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**Testimony before the New York City Commission on Human Rights
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We want to start by thanking Commissioner Malalis and the New York City Commission on Human Rights for convening this public hearing on pregnancy and caregiver discrimination. Under Commissioner Malalis's leadership, the Commission on Human Rights has shown unparalleled dedication to enforcing the City Human Rights Law to ensure that all New Yorkers, especially those with the least means, need not compromise their health, safety, or economic security and can benefit from the full protections offered by the law.

Our organization, A Better Balance (ABB)—a national legal non-profit headquartered in New York City—was founded with the goal of ensuring that all workers can care for themselves and their families without compromising their health or economic security. Combating pregnancy and caregiver discrimination, and the economic injustice it perpetuates for low-income working women, especially women of color who face multiple forms of discrimination, has been central to ABB's efforts since day one.

Here in New York City, we drafted and shepherded to passage groundbreaking legislation, the 2014 NYC Pregnant Workers Fairness Act, which marks its 5th anniversary today and has been replicated in 19 states and 4 localities.¹

¹ See *State Pregnant Worker Fairness Laws*, A Better Balance, <https://bit.ly/2yEKL6P>.

We also helped to draft New York City’s caregiver discrimination law and have been proud to partner with the Commission on enforcement of these and other crucial pieces of legislation, including the City’s excellent new sexual harassment and equal pay laws. We are here today to offer detailed lessons learned since the passage of the NYC Pregnant Workers Fairness Act and caregiver discrimination law and recommendations for improvement.

1. PREGNANCY DISCRIMINATION & ACCOMMODATIONS

a. The History of the NYC Pregnant Workers Fairness Act

In the early 2000s we began to hear from pregnant women across New York City and beyond who faced the impossible choice of maintaining a healthy pregnancy or earning a paycheck. The devastating choice arose because employers were refusing to grant pregnant workers modest accommodations, such as carrying a water bottle on the retail floor, light duty, or additional bathroom breaks to stay healthy and on the job.

We heard from a pregnant retail worker in Manhattan who was rushed to the emergency room when she fainted on the job because her boss would not let her drink water.² A supermarket worker with a lifting restriction was sent home and forced onto disability insurance, which ran out a month after she gave birth, and resulted in her losing her health insurance and needing to go onto Medicaid.³ A worker at JFK whose doctor gave her a lifting restriction, was pushed onto

² See A Better Balance et al., *Why We Need the Pregnant Workers Fairness Act: Stories of Real Women* 5 (2012), <https://www.abetterbalance.org/resources/why-we-need-the-pregnant-workers-fairness-act-stories-of-real-women-2014/> [hereinafter *Stories of Real Women*].

³ See A Better Balance & Nat’l Women’s Law Ctr., *It Shouldn’t Be A Heavy Lift: Fair Treatment for Pregnant Workers* 11 (2013), <https://www.abetterbalance.org/resources/it-shouldnt-be-a-heavy-lift/>.

unpaid leave despite the fact that the employer provided light duty to non-pregnant temporarily disabled employees.⁴

Gaps in our federal, state, and local laws permitted too many pregnant workers, especially low-income women in physically demanding jobs, to be forced off the job and robbed of critical income when they needed it most. In a 2012 *New York Times* op-ed, “Pregnant & Pushed Out of a Job,” we argued that pregnant workers, like workers with disabilities, need a clear right to temporary workplace accommodations to avoid the impossible choice between their paycheck and a healthy pregnancy.⁵ Under federal law, while pregnant and breastfeeding women have some protections from discrimination under the federal Pregnancy Discrimination Act, those protections are limited— employers only need to accommodate pregnant workers if they already provide accommodations to other workers. And the Americans with Disabilities Act does not require accommodations for pregnancies that do not qualify as disabilities under the Act. This leaves many workers without protections and creates confusion among both employers and employees with regard to workplace accommodations.

When pregnant women are pushed out of the workforce, whole families suffer. In New York City, nearly 300,000 households are headed by women who care for over a million children.⁶ And 40 percent of single-mother households in this city are living in poverty.⁷ When a

⁴ See *Stories of Real Women*, *supra* note 3, at 5.

⁵ Dina Bakst, *Pregnant, and Pushed Out of a Job*, N.Y. TIMES, January 30, 2012, at A25, available at <http://www.nytimes.com/2012/01/31/opinion/pregnant-and-pushed-out-of-a-job.html>.

⁶ The New York Women’s Foundation, *Economic Security and Well-Being Index For Women In New York City* 4 (Mar. 2013), <https://www.nywf.org/wp-content/uploads/2017/02/New-York-Womens-Foundation-Report.pdf>.

⁷ *Id.*

pregnant woman is denied an accommodation and forced to take unpaid leave or worse, terminated, that means she may not be able to afford groceries for her family, or pay rent, or make utility payments. It can affect workers' credit scores, drive them into debt, and leave them saddled with outlandish medical bills. Alternatively, if a woman chooses to forego the accommodation, she can put her health at risk.⁸

Not only does the legal gap take a toll on workers, but it also negatively impacts businesses. Businesses struggle to make sense of a muddled patchwork of federal laws, confused as to their obligations to pregnant workers. This confusion can lead to expensive and protracted litigation. Moreover, when a pregnant worker continues to work without the accommodation they need, it can lead to severe health consequences including dehydration, UTIs, fainting, pre-term birth, low birth weight, and miscarriage.⁹ In addition to compromising a worker's health and safety, these health issues can also lead to elevated healthcare costs for employers. For instance, when someone gives birth prematurely it can cost employers and employees an average of \$58,917 more in additional maternal and infant healthcare costs.¹⁰

The solution was clear. Fix the gap in the law by requiring employers to provide reasonable accommodations to workers with needs arising from pregnancy, childbirth, or related conditions. Prior to 2012, only six states had a patchwork of stronger legal protections for

⁸ Letter from Wendy Chavkin, MD, MPH to James Vacca, New York City Council Member (Nov. 29, 2012), <https://www.abetterbalance.org/resources/chavkin-letter/> (“[P]hysically demanding work—including prolonged standing, long work hours, irregular work schedules, heavy lifting, and high physical activity—has consistently been shown to be associated with a statistically significantly increased risk of preterm delivery and low birth weight.”).

⁹ *Id.* See also Jessica Silver-Greenberg and Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, N.Y. Times (Oct. 21, 2018), <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html?action=click&module=Top%20Stories&pgtype=Homepage>.

¹⁰ *Premature Birth: The Financial Impact on Business*, March of Dimes (2013), <https://bit.ly/2PCo2Qs>.

pregnant workers than federal law provides: Alaska, California, Connecticut, Hawaii, Louisiana, and Texas.¹¹ The *Times* op-ed and A Better Balance's call to action sparked a concerted legislative movement to create a uniform pregnancy accommodations standard, with New York City leading the way.

In November 2012, then-Councilmember James Vacca introduced the New York City Pregnant Workers Fairness Act (NYC PWFA), a bill that would require employers to provide reasonable accommodations for workers with needs arising from pregnancy, childbirth, or related conditions unless it would cause an undue hardship on the employer.¹²

A Better Balance worked closely with Councilmember Vacca and the City Council to draft and help pass the legislation. In June 2013, we testified in support of the bill highlighting the stories of women and the economic toll the failure to accommodate can take on them and their families.¹³ For instance, we shared the story of one woman who contacted A Better Balance's free legal hotline because she was pushed off the job during her 17th week of pregnancy after asking for a modest accommodation. She wound up in a homeless shelter because she could no longer afford rent.¹⁴

The Council passed the Pregnant Workers Fairness Act on September 24, 2013 and the law went into effect on January 30, 2014, exactly five years ago. In addition to the

¹¹ See *State Pregnant Worker Fairness Laws*, A Better Balance, <https://bit.ly/2yEKL6P>.

¹² See N.Y.C. Council Int. 0974-2012, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1241612&GUID=505FEA48-8362-46CB-88CF-A1BDE9B9084E>.

¹³ Hearing on Int. 0974-2012 Before the New York City Council Committee on Civil Rights (testimony of A Better Balance), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1241612&GUID=505FEA48-8362-46CB-88CF-A1BDE9B9084E>.

¹⁴ *Id.*

accommodation requirement, the law also requires employers to post notice of employees' right to reasonable accommodations. It also tasked the Commission on Human Rights, the enforcing agency, to "develop courses of instruction and conduct ongoing public education efforts as necessary."¹⁵

After the law passed we worked closely with the Commission to ensure New Yorkers understood their rights under the law. In 2016, with input from A Better Balance, the Commission issued legal enforcement guidance on pregnancy discrimination and accommodation to clarify employers' obligations and employees' rights under the law. The guidance was, and remains, some of the strongest and clearest guidance on pregnancy accommodation law in the country.¹⁶

Since the NYC PWFA was signed into law, nineteen states, most recently South Carolina, have passed similar legislation, mostly with bi-partisan and often unanimous support, as well as support from the business community. A Better Balance worked on most of these state campaigns as well, drawing on the New York City PWFA as a model. New York City pioneered not just a law, but a movement.

b. The NYC Pregnant Workers Fairness Act is Working for Workers

As soon as the law went into effect, we began to see its impact. In 2014, Angelica Valencia, was working at a potato packing factory in the Bronx when she became pregnant. In order to reduce the risk of having a second miscarriage, her doctor ordered her not to work

¹⁵ N.Y.C. Admin. Code § 8-107(22)(b)(ii).

¹⁶ N.Y.C. Comm'n on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy* (2016), https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf.

overtime at the factory, but after making the simple request, she was sent home without pay and worried how she would get by without a paycheck. A Better Balance took Angelica on as a client and with the New York City Pregnant Workers Fairness Act squarely on her side, wrote a letter to her company informing them of their obligations under the law. Soon thereafter, Angelica's story was featured in the *New York Times* and in a matter of weeks, "the matter was resolved to the satisfaction of both parties, and Valencia was returned to work and made whole."¹⁷ There was no protracted legal battle – just a clear law that helped both Angelica and her employer resolve the matter swiftly.

Another former client, Sanna-gay, who worked as an EMT in Queens, came to us in 2016. After she told her employer she was pregnant, he responded that she would have to resign if she planned to carry her pregnancy to term. He gave her 48 hours to let him know her decision. After speaking with her employer and explaining both the pregnancy discrimination law and NYC PWFA to him, he not only assured Sanna-gay that her job was safe, but also guaranteed she would receive a light duty accommodation at the point in her pregnancy when she would need it. Again, this matter was resolved in a matter of days, not months or years as is often the case when it comes to pregnancy accommodation cases in states without pregnant worker fairness laws.¹⁸

While A Better Balance has taken on clients and intervened in egregious cases like Angelica's or Sanna-gay's, we take the most pride in the fact that because of the clarity in the

¹⁷ Rachel Swarns, *Baby on Way, Worker Gets Her Job Back* (Oct. 20, 2014), <https://www.nytimes.com/2014/10/21/nyregion/a-pregnant-worker-is-offered-her-job-back.html>.

¹⁸ See A Better Balance, *Headlines from the Frontlines* (Feb. 9, 2017) (on file with A Better Balance).

law we are able to explain the law to workers so that they can resolve accommodation issues on their own. Through our free, confidential legal hotline we walk workers through the law and because the standard is so simple, workers are able to speak with their employers about the law and resolve accommodation issues quickly and without conflict.

For instance, Yagnma Amparo, a recent immigrant to the United States, who cleaned rooms at a well-known hotel chain, was fired after she provided her employer with a doctor's note advising that she take a few extra weeks to recover after having a C-section. Yagnma worried about how she would pay her bills and feed her baby. When she called our Spanish-speaking hotline, we guided her through her rights under the NYC PWFA, which includes a right to the accommodation of time off to recover from childbirth. She sent her employers materials in English and just one day after she self-advocated, she got her job back. Yagnma went from fearing about how she would provide for her new baby to feeling secure and empowered, and she did it on her own.¹⁹ That is the power of the Pregnant Workers Fairness Act.

Yagnma's story is not unique. We have spoken to countless women who were able to use the law to get accommodations on the job, from a recent caller whose boss granted her request to work from home two days a week after she invoked the law to a woman who quoted the law and NYC guidance to her employer after they refused to provide her with a private space to pump breast milk and they responded promptly by putting up a curtain and a lock in a small office and posting her pumping times outside.

¹⁹ See A Better Balance, *Standing Up for Women's Equality* (Aug. 25, 2017), <https://www.abetterbalance.org/standing-up-for-womens-equality-day/>.

The PWFA is working. At the same time, as we mark the fifth anniversary of the PWFA, we have the opportunity to look back and assess where we can continue to improve enforcement of, and public education about, the law. The next section lays out various recommendations to strengthen the effectiveness of the Pregnant Workers Fairness Act, especially for the most vulnerable workers.

c. Recommendations for Strengthening Education and Enforcement of the NYC Pregnant Workers Fairness Act

We recommend three key ways to increase the efficacy of the NYC PWFA: 1) The Commission should fast track pregnancy accommodation complaints, especially when the worker's health is at risk and to do that, the City Council should increase the Commission's budget in the FY 2020 budget; 2) the Commission's public-initiated investigations team should proactively investigate pregnancy discrimination in low-wage and male dominated industries; and 3) the Commission should increase public education and outreach efforts around pregnancy discrimination.

1. Recommendation #1: Fast Track Pregnancy Accommodation Complaints, Especially When the Worker's Health is at Risk

As we mentioned, the strength and effectiveness of the Pregnant Workers Fairness Act is that it has led to workers and employers reaching informal resolutions to pregnancy accommodation needs. The Commission's guidance on the law and strong commitment to enforcement is a key contributor to that success as it has provided a clear roadmap for employers' obligations and workers' rights.

Unfortunately, there are times when workers are unable to reach informal resolution and additional enforcement is needed. Pregnancy is a finite period of time and the accommodations workers seek are necessary to ensure their own safety and a healthy pregnancy. When a worker comes to the Commission because an employer has failed to accommodate them, the Commission may not need to do an in-depth investigation but rather should help the employer and employee expediently resolve the situation.

As such, the Commission should expand its new gender-based harassment unit—a unit designed to fast track harassment complaints—to include pregnancy accommodation complaints, especially when it is clear the accommodation the worker seeks is to prevent putting their health and the health of their pregnancy at risk. Moreover, the Commission should dedicate resources to mediating pregnancy accommodation disputes to try and resolve more expediently.

Adding capacity will require additional funding for the Commission. Last year, the City cut the Commission’s budget by \$1.4 million, or a nearly 10% reduction.²⁰ When drafting the Fiscal Year 2020 budget, we urge the Mayor and City Council to increase the Commission’s budget. Ultimately, fast tracking complaints and expanding mediation will save the city money as it will help resolve complaints early on, without the need for a prolonged investigation.

The PWFA must be vigorously enforced and the Commission needs the appropriate resources to do that. For many low-income workers, obtaining private counsel is not affordable and the Commission is their only means to adjudicate their rights. The City can and must devote

²⁰ See City of New York, Mayor’s Office of Management and Budget, *Adopted Budget: Fiscal Year 2019, Financial Plan Reconciliation* (June 15, 2018), <https://www1.nyc.gov/assets/omb/downloads/pdf/adopt18-fprecon.pdf>.

the appropriate resources to ensuring pregnant workers are able to vindicate their rights and get the accommodations they need.

2. Recommendation #2: Proactively Investigate Pregnancy Discrimination in Low-Wage and Male Dominated Industries

Too many New York City employers are still discriminating against pregnant workers simply because they are pregnant. After our client Chadel Reyes informed her boss at a Manhattan restaurant that she was pregnant, he significantly cut her hours and told her she “couldn’t work” because she “had a treasure inside [her]” and that she needed to stay home and rest, even though she wanted, and needed, to keep working.²¹ In 2019, this flagrant paternalism must end. These issues were recently highlighted in a devastating New York Times series on pregnancy discrimination in America, which highlighted three ABB clients, one of whom, Tasha Murrell of Memphis, Tennessee, miscarried after being denied medically-advised accommodations.²²

We encourage the Commission to conduct proactive investigations into companies and industries where pregnant workers are likely to face the highest rates of discrimination, including male dominated industries such as construction, law enforcement, the trades, and STEM professions. The Commission should also conduct investigations into low-wage industries

²¹ Jay Dow, *Pregnant woman files lawsuit against donut shop for discrimination*, Pix 11 (Aug. 2, 2018), <https://pix11.com/2018/08/02/pregnant-woman-files-lawsuit-against-donut-shop-for-discrimination/>.

²² See Jessica Silver-Greenberg and Natalie Kitroeff, *Pregnancy Discrimination Is Rampant Inside America’s Biggest Companies*, N.Y. Times (June 15, 2018), Jessica Silver-Greenberg and Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, N.Y. Times (Oct. 21, 2018), <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html?action=click&module=Top%20Stories&pgtype=Homepage>.

including home health, domestic work, food service, and retail. Strategic enforcement would put employers throughout these industries on notice that pregnancy discrimination will not be tolerated.

3. Recommendation #3: Increase Public Education and Outreach Efforts around Pregnancy Discrimination & Accommodation

There remains a great need for increased public education and outreach efforts around pregnancy discrimination and accommodation, including the right to accommodations for nursing mothers, in New York City. Too many women are in the dark about their rights despite the clear law on their side. The Commission should engage in a renewed public education campaign for the PWFA and pregnancy discrimination laws more generally.

In addition to targeting employers, the Commission should also reach out to hospitals, obstetrician-gynecologists, midwives, doulas, other birth and lactation professionals, home birth centers, and pre-natal preparation courses to educate them about the PWFA and the specific requirements to accommodate not just for pregnancy but for lactation as well.

d. New York City's Commitment to End Pregnancy Discrimination Should Be a Model for Other Cities, States, and Congress

As mentioned previously, the NYC PWFA has served as a model for other states around the country. Now it is time for Congress to act to swiftly to pass the federal Pregnant Workers

Fairness Act.²³ The current post-*Young v. UPS* legal framework is simply insufficient.²⁴ Every pregnant worker, no matter their zip code, should have the affirmative right to reasonable accommodation to stay safe and healthy on the job. This measure transcends political and ideological affiliation. It is supported by workers and businesses alike. It is time to make the Pregnant Workers Fairness Act the law of the land.

2. CAREGIVER DISCRIMINATION

a. The History of the NYC Caregiver Discrimination Law

Since A Better Balance's founding a core part of our mission has been to end discrimination against those who provide care to loved ones.²⁵ In 2007, then-Public Advocate Betsy Gotbaum and the City Council first introduced a bill that would ban discrimination based on actual or perceived caregiver status. We testified at a hearing on the bill in December 2007 citing example after example of workers who were fired or demoted based on their caregiving responsibilities, from a woman who was demoted after having her first child because her employer felt she should spend more time at home with her family or a worker who was fired because he needed to take his ill mother to a doctor's appointment.²⁶ As women's labor force participation increased, so too did caregiver discrimination. As we noted in our 2007 testimony,

²³ See A Better Balance, *Fact Sheet: The Pregnant Workers Fairness Act* (Jan. 2019) <https://www.abetterbalance.org/resources/fairness-for-pregnant-workers-bill-factsheet/>.

²⁴ See A Better Balance, *Fact Sheet: Fairness for Pregnant Workers after Young v. UPS* (May 2017), <https://www.abetterbalance.org/resources/fact-sheet-fairness-for-pregnant-workers-after-young-v-ups/>.

²⁵ See A Better Balance & the Barnard Center for Research on Women, *The Work Family Dilemma- A Better Balance: Policy Solutions for All New Yorkers* 3 (2007), http://bcrw.barnard.edu/wp-content/nfs/reports/NFS3-Work_Family_Dilemma.pdf.

²⁶ Hearing on Int. 565A-2007 Before the New York City Council Committee on General Welfare (testimony of A Better Balance), <https://www.abetterbalance.org/resources/testimony-proposed-int-565a-2007/>.

there was a 400% increase in claims of “family responsibilities discrimination” over a 10-year period.²⁷

While the legislation to amend the City Human Rights Law did not pass that year, the City Council took up the issue again in 2014 and held a hearing on the bill in September 2015. A Better Balance testified again in support of the bill, noting 61 percent of women in New York City with children under six years old were in the labor force, and more than 1 in 6 American workers was providing care to an elderly family member, relative, or friend with disabilities.²⁸ Further, we emphasized that family caregivers, who provide unpaid labor which some estimate to be in the range of \$188 billion annually, “deserve protection from unfair treatment that derails their careers, suppressed their lifetime earnings, and pushed their families onto public assistance and into poverty.”²⁹ We highlighted yet more stories of workers we had heard from who had been pushed out due to caregiving responsibilities, women like Yvette, a single mother of three children who lost her job of eleven years at a grocery store after she asked for a shift change due to childcare needs even though another colleague without children was permitted to change shifts to attend school.³⁰

²⁷ *Id.* (citing Mary C. Still, *Litigating the Maternal Wall: U.S. Lawsuits Charging Discrimination Against Workers with Family Responsibilities* 7, Center for WorkLife Law (July 6, 2006), http://www.uchastings.edu/site_files/WLL/FRDreport.pdf).

²⁸ Hearing on Int. 0108-2014 Before the New York City Council Committee on General Welfare (testimony of A Better Balance), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1672736&GUID=D78A68CB-0CA2-4777-9784-1B1CC79C4C9A> (citing Dina Bakst, Sherry Leiwant, and Janet Gornick, “Promoting Work-Family Balance” in In John Mollenkopf (ed), *Towards a 21st Century for All: Progressive Policies for New York City in 2013 and Beyond*. New York City: Center for Urban Research, 246–288, https://www.gc.cuny.edu/CUNY_GC/media/LISCenter/4-Page-246-288.pdf).

²⁹ *Id.* (citing Family Caregiver Alliance, *Women and Caregiving: Fact and Figures* (Feb. 2015), <https://www.caregiver.org/women-and-caregiving-facts-and-figures>).

³⁰ *Id.*

To our great relief, the City Council passed the law in 2016, joining many other cities and state with similar protections for familial or caregiver status.³¹

b. Implementation of the Caregiver Discrimination Law

Like the NYC PWFA, the caregiver discrimination law has brought relief and clarity to many. For instance, one hotline caller whose employer was giving her a hard time about changing her schedule to care for her daughter with a disability even though they allowed other employees to switch their schedules informed her boss about the law and soon thereafter was provided with the schedule she needed to care for her daughter.

Still, more education about, and enforcement of, the law is needed, especially within city agencies. Our client Karina Flete is one such city employee who has suffered immensely because of the city's discrimination against her based on her caregiving responsibilities. Karina is a single mother and the sole caregiver for her three-year-old daughter with special needs.³² She has worked for the New York City Department of Information Technology and Telecommunications as a 3-1-1 customer service representative for more than three years. After her daughter started school last fall, Karina requested that her 9:00 a.m. to 5:00 p.m. schedule be shifted by one hour to ensure that she would be able to arrive to work on time after placing her daughter on the school bus. Karina knew that her coworkers worked many different shifts at the 24-hour call

³¹ *Id.* (citing Stephanie Bornstein & Robert J. Rathmell, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, Center for WorkLife Law (Dec. 2009), <https://worklifelaw.org/publications/LocalFRDLawsReport.pdf>).

³² *ABB Files Discrimination Charge Against New York City on Behalf of Single Mother*, A Better Balance (Mar. 29, 2017), <http://www.abetterbalance.org/abb-files-discrimination-charge-against-nyc-on-behalf-of-single-mother/>.

center. She also knew that other workers had requested and received schedule changes in the past. Yet her supervisor told her that only overnight shifts were available and suggested she work overnight. Karina explained that working at night was impossible due to her parental responsibilities and the fact that she could not afford nighttime childcare.

She was stunned when shortly thereafter, the agency notified her that her schedule was being changed to 3:00 to 11:00 p.m.—a shocking reprisal for asking that her daytime schedule be modified and one clearly intended to force her off the job. Though Karina filed her case at the Commission almost two years ago, her case is still ongoing and in the interim she has suffered devastating emotional and financial consequences.

Karina’s case illustrates three changes that are needed with respect to the caregiver discrimination law: 1) The Commission must ensure that investigations into caregiver discrimination, especially when a worker has been pushed off the job without pay, are handled swiftly and should do a proactive investigation into city agencies; 2) The Commission must do more outreach and education about the caregiver discrimination law; and 3) The City Council must amend the law to provide affirmative accommodations to caregivers who are providing care for dependents with disabilities. In addition to changes under the Human Rights Law, the City Council should also amend the recent Temporary Schedule Change Law to require more than two schedule changes per year for “personal events” and should add to the definition of “personal event” to include the need to attend educational events.

c. Recommendation #1: The Commission Must Improve Its Investigations Into Caregiver Discrimination, Especially Within City Agencies

Karina should not have to wait more than two years for a resolution to her case, especially since her case resulted in her being pushed off the job and struggling to make ends meet and to provide for herself and her daughter. The Commission should prioritize caregiver discrimination cases that involve low-wage workers and those where the worker is facing brutal economic consequences as a result of the discrimination. Moreover, the Commission should conduct proactive investigations into caregiver discrimination, starting with a probe of city agencies. The City should be a model employer but, as Karina's case reveals, is clearly lagging.

d. Recommendation #2: The Commission Should Increase Outreach and Education about the Caregiver Discrimination Law

While the caregiver discrimination law has been in effect for over three years, far too few workers and workplaces know about the law. The Commission should create a dedicated caregiving discrimination poster and FAQs to provide employers and employees with more detailed information about their obligations and rights under the law, respectively. Workers are not able to take full advantage of their rights under the law because they are uninformed about their rights. The Commission should work expediently to remedy that.

e. Recommendation #3: The City Council Should Amend the Law to Include the Right to Accommodations for Caregivers Who Provide Care to Dependents with Disabilities

Currently, the caregiver discrimination law does not provide caregivers with the affirmative right to accommodation. The law should be amended to include an affirmative right to accommodation for those caregivers who need to provide care for dependents with disabilities.

Such an accommodation could have prevented the situation Karina finds herself in, wherein she is forced to find a comparator to show that a colleague was accommodated when she was not, when all she needed was a small schedule change in order to provide for her daughter with special needs.

Though federal and state law require employers to accommodate workers with disabilities, those who provide care to loved ones with disabilities are often left without recourse, especially if they do not qualify for the Family and Medical Leave Act or New York Paid Family Leave, or if they do not need time off but rather modifications to their schedule or other accommodations that would allow them to stay on the job while also providing care. As we pointed out in our 2015 testimony in support of the caregiver discrimination law, “working caregivers of aging relatives report having less access to flexible work and perceive significantly lower job security than even workers with childcare needs.”³³

This issue affects workers of all ages and genders, be it someone who needs to provide care for a young child, a sibling with disabilities, or an aging parent, to name just a few examples. Amending the law to include such an accommodation would ensure that highly involved caregivers with the most responsibilities are able to shoulder both their work and caregiving obligations.

f. Recommendation #4: Amend the Temporary Schedule Change Law to Add More Time and Additional Purposes

³³ Hearing on Int. 0108-2014 Before the New York City Council Committee on General Welfare (testimony of A Better Balance), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1672736&GUID=D78A68CB-0CA2-4777-9784-1B1CC79C4C9A>.

In July 2018, the NYC Temporary Schedule Change Law went into effect.³⁴ The new law requires employers to grant temporary schedule changes to employees up to two times per year for “personal events.” Among other purposes, “personal events” can include the need to care for a minor child or a care recipient.³⁵ While this law is an important first step, the City Council should amend it to provide for more time, at least up to five temporary schedule changes, and to include the need to attend school-related events as a qualifying “personal event.” Many states mandate that employers provide employees with unpaid time off to attend school-related events.³⁶ Amending the Temporary Schedule Change Law to include the ability to change one’s schedule to attend a child’s parent-teacher conference or important school meetings would serve a similar purpose by providing parents with the flexibility to attend school-related events without fear of retribution or retaliation.

CONCLUSION

We thank the Commission for holding today’s hearing and taking the time to consider additional steps that need to be taken to stamp out pregnancy and caregiver discrimination in our city. We look forward to continuing to partner with the Commission to ensure that no worker is ever forced to choose between caring for themselves and their families and maintaining their economic security.

³⁴ See *N.Y.C. Admin Code* § 20-1261–1263.

³⁵ *Id.*

³⁶ See *School Related Parental Leave — State Laws*, Workplace Fairness, <https://www.workplacefairness.org/school-related-parental-leave-state-law> (last visited Jan. 28, 2019).

