

**Testimony of A Better Balance: The Work & Family Legal Center
Before the Commission on Gender Equity, the Commission on Human Rights, and the
Department of Consumer and Worker Protection on Equal Pay**

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Good evening, and thank you to the New York City Bar Association for hosting us tonight, and to the New York City Commission on Gender Equity (“CGE”), Commission on Human Rights (“CCHR”), and the Department of Consumer and Worker Protection (“DCWP”) for holding this hearing to discuss the persistent gender wage gap faced by women, and particularly women of color, in New York City, and for the opportunity to testify. 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. Fighting to close the wage gap for working families, particularly for low-income working women, especially women of color, has been central to ABB's efforts since day one.

In New York City, we are proud to have drafted and shepherded to passage groundbreaking legislation, the 2014 NYC Pregnant Workers Fairness Act, and helped to draft New York City's caregiver discrimination law. We were at the forefront of drafting and advocating for the New York City Earned Sick Time Act as well as the recent expansion of the law to include safe time and to broaden the definition of family members as well as the city's recent Fair Workweek law. We were also proud to work closely on New York City's salary history ban law and recent lactation rooms laws and for our continued partnership with CCHR and DCWP on enforcement of these and other crucial laws, including the City's excellent new sexual harassment laws.

In New York State, we led the coalitions to pass both the New York State's Women's Equality Act and the State's groundbreaking Paid Family Leave law. In 2017, we offered detailed testimony before the New York State Department of Labor on the gender wage gap in New York State, with many suggestions that would impact New York City's workers as well. We are also leaders of a national campaign Equal Pay Today!, that challenges barriers that have allowed gender discrimination in pay to persist in every corner of the country. We are honored to

be able to continue the conversation on how best to address the gender wage gap with you this evening.

I. BACKGROUND ON THE GENDER WAGE GAP

In the United States, women working full time only earn, on average, 82 cents for every dollar earned by white, non-Hispanic men.¹ New York City's working women also earn 82 cents on average for every dollar their male counterparts in the City earn.² The gap is wider for many women of color. Nationally, Black women earn 62 cents for every dollar earned by white, non-Hispanic men, and Hispanic women earn just 55 cents.³ In 2016, Black women in New York City made only 57 cents for every dollar earned by white, non-Hispanic men, while Latina women made 49 cents for every dollar earned by white, non-Hispanic men—larger gaps than exist in New York State and in the United States as a whole.⁴ In 2014, Asian women in New York City earned only 37 cents for every dollar earned by white, non-Hispanic men, despite the fact that national gap in wages between Asian women and white, non-Hispanic men is 87 cents for every dollar.⁵

The wage gap is particularly egregious in New York City government itself—the wage gap for women working full-time in the City's municipal workforce is three times larger than the gap for women working full-time in New York City's private sector.⁶

Mothers also face a higher wage gap than do women without children: Nationally, mothers make, on average, 80 cents for every dollar a white man makes.⁷ Troublingly, progress towards closing the gender wage gap has stalled in recent years.⁸ A redoubling of efforts to address this problem is needed.

The gender wage gap is a multi-faceted problem, and closing it requires multi-faceted solutions that fully address its many causes. Closing the gender wage gap, and closing the gaps among women's earnings based on race, requires addressing multiple forms of discrimination, including pregnancy discrimination, caregiver discrimination, and unequal compensation for

¹ Institute for Women's Policy Research, *The Gender Wage Gap: 2018 Earnings Differences by Gender, Race, and Ethnicity* 1 (2019), <https://iwpr.org/wp-content/uploads/2019/09/C484.pdf> [hereinafter *The Gender Wage Gap*].

² Office of the New York City Comptroller, *Policy Brief: Gender and the Wage Gap in New York City* (2014), https://comptroller.nyc.gov/wp-content/uploads/documents/Gender_and_the_Wage_Gap_in_New_York_City.pdf [hereinafter *Policy Brief: Gender and the Wage Gap in New York City*].

³ *The Gender Wage Gap*, *supra* note 2, at 2.

⁴ Office of the New York City Comptroller, *Inside the Gender Wage Gap, Part I: Earnings of Black Women in New York City* (2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/BW-Equal-Pay-Day.pdf>; Office of the New York City Comptroller, *Inside the Gender Wage Gap, Part II: Earnings for Latina Women in New York City* (2018), <https://comptroller.nyc.gov/reports/gender-wage-gap/inside-the-gender-wage-gap/inside-the-gender-wage-gap-part-ii-earnings-of-latinas-in-new-york-city/>.

⁵ Letitia James, N.Y.C. Pub. Advocate's Office, *Policy Report: Advancing Pay Equity in New York City* 2 (2016)

⁶ *Id.* at 8.

⁷ National Women's Law Center, *Fact Sheet: Equal Pay for Mothers is Critical for Families* (2018), <https://nwlcciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/05/Motherhood-Wage-Gap-2018.pdf>. Note also that the wage gap between mothers and *fathers* is larger than the wage gap between mothers and men in general: Mothers earn, on average, 71 cents for every dollar a father makes. *Id.*

⁸ *The Gender Wage Gap*, *supra* note 2, 1.

equal work. It also requires the development and enforcement of policies that support pregnant and parenting workers, caregivers, and domestic workers. A Better Balance sees this up close every day through our free, confidential legal hotline where we speak to workers who are facing these types of discrimination, often multiple forms at once.

Take, for example, A Better Balance's client Luisa.⁹ Luisa worked in the kitchen at a supermarket in New York City making \$10.50/hour. One of her supervisors repeatedly touched and groped her but she never reported it because she was afraid she would lose her job if she told anyone. Then, when Luisa became pregnant, she asked her supervisor to stop touching her because she did not want him to harm her baby. After that, he began to constantly ridicule her for having a second baby so soon after her first. Luisa requested to move to a different position in the store but HR ignored her requests. Then, when she asked to avoid climbing ladders because of the risk of miscarriage, one of her supervisors told her she should go out on unpaid maternity leave and come back to work when she had the baby. Luisa was eventually fired after she requested time off to attend one prenatal appointment.

Luisa's story demonstrates the multiple, interconnected forms of harassment low-income women face on the job every day and the impossible choices they are forced to make in order to keep earning a paycheck. Initially, Luisa had to endure her supervisor's sexual harassment only for it then to evolve into harassment based on her pregnancy.

Luisa's story gets to the heart of the gender wage gap. Terminated just weeks before giving birth, Luisa suffered tremendous economic and emotional distress as a result of this discrimination. Not only did Luisa lose much-needed income, but she also lost out on opportunities to advance in the workplace. When Luisa was fired, she went to work at a different supermarket where she again started at an entry-level position, while the supervisors who discriminated against her continued to occupy their positions of power. When low-wage working women cycle in and out of the workforce, they lose not only wages, but also seniority and other benefits of continuous employment that would promote economic stability for their families.¹⁰ What began as sexual harassment eventually led to pregnancy discrimination and the perpetuation of the gender wage gap.

Luisa is not alone. Women across New York City face discrimination in the workplace every day. In particular, women working in low-wage industries and non-traditional occupations are subjected to alarmingly high levels of sexual harassment. For instance, women in non-traditional occupations, such as the construction industry, face alarmingly high levels of sexual harassment. A study by the Department of Labor found that a startling 88 percent of women working in construction experienced sexual harassment in the workplace,¹¹ a factor that contributes to women's low workforce participation (just 2.6% nationally) and promotion rates in that industry.¹² Often, these women experience discrimination in multiple forms, just as Luisa did. While Luisa fortunately came to A Better Balance, many workers do not know where to turn when they face discrimination and all too often, employers are able to thwart the law. Just as

⁹ Name changed to protect confidentiality.

¹⁰ See Dina Bakst & Phoebe Taubman, A Better Balance, *The Pregnancy Penalty: How Motherhood Drives Inequality & Poverty in New York City* 6 (2014) [hereinafter *ABB Pregnancy Penalty Report*].

¹¹ Advisory Committee on Occupational Safety and Health, U.S. Dep't of Labor, *Women in the Construction Workplace: Providing Equitable Safety and Health Protection* (June 1999), <https://www.osha.gov/doc/accsh/haswicformal.html>.

¹² Fatima Goss Graves et al., National Women's Law Center, *Women in Construction: Still Breaking Ground 2* (2014), https://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf.

Louisa faced multiple forms of discrimination that impeded her economic progress—sexual harassment, pregnancy discrimination, violations of the Earned Safe and Sick Time, so too must the solutions be multi-faceted.

In our testimony this evening, we will discuss several key drivers of the gender wage gap and highlight solutions that exist and new policies that are still needed to close the wage gap for New York City’s women.

II. KEY DRIVERS OF THE GENDER WAGE GAP

1. Pregnancy and Caregiver Discrimination

Through our free legal clinic for low-income pregnant women and caregivers, we at ABB see, up close, how bias and institutional barriers penalizing pregnant women and mothers in the workplace deny women equal opportunities, harm families, and threaten our City’s economic growth. In fact, the pay gap and income inequality share a common core—one we call “the pregnancy penalty”: bias and inflexibility towards women in the workplace that starts when they become pregnant and snowballs into lasting economic disadvantages.¹³ Many women struggle to get accommodations to allow them to pump breastmilk at work, and as a result they often either stop breastfeeding or are pushed out of their jobs illegally. In fact, thirty-two percent of new mothers give up breastfeeding less than seven weeks after returning to work. And in the low-wage workplace, caregiver discrimination is often especially blatant. We have heard from countless women who have had their hours slashed, or eliminated all together, because they chose to start a family. As we will discuss below, while New York City already has strong protections in place for pregnant and caregiving workers, more notice, outreach, education, and enforcement is needed to ensure these laws are being utilized to their full extent, especially by low-wage workers.

2. Access to Earned Safe & Sick Time & Paid Family Leave

Most workers will have to provide care to a loved one at some point in their lives, but the United States has no national paid leave law to help them stay afloat in these critical life moments. Without paid leave to help them weather family health emergencies, almost one in five low wage working mothers have lost their jobs due to sickness or caring for a family member.¹⁴ In fact, half of women with less than a high school education “quit” their jobs in order to bond with new babies, reporting that without paid leave they had no other choice.¹⁵ These workforce exits result in longer gaps in work histories with a negative impact on future wages. In contrast, new mothers with access to paid sick days and paid family leave are more likely to return to work and earn higher wages.¹⁶ Again, while New York City has paid sick time, and the state has

¹³ *ABB Pregnancy Penalty Report*, *supra* note 11, at 9.

¹⁴ *See ABB Pregnancy Penalty Report*, *supra* note 11, at 6.

¹⁵ *Id.*

¹⁶ *Id.*

a paid family leave law, enforcement of, and access to, these laws is crucial in ensuring their success.

3. Fair Schedules

Rigid and unpredictable workplace schedules also routinely serve to push women, especially mothers, out of the labor force. For higher-earning mothers, long work hours and the stigma associated with flexible or part-time work often shove them into less lucrative jobs or out of the workforce all together.¹⁷ Middle-income mothers contend with highly supervised schedules, where they might be fired for being a few minutes late, and face mandatory unscheduled overtime that can throw carefully constructed, tag-team childcare plans into disarray.¹⁸

4. Access to Quality & Affordable Childcare

Lower-income mothers often face the most acute work-family challenges, yet they are least likely to be able to control their work schedules. Approximately half of low-wage hourly workers report having limited control over their work hours.¹⁹ The consequences are profound: many mothers find it impossible to arrange safe, affordable child care at a moment's notice and must exit the workforce, with no path for reentry. Other women are forced to work part-time, but this flexibility comes at a cost: part-time workers often face an earnings penalty when compared with their full-time counterparts and they are less likely to qualify for benefits such as paid leave, health insurance and employer-sponsored retirement plans.²⁰

When low-wage working mothers cycle in and out of the workforce, they lose not only wages, but also seniority and other benefits of continuous employment that would promote economic stability for their families.²¹ For these women, the pregnancy penalty is steep: each new child brings a pay penalty of fifteen percent, compared to four percent for higher-wage earning mothers. Even worse, low-earning mothers suffer the largest pay penalties at the moment when physical care of their children is most intense: the pay penalty per preschooler is almost five times as great for a low-income mother as for her higher-earning counterparts.²² The long-term financial consequences for families can be devastating.

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Joint Economic Committee Democratic Staff, *Gender Pay Inequality: Consequences for Women, Families and the Economy* 16 (2016), <https://www.jec.senate.gov/public/cache/files/0779dc2f-4a4e-4386-b847-9ae919735acc/gender-pay-inequality---us-congress-joint-economic-committee.pdf>.

²¹ See *ABB Pregnancy Penalty Report*, supra note 11, at 6

²² *Id.*

5. Sexual Harassment

Women across New York City face sexual harassment in the workplace every day. In particular, women working in low-wage industries and male-dominated occupations are subjected to alarmingly high levels of sexual harassment. For instance, thirty-six percent of live-in domestic workers report experiencing threats, insults, or verbal abuse on the job, often in the form of sexual harassment, and thirty-one percent of women in construction report sexual harassment on the job.²³

Women who experience sexual harassment at work experience higher levels of stress, anxiety, and depression, which can lead to declining job performance and productivity.²⁴ Sexual harassment can also push women out of their jobs and into positions with lower pay, and it can discourage women from seeking employment in or push them out of certain industries, increasing occupational segregation.²⁵

6. Lack of Salary Transparency

Women, and especially mothers, are frequently not paid what they are worth. Women with college degrees make less than their male counterparts in their first jobs out of school, with the starting salary gap widening for women of color.²⁶ And one of the most cited studies on the topic found that mothers were recommended for significantly lower starting salaries compared to non-mothers.²⁷

Lack of pay transparency allows discriminatory wages to persist: When employees are unaware of the typical pay for a role like theirs, it is difficult for them to know whether they are

²³ Linda Burnham & Nik Theodore, National Domestic Workers Alliance et al., *Home Economics: The Invisible and Unregulated World of Domestic Work* 33 (2012), <https://communitywealth.org/sites/clone.communitywealth.org/files/downloads/report-burnham-theodore.pdf>; Ariane Hegewisch and Bridgid O'Farrell, Institute for Women's Policy Research, *Women in the Construction Trades: Earnings, Workplace Discrimination, and the Promise of Green Jobs Findings from the IWPR Tradeswomen Survey* (2015), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/C428-Women%20in%20Construction%20Trades.pdf>.

²⁴ Rebecca S. Merkin & Muhammad Kamal Shah, *The Impact of Sexual Harassment on Job Satisfaction, Turnover Intentions, and Absenteeism: Findings from Pakistan Compared to the United States*, 3 SpringerPlus (2014).

²⁵ Alieza Durana et al., *New America Sexual Harassment: A Severe and Pervasive Problem* (2018), <https://www.newamerica.org/better-life-lab/reports/sexual-harassment-severe-and-pervasive-problem/>; Heather McLaughlin et al., *The Economic and Career Effects of Sexual Harassment on Working Women*, 31 *Gender & Soc'y* (2017).

²⁶ Christianne Corbett & Catherine Hill, American Association of University Women, *Graduating to a Pay Gap: The Earning of Women and Men One Year After College Graduation* 9 (2012); Teresa Perez, PayScale, *Earnings Peak at Different Ages for Different Demographic Groups* (2019), <https://www.payscale.com/data/peak-earnings>.

²⁷ *ABB Pregnancy Penalty Report* 9 (citing Shelley J. Correll, Stephan Benard, and In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 *American J. of Sociology* 1297 (2007), <http://gender.stanford.edu/sites/default/files/motherhoodpenalty.pdf>).

being discriminated against or what their work is worth. And without information about what salary is appropriate for a particular role, female job applicants are left without the support they need to ensure they are compensated appropriately. Women ask for lower salaries than men during hiring negotiations 61% of the time.²⁸ Many have suggested that women should negotiate better or more often to close this gap, but that suggestion ignores the barriers to women's ability to successfully negotiate. Employers may be less willing to work with women who try to negotiate while men don't face the same penalty, and women are less likely than men to get what they ask for when they negotiate their salaries.²⁹

7. Devaluing of “Women’s Work” and Occupational Segregation

Occupational segregation of the sexes—with male-dominated fields tending to pay more and women-dominated fields tending to pay less—is one of the most important measurable factors explaining the present wage gap between men and women in the United States.³⁰ Within the paid labor force, women are underrepresented in higher wage occupations and overrepresented in fields like nursing, teaching, social work, home health care, and others that involve the direct provision of physical and emotional care.³¹ Yet workers in those fields are notoriously undercompensated for their work. Jobs performed predominantly by women and people of color are systematically underpaid because of historic discrimination.³² For example, some school districts pay teaching assistants less than cleaners despite the fact that teaching assistants are required to have associate's degrees and cleaners are not.³³ The disparate earnings between female and male dominated fields are a key contributor to the wage gap.

III. SOLUTIONS TO PAY INEQUITY IN NEW YORK

New York City has been at the forefront of addressing issues that impact women's economic security, from the passage of the City's Pregnant Workers' Fairness Act to the City's recent passage of Fair Workweek legislation. These efforts signal the City's commitment to economic justice for the more than 4 million people who work in New York City.³⁴ With well-

²⁸ Hired, *The State of Wage Inequality in the Workplace* (2019), <https://hired.com/page/wage-inequality-report/ask-for-their-worth>.

²⁹ Benjamin Artz et al., *Do Women Ask?*, 57 *Industrial Relations* 611 (2018), Hannah Riley Bowles et al., *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 *Organizational Behavior & Human Design Processes* 84 (2007).

³⁰ See Ariane Hegewisch & Heidi Hartmann, Institute for Women's Policy Research, *Occupational Segregation and the Gender Wage Gap: A Job Half Done* 11 (2014), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwprexport/publications/C419.pdf>.

³¹ *Id.* at 15–16, 18–19.

³² Equal Pay Coalition NYC/NYWA, *Call to Action: Pay Equity Resource Guide*, <http://www.lwvny.org/advocacy/pay-equity/2010/PayEquityGuide061510.pdf>.

³³ *Id.*

³⁴ Office of the New York State Comptroller, *New York City Employment Trends* (2019), <https://www.osc.state.ny.us/osdc/rpt1-2020.pdf>.

funded agencies to ensure that these crucial protections are enforced and to educate workers about their rights, New York City's existing protections will be crucial weapons in the fight to close the gender wage gap.

A. COMMISSION ON HUMAN RIGHTS

1. Fast-Track Pregnancy and Caregiver Discrimination Complaints

ABB is proud to have drafted and shepherded to passage groundbreaking legislation, the 2014 NYC Pregnant Workers Fairness Act, and since the law's passage we have seen its profound impact on New York City's workers. 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 on Human Rights' 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.

As we mentioned in testimony before the Commission during the 2019 pregnancy and caregiver hearing, 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.

Likewise, workers who also serve as family caregivers are often dealing with time-sensitive, urgent needs—be it caring for a family member in the midst of a medical crisis or caring for a child who is too young to be left alone. Caregivers should not have to suffer through long waits before their complaints are resolved, especially in cases where they have been pushed off the job or otherwise had their ability to make ends meet jeopardized. The Commission on Human Rights 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, and should work to help expediently resolve those disputes.

Moreover, the Commission should dedicate resources to mediating pregnancy accommodation and caregiver discrimination disputes to try and resolve them more expediently. Adding capacity will require additional funding for the Commission. 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 and caregiver discrimination protections 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 the appropriate resources to ensuring pregnant workers are able to vindicate their rights and get the accommodations they need.

2. Strong Enforcement of Lactation Discrimination Laws

The passage of Local Law 185 and Local Law 186 gives New York City women significant legal protections against lactation discrimination when they return to work following childbirth, and we are glad that the Commission on Human Rights has dedicated time and resources to creating model accommodations policies. But without strong enforcement of these laws, mothers are still forced to wean their babies early, endure painful health complications, or even lose their jobs. These laws were passed to ensure that women in New York City have the right to make decisions that are healthiest for themselves and their babies. The Commission on Human Rights should prioritize enforcement of lactation discrimination laws to make that right meaningful.

3. Proactive Investigation of Sexual Harassment and Other Gender-Based Discrimination in Low-Wage and Male-Dominated Industries

We encourage the Commission on Human Rights to proactively investigate companies and industries known to have particularly high rates of discrimination and harassment, such as the retail industry, food service industry, home health care industry, construction industry, and domestic work. Increasing strategic enforcement would put employers throughout these industries on notice that harassment and discrimination will not be overlooked in low-wage industries and employers will face consequences for creating hostile work environments for women.

When someone files a complaint with the Commission, the Commission must undergo a lengthy process to investigate the complaint. For complainants who remain at the same employer during the investigation, this could mean subjecting themselves to continued harassment while the Commission investigates the complaint. For those complainants that may have been fired or left their jobs due to harassment, it means the complainant must wait often more than a year for a resolution to a traumatic event. Proactively investigating harassment and discrimination in industries where such problems are rampant, particularly around time sensitive issues such as pregnancy discrimination and sexual harassment, would put employers throughout these

industries on notice that discrimination will not be tolerated and obviate the need for some individual employees to pursue the lengthy and complex complaint process.

4. Increased Notice, Outreach & Education

There remains a great need for increased public education and outreach efforts around the city human rights law more broadly and pregnancy discrimination and accommodation, caregiver discrimination, and lactation rights, specifically. 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 around pregnancy, lactation, and caregiving.

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 these laws and the specific requirements to accommodate for pregnancy, lactation, and caregiving.

B. DEPARTMENT OF CONSUMER & WORKER PROTECTION

1. Strong Enforcement of Paid Sick Time and Flexible Scheduling Laws

Our organization was at the forefront of drafting and advocating for the New York City Earned Sick Time Act. This landmark piece of legislation, which went into effect just over three years ago, gave most New York City workers the right to time off, usually paid, when they or their families are sick, injured, or seeking medical treatment. We were also proud to work with workers throughout New York City to pass the Fair Workweek legislation, which became law in 2017.

While the passage of these laws was a crucial step forward for the City's workers, much remains to be done. Through our legal hotline, we still hear regularly from workers whose rights under these laws are being violated—who are not being paid for time they have earned or are being retaliated against, including being fired, for exercising their rights under these laws. These problems are especially acute for low-income workers, for whom the loss of income hits the hardest.

Abuses are especially endemic in certain industries, such as home care agencies, an area of particular need highlighted by the creation of the Paid Care Division, as well as retail, restaurants, and construction. Without robust, consistent enforcement, even the strongest labor laws are only paper promises. To that end, we look forward to continuing to work with the Office of Labor Policy and Standards at the Department of Consumer and Worker Protection to build a process that works for workers. Such a process must fulfill the law's clear requirement to attempt to resolve complaints through mediation, which must include complainants as full parties with equal status to their law-breaking employers.

2. Education and Outreach

In the tenure of Commissioner Lorelei Salas, the newly established Office of Labor Policy and Standards (OLPS) has brought a new energy and a committed team of experienced workers' advocates to the Department of Consumer and Worker Protection. This team has made major strides forward in creating a worker-responsive agency, including important steps like prioritizing recovery for complainants who take the risky step of coming forward and the dedication of significant resources to witness preparation prior to hearings.

Building on this momentum, we urge renewed attention to worker education and outreach, to ensure that all workers know about and can use their rights under the law. The Department of Consumer Affairs may also wish to consider partnering with community groups and organizations that represent workers to help get the word out about the labor standards legislation OLPS is responsible for enforcing. Cities such as Seattle and San Francisco have successfully utilized such partnerships in their efforts to enforce paid sick time and fair scheduling laws.

IV. NEW POLICIES NEEDED

Over the past several years, New York City has taken meaningful steps towards economic justice and equal pay for the millions of people who work here, and we have been honored to work with the Commission on Gender Equity, the Commission on Human Rights, and the Department of Consumer and Worker Protection on implementing many of those laws. To become a true leader in the effort to close the gender pay gap, New York City can and should continue to pass progressive policies aimed at increasing salary transparency and addressing the structural factors that perpetuate gender-based differences in income.

1. Amend the New York City Human Rights Law to Lower Employee Threshold and Extend Protections to Domestic Workers

In the last legislative session, the New York State Legislature amended the State's Human Rights Law to extend coverage to all New York State employers with one or more employees, lowering the threshold from four. New York City should follow the State's lead, lowering the employer threshold in the City's Human Rights Law from four to one. The City should also go further, acting to ensure that domestic workers are affirmatively protected by all relevant provisions of the City's Human Rights Law. This would help to ensure that discrimination in all its forms cannot force New York City's women into lower-paying jobs or out of the workforce altogether, and would also help to ensure that New York City's workplaces are supportive of the women working here.

2. Amend the Earned Safe & Sick Time Act to Include a Private Right of Action

After years of work with our partners and supporters, ABB was thrilled to finally see the Earned Sick Time Act become law. Since the law's initial passage in 2013, we have conducted hundreds of trainings to educate New Yorkers about their rights under the law. Since the law's inception, we have also represented dozens of low-income workers who were denied sick time or retaliated against for asking for or using sick time, including over two dozen complaints before the Department of Consumer Affairs.

But New York City's enforcement is lagging behind the enforcement of other jurisdictions with sick leave laws. **Over two-thirds of the nearly three-dozen paid sick leave laws in the U.S. include a private right of action, including Westchester.**

As we have seen firsthand through our work representing New York City workers whose rights were violated under the City's sick time law, without a private right of action, workers lack assurance that their rights can be meaningfully enforced. The existing administrative complaint process under the current paid safe and sick leave law is an important but inadequate means of enforcing the law as to individuals who have been harmed as a result of attempting to exercise their rights. That process must be supplemented with a private right of action in order to ensure that each worker in New York City can vindicate his or her rights.

Exclusive agency enforcement harms workers in several significant ways:

- a. **Cases languish and workers are left paying the price.** Administrative complaints can languish for years with no other recourse for aggrieved workers to obtain relief. Workers subject to retaliation for filing an administrative complaint or for otherwise asserting their rights under the law are left particularly vulnerable during the agency's often-lengthy investigation process. In addition, the enforcing agency may prolong an investigation because it wants to pursue a company-wide investigation. While it is important to rout out pervasive abuses, it often leaves complainants waiting far longer for resolution than they would have had they been able to go to court.
- b. **The agency's and the complaining worker's priorities do not always align, leaving workers confused, disempowered, and without full relief.** Complainants are not parties in the administrative action—nor do they have the right to intervene as parties, as they do under the human rights law—which is problematic for workers because the agency's interests do not always align with those of complainants. Workers are bound by all decisions the agency makes with respect to their case. For instance, the complainant does not have the right to accept or reject settlement offers. This is unfair, confusing, and disempowering to workers. Workers must accept any amount of money the agency

negotiates on their behalf, which often means accepting less than 100% full relief even as the City pursues civil penalties or full relief for other non-complaining workers. Without complainants, there would be no recovery for anyone. Having a private right of action would ensure that workers, especially those who choose to speak out, can pursue full relief with respect to their own claims.

- c. **Workers lack a single venue to vindicate their rights.** Workers who experience other labor abuses such as minimum wage violations or discrimination lack the ability to consolidate all of their claims in a single venue. This is both extremely burdensome for workers and an inefficient use of New York City resources. ABB represents multiple clients who had no other option but to file separate administrative complaints to vindicate their rights under both the sick leave law and the human rights law. If the sick leave law had a private right of action like the human rights law, these workers could have brought all of their claims in a single court complaint. In addition, we have found that agencies will delay investigating a complaint as they wait for resolution from another agency, leaving workers waiting additional years for resolution.
- d. **Agency resources are not guaranteed in perpetuity.** Workers' already-limited ability to obtain relief through the administrative complaint process is dependent on the agency's resources. A future administration may not be inclined to fund enforcement of this law. Moreover, other laws enforced by the Department of Consumer and Worker Protection have private rights of action, including the Fair Workweek Law, Freelance Isn't Free Act, and Temporary Schedule Change Law. The Earned Safe and Sick Time Act is an outlier and needs to be updated.
- e. **Adding a private right of action would also provide an opportunity to amend the law to expand the type of relief a worker can recover for violations of the law.** Right now, workers can recover damages only for back pay and fixed penalties for specific violations, but they cannot recover compensation for emotional distress, punitive damages, or attorneys' fees. For low-wage workers especially, the current enforcement scheme fails to make workers whole. Workers often suffer immense emotional harm as a result of violations of the sick and safe leave law—they are penalized at a particularly vulnerable time when they or a loved one may have been ill or injured and should be able to recover emotional distress damages as well as punitive damages and attorneys' fees.

In sum, we urge amendment of the Paid Sick Time law authorizing workers to bring a civil action in a court of competent jurisdiction in order to enforce their right to paid sick or safe time, to remedy retaliation in violation of the law, or to remedy any other violation of the ordinance that harms the worker. Administrative filing should not be a prerequisite to the filing

of a civil action, and attorneys' fees, injunctive relief, back pay, and compensatory and punitive damages should be authorized for prevailing workers.

3. Pass the Paid Personal Time Bill

The passage of the Paid Personal Time bill currently before the City Council is a necessary step towards closing the gender pay gap in New York City. This bill will undoubtedly improve the lives and wellbeing of millions of New Yorkers. Presently, New Yorkers enjoy the rights to paid sick and safe leave and to paid family leave. New York City workers also have a limited right to a temporary schedule change for certain qualifying personal events.³⁵ As crucial as these protections are, they do not account for many other personal or family needs that may arise for which workers currently have no protection.

For example, parents of special needs children are often required to have their children evaluated for special education-related services during business hours. Because these needs are not necessarily medical, the law does not clearly protect them. The same is true of parent-teacher conferences. In addition, graduations, retirements, and other important life events and milestones are unprotected. The proposed legislation would allow workers to use earned personal time at their discretion for both foreseeable and unforeseeable events, whether it is an appointment scheduled weeks in advance or the unexpected death of a loved one.

Workers without family responsibilities will also benefit from this legislation. Only the luckiest of renters here in New York have managed to evade an apartment-related emergency such as a leaking ceiling or a backed up bathtub. As it stands, a worker could be legally fired for failing to report to work because their house is on fire. This law would change that.

That said, it should not take a catastrophic event to justify taking time off from work. The positive value of taking time off simply to relieve stress or to enjoy a day to one's self or with one's family, absent an emergency, should not be understated. In fact, studies have shown that taking personal time can improve one's health and longevity, including "a direct positive effect on mortality."³⁶ A Harvard Business Review study also found that personal time can improve employees' productivity, reporting that "employees in countries that take more vacation do have a strong desire to get a lot done as well as a tendency to move faster."³⁷

³⁵ N.Y.C. Admin. Code § 20-1261 (defining "personal event" as: (i) the need for a caregiver to provide care to a minor child or care recipient; (ii) an employee's need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee's care recipient is a party; or (iii) any circumstance that would constitute a basis for permissible use of safe time or sick time).

³⁶ BROOKS B. GUMP & KAREN A. MATTHEWS, PSYCHOSOMATIC MEDICINE, ARE VACATIONS GOOD FOR YOUR HEALTH? THE 9-YEAR MORTALITY EXPERIENCE AFTER THE MULTIPLE RISK FACTOR INTERVENTION TRIAL (2000), <https://pdfs.semanticscholar.org/58e0/daefe57373f63f56d7a9ad55701ddee1fd2e.pdf>

³⁷ Jack Zenger & Joseph Folkman, *Are We More Productive When We Have More Time Off*, HARVARD BUSINESS REVIEW (June 17, 2015), <https://hbr.org/2015/06/are-we-more-productive-when-we-have-more-time-off>.

Taking personal time therefore benefits workers' health and the economy. In addition to ensuring that workers are able to take time off work when unexpected personal or family needs arise, this bill would also give them the ability to recharge and return to work refreshed. One study has shown that when workers are able to take vacation, it betters their quality of sleep which results in an "80 percent improvement" in their reaction times, meaning people are sharper and more acute after taking time off.³⁸ We are eager to see the City take this monumental step forward toward improving the lives and wellbeing of workers and their families.

4. Require Inclusion of Salary Ranges in Job Postings

While the passage of New York City's salary history ban law takes a significant step towards ensuring that the biases that lead to lower salaries for women do not follow them throughout their careers by prohibiting employers from relying on or asking about a potential new hire's previous salary, further steps towards salary transparency are needed. Without information about the appropriate salary for a job, female applicants have little outside of their own past salaries to rely on when negotiating their salary for a new job. New York City should enact legislation requiring employers to include a salary range in their job postings, to increase pay transparency and put all applicants on a more equal footing for salary negotiations. This would ensure that the responsibility for ensuring fair and equitable pay rests with employers, and would also be good for business: Increased salary transparency can increase productivity and collaboration among workers, and can make employees' efforts to seek help and advice on workplace tasks more effective.³⁹

5. Expand Access to Childcare

Too many women are forced to drop out of the paid workforce due to a lack of access to paid childcare. The City should implement the proposals laid out in Comptroller Stringer's NYC Under 3 plan, including extending child care assistance to a greater number of working families and assessing family contributions towards childcare along a sliding scale, and supporting the construction and renovation of childcare centers to increase access to childcare—especially in the City's many childcare deserts.

³⁸ Alina Tugend, *Take a vacation, for your health's sake*, THE NEW YORK TIMES (June 8, 2008), https://www.nytimes.com/2008/06/08/business/worldbusiness/08iht-07shortcuts.13547623.html?pagewanted=all&_r=1&_ga=2.111111111.111111111.111111111.111111111.

³⁹ Elena Belogolovsky et al., *Looking For Assistance in the Dark: Pay Secrecy, Expertise Perceptions, and Efficacious Help-Seeking Among Members of Newly Formed Virtual Work Groups*, 31 J. Business & Psych. 459 (2016); Chris Weller, *A CEO Who Makes Everyone's Salary More Transparent Says People Are More Productive Than Ever*, Business Insider (May 8, 2017, 11:13 AM), <https://www.businessinsider.com/sumall-ceo-says-salary-transparency-makes-people-more-productive-2017-5>.

Conclusion

All too often, the gender wage gap is misunderstood or mischaracterized. We thank the Commission on Gender Equity, the Commission on Human Rights, and the Department of Consumer and Worker Protection for taking the time to consider this problem and potential solutions. A Better Balance looks forward to working with you to effectuate the above-proposed solutions. Unless we take active steps to close the gender wage gap, women will not achieve wage parity until 2059.⁴⁰ We cannot, and will not, let that happen. Thank you for taking the time to study and combat this problem.

⁴⁰ Institute for Women's Policy Research, *Women's Median Earnings as a Percent of Men's Median Earnings, 1960–2014 (Full-time, Year-round Workers) with Projection for Pay Equity in 2059*, at 1 (2015), <http://www.iwpr.org/publications/pubs/equal-pay-projection-2059>.