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Testimony before the New York City Council Committee on Consumer Affairs and Business Licensing

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My name is Sherry Leiwant. I am the Co-President and Co-Founder of A Better Balance, a legal non-profit that helps working men and women take care of themselves and their families without compromising their economic security. In 2013, we helped draft and negotiate the paid sick days bill that became law in April 2014 giving millions of New Yorkers the right to paid sick time. Following passage of the law we worked on outreach and education, distributing thousands of “know your rights” brochures and fact sheets on the right to sick time, conducted more than a dozen trainings, and provided legal advice to hundreds of callers, representing a score of them in administrative proceedings to secure their rights to paid sick time. More recently we worked with the Governor’s office to secure state-wide paid sick time for all workers in the state of New York. The law we helped pass at the state level in April that will go into effect in October is in some respects stronger than the paid sick time legislation we passed in the city in 2013. The purpose of the legislation currently proposed here is to ensure that the city law is consistent with the state law. The state law provides: “Nothing in this section shall be construed to prevent a city with a population of one million or more from enacting and enforcing local laws or ordinances which meet or exceed the standard or requirements for minimum hour and use set forth in this section, as determined by the commissioner.” Therefore, unless the city law is as strong as or stronger than the state law, the city cannot enforce their law. We want to

take this occasion to applaud the Department of Consumer Affairs for their commitment to robust enforcement of the paid sick time law, working on behalf of workers who file complaints with the agency as well as engaging in proactive enforcement of the law and outreach and education to inform workers and employers of their rights and obligations under the law. It is imperative that the Department of Consumer Affairs be able to enforce the city's paid sick time law. To ensure that happens, the City Council must pass Intro 2032-2020 to bring the city law into line with the new state sick time law.

But the need to conform to state law is not the only reason to pass these amendments to the New York City paid sick time law. Some of the changes to the law in Intro 2032-2020 were in the original proposed paid sick time law but needed to be negotiated out due to the hostility of the then Mayor (who vetoed the law) and the then City Council President who worked hard to weaken the bill. In the course of the last 6 years – and particularly in the last 6 months as paid sick time has become even more important to all of us here in the city -- we have learned that many of these proposed changes are necessary to improve our law and make it even more effective in protecting workers and the city's health. Some of the proposed changes include:

- **Employers of 100 or more workers must provide at least 56 hours of paid sick time.** The current paid sick time law provides for 40 hours of paid sick leave for any employers with 5 or more employees. The state law provides that larger employers (those with 100 or more workers) must provide at least 56 hours. Intro 2032 conforms the city law to the state by requiring employers with 100 or more workers to provide 56 hours of sick leave. (The original proposal for a city sick leave bill required 72 hours for larger employers but that was negotiated down to 40 hours.)
- **Paid sick time for workers of smaller employers with a net income of a million dollars or more.** The city law provides only unpaid sick leave for any worker whose employer has less than 5 workers. The state law provides that even employers with fewer than 5 workers must provide paid sick time if their net profit is a million dollars or more. The proposal conforms the city law to the state law in this respect. (The original city proposal had no business size carve out for

paid leave; the current law provides unpaid sick time for those working for smaller employers.)

- **Immediate use of paid sick time.** The current law includes a 120 day waiting period before workers can use their accrued paid sick time. As we have learned in the current crisis, if someone is sick, they need to be able to take time off and protect themselves and their fellow New Yorkers from the spread of disease. The state law contains no waiting period for use of paid sick time and this proposal conforms to the state law so that workers can take sick time even if recently hired.

- **Treatment of domestic workers.** Inclusion of domestic workers in the original paid sick time law was a serious fight. The compromise inclusion gave domestic workers fewer days of sick time than other workers and had them wait a year before gaining any sick time. Revisions contained in the current proposal give domestic workers the same number of paid sick days as other workers, counting the state domestic worker “days of rest” as sick days only if they are given for sick time.

- **Notice to workers of their accrued sick time.** We have found that workers often do not know how much sick time they have and therefore are unable to know whether they are being given proper access to that time. The state law requires that workers be told about their sick leave accruals; the proposed city law is even better requiring that workers be told of their paid sick days balance on a pay stub or other documentation each pay period.

We are delighted with the amendments to the New York City paid sick time law which are well drafted and bring the city into compliance with state law. We have two suggestions for technical amendments.

The first is an amendment to the definition of “domestic worker.” That definition states: The term “domestic worker” does not include any person who is employed by an agency whenever such person provides services as an employee of such agency, regardless of whether such person is jointly employed by an individual or private household in the provision of such

services. Because there are domestic workers who work for agencies, the import of this provision is that domestic workers who work for agencies are not covered by the paid sick time law, which of course, is not intended by these amendments. We would suggest striking that sentence and instead adding a sentence that says: “Any person employed by an agency who performs domestic work is included in the definition of employee and both the agency and *the individual hire or private household employer* are responsible for ensuring the domestic worker receives sick time as provided under this chapter.” Alternatively, the exception for domestic workers employed by agencies could just be deleted and those workers could be treated as other domestic workers for purposes of this law. What is most important is assuring that domestic workers performing work through an agency are covered by this law and their employers treated as joint employers jointly responsible for ensuring workers receive paid sick time. And in either case, a definition of agency for these purposes would be helpful.

Second, the amendments give the corporation counsel the authority to bring a lawsuit to enforce the provisions of the statute. That is a good thing but the section provides at § 20-924.1 (3) that : Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel. Because we expect that workers will be able to bring private civil actions under the state paid sick days law, we ask that (3) be removed from the amendments as it could be seen as barring such actions.

Thank you for the opportunity to submit testimony and for your consideration of these excellent amendments to New York City’s paid sick time law that greatly improves the law and will enable the city to continue to enforce this law that has helped so many working New Yorkers.