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September 21, 2021

Mayor Bill de Blasio
City Hall
New York, NY 10007

Re: A Better Balance Concerns With Mayor De Blasio's Return-to-Office Policy for City Employees

Dear Mayor de Blasio:

We are writing to express concern about your directive requiring 80,000 municipal employees to return to work full time after they had successfully worked remotely for over a year. At A Better Balance, we know firsthand that this directive stands to harm both caregivers and the City's economy. **As advocates for workplace justice who are hearing from City workers whose lives have been upended by this mandate, we write to urge you to adopt a more flexible return-to-office policy that better meets the needs of workers, particularly those with serious medical needs and caregiving responsibilities. We also urge you to ensure that City workers understand their legal rights.**

Based on public statements you have made, we understand that you believe this transition is necessary both to maximize worker productivity and to signal that the City is "moving forward."¹ Although we dispute the logic behind both of these rationales, our concern with this directive runs deeper: at a time when the public health threat of the coronavirus remains very real, and many families remain without consistent child or eldercare, we fear that this decision is both premature and blind to the challenges faced by your workforce. In addition, we want to highlight that with women leaving the workforce in record numbers due to responsibilities foisted on them by the pandemic, this is very much a women's issue.

Women like Toya, a municipal worker and single mother who recently called A Better Balance's free legal helpline, have been abruptly stripped of the flexibility that allowed them to perform both their caregiving duties and their jobs once schools shut down due to the pandemic. Toya was ordered back to work in person, but her children's school is still operating on a hybrid basis, meaning Toya must use her limited amount of accrued time off to stay home with them several days a week. Moreover, even on the days Toya can send her children to school, their afterschool program remains closed, so she has no choice but to use her lunch breaks and more of her

¹ Dana Rubenstein, *Mayor Ends Remote Work for 80,000 in Signal to Rest of New York City*, N.Y. TIMES (Mar. 23, 2021), <https://www.nytimes.com/2021/03/23/nyregion/coronavirus-work-return-nyc.html>.

accrued time off to pick them up at the end of the school day. Toya is growing increasingly anxious about what will happen to her employment when her accrued time runs out. “I may have to quit my job, if it comes to that,” she told us. “I’m being forced [to choose] between caring for my kids and my job. It’s unfathomable. There’s no help for working moms. We’ve been doing this [working from home] for 18 months and all of a sudden it’s gone, with absolutely no options. You cannot go back to 2019 in this day and age.”

Likewise, Jennifer Gravel, the director of housing and economic development for the NYC Department of City Planning, wrote, in a piece for *The New York Times*, that the return-to-office mandate “is forcing me to make what feels like an unnecessary choice between my career and my family, between my health and my duty to my colleagues and the city”—despite her department’s strong performance while working remotely.²

New York City should be leading the way in establishing supportive work-family policies and ensuring that women and caregivers stay attached to the workforce, but this return-to-office policy suggests that this is not yet the case. Moreover, based on the calls we’ve received from City employees struggling to understand their rights and options, it appears to us that the municipal workforce is in a state of confusion concerning what the City’s policies are, what their individual agencies’ policies are, and how those policies interact with their legal rights under the law. The City can and must do better.

Lack of Flexibility Is A Women’s Issue

As you are undoubtedly aware, the economic effects of the pandemic have been disproportionately borne by women, who have left the workforce in record numbers³—largely due to the challenge of trying to juggle paid work with caregiving responsibilities, while schools and care facilities remain shuttered or operating at reduced capacity. Rigid scheduling practices and inflexible workplace policies that prevent employees from teleworking have exacerbated these challenges, leaving far too many women with no options and pushing them out of their jobs. Our recent report, authored in conjunction with the NYC Comptroller’s Office, “Our Crisis of Care: Supporting Women and Caregivers During the Pandemic and Beyond,” surveyed over a thousand New York workers and found that workers want and need increased flexibility.⁴ Nine in ten respondents surveyed for the report wanted the ability to work from home at least some of the time, and more than one in four would consider leaving a job if their employer denied a request for flexibility.⁵ Yet our report also demonstrates that workers, especially women, low-

² Jennifer Gravel, Op-Ed, *Bill DeBlasio is Forcing Me to Choose Between My Family and My Career*, N.Y. TIMES (Sept. 15, 2021), <https://www.nytimes.com/2021/09/15/opinion/remote-work-de-blasio.html>.

³ See, e.g., Anneke Tappe, *Working mothers are quitting to take care of their kids, and the US job market may never be the same*, CNN BUSINESS (Aug 19, 2020) <https://www.cnn.com/2020/08/19/economy/women-quitting-work-child-care/index.html>; Alicia Sasser Modestino, *Coronavirus child-care crisis will set women back a generation*, WASH. POST (July 29, 2020), <https://www.washingtonpost.com/us-policy/2020/07/29/childcare-remote-learning-women-employment/>.

⁴ OFFICE OF THE NEW YORK CITY COMPTROLLER SCOTT M. STRINGER & A BETTER BALANCE, OUR CRISIS OF CARE: SUPPORTING WOMEN AND CAREGIVERS DURING THE PANDEMIC AND BEYOND (March 2021), https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf.

⁵ *Id.* at 6.

wage workers, and caregivers, continue to face barriers to receiving the flexibility they need and retaliation for requesting flexibility at work. The COVID-19 pandemic has highlighted and exacerbated the challenges many workers face in balancing the competing demands of work and care. It has also provided a unique opportunity to create a fairer, more flexible workplace that better accounts for those competing demands—the City should be leading the way as a model employer, but it is clear to us that the City is not seizing that opportunity.

In spite of its reputation as one of the most progressive cities in the country, New York City stubbornly maintains a massive gender wage gap⁶, which has been partially attributed to workplace inflexibility. The lack of workplace flexibility has already forced too many women to pay a steep price, and if this trend continues, it threatens to wipe out a generation of progress for women in the workplace. One of our former clients experienced these issues firsthand when her employer—a New York City government agency—refused to allow her to shift her schedule by one hour to ensure that she would be able to arrive to work on time after placing her special needs daughter on the school bus. Rather than approve the modest schedule change, the agency suddenly moved her to an overnight shift, which was impossible for her as a single mother.

We have also heard from panicked workers whose children have been sent home from school or daycare due to a potential exposure, anxious to know what rights they have if they are unable to go into work while their child is sick or quarantining. Moreover, although vaccines are now available, there are workers for whom the return to an enclosed office space will continue to pose significant health risks for them or their loved ones. Some workers have disabilities or serious health conditions that place them at a higher risk of becoming severely ill if they contract the virus, and others reside with or provide care for loved ones with disabilities or serious health conditions that place them at increased risk—including young children, who are not yet eligible for the vaccine. The health and caregiving needs of these workers are inadequately addressed in the City’s reopening plans.⁷

The City’s Return-to-Office Policy Is Unclear and Fails to Meet the Needs of Employees

Against this backdrop, we have monitored the City’s reopening plans with some concern. Guidance put forth by the City suggests use of alternative work schedules, and notes that these “[f]lexible workdays provide for a work schedule where employees have flexible days off (e.g., granting Mondays and Tuesdays off instead of the weekend) to handle responsibilities that may have changed since the beginning of the crisis.”⁸ This, however, still fails to account for the needs of caregivers who have an ongoing need for flexibility due to, for instance, a consistent lack of childcare, caregiving responsibilities for someone with a compromised immune system, or a child’s sudden school closure due to a COVID-19 outbreak. Indeed, one of the guidance’s few specific recommendation for employees who have difficulty securing care for a child or other dependent is that they take leave under the emergency leave provisions of the Families

⁶ Azi Paybarah, *What Women in New York Earn Compared With Men*, N.Y. TIMES (April 2, 2019), <https://www.nytimes.com/2019/04/02/nyregion/newyorktoday/nyc-news-women-equal-pay-day.html>.

⁷ See MANAGING THE OFFICE IN THE AGE OF COVID-19, available at https://www1.nyc.gov/assets/dcas/downloads/pdf/guidelines/city_guidance.pdf (effective September 13, 2021).

⁸ *Id.* at 13.

First Coronavirus Response Act (FFCRA), which **expired on December 31, 2020**.⁹ Additionally, the only reference to telework in the City’s guidance refers to the now-expired FFCRA. The fact that the City’s guidance to agencies about how to manage the needs of workers without child or dependent care is to **reference a federal law that is no longer in effect** has caused tremendous confusion.

Consequently, we write to urge you to reconsider and revise the return-to-office plan currently in place.¹⁰ *The New York Times* has reported that it is the position of your reopening task force that “telework will only be allowed in limited circumstances.”¹¹ That stance, as the experiences of our helpline callers have made abundantly clear, is failing City employees, especially those with caregiving responsibilities or health concerns. In the midst of the ongoing public health emergency, we urge you to consider a more flexible remote work policy that ensures that no City employees are forced to choose between their own well-being or that of their loved ones and their economic security. Moreover, we urge you to engage in a public education campaign with respect to the City’s strong pregnancy and disability accommodations laws (which protect municipal workers), and consider updating the City’s policies to expand access to robust paid family and medical leave¹² and workplace flexibility for all City employees. You should ensure that the City workforce has these needed protections and should then consider legislation to expand access to workplace flexibility for all workers.

In spite of the enormous challenges of this past year, it has presented a valuable opportunity for employers to innovate and reimagine their workplace policies to meet the needs of their workers and center the importance of care. Many private employers have heeded the call and embraced supportive policies like paid sick leave, telework, and flexible scheduling. We urge the City to do the same.

We would welcome the opportunity to engage with your office to ensure that the City’s transition to in-person work adequately addresses workers’ medical and caregiving needs, educates workers about their legal protections under City law, and establishes New York City as a model employer in advancing supportive work-family policies.

We look forward to your response.

⁹See *id.* at 19, available at https://www1.nyc.gov/assets/dcas/downloads/pdf/guidelines/city_guidance.pdf (effective September 13, 2021) (“If an employee is having difficulty securing care for a child under the age of 18 whose school or daycare facility is closed due to COVID-19 restrictions and the employee is unable to telework, they may be eligible for leave under the Emergency Family and Medical Leave Expansion Act (Division C of the Families First Coronavirus Response Act (FFCRA)).”). The City’s “DCAS Return to Office Guide” does not include any guidance about leave options or other accommodations for employees who do not have childcare.

¹⁰ *Id.*

¹¹ Dana Rubinstein, *N.Y.C.’s Mayor Directs City Employees to Return to the Office Full-Time Soon*, N.Y. TIMES (Sept. 6, 2021), <https://www.nytimes.com/2021/09/01/nyregion/new-york-city-workers-office.html>.

¹² Currently, non-unionized City employees are only guaranteed paid parental leave, leaving City employees with their own serious health needs or a seriously ill loved one with little recourse. See Office of the Mayor, *Mayor de Blasio Signs Paid Parental Leave Personnel Order for NYC Workers* (Jan. 7, 2016), <https://www1.nyc.gov/office-of-the-mayor/news/025-16/mayor-de-blasio-signs-paid-parental-leave-personnel-order-nyc-workers#/0>.

Sincerely,

Dina Bakst

Dina Bakst
Co-Founder & Co-President

Headquartered in New York City, A Better Balance is a national non-profit advocacy organization that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. Our expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. Through our free legal helpline, we have heard from thousands of workers across the country over the past year who are struggling to maintain their jobs while balancing caregiving responsibilities.