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A BETTER BALANCE'S 2022 NEW YORK STATE WORK-FAMILY AGENDA

Dear Governor Hochul,

We write as advocates for working families in New York to thank you for your tireless commitment to New Yorkers who struggle to balance the competing demands of work and care. A Better Balance has been so proud to work with you on many initiatives to advance fairness and equality for working women and families from closing the gender wage gap in New York,¹ to the Women's Equality Act, New York Paid Family Leave, and, more recently, both the permanent and emergency paid sick time laws.

New York has long been a national leader on work-family issues, but, in the wake of the ongoing pandemic and care crisis, more action is urgently needed. We are confident that, as a committed advocate for working families, your administration will prioritize their needs across agencies and in the coming legislative session. As you undoubtedly know, **New York is facing a care crisis.** Workers across the state are facing economic insecurity and struggling to care for themselves and their loved ones due to the COVID-19 crisis. At the same time, the pandemic created an unprecedented, successful experiment in workplace flexibility for many, but there is much-needed work to be done in making that a reality for all New Yorkers. Access to fair and flexible work remains unequal, available most often to higher-income workers, and out-of-reach for many who fear retaliation for so much as requesting a schedule change.

As the COVID-19 pandemic continues, it is crucial that New York State prioritize the needs of women, especially women of color, and caregivers in the workplace. We have been proud to work with you on this issue in the past,² but now, when millions of women, disproportionately women of color, have been pushed out of the workforce during the pandemic due, in large part, to caregiving needs,³ and with experts suggesting that it could take years to

¹ A Better Balance, *Tackling the Gender Wage Gap in New York* (July 5, 2017), <https://www.abetterbalance.org/tackling-the-gender-wage-gap-in-new-york/>.

² *Id.*

³ See, e.g., Megan Cerullo, *Nearly 3 Million U.S. Women Have Dropped Out of the Labor Force in the Past Year*, CBS News (Feb. 5, 2021), <https://www.cbsnews.com/news/covid-crisis-3-million-women-labor-force/>; BIPARTISAN POLICY CENTER, *NEW SURVEY: FACING CAREGIVING CHALLENGES, WOMEN LEAVING THE WORKFORCE AT UNPRECEDENTED RATES* (Oct. 2020), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2020/10/Oct-2020-BPC-Impact-Of-COVID-On-Workforce-Analysis_-D2.pdf.

undo the pandemic's damage to women's economic equality,⁴ this work is more urgent than ever. Workers—especially low-income women of color, LGBTQ+ workers, and all of the workers who have borne the brunt of both the job loss and the caregiving needs exacerbated by the current crisis—need and deserve a recovery that prioritizes their needs.

Ending this care crisis is a crucial step towards gender equality and racial justice and we are hopeful that this will be a key priority for your administration. As Governor, you are well-positioned to end the care crisis facing New York families by championing comprehensive, bold solutions. Outlined below are the key policies working families need in 2022. We urge you to make these a priority this coming legislative session and would welcome the chance to discuss these issues with you.

PRIORITIES

- **Paid Sick & Safe Leave**
 - Issue additional guidance on the New York State paid sick and safe leave law and prioritize enforcement and outreach.
- **Paid Family & Medical Leave**
 - As you probably know, a federal paid family and medical leave program is currently part of the President's Build Back Better plan to expand our care infrastructure. The current paid leave proposal would leave state programs intact and offer federal reimbursement to all state programs currently enacted that meet federal standards. If the paid family and medical leave bill passes Congress as currently proposed our priority in New York will be to bring the New York program into line with Federal requirements so that we can obtain federal reimbursement. A Better Balance has been a leader in the effort to pass paid family and medical leave at the federal level and we hope to serve as a resource to insuring that our program meets all federal standards.
 - With or without a federal program, it is essential that we modernize temporary disability insurance ("TDI"), which provides benefits for workers who cannot work due to their own serious, non-work-related medical condition. TDI needs to be improved to provide New Yorkers with paid medical leave that offers full employment protections and benefits that are high enough to be meaningful. The benefit level for TDI has not been raised since 1989 and stands at a maximum of \$170 a week. Raising the benefit level and improving the program are long

⁴ See, e.g., CONGRESSIONAL RES. SERV., THE COVID-19 PANDEMIC: LABOR MARKET IMPLICATIONS FOR WOMEN (2020), <https://fas.org/sgp/crs/misc/R46632.pdf>; Julie Kashen, Sarah Jane Glynn, & Amanda Novello, *How COVID-19 Sent Women Backward*, CTR. FOR AM. PROGRESS (Oct. 30, 2020, 9:04 AM), <https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward/>; André Dua et al., MCKINSEY, ACHIEVING AN INCLUSIVE US ECONOMIC RECOVERY (2021), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/achieving-an-inclusive-useconomic-recovery>.

overdue and if a federal program passes, our benefit levels for TDI will need to be raised to meet federal standards as no proposal has benefits as low as those currently paid in New York for short term disability.

- Make paid family leave benefits more portable, ensuring that workers in our changing economy can use the benefits as they move between jobs or face unemployment, especially as the crisis has left so many unable to access the benefits they have paid for. This too is likely to be a requirement in the federal paid family and medical leave law.
- Ensure that self-employed workers can meaningfully access their right to paid family leave by removing the onerous waiting period. The federal proposal would automatically cover all self-employed workers so that may also be a change we will need to make in our state program.
- **Supporting Pregnant, Nursing and Caregiving Workers**
 - The Human Rights Law should be updated to expand the prohibition on familial status discrimination to encompass all forms of caregiver discrimination.
 - The legislature should also consider additional action to ensure that certain caregivers, such as those who care for someone with a disability, are able to access the accommodations they need.
 - Finalize and issue strong regulations and guidance on New York State pregnancy, childbirth and lactation accommodation laws.
- **Fair & Flexible Scheduling**
 - In late 2020, A Better Balance jointly administered a survey with the NYC Comptroller's Office to better understand how New Yorkers are navigating professional and personal responsibilities in COVID-19-era New York City. Our findings, outlined in our report "Our Crisis of Care," revealed that fair and flexible work is crucial for New Yorkers struggling to balance the competing demands of work and care during the pandemic, but access to flexibility is inequitable.⁵ While 73% of respondents with income over \$100,000 reported having access to a flexible schedule, only 41 percent with incomes below \$50,000 did. Women of color had the among the least access to flexibility. We also found women are more than four times as likely as men to experience retaliation related to their responsibilities as a caregiver, while individuals who live with someone with a disability were twice as likely as those who do not to have been retaliated against for this reason.
 - Now more than ever, New York must lead the way and ensure workers—especially those who are balancing the need to care for themselves or others while maintaining their economic security—have meaningful access to alternative work

⁵ 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.

arrangements, including telecommuting and part-time work, without fear of retaliation for the request.

- Workers, especially in low-wage industries, should also have a fair say in, and advance notice of, their schedules.

- **Fair Disciplinary Policies**

- Pass legislation ensuring that workers cannot be subject to discipline for lawful absences, including those related to a known disability, pregnancy-related conditions or protected sick leave where sick time is guaranteed by law. The policy should include a requirement that employers engage in a good-faith, interactive process to determine if an employee is entitled to a reasonable accommodation or if lawful absences have been improperly counted against the worker before any disciplinary action is assessed.

- **Notice to Employees**

- Pass legislation to broaden and modernize New York’s posting and notice requirements. Many of New York’s equal employment opportunity laws and labor laws contain provisions requiring employers to post a notice of employee rights in the workplace. In the modern workplace—and especially the pandemic workplace—however, a physical poster may not be enough to adequately inform workers of their rights. At the same time, many employers have additional workplace policies, such as so-called “no-fault attendance” policies—and, all too often, employees are not given any way to access these policies and, as a result, are left in the dark about the policies that are used to penalize them. Legislation is needed to ensure that workers are provided with easily-accessible, digital information about their rights and the workplace policies that apply to them that they can access both in and out of the workplace.

- **Funding for Education, Outreach, and Enforcement**

- New York’s Labor, Human Rights, and Workers’ Compensation laws contain many crucial provisions protecting workers from discrimination and exploitation and providing a baseline of labor benefits. Strong outreach and education to ensure that workers are informed of their rights is crucial, as is strong enforcement of these laws to ensure that workers are truly able to access and benefit from these important protections.
- The Department of Labor, Department of Human Rights, and Workers’ Compensation Board must be robustly funded, so that they have the resources they need to strongly enforce these laws. In addition, these departments must prioritize proactive enforcement that responds to workers’ needs during the pandemic and beyond—for instance, the Department of Labor must prioritize enforcement of the newly-enacted Paid Sick Time law and wage theft enforcement, and the Department of Human Rights should fast-track pregnancy

and disability accommodations complaints as well as familial status discrimination complaints.

Related Key Issues

- **Worker Misclassification**
 - Pass legislation to ensure that employers cannot evade labor protections by misclassifying their workers as independent contractors.
- **Childcare**
 - Support efforts to increase funding for childcare providers and ensure that all New Yorkers are able to access quality, affordable childcare. (As with paid family and medical leave, federal efforts in Build Back Better may assist with funding in this area.)
- **Long-Term Care**
 - Support efforts to increase funding for home care in ways that honor the rights of seniors and those with disabilities while also valuing the work of home care providers. (Here as well there may be federal support through Build Back Better to enable us to offer those supports.)
- **Maternal & Reproductive Health**
 - Prioritize outreach and education on the Reproductive Health Act
- **Equal Pay**
 - Pass legislation requiring employers to disclose the salary range for a position to applicants during the hiring process.

Sincerely,

A Better Balance