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**Testimony from A Better Balance for New York City Council Committee on Civil Service and Labor regarding Oversight—How to Strengthen Workers’ Rights Across the New York City Workforce**

*February 23, 2022*

**by Cassandra Gomez, Staff Attorney**

A Better Balance (“ABB”), a national nonprofit advocacy organization based in New York City, 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. Through legislative advocacy, direct legal services and strategic litigation, and public education, 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. When we value the work of providing care, which has been long marginalized due to sexism and racism, our communities and our nation are healthier and stronger.

For over a decade, ABB has worked with New York City to enact robust workplace protection laws. We are proud to have drafted and shepherded to passage groundbreaking legislation, including the Earned Safe and Sick Time Act, the NYC Pregnant Workers Fairness Act, and the temporary schedule change law, and to have helped draft New York City’s caregiver discrimination law. ABB has also led the fight for paid leave around the country, including the New York State paid family leave and sick leave laws. While New York City has long been on the forefront of protecting workers, the pandemic has shifted work-family relationships in all five boroughs. We thank you for considering how to strengthen workers’ rights citywide.

While New York City has a strong body of workplace rights, the city has also been the epicenter of the pandemic in the U.S., and workers continue to feel the effects. For example, a survey that A Better Balance jointly administered with the New York City Comptroller’s Office in late 2020 found that to cope with increased caregiving needs, more than half of women in New York City who care for children have had to cut back on paid working hours during the pandemic.<sup>1</sup> As the pandemic continues, we must ensure that workers and families are protected under the law and are aware of the extent of the suite of rights available to them. Through A Better Balance’s free and confidential legal helpline, we have spoken to thousands of New Yorkers about their workplace rights, and have a bird’s-eye view of workplace issues that New Yorkers face. We are also proud to have represented workers before the New York City Commission on Human Rights and the Department of Consumer and Worker Protection. Through this direct contact with workers, we know that New Yorkers are struggling to balance the demands of work and

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<sup>1</sup> 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](https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf).

providing care. The following policy and administrative solutions are crucial steps New York City must take to support workers throughout the ongoing pandemic and into the future:

- **Prioritize outreach, education, and enforcement of critical baseline laws**, including the Earned Safe and Sick Time Act, the Pregnant Workers Fairness Act, the temporary schedule change law, and protections from discrimination.
- **Ensure that workers have meaningful access to alternative work arrangements**, including telecommuting and part-time work by, in part, amending the temporary schedule change law.
- **Pass legislation to address harmful “no fault” attendance policies** and ensure that workers cannot be subject to discipline for lawful absences, including those related to a known disability, pregnancy-related conditions, or protected sick leave.
- **Consider legislation to support caregivers** balancing the competing demands of work and care with reasonable accommodations in limited circumstances and a clear right to request accommodations without fear of retaliation.
- **Ensure that all city workers have access to comprehensive paid family and medical leave** and revise city policies to better serve the needs of workers.

#### **I. Prioritize outreach, education, and enforcement of critical workplace laws**

New York City has many crucial laws protecting workers from discrimination and exploitation—including the Earned Safe and Sick Time Act, the Pregnant Workers Fairness Act, the temporary schedule change law, protections from discrimination based on caregiver status, and more.<sup>2</sup> Even though these laws have been in effect for a number of years, too few workers know about their rights under these essential laws, leaving them vulnerable at the best of times, and more vulnerable than ever during the ongoing COVID-19 pandemic. Workers throughout the city deserve to be able to use the rights guaranteed to them when they need—meaningful access to their rights is essential to workers’ ability to care for themselves and their loved ones without risking their economic security. 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 protection

In particular, there are several actions that the City Council can take regarding outreach, education, and enforcement of workplace laws. First, the City Council should consider legislation to provide funding for grants to community organizations to allow such organizations to engage in robust outreach and education, especially in marginalized communities. The City Council should also pass Intro. 2370, which will ensure that pregnant people receive information

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<sup>2</sup> N.Y.C. Admin. Code § 20-911 *et seq.*; N.Y.C. Admin. Code § 8-107; N.Y.C. Admin. Code § 20-1201 *et seq.*



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about their workplace rights when they receive care at New York City Health and Hospitals locations, meeting workers where they are and getting them crucial information when they need it most. Expecting families and parents-to-be deserve to have this information made available to them proactively. Additionally, the City Council should pass legislation to broaden and modernize New York City’s posting and notice requirements. The way New Yorkers work is changing, and our laws must change with shifting workplace practices. To ensure that workers have knowledge of their rights, our city must re-evaluate ways in which it provides notice to employees about their workplace rights.

There are also actions that can be taken by city agencies to increase outreach, education and enforcement efforts. The Commission on Human Rights (CHR) and the Department of Consumer and Worker Protection (DCWP) need to prioritize outreach and education on these laws in multiple languages, and prioritize proactive enforcement that responds to workers’ needs. Relatedly, in materials on the Earned Safe and Sick Time Act, DCWP should recognize workers’ ability to hold employers that violate the New York State sick time law accountable in court, as well as highlight the opportunity to enforce rights under the city law through the department. Finally, CHR and DCWP should work together on a comprehensive package of know your rights information and outreach to workers so that workers throughout the city are fully-informed of the full scope of their workplace rights. This should include know your rights information tailored to the things workers, and in particular those with family caregiving responsibilities, need to know during the pandemic.

## **II. Ensure that workers have meaningful access to alternative working arrangements**

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.<sup>3</sup> While 73 percent 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 among the least access to flexibility.

Now more than ever, amidst employers’ increasingly onerous and inflexible demands that workers who have been working successfully from home during the pandemic return to the office and the increased caregiving demands and health needs faced by many workers, including

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<sup>3</sup> 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](https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf).



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those who have worked in person throughout the pandemic, New York City must lead the way. The city must ensure that 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 arrangements, including telecommuting and part-time work.

Under the existing New York City Temporary Schedule Change Law, workers are entitled to up to two temporary schedule adjustments—such as remote work—per year for a personal event, including the need to care for a child or family member with a disability, the need to attend a public benefits hearing, and any reason for which sick leave under the city law is available. The law also protects workers against retaliation for any schedule change request, regardless of whether the employer is legally required to approve the request. While the temporary schedule change law was a groundbreaking step towards ensuring that workers have access to alternative work arrangements, increased outreach, education, and enforcement of this law is needed to ensure that New Yorkers can take meaningful advantage of its critical protections.

At the same time, more is needed to ensure that New Yorkers have the full spectrum of rights and protections they need. 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.<sup>4</sup> First, the City Council should broaden the circumstances that give rise to a workers' right to a temporary schedule change under the temporary schedule change law. For example, workers should also be granted a temporary schedule change in the event of a public health emergency, a change in transportation circumstances, or another emergency that may make it difficult to come to work as scheduled. Next, the law should be amended to provide the right to five temporary schedule changes per year. As New Yorkers continue to encounter unexpected realities of the modern world—school closures related to public health emergencies, subway lines down following flooding, etc.—the need for temporary schedule changes will only increase and workers deserve increased flexibility.

Lastly, DCWP must build upon its existing materials<sup>5</sup> and prioritize outreach and education of this landmark law. The temporary schedule change law can prove to be a vital shield for our city's most vulnerable workers, and the agency must ensure that information about it is easily accessible and readily available.

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<sup>4</sup> 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](https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf).

<sup>5</sup> The Department of Consumer and Worker Protection currently has three resources available online regarding the New York City Temporary Schedule Change Law, including Frequently Asked Questions accessible at <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/FAQs-TemporaryScheduleChangeLaw.pdf>.

### **III. Pass legislation to address harmful “no fault” attendance policies**

Our report, “Misled and Misinformed: How Some U.S. Employers Use ‘No Fault’ Attendance Policies to Trample on Workers’ Rights (And Get Away With It)”<sup>6</sup> shows how the strict points-based attendance policies (often called “no-fault” attendance policies) favored by some of the country’s biggest employers—including the meat and food processing, manufacturing, and retail companies that have become essential during the pandemic—are used to infringe on workers’ rights by punishing them with “points” or “occurrences” for absences that are legally protected, including time off for serious medical needs or to care for loved ones. Despite the existence of strong worker-protective laws in New York City, including paid sick time and pregnancy accommodations, workers are still being punished for taking legally protected time off to care for themselves or their loved ones.

These policies mislead workers about their rights and discourage them from taking time off to which they are legally entitled, for fear of receiving a point and facing discipline or termination.<sup>7</sup> Additionally, such “no-fault” attendance policies undermine the City Council’s actions to protect workers by undercutting workers’ rights under laws enacted by the Council. Under these policies, too many workers, especially low-wage workers of color, stress over being one sick child, one pregnancy-related complication, one medical emergency, or one disability-related flare up away from losing their job.

These harmful policies have no place in our city. The City Council must pass legislation ensuring that workers cannot be subject to discipline for legally protected absences, including those related to a known disability, pregnancy-related conditions or protected sick leave. All such policies should ensure that legally protected absences are not counted against employees and must ensure that workers are informed of the full spectrum of laws that may give them a lawful right to time off, including New York State and New York City paid sick time laws, New York State paid family leave, and New York State and New York City laws related to reasonable accommodations for disabilities and pregnancy-related conditions.

### **IV. Ensure that city law supports caregivers**

Family caregivers’ work has long been undervalued, and too many have had to choose between caring for their loved ones and maintaining their economic security. This reality has been exacerbated by the pandemic, as the brunt of the crisis has fallen on caregivers’ shoulders—

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<sup>6</sup> Dina Bakst, Elizabeth Gedmark, & Christine Dinan, A Better Balance, *Misled And Misinformed: How Some U.S. Employer Use ‘No Fault’ Attendance Policies to Trample On Workers’ Rights (And Get Away With It)* (2020), [https://www.abetterbalance.org/wpcontent/uploads/2020/06/Misled\\_and\\_Misinformed\\_A\\_Better\\_Balance-1-1.pdf](https://www.abetterbalance.org/wpcontent/uploads/2020/06/Misled_and_Misinformed_A_Better_Balance-1-1.pdf).

<sup>7</sup> *Id.* at 30.



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disproportionately impacting the lives and careers of women, especially women of color. Working family caregivers have had to navigate closures of schools and care centers, the increased medical needs of vulnerable loved ones, and their employers' needs, often while facing unfair treatment at work. In our "Our Crisis of Care" report, we also found that women in New York City were more than four times as likely as men to experience retaliation related to their responsibilities as a caregiver during the pandemic, 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.<sup>8</sup>

New York City must support the workers that provide critical care for their loved ones. New York City law provides caregivers with crucial protection from discrimination, but the law can go still further to ensure that caregivers are treated fairly in the workplace. The City Council should consider legislation requiring employers to engage in the cooperative dialogue without penalty and provide reasonable accommodations to caregivers absent undue hardship on the employer. This legislation would promote the health, safety and well-being of our city's children and families and enable caregivers to stay attached to the workforce.

## **V. Support city workers**

Businesses often look to the City government for guidance as to how to treat their employees; the City should take that responsibility seriously not only by adopting legislation and policies that support the private sector workforce, but also by leading the way as a model employer for municipal employees, who are currently not covered by many important city laws.

The City has not yet taken advantage of the opportunity to lead by example: a 2016 report by then-New York City Public Advocate Letitia James found that the gender wage gap for women in the municipal workforce is *three times* larger than that faced by women in the city's private sector, indicating the City's failure to support women in its workforce.<sup>9</sup> City workers are not covered by many important laws, including the Earned Safe and Sick Time Act and the temporary schedule change law, and they are not automatically covered by the state's paid family leave and temporary disability insurance program. The City has not stepped up to provide the municipal workforce with comparably protective policies. Recently, for example, the City's rigid and confusing return-to-office policy has failed to provide a feasible option for workers or useful a model for private-sector employers to follow.<sup>10</sup>

<sup>8</sup> 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* 7 (March 2021), [https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis\\_of\\_Care\\_Report\\_031521.pdf](https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf).

<sup>9</sup> Letitia James, N.Y.C. Public Advocate's Office, Policy Report: Advancing Pay Equity in New York City 2 (2016) (on file with A Better Balance).

<sup>10</sup> Letter from A Better Balance to Bill de Blasio (Sept. 21, 2021), [https://www.abetterbalance.org/wp-content/uploads/2021/09/Letter-to-NYC-Mayor-re-Return-to-Office\\_FINAL.pdf](https://www.abetterbalance.org/wp-content/uploads/2021/09/Letter-to-NYC-Mayor-re-Return-to-Office_FINAL.pdf).



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There are policy solutions that would support the workers that keep our five boroughs running. First, the City Council should prioritize expansions of the Human Rights Law, which applies to municipal workers, such as the recommended accommodations law discussed above. Next, the City should proactively act to ensure that *all* city workers have access to comprehensive paid family and medical leave and should revise its policies to better serve the needs of workers, especially those who are balancing the demands of work with the need to care for themselves or loved ones.

While our city has long been on the forefront of protecting workers, we must continue to work together to enact bold solutions to pave the path for workers in our city to thrive. We appreciate the Council's interest in strengthening workers' rights, and welcome the opportunity to work together on the actions outlined in this testimony.