

Committee on Civil and Human Rights

New York City Council

Public Hearing on Int. 0871-2024: Extending reasonable workplace accommodations to caregivers

Written Testimony of A Better Balance: The Work & Family Legal Center

Submitted on December 13, 2024 by Chelsea Thompson, Staff Attorney and Elizabeth Gedmark, Vice President

Introduction

A Better Balance is a national legal advocacy organization headquartered in New York City. A Better Balance is the leading legal nonprofit dedicated to work-family justice, and we use the power of the law to ensure all workers can care for themselves and their loved ones, without sacrificing their economic security. Through legislative advocacy at the local, state, and national level, we have advanced supportive work-family policies like reasonable accommodations for pregnancy, paid sick time, and paid family and medical leave. We also directly represent workers who contact us through our free helpline with questions about their legal rights.

We are writing to offer comments on Int. 0871, a measure to expand the existing right to reasonable accommodations for disability to workers with caregiving responsibilities.

We thank Councilmember Hanks for sponsoring this bill and the Committee on Civil and Human Rights, in particular Chair Dr. Nantasha Williams, for holding the hearing on this important topic.

I. Currently the Human Rights Law provides anti-discrimination protections for caregivers, but not an affirmative right to accommodations

In 2015, we testified before this Council about the devastating impact that discrimination based on caregiver status can have on working families, especially on women and in particular women of color.¹ Women still overwhelmingly shoulder the burden of caregiving for minor children, spending twice as much time as men on childcare and household work,² even as mothers make up an increasing percentage of the workforce. Women are the primary breadwinners for 40% of households with children under the age of 18, and 70% of working mothers will be the primary earner at some point during the first eighteen years of motherhood.³ The burden of both working

¹ A Better Balance, Testimony Before the New York City Council Civil Rights Committee (Sept. 21, 2015), https://www.abetterbalance.org/wp-content/uploads/2016/11/Caregiver_Testimony_9-20-15.pdf.

² GENDER EQUALITY POLICY INSTITUTE, THE FREE-TIME GENDER GAP 2 (2024), <https://thegepi.org/GEPI-Free-Time-Gender-Gap-Report.pdf>.

³ NAT'L PARTNERSHIP FOR WOMEN AND FAMILIES, AMERICA'S WOMEN AND THE WAGE GAP 3 (2024), <http://www.nationalpartnership.org/ourwork/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>.

and being the primary care provider falls even harder on women of color. Four out of five Black mothers are breadwinners for their family, and two out of three Native American mothers are breadwinners for their families.⁴

In our 2015 testimony, we shared the story of Yvette, a single mother of three who lost her job at a grocery store where she had worked for eleven years after her boss changed her shifts. Yvette's boss now required her to work on Saturdays, even though she had no childcare during the weekends and the cost of securing it would have wiped out her wages for the day. When Yvette explained the situation to her boss and tried to work out alternative shift times, her boss refused even though he had granted schedule flexibility to other employees who didn't have caregiving responsibilities. Yvette would be out of work for another 8 months.

Inspired by stories like Yvette's, in 2015 the New York City Council passed one of the first caregiver anti-discrimination laws in the nation, leading the way in making sure that caregivers receive the same benefits of employment as their coworkers. However, as important as this law was, it still fell short of providing the kind of help that caregivers desperately need. Under the current anti-discrimination standard, caregivers only have a right to accommodations for caregiving needs if their boss would make the same accommodations for other similarly-situated employees. Not only is this a difficult legal standard to meet, as no two employees are identical, it does not require employers to take affirmative steps to help their employees balance work and family responsibilities.

These kinds of accommodations are often well within an employer's power to give. Adjusting an employee's start time to accommodate childcare drop-off, allowing employees to work remotely while they look for long-term care for an elder, reassigning an employee to a different location so they can be closer to the place where an adult they are responsible for attends daycare—for employers, these kinds of changes would require minimal adjustments to their way of doing business. For workers, they would mean everything.

II. Post-pandemic, New Yorkers face a growing crisis of care and need accommodations to balance work and family demands

Providing caregivers the changes they need in their workplace has never been more imperative. In 2021, A Better Balance released a report in partnership with the NYC Comptroller's Office that provided insight into the daily struggles New Yorkers were facing balancing caregiving and making an income during the COVID-19 pandemic, as daycares and schools closed across the country.⁵ In our survey of over 1,200 New Yorkers, we found that more than half of working women caring for children had to cut back on their hours during the pandemic, compared to one in three men.⁶ Women were also twice as likely to need to take leave from work due to child care

⁴ MASON E. SHAW ET AL., INST. FOR WOMEN'S POL'Y RES, HOLDING UP HALF THE SKY: MOTHERS AS WORKERS, PRIMARY CAREGIVERS, & BREADWINNERS DURING COVID-19. 3 (May 2020), <https://iwpr.org/wp-content/uploads/2020/07/Holding-Up-Half-the-Sky-Mothers-as-Breadwinners.pdf>.

⁵ 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.

⁶ *Id.* at 6.

responsibilities.⁷ Women of color in particular were struggling to balance work and family responsibilities, reporting lower access to workplace flexibility during the pandemic.⁸ People of color also experienced retaliation for requesting workplace flexibility at nearly twice the rate of white respondents,⁹ and people with income below \$50k also experienced higher rates of retaliation.¹⁰

Our report reflected a national trend that the childcare crisis created by the COVID-19 pandemic was driving parents out of the workforce, and impacting women disproportionately.¹¹ However, working parents were not the only ones who suffered during the pandemic. A growing proportion of workers also have caregiving responsibilities for adult family members, such as parents, grandparents, and other adult loved ones.¹² Our survey found that one in four respondents who provided care to a parent or other adult had to reduce or change their work hours, or even quit, during the pandemic.¹³ Low-wage respondents in particular were impacted by the increasing care needs created by the pandemic, and one in three respondents with income below \$50,000 reported having to cut back on work.¹⁴

Parents and in particular mothers were slow to regain the jobs lost during the pandemic, and only recently did employment levels among mothers surpass pre-pandemic employment.¹⁵ However, skyrocketing childcare costs have made the impossible choices many caregivers faced during the pandemic the new normal. Compared to before the pandemic, 22% more workers report working part-time or missing work due to childcare problems.¹⁶ The demands of caring for an aging population are also anticipated to have an impact on workforce participation and stability of employment for caregivers, which again, are more likely to be women.¹⁷ More and more Americans are providing unpaid care for an adult, and this number will only increase in years to come.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 20.

¹⁰ *Id.* at 17-18.

¹¹ Liana Christian Landivar & Mark deWolf, U.S. Department of Labor, *Mothers' Employment Two Years Later: An Assessment of Employment Loss and Recovery During the COVID-19 Pandemic* (May 2022), <https://www.dol.gov/sites/dolgov/files/WB/media/Mothers-employment-2%20years-later-may2022.pdf>.

¹² According to a 2022 report, 1 in 5 U.S. workers now provide assistance for a parent or other adult family member, providing on average 20 hours of caregiving services per week on top of their full-time jobs. DEBRA LERNER, ROSALYNN CARTER INSTITUTE FOR CAREGIVERS, *INVISIBLE OVERTIME: WHAT EMPLOYERS NEED TO KNOW ABOUT CAREGIVERS 4* (Jan. 2022), <https://rosalynncarter.org/wp-content/uploads/2022/03/Invisible-Overtime-White-Paper.pdf>.

¹³ A BETTER BALANCE, *OUR CRISIS OF CARE*, *supra* note 5 at 13.

¹⁴ *Id.*

¹⁵ Erin George, U.S. Department of Labor Blog, *Mothers' employment has surpassed pre-pandemic levels, but the child care crisis persists* (May 6, 2024), <https://blog.dol.gov/2024/05/06/mothers-employment-has-surpassed-pre-pandemic-levels-but-the-child-care-crisis-persists>.

¹⁶ KPMG, *The parental work disruption index: A new measure of the childcare crisis* (Sept. 30, 2024), <https://kpmg.com/us/en/articles/2024/september-2024-the-parental-work-disruption-index.html>.

¹⁷ AARP & NATIONAL ALLIANCE FOR CAREGIVING, *CAREGIVING IN THE US 11* (May 2020), <https://www.aarp.org/content/dam/aarp/ppi/2020/05/full-report-caregiving-in-the-united-states.doi.10.26419-2Fppi.00103.001.pdf>.

Our economy’s reliance on family caregivers is only growing, and yet employers aren’t adapting to this change. Employers have the power to enable their employees to provide care to their families and to work. Even a little flexibility goes a long way, but without a caregiver accommodations law, supporting employees with caregiving responsibilities is entirely up to an employer’s discretion. As the calls to our helpline show, not enough employers are rising to the occasion.

Take for example Nikia, who called our helpline asking about her rights as a caregiver. Nikia works full-time for a New York City-based nonprofit. Like many parents, she struggled to find daycare for her newborn that was compatible with her work schedule, but eventually found one that was open late enough that she could make it there after work with minimal adjustments to her schedule. However, Nikia’s employer refused to let her leave work just thirty minutes before the end of the workday in order to make it to her daycare in time. Instead of supporting an employee of three years, her employer questioned why she wasn’t getting more help from family.

“I feel like I can’t be a full-time employee and a mom,” Nikia told us. “I’m not naïve, I know I have a job to do. I’m okay with taking a reduction in pay if that is what it takes to get to my baby on time.” Nikia pointed out that her employer’s expectation that family can help is outdated, as retirement becomes harder for many workers. “You can’t expect grandparents to be able to provide care, my parents still have to work.”

III. Passing a right to accommodations for all caregivers is critical to keep caregivers in their jobs

On our helpline, we frequently hear from workers facing similar struggles, trying to balance the demands of caregiving and their need to make an income. Nikia’s story shows that the changing landscape of care requires employers to adapt, or risk losing skilled employees. Int. 0871 has the potential to help caregivers balance work and family responsibilities, improving the job stability and economic power of women and in particular women of color, who disproportionately suffer when caregiving and employment prove incompatible. A right to accommodations could keep caregivers in the workforce, providing valuable labor and skills, and drive workplaces to make the changes necessary to respond to the ongoing crisis of care.

A Better Balance wholeheartedly supports the passage of a caregiver accommodations law, but we have several reservations, which we look forward to discussing further, about the particular approach of Int. 0871.

In the New York City Human Rights Law (HRL), “caregiver” is defined broadly to include not only parents of minor children (with or without disabilities), but also caregivers for adults with disabilities who share a familial relationship with their caregiver, or who reside with the caregiver and rely on them for care.¹⁸ This definition importantly includes the diverse forms of kinship through which New Yorkers build their families, including chosen family and extended family.¹⁹

¹⁸ N.Y.C. Admin. Code § 8-102.

¹⁹ N.Y.C. Admin. Code § 8-107(17).

A Better Balance is fully behind providing an affirmative right to accommodations for all caregivers as defined in the HRL, which is also the clear intent Int. 0871 states in the preamble. However, we have concerns about whether the current approach and wording of the bill itself unambiguously accomplishes that end. In addition, Int. 0871 doesn't address the specific accommodation needs of caregivers (which can differ from the needs of people with disabilities) or processes for obtaining these accommodations. This merits further discussion with stakeholders and regulatory bodies such as the NYC Commission on Human Rights to develop a comprehensive and tailored approach for caregivers.

Conclusion

In conclusion, A Better Balance supports the creation of a legal right to accommodations for working caregivers, as defined in the HRL. Such a law would help the many employees we speak to who find themselves in an impossible position, torn between their work and care responsibilities. It would further gender and racial equity, increase the economic stability of workers with families, and bring about necessary change in New York City workplaces. We look forward to working with Councilmember Hanks and other members of the City Council on developing a law that rises to the moment and addresses the urgent needs that caregivers face in the workplace. Thank you for your time, and thank you again to Councilmember Hanks and to the Committee for your work on furthering this important area of the law.