a better balance
Offices in New York, Tennessee, Colorado, and Washington D.C.
abetterbalance.org | info@abetterbalance.org

Testimony of A Better Balance
Submitted by:
Jesse Workman, Senior Staff Attorney
Marcella Kocolatos, Managing Attorney of Direct Legal Services

Submitted to the New York City Council
Committee on Women and Gender Equity

September 19, 2025

Re: **Oversight: Implementation of Paid Family Leave and Prenatal Leave in New York City, and Such Other Business As May Be Necessary**

Dear Chair Louis and Committee Members:

We thank you for convening this hearing, and for the opportunity to provide testimony on this critical issue.

A Better Balance is a national legal services and advocacy organization, headquartered in New York City, 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 organization led the campaign to pass paid family leave (PFL) in 2016, a groundbreaking program that gives new parents paid time off to bond with a new child and gives all workers paid time to care for seriously ill family members. This program has been a resounding success in New York and many other states have followed New York's lead, enacting comprehensive paid family *and* medical leave programs.

ABB also engages in national policy advocacy to advance comprehensive paid leave laws in states across the country. In addition to our policy advocacy, we run a free and legal confidential legal helpline, through which we have heard from thousands of New Yorkers, disproportionately low-wage workers of color, seeking information and assistance enforcing their rights under paid family leave, paid prenatal leave, and New York's paid medical leave program, known as Temporary Disability Insurance (TDI).

Through this testimony, we wish to bring to the Committee's attention opportunities for targeted enforcement of the paid prenatal leave law so as to ensure that particularly vulnerable workers

are not illegally denied paid leave by their employers to attend prenatal appointments or other medical services during or related to pregnancy. In addition, our testimony highlights key reforms to the TDI and PFL laws necessary to ensure that workers across our state have meaningful access to paid family and medical leave benefits when they need them.

I. We urge the Council, based on reports from workers to our free legal helpline, to consider targeted enforcement of paid prenatal leave in industries where collective bargaining agreements (CBAs) are prevalent and in low-wage industries such as fast food and retail where employers frequently treat labor law requirements as optional, to ensure that *all* eligible workers are able to access paid prenatal leave when they need it.
II. We urge the Council to recognize the importance of modernizing New York's paid medical leave program by calling on state legislators to prioritize TDI reform this session, and through passage of resolution Res 0867-2025, to strengthen New York's paid medical leave program for all New Yorkers.
III. We urge the Council to advocate for much needed changes to New York's paid family leave program by calling on the state legislature to pass reforms in three key areas: eligibility requirements, benefit level, and protections for workers who face interference and/or retaliation.

I. Paid Prenatal Leave

A Better Balance was a strong advocate for passage of New York's first-in-the-nation paid prenatal leave law, and we applaud New York State's commitment to ensuring that workers have the right to dedicated paid time off to attend prenatal visits or to receive other healthcare services during pregnancy or related to pregnancy such as fertility treatment. The state is facing an overwhelming maternal health challenge, and the ability to attend prenatal health care appointments is an important step in protecting the health of pregnant workers. In the early months after paid prenatal leave became a right across New York State, we heard from a number of callers to our free legal helpline that their employers had promptly updated their policies to provide a separate bank of paid prenatal leave as required by the new law—a testament to the commendable implementation efforts the City and State have undertaken.

However, we have also heard from workers whose employers are refusing to implement paid prenatal leave. For instance, unionized workers have reported to us that their employers are relying on the existence of collective bargaining agreements (CBAs) to justify failure to provide the twenty hours of dedicated paid prenatal leave that the law now requires. While it is true that the paid prenatal leave statute excuses employers from providing this benefit to workers covered by a CBA in *some* instances, we are concerned that employers may be automatically jumping to the erroneous legal conclusion that unionized workers are not entitled to the new benefit simply

by virtue of being covered by a CBA—even when the CBA does not clearly meet the conditions enumerated in the statute necessary to excuse a company from providing the benefit. That is, the CBA must provide both a "comparable benefit . . . in the form of paid days off" *and* "specifically acknowledge the provisions" of the statute.[1] If one or both of these conditions are not met, the employer must comply with the law. Yet employers appear to be pointing to CBAs that have not even been updated since paid prenatal leave was passed—and therefore could not specifically acknowledge the new provisions for paid prenatal leave that were added to the law—and insisting that they excuse the company from compliance.

After paid prenatal leave took effect, we spoke with one unionized worker who sought to use it for medical appointments related to fertility treatment. She was summarily denied based on the existence of her CBA and was instead required to use her sick leave—a limited bank of time she anticipated exhausting quickly, especially as she was simultaneously dealing with an unrelated family health issue. Indeed, the requirement that paid prenatal leave be provided *in addition to* paid sick leave or other forms of paid time off already offered by an employer reflects an acknowledgment by legislators that a dedicated bank of paid prenatal leave is necessary to effectuate the aim of the statute, i.e. to advance maternal health. The statute does not create a wholesale carveout of unionized workers, whose needs related to prenatal care are no different from those of non-unionized workers, yet some employers seem to be assuming that it does.

Thus, we believe workers could benefit from targeted enforcement of paid prenatal leave in industries where CBAs are prevalent. It is crucial that employers understand the mere existence of a CBA does not amount to an automatic exemption from the requirements of the paid prenatal leave law.

We also know that in general, employers in low-wage industries such as fast food and retail frequently treat the labor law requirements as optional. We commonly hear from workers in such industries that their employers claimed they "don't do" paid family leave or told them that they "don't qualify" for paid sick leave until they have been at their job for one year (a requirement of unpaid leave under the federal Family & Medical Leave Act but *not* of any of New York's paid leave-related laws). Employers who are refusing to comply with state and city laws that have been on the books for years are hardly likely to be complying with the new paid prenatal leave statute. Thus, we also encourage targeted enforcement in these industries where compliance with labor law requirements in general is already comparatively low.

II. Urgently Needed TDI Reform

[1] N.Y. Labor Law § 196-b(9).

While the paid prenatal leave law provides an extremely valuable benefit that advances maternal health across New York State, the reality is that it is simply not enough to close the massive gaps in the law that leave pregnant and postpartum workers vulnerable to both adverse health outcomes and economic ruin. The addition of twenty hours of paid prenatal leave addresses a narrow need to attend appointments while leaving larger, systemic failures in the state's core medical leave program—called Temporary Disability Insurance (TDI)—completely untouched. While this new policy represents a welcome acknowledgment of the unique needs of pregnant workers, TDI has not been updated since 1989, and modernization of the program is a vital aspect of supporting workers' health.

New York is one of 14 states (including D.C.) that provide family and medical leave benefits for its workers. Unlike in most of these states, in New York, TDI and PFL are distinct programs with different eligibility requirements, benefit levels, and protections. New York's PFL program—enacted in 2016 as the fourth in the country—provides up to twelve weeks of job-protected leave to bond with a new child or care for a seriously ill family member, with benefits covering up to 67% of a worker's average weekly wage, currently capped at $1,177 per week (67% of the state average weekly wage). PFL is fully funded through employee payroll deductions (employers do not contribute) and includes job protection, intermittent leave, anti-retaliation provisions, and health insurance continuation protections.[2]

In contrast, TDI, which provides workers with benefits when they have a serious health condition, has not been updated in more than thirty-five years. TDI was enacted in 1949, and is a lifeline for pregnant, birthing, and post-partum workers. The maximum benefit has remained unchanged since 1989, capping benefits for a worker's own serious illness at just $170 per week. The cap on benefits under New York's paid family leave program is nearly seven times higher. The temporary disability insurance program is not a viable option for most low- and middle-income workers in New York, particularly for workers in jobs that lack additional benefits.[3]

The lack of a reliable paid medical leave program in New York has serious consequences for all New Yorkers,[4] requiring workers to make an impossible choice between their health and the economic security of themselves and their families. We urge the City Council to pass Resolution

---

[2] *See* Jesse Workman, *Beyond Prenatal Leave: New York's Unjust Medical Leave System*, August 25th edition of the New York Law Journal, https://www.law.com/newyorklawjournal/2025/08/25/beyond-prenatal-leave-nys-unjust-medical-leave-system/?slreturn=20250919132640.

[3] *Id.*

[4] MEGHAN RACKLIN & MOLLY WESTON WILLIAMSON, WITH CONTRIBUTION FROM OTHERS, THE TIME IS NOW: BUILDING THE PAID FAMILY AND MEDICAL LEAVE NEW YORKERS NEED (2023, updated 2025), https://www.abetterbance.org/the-time-is-now.

0867-2025, which calls on the State Assembly to pass Assembly Bill A-84, a bill that if passed would modernize New York's outdated medical leave program (TDI) by creating parity between TDI and PFL.

Though Resolution 0867-2025 highlights the need for workers who have experienced stillbirth, the need for TDI reform is vital for any worker facing a serious illness including pregnancy-related needs, pregnancy loss, a cancer diagnosis, sudden accident or injury, surgery, substance use issues, mental health crisis, and more. The need to take time off work to take care of oneself during a health crisis can happen to any worker, and all New Yorkers deserve job protection, continued health insurance, and financial security in the times when they need stability the most.

Key changes needed to the TDI program include raising the benefit level in TDI to 67% of a worker's average weekly wage (consistent with PFL), adding job security, and guaranteeing continuation of workers' health insurance—all of which, taken together, would allow workers *meaningful* access to time off work to address serious health issues while maintaining economic stability and remaining connected to the workforce.

For many pregnant and postpartum New Yorkers, TDI is the only available safety net for extended time off to prepare for and recover from childbirth, manage complications during and after pregnancy, or address postpartum mental health conditions such as perinatal mood and anxiety disorders (PMADs). A weekly benefit of $170 is not enough to cover basic living expenses, let alone provide stability during a medically vulnerable time. We urge the City Council to call on our State leaders to modernize TDI and bring relief to the many New Yorkers in need of reliable paid medical leave.

III. Urgently Needed PFL Reform

New York was an early adopter of paid family leave, and in 2016 when the program was enacted, it was touted as the strongest in the country. However, in the years since the program was implemented, many states, inspired in part by New York's leadership on this issue, have enacted innovative paid family and medical leave programs with rights and protections surpassing those currently available to New Yorkers. Key reforms to expand eligibility requirements, increase benefit levels for lower income workers, and expand protections for workers whose rights have been violated or interfered with would go a long way to bring New York back into a position of leadership on paid leave. These key areas of reform are outlined in detail below.

A. Eligibility

Under the current program, self-employed workers, workers who have been at their job for less than six-months, and workers who need leave to care for a family member or loved one not related by blood or legal relationship face serious barriers to accessing paid family leave benefits, or are unable to access benefits at all due to restrictive eligibility requirements.

Self-employed workers, including independent contractors, can qualify for the program by voluntarily opting in and paying into the program for six months like other workers. However, if they do not opt-in in the first six months of becoming self-employed, there is an arduous two-year waiting period during which time they must pay into the program for the full two years without being eligible to receive benefits. We hear from many self-employed workers on our helpline, most of whom are expecting a child at the time they call and are hopeful that they will be able to benefit from the state's paid family leave program, only to learn that paid family leave is not a viable option for them because they have already been performing self-employed work for more than six months and do not yet have their own policy. Indeed, it is unfortunately the exception rather than the rule that we speak with a self-employed worker who will actually be able to use paid family leave to bond with the child they are expecting at the time they call.

For workers who have been with their current employer for less than six months, they do not become eligible to take paid family leave until they have worked for their current employer for roughly six months. This "six-month-clock" applies even to workers who have been in the workforce for years—dutifully paying into paid family leave—if they have not been at their current job for at least six months. Each time they move to a new job, they must start the six-month period over from scratch. This is true whether they left their last job voluntarily or whether they were laid off. And while in theory being *illegally* terminated should not preclude a worker from receiving paid family leave benefits they qualify for, in reality it is extremely difficult for workers illegally pushed off the job due to pregnancy discrimination to receive any benefits. We hear about such scenarios regularly on our helpline and on our Spanish-language helpline in particular. Pregnant workers in low-wage industries such as retail and fast food commonly report that their hours suddenly decreased, or that they were taken off the schedule altogether, once they announced their pregnancies, and that by the time they gave birth and found out about paid family leave, their employers falsely claimed that they had quit, making them ineligible for paid family leave benefits since they were no longer considered an "employee" of the company. While workers in these situations might hypothetically still be able to use paid family leave to bond with their child if they immediately start working a new job and work there long enough to qualify before their child's first birthday, this is not realistic or particularly helpful for most workers who lose their jobs in the last months of their pregnancies.

And for individuals who need to care for chosen family and loved ones, access to paid family leave may be entirely impossible depending on the relationship. Under the current program, the

definition of family is limited to include only certain relatives such as spouses, children, grandchildren, parents, and siblings. Unlike half of the 14 states (including Washington D.C.) with paid family and medical leave (PFML) programs, New York does not cover chosen family members, i.e. loved ones who are like family but not biologically or legally related to the worker.[5]

Three key reforms would change this:

1. **Creating an easier path for PFL coverage for self-employed workers/independent contractors.** This includes removing the current requirement that workers either affirmatively opt-in within the first six months of becoming self-employed (the majority of independent contractors do not know this is an option) or pay into the program for two years before being eligible for benefits, and allowing self-employed workers to buy policies and become eligible to use benefits within one month, as long as they pay into the program for one year after.

   Requiring self-employed workers to wait two years without benefits if they fail to affirmatively opt-in to the PFL program (an option the vast majority of self-employed workers do not know about until the need for PFL arises) largely locks self-employed workers out of the program entirely. Many self-employed workers are independent contractors, and gig workers, working low-paid positions and often misclassified. Nearly all other jurisdictions with paid family and medical leave laws around the country allow self-employed workers to opt into the program without the type of barriers in place in New York.

2. **Removing the requirement that a worker be employed for six months at a singular employer in order to be eligible for PFL benefits**, and creating portable benefits so that workers are eligible based on their working status rather than their time at a specific employer. New York paid family leave benefits are funded entirely by workers through their paycheck contributions, and forcing workers to restart the clock at each new job is profoundly unfair. It locks workers into potentially abusive work environments, frustrates workers' career advancement prospects, especially women seeking to move up the career ladder but tied to their current employer for PFL eligibility purposes. Many workers today, especially low-wage workers, move from job to job and need the ability to access benefits by virtue of paying into the program rather than staying at a single employer.

[5] *The Importance of an Inclusive, Realistic Family Definition in Paid Family and Medical Leave and Paid Sick Time Policies*, A Better Balance, https://www.abetterbalance.org/resources/fact-sheet-importance-of-broad-family-definitions-for-paid-leave/ (Oct. 2023).

Nearly all other states with paid family and medical leave programs provide some portability through the ability to combine multiple jobs to meet eligibility requirements.[6] Delaware is the only other state (of 14 with PFML programs) that has an employer-specific eligibility requirement. In most jurisdictions, eligibility follows the worker, rather than their employment with a particular employer.

3. **Expanding the definition of "family member" to include other blood relatives not already covered and chosen family** (defined as someone with whom the employee has a "close association" that is "the equivalent of a family relationship"). Families in New York take diverse forms. Due to cultural, economic, and social forces, the overwhelming majority of households today depart from the "nuclear family" model of a married couple and their biological children. Instead, they are blended, LGBTQ, and increasingly include loved ones who are not biologically or legally related. Ensuring a broad definition of family member that includes an expansive definition is especially important for LGBTQ adults, people with disabilities, and immigrant families, as well as young adults and aging adults.

   New York is quickly falling behind other states in its definition of family member. States around the country with paid leave laws cover chosen and extended family in their definitions of family care. For example, paid family and medical leave laws in New Jersey, Connecticut, Oregon, Colorado, Washington State, Minnesota, and Maine all provide leave to care for loved ones with whom a worker has a close relationship equivalent to a family relationship.

B. Increasing Benefit Levels for Low-Wage Workers (Progressive Wage Replacement)

Currently, eligible workers can receive 67% of their wages up to a cap of 67% of the statewide average weekly wage, currently $1,177.32. The benefit wage replacement rate is flat at 67% regardless of income level (up to a cap). This means that low-wage workers are only eligible to receive 67% of their income even when 100% of their income is not enough to provide financial stability and security.

New York's flat wage replacement rate is an outlier among modern paid family and medical leave programs. Nearly all of the paid family and medical leave laws passed since New York's 2016 paid family leave law use a progressive wage replacement rate.[7] That means that all

[6] *Interactive Overview of Paid Family and Medical Leave Laws in the United States*, A Better Balance, https://www.abetterbalance.org/family-leave-laws/ (Jan. 7, 2025).
[7] *Id.*

workers receive a higher percentage of their wages up to a point, and a lower percentage of their wages after that point, up to the total benefits cap.

Progressive wage replacement benefits all workers while ensuring that lower-income workers—those already most likely to be living paycheck to paycheck—are able to weather loss of income in times of increased need such as a new baby or a family member's medical emergency. This can be accomplished by **moving both paid family leave and temporary disability insurance to a progressive wage replacement system**, in line with modern paid family and medical leave laws in other states, which provide that workers receive 90% of their average weekly wages up to 50% of the statewide average weekly wage and 67% of their average weekly wages above that, up to an overall cap of 67% of the statewide average weekly wage.

C. Retaliation and Interference Protections

Currently, New York's paid family and medical leave program provides insufficient protection against retaliation for exercising one's rights under the law and no protection against interference with one's exercise of their rights. Lack of interference protections means that workers can be punished or blocked from seeking PFL benefits and have no cause of action under the statute to remedy the harm.

We hear all too often on our helpline from workers—especially low-wage workers—whose employers fail to provide them with any information at all about their PFL rights, provide them with inaccurate information about their eligibility, fail to inform them of the correct application procedure, refuse to complete the necessary paperwork, threaten retaliation if they do take leave, or otherwise interfere with their ability to take the leave they qualify for. However, unlike the federal Family & Medical Leave Act (FMLA), New York's PFL statute contains *no cause of action* for unlawful interference with an employee's ability to take PFL, only one for unlawful retaliation.[8] This means that an employee must essentially wait for their employer to fire them or take other retaliatory action against them such as a demotion or a pay cut before they might have a viable legal claim against the company. The lack of legal consequences for employers who act to prevent their employees from taking PFL only further emboldens them to do it. And it puts those workers who have managed to learn about their PFL rights on their own in the position of having to decide whether to call their employer's bluff—do they attempt to take the leave they are entitled to and hope their employer's threatened retaliation does not come to pass? Or do they decide the risk of retaliation is not worth it? Unsurprisingly, when weighing the potential consequences, many workers choose not to take the leave at all.

[8] N.Y. Workers' Compensation Law § 203-A.

Adding anti-interference protections and strengthened anti-retaliation protections to the paid family leave law would go a long way towards ensuring that paid family leave is actually accessible to the most vulnerable workers who need it the most.

Conclusion

We urge you to consider targeted enforcement of New York's paid prenatal leave law to ensure that all workers are able to access this critical benefit and to advocate for urgently needed changes to our state's Paid Family Leave and Temporary Disability Insurance programs. New Yorkers need and deserve a modern paid family and medical leave program that meets their needs and enables them to care for themselves and their loved ones without sacrificing their economic security, health, or peace of mind. They should not have to wait for one day longer.