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TESTIMONY OF THE LEGAL AID SOCIETY

HEARING OF THE COMMITTEE ON CIVIL RIGHTS
NEW YORK CITY COUNCIL
December 12, 2013, 1:00 p.m.

Good morning, my name is Katherine Greenberg, and I am a Staff Attorney in the Employment Law Unit of The Legal Aid Society. My practice focuses on employment issues affecting pregnant women, caregivers, and workers with disabilities.

I am here to speak in favor of the proposed amendment to the Administrative Code of the City of New York, which would prohibit employment discrimination based on an individual's actual or perceived status as a caregiver.

The Legal Aid Society is the oldest and largest not-for-profit public interest law firm in the United States, working on more than 300,000 individual legal matters annually for low-income New Yorkers with civil, criminal, and juvenile rights problems in addition to law reform representation that benefits all two million low-income children and adults in New York City. The Society delivers a full range of comprehensive legal services to low-income families and individuals in the City. Our Civil Practice has local neighborhood offices in all five boroughs, along with centralized city-wide law reform, employment law, immigration law, health law, and homeless rights practices. The Employment Law Unit provides representation, community education, and advice to low-wage workers regarding employment issues, including: unemployment insurance benefits; unpaid wages, overtime and other wage and hour law violations; and employment discrimination and retaliation.

The Legal Aid Society often hears from workers who have been fired because they needed to take a few days off work to care for a loved one. In the past two years, I have represented two single mothers who were fired from their jobs because they took time off work to care for sick children. One woman was fired while home caring for her asthmatic daughter; the other was discharged after taking a few days off to tend to her young child, who was hospitalized with chronic ear infections. Both of these women were lucky – their employers were large enough to qualify them for coverage under the Federal Family and Medical Leave Act, and so we were able to pursue claims on their behalf under that statute. Had they been among the 40% of workers who are not covered by the FMLA, however, they would have had no legal basis to challenge their terminations. It is unconscionable for us as a society to allow hard working employees and caregivers to be fired simply because they are providing care to a sick or injured family member.

The Legal Aid Society is also frequently contacted by low-wage workers who are forced out of their jobs when their employers deny them the minor scheduling adjustment they need to accommodate their caregiving responsibilities. For example, we recently heard from a woman named Diane, a retail worker who was fired after repeatedly requesting a transfer from the evening shift to the morning shift so that she and her partner could coordinate care for their infant son. Although there were openings on the morning shift, her employer gave those positions to workers without caregiving responsibilities, then fired Diane because of her inflexible schedule and repeated requests for a shift change.

Workers with caregiving responsibility come in all forms – mothers, spouses, children, and grandchildren. Caregiving work is challenging in many ways, and stable employment is vital to ensuring that caregivers are able to provide for our society's children, elderly, and disabled. The City should protect the caregivers among us by ensuring that they cannot be fired simply because of their caregiving responsibilities or denied minor accommodations that would enable them to care for their loved ones. Accordingly, The Legal Aid Society is in favor of the proposed amendment to the New York City Administrative Code.

We would also like to encourage the City Council to pursue creating affordable child care options. Many of our clients would be able to report to work if they had a safe and affordable child care option. The expansion of public pre-school to include 4 year olds is important – but alone it will not address the full scope of the problem. New Yorkers, especially low-income workers, need safe and affordable child care options for their children from the time they are newborns until age 13.

Respectfully submitted,

Katherine Greenberg
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Testimony before the New York City Council Civil Rights Committee Regarding Int.
0863-2012

December 12, 2013

Submitted by Dena Adams

Good afternoon. My name is Dena Adams and I am a single mother who lost my job because of caregiver discrimination.

I worked for over 15 years for a non-profit that provides care for homeless youth. For most of that time, I worked in the records department, where my job offered a steady and predictable schedule. In 2011, I received a service award with a gift to recognize my loyalty to the organization. But one week later, my employer eliminated my department for budget reasons and offered me a different position that required varying evening and weekend work hours. I did not have childcare for my 11-year-old daughter in the evenings and did not feel comfortable leaving her home alone until midnight. We live in a risky neighborhood and I don't have any other family in New York who can pitch in. My employer gave me one week to consider the offer or leave and file for unemployment insurance benefits.

I did not want to lose my job so I tried to negotiate some alternative arrangement. I asked about working weekends and holidays but not evenings, since I could safely send my daughter to a friend's house during those times. My bosses said no. I asked if we could arrange for my evening hours to be the same day every week, so I could predict and plan care for my daughter. My bosses said no. I even suggested bringing my daughter with me to the office for the nights when I would have to work. Again my bosses said no. They denied each and every request, flat out. They would not even discuss any alternatives with me. Meanwhile, I found out that they were allowing a co-worker of mine, in the same position, to work predictable evening hours to accommodate his school schedule.

A few months after earning my service award, I was terminated. My termination papers stated that I was fired for lack of childcare. I started claiming unemployment and looking for a job. It took me over a year to find employment.

My employer forced me into an impossible choice between my job and my child. I don't live in the best of neighborhoods, and we don't have the same dynamics that other households have—it's just my daughter and me. All I was asking of my employer was to work with me. I can do both jobs: I can be a good parent and a good employee. But they refused to engage with me. I don't think any parent should have to make that choice between their work and their child. It's like asking us: should we breathe or should we die?

I am here today because this bill would help parents like me. It would ensure that mothers are not discriminated against in the workplace. It would also make sure that our employers engage with us to find productive solutions when work conflicts with our caregiving responsibilities, instead of just tossing us aside. If this law had been in effect two years ago, I probably could have kept my job and my employer would have saved the money it spent finding and training my replacement. The loyalty that I had shown to my employer over 15 years would have become even stronger. Instead, I was out of work for months and had to rely on public assistance to support my family. I'm not an economist, but that just seems like bad policy.

Thank you for considering this bill and for helping working mothers and other parents like me.



the work and family legal center

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Testimony before the New York City Council Civil Rights Committee
Regarding Int. 0863-2012

December 12, 2013

Submitted by Phoebe Taubman, Senior Staff Attorney
A Better Balance: The Work and Family Legal Center

Good afternoon. My name is Phoebe Taubman, and I am a Senior Staff Attorney at A Better Balance: The Work & Family Legal Center. A Better Balance is a New York City-based legal advocacy organization dedicated to promoting fairness in the workplace and helping workers across the economic spectrum care for their families without risking their economic security. A Better Balance also hosts the Families @ Work Legal Clinic, where we partner with the prominent New York employment law firm, Outten & Golden, to assist low-income working New Yorkers with pregnancy discrimination, caregiver discrimination, pay discrimination, and other related issues. We receive calls from men and women across the tri-state area as well as from individuals all over the nation in response to our advocacy efforts.

I want to start by thanking Councilmember Rose for convening this hearing and Councilmember Brewer for introducing this bill, which would modernize the workplace and provide much-needed support for people struggling both to provide and care for their families.

Employment discrimination against caregivers harms a wide range of New Yorkers. Bias in the workplace against parents and family caregivers affects men and women across the economic spectrum. Seventy percent of children are growing up in families headed by a single working parent or two

working parents,¹ and nearly four in ten mothers are the primary breadwinner for their families.² More Americans are shouldering elder and family care responsibilities, especially as the baby boomer generation ages: about half of the U.S. workforce expects to be providing eldercare in the coming five years.³ Most family caregivers are women (65 percent)⁴ and the value of all the informal care they provide ranges from \$148 billion to \$188 billion annually.⁵ These caregivers provide unpaid labor that benefits not only their families but our society and economy as well. They deserve protection from unfair treatment that derails their careers, suppresses their lifetime earnings, and pushes their families onto public assistance and into poverty.

We need legal protections that fit the workforce of today. Although young women entering the workforce today are starting their work lives at near parity with men, they fall further behind their male counterparts as they age and deal with the responsibilities of parenthood and family.⁶ We met a professional woman with ten years of experience and excellent reviews at her job, who was fired after returning from her second maternity leave and told she was not capable of doing the work anymore because she was mother with small children. We spoke with a man working in retail who was fired the day after he asked for a part-time schedule to care for his mother, who had recently been diagnosed with cancer. And we heard from a mother of three who lost her job at a grocery store, where she had worked for eleven years, after her boss changed her shift to require work on Saturdays, even though he routinely made shift changes for others. She had no childcare on the weekend and the cost of securing it would have wiped out her wages for the day. Eight months later she is still looking for work.

In the low-wage workplace, caregiver discrimination is often especially blatant. We have heard from women who are scolded and ridiculed in front of their colleagues for having children and often denied any requests—for a raise, a shift change, even just time off for a doctor's appointment—because they chose to start a family. The economic consequences for these women, and their families, can be severe. Many of our callers have ended up on public assistance and some have been forced to leave their homes after losing income because of caregiver discrimination.

Targeted legislation is necessary to prevent caregiver discrimination. Without a law on the books that explicitly prohibits discrimination based on caregiver status, individuals who have suffered job loss and lost income from this kind of unfair treatment often find themselves without legal redress. Some caregivers may be able to make out claims under existing civil rights laws if they can prove, for example, that the discrimination they faced was based on sex or association with a disabled person. But too many cases fall through the cracks. For instance, women facing caregiver discrimination often find it hard to articulate their legal claims as sex discrimination because they cannot point to a comparator—a man or woman without young children who has placed similar requests for time off or the like and who has received better treatment. Low-wage workers tend to work in isolated settings or do not have the freedom to confer with colleagues to uncover information necessary for a legal claim. Clearly designating caregiver status as a protected class under the law would give these women hope for economic stability, job protection, and basic human dignity at work.

Making caregiver discrimination explicitly illegal would help employers as well. Without clear legal guidance, employers are confused about what kind of conduct is prohibited. Creating an unambiguous ban on discrimination against caregivers would help prevent unfair treatment and invite a discussion about caregiver bias, both in the workplace and more broadly, that could help workers retain their jobs and much-needed income for their families.

Other cities around the country have enacted laws to prevent discrimination against caregivers. New York city would join dozens of other cities and localities that have prohibited employment discrimination based on familial or caregiver status.⁷ In addition, the District of Columbia⁸ prohibits discrimination based on an employees family responsibilities and Alaska⁹ outlaws workplace discrimination against parents. Governor Cuomo also included a proposal to amend New York State's Human Rights Law to ban employment discrimination based on familial status in his 2013 Women's Equality Agenda.

Strengthening protections for caregivers will support struggling families without harming business. Intro. 863 would afford caregivers the same protections currently extended to people with disabilities and those who require accommodations for religious practice. Using standards already in the Human Rights Law, employers would be required to provide workplace accommodations for caregivers, but only if such changes do not cause “undue hardship” for their business. Caregivers would be granted the same interactive process that disabled workers enjoy, allowing them to propose, for example, alternative work arrangements to help them meet the requirements of the job while also attending to their family responsibilities.

“Reasonable accommodation” has worked well to ensure that disabled workers are not treated unfairly or driven out of the workplace. It is equally important that employers provide accommodations, when possible and reasonable, to the family members who care for the disabled, as well as for children and the elderly, while holding down a job. Discrimination against caregivers, like discrimination against the disabled, is prevalent not just because of stereotypes about them as a group, but also because these groups often have different needs from other workers, different “norms” that require accommodation in order to allow them to be productive members of the workforce.¹⁰ Caregivers, their families and our economy suffer significantly when these individuals are unable to contribute their talents to the labor force.

Other countries that have included caregivers in their civil rights laws have also enacted reasonable accommodations requirements, acknowledging their debt to the United States for creating the concept in the context of disability.¹¹ The Canadian Supreme Court noted with approval that an anti-discrimination standard accompanied by a reasonable accommodation requirement fosters workplaces that accommodate the potential contributions of all employees. Under this approach, employers may still have rules that burden caregivers, but they must explore reasonable alternatives in such cases.¹² New South Wales, Australia, in response to mothers dropping out of the workforce and the growing wage gap between women and men, created a strong caregiver anti-

discrimination law with a reasonable accommodation provision, which has been used to increase workplace flexibility for caregivers who need it to stay in the labor market.¹³

A reasonable accommodation provision for caregivers is important because few low-income workers have access to workplace flexibility when they need to care for family. They often find themselves pushed out of the labor force when they just need a bit of time to be with their loved ones. Thanks to this Council, New Yorkers will soon be able to take sick time without fear of retaliation, and many without losing a day's pay. Thanks to this Council, pregnant women in New York City will no longer be forced to choose between their jobs and healthy pregnancy. Strengthening legal protections for caregivers is also sound public policy that can help keep caregivers off public assistance, promote the wellbeing of their children, and allow employers to retain happier, more productive and loyal employees.

* * *

New York City's Human Rights Law is one of the strongest in the nation but you have the opportunity to make it even stronger for working families. We look forward to working with you on strengthening protections for caregivers and thank you for your consideration.

¹ Heather Boushey, Center for American Progress, *Equal Pay for Breadwinners* 8 (Jan. 2009), available at http://www.americanprogress.org/issues/2009/01/gender_economy_report.html.

² Wendy Wang, Kim Parker, & Paul Taylor, *Breadwinner Moms Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children: Public Conflicted about the Growing Trend*, (May 2013), http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.

³ Joan C. Williams et al., *Protecting Family Caregivers from Employment Discrimination*, AARP Public Policy Institute, 2, http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf.

⁴ Id.

⁵ *Women and Caregiving: Facts and Figures*, Family Caregiver Alliance, http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=892.

⁶ *On Pay Gap, Millennial Women Near Parity—For Now: Despite Gains, Many See Roadblocks Ahead*, Pew Research Social Demographics and Change (December 11, 2013), <http://www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/>.

⁷ Stephanie Bornstein and Robert J. Rathmell, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, Center for WorkLife Law, University of California at Hastings (December 2009), available at <http://worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.

⁸ D.C. Code Ann. §2-1401.01-02

⁹ Alaska Stat. §18.80.200

¹⁰ Lucinda Finley, "Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate," 86 *Columbia L. Rev.* 1118, 1172 (1986).

¹¹ *European Union Directive on Equal Treatment* (2000).

¹² *Central Alberta Dairy Pool*, 2 S.C.R. 489, 518 (1990).

¹³ Conference Report, *Working Time Discrimination and the Law: The Family Responsive Workplace in Europe and the United States* (March, 2005), pg. 11.

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in favor in opposition

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I represent: The Legal Aid Society

Address: same

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