The Pregnancy Penalty:
How Motherhood Drives Inequality & Poverty in New York City

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the work and family legal center

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About A Better Balance: The Work & Family Legal Center

A Better Balance is a 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 hosts the Families @ Work Legal Clinic to assist low-income working New Yorkers with pregnancy and caregiver discrimination, accessing sick time and family leave, and other related issues. We are supremely grateful to the women and men we have met through our advocacy who have allowed us to share their stories. Their courage and determination in the face of adversity inspire our work.

Summary of Report

Despite advances in gender equality over the past 40 years, women continue to jeopardize their livelihoods simply by having children. This report names, explains and offers solutions to the pregnancy penalty: bias and inflexibility towards women in the workplace that starts when they become pregnant and snowballs into lasting economic disadvantages. Informed by the latest research and by the experiences of our hotline callers, we offer a set of proposals for New York City to address the pregnancy penalty and make progress toward the promise of opportunity and equality for all.

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Introduction

Much has been written about the persistent gender wage gap. We all know the familiar numbers—women earn only 78 cents on the dollar compared to men—and decry the inequality, but the wage gap refuses to budge. At the same time, income inequality continues to vex policy makers, including those in New York City who see the middle class vanishing before their eyes. These two problems share a common core—the pregnancy penalty: bias and inflexibility towards women in the workplace that starts when they become pregnant and snowballs into lasting economic disadvantages.

Despite advances in gender equality over the past 40 years, women continue to jeopardize their livelihoods simply by having children. The pregnancy penalty helps to explain why mothers as a whole continue to earn five to six percent less than non-mothers, and why historically disadvantaged women, single mothers and black women, have seen their wage penalties rise sharply since 1977.[1] In New York City, single, childless women under age 35 earn 96 cents for every dollar men earn, whereas women between the ages of 35 and 65, who are likely to have children, earn only 78 cents to the dollar.[2] Over the course of a lifetime, women earn only 38 percent of their male counterparts.[3] The pregnancy penalty also explains why poverty and gender are so closely linked. In New York City, nearly 40 percent of households headed by single mothers with children under 18 live in poverty.[4] Nationwide, women over 65 are twice as likely as men their age to be living in poverty.[5] When caregiving pushes women out of the workforce during their prime earning years, it derails their earnings and hampers their ability to put food on the table and make ends meet. In the long-term, it imperils their career prospects and social security payments, leaving them impoverished in their golden years.

The pregnancy penalty impacts workers across the economic spectrum, but in ways that play out differently depending on the resources at their disposal.[6] For low-wage workers, who often toil in the most rigid and unstable jobs and lack a financial safety net to cushion the blow of lost income, the consequences can be especially severe.[7] Research has shown that the motherhood wage penalty has the most acute impact on low-wage workers, largely because they lack the bargaining power to negotiate their work schedules, are deprived of key benefits, and cannot afford the services they need, such as childcare, to combine work and motherhood.[8]

The pregnancy penalty also impacts workers in the public sector. In fact, the motherhood wage gap in New York City's municipal workforce, which is 57 percent female, is larger than that of the city's for-profit sector—21.4 percent differential versus 17.5 percent.[9] Much of this gap can be attributed to rigid work rules in municipal government, and lack of paid parental leave and flexible work schedules, which hold women back and depress their career mobility.[10]

Wage differentials between men and women:

	Women Without Children	Women With Children
For-Profit	-14.3	-17.5
Non-Profit	-5.4	-9.3
State/Federal	-14.0	-14.8
Local Govt	-15.2	-21.4

Source: Office of New York City Comptroller

Finally, the pregnancy penalty harms our society and economy more broadly. When women are forced to exit and reenter the workforce, and cannot afford to support their families on depressed wages, they must rely on public assistance to get by.[11] The pregnancy penalty taxes public resources, and also leaves less money in the wallets of women who drive consumer spending. In fact, guaranteeing equal pay for women would cut the poverty rate for working single mothers nearly in half and could increase the U.S. GDP by 3 percent.[12]

At A Better Balance, we have seen first hand how the pregnancy penalty derails careers, saps household income and pushes families into poverty. For the past five years, A Better Balance has run a free legal clinic for workers facing problems on the job related to pregnancy and family responsibilities. We have spoken with hundreds of mothers struggling to make ends meet in New York City. Their stories illustrate how motherhood is a liability in the workplace.

- A pregnant hotel concierge lost her job because she needed to rest her feet periodically during her 9-hour shift, but her employer would not give her a stool. She lost her job and ended up drawing unemployment benefits before moving out of state, because she could not afford to live in New York City anymore.
- A New York City schoolteacher without paid maternity leave cut back on expenses while caring for her newborn to the point of reducing her caloric intake so much that she was unable to breastfeed her daughter. A year after her daughter was born, the woman had destroyed her credit rating, obliterated her savings, and left her job to relocate out of state where the cost of living was lower.
- After 15 years working for an agency in New York City providing shelter for high-risk youth, a single mother was given an ultimatum: agree to work unpredictable weekend and night hours or leave. Without family nearby to care for her daughter, and without any help from her employer to negotiate a predictable schedule, she lost her job and was unemployed for over a year.

These are just a few of the stories we have heard through our hotline that reflect a much larger problem. While women's exits from, or lack of advancement within, the workforce have historically been framed as "choices," the women featured in this report highlight a starkly different reality. They show how bias and institutional barriers penalizing mothers in the workplace deny women equal opportunities, harm families and threaten our city's economic growth.

> "It's time to restore that grand bargain for everyone. If you work hard and play by the rules, you can punch your ticket to the middle class."
>
> *— Mayor Bill de Blasio, U.S. Department of Labor – New York Regional Summit on Working Families, May 12, 2014*

The women featured in this report, and others throughout the city, are working hard and playing by the rules. They are trying to do right by their families, but are being punished as a result. As our elected officials consider solutions to the crises of income inequality and the persistent gender wage gap, they must confront the pregnancy penalty as one of the root causes.

New York City is perfectly positioned to lead the charge. Mayor Bill de Blasio and the City Council have already shown their commitment to working parents by passing a strong paid sick leave law that covers care for family members; de Blasio's push for universal pre-kindergarten has renewed the promise of quality education for the youngest citizens of our city and peace of mind to their parents. Both the Mayor and Council leaders are committed to tackling income inequality as one of the greatest challenges of our times, and the Mayor has recognized that a variety of tools will be necessary to address that project. While paid sick leave and universal pre-kindergarten are critical first steps, we need our leaders to do even more. They need to dismantle the pregnancy penalty.

In this report, we offer specific policy proposals to address the pregnancy penalty from a variety of angles and put New York City at the vanguard of equal opportunity. Some of our proposals are legislative, while others focus on the city's own workforce and offer an opportunity for our leaders to make good on their promises of economic opportunity and income equality by starting in their own back yard. New York City can and should be a beacon for the rest of the country by demonstrating how support of working mothers can lead to better economic outcomes for all.

Economic contributions of mothers

Our economy has been revolutionized by the influx of women, including mothers, into the labor force over the past three decades. Women now make up half of all workers on U.S. payrolls and their earnings are critical for the well being of their families. Today, nearly four in ten mothers are primary breadwinners, and almost two thirds are either breadwinners or co-breadwinners, bringing in at least a quarter of the family's income.[13] Middle class households—nearly half of whom live paycheck to paycheck with insufficient savings to weather the loss of a job or other financial emergency[14]—would be struggling with even lower earnings were it not for women's increased contributions.[15] And more women are working further into pregnancy because their families cannot afford to go without their income. Almost nine out of ten (88 percent) first-time mothers who work while pregnant do so into months eight and nine of their pregnancies.[16]

Families are not the only ones relying on mothers' increased output: our economy also benefits tremendously from their labor. In fact, had women not flooded the workplace over the past thirty-five years, U.S. gross domestic product would have been roughly 11 percent lower in 2012, which translates to more than $1.7 billion less in output.[17] But progress is slowing after decades of growth and some economists worry that women's workforce participation might be hitting a wall.[18] Because of the potential impact on our families as well as our economy as a whole, any forces that serve to push women out of the workforce should be of grave concern to us all.

Clash of motherhood and workplace norms

As the volume and value of mothers' paid work has increased, our workplace policies have barely changed to reflect that reality. Instead, most workplaces continue to assume that a breadwinner (almost always male) and a caregiver (almost always female) will divide the tasks of providing economic support and care for their family. But this assumption no longer holds. In New York City, the majority of two parent households have both parents in the workforce, and 61 percent of women with children under age six are in the labor force.[19] Nationwide, the share of mothers who work full time, full year, rose from 27.3 percent in 1979 to 46 percent in 2007,[20] and the total labor force participation rate of mothers with minor children rose from 47 percent in 1975 to 70.6 percent in 2011.[21] Mothers are the new breadwinners in many families.

Yet women also continue to shoulder the majority of unpaid family care work. Although men spend more time on childcare today than they did thirty-five years ago, mothers continue to spend twice as much time as fathers caring for their children.[22] Mothers also continue to do nearly twice as much housework as fathers.[23] And more women than men provide care to elderly, ill or disabled family members: an estimated 66 percent of such caregivers are female, and they spend, on average, around twenty hours per week providing care.[24] Over half of working mothers report that balancing their family responsibilities with their work responsibilities is difficult.[25]

Instead of helping women who are juggling a job and a family stay in the workforce, our policies are pushing them out. Even though 75 percent of women will become pregnant in the course of their working lives,[26] and half of the workforce is female, blatant pregnancy discrimination is alive and well. According to the Equal Employment Opportunity Commission (EEOC), pregnancy discrimination claims filed with the agency, and state and local agencies, have been on the rise,[27] and the Commission continues to be shocked by how many supervisors and women are unaware of pregnant workers' rights in the workplace.[28]

Rigid and unpredictable workplace schedules also serve to push mothers out of the labor force. For higher-earning mothers, long work hours and the stigma associated with flexible or part-time work often shove them into less lucrative jobs or out of the workforce all together.[29] Middle-income mothers contend with highly supervised schedules, where they might be fired for being a few minutes late, and face mandatory unscheduled overtime that can throw carefully constructed, tag-team childcare plans into disarray.[30] Lower-income mothers often face the most acute work-family challenges, yet they are least likely to be able to control their work schedules. Approximately half of low-wage hourly workers report having limited control over their work hours.[31] The consequences are profound: many mothers find it impossible to arrange safe, affordable child care at a moment's notice and must exit the workforce, with no path for reentry.

Finally, only a fraction of workers have access to any form of paid leave to care for a new child or seriously ill family member. While twelve percent of all private sector workers have access to paid family leave, only five percent of low-wage workers have it.[32] Without paid leave to help them weather family health emergencies, almost one in five low-wage working mothers have lost their jobs due to sickness or caring for a family member.[33] In fact, half of women with less than a high school education "quit" their jobs in order to bond with new babies, reporting that without paid leave they had no other choice.[34] These workforce exits result in longer gaps in work histories with a negative impact on future wages.[35] In contrast, new mothers with access to paid leave are more likely to return to work and earn higher wages.[36]

Low-wage mothers

While all mothers pay a price for motherhood, those working at the bottom of the income scale pay most dearly. Nearly twenty percent of mothers with very young children are employed in low-wage jobs, and over one third of them are poor.[37] Many mothers in low-wage jobs work part-time to manage child care and experience a severe wage penalty as a result.[38] They are also far more likely to be raising a family on their own without any support,[39] have little power to negotiate their schedules, cannot afford reliable childcare, and often drop out of the workplace completely when all else fails.[40] Such breaks in workforce participation that are not accompanied by additional schooling are the single greatest contributor to the motherhood wage penalty.[41]

When low-wage working mothers cycle in and out of the workforce, they lose not only wages, but also seniority and other benefits of continuous employment that would promote economic stability for their families. For these women, the pregnancy penalty is steep: each new child brings a pay penalty of fifteen percent, compared to four percent for higher-wage earning mothers.[42] Even worse, low-earning mothers suffer the largest pay penalties at the moment when physical care of their children is most intense: the pay penalty per preschooler is almost five times as great for a low-income mother as for her higher-earning counterpart.[43] The long-term financial consequences for families can be devastating.

Armanda's Story

I live in Queens, New York, with my two boys. It's just them and me—I am the sole breadwinner for our family.

I worked for an armored truck company for two years before I was pushed out of my job. I was six and a half months pregnant when I pulled a muscle in my stomach doing some heavy lifting at work and had to miss the rest of the week recovering. My doctor told me to avoid heavy lifting so I wouldn't hurt myself again, and gave me a note to bring into work. My manager took one look at the note and sent me home without pay, indefinitely. He said I could only work if I had no restrictions—company policy. I knew this wasn't true: they had accommodated my co-worker who had injured his back on-the-job. The result was devastating.

I tried to get another job, but I was showing and I could tell from the interviews that no one was going to hire me. I had to go seven months without pay when I needed that income more than ever. My credit score dropped and I almost lost my apartment when I fell behind on rent payments. Even when I applied for emergency rental assistance, I didn't qualify because I didn't have any income coming in. My employer fought my unemployment benefits, and when the check did finally arrive, it was still only a fraction of my original salary.

I had no choice but to apply for public assistance. The experience was so draining. I almost fainted after waiting in line for hours. I actually fell to the ground. Thankfully, the stranger behind me was kind enough to help me up. I was desperate to leave but dreaded the thought of going back.

When I was eight and a half months pregnant, my health insurance was cut off. I couldn't afford the COBRA payments and had to apply for Medicaid for my prenatal care. Once my baby arrived, just putting food on the table for him and my four-year-old was a challenge. I was forced to use water in his cereal at times because I could not afford milk.

I was scared every time I looked in my empty fridge.

I'm doing my best to get back on my feet, but it's been really hard. I had to apply for Medicaid for my kids, and have relied on food stamps to help feed my family. I started a new job but they only give me 17-18 hours of work per week, about $260/week.

I used to have some security in my job. I used to be able to support my family and myself. Now I worry what happens if I get sick or my kids get sick. We simply can't afford it. I can't even afford childcare for both of my kids—care for them costs an entire month's paycheck.

Policies to address pregnancy penalty improve economic outcomes

There is good news for leaders seeking to reverse the trend toward income inequality and abolish the wage gap. Examples from around the globe, and here in the U.S., show that supporting working women and mothers can have a significant impact on gender and income inequality.

Work-family policies that help women stay attached to the labor market, including affordable, reliable childcare and short-term paid leaves, are extremely effective at reducing poverty,[44] and, along with broad cultural support for full-time maternal employment, appear most effective at reducing the motherhood wage penalty.[45] Instead of relying on public benefits, women can direct higher earnings back into the economy and even help to pay for government programs. If pay penalties disappeared, women's earnings would increase by an amount more than fourteen times greater than what the federal and state governments spend on Temporary Assistance to Needy Families.[46]

According to one report:

> "Nations such as Sweden, Finland, and Norway have the lowest gender gaps in the world. These nations were so poor at the beginning of the 20th century that there were famines, but today they are regularly in the highest ranks of the World Economic Forum's Global Competitiveness Reports. A major factor in this dramatic shift was that these nations invested in developing their "human capital" by empowering women."[47]

We can see similar results in California, where the state's pioneering paid family leave benefit law increased job retention among workers in low-paying jobs, and helped those workers recoup at least half of their usual pay while on leave,[48] providing much-needed income and stability to their families. The law also led to increased hours of work for women returning from leave, corresponding to a positive, though modest, increase in wages.[49]

In the United Kingdom, where legislation was introduced and then expanded to guarantee employees the right to request flexible work schedules without penalty, millions of parents have been granted more control over their schedules with little opposition by employers.[50] Fair and flexible work can also combat inequality: economists have suggested that the gender pay gap "would be considerably reduced and might even vanish if firms did not have an incentive to disproportionately reward individuals who worked long hours and who worked particular hours."[51]

In contrast, the national picture in the United States is bleak. Our country is the only developed economy, and one of only a handful of nations worldwide, that does not guarantee paid leave for new mothers. We have no national childcare program, and a legal landscape that often penalizes workers for taking time to care, rather than facilitating their dual responsibilities. Our failure to give "visibility, value and support to care work" in the United States, has been recognized as "one of the reasons why children in female-headed families are so disproportionately poor."[52]

Proposals for New York City

New York City is perfectly poised to take on the pregnancy penalty and set an example for other cities, our state and the nation. With new leadership and political momentum for equality, the time is ripe. Below we outline a variety of proposals to address the pregnancy penalty in New York City and help women stay attached to the workforce, earning critical income to support themselves and their families.

Enforcement and Expansion of Anti-Discrimination Laws

1. New York City Pregnant Workers Fairness Act

New York City is one of a small but growing group of cities and states to provide an explicit right to workplace accommodations for pregnant women and new mothers. The New York City Pregnant Workers Fairness Act (NYCPWFA),[53] which went into effect January 30, 2014, requires employers to provide reasonable accommodations to employees with needs arising from pregnancy, childbirth or a related medical condition, unless such accommodation would pose on undue hardship on the employer. The law puts pregnant women on equal footing with disabled workers, who are already entitled to accommodations in the workplace under city law, and ensures that they will not be forced out of their jobs simply because they need minor adjustments to stay healthy or recover from childbirth.

The NYCPWFA was necessary to clarify the law and reinforce the basic principle that pregnant women must be treated fairly on the job. Despite the fact that pregnancy discrimination has been explicitly illegal since 1978, many employers disregard or simply do not understand their obligations under the law.

Hope's Story

I was very excited about my pregnancy and the prospect of starting a family, but I chose not to disclose that I was pregnant when I was hired as a counter person at a popular café on the Upper East Side of Manhattan. I didn't think my pregnancy was anyone else's business, and since I was hired early into the pregnancy, no one could tell I was pregnant.

The first month went well and my supervisors were happy with me. I got along great with the customers who often included parents with babies and young children. I asked not to be in the schedule a couple of times (because I had doctor's appointments), but other than that, my pregnancy was not an issue.

However, once my belly started to become visible, I began to get questions at work. First, a co-worker placed her hand on my stomach and asked me if I was "with child." I felt extremely uncomfortable discussing it with her, so I told her that I didn't know what she was talking about. Later, my boss approached me in front of my coworkers as well as staring customers, to say that someone had told him that I was pregnant. I felt very embarrassed discussing personal information in such a public setting, but I found my boss later in the day and confirmed that I was indeed pregnant.

Within a week, I was fired. My boss admitted that I was very good at my job but told me he needed to terminate me because I was pregnant. He said I was too much of a "liability" and that it was not safe for me to be working at the café while pregnant.

I was shocked. My boss admitted to firing me because I was pregnant, and later when he was questioned about it said it was because I was taking too much time for medical needs. That's pretty outrageous, since my doctor's appointments were not disruptive at all and, in New York City, the law requires employers to make reasonable accommodations for pregnant workers.

My boss is a successful businessman—the café is actually one of a small chain—and I am appalled that he doesn't know better. He used my pregnancy against me to keep me from earning a living at a time when I was most vulnerable.

While still new, the NYCPWFA has already proved its effectiveness in keeping women on the job. Floralba Espinal was pregnant and had recently been pushed out of her job when she learned about the new law's protections at a training lead by A Better Balance. Within a few months, she was back at work, earning money for her family and awaiting the arrival of her baby.

Floralba's Story

Floralba Espinal was working for $8.00 an hour at a thrift shop in the Bronx when she became pregnant. As part of her job, she carried heavy piles of clothing from the storeroom to the retail floor, where they were hung on racks. She had a history of miscarriage and worried about the risk to her pregnancy and her baby if she continued to lift such heavy loads. She saw that other workers had been temporarily transferred to other positions with less physically demanding work, so she asked to do the same. Her boss told her to bring in a doctor's note. But when she did, she was sent home on unpaid leave within hours because, as her boss said, she could no longer do her job. She was told to return when she was cleared to work without restrictions. Floralba walked out of the store and burst into tears. "How do they expect me to pay rent, to buy food?" she wondered.

Floralba went to her union, which then consulted its lawyers. After learning about the New York City Pregnant Workers Fairness Act, and with the help of A Better Balance, Floralba was able to use the law to get her job back. She was reinstated in a light-duty capacity as her doctor ordered, got $1,088 in back pay, and was able to maintain her seniority at the company.

Floralba was lucky. She had a union and free legal representation to help her get immediate relief and get back on the job before losing much income. Other women are not as fortunate, and need help getting a speedy resolution of their accommodations requests so they can stay healthy and employed.

New York City must promote education and enforcement of the NYCPWFA. This law will only keep women employed if they, and their employers, know about its requirements. The Mayor's office should establish a web portal for parents through the city's well established 311 and NYC.gov information access points. This portal should include user-friendly information about pregnancy discrimination, temporary disability insurance for pregnancy and childbirth, breastfeeding and expressing milk at work, sick leave, childcare, schools, resources for special needs children, and other topics. Helping parents to navigate the complex set of rules and laws applicable to them ensures that city programs reach their intended beneficiaries and also eases the work-family time crunch by streamlining complicated bureaucracy for the lay audience and saving precious time.

The Human Rights Commission, which is tasked with enforcing the law, must leverage the expertise and reach of other city agencies in its public education efforts. The Department of Health and Mental Hygiene, including its Nurse-Family Partnership program and the New York City Commission on Women's Issues, particularly its NYC Family Guide, are ideal places for inter-agency collaboration to reach women who would benefit from the law's protections. The Commission must also work to educate employers about the law's requirements, particularly small employers who do not have attorneys keeping them apprised of compliance obligations. Finally, the Commission should prioritize speedy resolution of pregnancy accommodations complaints, which are short-term by nature and require immediate attention. According to the agency's own records, as of October 2014, the average age of a pending pregnancy discrimination case is 271 days—approximately the length of an average pregnancy.[54] By implementing a "fast track" for these claims, the Commission can expedite investigation and keep women in their jobs.

In order for the Commission to follow through on these recommendations, it desperately needs additional funding and staffing, both of which have been reduced dramatically from years past. The Commission also needs new leadership that prioritizes transparency, efficiency, and dedication to the mission of addressing discrimination as real injury.

2. Caregiver Discrimination

Unfair treatment of mothers can extend far past pregnancy, and beyond the protections of pregnancy discrimination laws. In fact, stereotypes against mothers are some of the most powerful unconscious biases in the workplace today.[55] One of the most cited studies on the topic found that mothers are 79 percent less likely to be hired than fathers and childless men and women, and are offered $11,000 less per year in pay.[56] Joan Williams, who reviewed numerous studies on the topic, concluded, "Once a woman's status as a mother becomes salient—either because she becomes pregnant, takes maternity leave, or adopts a flexible work arrangement—she may begin to be perceived as a low-competence caregiver rather than a high-competence business woman."[57]

Caregiver bias is not limited to "business women." Discrimination against low-wage workers is not only acute but often disturbingly overt. Mothers in the restaurant industry report that having children is a barrier for hiring and promotions.[58] One such worker said employers often ask applicants during interviews whether they have children, and how many, and reported that a coworker kept her pregnancy secret for fear of losing her job.[59] Cases of discrimination brought by low-wage workers nationwide reveal that many are refused small allowances for child and family care, even in emergencies, while other workers are given more leeway.[60]

Dena Adams, a single mother working in New York City, found herself in exactly that position after more than fifteen years in her job. Without consulting her, Dena's employer changed her position and hours, demanding an unpredictable schedule that was incompatible with Dena's responsibility to care for her only child. Dena tried to find a workable solution that would allow her to keep her job and not risk her child's safety. Dena's employer would not engage with her, even though the employer allowed another worker in the same position to work predictable hours to accommodate his school schedule.

Dena's Story

I worked for over fifteen 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 eleven-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. I started claiming unemployment and looking for a job. It took me over a year to find employment.

New York City should join dozens of other cities in explicitly outlawing employment discrimination based on an individual's status as a family caregiver.[61] Although existing law offers some protections for workers confronting bias because of their family responsibilities, there are still too many gaps. The patchwork of laws also leaves employers confused about what is illegal and what is not. Without clear protection in the Human Rights Law, workers like Dena who need schedule consistency to accommodate childcare are often treated worse than co-workers who request the same for school or other needs. They lose critical income and end up drawing on public benefits when they could continue working instead. These workers, often single mothers trying their best to manage their dual roles as wage-earners and caregivers with the deck perpetually stacked against them, deserve better.

3. Nursing Mothers' Rights

While the vast majority of mothers in New York City initiate breastfeeding, only a fraction of them are still nursing exclusively two months later.[62] This is due in large part to the challenges of combining breastfeeding and work, including inflexible work hours, job insecurity, and pressure from coworkers and supervisors not to take breaks to express breast milk.[63] According to one report, in the month that a mother returns to her job, she is more than twice as likely to stop breastfeeding as a mother who is not restarting work in that month.[64]

The New York State Nursing Mothers in the Workplace Act, passed in 2007, guarantees nursing mothers unpaid break time from work to express breast milk for their babies for up to three years after birth. It also requires employers to make reasonable efforts to find a private space, which is not a bathroom, for employees to express milk and prohibits discrimination against mothers who choose to express milk at work.[65] The law applies to all employers, regardless of size.

Despite medical consensus that breastfeeding has innumerable health benefits for both babies and their mothers,[66] and state-wide efforts to educate postpartum mothers through the New York State Breastfeeding Mothers' Bill of Rights,[67] public education and enforcement of the Nursing Mothers in the Workplace Act has been minimal. As a result, mothers and their employers do not understand their rights and responsibilities. This can lead to women weaning prematurely, being forced out of their jobs, or failing to initiate breastfeeding altogether.

Clarissa's Story

Clarissa had already experienced the power of the pregnancy penalty by the time she ran into trouble combining breastfeeding and work. She was working as a lab technician at a prominent Manhattan hospital when she got pregnant. Because of workplace hazards she required accommodations, and experienced increasing hostility from management thereafter. After giving birth to a healthy baby girl, Clarissa learned that she would have to return to work within six weeks and her hours would change from an 8:00am-4:00pm shift to a 2:30pm-midnight shift. Feeling stuck, she quit her job and turned to public assistance. "Here I was with a small child, educated, and licensed for clinical labs—but at a food stamps and WIC office. It was a low point for me."

When Clarissa's daughter was nine months old, she decided to return to work full-time. "I could now get someone in my family to care for her and I got a free breast pump from WIC. I took a tremendous pay cut just to work 9-5 and be home at a decent hour. Choosing to breastfeed was so important to me. At first I tried to hide it, sneaking in pumping during my fifteen-minute breaks, lunch breaks and bathroom breaks. I had no idea at the time there were any laws that would support my choice to nurse and so I hid it for as long as I could. After three months I could no longer take the engorgement, leaking breast milk and hunger from not eating during lunch. I could also not afford to dump the milk I expressed in the filthy bathrooms and I needed all the milk to have a supply for my caregiver."

"I decided to take a stand. I told my new employer, hoping they would allow me twenty minutes to pump since we certainly had the space and privacy in the office. The first words out of my office manager's mouth were 'why didn't you tell us you had a baby?' followed by a long lecture on work demands and fairness of break time. My heart sank. Although I did get to pump in an office after that, the attitude in the office towards me changed. I was perceived as the breastfeeding mother always in need and interrupting work functions as opposed to the young girl with strong work ethic whom they had hired."

Clarissa decided she "could no longer keep working jobs unsupportive of my choice to be a mother. I wanted to educate myself and not become assistance dependent." She left her job, and for the past three years she has been working for a small company with a boss who does not make her feel she needs to apologize for being a mother. She has received three separate raises for her hard work over that time, and her boss has supported her educational journey as she pursued a Bachelor's Degree and now a Master's Degree in Public Health.

New York City should do more to support nursing mothers like Clarissa, who struggle to combine work and breastfeeding. Public education is paramount. The city should develop an interactive website for parents that includes information about and links to laws and programs that offer support to working parents, including the NYS Nursing Mothers in the Workplace Act and the NYCPWFA, among other resources. The city should also establish and advertise public lactation rooms, where women can express breast milk or nurse their babies in the comfort of a clean, protected space. While professional mothers may have a private office at work, the majority of mothers do not have a their own space to breastfeed or express breast milk and may resort to using the restroom, which is unhygienic and associated with premature weaning.[68] Councilmember Robert Cornegy has already established a public lactation room in his Brooklyn office, which is available to workers in the surrounding business district. These workers are entitled to break time to pump but their employers, especially restaurants and retail stores, find it hard to create a space for them to do so. Other council members should follow Cornegy's example, and the city should use its existing real estate to create even more breastfeeding havens throughout all five boroughs. Finally, the Council should clarify that the Human Rights Law prohibits discrimination on the basis of lactation as gender discrimination.

Making Fair and Flexible Work a Priority

Unpredictable work hours are a leading cause of economic instability for low-wage workers, especially those with children. Erratic scheduling practices make it nearly impossible to arrange childcare and leave workers guessing, week to week, whether they'll have enough money to pay their bills. According to a report by the Restaurant Opportunities Centers United, one out of every five restaurant workers who are mothers lost their child care provider because of work scheduling changes and nearly a third reported paying fines to their care providers for arriving late.[69] Irregular or infrequent hours also may threaten workers' eligibility for government income supports and employer-provided benefits, including paid time off.[70] Such policies have also been linked to employee stress, marital strife, and poor school performance among the children of workers with inconsistent schedules.[71]

Similarly, inflexible and unpredictable work hours can impose real hardship, especially on single mothers who may not have other family to help out in case of a childcare emergency.[72] Yet low-wage workers, and particularly women of color, are the least likely to have access to flexible and predictable schedules.[73] And even those who do have access to flexibility report that using it will negatively affect their job advancement.[74] The consequences for their families are great. Non-standard hours, combined with inflexible and unpredictable work schedules in low-wage jobs, prevent parents from being available to their children at home and at school. This affects school performance, health outcomes, and often causes to low-income youth to grow into adult responsibilities before they are ready.[75]

Too many New Yorkers are living on the edge, and inflexible workplaces force them to make the impossible decision of caring for their loved ones at the risk of falling into poverty. One such mother suffered a breakdown after her employer changed her hours and refused to consider an alternative so that she could care for her severely disabled son. *(See Jasmine's story)*

Abundant research shows that workplace flexibility benefits both workers and employers. It reduces employee stress and improves long-term employee health while helping employers retain talent and enhance productivity.[76] The positive effects extend to children too, as parents with workplace flexibility are more likely to be involved with their children's healthcare and education.[77] Yet in spite of robust evidence of its benefits, many employers continue to resist the concept, often refusing to engage at all with employees to find a mutually agreeable solution to problems of work-family conflict. Even worse, workers who request a flexible arrangement may be punished with slashed hours, less desirable work duties, or even fired outright. Unwillingness to consider flexible work arrangements pervades even City government, where rigid work rules contribute to a wage gap for women with children, which is higher than that in the private sector.[78]

Making workplace flexibility available for all workers is especially critical to reduce stigma and prevent further discrimination against women. Male caregivers face surprisingly overt discrimination in the workplace, including being eligible for fewer leave benefits than women and facing harsh penalties for taking advantage of family leave policies or requesting formal, as opposed to ad-hoc, flexible work.[79] Treating men as secondary or "inauthentic" caregivers perpetuates gender disparities in the workplace.[80] Data shows men want to participate more in family caregiving[81], and are better able to do so when they have control over work schedules, flexible hours and access to paid sick and family leave. Until and unless we eliminate penalties for men to be real caregivers for their children, women will never have equal opportunity in the workplace.

Jasmine's Story

Jasmine is a single mom and sole provider for three sons, two of whom are autistic. Both disabled sons require consistency in their schedules to stay well, and one of them needs extra care from Jasmine, who helps him board the school bus each morning at 7:00am. When interviewing for her job as a customer service manager she was careful not to say anything about her kids, for fear of not being hired. She ultimately got the position and the 10:00am-8:00pm schedule that worked for her.

Nearly a year later, word came down that a corporate initiative would require altering schedules for customer service staff, including Jasmine. The new schedule would require her to arrive by 7:00am at least two days each week, and would shift her hours significantly from week to week. Jasmine told Human Resources that the new hours would be problematic for her, because of her childcare responsibilities, and asked for reconsideration. Her manager told her: "I'll give you one month to find other means of childcare, or find other employment. This just may not work for you." Neither Jasmine's manager nor the human resources department would engage with her to find a mutually workable solution. Jasmine felt stuck—she needed the income to support her family but didn't want to risk regression, where her children might accidentally hurt themselves if left alone without her care.

Barak's Story

My daughter has cerebral palsy and she regularly requires my care during work hours. She cannot walk, she requires assistance with her basic daily needs (getting dressed, using the bathroom, eating, etc.), and makes over ten doctor and therapist visits each week. Even if we could afford to hire the type of caregiver my daughter needs, her mother and I would still need to be by her side frequently, because her appointments can be upsetting experiences for her otherwise.

I work as a tax auditor for the City of New York. In the summer of 2011, following my daughter's diagnosis, I applied for leave under the Family Medical Leave Act and informed my employer that I would need to come in late or leave early a couple days each week because of my caregiving responsibilities. My supervisors approved the leave, and were very sympathetic and understanding. I was not surprised that they were happy to accommodate me; I have always been a model employee and my work has a flexible nature requiring very little face-time.

Unfortunately, over the next few years, new managers took over and everything changed. The new director began to viciously harass and bully employees who have irregular schedules due to family or health needs. He would complain that employees who couldn't fit into his strict 9 to 5/10 to 6 day were "lazy." On one occasion, he lunged at me, screaming and cursing. He yelled that I "take too much time off" (even though it is just a few hours per week) and that "part-time" employees were unwelcome in our agency. Another manager joined him to tell me that a person with "my problems" should get a job somewhere else. I honestly felt threatened and I became so emotional that I shed a few tears.

I feel like my employer is squeezing me from every angle. The director refuses to pay me when I try to make-up the time I miss but refuses to reduce my workload.

The hostility I have received from my employer is a strain on me personally, but it is also a strain on my family. My lack of workplace flexibility means my wife, who has a more understanding employer, has to bear 90% of the load of caring for our daughter during the day. Because my employer is so unreasonable, my wife is forced to sacrifice her work. This situation is completely unfair and unnecessary.

Lawmakers can promote flexible work schedules by passing legislation that requires employers to consider requests for flexible work arrangements, and protects workers from retaliation if they request such an arrangement. These statutes help employers to consider and implement alternative modes of work, and ease employees' fear that asking for such arrangements will backfire. The large majority of high-income countries have introduced flexible work statutes to great effect,[82] and in 2013, San Francisco and Vermont passed the first two flexible work laws in the U.S. Federal legislation—the Schedules That Work Act[83]—was introduced in July 2014, proposing to give workers a right to request a schedule change without fear of retaliation, create a right to schedule changes in certain situations, like a childcare emergency, and provide additional payment for workers called in at the last moment.

New York City should pass its own flexible work statute to allow all workers, including those with caregiving needs, to request alternative work arrangements without risking retaliation. The City Council should ensure that workers who provide ongoing care to disabled relatives, want to participate in their children's education, or have to deal with last-minute childcare emergencies, have affirmative access to workplace accommodations. The Council should also consider legislation to address abusive scheduling practices, including "just in time" and "on call" scheduling, which require ultimate flexibility from workers while imposing uncertainty and financial risk on them and their families. In addition, the Council should consider policy and/or legislative solutions to curb the part-time wage penalty, which disproportionately punishes mothers in low-wage jobs. Finally, Mayor de Blasio should demonstrate the City's commitment to dismantling the pregnancy penalty by studying the complex set of work rules that drag down wages for women and caregivers in the city's own workforce and proposing solutions to abolish these barriers.

Extending Paid Time Off for Family Care

Most workers will have to provide care to a loved one in need at some point in their lives, but the United States has no national paid leave law to help them stay afloat in those critical life moments. And although federal law does offer some unpaid time off to welcome a new child, care for a seriously ill relative, or recover from illness, nearly half of all workers do not qualify for that leave. As a country, we are an outlier on this issue—out of 185 countries, only the United States and Papua New Guinea do not guarantee paid leave benefits for new mothers.[84] And within our country, New York lags behind. Twelve states have their own unpaid family leave laws that expand upon the protections of the federal Family and Medical Leave Act, and three also provide paid benefits to those who are out of work caring for a relative.

Without job-secured time off, and wage replacement during that time, families often find themselves in financial dire straits when a new baby arrives or a relative falls ill. The strain of unpaid leave may be compounded by medical costs, resulting in high credit card debt, unpaid bills, use of high interest loans, bankruptcy, and other serious financial consequences.[85] In fact, one quarter of poverty spells in America result from a child's birth[86] and "having a child is now the single biggest predictor that a woman will end up in financial collapse."[87] Extended leave without pay or job protection can also disrupt a woman's workforce attachment with long term economic consequences for both her and her family.[88]

Thana's Story

Thana is a single mom who gave birth to a baby boy after a difficult pregnancy, and after several other family and personal health crises had drained her store of accrued paid leave. Luckily, the Family and Medical Leave Act covered Thana, so she did not have to worry about her job while out of work. But she had no paid leave to cover her expenses, and, as a government employee, was not eligible for temporary disability insurance payments while recovering from childbirth. Instead of taking the twelve weeks she was entitled to under the FMLA, Thana was back at work within two months so she could pay her bills. "The FMLA would be beautiful…if I could afford it. It was so hard in those early months, and I can never get that time back."

The weeks without income hit her family hard. Thana was left "out of work with a newborn child and no money to supply our basic needs, which led to me having my car repossessed, my lights disconnected, my telephone and cell phone service also disconnected, and last but not least being evicted from our apartment. I was unable to fully bond with my newborn with all the stress and worries of how I was going to handle the basic bills and keep a roof over our head with no income coming in. No one should risk losing everything just because they don't have enough paid time off saved up, and no money to fall back on."

New York City should take the lead in ensuring that the municipal workforce has access to a reasonable amount of paid leave for family care. The Mayor has the ultimate authority over benefits for employees of the city, where paid family leave is virtually non-existent. In creating a guarantee of paid family leave for municipal workers the city can be a model employer, setting an example for the private sector while providing economic security for its employees. Such a policy would also constitute a measurable step toward dismantling the maternal wage gap within its own workforce. The Mayor should explore incentives for men to take family leave, as increasing care by men can also help alleviate gender discrimination and diminish the motherhood wage gap. The City Council should also pass a resolution to support the New York State Paid Family Leave Insurance proposal, which would expand the existing state temporary disability program to cover workers providing care to family throughout the state.

Summary of Proposed Solutions

1. Enforcement and Expansion of Anti-Discrimination Laws

New York has one of the strongest human rights laws in the country, but the law cannot achieve its stated goals, including eradication of sex discrimination, without vigorous enforcement. The Human Rights Commission requires added funding and new leadership to fulfill its mission and should commit resources to speedy resolution of Pregnant Workers Fairness Act violations. The Commission should clarify that reasonable accommodations under the law include those that help nursing mothers express breastmilk at work. The Council should consider legislation to strengthen existing equal pay laws, and increase transparency in wage information to assist in rooting out discrimination. Finally, the Council should amend the Human Rights Law to protect family caregivers from workplace discrimination, and grant reasonable accommodations for certain caregiving situations.

2. Making Fair and Flexible Work a Priority

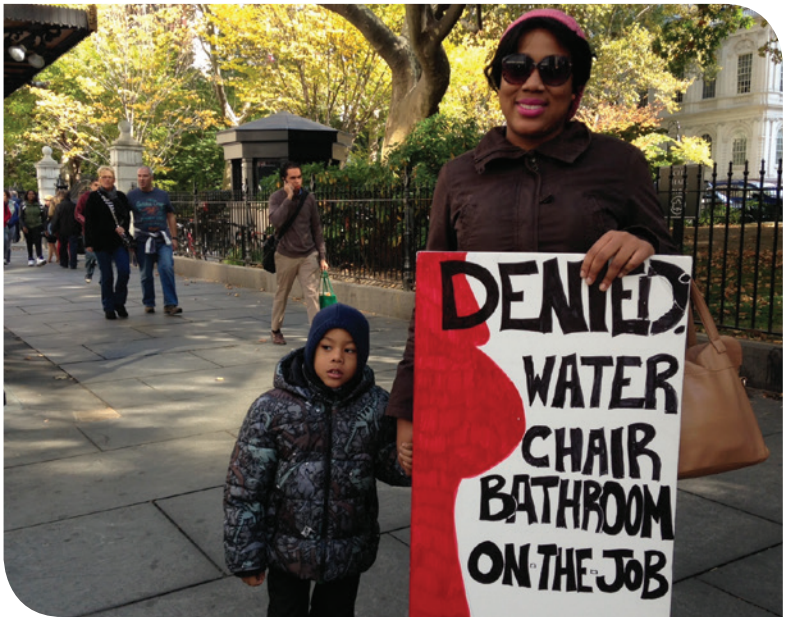
Inflexible and unpredictable work hours are wreaking havoc on New York's working families. The Council should enact legislation allowing all workers to request alternative work arrangements without risking retaliation. The Council should also consider legislation to address abusive scheduling practices, including "just in time" and "on call" scheduling, and the part-time wage penalty. Finally, Mayor de Blasio should demonstrate the City's commitment to dismantling the pregnancy penalty by studying the complex set of work rules that drag down wages for women and caregivers in the city's own workforce and proposing solutions to abolish these barriers.

3. Extending Paid Time Off for Family Care

Lack of paid time off for family care leads many New Yorkers into financial dire straits when their families need them most, and leaves them worse off than their peers across the river in New Jersey. New York City should set an example for the private sector and take the lead in ensuring that the municipal workforce has access to extended but reasonable paid leave for family care. The City Council should also pass a resolution to support the New York State Paid Family Leave Insurance proposal, which would expand the existing state temporary disability program to cover workers providing care to family throughout the state.

4. Guaranteeing Quality Affordable Childcare and Raising the Minimum Wage

Although not a focus of this report, quality, affordable and accessible childcare is critical for mothers, and fathers, to be able to participate in the paid workforce. Mayor de Blasio has made significant progress through efforts to establish universal pre-kindergarten. However, without any guarantee of paid leave (or even unpaid leave in many cases), parents often must return to work within weeks of a baby's arrival, and need access to safe and affordable care both immediately and throughout their child's early years. According to a case study by our partners at the Center for Children's Initiatives, low-income mothers in New York City have been forced to cut back on work hours, turn down promotions, training opportunities or even quit their jobs altogether because they cannot afford childcare.[89] These forced workplace exits and decelerations drag down women's wages, pushing them and their families into further financial peril. And finally, once New York State acts to empower them, our elected officials should raise the minimum wage in New York City, to help the disproportionate share of low-wage workers who are women and narrow the motherhood wage gap.



Armanda Legros after rally for PWFA at City Hall

Johana's* Story

I worked as a high-level executive at a multi-national consumer goods company when I found out, much to my surprise, that I was pregnant. Because I was already two months along, and diabetic, my doctor required that I submit to five days of testing and rest to make sure my pregnancy was on track and healthy. I told my supervisor, and took documented medical leave.

When I returned to work the next week, my boss asked me how I was doing, and whether I planned to continue the pregnancy. I said, "Yes, everything is fine, thank goodness," to which my boss responded "Congrats! We'll start working on your succession plan." I was fired one week later—ushered out of the building in the midst of a work event with my colleagues.

I was humiliated. My company had recruited me aggressively just six months earlier, but now they told me I was "no longer a good fit" and "didn't have the skill set." I tried to find another job, but my baby belly was obvious, and no one was willing to hire me. Potential employers, after asking what happened at my last job, told me "good luck," or "maybe it's best so you can rest and have a stable pregnancy now." I ended up miscarrying, partly due to the stress, but had lost my health insurance.

Even though I was no longer pregnant, interviewers still asked me "are you planning to try for more children soon?"

Because of the discrimination I faced, I was thrown into hardship. Without a job, I could not afford to pay rent, so I had to move out of New York City. My landlord later sued me for breaking my lease early, and I'm still dealing with that.

I am originally from another country, where women get six months of paid leave for pregnancy and childbirth, and their jobs are held for them while they are out. When I came to New York City, I saw lots of women out and about with their babies during the workday and I thought, "Oh, how nice," not realizing they might not be there entirely by choice. As an outsider, I am shocked by the lack of family-supportive laws in the U.S., and even more by employers' lack of knowledge about (or regard for) the laws that do exist to protect pregnant women in the workplace. I often ask myself, "Why did I pursue an education if I am just going to end up like this? Fired for starting a family."

** Name Changed*

Conclusion

Women make up nearly half of the workforce in New York City, and 57 percent of its municipal workforce.[90] Over 75 percent of those women will become pregnant during the course of their lives. Mothers are in the workforce to stay, and the problem of the pregnancy penalty is not going anywhere without focused attention. As Chai Feldblum, Commissioner of the Equal Employment Opportunity Commission recently said:

> If you think there is no discrimination going on here and this is all because of choices women are making to choose certain professions, that's just having blinders on. At the same time, if one thinks the only thing going on here is bad employers wanting to pay women less, that's also a set of blinders — and an unfortunate set because if you understand that the problem is not simple but instead complex, that actually pushes you to do the hard work to have the complex, multifaceted solution.[91]

We have proposed a number of solutions for policymakers in New York to implement and study the results. Addressing the pregnancy penalty through targeted legislative and executive action can lift up families, address chronic poverty among women, and bolster our economy. New York City's leaders have the opportunity now to break new ground and establish this city as a laboratory for equality. We hope they will seize it.

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