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Testimony before the New York City Women's Issue Committee June 16, 2010

Submitted by Dina Bakst
Co-Founder & Co-President of A Better Balance: The Work & Family Legal Center

Good morning. My name is Dina Bakst and I am co-founder & co-president of A Better Balance: The Work & Family Legal Center. ABB is a New York-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.

I want to start by thanking the Women's Issue Committee for convening this hearing to bring attention to the persistent wage gap faced by women in New York State.

Over forty years ago, the Equal Pay Act of 1963 (EPA) and Title VII of the Civil Rights Act of 1964 made it illegal to pay women and men unequal wages for doing the same work. Although enforcement of these laws has helped narrow the wage gap, significant disparities remain. Women continue to make, on average, 77 cents for every dollar earned by her male counterpart. The circumstances are even worse for Latinas and women of color.

There could not be a more important time to address the gender pay gap. Women now comprise half of all workers on U.S. payrolls.¹ Nearly 4 in 10 mothers are primary breadwinners for their families and nearly two thirds are primary or co-breadwinners.² This means that the gender pay gap is not just a women's issue-- it's an issue of family economic security.

¹ Heather Boushey and Ann O'Leary, *The Shriver Report: A Woman's Nation Changes Everything*, Executive Summary (2009).

² *Id.*

The wage gap is a multi-faceted problem. Closing the wage gap requires outlawing the discriminatory practice of compensating women and men differently for comparable work. Closing the wage gap also requires strengthening existing antidiscrimination laws and addressing other factors that contribute to its persistence, including caregiver discrimination and the lack of essential public policy supports to help men and women balance their work and family responsibilities. The purpose of my testimony this morning is to focus attention on these key aspects of the gender pay gap.

Loopholes in Existing Equal Pay Laws Make Enforcement Difficult. Weak provisions and broad loopholes have limited the effectiveness of the EPA as well as other civil rights laws. For example, employers can often avoid liability if they can show the pay differential is based on seniority, merit or productivity system or “any other factor other than sex.”³ Some employers have argued for interpretations of this affirmative defense that are so broad (e.g., to include factors such as a male worker’s stronger salary negotiation skills or higher previous salary) that they may themselves be “based on sex.”⁴ Also, the EPA provides only for liquidated damages and back pay awards, which tend to be insubstantial.⁵

The persistent wage gap can only be addressed if women and all workers are able to challenge discrimination. Congress took an important step in passing the Lilly Ledbetter Fair Pay Act of 2009, which restored the right to seek a remedy for women subjected to unlawful pay discrimination. However, this law was only a first step. We need to do more.

The Paycheck Fairness Act (S. 184/H.R.12), a bill pending before Congress, would update and strengthen the Equal Pay Act, and among other things, tighten the broad

Id.
NATIONAL WOMEN’S LAW CENTER, FACT SHEET: HOW THE PAYCHECK FAIRNESS ACT WILL STRENGTHEN THE EQUAL PAY ACT (2010), available at http://nwlc.org/pdf/Broad_Paycheck_Fairness_Fact_Sheet.pdf
Id.

“factor other than sex” loophole and prohibit employer retaliation for workers who inquire about pay practices.⁶ In addition, the bill would enhance remedies to allow for compensatory and punitive damages, putting pay discrimination on equal footing with discrimination based on race or ethnicity.⁷ The bill also improves the EEOC’s ability to collect and publish wage discrimination information and research and engages in targeted enforcement of equal pay laws.⁸

The Fair Pay Act, introduced by Sen. Tom Harkin on April 28, 2009, would address the problem of lower wages in female-dominated fields by requiring equal pay for jobs that are comparable in skills, effort, responsibility and working conditions. A substantial part of the wage gap is due to the combined effect of industry and occupational segregation of men and women.⁹

Caregiver Discrimination Results in Gender Pay Disparities. In addition to strengthening our equal pay laws, it is imperative we address other sources of the wage gap. A key component of the gender pay gap is women’s status as primary caregivers. As Commissioner Stuart Ishimaru, Acting Chairman of the Equal Opportunity Commission stated in his recent testimony before Congress, discrimination against caregivers in the workplace based on gender stereotypes and presumptions about their competence and commitment of working mothers and others with significant caregiving responsibilities continues to drag down wages for women¹⁰. Studies have found a 7% wage penalty for mothers compared to non-mothers, just one third of which can be explained by differences in experience and seniority.¹¹ In one study, mothers were

Id.
Id.
Id.

Strengthening the Middle Class: Ensuring Equal Pay for Women: Hearing before the U.S. Senate, Comm. on Health, Educ. & Labor, 113th Cong. (Mar. 11, 2010) (statement of Heather Boushey, Senior Economist, Center for American Progress).

A Fair Share for All: Pay Equity in the New American Workplace: Hearing Before the U.S. Senate Comm. on Health, Educ., Labor, 113th Cong. (Mar. 11, 2010)(statement of Stuart Ishimaru, Acting Chairman of the Equal Employment Opportunity Commission).

Boushey, supra note 11.

offered starting salaries that were 7.4% lower than those offered to otherwise equally qualified childless women, and mothers were rated significantly less promotable and less likely to be recommended for management positions.¹² The long-term consequences of this motherhood penalty are devastating: an average woman loses \$434,000 over a 40-year career due to the wage gap.¹³

Part-Time Work Leads to Lower Pay and Benefits. Another important dimension of the pay gap involves the earnings penalty for part-time work. In 2009, over 17 million women worked part time. Out of the pool of individuals who work part-time time, nearly two-thirds are women.¹⁴ Part-time workers across a spectrum of occupations earn hourly wages below those of full-time workers-- as little as 60 percent of the wage for full-time workers in the same occupation. According to an April 2010 Congressional Joint Economic Committee report, for every dollar of earnings a full-time worker receives in a sales or related occupation, a part-time worker receives 58 cents.¹⁵ A similar story is true for workers in computer and mathematics occupations: a part-time worker receives about 63 cents for every dollar of earnings a full-time worker receives.¹⁶

In addition, outdated laws and policies exclude part-time workers from basic benefits such as health care, paid time off for vacation or sick leave, or pension benefits that full-time workers receive. The part-time wage penalty is actually much larger when total compensation is factored in. As part-time workers increasingly become the family breadwinner, closing the pay gap between full and part-time workers will contribute significantly to closing the pay gap between men and women.¹⁷

¹² Shelly J. Correll, Stephen Benard & In Paik, *Getting a Job: Is there a Motherhood Penalty?*, Am. J. of SOCIOLOGY 1297 (2007).

¹³ Jessica Aron, CENTER FOR AMERICAN PROGRESS, LIFETIME LOSSES: THE CAREER WAGE GAP, 1 (Dec. 2008).

¹⁴ "The Earning Penalty for Part-Time Work: An Obstacle to Equal Pay," Report by the Joint Economic Comm., Rep. Carolyn Maloney, Chair (April 20, 2010).

Id.

Id.

Id.

Policy Solutions that Can Help Narrow The Wage Gap. Pay discrimination is not only unjust, it threatens the economic security of our families. Millions of Americans are dependent on women's paychecks just to get by, pay their rent and feed their families. We need public policies to address the critical importance of women's earnings to family economic security and take immediate steps to close the wage gap.

First, New York should prohibit employers from limiting the ability of workers to share salary information or retaliating against them in any way for doing so. If a woman does not know how much her male colleagues earn, it is difficult for her to know she is being discriminated against.

Second, New York should immediately establish a Task Force on Pay Equity & Family Economic Security. Specifically, the Task Force should study how job segregation, discrimination against caregivers, the part-time penalty and other work family policies contribute to the pay gap and make policy recommendations to address these issues.

Finally, New York should be a leader in developing public policy solutions to make the workplace more hospitable to working families, especially mothers, so they can advance in their careers and help close the wage gap. We must follow the lead of other countries that have seen a narrowing of the family wage gap as a result of more supportive work family policies.

Workers with caregiving responsibilities need paid family leave. While the Family & Medical Leave Act (FMLA) provides 12 weeks of unpaid leave for the arrival of a new child or the serious illness of a family member, most workers cannot afford to take it. Research shows that women with access to paid

maternity leave are likely to return to work after they have a child, thus increasing their lifetime employment and earnings.¹⁸

Workers also need paid sick days to care for themselves and their children. Many New York City workers and a majority of the working poor lack even a single day of sick leave. No family should have to cope with a worker losing a job because they needed a day off to care for a sick child or family member.

Workers need protection from family responsibilities discrimination. Our city's anti-discrimination laws fail to protect New Yorkers with family responsibilities from job loss and discrimination because of their need to care for loved ones. New York City should pass Int. No. 565-A, a local law prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver, to protect these workers.

Finally, workers need greater access to workplace flexibility. A recent report from the Colorado Pay Equity Commission emphasized the critical relationship between flexible work policies and reducing the wage gap.¹⁹ Flexible work arrangements such as telecommuting also have tremendous business benefits, including lower absenteeism, turnover and increased productivity.²⁰ New York should become a model family-friendly employer and pilot a workplace flexibility initiative in a city agency. New York should also consider tax credits and other incentives to improve the quality and benefits of part-time work as well as pro-rata pay for part-time workers.

¹⁸ HEATHER BOUSHEY, CENTER FOR AMERICAN PROGRESS, HELPING BREADWINNERS WHEN IT CAN'T WAIT: A PROGRESSIVE PROGRAM FOR FAMILY LEAVE INSURANCE (May 2009).

¹⁹ "Fulfilling the Promise: Closing the Pay Gap for Women & Minorities in Colorado," Colorado Pay Equity Commission, available at [_____](#) 2009).

²⁰ Id.

In these tough economic times, fair pay is more critical than ever to women and their families. New York should be a leader in closing the pay gap and providing an environment where women can flourish. Stronger anti-discrimination laws and more supportive work-family policies would have a significant impact on the long-term economic security of women and families in New York.