

Moving Families Forward: Reflections on a Decade of Change



a better
balance
the work and family legal center

March 2016

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Published by A Better Balance, © March 2016



About A Better Balance: The Work & Family Legal Center

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education, and technical assistance to state and local campaigns, A Better Balance is committed to helping workers care for their families without risking their economic security.

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Introduction:

Ten years ago, a group of women's rights lawyers came together to launch A Better Balance: The Work and Family Legal Center (ABB). For decades, women and mothers had been steadily increasing their workforce participation in a marketplace that demanded longer and less predictable hours of all workers. Yet the unpaid and often invisible work of caring for children, the sick, and the elderly continued to fall, primarily, on the shoulders of women. And workplace policies continued to assume that a breadwinner (almost always male) and a caregiver (almost always female) divided the tasks of providing economic support and care for the family, even while demographic realities proved otherwise.

The problem ABB set out to address was easy to see but hard to name. Alternatively called "the care crisis," the "work-family dilemma," and "the time crunch," growing tensions between work and family responsibilities were harming a majority of workers, and weighing most heavily on women in low-income, marginal jobs. The American economy and workforce had undergone tectonic shifts over the course of a generation, but American policies consistently failed to keep up with the swift pace of change.

A Better Balance launched on the principle that we all deserve to be present for the ones we love when they need us most without paying an impossible price at work. At some point in our lives, we are all likely to be a caregiver to a family member, but because this work is treated as a private concern or just a "women's issue," it has been chronically undervalued, ignored, and, worst of all, penalized by our society. ABB recognized from the outset that until our culture prizes caregiving as a key value underlying our economy, women's equality will remain elusive. This is the unfinished business of the women's movement, but it reaches beyond women as well.

ABB's mission, from day one, was to promote equality and expand choices for women and men at all income levels so they may care for their families without sacrificing their economic security. We wanted to change the way America works.

We also wanted to change the way America thinks and talks about the care crisis. From our founding, ABB recognized the particular urgency work-family conflict posed for families

living paycheck to paycheck. While the media spotlight shone brightly on professional and higher-earning workers, it routinely failed to address the stark realities facing those struggling to meet their families' basic needs with little to no financial safety net. Where were the workers who had no choice to opt-out? Where were the mothers who left their own children before dawn every day to make it possible for professional mothers to advance? ABB wanted to lift up the voices of these workers, and recognize the invaluable care they provided to their families and to our society more broadly.

In the ten years since ABB's founding, the public conversation on the work-family dilemma has changed dramatically. When the conversation first began, the media commonly portrayed barriers to women's advancement as individual challenges, not systemic problems requiring public solutions. And the challenges of low-income workers, who were struggling to provide care to children and other family members while earning enough to get by, barely registered on the national radar screen. Fast forward to 2016 when not only did President Obama vow to fight for paid family leave in his State of the Union address, but candidates seeking to take his job are debating paid family leave policy proposals as well. Times have certainly changed.

This report, and the conference that accompanies it, seeks to take stock of the past ten years in the work-family movement and strategize for the future. Section I will review the cultural, political, and legislative shifts that have occurred to change the national debate about working families. It will explore successful strategies employed to facilitate that change, and highlight key achievements by ABB and our allies that have transformed the legal landscape. Part II will explore what lies ahead in the next phase of the work-family movement, highlighting opportunities for integrating new constituencies and outlining policy priorities that will continue to advance the rights of working families.

Look How Far We've Come

As momentum in the work-family movement has accelerated over the past ten years, we have witnessed tremendous changes in the public conversation as well as in the legal landscape regarding working families.

2006

- A Better Balance (ABB) is founded.
 - San Francisco voters pass first paid sick days law in the country.
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2007

- ABB convenes national experts for work-family summit and releases report on work-family dilemma and solutions for all New Yorkers.
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2008

- New Jersey becomes second state to enact paid family leave.
 - Washington, D.C. enacts paid sick days law, and Milwaukee voters approve paid sick days proposal drafted by ABB.
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2009

- ABB drafts New York City Earned Sick Time Act and rallies with supporters as it is introduced at the City Council for the first time.
 - ABB assists in legal defense of Milwaukee paid sick days law.
 - ABB launches Families @ Work Legal Clinic in partnership with Outten & Golden, to assist low-income New Yorkers with workplace problems related to pregnancy and caregiving.
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2010

- ABB receives inaugural Outten & Golden Public Interest Award, in recognition and support of our work advancing the rights of workers.
 - New York State Domestic Workers Bill of Rights passes with support from ABB, which testified and advocated on behalf of the bill.
 - ABB helps to convene summit on work-family solutions for New England and publishes summit report.
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2011

- Milwaukee paid sick days challenge is won with ABB's legal help, although a statewide preemption law is passed to overrule the Wisconsin courts and Milwaukee's voters.
 - ABB releases report based on original data to examine the work-family challenges facing fathers.
 - ABB files amicus brief in California Court of Appeals supporting state kinship care law, which is ultimately upheld.
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2012

- Dina Bakst's Jan. 30 op-ed in the *New York Times* launches national movement to pass pregnancy accommodation laws, and spurs introduction of the federal Pregnant Workers Fairness Act, which ABB helped to draft.
 - Long Beach, California, passes Paid Sick Days for hotel workers.
 - ABB and coalition partners re-launch campaign for paid sick days in NYC.
 - ABB collects more than 11,000 signatures for paid family leave in New York and delivers stories from constituents to Albany legislators, urging action.
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2013

- ABB is one of three organizations at the table to negotiate the NYC Earned Sick Time Act. The City Council overwhelmingly passes the bill and overrides the Mayor's veto to provide an entitlement to paid sick time for 3.4 million working New Yorkers.
- ABB publishes *Babygate*, the first-of-its-kind guide for expecting and new parents about their workplace rights, to overwhelmingly positive reviews.
- ABB's advocacy on pregnancy accommodations, family status discrimination, and equal pay featured in New York Women's Equality Agenda.
- ABB helps to draft Rhode Island paid family leave bill, making it the third state in the country to guarantee paid time off for family care.

- ABB advises San Francisco in passage of law enabling caregivers to request flexible schedules without retaliation.
- ABB issues comprehensive report on LGBT rights and paid leave laws, entitled *Time for a Change*, and *It Shouldn't Be a Heavy Lift*, with the National Women's Law Center, on fair treatment for pregnant workers.
- ABB spearheads successful campaign to make New York City the first to enact fairness for pregnant workers.
- With critical help from ABB, Portland, OR, and Jersey City, NJ pass paid sick days laws.

2014

- ABB plays an integral role in strengthening and expanding NYC's paid sick time law.
- California, Massachusetts, San Diego and Oakland, CA and seven cities in New Jersey enact paid sick time laws, using ABB's model. ABB provides critical legal support in the Massachusetts ballot initiative that passes overwhelmingly, making it the third state to enact a paid sick time law.
- ABB opens southern office in Nashville, TN.
- Under pressure from ABB and partners, Walmart upgrades policy for pregnant workers.
- Feminist Press publishes second edition of *Babygate*, and ABB launches website version to break down the pregnancy and parenting laws in an easy-to-use, state-by-state, searchable format.
- ABB co-authors amicus brief in the Supreme Court supporting former UPS worker Peggy Young in her fight for pregnancy accommodations.
- ABB helps five states and four cities enact pregnant worker fairness laws.
- ABB featured in the *New York Times* for helping low-wage women get back to work using the NYC Pregnant Workers Fairness Act.
- ABB launches LGBTQ Work-Family Project with Family Values @ Work.
- ABB releases report on the Pregnancy Penalty, which is featured on MSNBC.
- ABB works with the National Women's Law Center and other partners to draft the "Schedules That Work Act," to address abusive scheduling practices. The bill is introduced in Congress with a thank you to ABB.



2015

- ABB marks first anniversary of NYC Earned Sick Time Act, and celebrates distributing more than 10,000 copies of educational materials and fielding more than 175 calls from New Yorkers seeking information and help enforcing their rights.
- ABB co-founders, Dina Bakst and Sherry Leiwant, awarded the 16th Annual Edith Spivak Award by the New York County Lawyer's Association, for their efforts to defend and protect the rights of thousands of women.
- ABB releases *Investing in our Families*, a report on the case for paid family leave.
- With 24/7 support from ABB, Oregon becomes fourth state to enact paid sick days law. Five more cities, including Philadelphia, and one county, also join the movement using ABB's model.
- Nebraska, North Dakota and Rhode Island enact pregnant worker fairness laws.
- Key measures pushed by ABB to advance women's equality pass in NY.
- ABB helps draft laws introduced in states and cities around the country to address problems of workers' lack of control over their schedules.

Successful Strategies

While it can be hard to pinpoint the key determinants of social change, certain strategies stand out when reflecting upon the successes of the work-family movement over the past ten years.

1 | Choosing the proper frame

For decades, the public face of the work-family dilemma was a white, affluent working woman. In 2003, Lisa Belkin profiled a small group of such women for the *New York Times* in a magazine cover piece called “The Opt-Out Revolution.”¹ Her article, and the storyline it presented—that women were choosing to leave the workplace to be with their children—furthered a cultural narrative that had been dominating the public conversation on work and family for years.² Not only was this narrative factually inaccurate, it artificially narrowed the constituency affected by the problem, the audience paying attention, and the scope of potential solutions to resolve it. In order to facilitate a shift in attention and attitudes, we first needed a new frame.

Economic Justice

A Better Balance formed to find solutions to the work-family dilemma that help men and women across the economic spectrum. As we said in our first report, back in 2007: “Work-family policy that is informed by the needs of all workers would avoid the pitfalls of exacerbating existing inequalities and would promote equal opportunity.”³ In the years since, income inequality has continued to vex policymakers, who see the middle class disappearing before their eyes. Highlighting the ways in which the care crisis disproportionately burdens low-wage workers has helped to engage crucial constituencies in the fight to expand the rights of working families and position work-family issues alongside the minimum wage as a key priority in the push for economic justice.

ABB’s unique position as a policy organization that offers direct legal services to low-wage workers has helped us immeasurably in this effort. Through our hotline we have spoken to single mothers whose carefully constructed childcare schedules were thrown into disarray by unpredictable shift changes that threatened their sole source of income. And others who sent a sick child to school, for fear that taking the day off would spell certain job loss. We have spoken to families scrambling to patch together time they need to care for a new baby or ill loved one without breaking the bank. And we have spoken to dozens of pregnant women who lost paychecks they desperately needed because their employers would not allow them to avoid heavy lifting or visit the bathroom more frequently for a few months. These are the

problems that low wage workers face – higher income workers generally have some degree of flexibility in their work hours, paid sick time they can use to care for children, some resources to fall back on in a family emergency, and often work in jobs where accommodations are unnecessary during pregnancy.

While direct contact with ABB’s core constituency has helped us zero in on challenges ripe for policy reform, it has also helped us craft policies that include those most in need. For example, from the beginning ABB has made sure that part-time workers, the majority of whom are women, are covered by paid sick time laws and can accrue time off at a prorated rate based on their hours worked. We have also fought hard to include smaller businesses so that workers historically carved out of the Family and Medical Leave Act are able to take some job-protected time off when they need it to tend to a family health emergency. We have argued for these provisions by showing how low-wage workers, and marginalized women in particular, are disproportionately impacted. Similarly, in the case of pregnancy discrimination, we have highlighted how existing laws leave too many women, particularly those in low-wage, physically demanding jobs, in the lurch when they needed a minor job adjustment to stay healthy and stay employed. Our successful push to enact clear reasonable accommodations requirements for pregnant workers has focused on the economic impact to women of losing income just when they need it to support their growing families.



Women's Equality

America's devaluation of care work impacts women disproportionately because they carry the lion's share of domestic and family responsibilities. This includes the highly educated and financially comfortable women of the "opt-out revolution" but also women at the other end of the economic spectrum, who struggle mightily to care for their families while staying employed in workplaces that are often draconian and steeped in gender bias. And women are a powerful political force. They have turned out to vote at higher rates than men over the past decade, particularly younger women⁴ who are often in the thick of very care-intensive phases of their lives. Politicians have taken note.

Framing family-friendly policies as crucial gender equity measures has helped to generate broad-based support for proposals that address the work-family dilemma. The New York Women's Equality Agenda introduced by Governor Cuomo in 2013 used this frame to package a variety of bills, including those targeted at unfair pay, and pregnancy and family status discrimination in the workplace.⁵ This example sparked similar women's economic and equality agendas around the country, which use a multi-prong approach to address the underlying causes of women's inequality.



Wielding the strength of women has also helped to push other policies over the finish line. Our work to pass paid sick days in New York City, a campaign that had been focused on labor rights and public health, got a dramatic boost when framed as a women's issue. ABB highlighted the importance of earned sick time for women, who are often the ones who stay home to care for ill children and can quickly find themselves one sick child away from economic catastrophe. In February 2013, the *New York Times* published a letter from hundreds of women leaders urging New York City Council Speaker Christine Quinn to bring paid sick leave to a vote. Simultaneously, feminist icon Gloria Steinem, articulating ABB's women's rights frame, threatened to withdraw her support for Quinn in the mayoral race if she continued to block a vote on the bill.⁶ A month later, advocates reached a compromise with Quinn to pass a bill that would cover millions of workers in the city.⁷



Public Health

Caring for a loved one fosters wellbeing and contributes to the health of our communities. By making it hard for family members to provide this care for each other, our outdated laws and policies are not only harming individual families but also having a negative impact on broader public health. Framing work-family policies as public health measures helps to broaden their appeal, especially in more conservative spaces, and deepen public empathy for policies that may directly impact only a subset of the population.

Campaigns for paid sick days, paid family leave, and improved laws on pregnancy discrimination all have a strong public health component that has helped galvanize widespread support. Paid sick time campaigns around the country have had great success in cities where people live in close proximity and are shocked by the fact that 40% of their neighbors have not a single paid day off they can use when they or a family member is sick. Advocates have used data about maternal and infant health outcomes to argue effectively for paid family leave, which promotes bonding and breastfeeding, reduces healthcare costs, and produces long-term benefits for children.⁸ Similarly, they have highlighted the connection between family caregiving and improved outcomes for the elderly, as well as health care savings from avoiding costly nursing home care,⁹ as compelling arguments for passing paid family leave. Finally, health arguments have proven crucial to the cause of pregnant worker fairness, especially in garnering the support of allies across the political spectrum who want to create every incentive for women to deliver healthy babies.

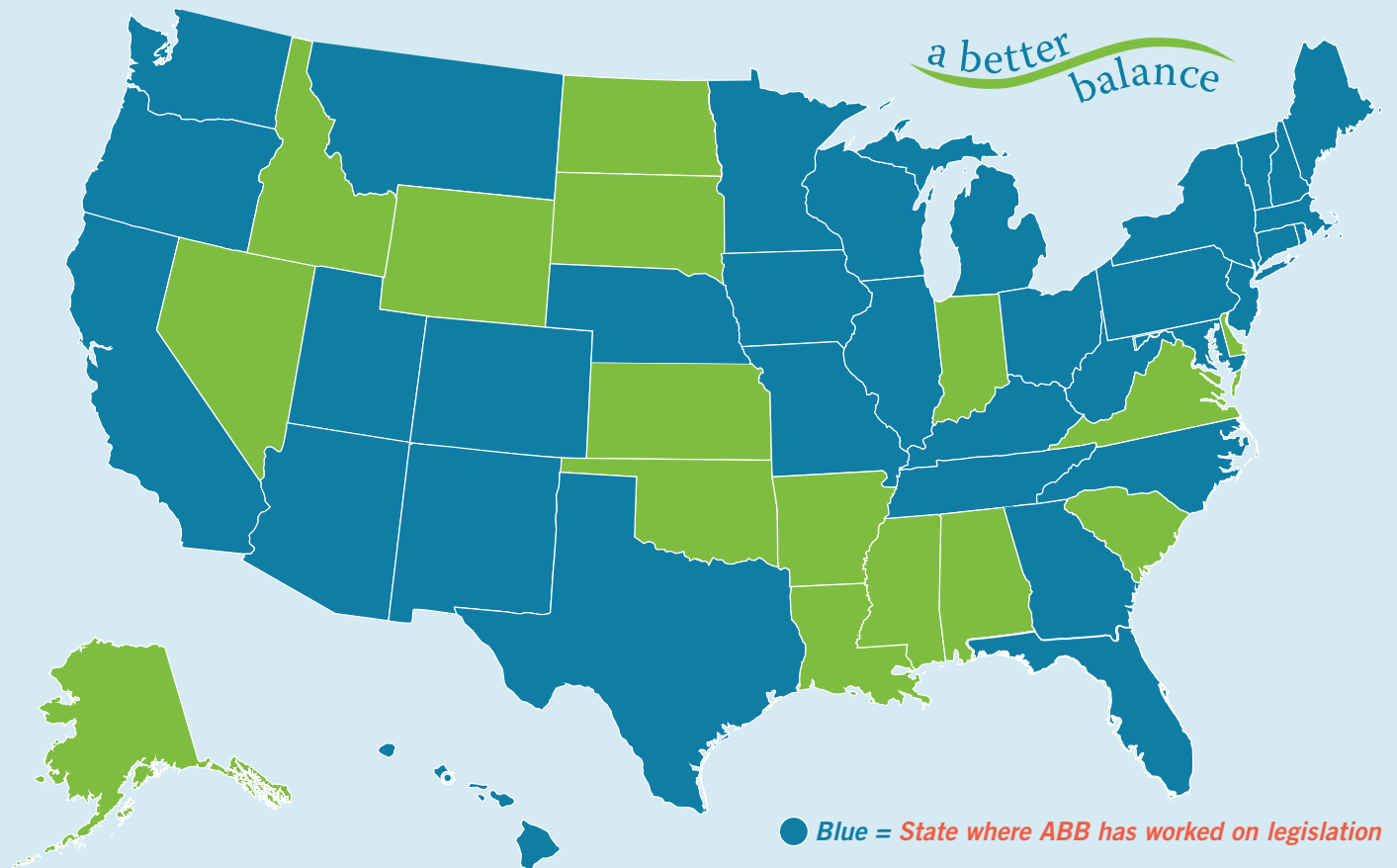


2 | Location, location, location

The first and only federal law passed to address the struggles of workers caring for family members—the Family and Medical Leave Act—was enacted in 1993. In the years since, shifting political winds have made it increasingly difficult to pass any legislation in Congress, let alone laws that implement fundamental changes to the workplace. States and localities have instead become the locus of change, serving as laboratories for socially progressive policies whose success drives demand for national solutions.

A Better Balance has served as the legal counsel for advocates around the country seeking to enact family-friendly legislation at the state and local level. We have provided technical assistance, helping to determine the scope of local authority and how best to draft legislation to avoid legal challenges, in addition to strategic advice and communications support. With our help, dozens of states and cities have passed paid sick leave laws and legislation to guarantee fairness to pregnant workers who need minor workplace adjustments to stay healthy and stay employed. And our expertise was key in the

passage of Rhode Island's paid family leave law, making that the third state in the country to guarantee some financial security when families welcome a new baby or have a seriously ill family member who needs care. All of these advances at the state and local level help to generate momentum for nationwide legislation, including the Healthy Families Act (federal paid sick time bill), the FAMILY Act (federal paid family leave bill), and the Pregnant Workers Fairness Act (federal pregnancy accommodation bill).



3 | Raising Up Individual Voices

As advocates, we understand that the power of reasoned argument and data reaches only so far amid the din of thousands of issues and moneyed interests competing for policymakers' attention. But a picture, a face, and a personal story can cut through the noise and move those in power to action.

In 2009, A Better Balance launched our Families @ Work Legal Clinic and hotline, to offer information, advice, and representation to individuals facing a crisis at work related to their own illness, pregnancy, or care for a loved one. Our priority as lawyers is to secure justice for the people who call on us for help by enforcing legal protections to their fullest extent. But for those cases where the existing legal framework is insufficient, we have helped our callers find an additional measure of justice by empowering them to share their stories to advance the law. We have spoken to hundreds of people with heartbreaking stories of sacrifice and struggle, and many of them are eager to ensure that no one else has to face the hardships they have experienced. In the course of educating and representing these individuals, we have also helped them become part of the solution by raising up their voices and engaging them in our campaigns.

Armanda Legros is a prime example of empowering an individual in crisis to become a leader who can deliver the call for change. Armanda reached out to ABB when she was six months pregnant and had just been pushed out of her job at a trucking company after bringing in a doctor's note that recommended she refrain temporarily from heavy lifting. Armanda had read about our advocacy to guarantee



reasonable workplace accommodations to women affected by pregnancy and childbirth and she wanted to help. After ABB helped to secure her legal counsel and get her job back, Armanda became an outspoken advocate for stronger laws to help women like her. She rallied at New York City Hall and Albany, New York, and traveled to Washington, D.C. to deliver personal testimony before the United States Senate Committee on Health, Education, Labor and Pensions. Thanks to her help, fairness for pregnant workers is now the law in New York City and New York State, and the federal Pregnant Workers Fairness Act has been reintroduced with bipartisan support.

4 | Making the Business Case

While ABB has advocated passionately for systemic solutions to the work-family dilemma to help workers, we have also consistently underscored the benefits of these policies to employers and businesses, as well as to our economy more broadly.

With the help of stellar research from the Center for Law and Social Policy, the Center for American Progress, and the Institute of Women's Policy Research, we have made significant strides, as a movement, to change the dominant workplace culture. We have witnessed more employers adopting flexible work policies, and competing with each other to offer the most generous paid leave benefits for their workforce. And although these efforts certainly help employers attract and retain women, they are no longer framed as solely women's issues.

We have also seen more employers begin to acknowledge that free market competition, and relying on businesses to "do the right thing," is insufficient to address the full scope of the

care crisis. A decade ago, companies were content to provide generous benefits on paper and receive commendations for doing so, but now more are recognizing that public solutions can help to level the playing field for all businesses, especially small businesses. These employers see that policies like paid family leave, paid sick time, and pregnancy accommodations decrease healthcare costs, promote children's health and educational outcomes, and keep women attached to the workforce and off of public assistance, saving taxpayers money. They view the problem more comprehensively, especially within the context of the international competition for talent, and are slowly embracing broader solutions.

5 | Strength in Numbers

One core challenge ABB faced in the early years involved gaining attention from policymakers on an issue that was unfamiliar to them, and did not have an established and powerful constituency. In fact, parents and family caregivers, who are already overextended in their attempts to meet the competing demands of work and family, have little spare time to spend on political activism. In addition, as a small organization with limited name recognition, ABB needed ways to amplify our voice.

From the very beginning, ABB worked in coalition with other groups whose interests were aligned with our mission and benefitted from the diversity they offered. We have worked both in New York and around the country with labor unions, workers' centers, public health professionals, women's groups, reproductive health organizations, LGBT groups, and community groups, to pass family-friendly legislation in dozens of states and cities. The Community Service Society and Center for Popular Democracy have been strong partners in New York. Not only are coalitions, like the Paid Sick Time Coalition in New York City and the Women's Equality Coalition in New York State, effective in pushing elected leaders to act, but they also help with outreach and education once new laws have passed,

making the laws we help to enact that much more effective. Coalitions are also valuable for sharing legal strategies and best practices to reach better outcomes, and allow coordination across the collage of state and local laws that this movement is swiftly building. And our national partners such as the Center for WorkLife Law, Family Values @ Work, the National Partnership for Women and Families, the Center for Law and Social Policy, and the National Women's Law Center have supported ABB from the beginning as thoughtful colleagues in this struggle, helping to amplify the message we are all trying to convey about the need to support working families.



6 | Enforcement and Education

While enacting policies to support working families is critical to solving the care crisis, it alone is not enough. Strong laws on the books are only meaningful if the people they are designed to help know about them and can effectively exercise their rights.

ABB has been a leader in public education, making sure that workers who need to understand their rights and advocate for themselves have access to accurate, understandable, and up-to-date information about the law. In 2013, ABB published a first-of-its-kind guidebook for expecting and new parents about their workplace rights—*Babygate: Surviving Pregnancy and Parenting in the Workplace*—and followed in 2014 with an accompanying website that breaks down complex workplace rights regarding pregnancy, leave, breastfeeding, and workplace flexibility, state by state. Through our advice and counseling hotline, we educate workers nationwide about their legal rights so that they can advocate for themselves with confidence, fulfill the promise of laws that exist to support them, and remain attached to the workplace without sacrificing their family's wellbeing.

Unfortunately, even informed self-advocacy is often insufficient to ensure that employers comply with the law. As a legal advocacy organization, A Better Balance has taken on the work of ensuring that laws are properly enforced by working with state and local agencies and by representing individuals who have claims under the laws we have helped to enact. This targeted enforcement work also helps to publicize new laws and capture the attention of employers who may not have

heard about them, or those who need additional motivation to bring their operations into compliance. For example, ABB has represented multiple women across New York City who got pushed out of their jobs after requesting a workplace accommodation. We have been able to use the NYC Pregnant Workers Fairness Act to get these women back to work and back on their feet financially. Several of their stories have been featured in "The Working Life" column in the *New York Times*, eliciting thousands of reader comments, while others shared their experiences in ABB's *Pregnant and Jobless* report to push for a national standard akin to the one in New York City. ABB has an outreach and education project as well as a representation project to help ensure workers know about the NYC Earned Sick Time Act and can seek redress if they do not get the sick time they are entitled to or are retaliated against for using it. As part of our representation of workers, we have worked closely with the enforcement agency charged with implementing paid sick time, helping develop improved procedures and commenting on regulations and fact sheets. Indeed, we have helped agencies to draft good regulations and interpretive materials on the laws we have helped enact around the country, also leading to better enforcement of those laws.



Key Achievements

1 | Paid Family Leave

ABB has been a key player in the fight to secure paid family leave in New York State, and, more broadly, in the movement to expand paid family leave around the country. After ten years of persistent advocacy, we are witnessing a potential tipping point in the campaign for paid family leave in New York. In January, New York Governor Cuomo—with support from Vice President Joe Biden—declared paid family leave a priority and called on the Legislature to pass a strong paid family leave bill this year. A Better Balance and a diverse coalition of community organizations, unions, businesses, early childhood advocates, women’s, senior, and LGBT groups are working with the governor and the legislature to make New York State the fourth state in the country with a family leave program.

Our model law, developed with the National Partnership for Women and Families, has served as the basis for proposed legislation in multiple states, and has drawn advocates and legislators from around the country seeking our help with in-depth support on bill drafting, legal strategy, and tactical advice. Our expertise was key in the passage of Rhode Island’s paid family leave law in 2013, and ABB has worked closely with advocates in Washington, D.C. to draft a robust paid family and medical leave proposal, submitted testimony on the Massachusetts paid family leave bill we helped to draft, and joined research teams in Minnesota and Connecticut exploring the best possible policy approaches to paid family leave in those states. Our work continues in states like Colorado and New Mexico as enthusiasm for enacting paid family leave spreads. We hope that the explosion of interest in paid family leave in the states will pave the way to a federal program covering all American workers like that proposed by Senator Gillibrand, the FAMILY Act.

2 | Paid Sick Time

Since its founding, ABB has endeavored to address the problem of workers lacking paid sick time to use for themselves or a family member, an area where there has been breathtaking progress over the last few years. ABB has been, and remains, at the forefront of this movement and the legal advisor to almost every campaign for paid sick time around the country.¹⁰ Our model law, and legal advice, has been used by virtually every campaign for paid sick days in the U.S., leading to the passage of paid sick time requirements in five states and 23 localities from San Francisco to Massachusetts to Philadelphia.¹¹ Here in New York City, we played a crucial role in drafting and negotiating the 2014 Earned Sick Time Act (ESTA), and have led efforts after its enactment to shape the rules and regulations used to enforce the law. ABB is also offering free legal services to New Yorkers seeking to exercise their rights under the law, serving nearly 200 New Yorkers in the first year that the NYC ESTA was in effect. All of this momentum has helped to bolster the case for the federal Healthy Families Act, which would guarantee workers nationwide the right to earn up to seven paid sick days a year to address their own health needs or to care for a sick family member.



3 | Pregnant Workers Fairness

In 2012, ABB inaugurated a new area of advocacy by highlighting the gap in legal protections for pregnant workers, especially low-wage women in physically demanding jobs, who are often denied the modest workplace accommodations they need to stay healthy and employed. That year, the federal Pregnant Workers Fairness Act (PWFA), which ABB helped draft, was introduced in response to ABB Co-President Dina Bakst's *New York Times* Op-Ed, *Pregnant and Pushed Out of a Job*,¹² and has since been reintroduced with bipartisan support. Prior to 2012, only six states had stronger legal protections for pregnant workers than federal law provides. In the years since, with ABB's leadership, more than a dozen states and localities have passed laws ensuring fair treatment for pregnant workers, often unanimously and with bipartisan support.¹³

In addition to creating momentum at the state and local level, ABB is a key ally in the coalition to pass the federal PWFA. Our report *Pregnant and Jobless: Thirty-Seven Years after the Pregnancy Discrimination Act, Pregnant Women Still Choose Between a Paycheck and a Healthy Pregnancy*,¹⁴ made the case for why a federal standard is necessary, featuring our experience implementing the New York City PWFA as a case study for success and stories of real women from across the country.

4 | Combating Abusive Scheduling

ABB has been spearheading a new initiative to help workers harmed by the time crunch caused by insufficient control over their work schedules. While lack of schedule control impacts most workers, it has become a particularly critical problem for those at the bottom of the economic spectrum; many low-income workers don't even know what their work hours will be 24 hours before their shift, making family life difficult or impossible.

ABB is part of the brain trust generating solutions to this problem. In 2015, ABB Co-President Sherry Leiwant published an article in the *Clearinghouse Review*, co-authored with colleagues from the Center for Popular Democracy, on potential legal and policy solutions to the problems of unpredictable and often abusive scheduling practices.¹⁵ And in September of 2015, ABB released *Families and Flexibility: Building the 21st Century Workplace*,¹⁶ a report co-authored with New York City Comptroller Scott Stringer based on an extensive survey of New York City workers. The survey found an overwhelming need for workplace protections like the right to request flexibility, prior notice of one's work schedule, and paid family leave. ABB also played a key role in drafting the first federal bill introduced to address abusive scheduling practices. The Schedules That Work Act would give all workers the right to request a flexible or stable work schedule without fear of retaliation, and would promote predictable scheduling for workers in certain industries, ensuring that they receive compensation when their employers require them to be "on-call."¹⁷ ABB is continuing to work with coalitions around the country who want to address this growing problem in their state or locality.

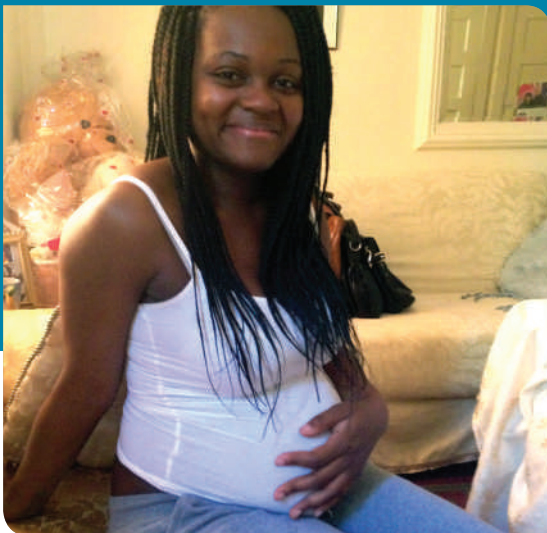


5 | Families @ Work Legal Clinic: An Advice and Counseling Hotline

Our hotline has fielded calls from hundreds of women and men across the country seeking information about their rights and assistance in addressing a crisis at work. One such recent caller was confused about her rights regarding maternity leave in New York. As the sole employee working in New York for a small California-based employer, she had trouble determining which laws applied to her and what she could expect when her baby was born. We counseled Tatiana, coached her in self-advocacy, and she was successfully able to negotiate a maternity leave.

Tatiana wrote:

"When I called, I received so much care and attention by [ABB], who took the time to explain the legal complexities of my situation, and allowed me to see the options I had when addressing my company. I felt lost before I called, and after my talk with [ABB], I had a clear picture of my situation and my options. I was able to speak to my company, and my issue was resolved without any problems. I could not be more grateful to have had A Better Balance as a resource. For many people, seeking legal advocacy is confusing, stressful, and expensive. A Better Balance really took my anxiety away, as I was met with kindness and openness."



Our hotline has played a central role in ensuring that the laws we have helped to enact are vigorously enforced. In 2014, the *New York Times* highlighted ABB's pioneering work enforcing the NYC PWFA, separately featuring Floralba Espinal and Angelica Valencia, two of ABB's clients, in "The Working Life" column.¹⁸ Following passage of the New York City Earned Sick Time Act (ESTA), ABB began an ESTA hotline to field calls specifically from workers being denied their rights under the new law. *One low-wage worker for whom we secured a settlement after her employer denied her paid sick days wrote:*

"My daughter got sick and my employer didn't understand. I was frustrated, angry, but I didn't know how to resolve the problem. I have two children and I have to pay my rent. My daughter has asthma and would have died if I couldn't take care of her. It's not right. This law helps workers a lot, and your organization has helped me so much."

6 | Advocacy in the courts

Over the past ten years, ABB has helped to defend family-friendly policies when they are challenged in court. In 2009, we contributed substantially to the legal defense of Milwaukee's paid sick time law, which was upheld by the Wisconsin courts.¹⁹ In 2011, we co-authored an amicus (friend of the court) brief in support of the plaintiffs in the case of *Air Line Pilots Assoc., Int'l v. United Airlines, Inc.*²⁰ The case addressed whether United could avoid complying with California's kin care law—which allowed workers with paid sick leave to use half of that time for the care of ailing family members—by administering its paid sick leave benefits through a trust. The California Supreme Court ultimately ruled against United and in favor of a pilot who was denied the chance to use a portion of her paid sick leave to care for her dying mother. In 2013, we weighed in as a friend of the court to support the Wisconsin Family Leave Act's provision that allows for workers to substitute paid leave while taking job-protected time off under the Act.²¹

ABB is also actively engaged in litigation to shine a public spotlight on the problems that pregnant women face in the workplace and to ensure a progressive interpretation of laws. Through an ABB intake in 2013, we learned of an illegal policy regarding pregnant workers at Walmart. Together with Respect the Bump (the pregnant worker group at Walmart, a part of the United Food and Commercial Workers International Union) we worked on a shareholder resolution and, with the National Women's Law Center and Mehri & Skalet, filed a charge of discrimination at the Equal Employment Opportunity Commission (EEOC). Soon thereafter, Walmart announced an update to its pregnancy policy, though litigation continues to push for all pregnant women at Walmart to have access to



simple workplace modifications when they need them to stay safe and healthy.²² In 2014, A Better Balance and the American Civil Liberties Union (ACLU) jointly filed an amicus brief in the U.S. Supreme Court supporting Peggy Young, who was forced off her job at UPS while pregnant after she handed in a note from her doctor with a lifting restriction. Our brief highlighted the economic penalties suffered by women who are forced to exit the workforce while pregnant.²³ Not only did UPS change its policy after the Supreme Court agreed to hear Peggy Young's appeal, and the Court ruled in Young's favor, but even Justice Kennedy wrote in his dissent:

There must be no doubt that women who are in the workforce—by choice, by financial necessity, or both—confront a serious disadvantage after becoming pregnant. They may find it difficult to continue to work, at least in their regular assignment, while still taking necessary steps to avoid risks to their health and the health of their future children. This is why the difficulties pregnant women face in the workplace are and do remain an issue of national importance.²⁴

7 | Advancing Rights of Working Families in the South

States in the Southeastern part of the United States represented almost half of all sex discrimination (which includes pregnancy discrimination) charges filed with the EEOC in 2012, even though they make up only one-third of the U.S. population. Despite this great need, there are not enough attorneys and legal teams on the ground available to help families suffering from discrimination at work and to push for more family-friendly laws and policies. In 2014, A Better Balance opened a Southern Office, based in Nashville, Tennessee, to help fill this gap in legal advocacy. We are building partnerships with civil rights groups, labor groups, health advocates, and women's groups in the South, raising awareness of the needs of Southern women and families living paycheck to paycheck, and replicating our successful ABB advocacy model to empower communities in some of the most impoverished parts of the country.

Soon after launching, ABB's Southern Office gained national recognition for filing a charge of discrimination with the EEOC against the City of Florence, Kentucky on behalf of police officer Lyndi Trischler, who was forced out of her job while five months pregnant after repeatedly requesting modified duty for her pregnancy-related disabilities. Officer Trischler's case was featured on *CBS This Morning* and is now under investigation by the federal Department of Justice following a determination by the EEOC that there is reason to believe legal violations occurred. Officer Trischler's and ABB's testimony before the Kentucky Legislature have also helped push forward the proposed Kentucky Pregnancy Workers Fairness Act.²⁵

8 | Babygate

In 2013, ABB published *Babygate: Surviving Pregnancy and Parenting in the Workplace*, the first-of-its-kind guide for expecting and new parents about their workplace rights, to overwhelmingly positive reviews.

*“Any mother-to-be who buys **What to Expect When You’re Expecting** should pick up a copy of **Babygate** to go with it. It offers indispensable advice to allow working parents to stay on the job and is a blueprint for change in the coming work–family revolution.”*

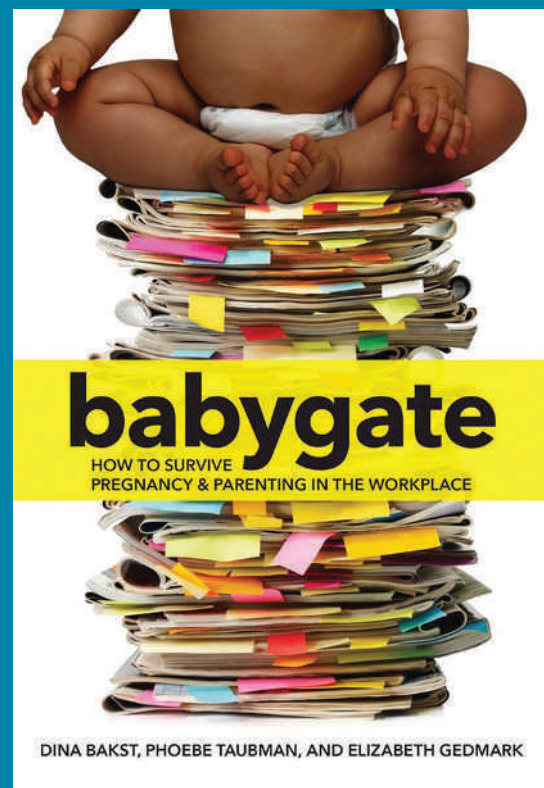
— Anne-Marie Slaughter, President and CEO of New America and author of *Why Women Still Can’t Have It All*

“With real-life stories from working moms and dads, a state by state guide to the law, and even sample letters for employers, ‘Babygate’ aims to educate and empower working parents so that they can benefit from the law’s protections and understand and prepare for its shortfalls.”

— Maria Shriver, in an interview with *Babygate* co-author and ABB Co-President, Dina Bakst²⁶

In 2014, ABB launched the Babygate website to break down pregnancy and parenting laws state by state in an easy-to-use, searchable format. Featured on the self-help website Lifehacker²⁷, the Babygate website provides a one-stop online shop for workers around the country. One visitor to the site from Illinois wrote:

“Just the fact that you have this organization and even just publishing the book gives women and men so much more power, and that’s a feminist issue, and that’s a reproductive justice issue... You’re helping so many women and families.”



9 | LGBT Organizing and Advocacy

For many years, ABB has been working to raise awareness about the intersection of paid leave and LGBT (lesbian, gay, bisexual, and transgender) rights. Our notable publications include *Time for a Change: The Case for LGBT-Inclusive Workplace Leave Laws and Nondiscrimination Protections*²⁸ and *The Family and Medical Leave Act: What Should LGBT Families Know?*²⁹ In 2014, ABB built on this work by launching the LGBTQ Work-Family Project in partnership with Family Values @ Work. Through the project, ABB is working with advocates in more than 20 states on LGBT organizing and has helped campaigns in a dozen states write bills that would expand recognition of diverse families. We are also raising the profile of this work nationally. In October 2015, ABB co-hosted a second annual LGBT work-family conference bringing together 35 leaders from the LGBT, work-family, labor, reproductive rights, and economic/racial justice movements. Participants discussed and explored opportunities to work across our movements both proactively and defensively, especially following the Supreme Court's landmark marriage equality decision in *Obergefell v. Hodges*.³⁰ ABB has also led workshops on the need for paid leave and efforts to broaden diverse family recognition at several LGBT and labor conferences, including the National LGBTQ Task Force's Creating Change conference (the largest annual gathering on LGBT rights), the Equality Federation's Summer Meeting (a gathering of state LGBT rights groups), and Pride @ Work's triennial conference (a meeting with LGBT leaders from the labor movement).

10 | Caregiver Discrimination, Women's Equality, and Breastfeeding Rights

In 2007, A Better Balance delivered testimony in favor of a New York City proposed bill to ban discrimination against family caregivers in the workplace. Nine years and countless fact sheets, strategy sessions, hearings, and re-writes later, employment discrimination based on caregiver status is illegal in New York City starting in May 2016. In addition, thanks to ABB's advocacy, employment discrimination based on a worker's family status is now illegal across New York State as part of the Women's Equality Act that passed in 2015. These new laws make clear that parents, and others caring for loved ones, deserve fair treatment in the workplace.

Over the past decade, ABB has also spearheaded efforts to ensure women's equality by increasing wage transparency, strengthening equal pay protections, and ensuring that nursing mothers can get the break time and space they need to express breast milk on the job. In addition, thanks to our successful advocacy in support of an amendment to the New York State Breastfeeding Mothers' Bill of Rights, thousands more women each year will be informed of their workplace breastfeeding rights.



Where Do We Go From Here?

We stand at a pivotal moment. Opinion makers and political leaders are finally paying attention. We have an opportunity to develop and implement further policy solutions to the work-family dilemma that promote equality and highlight the importance of caregiving as a core value of our society. This section of the report will review key avenues to further that mission as well as policy priorities for the next ten years of the movement.

Opportunities

Integrating More Men into the Movement

In 2006, A Better Balance set out to promote greater equality by reducing the wage gap between men and women with family responsibilities and encouraging men to take on a greater share of care work. Though women have traditionally borne the lion's share of care work in most families, men are taking on more and more family responsibilities and feeling the strain of the time crunch just as acutely.³¹ In order to break down the persistent bias against caregiving in the workplace, and change stereotypes about that work in the home, we need to engage men as well as women.

While men have featured prominently in the work-family movement over the years, we need to involve them even more. We need more leaders like Governor Andrew Cuomo and Vice President Joe Biden to speak out about their own experiences, set an example for other men, and use their personal stories to influence others in power. When men take ownership of the issue in this way, it becomes harder for others to pigeonhole the work-family dilemma as a problem that affects only women. We must also elevate more male voices in our advocacy, and actively engage men as agents of change. Using newly enacted protections against family status and caregiver discrimination in New York can also shine a light on the problems men face when they resist the breadwinner stereotype and take on caregiving responsibilities.



Family-Friendly Policies are Reproductive Justice Policies

For over 40 years, the reproductive rights movement has focused on access to reproductive health care, including contraception and abortion, and on fighting relentless attempts to limit women's ability to decide whether and when to start a family. While reproductive justice means guaranteeing a woman's autonomy to decide not to bear a child, it also means guaranteeing her right to carry a pregnancy to term without fear of discrimination or disproportionate economic penalty. Policies such as paid family leave and reasonable accommodations for pregnant workers promote reproductive justice for women generally, and particularly for those with the fewest financial resources whose choice to bear a child is constrained by social and economic barriers.

By highlighting this dimension of reproductive justice, advocates for work-family reforms can enlist the support of a well-established network of experienced and dedicated activists while also challenging opponents' limited characterization of reproductive choice. For example, ABB's Southern Office's reproductive health partners, who are working in a difficult political climate, are eager to engage in work that shows they support women whether or not they choose to carry their pregnancies to term. Our joint efforts also provide credibility to reproductive health partners in the face of opponents' assumptions about their core mission. ABB's successful model of lifting up voices of marginalized communities as advocates for change is similarly in line with reproductive justice methodology and represents a pivotal opportunity in the work-family movement.

LGBT Families

In the wake of *Obergefell v. Hodges*, the Supreme Court's 2015 landmark decision establishing same-sex marriage as a constitutionally protected right, many LGBT advocates are setting new goals for advancing LGBT equality. Particularly ripe for advocacy in this area is the workplace, as more than half of all states lack explicit protections against employment discrimination based on sexual orientation and gender identity. ABB has also been raising awareness about the need to expand family recognition in the workplace. Many relatives and family members of choice are often excluded from employer policies pertaining to paid leave—if any employer offers paid leave benefits—a pressing issue that lies at the intersection of various movements from reproductive justice to economic justice to the work-family and labor movements. Paid sick time and paid family leave campaigns therefore offer a prime opportunity for expanding family definitions and developing intersectional coalitions around the need for more inclusive work-family policies.

Through our LGBTQ Work-Family Project, in partnership with Family Values @ Work, ABB is working with advocates in more than 20 states on the need to expand recognition of diverse family structures, both LGBT and non-LGBT. In addition to hosting an annual conference on these issues, the Project has made grants to coalitions in several states who are working to pass paid leave laws that broadly define family. ABB is also working to raise the profile of this work nationally and will continue to prioritize engaging LGBT rights organizations to discuss and explore opportunities to collaborate across movements, both proactively to enact policies that recognize the lived reality of today's families and defensively to challenge attempts to narrow family definitions or strip LGBT employees of legal protections.



Giving Voice to the South

ABB's Southern Office recognizes that obstacles to women's equality and economic advancement are often even more severe in the South. Considering the high rates of poverty and health problems for women, particularly women of color, in the South, it is especially important that we advocate for supportive work-family policies in the region. We are empowering Southern working families through impact litigation, legislative advocacy, coalition building, and raising awareness of uniquely Southern industries and struggles.

Voices from the South can and do contribute significantly to national movements, influencing the ability to enact policies that will have a nationwide effect. It is critical not just for Southern families, but for the nation, that the South be part of our movement. As we have seen from the success of PWFA bills in more conservative states, the South must be an integral component to any nationwide movement to update outdated laws and policies.

"I am a police officer with the Florence, Kentucky Police Department, where I work 10-hour shifts patrolling the streets. In 2014, when I was 5 months pregnant, my doctor told me I had to go on light duty for the rest of my pregnancy. My heavy gun belt was causing abdominal pains, my bulletproof vest was so tight I could barely breathe, and I was having heart palpitations. But my employer would not accommodate me. I decided to stand up for my rights, and, with the help of A Better Balance, filed a charge of discrimination with the Equal Employment Opportunity Commission. Together with ABB, we are still working to make sure the City doesn't do this to me or any other pregnant women they employ."

Time for a Change:

The Case for LGBT-Inclusive Workplace
Leave Laws & Nondiscrimination Protections



a better
balance
the work and family legal center

April 2013

Gender and Labor

Though the work-family dilemma has always resonated with women's groups, there are new opportunities to work together in the next phase of this movement. As always, we must share strategies and support overlapping efforts to break down the barriers holding women back from achieving their full potential. But we can also take more proactive steps. For example, ABB has joined a diverse group of state and national women's rights groups as part of the Equal Pay Today campaign. This coordinated campaign involves state-level legislative advocacy on a variety of fronts to create a chain reaction strong enough, we hope, to close the gender wage gap.

Unions are also important allies as we seek to expand the rights of working families. As women rise to leadership positions in many unions, there will be a deeper understanding and prioritization of work-family issues. Unions have a great deal of political power, particularly in states like New York, and can help to get strong policies across the finish line with their endorsement and the support of their members. Unions are also key partners as advocates in the workplace and can bring an important perspective to our work. At the same time, it is important for us to work together to ensure that both leadership and rank-and-file members are aware of and understand the new laws that exist and ensure that discrimination charges are handled properly. Union shops can also provide creative approaches to many work-family issues in the context of model policies negotiated in labor contracts, another way to bring about social change for millions of workers and establish a precedent for new public policy.

Strengthening Alliances with Business Partners

Advocating to update America's workplace policies for the 21st century means facing automatic opposition from organized business groups who resist any changes to the status quo. But more and more individual businesses also realize that changing the way they do work can benefit their bottom line and keep them competitive in a global competition for talent. While the work-family movement has engaged leaders in the business community who see the benefits of adopting better policies for their own workforce, we need more of them to support public policies that offer similar security to all workers. We need to foster relationships with, and boost the voices of, champions from the corporate world, like Tom Nides of Morgan Stanley, who wrote in the Huffington Post that paid family leave "is not just good for families and businesses—it also makes economic sense."³² Such business leaders can assuage the fears of policymakers who believe the cause of supporting workers and their families is inherently at odds with interests of the business community.



Priorities For the Next Decade

Enforcement and Education

After fighting hard to enact family-friendly legislation at the state and local level, advocates and allies must work together to ensure those laws are enforced. We must expand public education so that employees and employers understand their rights and obligations under newly passed laws. ABB will continue to work to ensure that agencies properly enforce new laws by helping to craft strong rules and regulations.

Representation and Litigation

As lawyers, we are in a unique position to vindicate our clients' rights in court and through enforcement processes that we have crafted in the laws we pass. We will provide direct representation to individuals seeking to vindicate their rights and will litigate cases that will have broad impact on interpreting the laws to have maximum positive impact. We will also help our clients use their voices to push for robust enforcement. Laws are in place to empower the communities we serve, and we are dedicated to making those communities part of the enforcement process.

Attention to the Importance of Caregiving in Movements for Economic and Social Change

Awareness of the erosion of economic equality in the United States has given rise to movements for social change with special attention to the roles of race, gender, and sexual orientation. It is important that issues related to support for caregiving be front and center in the struggles for improvement in minimum labor standards and expansion of opportunity. Together with partners who are also working to increase economic security for all and alleviate income inequality, we can help ensure that the importance of caring for family is a key component of solutions to these problems.

Expansion of Successes on Rights to Sick Time and Pregnancy Accommodation

Over the last decade, we have had extraordinary success in enacting paid sick time legislation and rights to accommodations for pregnant workers in states and cities across the nation. The laws we have helped to pass have changed the lives of millions of workers. ABB will continue to do this work, supporting enactment of laws in more states and localities that will ensure workers can take paid time off to care for themselves or a sick family member and remain healthy and on the job when pregnant. We are hopeful that the momentum on these issues will result in the enactment of federal legislation that will protect all American workers and will continue to fight for passage of the Federal Pregnant Workers Fairness Act and the Healthy Families Act.

Paid Family and Medical Leave

It remains shameful that the United States is one of only two countries in the world that has no paid leave for new mothers and the only developed country that has no paid family leave to care for a seriously ill family member. Progress in this area over the last decade has been slow with only three states in the nation

providing programs for paid family and medical leave. Even those programs are exceedingly modest in the time they allow, their wage replacement rate and the lack of job protection for using the benefit. It is important to make the case for a paid family leave program that will include broad definitions of family to ensure that individuals in a diverse range of family structures can access paid leave, a decent benefit level and enough guaranteed time off to ensure the health and wellbeing of families. New York must be next, raising the bar on what constitutes a good paid family and medical leave program, fueling support for action by other states and ultimately pushing a federal solution like the one currently proposed in the FAMILY Act. States and localities should also continue to expand paid leave benefits for public workers, as New York City and many states and localities around the country have recently done.

Address the Problem of Lack of Control Over Work Schedules

States and localities should continue to innovate potential solutions to the problems of unpredictable and abusive scheduling, focusing on industries such as retail, food service, and health care, where workers are particularly vulnerable. In addition, New York City should enact protections for workers so they may seek changes to their schedule without risk of retaliation. Such "right to request" laws have been highly effective in the UK and other European countries where they have improved communication and understanding in the workplace and increased worker access to alternative work schedules.³³ Such local efforts can help to build momentum for the federal Schedules That Work Act that includes protections against abusive scheduling practices and a right to both request and receive changes in schedule under certain circumstances.

Combat Workplace Bias Against Caregivers and Part-time Workers

Discrimination against caregivers like most other forms of bias is often unconscious and unintentional. It is important to increase the understanding that caregiving responsibilities or a part-time schedule do not make a worker less valuable. Legal protections against caregiver discrimination are important and also provide an opportunity for further conversation about the need to stamp out discrimination that threatens the ability of women – and men – to realize their full working potential. Over 60 cities, most recently New York City, have enacted legislation explicitly to ban discrimination in employment based on an individual's family status, family responsibilities, or status as a family caregiver.³⁵ New York also just joined a handful of states to guarantee similar protections. We must build on this momentum so that more states follow New York's example, while also working to ensure existing laws are enforced to their fullest potential. In addition, New York City should craft new solutions to address the bias and inflexibility that harm family caregivers at work. Specifically, the city should explore legislation that would allow workers to access reasonable accommodations in the event of a family caregiving emergency.

Conclusion

The past ten years have brought us significantly closer to our goal of a family-friendly America, and the enthusiasm for progress is thrilling. We must keep up the momentum and seize new opportunities to push our country's workplace policies into the 21st century so that no American has to choose between caring for her family and maintaining her economic security.



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A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers care for their families without risking their economic security.

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