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Fact Sheet: New York’s Law Addressing Abusive Attendance Policies

Absence control, or “no-fault” attendance, policies are used by some of the biggest corporate sectors including retail, manufacturing, and food service, which employ millions of workers across the country and in New York State specifically. These policies subject employees to discipline for absences regardless of the reason for the absence—often including absences that are legally-protected. **Through our legal helpline, A Better Balance has heard from countless workers who have experienced the harsh realities of absence control policies firsthand, especially during the pandemic, as they have received points for absences related to their disabilities, pregnancy-related conditions, or caregiving obligations.¹**

As we wrote in our recent report *Misled and Misinformed*, on the use of these policies at many of the nation’s largest employers “[e]nsuring “no fault” attendance policies do not punish workers for lawful absences is a gender justice, racial justice, and economic justice issue.”²

- Workers with disabilities or serious health conditions and pregnant workers see their economic security and, for many, their health insurance, in jeopardy when they are already economically vulnerable, leaving many with no choice but to risk their health in an ongoing pandemic rather than risk termination.
- Workers with caregiving responsibilities—who, in this country, are still overwhelmingly women—are forced to choose between caring for an ill loved one and risking their job, and are yet another barrier pushing women out of the workforce in droves. Caregivers are in an especially challenging position as they continue to navigate sudden school closures and pandemic-related lack of child- and elder-care options.
- The harsh impact of these policies is primarily felt by workers of color, who are disproportionately likely—due to continued racism, anti-immigrant rhetoric, and the legacy of slavery and segregation—to work in the low-wage occupations in which these policies are most common.

By passing legislation to address this problem, New York has set an important precedent, requiring companies to ensure that their attendance policies are not used to punish workers for lawful absences and encouraging other states to follow suit.

¹ See, e.g., DINA BAKST, ELIZABETH GEDMARK & CARA SUVALL, POINTING OUT: HOW WALMART UNLAWFULLY PUNISHES WORKERS FOR MEDICAL ABSENCES (A BETTER BALANCE 2017), <https://www.abetterbalance.org/wp-content/uploads/2020/11/Pointing-Out-Walmart-Report-FINAL.pdf> (highlighting the stories of dozens of workers who received points for lawful absences related to their own medical needs or caregiving).

² DINA BAKST, ELIZABETH GEDMARK, AND CHRISTINE DINAN, MISLED & MISINFORMED: HOW SOME U.S. EMPLOYERS USE “NO FAULT” ATTENDANCE POLICIES TO TRAMPLE ON WORKERS’ RIGHTS (AND GET AWAY WITH IT) 34 (A BETTER BALANCE 2020), https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled_and_Misinformed_A_Better_Balance-1-1.pdf.

What are abusive attendance policies?

- Under abusive attendance policies, employees receive points (or “occurrences”), or are docked from a bank of time, for missing work. They are then subject to disciplinary consequences, up to and including termination, when they accrue a certain number of points or deplete their time. These are sometimes called “**no-fault attendance policies.**”

Why are abusive attendance policies a problem?

- These policies punish employees for virtually all absences, tardies, and early departures from work, **regardless of the reason.** Giving a worker a disciplinary “point” for any absence from work, including absences due to a disability, a serious medical condition, or the need to care for a loved one, is not only callous but often flouts current legal protections. These policies are particularly challenging for pregnant women, caregivers, and people with disabilities or chronic health conditions, as they threaten the loss of income at a time when workers are most vulnerable.
- Moreover, these policies often **mislead and misinform** workers about their legal rights. A Better Balance recently surveyed the “no fault” attendance policies of sixty-six U.S. employers and found that more than 80% of those policies failed to make clear that employees would not receive points for disability-related absences; many provided incomplete or misleading information to workers regarding their right to time off under the federal Family and Medical Leave Act (FMLA); and the majority of the policies indicated that workers *will* incur points when they miss work because they are sick.³

New York bill A8092B/S1958A—signed into law on November 22, 2022—addresses this problem by:

1. Making it illegal for employers to punish employees or subject them to discipline for absences that are protected by local, state, or federal law, including absences protected by New York’s paid sick time law and paid family leave law.
2. Making it clear that improperly assigning points or occurrences under an absence control policy, or deducting from an allotted bank of time, can be a form of illegal retaliation.
3. Ensuring that employees who receive points in violation of this section have access to the full spectrum of remedies available under the labor law, including the right to be reinstated to their job and the right to lost wages.

This groundbreaking new law will go into effect on Monday, February 20, 2023.

³ *Id.* at 2-3.