



**TESTIMONY BEFORE THE CITY COUNCIL COMMITTEE  
ON GOVERNMENTAL OPERATIONS**

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Hearing: The Glass Ceiling: Is there Diversity and Equal Opportunity at all Levels of New York City's  
Workforce?

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I am delighted to have this opportunity to address the Committee on Governmental Operations on the challenge of creating equal opportunity in New York City's workforce. Legal Momentum (which is the new name of NOW Legal Defense and Education Fund) has been at the forefront of advancing women's workplace rights since our founding in 1970. We were leaders in raising awareness of gender stereotyping in the workplace, with our "Hire Him, He's Got Great Legs" ad campaign in the 1970s. We have brought and taken part in dozens of employment rights cases over the years, including challenges to sex-segregated help wanted ads; sexual harassment in the workplace; unfair treatment of pregnant workers; insurance and pension rights; and women's exclusion from non-traditional jobs.

### **The Pay Gap and Occupational Separation and Segregation**

There is no question that in the decades since we began this fight for equality, women's status in the workplace has improved tremendously. Women's progress in some professions, including medicine and law, is nothing short of astounding. For example, in 1970 one in twelve doctors was female; today the number is one in four. Women's representation in law has grown from 12% in the mid-1980s to some 30% today.

But as evident as is women's progress, equally evident is the absence of anything approaching full equality. Both occupational segregation, and unequal pay, persist in the workplace, to women's disadvantage. Here are some illustrative facts.

In 2003, the congressional General Accounting Office studied women's earnings relative to men's.<sup>1</sup> Overall, the GAO reported that among full-time workers, women's weekly earnings averaged

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<sup>1</sup> General Accounting Office, Women's Earnings: Work Patterns Partially Explain Difference between Men's and Women's Earnings, GAO-04-35 (Oct. 2003).

about three-quarters those of men. The GAO conducted a sophisticated analysis of a nationally representative sample of men and women workers. It analyzed the impact of nondiscriminatory factors that are known to affect earnings, including industry, occupation, years of work experience, hours worked per year, interruptions in time in the labor force, race, marital status and job tenure. Even after taking all those factors into account, the GAO found that women's earnings averaged only 80% of men's. Interestingly, while the actual pay gap between men and women has narrowed somewhat over time, the 20% portion of that gap that the GAO could not explain by all the factors just mentioned has remained fairly stable over the last 20 years.

Occupations: 2000, the Census Bureau's analysis of occupational data from the 2000 Census, sheds light on both occupational separation and segregation and the pay gap between the sexes. As Occupations: 2000 points out, only one job – retail salesperson – is on the list of the ten most common occupations for both men and women. Millions of women continue to do the jobs long considered “women's work”: as secretaries, teachers, nurses, health aides, cashiers, clerks, child care workers, and waitresses. And while men are distributed much more broadly across the spectrum of occupations, the top ten occupations for men include a number that are quintessentially considered “men's work”: truck drivers, supervisors and managers of retail and manufacturing workers, laborers, and carpenters.

Occupations: 2000 also found that women earned less than men in all six of the major occupational groupings.<sup>2</sup> For example, while 36.2% of all women, and 31.4% of all men, are in management, professional or related occupations, women's median earnings in those jobs are just over \$35,000 while men's are just over \$50,000. Even in sales and office occupations – which employ more than 36% of employed women but just 18% of employed men – women's median earnings are still lower, at less than \$25,000 compared with \$35,000 for men. And to top it off, the industry where

women's wages come closest to men's – 90% - employs just 0.7 % of working women. That industry is construction, extraction, and maintenance occupations, which is the focus of my testimony today.

### **Barriers to Women in the Construction Trades**

The concept of the “glass ceiling” is usually applied to management positions – the idea being that women can get entry and middle-level positions in corporations or government, but reach a point where their further advancement is stymied for invisible reasons – stymied, that is, by the glass ceiling.

Instead of talking about glass ceiling barriers – which by definition apply to professions where women can at least get a foothold on the ladder – we have chosen to focus our comments on the construction trades where women, by and large, cannot even get a foot in the door. You might wonder why Legal Momentum is focusing attention on a field that employs such a tiny percentage of working women. The simple answer to that question is that the skilled construction trades are great jobs for those who can get them, and that women have been, and continue to be, both shut out and chased out of these jobs.

The building trades do not require a college education; the apprenticeship years that are an accepted part of entry to the trades offer paid, on-the-job training; and unionized tradespeople who achieve journey-level status earn high rates of pay with extraordinary benefits. There is no question that women are capable of performing these jobs and finding great satisfaction in them. That issue was definitively resolved decades ago, when the United States depended on women to produce the arms and heavy machinery needed for World War II. Yet sixty years after “Rosie the Riveter,” and thirty years after women began to re-enter the skilled trades in significant numbers, women make up only 2-3% of the skilled trades workforce.

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<sup>2</sup> The six occupational groupings are: management, professional, and related occupations; service occupations; sales and office occupations; farming, fishing, and forestry occupations; construction, extraction, and maintenance occupations; and

There are no doubt many reasons that, even today, so few women work in the skilled trades. Reason number one may well be that physical strength is inexorably, if mistakenly, linked in many people's minds with the skilled trades, and if there is one sex stereotype that seems to command broad agreement in our culture, it is that women are just not cut out for physical labor. Now this stereotype bears very little scrutiny: much of what is traditionally considered women's work, including nursing, waitressing, child care and factory work, is very physically demanding. What is more, skilled trades rely on tools and machinery, not brute strength, and women are fully as able as men to use combustion engines and electricity to accomplish work. But without question, there is a deep-seated prejudice against women's physical capabilities that contributes to their absence from the trades.

Despite this prejudice, many women have found their way into the skilled trades only to be hounded out by overt discrimination. The most vicious sexual harassment has been reserved for women who are perceived as intruders into previously all-male fields, such as the trades or, in another line of work, firefighting. While it is probably the case that today, fewer women than in the past are subject to daily grabbing or sexual slurs, it is still routine for pornographic photos and drawings to be posted as a way to make women feel the construction shack is an all-boys clubhouse. One New York builder found a strikingly simple solution to the problem of male construction workers drawing crude and demeaning caricatures of their female co-workers on the walls of portable toilets – they painted the insides black.

Other forms of discrimination against women on the job are more subtle but equally effective: the silent treatment, which denies an apprentice the informal, on-the-job training that is integral to successful apprenticeship, or the practice of making women repeatedly prove themselves by giving them the hardest jobs, sometimes without adequate tools or safety equipment. Women may find themselves excluded from overtime, or learn that male colleagues who willingly trade shifts with other men to accommodate scheduling needs won't do such a favor for a woman. The complaint we hear most often

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production, transportation, and material moving occupations.

from women is that they simply cannot get work. Women in the Laborers union have told us that even after nearly two decades on the job, they see men get two-year stints while they get two-week jobs.

So long as each woman who comes onto a construction site or enters the shop is seen as an exception, as someone who just doesn't belong, women will continue to experience deep frustration in the trades, and their numbers will remain small. The status quo is inherently discriminatory, and only with concerted action will it change.

### **Rebuilding Lower Manhattan: Changing the Face of Construction**

Against this background, the influx of billions of federal tax dollars into New York for the rebuilding of Lower Manhattan poses a critical question: will you, as City officials, allow that money to be used to reinforce an existing, discriminatory employment structure? Or will you use it to open new opportunities and careers for thousands of women – to change the face of construction in this City? Legal Momentum invites you to choose the latter course, and to be our partners in creating structures that will ensure fairness and equal opportunity in the rebuilding of Lower Manhattan.

What will it take to truly open these employment opportunities for women? Let me begin with what has not been done. Since 1970, federal Executive Order 11246 has explicitly prohibited companies that have construction contracts with the federal government from discriminating on the basis of sex, and has required that such contractors make what are called good faith efforts to employ women for 6.9% of contract hours.

Enforcement of E.O. 11246 is up to the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor. But OFCCP has to be one of the most ineffective agencies in the entire federal bureaucracy, because women virtually never work anywhere near 6.9% of the hours on any federally funded construction project. We have taken an active interest in women's employment

on two major federal projects in downtown Brooklyn that are still under construction, the Post Office and the new federal courthouse. Cumulatively from October 1999 through March 2003, women had worked just 5% of the total hours on those projects – still short of a goal set more than thirty years ago.

The record of the major agencies that will issue contracts for the various Lower Manhattan transportation projects, the Port Authority of New York and New Jersey and the Metropolitan Transportation Authority, is even worse. Months ago, the Lower Manhattan Development Corporation arranged for us to meet equal employment officials from these two agencies. They didn't come to the meeting with any numbers on women's employment in the construction they fund, and follow-up meetings made the reason for that clear. We learned that in 2001, the Port Authority – which writes the same 6.9% best-efforts requirement for women's employment into all of its construction contracts – in fact employed women for just one percent of skilled trades hours and two percent of unskilled trades hours through those contracts. The MTA assured us that it, too, requires contractors to make efforts to integrate their workforces by sex and race. However, we learned that the MTA does not even keep track of the hours actually worked by women or minorities on the contracts that it lets. All it does is require those contractors to file reports with the federal government. The MTA never even looks at the numbers.

These two agencies, the Port Authority and the MTA, will, with the State Department of Transportation, administer more than \$4.5 billion of federal transit reconstruction aid that is on its way to New York City. Clearly, they cannot be the only ones in charge of ensuring that money does not go to discriminate. Merely relying on the "good faith" and "best efforts" of contractors to afford equal opportunity will only continue to result in worksites almost entirely devoid of women. The City of New York needs to take the affirmative steps that have made other large federally funded projects models of

equal opportunity for women. Only by taking these steps will we crack the wall of discrimination that has prevented women from making their full contribution to building New York.

### **Strategies for Monitoring Equal Opportunity in the Building Trades in Lower Manhattan Building Sites**

There are three primary measures that will ensure New York City-area tradeswomen their right to participate fully in the rebuilding of Lower Manhattan. First, all work contracts must contain enforceable equal opportunity clauses; second, an Independent Monitor must be an integral part of the project; and third, an on-site pre-apprenticeship program should be established to ensure that there will be qualified tradeswomen to be hired in the numbers necessary to achieve a critical mass. We invite you to work with us to implement these measures.

Contractual Equal Opportunity Clauses: It is critical that all construction contracts and subcontracts include enforceable equal opportunity clauses. Examples found effective in other locations include agreements to:

- cooperate with an independent equal opportunity monitor appointed by the project developer to increase minority and women trade hours worked;
- report all hours worked to the monitor on a monthly basis, with a provision that monthly invoices will not be paid if the report is not made; and
- take clearly defined steps to employ women for a given percentage of the work hours.

The contracting agencies should also require each bidder to submit a plan with its bid explaining how it will meet its employment goals.

Independent Monitor: Independent monitors have been used effectively to increase the participation of tradeswomen at publicly funded construction sites around the country. An equal opportunity monitor helps contractors to meet their contractual hiring goals by assisting them in locating

qualified targeted workers, establishing working procedures in compliance with government regulations and contractual stipulations, developing antidiscrimination and anti-harassment policies, training front-line supervisors, and mediating problems between employees and employers. The monitor also ensures nondiscriminatory working conditions for tradespeople by scrutinizing and improving workplace conditions that affect retention and career growth, such as training disparities or sexual or racial harassment. Finally, the monitor serves the public by collecting and reporting employment data regarding both hiring and retention, an important element of accountability. Large publicly funded projects in Cleveland, Portland (Maine), Oakland, and Milwaukee provide excellent models in which women worked far more than the usual 2-3% of all labor hours, and Legal Momentum looks forward to working with officials at all levels of government to adapt these models to the rebuilding downtown.

In addition to providing services to contractors and tradespeople already on the work site, the monitor will also act as a liaison with sources of qualified workers in New York City-emphasizing the (overlapping) categories of women, minority workers, and workers affected by the events of September 11, 2001. The monitor will perform outreach with local tradeswomen's groups and unions to communicate job opportunities to qualified community tradeswomen as they arise. The monitor will also work with organizations that run pre-apprenticeship programs to train women for the construction trades, technical high schools, and other job referral sites to coordinate a smooth flow of eligible women to particular projects for employment.

The rebuilding of Lower Manhattan is an enormous project, and effective monitoring will require staffing and a budget that is adequate to the challenge. This will include office space and computer resources located on the work site. Government must commit adequate funding to the monitor's office for the duration of the project. The creation of an independent equal employment opportunity monitor is critical for ensuring that all parties - government, developers, contractors, construction managers, and

unions - are held accountable for effective, inclusive, and nondiscriminatory practices. Only such an entity can ensure that rebuilding takes full advantage of New York's diverse workforce.

Pre-Apprenticeship Training: Unions control the apprenticeship training that is the foundation for eventual entry into a trade. Targeted pre-apprenticeship training prior to this stage can play a key role for women hoping to enter this pipeline, since sexual stereotyping often denies women the opportunities to gain the basic skills and knowledge that are expected for those who want to enter the trades. We urge the City and the agencies involved to work with Legal Momentum and other interested groups to create an on-site pre-apprenticeship program that will familiarize potential apprentices with Lower Manhattan construction sites and with the wide range of construction-related positions open there. The particular pre-apprentice skills taught at any given time can be targeted toward the particular trades and skills that will be needed as the project progresses. The program should include a childcare component to facilitate participation in the program by parents working on the site. To ensure a steady flow of new apprentices into the rebuilding efforts, there should be an agreement among contractors and unions to reserve a substantial number of the new apprenticeship slots to be created in Lower Manhattan for graduates of this pre-apprenticeship program.

### **Conclusion**

The rebuilding of Lower Manhattan creates an unprecedented opportunity for the City Council to work with advocates and government agencies in order to break what remains one of the most blatant and persistent forms of employment discrimination in the New York City workforce: the exclusion of women from the skilled trades. Your leadership is clearly needed and we hope you will work with us to remake an exclusionary industry into a model of truly equal opportunity.