



**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEE
ON WOMEN'S ISSUES**

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Oversight: Are There Enough Non-Traditional Employment Opportunities for Women in NYC?

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I am pleased to have this opportunity to address the Committee on Women's Issues on non-traditional employment opportunities for women. Since our founding in 1970, Legal Momentum has been a leader in establishing legal, legislative and educational strategies to secure equality and justice for women across the country. 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; and women's exclusion from non-traditional jobs. A list of current cases where we represent women who are fighting back against discrimination in non-traditional jobs is attached to the testimony I have submitted.

Equality Works

I am the project manager of Legal Momentum's Equality Works program. Equality Works advocates to get women recruited, trained, and hired for non-traditional jobs, and to end discrimination against women in these fields. I am also a member of the Mayor's Commission on Construction Opportunity. Non-traditional occupations generally offer high wages, generous benefits and flexible schedules and most do not require a college degree. These are highly desirable jobs – and they are currently far too difficult for women to get or to keep. My testimony today will focus on the pathways and stumbling blocks to opportunity for women in construction.

Women in Construction

The small number of tradeswomen in the field is due both to stereotypical cultural assumptions about women's work and entrenched discriminatory practices in the construction industry. This discrimination is typical of male dominated occupations and can and has been changed in some of those

occupations. The New York City Police Department is one success story. It was only 15-20 years ago when New York City was full of stories about pornography in police locker rooms, inaccessible bathrooms, male officers refusing to partner with women and similar stories. However, equal opportunity and fair workplace environment conditions were enforced and while the problems have not disappeared, the 2007 graduating class included 18% women. These changes can and should also occur in the construction industry to open more opportunities for women. A concerted effort is needed that includes addressing the education of young girls and women to combat long held stereotypes as well as taking measures to change the conditions that negatively impact the recruiting, training, hiring and retention of women in the trades.

These efforts include:

- Ensuring that recruiting efforts target women;
- Reviewing and changing training processes that negatively impact women;
- Instituting contractually enforceable equal opportunity provisions;
- Monitoring construction sites for fair employment practices; and
- Enforcing anti-discrimination policies and procedures.

Entering the Field– Do women want the job, Can they do the job?

Women's ability to perform these jobs and find great satisfaction in them was definitively proven 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 about 3% of the construction workforce. Widespread stereotypes persist. For instance, 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. This stereotype bears very little scrutiny, however: much of what is traditionally considered women's work, including nursing, waitressing, child care and factory work, is very physically demanding. But without question, there is a deep-seated prejudice against women's physical capabilities that contributes to their absence from the trades.

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 painted the insides of the portable toilets on his construction site black to address the problem of male construction workers drawing crude and demeaning caricatures of their female co-workers on the walls of portable toilets, another employed a worksite crew of laborers and painters to remove all such graffiti.

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

from women is that they simply cannot get work. Tradeswomen have told us that even after nearly two decades on the job, they see men get two-year stints while they still get offered 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.

Educating the Educators

The lack of opportunity for women in the trades often begins with cultural stereotypes reinforced through education and training, so it is imperative that "re" education is targeted to educators. While exposing boys and girls from a young age to women doing skilled trades jobs, both in real life and in stories and coloring books, is part of addressing these stereotypes, the growing need for construction labor dictates an immediate attention to middle and high school girls. Targeted outreach to seventh graders, their guidance counselors and their parents should be prioritized. Tradeswomen are an integral part of recruitment and should be meeting with school guidance counselors, parents and attending career fairs so that girls can see themselves in these occupations. Tradeswomen worked closely with Legal Momentum to ensure that girls were part of the Construction Trades Engineering and Architecture High School, launched as an initiative of the Mayor's Commission on Construction Opportunity. As a result, there were 25% girls in the schools' first ninth grade class, and 34% this year. Tradeswomen have also spoken to summer youth employment contractors at the Department of Youth and Community Development. Earlier this year, tradeswomen spent a morning with 9th graders at Queens Vocational

High School. As a result of that event, the skilled trades and related programs at that school have more girls in this year's 10th grade class than in the entire 10-12th grades last year. Institutionalizing targeted outreach to girls for career and technical programs in the trades across the city would significantly increase the number of girls and women interested in and ready for a career in the construction trades.

Workforce development and caseworkers also need to be educated. A 2001 study by the Institute for Women's Policy Research for Legal Momentum, *Working First But Working Poor*, found that mothers leaving welfare for work were commonly shunted into unstable low-paying jobs that did not sustain their families and held little opportunity for advancement. Both women and their caseworkers were unaware of what nontraditional occupations were available in their area and the advantages such occupations might offer them. The Governor, with the City's urging, recently vetoed legislation that would have ensured social services departments across the state informed women of opportunities in nontraditional areas. However, the City can still take the lead in making sure that caseworkers and workforce development professionals are aware of these career paths and actively advise women of them so that more women will have the opportunity to earn an economically sustainable wage.

The City also urgently needs more pathways leading to apprenticeships in the trades. More pre-apprenticeship programs, especially ones with ample time for people to complete their General Equivalency Diploma, are needed. Pre-apprenticeship programs are especially critical for women who may need time to become acquainted with construction terms, tools and rudimentary skills that young men are more often exposed to in the course of growing up.

Hiring and Retention on Construction Sites

Construction work is cyclical, dependent on building booms, infrastructure work on roads and bridges and on weather. The number of workers and available jobs are constantly changing. Most construction companies have “company men,” workers they keep with them from job to job. Other workers get their jobs in varying ways that depend on the agreements between their unions and the contractors. These agreements create different mechanisms for referring workers to contractors. Many allow a practice called shaping, wherein workers show up at active sites with their tools, ready to work, and try to get hired. There is little record keeping and even less enforcement to ensure that shapers are hired in an equitable manner. The small number of women working in construction, the cyclical nature of the work and the varying hiring and working agreements make goals, contractually enforceable equal opportunity provisions and monitoring imperative.

There are currently a variety of efforts underway to improve diversity on construction worksites. Many in the construction industry are very interested in ensuring equal opportunity, and in fact see it as absolutely critical for the industry’s survival, as large numbers of white male construction workers are reaching retirement age and their sons and nephews have obtained white-collar jobs rather than follow them into the trades. Many big construction companies employ monitors to promote minority and women’s business enterprise (MWBE) goals, and a handful employ monitors for workforce goals, as well. However the mechanisms to implement and enforce fair hiring and recruiting are not working. A particular problem is that often there is a single goal for women’s and minority workforce participation, which does not allow for monitoring women’s participation, often starkly lower than minority men’s.

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. In downtown Brooklyn, for instance, cumulatively from October 1999 through March 2003, women worked just 5% of the total hours on the Post Office and the new federal courthouse – still short of a goal set more than thirty years ago.

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 has assured us that it, too, requires contractors to make efforts to integrate their workforces by sex and race. However, we learned that the MTA did 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.

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 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 Equal Opportunity in the Building Trades

First, all work contracts must contain enforceable equal opportunity clauses; second, these must be enforced through on-site monitoring; and third, recruitment and training programs must be established to ensure that there will be qualified tradeswomen to be hired in the numbers necessary to achieve a change. 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:

- set high goals for women's employment on the site;
- cooperate with an independent equal opportunity monitor appointed by the project developer to aggressively recruit women workers, monitor the fairness of worksite conditions, and report to the public on contractors' performance on equal opportunity goals; and
- ensure that work environments are free of such forms of harassment as sexual images and graffiti, and that they provide separate, secure restroom and changing facilities for each sex.

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

Monitoring: 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.

Training: Department of Labor-approved apprenticeship training 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 sex 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 create better pathways to the trades including enhancing current programs in the City's Career and Technical Education High Schools and ensuring that non-traditional opportunities are part of workforce development referrals.

Conclusion

The New York City building boom 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.



Equality Works Program -- Recent and Current Cases, September 2007

Barometre v. L & L Painting Co., et al. (EEOC, filed 2006)

Legal Momentum filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination and retaliation claims on behalf of a female apprentice painter who was harassed in her union apprenticeship program and assaulted on the job; her assailant was retained, but our client was fired. Her EEOC charge names L & L Painting, District Council 9, and Local 28.

Client v. DeFoe Construction, et al. (EEOC, filed 2006)

Legal Momentum represents a 50-year-old laborer who was fired from the state-funded project repairing the Bronx-Queens Expressway. Our client was one of just two women on the site; when she was fired, she was told it was because “two girls” was too many. Her EEOC charge raises discrimination and retaliation claims against her former employer and her union, Local 731.

Genao v. Allied New York Servs., Inc., et al. (Index No. 19335/06, N.Y. Sup. Ct., Queens Co., filed Sept. 1, 2006)

Legal Momentum has filed suit in New York state court on behalf of Nattalia Genao, the only female mechanic at Allied New York Services, Inc., a company providing fueling services and fuel facility maintenance at JFK International Airport. The case alleges that Ms. Genao endured pervasive harassment at Allied's JFK worksite, culminating in an incident in which Ms. Genao's three foot tall standing toolbox was soaked in urine. Legal Momentum also represented Ms. Genao in EEOC proceedings against her union, which were resolved in early 2006.

Miller v. Conti Enterprises (EEOC, filed 2005)

Legal Momentum represents a woman laborer who tried, repeatedly and unsuccessfully, to be hired on the state-funded Route 9A/West Side Highway reconstruction project in lower Manhattan. The EEOC recently issued a determination finding “probable cause” to believe not only that the company had discriminated against Ms. Miller, but also that it had a pattern or practice of discriminating against women applicants generally. The EEOC is now attempting to resolve the case through conciliation.

Sellick v. Consolidated Edison Co. of New York (EEOC, filed 2007)

Legal Momentum represents Sharron Sellick, one of the few women mechanics with Con Ed's maintenance and construction services department. Her discrimination charge alleges that despite showcasing Ms. Sellick on its website as a “remarkable” employee, Con Ed denied her promotion three times in favor of less qualified men. In addition to raising discrimination and retaliation claims, Ms. Sellick allege that her experience reflects an overall pattern or practice of discrimination against women

at Con Ed.

Wedow and Kline v. City of Kansas City, Nos. 04-1443 & 04-1704 (8th Cir. Mar. 24, 2006)

In a victory for women in firefighting and other non-traditional jobs, the U.S. Court of Appeals for the Eighth Circuit ruled that a city's failure to provide properly-sized protective clothing and its failure to provide adequate restrooms, showers and private changing facilities in firehouses, constitute sex discrimination.

Welfare v. American Airlines (EEOC, filed 2006)

Legal Momentum, along with New York City attorney Deborah H. Karpatkin, represents Angie Welfare, a female Fleet Service Clerk working in American Airlines' Cargo Division at J.F.K. International Airport. Ms. Welfare's charge arises from American's "light duty" workplace policy. This policy forced Ms. Welfare to take an unpaid leave of absence in May 2006, approximately her eighth week of pregnancy. Ms. Welfare's EEOC charge alleges discrimination based on disability and pregnancy, as well as retaliation.