

# LEGAL MOMENTUM'S

## 2023-2024 Policy Action Agenda - National

Persistent discrimination, coupled with the deterioration of women's fundamental rights, ongoing impacts of the pandemic, and the rising cost of living, continue to undermine the wellbeing of women and their families. We are at a critical moment for gender justice, when lawmakers must take bold, urgent, and meaningful action to enact safeguards against gender, racial, and other forms of discrimination and to address longstanding structural inequities. Legal Momentum's 2023-2024 Action Agenda identifies 7 priorities areas for legislative advocacy in the coming year.

### ADVANCING PAY EQUITY THROUGH PAY TRANSPARENCY

Pay inequity persists in the United States, with women of color experiencing the largest pay gaps nationwide. Pay secrecy has long fostered pay inequity, concealing problematic pay disparities, perpetuating reliance on bias in salary setting, shielding employers from accountability, and disincentivizing implementation of more equitable pay schemes. We cannot achieve pay equity without pay transparency, starting by requiring all employers to disclose compensation ranges, benefits, and job descriptions upfront in job postings and to existing employees. Building on our crucial victories in New York City and New York State, we must continue the momentum in other states and localities, and at the federal level, to enact broad and comprehensive pay transparency legislation.

#### Priorities on Pay Transparency:

- Supporting efforts to strengthen existing pay transparency laws and to enact similar legislation nationwide. See Legal Momentum's New Publication: [Transparency Pays: Guidance on Enacting Pay Transparency Legislation](#).
- Advocating for pay transparency legislation and regulatory action at the federal level.

### INCREASING WOMEN'S ECONOMIC SECURITY BY RECOGNIZING THE VALUE OF THEIR WORK

Women, especially women of color, are overrepresented in the low-wage workforce, with many carrying out essential, difficult, and skilled jobs that are devalued precisely because they are considered "women's work." Many of these jobs are paid at minimum wage, or at a lower tipped or piece rate wage, while positions that exceed minimum wage still fall short of a living wage, meaning women are disproportionately making poverty wages. Thus, as the cost of living rises and wages remain stagnant, women, especially single-mother led households, face higher levels of economic insecurity and are vulnerable to a host of abuses, including wage theft, sexual harassment, retaliation, and gender-based violence.

To address these systemic inequities that are grounded in gender and racial discrimination, it is essential that we raise and index the minimum wage with the goal of mandating a living wage; increase pay and eliminate exploitation in female-dominated sectors such as the garment industry; establish meaningful protections against wage theft, which is prevalent in female-dominated sectors; and provide necessary supports to ensure that women are not trapped in cycles of economic insecurity. These efforts must accompany a broad push to establish universal childcare. These are some of the most impactful steps policymakers can take towards reducing poverty and economic insecurity for women and addressing long-term structural inequities, including the gender wage gap.

#### Priorities on Women's Economic Security:

- Passing the Raise the Wage Act (S.2488 / H.R. 4889), which would increase the minimum wage to \$17/hour, index it thereafter, and eliminate the subminimum wage.
- Supporting state and local measures to increase and index the minimum wage.
- Passing the FABRIC Act (S.2817 / H.R. 4889), which would enforce minimum wage standards and address rampant wage theft in the female dominated garment industry and increase transparency and accountability among manufacturers and brands.
- Passing the Wage Theft Prevention and Wage Recovery Act (S.2769 / H.R. 5402), which would strengthen protections and enforcement against wage theft under the Fair Labor Standards Act.
- Supporting state and local measures to address wage theft.

## ENSURING EQUALITY UNDER STATE AND FEDERAL CONSTITUTIONS

Gender equality should be a fundamental right, yet our federal and most state constitutions lack explicit protections based on gender. At a time when women's fundamental rights to bodily autonomy and reproductive freedom have been eroded at the federal and state levels, it is essential that our federal and state constitutions incorporate express protections against gender discrimination. The absence of express protections has made it difficult to safeguard basic rights and to raise constitutional challenges to basic forms of gender discrimination, including pregnancy discrimination. Thus, efforts to enact an Equal Rights Amendment ("ERA") under our federal Constitution, as well as state efforts to enact similar or even more inclusive protections that expressly cover gender are critical to fighting discrimination and achieving gender equality, including reproductive freedom.

#### Priorities on Constitutional Equality:

- Supporting state effort to enact inclusive Equal Rights Amendments in New York State and beyond.
- Enacting a federal Equal Rights Amendment.

## ENDING NONCONSENSUAL DRUG TESTING AND REPORTING OF PREGNANT PATIENTS TO CPS

Pregnant patients, especially women of color, are being subjected to hospital and government surveillance with devastating consequences. Hospitals and healthcare providers around the country regularly perform drug tests on pregnant patients without their knowledge or consent during routine prenatal care. Many patients who test positive for a controlled substance, or even legal substances or prescribed medications, are reported to Child Protective Services for child abuse or maltreatment. Reporting occurs when a positive drug test identifies exposure in utero when there is no existing child within the legal purview of Child Protective Services.

The practice of "testing and reporting" does not provide health benefits to mothers and newborns and is discriminatory, in that it targets women and pregnant patients, and it robs patients of their bodily autonomy, violates their privacy rights, and can have devastating and long-lasting effects on pregnant patients and their families. Based on these tests, new parents are denied the right to bond with their newborn children or make critical decisions like whether to breastfeed their babies despite medical recommendations not to deny such opportunities. Reporting to Child Protective Services leads to policing and surveillance of pregnant patients and their families during and after pregnancy, often discouraging women from seeking healthcare and disproportionately harming women of color who face higher rates of reporting and already face higher rates of maternal mortality. Legislation must be enacted to stop healthcare providers from drug testing pregnant patients without clear oral and written consent and to end the reporting of pregnant patients to child protective services based on positive drug testing pregnant women and newborns.

#### Priorities on Reproductive Health and Drug Testing:

- Supporting state legislation and efforts to prohibit nonconsensual drug-testing and reporting of pregnant patients to CPS for positive drug tests during pregnancy.
- Supporting efforts to seek clarity under federal legislation, like the Child Abuse Prevention and Treatment Act (CAPTA), and applicable regulations.

### ENSURING ENFORCEMENT OF TITLE IX FOR ALL STUDENTS

Title IX's promise of an education free from sex discrimination will only be fully realized by regulations and laws that hold it to that promise. In addition to robust implementing regulations, state and federal law must strengthen schools' obligations to prevent and respond to gender-based harassment and violence, require effective notice requirements, ensure that survivors are not subjected to school discipline, and increase transparency about compliance. Moreover, the constant attack on LGBTQ+ students' ability to access their education, student athletics and extracurricular activities in a safe, equitable and dignified way must be interrupted. Instead, laws and regulations must make clear that Title IX's intent and purpose protects LGBTQ+ students' rights equally.

#### Priorities on Title IX:

- Advocating for the urgent issuance of strong and meaningful Title IX implementing regulations by the Department of Education.

### EXPANDING EMPLOYMENT & ECONOMIC PROTECTIONS FOR SURVIVORS

Domestic violence, sexual assault, and stalking have significant, often debilitating, impacts on a survivor's economic security. Often, their employment is affected by the abuse at a time when their job is critical to achieving and maintaining their safety and that of their families. Laws establishing workplace protections for survivors and other economic supports are essential to aiding survivors in maintaining financial security. State and federal protections must prohibit discrimination on the basis of one's status as a survivor, require employers to make reasonable accommodations for survivors, provide paid leave to attend to needs in the aftermath of abuse, and ensure access to unemployment benefits when remaining in their employment is unsafe. States and the federal government should consider broader forms of financial assistance, such as cash assistance and debt relief, to support survivors economically as they escape abuse. Not enough states have these protections, and existing protections often have gaps and weak enforcement. When protections do exist, survivors and their employers often do not know about them, so laws, states, and the federal government must also promote compliance and enforcement of these protections and train employers. Survivors of sexual abuse and harassment must also have the freedom to file employment discrimination claims absent retaliatory threats, including defamation suits.

#### Priorities on Survivor Workplace/Economic Protections:

- Leading efforts to enact federal workplace protections and economic supports, including cash assistance for survivors.
- Supporting state efforts to enact comprehensive workplace protections for survivors.
- Challenging the use of defamation suits as a retaliatory measure at the state and federal levels.

## CLOSING GAPS IN PROTECTION FOR IMMIGRANT WOMEN WORKERS

Immigrant women, who provide some of the most essential services and are key contributors to our economy, are also some of the most vulnerable workers. Based on their immigration status and economic insecurity, immigrant women are over-represented in exploitative industries where they work long hours in demanding and difficult jobs, are subject to unacceptable working conditions, and are grossly underpaid. Meanwhile, immigrant women workers must subsist under these conditions with little to no state support. To address these exploitative practices, we must close gaps in protection that exclude our immigrant workforce and address the unique burdens and barriers faced by immigrant women workers. In addition to challenging the underlying practices, immigrant women workers must have access to equal rights under our labor and anti-discrimination laws and basic supports like childcare, sick time, safe working conditions, meaningful protections against retaliation, and unemployment insurance.

### Priorities to Uplift Immigrant Women:

- Supporting state and federal efforts to expand legal protections and supports like childcare and unemployment insurance for immigrant workers.