

LEGAL MOMENTUM'S

2023-2024 Policy Action Agenda - New York

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 New York Action Agenda identifies 7 priorities for the upcoming legislative session in New York State.

ADVANCING PAY EQUITY THROUGH PAY TRANSPARENCY

Pay inequity persists in New York State, with women of color experiencing the largest pay gaps. 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. Recognizing that we cannot achieve pay equity without pay transparency, Legal Momentum worked in coalition to help enact Local Law 32 in New York City and Section 194-b of the New York State Labor Law, both of which require employers with four or more employees to disclose good faith pay ranges upfront in advertisements for jobs, promotions, or transfer opportunities. But pay transparency must go further to require broader disclosures, including disclosures to existing employees. Going forward, our goal is to strengthen and build upon these critical protections.

Priorities on Pay Transparency:

- Securing meaningful enforcement and compliance with NYS pay transparency provisions by advocating for strong regulations. [See our joint Public Comments on the NYS Department of Labor's Proposed Rule on Pay Transparency in Job Advertisements.](#)
- Strengthening New York City and State's pay transparency provisions through proposed amendments that would require disclosure of broader compensation and benefits, mandate disclosure of pay ranges to existing employees, and establish parameters to better define what constitutes a "good faith" pay range to prevent employers from posting overbroad ranges or paying outside the disclosed range.
- Introducing legislation that would require larger New York employers to report pay data alongside demographic data, including gender, race, and ethnicity in order to encourage employers to identify and address problematic disparities, enhance enforcement, and advance accountability.

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 like homecare and childcare; 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. While New York State passed legislation raising the minimum wage and indexing it to inflation last year, more is required to ensure that all New York workers earn a living wage.

Priorities on Women’s Economic Security:

- Taking steps to strengthen our minimum wage law by (1) enacting legislation to remove the “off-ramps” in New York Labor Law § 652(1-b)(d), which would prevent the minimum wage from increasing with inflation under certain conditions, and (2) exploring avenues to increase the minimum wage locally.
- Enacting legislation (S5567/A1710) to eliminate the lower tipped wage in the restaurant industry.
- Enacting the Securing Wages Earned Against Theft (SWEAT) Act (S1977A/A46), which would expand liability, liens, and redress for wage theft violations in New York State, and supporting other state and local measures to address the underenforcement of wage theft, which is particularly harmful to the disproportionate number of vulnerable women in lower-wage work.
- Enacting legislation that would increase wages, benefits, and protections in undervalued female-dominated industries, including the
 - Fair Pay for Home Care Act (S3189), which would increase the base wage for home care workers who are predominantly women of color;
 - Just Pay for Human Services Workers Act (S4930/A1644A), which would increase base pay for human services workers who are predominantly women of color;
 - Paid Sick Leave for Domestic Workers (S1801/A1129), which would mandate sick days for domestic workers who are predominantly women of color;
 - Nail Salon Minimum Council Act (S1800/A378), which would bring nail salon workers and employers together to develop and submit recommendations on establishing regulations governing wages, working conditions, and other standards in the nail salon industry.

ENSURING EQUALITY UNDER STATE AND FEDERAL CONSTITUTIONS

Gender equality should be a fundamental right, yet the New York State Constitution lacks explicit protections based on gender. At a time when women’s fundamental rights to bodily autonomy and reproductive freedom have been eroded across the country, it is essential that our state constitution incorporates broad and express protections against gender discrimination. The absence of these protections has made it difficult to safeguard basic rights, including reproductive freedom, 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 state constitution that expressly covers sex, gender, gender expression, sexual orientation, age, disability, abortion, and other pregnancy outcomes is critical to fighting discrimination and achieving gender equality, including reproductive freedom.

Priorities on Constitutional Equality:

- Building momentum and legal education to enact an inclusive Equal Rights Amendments in New York State through ballot referendum in 2024.

ENDING NONCONSENSUAL DRUG TESTING AND REPORTING OF PREGNANT PATIENTS TO CPS

Pregnant patients, especially women of color, are being subjected to hospital and state surveillance with devastating consequences. Hospitals and healthcare providers in New York 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 the 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 of pregnant women and newborns.

Priorities on Reproductive Health and Drug Testing:

- Enacting S320B/A109 to require informed consent to drug test pregnant or postpartum patients and to mandate that testing be based on medical necessity.
- Ending testing and reporting practices at the state and local level, which discriminate against women, particularly women of color.
- Obtaining demographic race and gender-based data regarding the state’s test and report practice to identify gender and racial disparities.

ENSURING ENFORCEMENT OF TITLE IX FOR ALL STUDENTS

Title IX's promise of an education free from sex discrimination will only be realized by regulations and laws that hold it to that promise. In addition to robust implementing regulations, state 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 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. States must also ensure that students are educated about and aware of their rights under Title IX. Since 2017, Legal Momentum's Rights Now! peer education program for youth aged 16-24 has equipped and empowered students in New York City, especially young women with the knowledge to recognize and address sex-based discrimination and sexual harassment in relationships, online, and in schools.

Priorities on Title IX:

- Train a new cohort of peer educators to meaningfully engage students in conversations about Title IX and unhealthy patterns of behavior in their personal and professional lives.
- Enhance our training curriculum on Title IX protections by incorporating topics such as workplace rights and protections, strategies for preventing online sexual exploitation, safeguarding against online stalking and harassment, and remaining informed about Title IX protections from K-12 and through college.

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. New York State already has strong protections that prohibit discrimination for domestic violence victims, provide paid safe leave in certain circumstances, and afford access to unemployment insurance for survivors who have to leave their employment to escape abuse. But these protections can and should be stronger to broadly prohibit discrimination for all survivors and require employers to make reasonable accommodations (beyond leave) for survivors as defined by the survivor. New York State should also consider broader forms of financial assistance, such as cash assistance and debt relief, to support survivors economically as they escape abuse. When protections do exist, survivors and their employers often do not know about them, so the state 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:

- Introduce legislation to expand workplace protections to cover survivors of sex offenses and stalking, in addition to survivors of domestic violence, and to expand reasonable accommodation protections beyond leave to empower survivors to request the type of accommodation they need.
- Introduce legislation to require employers to include guidance on workplace protections for survivors in their mandatory sexual harassment prevention policies and training and to require the DOL to include such guidance in its model policy and training.
- Strengthen and enact S4493A to apply New York's anti-SLAPP law to defamation claims based on allegations of unlawful employment discrimination under federal, state, or local law, to ensure that survivors who speak out about workplace sexual harassment do not face retaliatory defamation lawsuits.

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 in New York State, are also some of the most vulnerable workers in our state. 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 protection under our labor and anti-discrimination laws and basic supports like childcare, sick time, safe working conditions, meaningful protections against retaliation, and access to unemployment insurance.

Priorities to Uplift Immigrant Women:

- Support efforts to extend childcare assistance to all children, regardless of immigration status.
- Enact the Unemployment Bridge Program (S3192/A4821), which would afford unemployment benefits regardless of immigration status.