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¹ See Wang, W., Parker, K., Taylor, P., *Breadwinner Moms*, PEW RESEARCH CENTER (May 29, 2013), <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>.

² See Cawthorne, A., & Alpert, M., *Labor Pains: Improving Employment and Economic Security for Pregnant Women and New Mothers*, Center for American Progress, (Aug. 3, 2009), <http://www.americanprogress.org/issues/women/report/2009/08/03/6599/labor-pains/>.

³ See Pew Research Center, Parenting in America (Dec. 17, 2015), <http://www.pewsocialtrends.org/2015/12/17/1-the-american-family-today/>.

February 1, 2019

Submitted via policy@cchr.nyc.gov

WRITTEN TESTIMONY BEFORE THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS ON PREGNANCY AND CAREGIVER DISCRIMINATION

Submitted by Seher Khawaja, Senior Attorney, Economic Empowerment on behalf of Legal Momentum, The Women's Legal Defense and Education Fund

Legal Momentum is the nation's oldest civil rights organization dedicated to advancing the rights of women and girls. Advocating on behalf of women's equality for over 40 years, we continue to harness the law to advance economic and personal security for all women and girls. Through our strategic policy advocacy, litigation, and educational initiatives, we challenge gender-based economic inequality, dismantle barriers to equal treatment, and secure access to equal opportunity for all women and girls.

Legal Momentum commends the New York City Commission on Human Rights "the Commission" for holding this hearing on the critical issues of pregnancy and caregiver discrimination, which unfortunately remain prevalent in our workplaces. We welcome the opportunity to submit this testimony, identifying key challenges and opportunities to enhance protections in these two areas.

Addressing and eliminating pregnancy and caregiver discrimination is critical to achieving gender equality and reducing poverty and inequality among women. Women are the sole or primary source of income in 40 percent of households with children in the United States.¹ Moreover, it is estimated that three-quarters of women entering the workforce will become pregnant at least once during their employment.² Labor force participation of mothers has increased significantly over time, and it now stands at approximately 70 percent.³ Looking more closely at these statistics, we can discern that not only are women working to support their families—but the overwhelming majority of them are returning to work as mothers and caregivers.



It should therefore not be surprising that discrimination on that basis of pregnancy or caregiver status undermines the wellbeing and economic security of too many women and their families. Despite the passage of critical federal, state, and local legislation, pregnant women and women with caregiving responsibilities are systematically denied raises, passed over for promotions, or fired, often because they requested adjustments to their schedules, pushed for work-life balance, requested a reasonable accommodation, or reported discrimination. Today, getting pregnant still threatens to drastically and negatively alter a woman's economic security or career trajectory, and the consequences of this discrimination can be financially debilitating.

Each individual case of discrimination is typically rooted in subtle underlying gender stereotypes. Employers often innately view pregnant women or women with young children as less dedicated, less dependable, and less competent. Requests for reasonable accommodations are viewed as an inconvenience. These discriminatory trends not only push women out of their jobs, they are reflected in women's earnings, which tend to go down fairly drastically after having children.⁴ Alternatively, men typically experience an increase in earnings after having children.⁵

Inherent in this dynamic is the gendered assumption that men are still the primary "breadwinners," expected to maintain the same hours and job responsibilities after having children, whereas women remain the primary "caregivers," which they must do without compensation and with expected losses in salary and job opportunity to account for any reduction in work hours or workplace flexibility. The fact that men, on average, continue to be paid more than women, contributes to this problematic dynamic.

Caregiver discrimination perpetuates a vicious cycle of gender stereotypes that no longer reflect realities for women or men. According to these antiquated stereotypes, men should work and women should stay home. Men should remain equally committed to their jobs and be paid more, whereas women should become the caregivers, spend less time at work, and be paid less. In perpetuating this cycle, employers create disincentives for men to take on more caregiving responsibilities and further lock women into the primary caregiver role. Ultimately, this approach hurts both men and women, preventing them from working towards a more equal distribution of work and caregiving responsibilities and opportunities.

These gendered conceptions of families and workers impact women from the moment they begin preparing for a family. One of the most notable challenges that pregnant women face in the workplace is lack of access to reasonable accommodations during and after pregnancy. While New York City's Human Rights Law has set important legislative precedents—requiring reasonable accommodations for pregnancy, childbirth, and related medical conditions, and prohibiting discrimination based on one's caregiver status—pregnant women in New York City continue to face substantial challenges in the workplace. This is due in large part to lack of employer awareness.

⁴ Claire Cain Miller, *The Gender Pay Gap is Largely Because of Motherhood*, N.Y. TIMES (May 5, 2017), <https://www.nytimes.com/2017/05/13/upshot/the-gender-pay-gap-is-largely-because-of-motherhood.html?module=inline>.

⁵ *Id.*

While many employers now assert a public-facing commitment to advancing gender equality, few have legitimately internalized these commitments in their workplace practices.

In New York City and across the country, we regularly speak with low-wage pregnant women working in jobs where they must (1) do physically demanding work, including lifting heavy boxes, equipment, or patients; (2) work in environments with hazardous conditions such as high temperatures; (3) stand for long periods during the course of the workday; and (4) work long shifts, exceeding 12 hours. These are conditions that are inherently taxing, but are particularly dangerous for pregnant women. Yet, many women in these positions still fear requesting accommodations. Those with the courage to do so are often given conclusory denials, ignored, or are forced to wait months before receiving a response to their requests.

For example, one of our clients was told by her medical provider that she could no longer lift more than 20 pounds because of her high-risk pregnancy. She was only in her second trimester. When she informed the hospital where she worked, she was told that they could not accommodate her lifting restriction but she could go on unpaid leave and return after her pregnancy. When she followed-up with a request for a temporary transfer to another position that did not require heavy lifting, she was eventually told that she had been put on “a list” and was forced to go on unpaid leave while she waited. Months went by before another position was identified, one which would require her to give up her union benefits with no assurance that she could return to her original unionized position. In short, while preparing for a family, she had to stop working, lost pay, and was forced to choose between maintain a salary and maintaining a better future job with union protections.

Under the predominant workplace culture, employers’ knee-jerk reaction is to deny a request for a reasonable accommodation without sincerely considering the feasibility of the request or practical alternatives. The increasingly popular option of unpaid leave is an easy way for an employer to offer something without having to do anything. Pregnant workers, who generally have little to no internal information about available options, have little leverage to push back when an accommodation is flatly denied or when they are put on perpetual hold.

As a result, we see pregnant workers continuing to work, forced to risk their health and pregnancy to maintain their paycheck. In some of these cases, continued work negatively impacts a woman’s health and job performance and she may end up losing everything: the pregnancy and her job. Alternatively, we see pregnant workers forced to go on unpaid leave without health insurance, which can have equally devastating long-term consequences. In such scenarios, women often expend all available leave before their child is born. They then must choose between losing their jobs or returning to work immediately after giving birth.

Moreover, although a variety of critical leave options now exist in New York City, including short-term disability, paid family leave, leave under the federal Family and Medical Leave Act, and employer leave policies, each form of leave offers a complex and divergent set of benefits, requirements, and exceptions. This complicated scheme makes it nearly impossible for most women to independently identify an optimal leave strategy. Efforts need to be made to streamline, simplify, and coordinate the ways in which these different leave options interact. For example, women who

need to take extended leave should not be in the position of determining how best to stagger or overlay paid short-term disability leave without job protection and unpaid FMLA leave with job protection. The Commission should explore ways to simplify these leave determinations and provide much needed guidance to women forced to navigate these various options.

In conclusion, despite the passage of critical legal protections in New York City, many employers are still unaware of their legal obligations, construe their obligation narrowly, or consciously shirk their obligations, capitalizing on their employees' known vulnerabilities. To address this ongoing problem, the Commission should convene a task force, which should include employers and employees in both low-wage and physically demanding industries, to assess needs for and challenges to providing reasonable accommodations with the goal of identifying practical solutions. Findings should be incorporated into employee-centered educational materials and employer-centered guidance that not only outlines legal obligations but provides practical guidance, with examples, on how to work with pregnant employees to identify workable reasonable accommodations.

We are making critical progress in strengthening legal protections. Meanwhile, we must work together to improve employers' legal compliance and awareness. Legal Momentum would be happy to assist the Commission in these efforts.