

Carol A. Baldwin Moody, *President and CEO*

BOARD OF DIRECTORS

Chair: G. Elaine Wood
Duff & Phelps, LLC

First Vice Chair: Meena Elliott
Extreme Networks, Inc.

Vice Chair: Robert M. Kaufman
Proskauer Rose LLP

Vice Chair: Amy Dorn Kopelan
Bedlam Productions, Inc.

Vice Chair: Deborah L. Rhode
Stanford Law School

Vice Chair: Jay W. Waks
American Kennel Club

Vice Chair: Laura A. Wilkinson
PayPal Inc.

General Counsel: Beth L. Kaufman+
Schoeman Uptide Kaufman & Gerber LLP

Secretary: Eileen Simon
Mastercard

Treasurer: Susan B. Lindenauer
The Legal Aid Society (retired)

Esha Bandyopadhyay
Fish & Richardson PC

Dede Thompson Bartlett
*Woodrow Wilson Visiting Fellow
Davenport University*

Glynnia Christian
Orrick, Herrington & Sutcliffe, LLP

Ethan Cohen-Cole, PhD, MPA, MA
Vega Economics

Kim Gandy
*National Network to End Domestic Violence
(Past President & CEO)*

Vilja B. Hayes
Hughes Hubbard & Reed LLP

Matthew S. Kahn
Gibson, Dunn & Crutcher LLP

Amy S. Leder
Holland & Knight LLP

Lori B. Leskin
Arnold Porter Kaye Scholer LLP

Stephanie A. Sheridan
Steptoe & Johnson LLP

Karen E. Silverman
Latham & Watkins LLP

Loria B. Yeadon
YMCA of Greater Seattle

HONORARY DIRECTORS

Muriel Fox, Chair

Barbara M. Cox

Etta Froio
Women's Wear Daily (retired)

Stephanie George
Fairchild Fashion Media Inc.

Ralph I. Knowles, Jr. (deceased)
*Doffermire Shields Canfield
& Knowles LLC*

Michele Coleman Mayes
New York Public Library

Lisa Specht
Manatt, Phelps & Phillips, LLP

+Non-voting Board Officer

*Organizational affiliations for
purposes of identification only.

LEGALMOMENTUM®

The Women's Legal Defense and Education Fund

September 23, 2019

WRITTEN TESTIMONY ON PAY EQUITY BEFORE THE NEW YORK CITY COMMISSION ON GENDER EQUITY, THE COMMISSION ON HUMAN RIGHTS, AND THE DEPARTMENT OF CONSUMER AND WORKER PROTECTION

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

Written Testimony Submitted via genderequity@cityhall.nyc.

Legal Momentum, The Women's Legal Defense and Education Fund 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 almost 50 years, we continue to use strategic policy advocacy, litigation, and education to challenge gender-based economic inequality and secure access to equal opportunity for all women and girls.

We are grateful to the Commission on Gender Equity, the Commission on Human Rights, and the Department of Consumer and Worker Protection for convening this critical panel on pay equity, and we applaud you for your pioneering work tackling gender inequality in New York City in a proactive yet thoughtful way—an approach that stands out as a national model.

Introduction

To start, it is worth noting that there has been a significant reduction in the gender-wage gap since the 1950's, which can be attributed to multiple factors, including enforcement of equal pay laws, increased access to reproductive health care, and to women earning higher levels of education and increasing their labor market participation.¹ That being said, progress has stagnated and gender-based pay inequity remains prevalent in our workplaces, particularly for women of color.

Today, women at all education levels and in nearly all occupations are still impacted by the wage gap from the moment they enter the work force. Women are paid less over time, expected to care for children and family members, and financially penalized for taking on this role. The cumulative impact means that the gap persists throughout a

¹ Francine D. Blau & Lawrence M. Khan, *The Gender Wage Gap: Extent, Trends, and Explanations*, IZA DP No. 9656, The Institute for the Study of Labor 3-4, 11-12 (Jan. 2016).



woman's career, ultimately leaving more women with less retirement income² and leaving more women in poverty.³

For too long, women across the country have been grossly undervalued. If we are to change this reality, we must take a multipronged and multifaceted approach that looks beyond equal pay for equal work and attempts to address widespread and systemic gender-based inequities. Legal Momentum's Women Valued Initiative does just this, looking beyond the issue before us to identify root causes and to provide comprehensive support. Every time a girl is discouraged from studying science, a woman is denied the ability to make decisions about her own reproduction, a woman is forced to take unpaid time off due to pregnancy complications, or a woman is viewed as less dedicated because she must take time off from work to care for a sick family member, our long march towards pay equity stalls.

Applying this multifaceted lens, Legal Momentum's written testimony will highlight key contributors to inequity, progress we have made so far, existing challenges, and recommendations for addressing problematic gaps that remain.

I. Gender Discrimination

While there are a host of systemic underlying trends driving the wage gap between men and women, research demonstrates that after accounting for factors such as experience, industry, and occupation, the remaining 35.4 percent of the gap can be attributed to discrimination.⁴ A 2015 study concluded that women can be three times more likely than men to be passed over on an assignment, promotion, or wage increase as a result of their gender.⁵ Not only are women passed over or pushed into lower paying work, research has also shown that the entry of a large number of women into a male-dominated field has the effect of depressing wages in that field.⁶

The problem is compounded by racial discrimination, and nowhere is that more clear than in New York, where despite overall advances in closing the gap, Black women earn a mere 66 cents for every dollar earned by a white non-Hispanic man. Indeed, this figure falls below the national average, to 57 cents if you are a Black woman working in New York City.⁷ This is unacceptable.

² Nat'l Women's Law Center, *The Wage Gap: The Who, How, Why, and What to Do 2* (2017), <https://nwlc.org/wp-content/uploads/2016/09/The-Wage-Gap-The-Who-How-Why-and-What-to-Do-2017.pdf>.

³ Meika Berlan & Morgan Harwood, Nat'l Women's Law Ctr., *National Snapshot: Poverty Among Women and Families*, 2018 (Sept. 2018), <https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf>.

⁴ Francine D. Blau & Lawrence M. Khan, *The Gender Wage Gap: Extent, Trends, and Explanations*, The Institute for the Study of Labor 73 (Jan. 2016).

⁵ Lean In & McKinsey & Company, *Women in the Workplace 2015* 13 (2015), <https://womenintheworkplace.com/2015>.

⁶ Asaf Levanon, Paula England & Paul Allison, *Occupational Feminization and Pay: Assessing Casual Dynamics Using 1950-2000 U.S. Census Data*, SOCIAL FORCES 88(2) (Dec. 2009).

⁷ Scott M. Stringer, N.Y.C. Comptroller's office, *Inside the Gender Wage Gap, Part 1: Earnings of Black Women in New York City* 3, 5 (Aug. 2018); <https://comptroller.nyc.gov/wp-content/uploads/documents/BW-Equal-Pay-Day.pdf>.

A. Limitations of Federal Law

Federal protections have fallen short of providing a realistic avenue for recourse. Unrealistic and insufficient legal and administrative filing deadlines mean that women often miss an opportunity to file a complaint or forgo meaningful damages by the time they become aware of a pay differential or recognize that the discrepancy was unjust. The stringent “equal pay for equal work” standard has meant that many claims are thrown out because many jobs vary in some respect even if the variance is minimal. And the liberal set of defenses that employers can call upon to justify a pay differential make it almost impossible for women to prevail in court. Moreover, most women simply do not know that they are being discriminated against. Employers have historically used female applicants' depressed salaries to pay them less and capitalized on the lack of pay transparency, often prohibiting employees from discussing salary, to perpetuate unfair pay practices.

B. Legislative Advances in New York

In New York, noteworthy steps have been taken to actively tackle many of these problems. Legal filing deadlines have been extended, the stringent equal pay standard has been relaxed, damages have been increased, and notably, employer defenses have been narrowed and curtailed.⁸ Employers in New York can no longer prohibit employees from inquiring about, discussing, or disclosing wage information.⁹ And in 2017, New York City led the way in establishing a critical new law prohibiting employers in New York City from inquiring about or relying upon an applicant's salary history in determining the applicant's overall compensation.¹⁰ This critical piece of legislation paved the way for New York State to enact similar protections, which go into effect as of January 6, 2020.

These reforms have had an impact. Through our work, we have already seen first-hand how the laws are working and benefiting our clients. One of our clients worked for a progressive tech company, which had publically proclaimed its commitment to equal pay. When she learned that she was making \$15,000 less per year than her male colleague, despite having the same title and job classification and doing the same job, she spoke with her employer. Unsurprisingly, her employer concluded that the pay differential was justified, claiming our client had less experience than her male colleague. It was particularly insulting that the company had strategically hired a women in a male dominated job classification, capitalized on her gender to advance the company's public-facing image of diversity, and then boldly asserted that she deserved less pay because she had less experience on a job where women have been traditionally excluded and thus denied the opportunity to acquire equivalent experience.

In representing her, we relied upon the 2015 amendments to New York's Equal Pay act, which created an important safeguard that essentially provides that a defense will not stand if the justification has a disparate impact on the basis of sex that could have been avoided through alternative business practices that the employer did not adopt. We were able to rely

⁸ N.Y. Labor Law § 194.

⁹ N.Y. Labor Law § 194.

¹⁰ N.Y. Admin. Code § 8-107(25).

on the disparate impact factor to successfully negotiate a settlement for our client to ensure that she was made whole.

Similarly, when one of our clients approached her employer about the reasons for the sizable discrepancy between her salary and her male colleague's salary, one of her employer's two rationales was that her male colleague had a higher prior salary and was able to leverage it to negotiate a higher salary in his current role. Once Legal Momentum intervened, we invoked New York City's salary history ban, making clear that although the law was not yet in effect at the time, it reflected the future trajectory of what constitutes a discriminatory pay practice. The employer promptly abandoned that defense and engaged in meaningful negotiations that ultimately brought our client to pay parity.

We cannot stress the importance of these legislative developments. Yet as we are making important progress, we also know that too many women are not aware of their rights, are not represented by attorneys, and are rightly reluctant to even raise issues with their employers due to the realistic risk of retaliation. At the same time, employers, big and small, are not well versed on their obligations. As a result, too many women are still being left behind. To address existing gaps, there are critical steps that the city can take towards enacting additional legal protections and educating employees and employers alike about their rights and obligations. We need to engage in widespread worker outreach, meeting women in their communities through channels they trust.

C. Policy Recommendations

To ensure pay equity, we need to enact laws that drive pay transparency so that women have a realistic opportunity to address discriminatory pay disparities. In light of ongoing uncertainty about federal pay data reporting, the City should contemplate legislation that requires larger employers to collect data on diversity and compensation, including demographic data on gender, race, and ethnicity, and it should establish a reporting mechanism to collect this data. To do so, the City should convene a task force of experts, including employers who have enacted pay data reporting schemes, employees who have experienced pay discrimination, and other experts, to develop an effective reporting mechanism. The City and State should also enact legislation to require employers to disclose hourly or salary compensation, or a range of such compensation, in postings for job openings. Requiring employers to provide this information upfront increases transparency and encourages fairness.

In non-traditional industries, in which women have typically been excluded and thus denied opportunities to acquire equivalent experience, it's essential that employers are forced to rethink the role that "experience" plays in setting salary. Public education can play an important role in pushing employers to rethink antiquated practices.

When we pass strong laws, we need to engage in widespread worker outreach to educate employees about their rights. Despite Legal Momentum's longstanding work to enact stronger legal protections for women, we regularly find that women calling our Helpline are unaware of their rights, especially with respect to newly adopted legislation. Moreover, under NYS's equal pay law, the Department of Labor (DOL) is tasked with receiving complaints; however the DOL website provides no clear guidance on how to file such a

complaint. Employees must therefore have clear and accessible guidance on what their rights are, how to access reporting mechanisms, and how to file complaints.

Employer outreach and education is equally critical and should go beyond the law. In our settlement negotiations, Legal Momentum has been successful in convincing companies to implement institutional reforms, including investing in software to collect and compile data on diversity and compensation, conducting annual pay parity audits and analyses using gender data, and hiring staff to monitor pay parity and address problems. Employer collection of data on diversity and compensation and internal pay auditing and monitoring based on this data should become the norm. In fact, many employers are moving in this direction. What is clear, however, is that a large number of employers, particularly smaller employers, need more guidance and resources on how to implement these best practices. Here, the State and the City can play a critical role to provide this essential guidance on how to comply with applicable laws and how to implement best practices.

II. Occupational Segregation

Although it has long been well-understood that systemic discrimination has resulted in occupational segregation, women are still underrepresented in high wage jobs and overrepresented in low-wage occupations, including domestic work, nursing, teaching, home health, hospitality work, and the garment industry. While men are still more likely to work in blue collar higher paying jobs, such as construction, production, or transportation, women are still more concentrated in lower paying office and administrative support positions in these industries.¹¹

A. The Problem in New York City

The City's workforce is just one example. While more men work in higher paying jobs including agencies that focus on construction, project management, and regulatory enforcement, women disproportionately fill traditionally female-dominated roles that revolve around education, childcare, and the provision of social services, where the average salary is \$10,000 less.¹²

B. Policy Recommendations

The City must be more proactive about moving women into higher paying occupations. As a start, this requires substantial investment in outreach and training programs to place women in high-demand occupations where salaries are higher. This also requires outreach and training to ensure employers are actively recruiting and retaining women in these fields. Meanwhile, we need to work towards increasing salaries in occupations where women already work, including in early childhood education.

¹¹ Carmen DeNavas-Walt & Bernadette Proctor, U.S. Census Bureau, *Income and Poverty in the United States: 2014, Current Population 6* (Table 1) (2015).

¹² Leticia James, N.Y.C. Public Advocate's Office, *Policy and Investigative Report: Tipping the Scales, Wage and Hiring Inequity in New York City Agencies* 3 (March 2018).

To effectively address occupational segregation, we must also overhaul the way we assign value to work. Specifically, the way we assign pay scales to job classifications should be based on standards that seek to remedy and reverse systemic inequities. The doctrine of equal pay for work of comparable worth has long sought to establish a more fair and equitable compensation scheme that correlates compensation across job categories to skill, education, and responsibilities. Although implementation of this doctrine has proven challenging, it is time that we invest in developing a comparable worth system that is effective, practical, and consistent. In light of persistent occupational segregation within New York City's own agencies, the City has an important opportunity to lead the way in exploring a comparable worth scheme in classifying positions within its agencies.

III. Pregnancy and Caregiving Penalties

As a result of pregnancy and caregiving responsibilities, women are more likely to experience workplace interruptions that negatively impact their earning potential or undermine their ability to remain in the workforce.¹³ Because women are more likely to take on caregiving when making decisions about work, they are more likely to take unpaid leave to care for a new child; switch to a lower paying job that affords greater flexibility or fewer work hours; or withdraw from the labor force after having a child, especially since childcare costs often exceed income.

In addition to making these sacrifices, women face persistent discriminatory attitudes. 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 request adjustments to their schedules, push for work-life balance, request a reasonable accommodation, or report discrimination. Today, having a child 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.

Studies have revealed that mothers are often recommended for significantly lower starting salaries, perceived as less competent, and are less likely to be recommended for hire.¹⁴ On the contrary, higher salaries are often recommended for men with children.¹⁵ 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.¹⁶ Alternatively, men

¹³ Francine D. Blau & Lawrence M. Khan, *The Gender Wage Gap: Extent, Trends, and Explanations*, The Institute for the Study of Labor 24 (Jan. 2016).

¹⁴ Shelley J. Correll, Stephan Bernard, & In Paik, *Getting a Job: Is there a Motherhood Penalty?*, *American Journal of Sociology* (Mar. 2007), https://www.jstor.org/stable/10.1086/511799?seq=1#metadata_info_tab_contents.

¹⁵ Francine D. Blau & Lawrence M. Khan, *The Gender Wage Gap: Extent, Trends, and Explanations*, The Institute for the Study of Labor 24 (Jan. 2016).

¹⁶ 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>.

typically experience an increase in earnings after having children.¹⁷ One study found that fatherhood increases a man's earnings by over six percent, whereas in contrast motherhood reduces a woman's earnings by at least four percent and the penalty increases up to fifteen percent for women earning low wages.¹⁸

A. Our Experiences

Through our Helpline, we regularly speak with and assist women across varying industries who have strong performance records at work and are pushed out of their jobs once they reveal they are pregnant or once they request necessary pregnancy accommodations. When faced with a lifting restriction during her second trimester of pregnancy, one of our clients requested a lifting accommodation. Instead, she was told she could go on unpaid leave and would be put on a list if another position opened up. When offered an alternative position, months later, she learned it 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, lose pay, and choose between maintaining a salary during her pregnancy or keeping her existing job with union protections, critical to providing for her growing family.

B. Policy Recommendations

To eliminate, address, and alleviate these discriminatory penalties, women need a comprehensive support structure that includes access to meaningful pregnancy accommodations and protections against pregnancy discrimination; paid parental leave that provides an opportunity for either parent to bond with and care for a new child; protections against caregiving discrimination; access to paid personal time; access to greater workplace flexibility without financial penalty; and access to safe, affordable, and quality childcare options. This structure is all the more critical for low-wage workers, who experience a higher motherhood penalty, which is often attributed to the fact that they are less likely to have access to key supports such as paid parental leave, affordable and accessible childcare; and paid time off.¹⁹

New York State and New York City have made huge strides towards creating this basic support structure with short-term disability benefits, a new state based paid family leave program, pregnancy accommodations in New York City, mandatory paid sick days in New

¹⁷ 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>.

¹⁸ Michelle J. Budig, *The Fatherhood Bonus and The Motherhood Penalty: Parenthood and the Gender Gap in Pay*, *Third Way & Next* 9, 13 (2012), https://thirdway.imgix.net/downloads/the-fatherhood-bonus-and-the-motherhood-penalty-parenthood-and-the-gender-gap-in-pay/NEXT_-_Fatherhood_Motherhood.pdf; Michelle J. Budig & Melissa J. Hodges, *Differences in Disadvantage: Variation in the Motherhood Penalty across White Women's Earnings Distribution*, *American Sociological Review* (Oct. 8, 2010).

¹⁹ Michelle J. Budig, *The Fatherhood Bonus and The Motherhood Penalty: Parenthood and the Gender Gap in Pay*, *Third Way & Next* 17, 20 (2012), https://thirdway.imgix.net/downloads/the-fatherhood-bonus-and-the-motherhood-penalty-parenthood-and-the-gender-gap-in-pay/NEXT_-_Fatherhood_Motherhood.pdf.

York City, State and City protections against caregiver discrimination, and fair work week protections for certain vulnerable industries in New York City. Together, these accomplishments create a fighting chance for women. But there is more to be done.

To ensure that these protections are being implemented and that New Yorkers are receiving benefits to which they are entitled, the City along with the State must ensure that employees are aware of their rights, employers are aware of their obligations, and that the relevant agencies are monitoring compliance. Employers need to be trained on pregnancy and caregiver discrimination so that workplaces start to take into account the reality of caregiving and recognize and address unconscious bias in hiring promotions, and advancement practices. Public education campaigns should also speak to the equal role and responsibilities of men in caregiving.

We also need robust reporting and monitoring mechanisms to ensure that available benefits are being administered fairly and properly. Through our Helpline, we regularly speak with women working for large employers in New York City which have yet to establish procedures and protocols to comply with existing programs and laws.

One woman we assisted contacted her employer, a large hospital in New York City, and requested paid family leave. Instead of walking her through a fairly straightforward application process, her employer stated that it did not handle requests, sent her to their insurance carrier, which then directed her to at least three different representatives who gave her conflicting instructions and ultimately enrolled her for FMLA and disability benefits rather than the Paid Family Leave benefits to which she was entitled. When she called our Helpline, our client's son was already one month old. She had made the request well before he was born, had been trying to navigate the system for months, and was on the verge of giving up. Once we intervened, the insurance carrier confirmed her eligibility in a matter of days.

Many women who are still unaware that they are eligible for paid family leave are dissuaded from accessing benefits simply because their employers have created overly onerous or noncompliant processes for applying. The purpose and intent of the comprehensive New York State Paid Family Leave law is thwarted if workers cannot reasonably obtain these benefits absent legal counsel. The Commissions and City agencies should use their independent investigative powers, where applicable, and their enforcement authority to monitor and investigate compliance to ensure that employers, particularly those who employ low-wage workers, are complying with legal protections. Employing this enforcement authority is especially important in exploitative industries where workers are too afraid to report violations.

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 and to ensure that employers aren't erecting bureaucratic barriers to access.

And notably, the city must turn its attention and resources to childcare. Across the city there is a scarcity of adequate, affordable, and high-quality childcare and across the state, subsidized childcare programs are underfunded, meaning too many families who qualify for childcare subsidies are not accessing them.²⁰ According to the New York City Comptroller, the City only has capacity to care for six percent of infants in the city in licensed child care centers and the cost can exceed in-state tuition in college.²¹ The City must invest in establishing meaningful childcare options.

IV. Access to Reproductive Health

Availability of and increased access to contraception has been associated with facilitating delays in marriage and childbearing, providing greater opportunity for women to pursue education and professional training.²² By controlling their own fertility, women have increased opportunity to pursue education, professional training, and consequently, to pursue higher-paying jobs. To promote and advance fair pay practices, we need to ensure that women have access to affordable reproductive health care and contraception so that they can retain control over their education and career trajectories.

V. Women in Poverty and Low-Wage Work

As a result of persistent gender discrimination, including occupational segregation and unpaid caregiving obligations, women in the United States are nearly 40 percent more likely than men to live in poverty²³ and more than twice as likely to work in low-wage occupations.²⁴ As a result women are also more likely to work under unsafe and exploitative conditions and be subjected to sexual harassment and other forms of abuse at work. The same is true in New York City, where women are more likely than men to live in poverty.²⁵

²⁰ See United States Government Accountability Office, *Childcare: Access to Subsidies and Strategies to Manage Demand Vary Across States*, GAO-17-60, 8 (Dec. 2016), <https://www.gao.gov/assets/690/681652.pdf>. (“out of the estimated 14.2 million children under age 13 nationwide who met federal work and income requirements for subsidies in an average month in 2011 and 2012, an estimated 8.6 million were eligible according to the eligibility policies in their states, and about 1.5 million received them.”).

²¹ Scott M. Stringer, NYC Comptroller's Office, *NYC Under Three: A Plan to Make Child Care Affordable for New York City Families* 4 (May 17, 2019).

²² Francine D. Blau & Lawrence M. Khan, *The Gender Wage Gap: Extent, Trends, and Explanations*, IZA DP No. 9656, The Institute for the Study of Labor (IZA) 16 (Jan. 2016); Martha J. Baily, Brad Hershbein, & Amalia R. Miller, *The Opt-In Revolution? Contraception and the Gender Gap in Wages*, Nat'l Bureau of Economic Research 2-3 (June 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3684076/>.

²³ Meika Berlan & Morgan Harwood, Nat'l Women's Law Ctr., *National Snapshot: Poverty Among Women and Families, 2018* (Sept. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf>.

²⁴ Nat'l Women's Law Ctr., *Women in the Low-Wage Workforce by State 2* (June 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/06/women-in-low-wage-workforce-by-state-2018-2.pdf>.

²⁵ City of New York, *New York City Government's Poverty Measure 2017, An Annual Report from the Office of the Mayor* 35 (Apr. 2019), https://www1.nyc.gov/assets/opportunity/pdf/19_poverty_measure_report.pdf.

A. Low-Wage and Tipped Work

Too many women in our City engage in low-wage work, finding it impossible to make ends meet, maintain a job, and care for family. Women working low-wage jobs are often relegated to the informal economy or work in industries that are exempted from complying with standard labor and anti-discrimination protections, such as domestic work, farm work, work for smaller employers, part-time work, consultancy work, or tipped work.

In New York, we know that the tipped workforce across all industries is almost 80% female and consists largely of women of color.²⁶ Tipped work, often characterized by predominantly female workforces, including the restaurant industry, nail and hair salons, makeup studios, and hotels, has become synonymous with low-wage women's work.²⁷ And while women make up the vast majority of tipped workers making the lowest wages, they remain underrepresented in the highest paying jobs in tipped industries.²⁸ These dynamics present a vicious cycle for women, perpetuating one of the most appalling national trends: women of color, immigrant women, and working mothers are more likely to be paid lower wages,²⁹ and women of color in tipped occupations are especially likely to live in poverty.³⁰ New York is no exception. About one in four tipped workers in New York is a woman of color.³¹ Maintaining the tipped minimum wage therefore rewards, sustains, and endorses an inherently discriminatory employment scheme.

B. Policy Recommendations

To equalize pay for women, we need to significantly increase pay for low-wage workers. This means that the City and State must work together to continue to progressively increase the minimum wage over time to coincide with inflation and the cost of living and must eliminate

²⁶ ROC-United, *Recipe for Success: Abolish the Subminimum Wage to Strengthen the Restaurant Industry* (Mar. 1 2014), http://rocunited.org/wp-content/uploads/2014/03/ROCUnited_Recipe-for-Success.pdf; Legal Momentum analysis of United States Census Bureau, EEO Tabulation Detailed Census Occupation by Sex, and Race/Ethnicity for Worksite Geography, Total Population 2006-2010 for bartenders, waiters and waitresses, hosts and hostesses, maids and housekeeping, hairdressers, hairstylists, and cosmetologists, and miscellaneous personal appearance workers; *Bare Minimum: Why We Need to Raise Wages for America's Lowest-Paid Families* 5 (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>; see also Sylvia A. Allegretto and David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage* 3, ECONOMIC POLICY INSTITUTE (July 10, 2014), <https://irle.berkeley.edu/files/2014/Twenty-Three-Years-and-Still-Waiting-for-Change.pdf>.

²⁷ Legal Momentum analysis of United States Census Bureau, EEO Tabulation Detailed Census Occupation by Sex, and Race/Ethnicity for Residence Geography, Civilian Labor Force 2006-2010 for bartenders, waiters and waitresses, hosts and hostesses, maids and housekeeping, hairdressers, hairstylists, and cosmetologists, and miscellaneous personal appearance workers.

²⁸ ROC-United, *Tipped Over the Edge: Gender Inequity in the Restaurant Industry* 19 (Feb. 13, 2012), http://rocunited.org/wp-content/uploads/2012/02/ROC_GenderInequity_F1-1.pdf.

²⁹ *Bare Minimum: Why We Need to Raise Wages for America's Lowest-Paid Families* 10-11 (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>.

³⁰ *Bare Minimum: Why We Need to Raise Wages for America's Lowest-Paid Families* 5 (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>.

³¹ *Bare Minimum: Why We Need to Raise Wages for America's Lowest-Paid Families* 5 (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>.

the antiquated and unjust tipped minimum wage to ensure that all workers across New York receive at least the regular minimum wage before tips. Since poverty is gendered, we must also rethink our poverty measures to account for the specific ways in which poverty impacts women.

Our existing system of carve-outs and tiered labor protections, which has exempted certain industries and employers from complying with labor and anti-discrimination protections, has driven and sustained exploitation of women who are often disproportionately employed in these industries. To increase pay and decrease exploitation of low-wage women, it is essential that the City and State work towards unifying legal protections to apply to all industries and job types in a more consistent manner. Important progress has already been made toward eliminating employee thresholds that exempt smaller employers, extending some legal protections to domestic workers and farm workers, and extending protections for non-employee categories. A broader assessment should be done to identify existing loopholes that impact low-wage workers and industries and to close those loopholes. Similarly, to the extent that reporting requirements or legal compliance may be too onerous for small employers, the City and State should devise ways to create centralized and streamline reporting mechanisms to achieve these goals.

For too long, women earning low-wages have been silenced or stifled by their poverty and/or immigration status, unable to advocate for fair wages, challenge discrimination or exploitative conditions, or escape workplace abuse because they cannot afford to lose their jobs. Women need stronger means to advocate for themselves. The City should continue to invest in and increase its support for emerging mechanisms such as worker cooperatives, which allow women to act collectively to secure better salaries and working conditions across industries. The City must also continue to use its independent investigative powers to monitor low-wage industries where women are overrepresented.

Conclusion

Critical steps to strengthen legal protections and advance pay equity have recently been taken. But to make meaningful progress, we must actively address root causes of the wage gap, including occupational segregation; create a comprehensive support structure for women that dismantles the financial costs and penalties they have long incurred; and look to change not just the law, but the predominant workplace culture that continues to turn a blind eye to the modern working family.

The gender wage gap is a multifaceted problem rooted in systemic forms of gender discrimination. If we legitimately want to achieve pay parity, the City must continue to take a multifaceted approach that closes loopholes, educates workers and employers alike, enhances legal compliance and awareness, but also seeks to implement sizable shifts to lift women out of poverty and low-wage work.

Legal Momentum looks forward to working with the City to assist in these efforts.