

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CIVIL RIGHTS

-----X

June 25, 2013
Start: 10:00 am

HELD AT: Council Chambers
City Hall

B E F O R E:
DEBORAH L. ROSE
Chairperson

COUNCIL MEMBERS:
Council Member Margaret S. Chin
Council Member Julissa Ferreras
Council Member Andy King
Council Member James G. Van Bramer

A P P E A R A N C E S

COUNCIL MEMBERS:

Council Member James Vacca

Council Member Julissa Ferreras

A P P E A R A N C E S (CONTINUED)

Ms. Michelle Caiola
Acting Litigation Director
Senior Staff Attorney
Legal Momentum

Ms. Angie Welfare
Fleet Service Clerk
Freight Department
New York's JFK International Airport

Dina Bakst
Co-Found and Co-President
A Better Balance

Katherine Greenberg
Staff Attorney
Employment Law Unit
Legal Aid Society

CHAIRPERSON ROSE: Good morning.

If there's anyone here who would like to testify, please make sure that you fill out a slip at the ah, the desk with the Sargent of Arms. And good morning. My name is Debbie Rose and I'm the Chair of the Committee on Civil Rights. And today we will be holding our first hearing on Proposed Introductory Bill No. 974-A, a local law to amend the administrative code of the City of New York in relation to prohibiting discrimination in employment based on pregnancy, child birth or related conditions. I am pleased to be joined today by the Bill's sponsor, Council Member Jimmy Vacca as well as my fellow committee members. You will hear from Council Member Vacca in a few moments. I'm pleased to say we are joined by Council Member Chin and Council Member Ferreras.

I'd like to take this opportunity to thank my Committee Council Julene Beckford and my Policy Analyst Damien Butvick.

According to the National Partnership for Women and Families pregnancy related discrimination charges made to the United States Equal Employment Opportunity Commission

1
2 have increased 35% over the past decade. Nearly
3 one-fifth of all discrimination charges made by
4 women have been related to their pregnancy.

5 This is a troubling statistic in a
6 country where women make up 47% of the workforce
7 and whether they are either the primary or co-
8 bread winner in nearly two-thirds of all families.
9 In New York State unwed mothers accounted for
10 34.6% of births in 2011. In New York City single
11 mothers account for 34.2% of all households with
12 children and over 82% of the single parent
13 households.

14 Though pregnant women do enjoy some
15 degree of protection at the federal level, these
16 protections are generally seen as inadequate. For
17 example, the Pregnancy Discrimination Act of 1978,
18 which prohibits discrimination in the workplace on
19 the basis of pregnancy, childbirth or related
20 medical conditions does not address accommodations
21 for pregnant women.

22 While some have used the Americans
23 with Disabilities Act to require such
24 accommodations, pregnant women who are not
25 significantly disabled by their pregnancy cannot

1
2 expect such treatment. Additionally, though state
3 law does not prohibit employers from forcing a
4 pregnant employee to take a leave of absence
5 unless they are unable to perform their job duties
6 in a responsibility manner. It does not
7 explicitly require employers to make
8 accommodations for them. And while the Commission
9 on Human Rights interprets the human rights laws
10 definition of disability to include pregnancy
11 thereby requiring employers to make reasonable
12 accommodations for pregnant women. The law itself
13 offers no explicit workplace protections for
14 pregnant women.

15 The Bill we are hearing today would
16 address some of the weaknesses in federal, state
17 and local law. Proposed Intro 974-A would amend
18 the city's human rights law to prohibit employers
19 from discriminating against workers who have a
20 condition related to pregnancy or childbirth and
21 require employers to provide a reasonable
22 accommodation to such workers as long as it does
23 not cause an undue hardship.

24 Proposed Intro 974-A would also
25 require the Commission on Human Rights to create a

1
2 written notice regarding employee's rights related
3 to pregnancy for employers to post in the
4 workplace.

5 Finally, Proposed Intro 974-A would
6 not affect any other protections relating to sex
7 discrimination or pregnancy.

8 Our city cannot jeopardize the
9 livelihood of its pregnant workers simply because
10 they need an accommodation to carry on their
11 professional responsibilities. This legislation
12 is a step in the right direction and with that I
13 will turn the mic over to the bill's sponsor,
14 Council Member Jimmy Vacca.

15 COUNCIL MEMBER VACCA: Thank you.
16 Thank you Chair Rose for holding this important
17 hearing.

18 Today we're going to hear testimony
19 on Intro 974 otherwise known as the Pregnant
20 Workers Fairness Act and this bill will insure
21 that pregnant workers are offered the
22 accommodations they need in the workplace.

23 I want to thank Chair Rose and
24 Council Member Lander and Palma for co-sponsoring
25 this intro with me.

1
2 The Pregnant Workers Fairness Act
3 which is modeled after federal legislation
4 sponsored by Representative Jerrold Nadler would
5 make pregnancy and related conditions an
6 explicitly protected status under the city's Human
7 Rights Law, similar to protections that are
8 granted for religious observances.

9 Under common law pregnant women
10 whose employers deny them a basic accommodation,
11 even something as simple as carrying a water
12 bottle at work, must file a discrimination claim
13 with the Human Rights Commission and wait for the
14 results of an investigation before receiving an
15 accommodation.

16 The pregnancy is only 40 weeks long
17 making each and every day important. Expecting
18 mothers simply don't have time to wait days or
19 even weeks for the results of an investigation.

20 We're here today to offer
21 legislation that provides a proactive channel for
22 a woman to seek a reasonable, medically necessary
23 accommodation. If we give women this proactive
24 option, not only can we pave the way for women to
25 keep their jobs and maintain a healthy working

1
2 environment for the duration of their pregnancies.
3 We can also reduce the number of related
4 discrimination claims filed just by taking care of
5 simple things up front.

6 Thanks to the federal Pregnancy
7 Discrimination Act firing or demoting a woman
8 simply because she is pregnant is against the law.
9 However, laws concerning accommodating pregnant
10 women on the job can be defined better. While the
11 vast majority of employers do their best to meet
12 the needs of pregnant employees, there have been
13 stories of pregnant women in the city being fired
14 or forced to take leave for requesting simple
15 accommodations like extra bathroom breaks.

16 The bottom line is this; no woman
17 should ever be forced to choose between the health
18 of her unborn child and her job. This bill will
19 create essential protections and my colleagues and
20 I am committed to doing all we can to move this
21 legislation forward.

22 With that I'll turn it back to
23 Chair Rose and I look forward to hearing the
24 testimony. Thank you. Chair Rose.

25 CHAIRPERSON ROSE: Thank you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Council Member Vacca.

Before we begin I'd like to state that we have, for the record, we have testimony from Commissioner Patricia Gatling of the Commission on Human Rights and testimony from the Partnership of New York City, which will be entered into the record.

And I want to say for the record that I am disappointed and I am actually more than disappointed. It's totally unacceptable that no one from the Commission on Human Rights is here to testify today. And I will be submitting a letter on behalf of this Committee to the Commissioner about what I consider a blatant affront to this Committee by the Commission by not even sending anyone to read the testimony. With that, I'd like to call the first panel. Michelle Ciolie, Caiola, I'm sorry and Angie Welfare.

Thank you. Make sure your microphone is on and please identify yourself before you testify.

MS. MICHELLE CAIOLA: Thank you. Thank you for inviting me to testify here today. My name is Michelle Caiola and I'm the acting

1
2 Litigation Director and a senior staff attorney at
3 Legal Momentum. Legal Momentum, founded in 1970
4 as the now Legal Defense and Education Fund, is
5 the oldest non-profit organization dedicated to
6 the personal and economic security of women and
7 girls.

8 For over 40 years we've used the
9 power of the law to define and defend women's
10 rights. Legal Momentum has focused on pregnancy
11 discrimination occurring in the workplace,
12 particularly against women in low wage jobs and
13 those attempting to make inroads in occupations
14 from which females historically have been
15 excluded.

16 Recently we've represented a fire
17 fighter, a police officer and an airline baggage
18 handler and their claims of pregnancy
19 discrimination.

20 By now it's hold news that women
21 are the sole or primary breadwinners in 40% of
22 households with children. Reflecting a
23 quadrupling at that rate since 1960. More than
24 one-third of those women make more money than
25 their husbands and the rest are single mothers.

1
2 Regardless of marital status the
3 stereotype that mothers are in the workforce just
4 to earn extra spending money has been put to rest
5 and women's economic importance to their families
6 can no longer be underestimated. As such, it's
7 incumbent on us to focus on how to best support a
8 woman in the honorable endeavor of maintaining a
9 paycheck while also insuring a healthy pregnancy
10 and childbirth.

11 Providing for reasonable workplace
12 accommodations not only due to pregnancy
13 complications, but also during the course of a
14 normal pregnancy is crucial.

15 New York City's Proposed Intro No.
16 974-A specifically addresses the shortcomings of
17 existing law and Legal Momentum urges its passage.

18 The federal law prohibiting
19 pregnancy discrimination, the Pregnancy
20 Discrimination Act or the PDA, will be 35 years
21 old in October of this year. We'll celebrate that
22 anniversary as the PDA was a landmark piece of
23 legislation that no doubt assisted many women
24 since then who have entered workforce in record
25 numbers. However, pregnancy discrimination in the

1
2 workplace remains prevalent indicating that work
3 on this front remains. The real and perceived
4 gaps in the PDA have become glaringly apparent.
5 The 1978 law was drafted and passed with an eye
6 toward equality and parity with men. And as such,
7 does not clearly and affirmatively set out
8 provisions addressing the unique limitations even
9 normal pregnancies can entail.

10 Federal court decisions under the
11 PDA, most recently the 4th Circuit Court of
12 Appeals ruling in UPS v Young have narrowed the
13 scope of the law even further than what the
14 drafters had intended.

15 Unfortunately a line of adverse
16 case law is growing holding that pregnant women
17 are not entitled to job accommodations even with
18 others with injuries or disabilities in the same
19 workplace are so entitled. Instead of relying on
20 broken federal law, we look to state and city
21 governments to lead the way in this progressive
22 and important movement to insure substantive
23 equality for working pregnant women.

24 The Commissioner of the New York
25 City Commission on Human Rights has asserted that

1
2 the New York City Human Rights Law already
3 requires employers to provide accommodations to
4 pregnant employees via the disability provisions
5 of the city law.

6 While this broad interpretation of
7 disability, to include pregnancy, has apparently
8 worked for a number of employees seeking
9 adjudication from the NYCCHR, it's not always
10 feasible or the best alternative for a charging
11 party.

12 In order to be an effective
13 protection against pregnancy discrimination for
14 New York City residents, the law must translate to
15 protection in state and federal court where many
16 employment discrimination claims are heard. Yet
17 both recent and past court rulings show that this
18 is not the case. For example, just last month a
19 decision was handed down that bialys the
20 protection that the city law currently provides
21 pregnant workers.

22 In Krause v Lancer Loader, a sales
23 manager for a wholesaler located in New York City,
24 allege pregnancy discrimination under state and
25 local law. In assessing her city claim under the

1
2 disability statute, the New York State court first
3 noted the liberal and expansive definition of
4 disability under the city law. But still held
5 that the plaintiff in the case could not use the
6 law to support a pregnancy discrimination cause of
7 action where the plaintiff had not alleged she
8 suffered any complications during the pregnancy or
9 asserted that the pregnancy impaired her normal
10 bodily functions.

11 The court expounded further saying,
12 this court has found no cases in this or other
13 departments nor does plaintiff cite any holding
14 that a normal pregnancy qualifies as a disability
15 within the meaning of the state or city Human
16 Rights Law.

17 In the federal court it's no
18 better. In Cannibrew [phonetic] v. New York City
19 Housing Authority a pregnant secretary with
20 gestational diabetes required time off for
21 prenatal care due to her condition. Her
22 discrimination claims under the American With
23 Disabilities Act were dismissed along with her
24 disability claims under the state and city
25 disability laws because "mere pregnancy is not a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

disability.”

In Wanning [phonetic] v Johnson a police officer requested sick leave upon the advice of her physician concerned that too much physical activity and heavy lifting could result in injury to her fetus. But her request was denied and instead she was transferred to inside duty from street patrol.

The court ruled against her disability claim summing up its view of prophylactic safety measures related to a normal healthy pregnancy like this. Wanning simply provided no evidence to support her claim of disability. If Wanning had been ill due to her pregnancy or was near the end of her term it would seem that she would have a legitimate claim to disability. However, she was only two months pregnant and was suffering from no complications.

Although Wanning is an older case, New York courts continue to cite to it and rely on its precedent.

Importantly there appear to be no reported court cases at the state or federal level holding that the city law provides necessary

1
2 protection for a worker stemming from a normal,
3 healthy pregnancy. Similarly the pregnancy plank
4 of the Women's Equality Act if reintroduced and
5 passed next year successfully does not alleviate
6 this problem that pregnant women encounter on the
7 job.

8 The New York State bill would
9 clarify that employers must provide reasonable
10 accommodations to employees with pregnancy related
11 conditions which codifies the state Human Rights
12 current interpretation of disability under the
13 state Human Rights Law. Yet based on case law
14 previously cited herein today, state and federal
15 courts are not apt to recognize broad
16 interpretations of disability.

17 So while the recently defeated
18 state bill moved in the right direction, it still
19 failed to squarely address the needs of a working
20 pregnant woman who needs accommodation prior to
21 suffering a pregnancy related impairment or
22 condition. She still is not guaranteed a
23 reasonable accommodation for a normal, healthy
24 pregnancy.

25 The city proposal, on the other

1
2 hand, allows accommodations for an employee due
3 simply to pregnancy, including healthy ones.

4 Therefore, Legal Momentum strongly
5 endorses Proposed Intro No. 974-A, a law that
6 would set out explicitly and in plain language an
7 employer's obligation to reasonably accommodate
8 the temporary demands and limitations of
9 pregnancy. The need for this law is clear. It is
10 not longer enough to insure protection against
11 pregnancy discrimination when a woman can work at
12 full capacity, uninterrupted by the physical
13 effects of pregnancy and childbirth.

14 This paradigm especially doesn't
15 cut it for women working in low wage jobs or any
16 job requiring physical capacity. Insuring a
17 woman's equality opportunity in the workplace
18 requires recognition of and protection of the
19 unique role of childbearing. The accommodation
20 provision being considered today will do just
21 that.

22 Also here to speak with you today
23 is one of Legal Momentum's clients, Angie Welfare
24 who would likely have benefited from the
25 protections of this proposed law. Her story helps

1
2 illustrate why it's crucial to insure women are
3 treated fairly in the workplace which includes
4 allowing them to maintain a paycheck and often the
5 benefits that go with the job that are vital
6 during their childbearing years.

7 Thank you.

8 CHAIRPERSON ROSE: Thank you.
9 Identify yourself for the record. And you can
10 testify. Thank you.

11 MS. ANGIE WELFARE: Okay first
12 thank you for allowing me to speak to you here
13 today. My name is Angie Welfare.

14 I am an 18 year veteran of a major
15 airline. I work at New York's JFK International
16 Airport as a Fleet Service Clerk in the Freight
17 Department, although I am currently out on a
18 medical leave of absence.

19 On May 31, 2006 I was put out of
20 work because my employer would not let me work
21 when I was pregnant. I was only eight weeks
22 pregnant when I was forced to take an unpaid sick
23 leave of absence. Although my doctor said I could
24 work a light duty position and a light duty job
25 was available, my manager said, we do not have

1
2 light duty for pregnant women. Light duty is only
3 for people who have been injured on the job.

4 He gave me a for instance. He said
5 and I quote, "If an employee was in a car accident
6 and was injured off duty and came back to work, we
7 would not put him on light duty. We are not
8 responsible for what happens to an employee off
9 the job."

10 I told my manager that I was not
11 sick and had not been injured. I was pregnant and
12 I was very healthy and fit. I could do my job but
13 I had to be mindful of my unborn child.

14 I proposed to my manager that I be
15 reassigned to a job location where the work is
16 less strenuous. He said, no. I was then sent
17 home. This was when I knew I must have been
18 experiencing pregnancy discrimination.

19 When I was sent home I was first in
20 shock that this injustice was done to me. I felt
21 lost and defeated. I was afraid I would lose my
22 home. Imagine planning to have a baby with no job
23 or income. How do you plan? I couldn't. I cried
24 myself asleep and I cried myself awake.

25 My circumstances forced me to apply

1
2 for Food Stamps, which is a very humiliating
3 experience. My home went into foreclosure. I
4 feared I would not be able to continue my prenatal
5 care or have a safe delivery in a hospital setting
6 because my medical coverage ran out. Just to add,
7 my medical coverage ran out. I had to get another
8 doctor but I had to first apply for Medicaid,
9 which was another strenuous task.

10 It is not an exaggeration to say my
11 life became a living hell. My employer is a very
12 powerful and important company. So what do you
13 do? When you have the feel in the pit of your
14 stomach that something is wrong but don't have the
15 knowledge or the resources that I needed to
16 challenge was what done to you?

17 How do you defend yourself when you
18 become speechless at the most critical and
19 vulnerable time in your life? You literally lose
20 your voice because you feel the world ranks you
21 lower than your employer.

22 In spite of my lack of knowledge,
23 God led me to begin my fight. I prayed to God
24 that there would be light at the end of the
25 tunnel. I found some hope after contacting

1
2 Deborah Capatskins [phonetic], an experienced New
3 York City trial attorney and Legal Momentum.

4 Together they advocated for me on my complaint of
5 discrimination to the EEOC and in a complaint to
6 the New York State Attorney General Office.

7 But the wheels of justice grind
8 slowly. It took years for EEOC to investigate and
9 determine that I had been discriminated against on
10 the basis of pregnancy. And for the Attorney
11 General also to make a finding against the
12 airline.

13 My employee filed bankruptcy before
14 I filed a lawsuit in court. Now it appears that
15 because of that I will never receive fair
16 compensation for the unfair treatment and economic
17 loss I and my children suffered.

18 If the Pregnancy Accommodation Law
19 you are considering had been in place, this
20 situation may have ended differently. I wish I
21 had been armed with a law that so clearly stated
22 that the company had a duty to accommodate me
23 while I was pregnant. If I could have pointed to
24 this law when speaking to my manager to show him
25 that they had to provide me a light duty position

1
2 just like they provided to other workers who
3 needed an adjustment to their duty for a temporary
4 period of time, I would have not suffered a loss
5 of pay, benefits and all the emotional trauma of
6 that followed. As a result of being sent him
7 unpaid for so many months of my pregnancy.

8 It does not feel good when you are
9 discriminated against and have to pursue your
10 rights through government agencies and lawyers.
11 It does not feel good when you wait years hoping
12 justice will be done but having no guarantees.

13 I do hope that this law is passed
14 and future women in my situation will be helped.

15 Thank you for listening to my
16 testimony today. May the God of justice bless us
17 all. Thank you.

18 CHAIRPERSON ROSE: Thank you very
19 much Ms. Welfare for your really heart wrenching
20 testimony. I thank Council Member Vacca for
21 promoting and pushing this legislation forward so
22 that no woman would have to go through this again.

23 With that I have a few questions.

24 Apparently from your testimony my
25 first question is, I think the answer is known to

1
2 me, but for the record, I'd like to know, do you
3 think this bill is necessary in New York City? If
4 so, why? And how many New Yorkers do you think
5 are affected by this type of behavior that the
6 bill seeks to remedy? Ms. Caiola.

7 MS. CAIOLA: Yes as I said in my
8 testimony, this is necessary because the current
9 state of the law just does not cover what women
10 experience when they're pregnant and trying to
11 continue to work. Especially all the women
12 working in low wage jobs or jobs that have any
13 sort of physical component to them.

14 Women in non-traditional employment
15 doing construction, fire fighting, etc. It's very
16 different if you're in an office setting, but if
17 you have one of those jobs, it's just difficult to
18 work through your entire pregnancy no matter if
19 there are complications or not. It's just
20 difficult to do the heavy lifting and so often
21 these jobs do have light duty jobs that they do
22 preserve for people that may be injured or
23 temporarily disabled in some way and pregnant
24 women should be able to avail themselves just as
25 easily.

1
2 CHAIRPERSON ROSE: Do you think
3 that if this law was enacted how do you see it
4 being enforced?

5 MS. CAIOLA: I see it being
6 enforced in the same way that a regular pregnancy
7 discrimination claim would be. Well there is a
8 step before that. I do think that there is a
9 benefit here, I think everyone knows that they
10 can't discriminate against someone based on sex,
11 race, etc.

12 But I don't think may employers
13 think about this issue of accommodation at all.
14 They don't think that they have to provide any
15 extra coverage or take any extra steps to make
16 sure pregnant women can maintain her job.

17 So just having the law on the books
18 I think will actually reduce the number of
19 complains and lawsuits that are filed in relation
20 to sex or pregnancy discrimination.

21 If an employer is not responsive to
22 a law on the books such as this, then they would
23 go through the same channels they would for a
24 normal pregnancy or sex discrimination claim.

25 CHAIRPERSON ROSE: Do you think

1
2 that based on the cases that you've cited that at
3 the crux of this is the definition of pregnancy
4 and pregnancy related disability?

5 MS. CAIOLA: I don't think that
6 disability law is a natural fit for pregnancy. As
7 Angie has testified here today, she wasn't sick.
8 She wasn't injured. She was pregnant. And to the
9 extent of the Pregnancy Discrimination Act at the
10 federal level can help some of these women. In
11 fact, she was treated unfairly compared to the men
12 on her job. So actually we believe that was a
13 violation of a federal law.

14 But to clarify it in law for
15 everyone, for employers, employees, for the
16 courts, that pregnancy is a natural condition for
17 women in the workforce and we want to start
18 allowing women to be equal members of the
19 workforce and that's going to require special
20 consideration of pregnancy related conditions.

21 CHAIRPERSON ROSE: And of the
22 efforts that you've seen being made in this area,
23 which do you think would adequately address this
24 issue?

25 MS. CAIOLA: I think the Proposed

1
2 Intro Number 974-A is perfect. It talks about
3 accommodating the needs of a pregnancy without
4 stating that there has to be a condition or an
5 impairment that courts or other adjudicators
6 starting parsing to understand whether it rises to
7 some level of a disability.

8 CHAIRPERSON ROSE: And from Ms.
9 Welfare. Have you exhausted all of your, is there
10 any other recourse that you have to receive
11 compensations that you lost?

12 MS. WELFARE: No I'm at a loss
13 right now. I'm behind the [unintelligible]. By
14 the grace of God my house got out of foreclosure
15 when I went back to work.

16 CHAIRPERSON ROSE: And they did
17 accept you back to work at your same salary and
18 same position?

19 MS. WELFARE: They did.

20 CHAIRPERSON ROSE: They did. Okay.
21 Council Member Vacca.

22 COUNCIL MEMBER VACCA: Thank you.

23 CHAIRPERSON ROSE: Oh um I'm sorry.

24 COUNCIL MEMBER VACCA: Okay. I
25 think you both for your testimony. You know I

1
2 introduced this legislation because we saw a gap.
3 We saw a gap in so much as basic human rights are
4 concerned. I think many of us assume that an
5 employer would make accommodations for a pregnant
6 female, but assuming is not enough because we ran
7 across cases where that was not happening.

8 I, for one, fail to understand why
9 a lady who is expecting is not allowed an extra
10 water break or why they're not allowed different
11 seating accommodations. Things that are very
12 simple to the average person to comprehend as an
13 accommodation but sometimes it has to be known
14 that that is the law and that people have
15 recourse.

16 It is discrimination when you make
17 someone's life miserable because they're expecting
18 a child and it's an indication that they may want
19 you to leave and they're making it difficult for
20 you and doing exactly what they have to do but no
21 more.

22 That's why I introduced this law,
23 to make it clear that you did have a recourse and
24 that there was—and I appreciate your testimony Ms.
25 Welfare that this law gives people like yourself a

1
2 way to combat what happened to you in 2006 from
3 ever happening again.

4 So I'm convinced that this is the
5 right way to go. I did not that although the
6 Chair indicated that the Human Rights Commission
7 chose not to attend today that their testimony
8 does not indicate that they object to the
9 legislation. It does say that around the edges
10 they'd like to talk to the Council which is par
11 for the course when it comes to the City and the
12 Council and the Executive Branch.

13 So we will be talking to them but
14 I'm very committed that this bill will not be
15 gutted. And I'm very committed that this bill
16 will not be torn apart. I've sat here too often
17 when the law a member has introduced at the end of
18 the day becomes a law the member himself or
19 herself does not recognize.

20 So that happened to me once. It
21 will never happen again. I could tell you a
22 story. I could tell a lot of stories. You're not
23 here to hear my stories.

24 But I'm committed that the
25 integrity of this legislation will be maintained

1
2 and I thank you very much for being here because
3 you, both of you, your policy driven testimony,
4 your personal experience, both speak volume to the
5 need and to the necessity of doing something.

6 So thank you.

7 MS. CAIOLA: Thank you.

8 CHAIRPERSON ROSE: Council Member
9 Ferreras who is the Chair of Women's Issues.

10 COUNCIL MEMBER FERRERAS: Thank
11 Chair Rose and also a special thanks to Council
12 Member Vacca for introducing this legislation. I
13 think it should not go unacknowledged that, you
14 know, this is a woman's issue but it is an amazing
15 colleague and a male that is proposing this
16 legislation. So a lot of times you look at
17 women's issues as if it's only for women, about
18 women. But we have incredible partners in many of
19 our men.

20 This is an effort that's a family
21 issue. This is not—you know it's an issue in our
22 community. It's an issue how women are perceived.
23 And I wonder sometimes if men could give birth if
24 we would even be in this room having this
25 conversation. You know as someone who is almost

1
2 eight months pregnant, I think it's really a
3 blessing that I'm in this position and I didn't
4 even have to think twice about accommodations. I
5 didn't have to think twice about days off and
6 whether I was going to be paid and if I was going
7 to keep my health insurance.

8 So every hair on body stands when I
9 hear your story because I think it's a struggle
10 that no woman should have to face. And you know
11 not only am I pregnant, but my council is also
12 pregnant. She's ahead of me. We're competing.
13 And it was always looked up in office as a
14 blessing. And I think that that's how all
15 employers should look. And you know as consumers
16 that we are all, I think we also should take some
17 time and look at these, where we're shopping,
18 where we're buying, where we're supporting. What
19 are your policies?

20 I think we need to—even just
21 thinking about you. I would hate to think that
22 I'm supporting a company that this is their track
23 record. It's a shame and all we're doing is
24 making a company stronger to discriminate against
25 women. As if they came to this earth on a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

spaceship.

So I find it incredibly frustrating. I just think your testimony is incredibly moving and I thank you so much and I want you to tell your story as often as possible because we really need to hear your voice and your challenge so more women aren't faced with these decisions.

And I think, you know, as I've gone through this process, and this is my first baby. I had to tell myself like I'm not disabled. Right?

But then the law says that for us to defend ourselves we have to prove that we're disabled. That makes no sense and then, of course, you're going to use it against us because we know we're not disabled. But the only recourse we have, and that is why this legislation is so important. Because this is something beautiful.

It's a wonderful time and just because you give someone light duty doesn't mean you're giving them a vacation. It's still work. They're still working. They're still getting up

1
2 in the morning. They're still coming. They're
3 still producing. These woman are still making
4 companies and organizations profitable.

5 So therefore, you're not giving us
6 a break. You're not giving us anything that we
7 don't deserve or that we haven't earned.

8 So I'm sorry that I don't have a
9 question. I'm just very impassioned about this
10 moment as in all moments if you've ever been to
11 any Women's Issues committee hearings.

12 I just want to thank everybody for
13 coming to testify today. I am disappointed the
14 Commission did not come. And I want to ask the
15 Chair that I join in on her letter because I think
16 we need to do this together.

17 And thank you. Thank you for your
18 strength. Thank you for your testimony. And
19 thank you to all the attorneys that fight these
20 fights that often time don't come with a big purse
21 at the end of the day. But no pun intended. But
22 that really do mean a lot for so many of these
23 amazing women. Thank you so very much.

24 CHAIRPERSON ROSE: Thank you Chair
25 Ferreras. Thank you so much.

1
2 Have you seen an uptick in cases
3 like this in your organization?

4 MS. CAIOLA: Well we hear from
5 other organizations dealing with these issues that
6 the calls never stop coming in. So pregnancy
7 discrimination does seem to continue to rise.
8 Sometimes it's hard to tease out how many are
9 related to straight pregnancy discrimination and
10 how many are related to accommodation. But that
11 may partly be because people haven't even
12 considered that they have the right to
13 accommodation until this debate started.

14 CHAIRPERSON ROSE: Right. Right.
15 And have you been working with the Commission on
16 Human Rights or the Federal Equal Opportunity, the
17 Federal Employment Opportunity Commission?

18 MS. CAIOLA: I have worked at the
19 EEOC and the New York Attorney General as well as
20 the U.S. Attorney General on cases related to
21 pregnancy discrimination.

22 CHAIRPERSON ROSE: Not on New York
23 City - -

24 MS. CAIOLA: No.

25 CHAIRPERSON ROSE: - - Human Rights

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Commission?

MS. CAIOLA: No I have not.

CHAIRPERSON ROSE: Is there a reason why? Nothing has just come into our office that, you know, fit within that.

CHAIRPERSON ROSE: Okay. And what does that look like when you work with them? How does that - -

MS. CAIOLA: It's very secretive.

CHAIRPERSON ROSE: Is it?

MS. CAIOLA: No that's a joke. You file a charge of discrimination with the EEOC with the Attorneys General. It's a bit different. They are, you know, their own authority and there's no particular charge. You're just assisting with the facts of the case and assisting the investigation.

CHAIRPERSON ROSE: And their timeframe seems to be quite protracted. It takes quite a while - -

MS. CAIOLA: That's an understatement.

CHAIRPERSON ROSE: In fact, Ms. Welfare did you say how long you've been going

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

through this process?

MS. WELFARE: To be honest I'm still going through it. But I just want to share with you how bad it is.

I was blessed to get pregnant again a year later. So this time I hid my entire pregnancy. I hid it and I can remember I was standing, I had to go to the bathroom. And a co-worker came out the bathroom and I would wear heavy clothing in the summertime. I would wear coats, jackets, and heavy clothing to hide my pregnancy.

And a co-worker came out the bathroom and I'm standing there and she touched my stomach and said, you're pregnant. And I just said, please don't tell anybody. I'm just, you know, just don't say anything please. And that was my experience the second time. I had to conceal it.

I stood on my feet for seven hours. And I did a reasonable job because there are jobs there that are not light duty but that could accommodate me for my condition. So I drove the Hi-Lo, things like that, that wouldn't put my

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

unborn child at risk.

CHAIRPERSON ROSE: And you were able to do that without the knowledge of your employer, which means that you were able to continue to work your first pregnancy because there were jobs that you were able to do.

MS. WELFARE: That's why I proposed to him to allow me to work in certain, another air and freight, you know, a work that's not light duty that I could have performed, you know, 'cause I'm not a handicap and I was perfectly fit and healthy. My doctor just told me I have to be mindful. I can't lift 80 pounds. We're required to lift at least 80 pounds. But there's positions. I can drive the Hi-Lo and it's reasonable. And that's not light duty.

CHAIRPERSON ROSE: It's still being productive employee - -

MS. WELFARE: Very productive.
Very productive.

CHAIRPERSON ROSE: Of the company.
Thank you. I do understand Ms. Caiola you have a time - -

MS. CAIOLA: An event to go to.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Yes.

CHAIRPERSON ROSE: I'd like to thank you so much for your testimony. Ms. Welfare we are going to really work hard to make sure that this legislation, you know, sees the light of day and goes through so that no woman, or you for your next pregnancy, will have to wear tons of clothing to conceal a pregnancy or to be laid off without pay.

So I thank you for your courage and your stamina for going through this. I apologize for a system that allows our women, the mothers of our children--no one gets here without a mother. Can you let me know if anyone has. No one gets here without a mother. And to not make a reasonable accommodation that does not, you know, increase the cost to the employer, is just a blatant, I can't even think of the word.

MS. CAIOLA: Civil rights violation.

CHAIRPERSON ROSE: Abomination and civil rights violation. So thank you both, thank you both for your testimony.

And with that I'd like to state

1
2 that we've received, for the record, testimony
3 from Manhattan Borough, President Scott Stringer
4 and the American Congress of Obstetricians and
5 Gynecologists.

6 And our next panel will be Dina
7 Bakst.

8 MS. DINA BAKST: Bakst.

9 CHAIRPERSON ROSE: Bakst, I'm sorry
10 Bakst. I'm sorry I can't kill some names. And
11 Katherine Greenberg. And I'd like to mention that
12 Ms. Bakst from A Better Balance really is
13 responsible for this discussion in New York City
14 today because of your New York Times piece in
15 January 2012. You started this conversation and
16 we're very grateful to you.

17 MS. BAKST: Well thank you so much.
18 I'm really grateful to you all, really grateful to
19 you for convening this hearing and to Council
20 Member James Vacca and to others for introducing
21 this critically necessary legislation.

22 Just again, by way of background,
23 I'm Dina Bakst and Co-Found and Co-President of A
24 Better Balance. We are a New York based legal
25 advocacy organization that's dedicated to

1
2 promoting fairness in the workplace and helping
3 workers across the economic spectrum care for
4 their families without risking their economic
5 security. We host the Families @ Work Legal
6 Clinic where we partner with a prominent law firm,
7 Outten & Golden, to assist low income working New
8 Yorkers with pregnancy discrimination, caregiver
9 discrimination, pay discrimination and other
10 related issues. We receive calls from men and
11 women across this tri-state area as well as from
12 individuals all over the nation in response to our
13 advocacy efforts.

14 Before I begin I'll just show you
15 the documents I handed off to you. I handed you a
16 report that we recently, last week, published with
17 colleagues, national colleagues, really laying out
18 the landscape of this issue. Sort of the stats
19 and figures in terms of the importance of pregnant
20 women as breadwinners, the particular challenges
21 faced by low wage women and women in non-
22 traditional jobs. And when we feature about ten
23 stories and a couple of them from New York. So
24 that's one piece I'm sharing with you and also our
25 legislative memo that we submitted in December

1
2 along with a coalition really of diverse groups
3 that are behind us and support this critical
4 legislation.

5 So just in sum to really say why do
6 we need stronger legal protections for pregnant
7 workers. In a nutshell we've heard that pregnant
8 women are now almost half the workforce, and
9 families rely on women's salary to make ends meet.
10 We need protections job security more than ever
11 before.

12 And as we just heard, despite our
13 nation's civil rights law discrimination against
14 pregnant workers is on the rise and really, really
15 pregnant workers and low wage workers are in low
16 wage physically demanding jobs are hardest hit.
17 They're often removed from their positions, placed
18 on unpaid leave or fired when they seek a modest
19 workplace accommodation such as relief from heavy
20 lifting, increase access to water, a chair or
21 minimal time off for prenatal appointment or
22 simply recovering from childbirth.

23 And this form of discrimination
24 pushes New York City women out of the workforce at
25 a time when they need financial security the most.

1
2 A couple of examples; a pregnant
3 retail worker in Manhattan was rushed to the
4 emergency room where when she fainted on the job
5 because her boss would not let her drink water.
6 And we highlight that report and here we even have
7 testimony from the ER doctor who when she arrived
8 and said this woman is here simply because she was
9 not allowed to drink water.

10 I've heard from a supermarket
11 worker with a lifting restriction who was sent
12 home and onto disability insurance, which ended a
13 month before she gave birth and she lost her
14 health insurance and had to go on Medicaid.

15 As I've said before, no pregnant
16 woman should be forced to choose between her job
17 and a healthy pregnancy. Discrimination that
18 prevents pregnant women from staying at their jobs
19 or advancing at work poses a significant threat to
20 family economic security. When a pregnant woman
21 is fired she loses out on much needed benefits and
22 for many low wage woman job loss has devastating
23 consequences.

24 Again, another woman who came
25 through our clinic wound up in a homeless shelter

1
2 after being denied a modest workplace
3 accommodation during her 17th week of pregnancy.

4 This important bill would codify
5 and clarify that the New York City Human Rights
6 Law protects pregnant woman who need minor
7 accommodations at work.

8 Pregnant women need clear legal
9 protections like those afforded other workers,
10 which promote healthy pregnancies and the economic
11 security of families. Although the City
12 Commission on Human Rights interprets the city
13 Human Rights Law to cover most pregnancy
14 limitations, legislation is still necessary and
15 desirable. Agency interpretation is not set in
16 stone and could change with the new administration
17 and we've actually heard that directly from Pat
18 Gatling.

19 In addition, a lack of clarity in
20 the law often means employers fail to understand
21 their obligations and routinely treat pregnant
22 workers worse than similar situation workers.
23 This bill is necessary to provide a proactive tool
24 for pregnant workers and ensure equal treatment
25 under the law. Moreover, pregnant women cannot

1
2 afford to wait crucial weeks or months for an
3 agency investigation that may or may not afford
4 them much needed relief.

5 The proposed law would provide
6 clarity and certainty for employees and employers
7 alike. The need for greater legal clarity has
8 been recognized across the country. California's
9 decade-old law guaranteeing reasonable
10 accommodation for pregnant workers has been used
11 countless times to help pregnant workers stay
12 healthy and on the job. Connecticut, Hawaii,
13 Louisiana, Alaska, Texas and Illinois also
14 explicitly require certain employers to provide
15 some accommodations to pregnant employees.

16 Proposed federal legislation, the
17 Pregnant Workers Fairness Act, has garnered broad
18 support from over 100 organizations and Governor
19 Cuomo's groundbreaking Women's Equality Act
20 includes a similar provision that has generated
21 broad bipartisan support.

22 I would also like to clarify and
23 respectfully disagree with Ms. Caiola's
24 interpretation of this similar provision in the
25 state WEA. The state's bill made clear that

1
2 pregnant workers are not disabled. It specifically
3 said that accommodations should be made for
4 medical conditions related to pregnancy or
5 childbirth or disabled workers. So by doing that
6 the law makes clear that no pregnant worker has to
7 prove they're disabled in order to get the
8 accommodation they need. They just need to show
9 that there has a condition related to pregnancy or
10 childbirth. And this is also an important step
11 forward, but we firmly believe the City can get
12 this done now and we would obviously be thrilled
13 to see the city do so.

14 To wrap up, you know this
15 legislation will benefit working women, their
16 families, employers and the public. Women who
17 need income but lack accommodations are often
18 forced to choose between working under unhealthy
19 conditions, risking their own health as well as
20 the health of their babies. Stress from job loss
21 can increase the risk of premature baby or low
22 birth weight and these risks are just risks that
23 can be avoided.

24 As I've said earlier, promote
25 women's economic security. It would also save

1
2 taxpayers money in the form of unemployment
3 insurance and other public benefits. And
4 employers benefit too from reduced turnover and
5 increased productivity. It would provide clarity
6 so employers can anticipate their responsibilities
7 and avoid costly litigation.

8 What's really interesting is after
9 California passed similar legislation, litigation
10 of pregnancy discrimination claims actually
11 decreased even as the number of pregnancy
12 discrimination cases around the country were
13 increasing. The Hawaii Civil Rights Commission
14 recently reported a similar reduction in pregnancy
15 discrimination complaints and litigation after
16 enactment.

17 So this is really a common sense
18 act that would dramatically benefit protections
19 for women and their families and we look forward
20 to working with you on passing this critically
21 important legislation. And thank you again for
22 your consideration.

23 CHAIRPERSON ROSE: Thank you.
24 Would you identify yourself for the record?

25 MS. KATHERINE GREENBERG: Good

1
2 Morning. My name is Katherine Greenberg and I'm a
3 staff attorney in the Employment Law Unit of the
4 Legal Aid Society. My practice focuses on
5 employment issues affecting pregnant women,
6 caregivers and workers with disabilities. I'm
7 here today to speak in favor of the proposed
8 amendment to the administrative code, which would
9 make it an unlawful discriminatory practice for an
10 employer to refuse to reasonably accommodate the
11 needs of an employee arising from pregnancy,
12 childbirth or a related medical condition.

13 The Legal Aid Society is the oldest
14 and largest not for profit public interest law
15 firm in the United States. We work on more than
16 300,000 individual legal matters annual for low
17 income New Yorkers with civil, criminal, juvenile
18 rights problems in addition lawyer firm
19 representation that benefits all over 2,000,000
20 low income low income children and adults in New
21 York City.

22 The Society delivers a full range
23 of comprehensive legal services to low income
24 families and individuals in the city. And our
25 civil practices local neighborhood offices in all

1
2 five boroughs along a centralized, city-wide
3 lawyer firm, employment, immigration, health and
4 homeless rights practices.

5 The employment law unit provides
6 representation, community education and advice to
7 low wage workers regarding employment issues
8 including unemployment insurance benefits, minimum
9 wage, overtime and other wage and hour laws,
10 unemployment discrimination based on any
11 prescribed category including gender and
12 disability.

13 Legal Aid is frequently contacted
14 by pregnant women who are having trouble at work
15 or who have lost their jobs. For example, we
16 recently met with a woman named A.S., I'll call
17 her by her initials, who lost her job shortly
18 after giving birth to a baby boy. A.S. had worked
19 in customer service at a bank where her job
20 consisted mostly of desk work. However, she was
21 also expected to walk around the bank and engage
22 customers in conversation over the course of the
23 day.

24 Throughout her pregnancy A.S.
25 experienced periods of severe morning sickness

1
2 including nausea and vomiting that made it
3 difficult for her to perform job tasks that
4 required standing and walking.

5 A.S. spoke with her manager
6 multiple times about her morning sickness and
7 asked if she could be relieved from job duties
8 that required standing and walking or if should
9 could swap those duties with a co-worker in favor
10 of increased desk work. Her manager repeatedly
11 refused and as a result A.S. used up all of her
12 sick time and was forced onto unpaid leave about
13 four months before her due date.

14 When she returned from work
15 following the birth of her son she was told that
16 she had no remaining sick time and was fired after
17 missing three days of work to care for her son who
18 was sick with a cold. She also lost benefits
19 associated with her job while she was on that
20 leave and she ended up with Medicaid and food
21 stamps and other public benefits through birth and
22 into what turned out to be a period of
23 unemployment following her very brief return to
24 work.

25 J.M. is another Legal Aid client

1
2 who lost her job after her employer refused to
3 provide a minor accommodation she needed as a
4 result of her pregnancy.

5 J.M. worked for a small employer
6 that didn't offer health insurance to its
7 employees. So as a result she obtain prenatal
8 care at a clinic that accepted Medicaid. This
9 clinic was only open during regular business
10 hours, which were the same hours that J.M. worked.
11 Although J.M. always gave her employer advanced
12 notice of her prenatal appointments and scheduled
13 these monthly checkups as early in the morning as
14 possible such as to minimize any missed work, she
15 inevitably arrived at the office a few hours late
16 on days when she had prenatal appointments.

17 Rather than accommodate J.M.'s need
18 for a few hours off work each month, time for
19 which she was not being paid since she was an
20 hourly employee, J.M.'s employer harshly
21 reprimanded her for her late arrivals and
22 threatened her with termination if she continued
23 arriving late.

24 Scared to lose her job, J.M.
25 stopped attending her prenatal appointments, which

1
2 endangered both her own health and that of her
3 unborn child and in fact led to her having to have
4 a cesarean section because her child was too
5 large. She should have been induced earlier but
6 her doctor didn't know because she hadn't been
7 able to attend her appointments because she was
8 trying to keep her job.

9 Excuse me. Despite her efforts, as
10 well, she was fired while she was at the hospital
11 in labor after she called her employer to report
12 her absence.

13 As these examples illustrate, low
14 wage pregnant workers are in a particularly
15 vulnerable position. Many work at small employers
16 and are not protected by the federal Family and
17 Medical Leave Act and many employers refuse to
18 offer even minimal accommodations that would
19 enable their pregnant employees to maintain both
20 their health and their jobs.

21 That's why this proposed amendment
22 is so important. With this law in place pregnant
23 women in New York City wouldn't have to fear
24 losing their jobs simply because they need a
25 modest temporary accommodation at work during

1
2 their pregnancy. This law would also enable
3 advocates such as myself to step into the
4 conversation between employer and employee at an
5 earlier phase and hopefully resolve these issues
6 before women lose their jobs or are forced out on
7 unpaid leave.

8 As a result, the Legal Aid Society
9 is in favor of the proposed amendment to the New
10 York City Administrative Code and we thank you for
11 putting this legislation forward and for your
12 time.

13 CHAIRPERSON ROSE: Thank you. I
14 thank both of you for your efforts on behalf of
15 pregnant women. Could both of you tell me is
16 there, can you give me a number of women that
17 you've worked who have experienced pregnancy
18 discrimination?

19 MS. BAKST: I would say the vast
20 majority of our callers to our hotline there are
21 some pregnancy related issue in the intake. So
22 it's just the vast majority of our callers relate
23 to pregnancy discrimination in one form or
24 another.

25 MS. GREENBERG: I speak to women

1
2 every week who are experiencing problems at work
3 because of pregnancy or were fired after becoming
4 pregnant or shortly after having a child. So we
5 hear from people in this situation a lot.

6 CHAIRPERSON ROSE: Does Legal Aid
7 have any documentation about the number of cases
8 that you've had in terms of pregnancy
9 discrimination?

10 MS. GREENBERG: I can probably pull
11 together numbers. We have a hotline that's open
12 about nine hours a week that we've had for I think
13 about half a year now. We get calls about a
14 variety of employment matters. I will certainly,
15 if there's any way for me to sort those calls
16 about pregnancy, I'll find out and I'll get you
17 those numbers.

18 CHAIRPERSON ROSE: Okay. Based on
19 the calls that you've gotten, has there been an
20 uptick in them recently or over the course of a
21 year?

22 MS. GREENBERG: I think we've
23 experienced an uptick in pregnancy issues.

24 CHAIRPERSON ROSE: It's pretty much
25 the same?

1
2 MS. GREENBERG: I'm pretty early in
3 my career. So I don't know how many calls I could
4 speak to trends over a number of years. But
5 certainly what I hear from advocates who have been
6 working in this field and from looking at the
7 statistics at the EEOC and other agencies, they
8 all indicate that pregnancy discrimination claims
9 are on the rise and disproportionately on the rise
10 as compared to other types of discrimination.

11 CHAIRPERSON ROSE: Thank you. Are
12 any of you working with the New York City Human
13 Rights Commission in terms of resolving these
14 issues?

15 MS. BAKST: We've reached out to
16 the City Human Rights Commission. And we, you
17 know, have advocated with them to explain how
18 important even though we respect and appreciate
19 their broad interpretation of the law, why we
20 firmly believe clear legislation will go a long
21 way to keeping pregnant workers healthy and on the
22 job.

23 MS. GREENBERG. I'm sorry. I was
24 going to say, that no, I haven't directly. I have
25 used the New York City Human Rights Law in

1
2 litigation although I haven't made any claims
3 trying to put forth a pregnancy accommodation
4 claim.

5 CHAIRPERSON ROSE: And have you
6 talked with employers to find out what their
7 objection to providing these accommodations are
8 and are there costs involved?

9 MS. BASKT: I actually would like
10 to speak to that because I've had a lot of
11 experience over the last few months working with
12 employers around the state in support of the state
13 Women's Equality Act and this similar provision in
14 state law. And we have generated broad support
15 across the state from businesses. Many businesses
16 have said, this is a no brainer.

17 And we have leading members of
18 businesses who have spoken out in support,
19 business leaders. And so we have the Greater New
20 York State Chamber of Commerce speak out
21 repeatedly in favor of this provision. And many,
22 many, many businesses.

23 And so I think that, you know,
24 smart progressive business leaders understand that
25 treating pregnant workers fairly is not just the

1
2 right thing to do for women, but it's smart
3 business practice because it keeps women on the
4 job. It keeps them healthy and as I said it's
5 smart HR practice because with the expanded scope
6 of how these laws are being interpreted, that
7 making sure that pregnant women are entitled to
8 the same accommodations as other workers on the
9 job is the right thing to do.

10 It's ultimately going to help them
11 avoid liability, keep their litigation docket down
12 and avoid the time and expense that they have to
13 put into defending these charges if they simply
14 enacted policies that applied extended equally to
15 workers with pregnancy related conditions, this
16 problem could be easily resolved.

17 CHAIRPERSON ROSE: We've asked the
18 Human Rights Commission to put together a listing,
19 a chart that talks about pregnancy discrimination.
20 Do you think that that would be effective or have
21 an impact on pregnancy discrimination in the
22 workplace?

23 MS. BAKST: I'm not sure I
24 understand the question.

25 CHAIRPERSON ROSE: We've asked them

1
2 to make like a poster for educational purposes
3 like what pregnancy discrimination - -

4 MS. BAKST: Right.

5 CHAIRPERSON ROSE: You know
6 encompasses, which would have to be posted on the
7 job.

8 MS. BAKST: Right and you're
9 talking about in this legislation?

10 CHAIRPERSON ROSE: Yes.

11 MS. BAKST: Yes I actually think
12 that's critical and I applaud you for including
13 that because, you know, women need to understand
14 what their rights are on the job. And so often
15 employers, you know, there are many, many, many
16 employers who do the right thing and we applaud
17 them. But there are often those employers who
18 think that they can get away with treating
19 pregnant women worse than other workers.

20 Posting will remind employers and
21 will also allow employees to have the ease, you
22 know and the comfort of knowing that if they, and
23 many pregnant workers go through the nine months
24 of pregnancy and need very little and that's very
25 important to know. This is only for those

1
2 pregnant women who have an issue that arises
3 during their pregnancy where they need a modest,
4 temporary accommodation that's routinely afforded
5 to other workers. And in those situations
6 pregnant women should know that they have rights
7 similar to other workers on the job.

8 So I think posting is a phenomenal
9 idea and would really help implement this law and
10 the benefit of women.

11 CHAIRPERSON ROSE: Thank you.

12 MS. GREENBERG: I strongly agree.
13 I think with pregnancy, in particular, because
14 it's only something that a person goes through for
15 a limited amount of time, the sooner an employee
16 knows about their rights and can ask questions
17 about them and stick up for themselves, the more
18 likely it is that the situation will be able to be
19 resolved. And so I think that pairing informing
20 women about their rights along with this
21 additional protection that allows women to speak
22 out and negotiate for an accommodation that keeps
23 them in their jobs is, I think, really what's
24 necessary. Too often I get calls from people who
25 have already lost their jobs. And if we have this

1
2 law and if they knew about their rights halfway
3 through their pregnancy, I could have talked to
4 them about having a conversation with their
5 employer. Or I could have reached out to their
6 employer on their behalf to have the conversation
7 that could have kept them in their job.

8 MS. BAKST: Right and I just wanted
9 to clarify one thing. What we're talking about is
10 making sure that pregnant workers are entitled to
11 a reasonable accommodation unless it imposes an
12 undue hardship on the employer. Right? And so
13 it's no guarantee, but by engaging in an
14 interactive process and requiring employers to
15 simply consider the accommodation and you heard
16 from testimony that many employers have a knee
17 jerk reaction and say, oh I can't accommodate you.
18 But when they really look around there's a million
19 other jobs that pregnant women could do to stay
20 safely on the job.

21 This would be to simply afford
22 pregnant workers the same rights to an interactive
23 process to determine whether there is a reasonable
24 accommodation that could be made.

25 If that's not possible, the law is

1
2 not a mandate in that respect. It's the right to
3 an interactive process and I think that's an
4 important distinction because, again, it's just
5 common sense.

6 CHAIRPERSON ROSE: Thank you.
7 Council Member Vacca. [off mic] Oh. Oh okay.
8 [off mic]

9 I've been advised by council that
10 the Commission had some concerns about how they
11 would enforce this. Do you have—specifically the
12 notice provision. Do you have some suggestions
13 that um...

14 MS. BAKST: I think that's a
15 conversation that would be a really, you know,
16 good conversation to have. I mean I don't, I
17 think it seems doable in other situations. So it
18 seems that it's not that much heavier a lift to
19 add a simple posting and to say that, you know,
20 pregnant workers have some basic rights under the
21 law.

22 I just, you know, in terms of
23 enforcement, you know there are posting
24 requirements in a variety of statutes and it's not
25 clear how they're enforced, but by knowing that

1
2 they're required, you have employers that, many
3 employers that do the right thing and take
4 proactive steps. So I think that it's the right
5 thing to include, you know, regardless in a sense
6 of how it's enforced. Obviously we'd love to see
7 enforcement, but I think it's an important
8 provision to include nonetheless.

9 Do you want to add something?

10 MS. GREENBERG: Yes I would agree
11 to the extent that employers are already required
12 to post many of these kinds of notices about
13 employee rights. And so it would seem to me that
14 it could be folded in both with the notices that
15 already exist that are comprehensive.

16 And on the enforcement side, I know
17 that with federally required notices when an
18 agency goes into an employer they can look for
19 those notices. So if there's some other reason
20 why the agency is on site, they can look for them.

21 But there's also a role to be
22 played with private enforcement. Because
23 sometimes if an employee isn't aware of their
24 rights, and part of the reason they're not aware
25 is because there was not the required postings in

1
2 the workplace. They can go to court even beyond
3 what would otherwise be the statute of limitations
4 for their claim and argue that they should still
5 be allowed to bring their claim because their
6 employer failed to put up the posting. And
7 employers know that this is a risk they run if
8 they don't post. So that incentivizes them to
9 post as well actually even without agency
10 enforcement.

11 CHAIRPERSON ROSE: Okay. Thank
12 you. All right. You were in all the
13 [unintelligible] last week right?

14 MS. BAKST: Yes.

15 CHAIRPERSON ROSE: Trying to get
16 legislation passed?

17 MS. BAKST: Right.

18 CHAIRPERSON ROSE: Unfortunately
19 the session ended and the legislation wasn't
20 passed. Are you going to continue your efforts to
21 get this legislation passed on the state level?

22 MS. BAKST: Yes I think that we
23 have unprecedented bipartisan support. This
24 legislation passed 63 nothing by the republican
25 controlled senate. We have democratic support and

1
2 this is an issue that effects woman across New
3 York State.

4 In the report we have women from
5 Long Island who have problems and who have had
6 this experience and the same stories and arguments
7 apply there. And so of course we would love to
8 see this. We applaud Governor Cuomo for his
9 leadership and we think that this is the right
10 thing to do statewide.

11 In the meantime, New York City can
12 act and we love to see that happen sooner rather
13 than later because this is a critical issue. Time
14 should not, we should not wait for women to get
15 what they need to stay healthy and on the job.
16 These are critical, critical issues for working
17 woman and their families.

18 CHAIRPERSON ROSE: Thank you.

19 Council Member Vacca.

20 COUNCIL MEMBER VACCA: I'm sorry.

21 I had to step out.

22 You know we has council people do
23 five things at the same time. And I want you to
24 know I have a friend of mine and we often talk and
25 we see other, I'm sorry - - [off mic].

1
2 Are you? Right. I have a friend of
3 mine and he often says, Jimmy you talk about five
4 things at the same time. He can't keep track of
5 what I'm talking about. I just shift gears. He
6 said I can't stomach this.

7 What I wanted to say is that I
8 wanted to thank Better Balance especially and I
9 wanted to thank Vicki Javier on my staff because
10 really she worked with you in formulating the
11 legislation. She brought to me the need and the
12 instances and the examples which we had to go with
13 the precedent and your advocacy.

14 You know we in the Council really,
15 I think, try to do the best we can but sometime we
16 depend on advocacy groups and we depend on policy
17 people like your organization as well, who really
18 know more than us. But in knowing more than us
19 you impart knowledge and then we can act
20 legislatively to correct injustices.

21 So I want to thank you both.

22 MS. BAKST: Well again I want to
23 reiterate my support too because we depend on
24 legislators to do the right thing on behalf of our
25 clients and what we see as a systemic problem on

1
2 the ground. And thanks to your leadership and
3 your efforts we can get this done.

4 COUNCIL MEMBER VACCA: Thank you.
5 I hope that we move on this here quickly and I'm
6 going to ask the Speaker to do so.

7 MS. BAKST: Thank you.

8 COUNCIL MEMBER VACCA: Thank you.

9 CHAIRPERSON ROSE: I thank you both
10 for your testimony today. And I'd like to
11 acknowledge we were joined throughout this hearing
12 by Isha Wright who is the Finance Analyst for the
13 Civil Rights Committee. And I hope we can
14 determine whether or not there's any undue costs
15 or anything that would preclude us from being able
16 to enact this legislation.

17 I thank you all for being here
18 today. I think the Council Members have
19 demonstrated a desire more than that, maybe a
20 passion and zeal to see that this legislation does
21 see the light of day and moves forward.

22 I'd like to thank the sponsor of
23 the legislation and Chairman Vacca for coming and
24 with that this meeting is adjourned. Thank you.

25

C E R T I F I C A T E

I, Kim Perrot certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

Kim Perrot

Date July 12, 2013