

# Your Rights While Pregnant, Breastfeeding, or Caregiving: A Report on the 2019 Commission Public Hearing on Pregnancy and Caregiver Discrimination





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**Commission on  
Human Rights**

Bill de Blasio  
Mayor

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Chair/Commissioner

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The New York City Commission on Human Rights and the Human Rights and Gender Justice Clinic at CUNY Law School

## **About the New York City Commission on Human Rights**

The New York City Commission on Human Rights (the “Commission”) is the City agency responsible for enforcing the New York City Human Rights Law (the “City Human Rights Law”), one of the most comprehensive anti-discrimination laws in the country. The Commission has three primary divisions: the Law Enforcement Bureau (“LEB”), the Community Relations Bureau (“CRB”), and the Office of the Chairperson. LEB is responsible for the intake, investigation, and prosecution of City Human Rights Law violations, including systemic violations. CRB, through borough-based Community Service Centers, helps cultivate understanding and respect among the many diverse communities through events, workshops, training sessions, and pre-complaint interventions, among other programs and initiatives. The Office of the Chairperson houses the legislative, regulatory, policy, and adjudicatory functions of the Commission and convenes meetings with the agency’s commissioners.

The current Commissioner and Chair of the Commission is Carmelyn P. Malalis, who was appointed by Mayor de Blasio in November of 2014, and began her tenure in February 2015. Commissioner Malalis brings with her over a decade of experience as a human rights and employee advocate in the private sector, prioritizing the fight against all types of gender-based discrimination.

## **About the Human Rights and Gender Justice Clinic at CUNY Law School**

CUNY Law School’s Human Rights and Gender Justice Clinic (the “Clinic”) focuses on gender-based violence, reproductive rights, sexual orientation and gender identity, economic and social rights, children’s rights, and anti-trafficking work. Clinic students engage in cutting edge human rights work under close clinical supervision. The Clinic maintains a diverse docket of projects, providing students broad experience in human rights practice. Through the clinical seminar and project work, clinic students develop a sound understanding of international human rights and sharpen lawyering skills necessary for effective law reform-oriented advocacy work applicable in both U.S. and international contexts.

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## Message from the Chair and Commissioner, Carmelyn P. Malalis



Pregnancy and caregiver discrimination has recently received renewed attention in light of the #MeToo movement, as advocates and communities have challenged accepted norms and injustices that continue to

disproportionately affect women and create inequalities in the workplace. As the stories and voices of workers who experience sexual harassment have been given a spotlight over the past several years, stories also emerged about the continued widespread and systematic marginalization of pregnant and caregiving workers. While stories of pregnancy and caregiver discrimination have returned to prominence recently, this issue has been an area of focus at the New York City Commission on Human Rights (the “Commission”) since I began my tenure as Chair and Commissioner in 2015. Our commitment to combat this form of discrimination and marginalization—which can result in real physical and emotional harm, financial instability and poverty for entire families, and contributes to pay inequity for women and people of color—is as strong as ever.

In 2015, within weeks of the start of my tenure leading this agency, the Commission published a notice of rights, required under the 2013 NYC Pregnant Workers Fairness Act, the first Commission document I sought to update. This notice, which employers must post or otherwise

provide to employees, clarified for the first time that the Commission interprets pregnancy accommodations to include time off to recover from childbirth and to pump in the workplace, among other requirements. In 2016, the Commission went a step further and published legal enforcement guidance on pregnancy discrimination and pregnancy accommodations which clarified, again for the first time, that the Commission interprets “related medical conditions” to pregnancy broadly and comprehensively, to mean “the state of seeking to become pregnant; any medical condition that is related to or caused by pregnancy or childbirth, including, but not limited to, infertility, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, miscarriage, lactation; and recovery from childbirth, miscarriage, and termination of pregnancy.” The guidance also provided clear examples of what constitutes discrimination based on pregnancy, childbirth or a related medical condition under the New York City Human Rights Law in employment, housing and public accommodations and outlined how employers must identify and accommodate pregnant employees, including the introduction of the groundbreaking process of a cooperative dialogue. That same year, we worked with our partners in the de Blasio Administration and the New York City Council to add protections against employment discrimination based on caregiver status to our already comprehensive New York City Human Rights Law. In March 2019, the Commission published extensive materials on lactation accommodations in the workplace, pursuant to the recently passed Local Laws 185 and 186, including three model policies, a model request form, and additional

resources for employers' use to develop and implement lactation accommodation policies. The Commission is currently in the process of developing proposed rules to further clarify and codify protections related to pregnancy discrimination and accommodations, lactation accommodations, and discrimination on the basis of sexual and reproductive health decisions.

To learn more about the experiences of people who have faced pregnancy or caregiver discrimination, the impact of the legal enforcement guidance, what more the Commission could do to combat this persistent and insidious form of discrimination, and what policy, regulatory, or legislative changes could strengthen protections, we held the Commission's first-ever public hearing on pregnancy and caregiver discrimination. The hearing was held on January 30, 2019, the fifth anniversary of the effective date of the New York City Pregnant Workers Fairness Act, and we heard from a diverse array of workplace rights and reproductive justice advocates; from doctors, midwives, and doulas; and from parents and caregivers. They shared their personal experiences and the stories of their clients and patients who endured pregnancy and caregiving discrimination. They also described the challenges they continue to face, and how discrimination affects them at the most vulnerable times of their lives. Testimony also addressed the heightened vulnerabilities of workers based on their intersecting identities, including people of color, low-income individuals, and immigrants.

While we acknowledge that legal protections are foundational, effective enforcement and public education, outreach, and engagement are critical.

Our law enforcement and community outreach efforts in this area, as well as this report, are designed to ensure New Yorkers not only enjoy the full benefit of the protections guaranteed to them under the City Human Rights Law, but also understand that the law exists to support them. We must create space, in the workplace and elsewhere, for New Yorkers to be their whole, complete selves as pregnant people, as parents, and as providers of care to their family members. We hope this report will serve to shed light on these issues, give voice to people's lived experiences, and contribute to generating new ideas on how to confront pregnancy and caregiving discrimination, so that being a pregnant person, a parent, or a caregiver, is not a deviation from the normative expectations of work but is a normalized and integrated part of the work/life experience, one that is accepted, supported, and respected.





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## I. Introduction

Employment discrimination based on pregnancy and caregiving status has existed since women entered the workforce in large numbers in the 1950s and 1960s.<sup>1</sup> In New York, women<sup>2</sup> are paid 89 cents for every dollar paid to men,<sup>3</sup> and the gap is even greater for women of color.<sup>4</sup> The “pregnancy penalty” plays a significant role in maintaining the gender wage gap, which increases after child-bearing age. In New York City, single, childless women under the age of thirty-five earn 96 cents for every dollar a man earns.<sup>5</sup> Yet, between the ages of thirty-five and sixty-five, women earn only 78 cents to the dollar, reflecting a decrease in income after childbearing years that continues to impact women through the end of their careers.<sup>6</sup> In addition, nearly 1.5 million people are informal caregivers<sup>7</sup> in New York City.<sup>8</sup> Most caregivers are women and provide at least thirty hours of care a week to children or other dependents.<sup>9</sup> Caregivers do everything from helping with grocery shopping, assisting with basic needs, and providing transportation.<sup>10</sup> Many caregivers have jobs, and it is common for them to encounter challenges in attempting to balance their roles as caregivers and workers.<sup>11</sup>

The Commission believed it was important to hold a public hearing in order to hear from people about their personal experiences while being pregnant, having a pregnancy-related condition, such as needing to pump while at work or dealing with a miscarriage, and being a caregiver outside of the workplace. It was time to provide a new forum for these individuals, advocates, and professionals who assist with childbirth and reproductive health to come forward and share what they have seen or experienced—not only so they could be heard, but so the Commission and the City could develop a better understanding of existing issues.

The Commission held a citywide public hearing (the “Hearing”) on pregnancy and caregiver discrimination in the workplace on January 30, 2019—the five-year anniversary of the effective date of the NYC Pregnant Workers Fairness Act. The Hearing, which took place at the CUNY School of Law, included opening remarks by Cynthia Thomas Calvert, Senior Advisor to UC Hastings College of the Law’s Center for WorkLife Law. The Hearing was moderated by a panel of commissioners from different City agencies or bodies, including Commissioner and Chair Carmelyn P. Malalis, Executive Director of the Commission on Gender Equity Jacqueline M. Ebanks, Human Rights Commissioners Ana Oliveira and Catherine Albisa, and Department of Health and Mental Hygiene Assistant Commissioner Deborah L. Kaplan. The panel received oral testimony from eighteen members of the public, including representatives from advocacy groups, activists, and workers. The Commission continued to receive written testimony after the Hearing, receiving a total of seventeen additional submissions.

The objectives of this report are to educate the public on current laws surrounding pregnancy and caregiver discrimination and to demonstrate the discrimination people face in the workplace because of pregnancy and caregiver status. Through these aims, the Commission hopes to provide support and resources for workers who experience pregnancy and caregiver discrimination, as well as information to help individuals and entities effect change in their workplaces and communities in order to address pregnancy and caregiver discrimination.

The report identifies distinctive characteristics of the New York City Human Rights Law (“City Human Rights Law”) and existing gaps in federal, state, and city laws. At the federal level, despite the existence of the Pregnancy Discrimination Act (the “PDA”) and advances in federal case law, employees do not have an explicit right to accommodations for pregnancy, childbirth, or related medical conditions. New York State law requires accommodations for pregnancy-related conditions, but allows employers to require that employees provide medical notes for any pregnancy-related accommodation request,

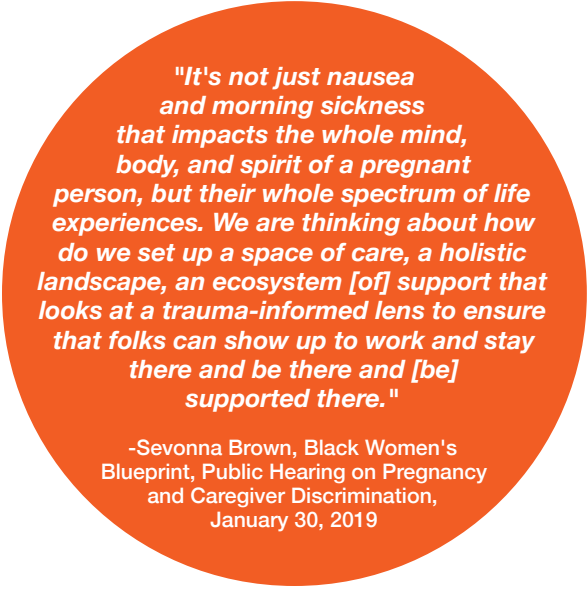


even routine needs that arise during the course of an uncomplicated pregnancy. The City Human Rights Law, in contrast, requires pregnancy related accommodations and limits the circumstances under which employers may require medical notes.

With respect to caregivers, federal law offers few protections and state law limits protections to those relationships falling within the limited definition of “familial status,” which is narrower than “caregiver” status protected under the City Human Rights Law. Currently, there is no law that requires employers to provide accommodations based on caregiver status.

This report examines the major themes that emerged from the oral and written testimony at the Hearing. These include: how pregnancy and caregiver discrimination manifest differently in different labor sectors; how domestic workers are not adequately protected from pregnancy and caregiver discrimination; how immigrant workers face significant barriers in invoking their rights; how public education is necessary to increase awareness about and compliance with the law; and how, due to the time-sensitive nature of workers’ needs for pregnancy and caregiver accommodations, they require special consideration in legal enforcement.

Finally, the report highlights recommendations for legislation and specific interventions that can be made by the Commission and other agencies to combat pregnancy and caregiver discrimination. Some of the recommendations include extending protections under the City Human Rights Law to all workers regardless of employer size, improving the Commission’s public education and outreach on pregnancy and caregiver discrimination, and requiring employers to have training and policies focused on pregnancy discrimination. While the Hearing focused primarily on pregnancy and caregiver discrimination in the workplace, stakeholders also raised serious concerns regarding race- and gender-based discrimination that pregnant patients experience in public accommodations, and specifically, in medical settings, and recommendations on how to improve these experiences.



*"It's not just nausea and morning sickness that impacts the whole mind, body, and spirit of a pregnant person, but their whole spectrum of life experiences. We are thinking about how do we set up a space of care, a holistic landscape, an ecosystem [of] support that looks at a trauma-informed lens to ensure that folks can show up to work and stay there and be there and [be] supported there."*

-Sevonna Brown, Black Women's Blueprint, Public Hearing on Pregnancy and Caregiver Discrimination, January 30, 2019



## II. Federal, State, and Local Protections for Workers Based on Pregnancy, Pregnancy-Related Medical Conditions, and Caregiving

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This section details existing protections under federal, state, and city law for workers in New York City based on pregnancy and caregiver status. For pregnant workers and those with pregnancy-related conditions, federal protections arise primarily under the Pregnancy Discrimination Act (“PDA”). However, the PDA’s narrow protections, which are restricted to conditions for which there is an identifiable comparator, fail to adequately address the unique challenges that pregnant and postnatal workers often face. Over forty years after the passage of the PDA, discrimination around the country based on pregnancy, childbirth, and related medical conditions continues to be pervasive across income levels and industries.<sup>12</sup> Federal law is generally inadequate to ensure pregnant workers obtain accommodations that will enable them to perform their jobs during and immediately following pregnancy.<sup>13</sup> The lack of availability of such accommodations can result in tragic consequences for workers, like when an employer’s refusal to grant a lifting restriction led to an employee’s miscarriage.<sup>14</sup> In light of the limited protections available under federal law, cities and states have filled the gap by passing local protections. New York City was the first jurisdiction to pass a Pregnant Workers Fairness Act in 2013, guaranteeing workers the right to reasonable accommodations based on pregnancy, childbirth, or related medical conditions. Since then, other jurisdictions around the country have adopted similar protections.

For workers in New York City with caregiver responsibilities, federal, state, and city law provide varying levels of protection, depending on the nature of the covered relationship between caregiver and dependent. For example, New York State law covers only parents caring for children, whereas the City Human Rights Law protects a broader range of caregiving relationships,

including care for both children and adults with qualifying relationships to the caregiver. Notably, there are currently no guarantees under federal, state, or local law of workers’ right to receive accommodations based on their caregiving responsibilities.

### a. Federal Protections

#### ■ Pregnancy and Related Medical Conditions

Federal protections for pregnant workers are mainly guaranteed by the PDA, which Congress passed in 1978 in response to the Supreme Court decision in *Gilbert v. General Electric*. The plaintiff class in *Gilbert* comprised female employees at General Electric who argued that the company’s disability plan discriminated against them based on sex, in violation of Title VII of the Civil Rights Act of 1964, because it denied coverage for pregnancy-related disabilities while offering coverage for non-occupational sicknesses and accidents.<sup>15</sup> The Supreme Court rejected the plaintiffs’ argument and ruled that discrimination on the basis of pregnancy is *not* discrimination on the basis of sex under Title VII of the Civil Rights Act.<sup>16</sup> The ruling galvanized activists, unions, and the feminist movement, quickly leading to a coordinated effort to introduce legislation and amend Title VII to specifically cover pregnancy.<sup>17</sup> Congressional hearings for the amendment began in early 1977, and less than two years after *Gilbert*, the PDA was signed into law, amending the definition of sex discrimination to include “discrimination on the basis of pregnancy, childbirth, or related medical conditions.”<sup>18</sup> The PDA’s central premise is that of equal treatment: employers must treat pregnancy like any other temporary medical condition. Specifically, the PDA sets forth that employers must treat “women affected by pregnancy...the same for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work.”<sup>19</sup> Notably, however, the PDA does not explicitly guarantee accommodations to address the particular needs of pregnant workers unless, as later clarified by the Supreme Court in *Young v. UPS* in 2015, an appropriate comparator is identified.<sup>20</sup>



Since the *Young* decision, more than two-thirds of cases involving a PDA claim have held that the employer was not obligated to accommodate the plaintiff pregnant worker.<sup>21</sup> The post-*Young* cases demonstrate that current federal standards are inadequate to provide workers with necessary accommodations based on pregnancy, childbirth, and related medical conditions. It is estimated that over 250,000 pregnant workers every year are denied requests for accommodations, and that many more do not ask for accommodations out of fear of retaliation and loss of financial stability.<sup>22</sup>

### ■ Specific Protections for Lactation

When workers return to work after pregnancy, they often face obstacles and discriminatory treatment from workplaces that are not prepared to accommodate their needs, including the need to express breast milk.<sup>23</sup> Many courts have found lactation to be a “related medical condition” to pregnancy and have concluded that disparate treatment against a worker due to lactation violates the PDA.<sup>24</sup> However, the majority of courts,<sup>25</sup> with some exceptions,<sup>26</sup> have also held that the PDA does not mandate accommodations for lactation.<sup>27</sup>

To address the needs of workers who pump or express breast milk in the workplace, a provision in the Affordable Care Act (the “ACA”) —called the “Nursing Mothers” provision—amended the Fair Labor Standards Act (“FLSA”) to require that employers provide reasonable break time for workers needing to express breast milk up to one year after childbirth, and provide a space, separate from a bathroom, in which workers can do so.<sup>28</sup> Employers are not required to compensate workers who need to pump or express breast milk during breaks unless they also compensate other workers for break time.<sup>29</sup> The federal requirement is only applicable to employers of fifty or more workers.<sup>30</sup> Because the ACA’s Nursing Mothers provision were included under FLSA’s overtime section, the only remedy that workers can pursue are lost or unpaid wages—a remedy that does not address the harms workers might suffer for denial of reasonable break time to pump, including diminished milk supply, painful

infections, emotional distress, extended unpaid leave, forced resignation, or termination.<sup>31</sup>

### ■ Caregiving

Federal law does not explicitly prohibit discrimination against caregivers, though workers with caregiving responsibilities may be able to assert claims under Title VII if the conduct complained of amounts to discrimination based on sex or another protected category. In particular, because stereotyping related to caregivers’ commitment to their jobs is often sex-based, discrimination against caregivers may give rise to claims of sex discrimination.<sup>32</sup> Caregivers may also be able to assert claims for associational discrimination under the Americans with Disabilities Act (the “ADA”).<sup>33</sup> The associational provision of the ADA<sup>34</sup> prohibits discrimination against a worker based on their association or relationship to a person with a disability.<sup>35</sup> While the ADA prohibits discrimination against those who have relationships with a person with disabilities, it does not require that the employer provide a reasonable accommodation to the worker for providing care.<sup>36</sup>

Workers who need to take leave for caregiving responsibilities may also have protections under the Family and Medical Leave Act (“FMLA”), which requires covered employers to provide up to twelve weeks of job-protected unpaid leave to covered workers for family or medical reasons, such as to care for a spouse, child, or parent who has a serious health condition.<sup>37</sup> However, the requirements of FMLA omit private employees who work at an employer with less than fifty employees and any employee who has worked at their employer for less than one year.<sup>38</sup>

### b. State Protections

#### ■ Pregnancy and Related Medical Conditions

The New York State Human Rights Law (“State Human Rights Law”) affords protections against pregnancy discrimination based on a person’s sex and/or familial status<sup>39</sup> in the employment,



housing, and public accommodations contexts.<sup>40</sup> The State Human Rights Law currently applies to employers with four or more employees, with the exception of sexual harassment, which applies to employers of all sizes.<sup>41</sup> New legislation will extend all protections to employers with one or more employees.<sup>42</sup> Currently, the State Human Rights Law prohibits the same types of conduct as prohibited under Title VII and is analyzed using similar legal standards.<sup>43</sup> However, the state legislature recently liberalized the legal standard applicable to the State Human Rights Law, bringing it into closer alignment with the more protective standard applicable under the City Human Rights Law.<sup>44</sup>

In 2015, the State Human Rights Law was amended to explicitly require employers to provide reasonable accommodations for “pregnancy-related conditions.”<sup>45</sup> A “pregnancy-related condition” includes routine “medically-advised restrictions” or “needs related to pregnancy” and a worker need not have a disability in order to receive accommodations.<sup>46</sup> When an employee requests a pregnancy-related accommodation, the employer may require the employee to provide a medical note to verify the existence of a pregnancy-related condition, including for routine needs in a pregnancy.<sup>47</sup> Employers must provide a reasonable accommodation for the employee based on pregnancy or a pregnancy-related condition unless it poses an “undue burden.”<sup>48</sup> Under state law, denial of a reasonable accommodation for pregnancy-related condition may qualify as sex or disability discrimination.<sup>49</sup>

### ■ Specific Protections for Lactation

The New York State Nursing Mothers in the Workplace Accommodation Law requires all private and public employers to provide unpaid dedicated breaks for nursing employees to express breast milk and protects workers expressing breast milk for up to three years after childbirth.<sup>50</sup> The law also prohibits employers from discriminating against workers who take breaks to express breast milk<sup>51</sup> and mandates that employers make “reasonable efforts” to provide a room, other than a

bathroom, where workers can express breast milk,<sup>52</sup> unless providing a lactation space would be significantly impracticable, inconvenient, or expensive to the employer.<sup>53</sup> Further, the law mandates that expectant workers be provided with the Breastfeeding Bill of Rights, which informs them of their right to breastfeed at their workplace.<sup>54</sup> In March 2019, New York added language to the State Human Rights Law making clear that lactation is covered as a pregnancy-related condition.<sup>55</sup>

### ■ Caregiving

The State Human Rights Law explicitly recognizes “familial status” as a protected category in employment.<sup>56</sup> However, familial status is limited to pregnancy or caring for a child and does not include care for adults.<sup>57</sup> Employers are not required to accommodate caregiving needs such as allowing time off or schedule adjustments for caregivers.<sup>58</sup> Employers are, however, required to provide individuals protected based on familial status with the same terms and conditions of employment, including time off, that they afford other workers.<sup>59</sup> For example, an employer who routinely grants workplace adjustments for workers attending school must not deny the same to workers based on familial status.<sup>60</sup> Moreover, starting in 2018, New York State provides paid leave for qualifying employees to bond with a newborn, adopted child, or foster child, or to care for a sick family member.<sup>61</sup> New York became the fourth state in the country to provide paid family leave.<sup>62</sup>

## c. City Protections

### ■ Pregnancy and Related Medical Conditions

The City Human Rights Law prohibits discrimination in employment, public accommodations, and housing on the basis of actual or perceived pregnancy through its prohibitions on discrimination based on gender.<sup>63</sup> Until 2014, the affirmative right to accommodations for pregnancy did not exist in New York City unless the pregnancy or condition amounted to a disability.<sup>64</sup> With the recognition



that an overwhelming majority of pregnant workers are working late into their pregnancies, and an increasing number of families are relying on the income of working women as primary breadwinners,<sup>65</sup> New York City passed the first Pregnant Workers Fairness Act in the nation in 2013. Today, nineteen states and four localities have passed similar laws that protect workers' rights to a reasonable accommodation and to be free from discrimination based on pregnancy, childbirth, or a related medical condition.<sup>66</sup> Under the City Human Rights Law, employers with four or more employees must reasonably accommodate employees' needs for their pregnancy, childbirth, or related medical condition,<sup>67</sup> regardless of whether the employees' limitation qualifies as a disability, unless providing the accommodation poses an undue hardship on the employer.<sup>68</sup>

In 2016, the Commission published Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy (the "Guidance"), clarifying employers' obligations to provide reasonable accommodations to pregnant workers.<sup>69</sup> The Guidance highlights that because pregnancy accommodations are time-sensitive, employers must provide accommodations liberally and quickly to permit pregnant workers to continue working without compromising their health, safety, or pregnancy.<sup>70</sup> In this spirit, the Guidance further clarifies that employers *may not* request medical notes from employees to prove pregnancy or a pregnancy-related condition for an accommodation request, unless the request is to work remotely or for leave beyond the assumed six- to eight-week period of physical recovery after childbirth, and only if the employer would request a note from employees requesting time away from work for medical reasons other than pregnancy-related conditions.<sup>71</sup> The Guidance identifies a non-exhaustive list of accommodations presumed reasonable, including: minor changes in work schedules; adjustments to uniform requirements or dress codes; additional water or snack breaks; allowing an individual to eat at their workstation; extra bathroom breaks or additional breaks to rest; and physical modifications to a workstation, including the addition of a fan or a seat.<sup>72</sup> The Guidance also clarifies that employers must reasonably

accommodate workers' needs arising from pregnancy-related conditions, including but not limited to, lactation, abortion, miscarriage, and infertility treatments, as they are directly related to pregnancy and childbirth.<sup>73</sup>

### ■ Specific Protections for Lactation

The City Human Rights Law also has explicit requirements regarding lactation accommodations. In December 2018, New York City passed two local laws amending the City Human Rights Law, mandating that employers of four or more employees meet specific standards with regards to lactation accommodations. First, Local Law 185 requires employers to provide employees with a lactation room that includes an electrical outlet, a chair, and surface on which to rest a breast pump, with nearby access to running water and close proximity to a worker's workspace and a refrigerator in which to store breast milk.<sup>74</sup> Second, Local Law 186 requires that employers have a written lactation accommodation policy that must be distributed to employees upon hire, informing them of their rights to express breast milk in the workplace and the process for requesting accommodations.<sup>75</sup> If an employer cannot provide a lactation room because of an undue hardship, the employer must engage in a cooperative dialogue with employees who need lactation accommodations to identify alternative accommodations that will meet the employee's need to express breast milk while working. To the extent that any mandated requirements for lactation accommodations would pose an undue hardship, employers must work with employees to meet as many of the lactation accommodation requirements as possible and create solutions such as: identifying a shared space that may be used for lactation; putting up privacy screens in a shared space or around a workspace to create privacy; ensuring employees can pump at their workspace; or purchasing a mini refrigerator or cooling devices for employees to use. In March 2019, the Commission published three model policies, a model request form, and additional resources and materials for employers to use to develop and implement their lactation accommodations policies.<sup>76</sup>





## ■ Caregiving

New York City recognized discrimination against caregivers as an increasingly important issue and, in 2016, enacted legislation that prohibits discrimination on the basis of caregiver status.<sup>77</sup> Unlike the state equivalent, New York City's definition of "caregiver" covers many different types of relationships, focusing on the provision of care to: children under the age of eighteen; individuals, such as a parent, sibling, spouse, grandparent, or grandchild with a disability; or someone who resides in the same household, to whom the worker provides direct and ongoing care.<sup>78</sup> The caregiver provision prohibits only disparate treatment; it does not establish a right to a reasonable accommodation for caregiver responsibilities.

*"No other condition is so rife with lack of accommodation and attention. Women are suffering through the most difficult part of their life with lack of support. The time they need the support is the time they get it the least. Minority women are 4 to 12 times more likely to die from complications of childbirth and pregnancy. So human rights in pregnancy is actually a matter of life and death."*

-Chinyere Anyaogu, OB/GYN at North Central Bronx Hospital, Public Hearing on Pregnancy and Caregiver Discrimination, January 30, 2019

### III. Themes from the Commission’s Public Hearing on Pregnancy and Caregiver Discrimination

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To better understand how pregnancy and caregiver discrimination affects workers in New York City, the Commission invited testimony from workers, advocacy organizations, medical providers, and various other stakeholders at the Hearing. The resulting testimony emphasized that although New York City’s protections against pregnancy and caregiver discrimination are among the best in the country, workers still experience these forms of discrimination across industries, often to devastating effect. Those who testified emphasized how low-wage workers, mobile workers, domestic workers, and immigrant workers are especially vulnerable to pregnancy and caregiver discrimination and fear speaking up to protect their rights because they often have so much to lose. These workers are also most likely to be people of color. Hearing testimony identified a significant lack of understanding of the rights and obligations under the law on behalf of employers and workers, which renders the law less effective.

#### a. Certain Industries and Jobs Pose Particular Challenges to Pregnant and Caregiving Workers

Testimony at the Hearing revealed that pregnancy discrimination impacts workers from all economic backgrounds; however, the consequences of discrimination manifest differently depending on the support and resources that workers have at their disposal.<sup>79</sup> As one advocate testified, “[p]regnancy and caregiver discrimination hit low-wage and immigrant workers especially hard. Many low-wage workplaces do not have any written or formal anti-discrimination policies. Few train their managers or staff on how to identify or report unlawful discrimination. Low-wage jobs

are often physically demanding ... [and] also tend to be inflexible with ridged hours and no personal time.”<sup>80</sup> Low-wage workers are considered easily replaceable, and also lack the financial security to risk advocating for better conditions while pregnant or while being a caregiver.<sup>81</sup> Employment sectors that pose a high risk of discrimination include the service industry, the nail salon industry, male-dominated fields, physically demanding jobs, and jobs that are mobile in nature.<sup>82</sup> The lack of written or formal anti-discrimination policies and lack of anti-discrimination training for managers and staff can exacerbate an environment where discrimination already occurs.<sup>83</sup> Workers in these industries are the least able to bear the consequences if they lose their jobs or face a reduction in hours or wages.<sup>84</sup> Furthermore, such unfair treatment of workers who have caregiving responsibilities and pregnancy-related needs derails their career, suppresses lifetime earnings, and can push families into public assistance and poverty.

Workers whose jobs require them to move around during the day and do not have a fixed worksite, such as delivery drivers and utility workers, are at high risk of discrimination based on pregnancy, childbirth, or related medical conditions because of the unique challenges travel poses.<sup>85</sup> Testimony from the Hearing described a pregnant postal worker who was unable to follow medical instructions to decrease physical activity because she knew she would lose her job if she did not continue walking her delivery route, and her job was the only means by which to provide for her family.<sup>86</sup> Every other week when she had her medical appointment, she would be “exhausted and broken” from trying to complete her route with her mailbag.<sup>87</sup> As a result, the worker had chronic hypertension during pregnancy, experienced worsened renal disease, and delivered her baby early.<sup>88</sup>

#### b. Domestic Workers Are Not Adequately Protected from Pregnancy and Caregiver Discrimination

Hearing testimony highlighted that current laws fail to protect domestic workers who are especially vulnerable to pregnancy



discrimination.<sup>89</sup> Because the City Human Rights Law only applies to workplaces with four or more employees, domestic workers, who may be the only worker in a household, often do not have legal rights or remedies related to pregnancy discrimination, caregiver discrimination, or related accommodations.<sup>90</sup> Testimony described pregnant domestic workers having to hide their pregnancies from their employers out of fear of termination.<sup>91</sup> Although some employers of domestic workers may engage in dialogue with their workers about accommodations for pregnancy, childbirth, and related medical conditions, this is the exception, not the rule.<sup>92</sup>

Hearing testimony described employers who have offered to pay for abortions rather than accommodate a worker's pregnancy by providing time off for prenatal care, such as a doctor's appointment, or other accommodations.<sup>93</sup> Employers will refuse time off during the week for postpartum doctor visits and instead insist that these visits happen on a worker's own time.<sup>94</sup> Given that many domestic workers are low-wage workers who often do not have healthcare, it is likely that their visits will take place in a community health center, where waiting time is often very long, and some workers may be deterred from seeking their needed care, which could result in high-risk complications during or after the pregnancy.<sup>95</sup> Testimony highlighted that those who care for others' children do not have the legal rights to receive accommodations to care for their own pregnancies, children, and well-being.<sup>96</sup> Pointedly, testimony further emphasized that "employers care for their own children over their nanny's right to choose [...] and so domestic workers are judged really harshly around their choices to have a family, and that's just not about them being a domestic worker. It's about them being women of color."<sup>97</sup>

### **c. Immigrant Workers Face Significant Barriers in Protecting Their Right to Employment**

Testimony raised concerns that undocumented workers are especially vulnerable to pregnancy and caregiver discrimination due to fear of deportation, fear of termination, and lack of

access to resources and information about their rights under the law. Although immigrant workers have the same workplace rights as all other workers, advocates stated that it is harder for immigrant workers to speak up because they have more to lose—they fear retaliation related to their immigration status for advocating for their rights, and they will have more difficulty finding a new job if they are fired.<sup>98</sup>

Employers may take advantage of their workers' fears and flout anti-discrimination laws without any repercussions. For example, discrimination against undocumented domestic workers poses particular challenges given that workers are often wary of any government agency because of their immigration status and are often unaware of their rights under local human rights laws.<sup>99</sup> This perpetuates the vulnerability and possible exploitation of these workers.<sup>100</sup>

### **d. Public Education Is Needed to Increase Awareness and Compliance of Rights and Obligations**

Hearing testimony consistently reported a disconnect between existing legal protections and implementation in workplaces. This is especially problematic in sectors that predominantly employ low-income workers and people of color, as well as for small employers with few resources.<sup>101</sup> Hearing testimony suggested that providing tools and resources to small employers could increase the likelihood that they provide accommodations for workers requesting them.<sup>102</sup> Stakeholders testified that the City should engage in outreach and education campaigns to close the gap and inform employers of their responsibilities and workers of their rights in the workplace.<sup>103</sup> Accommodations for pregnancy, childbirth, and related medical conditions should not be seen as inconveniences, but instead should be framed in a supportive way that builds the employer-worker relationship.<sup>104</sup>

Testimony highlighted that workers are similarly unaware of their rights under the City Human Rights Law, including of the requirement for employers to provide reasonable accommodations to pregnant



workers.<sup>105</sup> Workers are hesitant to request accommodations because they do not know their legal rights and remedies.<sup>106</sup> Many workers remain “in the dark” about such protections,<sup>107</sup> and their lack of knowledge not only contributes to their fear of retaliation, but also prevents them from receiving the accommodations they need.<sup>108</sup>

As repeated throughout the testimony, pregnancy and caregiver discrimination are generally rooted in gender stereotypes.<sup>109</sup> Outreach and education alone are not enough to combat discrimination without an active effort to normalize pregnancy, breastfeeding, and caregiver needs in the workplace. This includes reframing caregiving away from being a “women’s issue” and into a societal issue.<sup>110</sup> Without employers’ awareness of their obligations, workers’ awareness of their rights, and taking active steps to change the discourse and stigma surrounding pregnancy, breastfeeding, and caregiving, discriminatory conduct will persist unabated.<sup>111</sup>

### e. Pregnancy and Caregiver Accommodations Are Time-Sensitive

Hearing testimony underscored the time-sensitive nature of accommodations for pregnancy, childbirth, and related medical conditions and the challenges inherent in the timely investigation and processing of pregnancy and caregiving discrimination claims. This is especially an issue for lactation accommodations: workers who need to pump at work usually need the accommodations to do so immediately and may experience friction with the employer when demanding space, privacy, and time needed to express breast milk.<sup>112</sup> Stakeholders also described pregnancy discrimination cases not being formally resolved until after the pregnant worker gives birth, meaning pregnant workers may not be able to remain on the job and receive the accommodations they need while pregnant.<sup>113</sup> Testimony identified that the Commission’s complaint-filing process, case load, and limited ability to fast-track pregnancy cases typically only allows for “retroactive remedial measures” and may preclude the ability to proactively assist pregnant workers seeking to maintain their employment.<sup>114</sup> The individualized

nature of needs associated with pregnancy and related medical conditions means that the types of requested accommodations may vary widely,<sup>115</sup> creating a greater need for timely consultation and dialogue.

Similarly, testimony discussed the unique demands on caregivers’ time, availability, and need for flexibility to respond to “often unpredictable needs” of dependents.<sup>116</sup> These circumstances make it difficult to examine employer treatment of caregivers and establish a standard for disparate treatment.<sup>117</sup> The diverse range of caregiving workers from various employment sectors creates challenges for standardized enforcement of caregiver discrimination laws.<sup>118</sup>

*“It is harder for undocumented workers to speak up because they have more to lose...they may fear immigration consequence[s as] retaliation for trying to enforce their rights and they will have more difficulty finding a new job if they are fired.”*

-Amanda Bransford, Make the Road New York, Public Hearing on Pregnancy and Caregiver Discrimination, January 30, 2019

## IV. Recommendations Raised in Testimony at the Hearing

Written and oral testimony from the Hearing advocated for wide-ranging changes to address pregnancy and caregiver discrimination. This report identifies some key recommendations, though a full record of all recommendations raised is available by reviewing the transcript or video recording of the Hearing on the Commission’s website.<sup>119</sup> One recommendation from advocates is for employers to have mandated policies for requesting reasonable accommodations for pregnancy, and training about employers’ obligation to provide reasonable accommodations.<sup>120</sup> Testimony suggested that providing training and technical assistance for staff, upper management, and supervisors would not only help prevent discrimination, but also would aid in efforts to normalize and institutionalize pregnancy rights in the workplace.<sup>121</sup> The following recommendations were made by members of the public who offered testimony, and do not necessarily reflect the views of the Commission.

### a. Recommended Legislative Changes

#### i) Amend the City Human Rights Law to improve protections for pregnancy and caregiver discrimination

An attorney representing victims of pregnancy discrimination recommended amending the City Human Rights Law to create a rebuttable presumption of discrimination by employers who terminate pregnant workers during a then-known pregnancy.<sup>122</sup> Such an amendment would not only expedite pregnancy discrimination cases, but also provide additional protections for pregnant workers.<sup>123</sup> Moreover, once a case is brought, the burden would be on the

employer to show that the adverse action did not involve discriminatory animus.<sup>124</sup>

#### ii) Amend the City Human Rights Law to require caregiver accommodations

Testimony recommended amending the City Human Rights Law to explicitly require employers to provide reasonable accommodations to workers with caregiving responsibilities and require that, like in the context of pregnancy, childbirth, and related medical conditions, employers engage in the cooperative dialogue process with workers to determine how to accommodate certain caregiving needs.<sup>125</sup> Stakeholders noted that a cooperative dialogue process would place an affirmative obligation on employers to initiate conversations regarding accommodations for workers with caregiving responsibilities, and would aid in resolving disputes before they are brought to the Commission.<sup>126</sup> Advocates also explicitly recommended that the law should include the right to reasonable accommodations to caregivers who are providing care for dependents with disabilities.<sup>127</sup>

#### iii) Extend protections under the City Human Rights Law to all workers regardless of employer size<sup>128</sup>

A common theme throughout the testimony was the need to extend protections under the City Human Rights Law to all workers, regardless of employer size. Stakeholders recommended abolishing the requirement that limits application of the City Human Rights Law to employers with at least four workers.<sup>129</sup> The testimony noted that the four-employee requirement especially burdens the rights of domestic workers who are prevented from filing complaints of pregnancy discrimination or caregiving discrimination against their employers.<sup>130</sup>

#### iv) Prevent employers from adopting non-disclosure policies<sup>131</sup>

A state lawmaker recommended strengthening existing local and state legal protections to prevent employers from



adopting confidential severance agreements, non-disparagement clauses, and other non-disclosure policies that potentially conceal patterns of pregnancy discrimination.<sup>132</sup>

**v) Require employers to provide workers access to their personnel files**

When seeking to prove pregnancy discrimination, workers facing termination may lose access to important emails and information needed to help them prove their case. A state lawmaker recommended establishing a legal right for workers to access their personnel files to collect the information necessary to support their discrimination claims before entering into negotiations with their employers.<sup>133</sup>

**vi) Improve New York State's paid family leave**

Hearing testimony recommended amending New York State's paid family leave law to increase compensation for individuals on leave with caregiving responsibilities.<sup>134</sup> In 2018, the New York City Council adopted Resolution 312, which calls on the New York State legislature to pass legislation to amend the state Paid Family Leave Act to provide workers in New York State with a benefit equal to 100 percent of a worker's average weekly wage.<sup>135</sup> Testimony at the Hearing repeated this call for amending state law to help ensure that caregivers on leave are adequately compensated.

**vii) Add state tax credit for family caregivers**

Testimony recommended the creation of a state tax credit for family caregivers to ease their financial burdens and delay the need for publicly-funded institutional care.<sup>136</sup> A state tax credit would assist caregivers with middle-class incomes, as these individuals often do not qualify for Medicaid-financed caregiver assistance, but also do not make enough income to comfortably support the people for whom they provide care.<sup>137</sup> Hearing testimony also called for increased funding for Medicare services to decrease health care costs, decrease the cost of caregiving

for the elderly, and decrease the financial and emotional stress on caregivers.<sup>138</sup>

**viii) Improve protections for domestic workers**

In 2010, New York State enacted Senate Bill 2311A, the "Domestic Workers Bill of Rights," granting some rights and protections to domestic workers, including overtime pay, paid leave, and guaranteed rest days.<sup>139</sup> Hearing testimony called for the expansion of this 2010 state law to provide more financial assistance to domestic workers who are pregnant, raising young children, or working as caregivers.<sup>140</sup>

**b. Recommended Initiatives for the Commission**

**i) Improve case processing and structure**

Several advocates called for the Commission to implement a system to fast-track or prioritize pregnancy discrimination complaints because of their time-sensitive nature.<sup>141</sup> According to testimony, such a mechanism would especially help pregnant workers with pregnancy complications who may need an accommodation urgently or who are undocumented and hesitant to put their name on a complaint, and would provide immediate relief to pregnant workers who need urgent intervention.<sup>142</sup>

As a means of fast-tracking claims, advocates for pregnant workers and caregivers recommended that the Commission expand its gender-based harassment unit to include pregnancy accommodations and caregiver complaints and treat pregnancy discrimination as within the scope of gender-based harassment.<sup>143</sup> Tied to the requested expansion was a recommendation for additional resources from the City to ensure that the Commission has the ability to handle pregnancy discrimination claims in a timely fashion.<sup>144</sup> Advocates further recommended that the Commission have additional resources to support the Commission's



mediation program to mediate pregnancy discrimination disputes in a timely fashion, including increasing the number of available mediators who handle pregnancy discrimination claims.<sup>145</sup>

**ii) Formalize and improve Legal Enforcement Guidance on Pregnancy Discrimination**

Stakeholders repeatedly emphasized the critical role the Commission’s 2016 Legal Enforcement Guidance on Pregnancy Discrimination has played in advocating for clients in securing accommodations and fighting discrimination based on pregnancy, childbirth, and related medical conditions.<sup>146</sup> Advocates’ recommendations are two-fold: first, they encourage the Commission to take the Guidance’s progressive standards and examples and codify them into formal rules;<sup>147</sup> and second, they recommend further improvement and clarification of those standards.<sup>148</sup> Testimony suggested clarifying the standards surrounding the cooperative dialogue and medical notes by having the Guidance: (1) explicitly state that employers cannot require more documentation for pregnant workers seeking accommodations than they require for verifying other workers’ accommodation requests;<sup>149</sup> (2) provide clarity as to what constitutes “sufficient” documentation (referring in the Guidance to what an employer may do if it finds documentation to be “insufficient”);<sup>150</sup> (3) prohibit the potential for employers to be able to talk to an employee’s healthcare provider;<sup>151</sup> (4) define what is a “healthcare provider;”<sup>152</sup> and (5) specify that an employee’s request for a reasonable extension of time to provide medical certification cannot be unreasonably denied by the employer.<sup>153</sup> The Commission is currently in the process of formalizing rules related to the Guidance.

**iii) Pursue targeted investigations**

Hearing testimony also called for the Commission to proactively investigate certain labor sectors for cases of pregnancy discrimination, especially low-wage labor,

such as restaurants and domestic work, and industries with predominantly male workforces.<sup>154</sup>

**iv) Public education and outreach**

Testimony emphasized the need for public outreach and education of employers, health care professionals, workers, and the general public about New York City’s existing laws prohibiting pregnancy discrimination.<sup>155</sup> Specific recommendations included:

- launching a public education campaign about protections against unlawful pregnancy discrimination,<sup>156</sup> including education and outreach to immigrant workers and domestic workers;<sup>157</sup>
- launching a public awareness campaign on the rights of caregivers, reframing caregiving as a human rights issue instead of a “woman’s issue;”<sup>158</sup>
- working closely with healthcare professionals, particularly OB/GYNs, midwives, and doulas to help implement preventative solutions,<sup>159</sup> including educating their patients about their rights to accommodations and how to access them;<sup>160</sup>
- educating employers about the benefits of creating a caregiver-friendly workplace free from discrimination;<sup>161</sup>
- educating employers about their obligations under the City Human Rights Law;<sup>162</sup> and
- creating employee-centered educational materials, and employer-centered guidance that outlines legal obligations and provides practical guidance, with examples, on how to work with pregnant workers to identify workable reasonable accommodations.<sup>163</sup>



## V. Concerns About Discrimination and Harmful Practices in Healthcare Settings

While the Hearing focused primarily on pregnancy and caregiver discrimination in the workplace, stakeholders raised serious concerns regarding race- and gender-based discrimination that pregnant patients experience in public accommodations, particularly in the healthcare sector. The Hearing featured testimony by some healthcare providers who are usually in a unique position to hear from their patients about the discrimination they face in the workplace.<sup>164</sup> Other testimony described the “obstetric violence”<sup>165</sup> that some patients experience during the prenatal and birthing process, including abuse, coercion, and disrespect from healthcare providers while they are giving birth.<sup>166</sup> The Hearing highlighted concerns that traumatic childbirth experiences result in physical and emotional harm during an already stressful medical experience.<sup>167</sup> One individual who testified described being forced to undergo a psychiatric evaluation in the hospital for refusing a caesarian section.<sup>168</sup> Often the same people impacted by substandard prenatal and birthing care must also endure inhospitable, stressful, and physically-demanding workplaces prior to giving birth.<sup>169</sup> Workers dealing with the aftermath of childbearing trauma especially need the support and accommodations afforded to them by the law to heal and be able to return to work.<sup>170</sup>

To address these issues, advocates underscored the crucial importance of improving the treatment of pregnant persons, especially people of color, in the health care setting.<sup>171</sup> Testimony called on the Commission to take concrete steps to improve the Commission’s relationships with City hospitals and public health agencies, with the goals of reducing maternal mortality and morbidity and eliminating obstetric violence.<sup>172</sup> Advocates called on the Commission to urge hospitals and healthcare providers to adopt trauma-informed

and survivor-centered pregnancy and postpartum care, and to work with health care institutions to provide proper training to physicians, medical students, nurses, and other health care professionals.<sup>173</sup> More broadly, advocates called on the Commission to work with City hospitals and public health agencies, such as the Department of Health and Mental Hygiene, to shift the culture within medical institutions to ensure that people receiving pregnancy and postpartum care feel adequately supported and that patients are not disempowered or treated less well because of their race, national origin, or gender.<sup>174</sup>

Testimony also expressed concern about Child Safety Alert 14 (“CSA 14”),<sup>175</sup> an Administration of Children’s Services (“ACS”) policy that advocates say “operates often to unnecessarily separate newborns from their mothers.”<sup>176</sup> Under CSA 14, upon learning that a parent with a child in foster care is pregnant, the case worker assigned to oversee any siblings in foster care “must conduct an on-going assessment to determine whether it would be safe for the newborn to reside in the home.”<sup>177</sup> Advocates argue that the way in which CSA 14 has been carried out “presumes that it is safer and more appropriate for the state to remove newborns from mothers whose children are in foster care.”<sup>178</sup> There is concern that a lack of information and coordination within ACS can result in unwarranted “social holds”<sup>179</sup> by hospitals on infants, preventing parents from leaving the hospital with their infant, and placement of infants into foster care without a court order.<sup>180</sup> Testimony highlighted how the consequences of these decisions are devastating: the way in which CSA 14 operates can disrupt parent-infant bonding; impose stress and anxiety on parents and families; and cause a delay of weeks or months to return the infant to the family.<sup>181</sup>

Advocates recommended that CSA 14 be modified to be consistent with the legal requirement that a newborn stays with its parent absent an identifiable imminent safety concern.<sup>182</sup> Testimony urged New York State to enact laws that ensure newborns remain with their parents except in cases of imminent safety risks to the child, and called for policies that ensure that families are not unnecessarily separated.<sup>183</sup> Advocates called for the creation of a “family-centered, individualized





and strengths-based” process for determining the safety plan for what to do with infants who are born into families already involved with ACS or who would otherwise be flagged under CSA 14, and argued that such processes should occur prior to the birth of the child.<sup>184</sup> Subsequent to the Hearing, ACS has rolled out a pilot program, in consultation with advocates, to address the situation of pregnant parents who have had children removed and placed into foster care, to support parents in safely planning for their newborns.<sup>185</sup> The Queens-based pilot program uses targeted planning conferences with expectant parents, foster care agency case workers, and attorneys for the parents and children.<sup>186</sup> If the program effectively assists parents to safely plan for their newborns, ACS will consider rolling it out City-wide.<sup>187</sup>

The testimony also called on ACS to accommodate pregnant people, including to provide accommodations that allow pregnant people to follow medical advice, such as limiting its travel demands, and to offer practical assistance during the safety planning process for newborns.<sup>188</sup>

*“Every day in America pregnant women face the impossible choice between maintaining a healthy pregnancy and earning a paycheck.”*

-Dina Bakst, A Better Balance,  
Public Hearing on Pregnancy and Caregiver  
Discrimination, January 30, 2019



## VI. Next Steps

As evidenced by this report, the Hearing underscored how pervasive pregnancy and caregiver discrimination still is in the workplace. The recommendations highlighted in this report from the Hearing testimony illustrate the need for collaboration among stakeholders and lawmakers in order to address these issues. Based in part on the testimony at the Hearing, the Commission is initiating rule-making related to pregnancy, childbirth, or related medical conditions; lactation accommodations; and sexual and reproductive health decisions, and plans to update its Legal Enforcement Guidance on Pregnancy Discrimination after the rules are finalized. The Commission plans to work more closely with healthcare providers, sister agencies—specifically, the New York City Department of Health and Mental Hygiene—and professionals who support individuals through prenatal, birthing, and postnatal experiences so that they have the necessary information and tools to provide to their patients. The Commission will engage more deeply with community stakeholders and interagency partners to educate employees and employers of their rights and obligations. The Commission welcomes those stakeholders who testified at the Hearing, as well as the many representatives who were unable to attend or share their thoughts, to reach out to the Commission to share their experiences, expertise, and recommendations, either broadly or as it relates to specific industries.

For New Yorkers who are experiencing pregnancy and/or caregiver discrimination, or who are not receiving accommodations based on pregnancy, childbirth or a related medical condition, you can reach the Commission directly by calling the Commission’s Infoline at (718) 722-3131. Thank you to all of the individuals, organizations, and stakeholders who have come forward to share their stories.





## Endnotes

- 1 See Courtni E. Molnar, “Has the Millennium Yet Dawned?”: *A History of Attitudes Toward Pregnant Workers in America*, MICH. J. OF GENDER & L., 170-71 (2005) (“In the 1950s and 60s, many employers had mandatory leave policies requiring women to leave work upon reaching a certain month of pregnancy, regardless of whether they were able and willing to continue working. As late as 1960, women were still commonly fired if they became pregnant. In 1964, pregnancy was the most frequently reported reason why married women under age thirty-five quit work.”) (citing SHEILA B. KAMERMAN, ALFRED J. KAHN, & PAUL KINGSTON, MATERNITY POLICIES AND WORKING WOMEN, 1-2 (1983); Wendy Williams, *Equality’s Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, N.Y.U. REV. L. & SOC. CHANGE 325, 335 (1984-85); Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1129 (1986)).
- 2 Pregnancy, childbirth, and related medical conditions can be experienced by anyone regardless of gender. This report limits the use of gender-specific terms when citing studies, cases, or laws that explicitly use binary terms.
- 3 NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, NEW YORK WOMEN AND THE WAGE GAP, 1 (April 2017), <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/4-2017-ny-wage-gap.pdf>.
- 4 Among New York women who hold full time, year-round jobs, Black women are paid 66 cents, Latina women are paid 56 cents and Asian women are paid 82 cents for every dollar paid to white, non-Hispanic men. *Id.*
- 5 Dina Bakst & Phoebe Taubman, *The Pregnancy Penalty, How Motherhood Drives Inequality & Poverty in New York City*, A BETTER BALANCE, 5 (2014), [https://www.abetterbalance.org/wp-content/uploads/2016/11/ABB\\_PregnancyPenalty-Report-2014.pdf](https://www.abetterbalance.org/wp-content/uploads/2016/11/ABB_PregnancyPenalty-Report-2014.pdf).
- 6 *Id.*
- 7 The use of the term “caregiver” in this instance is not how caregiver is defined under the City Human Rights Law. See N.Y.C. Admin. Code § 8-102.
- 8 N.Y.C. COMPTROLLER SCOTT M. STRINGER, AGING WITH DIGNITY: A BLUEPRINT FOR SERVING NYC’S GROWING SENIOR POPULATION (Mar. 27, 2017), <https://comptroller.nyc.gov/reports/aging-with-dignity-a-blueprint-for-serving-nycs-growing-senior-population/>.
- 9 N.Y.C. DEP’T FOR THE AGING, A SURVEY OF INFORMAL CAREGIVERS IN NEW YORK CITY 2, 10 (2017), <https://www1.nyc.gov/assets/dfta/downloads/pdf/reports/UnpaidCaregivers2017.pdf>.
- 10 *Id.*
- 11 Written Testimony of Dina Bakst & Sarah Brafman, A Better Balance.
- 12 See, e.g., NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, BY THE NUMBERS: WOMEN CONTINUE TO FACE PREGNANCY DISCRIMINATION IN THE WORKPLACE, 1 (Oct. 2016); Natalia Kitroeff & Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America’s Biggest Companies*, N.Y. TIMES (Feb. 8, 2019), <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html>.
- 13 See generally, Dina Bakst, Elizabeth Gedmark & Sarah Brafman, *Long Overdue*, A BETTER BALANCE (May 2019), <https://www.abetterbalance.org/wp-content/uploads/2019/05/Long-Overdue.pdf>. One such case of an employee not receiving a simple accommodation is a cashier being denied a stool to sit while pregnant. *Id.* at 14 (citing *Portillo v. IL Creations, Inc.*, No. CV 17-1083 (RDM), 2019 WL 1440129, at \*6 (D.D.C. Mar. 31, 2019) (where court granted summary judgment for employer on a PDA claim because employee did not provide evidence that employer provided a stool to other employees due to disability)).
- 14 The employee provided a doctor’s note saying she could not lift more than 15 pounds. Her supervisor ignored her request and routinely instructed her to handle 45-pound boxes. One day, after a long shift of handling these heavier boxes, the employee miscarried. See Jessica Silver-Greenberg & Natalie Kitroeff, *Miscarrying At Work: The Physical Toll of Pregnancy Discrimination*, N.Y. TIMES (Oct. 21, 2018), <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html>.
- 15 See generally, *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976).
- 16 *Id.* at 1.
- 17 See Holly J. McCammon & Amanda J. Brockman, *Feminist Institutional Activists: Venue Shifting, Strategic Adaptation, and Winning the Pregnancy Discrimination Act*, 34 SOCIOLOGICAL FORUM 5 (2019).
- 18 U.S. EQUAL EMP’T OPPORTUNITY COMM’N, *The Pregnancy Discrimination Act of 1978* (Oct. 31, 1978), <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>; U.S. EQUAL EMP’T OPPORTUNITY COMM’N, *Facts About Pregnancy Discrimination* (2008), <http://www.eeoc.gov/facts/fs-preg.html>.
- 19 42 U.S.C. § 2000e(k).
- 20 See, e.g., *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1342 (2015).
- 21 See Dina Bakst, Elizabeth Gedmark & Sarah Brafman, *Long Overdue*, 5 (May 2019).
- 22 A BETTER BALANCE, *Pregnant Workers Fairness*, <https://www.abetterbalance.org/our-campaigns/pregnant-workers-fairness/> (last visited June 18, 2019).
- 23 See Liz Morris, Jessica Lee, & Joan C. Williams, *Exposed: Discrimination Against Breastfeeding Workers*, CENTER FOR WORKLIFE LAW, UNIV. OF CAL. HASTINGS COLLEGE OF LAW (Dec. 2018), <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf>. At least eighty percent of birthing parents in the United States start out breast feeding and/or pumping. Among infants born in 2015 in the United States, 83.2% started to breastfeed. See *id.* at 7 (citing CENTER FOR DISEASE CONTROL, *Breastfeeding Report Card*, <https://www.cdc.gov/breastfeeding/data/reportcard.htm>). Due to unsupportive work environments and policies, many of them are forced to stop. CENTER FOR DISEASE CONTROL, VITAL SIGNS: IMPROVEMENTS IN MATERNITY CARE POLICIES AND PRACTICES THAT SUPPORT BREASTFEEDING: UNITED STATES, 2007–2013 (Oct. 2015), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6439a5.htm>.



- 24 See, e.g., *Equal Emp't Opportunity Comm'n v. Houston Funding II, Ltd.*, 717 F.3d 425, 428 (5th Cir. 2013); *Hicks v. City of Tuscaloosa*, 870 F.3d 1253 (11th Cir. 2017).
- 25 See, e.g., *Martinez v. N.B.C., Inc.*, 49 F.Supp.2d 305, 311 (S.D.N.Y. 1999) (an employer's "alleged failure to provide [the employee] with acceptable facilities for breast milk pumping ... is not an employment practice covered by Title VII and [ ] if breastfeeding is to be afforded protected status, it is Congress alone that may do so.") *Pawlow v. Dep't of Emergency Servs. and Pub. Protection*, 172 F. Supp. 3d 568 (D. Conn. 2016) (holding that state trooper's allegations that employer twice failed to accommodate her breast-pumping, and otherwise required her to return home to express breast milk, were insufficient to establish a discrimination claim under Title VII and finding that the denial amounted only to an inconvenience).
- 26 See, e.g., *Hicks v. City of Tuscaloosa*, 870 F.3d 1253 (11th Cir. 2017) (holding that the police department violated the PDA by denying light-duty accommodations that would have allowed a breastfeeding officer to return to work and continue breastfeeding because the police department offered the same requested accommodation to other employees with temporary disabilities).
- 27 See Liz Morris, Jessica Lee, & Joan C. Williams, *Exposed: Discrimination Against Breastfeeding Workers*, CENTER FOR WORKLIFE LAW, UNIV. OF CAL., HASTINGS COLLEGE OF LAW, 36 (Dec. 2018), <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf>.
- 28 29 U.S.C. § 207(r)(1).
- 29 29 U.S.C. § 207(r)(2).
- 30 29 U.S.C. § 207(r)(3).
- 31 See Liz Morris, Jessica Lee, & Joan C. Williams, *Exposed: Discrimination Against Breastfeeding Workers*, CENTER FOR WORKLIFE LAW, UNIV. OF CAL., HASTINGS COLLEGE OF LAW, 1 (Dec. 2018).
- 32 U.S. EQUAL EMP'T OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES (2007), <https://www.eeoc.gov/policy/docs/caregiving.html>.
- 33 *Id.*; *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107 (2d Cir. 2004).
- 34 42 U.S.C. § 12112(b)(4).
- 35 For example, an employer may not refuse to hire a job applicant whose wife has a disability because the employer assumes that the applicant would have to use frequent leave and arrive late due to his responsibility to care for his wife. See U.S. EQUAL EMP'T OPPORTUNITY COMM'N, QUESTIONS AND ANSWERS ABOUT THE ASSOCIATION PROVISION OF THE ADA (Dec. 20, 2017), [https://www.eeoc.gov/facts/association\\_ada.html](https://www.eeoc.gov/facts/association_ada.html).
- 36 *Id.*
- 37 29 U.S.C. § 2612(a).
- 38 FMLA is applicable to employers of fifty or more employees, any public agency, regardless of the number of employees, and public or private elementary and secondary schools. FMLA applies to employees who have worked for the same employer for at least twelve months. 29 U.S.C. § 2611(2).
- 39 "Familial status" means "(a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or (b) one or more individuals (who have not attained the age of eighteen years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals, or (2) the designee of such parent." N.Y. Exec. Law § 292(26).
- 40 N.Y. Exec. Law § 296(1).
- 41 N.Y. Exec. Law § 292(5).
- 42 On June 16, 2019, the State legislature passed a bill which will remove the four-employee minimum from the State Human Rights Law. See N.Y. Senate Bill No. S6577 (2019), <https://legislation.nysenate.gov/pdf/bills/2019/S6577>.
- 43 N.Y. STATE DIV. OF HUMAN RIGHTS, GUIDANCE ON PREGNANCY DISCRIMINATION AND REASONABLE ACCOMMODATION OF PREGNANCY-RELATED CONDITIONS FOR EMPLOYERS IN NEW YORK STATE (2015), <https://dhr.ny.gov/sites/default/files/pdf/guidance-pregnancy-discrimination-employers.pdf>.
- 44 See N.Y. Senate Bill No. S6577 (2019) (rejecting the federal "severe and pervasive" standard for claims of harassment under the State Human Rights Law).
- 45 N.Y. Exec. Law § 292(21-e).
- 46 N.Y. STATE DIV. OF HUMAN RIGHTS, GUIDANCE ON PREGNANCY DISCRIMINATION AND REASONABLE ACCOMMODATION OF PREGNANCY-RELATED CONDITIONS FOR EMPLOYERS IN NEW YORK STATE, 3 (2015).
- 47 N.Y. Exec. Law § 296(3)(c) (The employee "must cooperate in providing medical or other information that is necessary to verify the existence of the disability or pregnancy-related condition, or that is necessary for consideration of the accommodation").
- 48 N.Y. Exec. Law § 296(2)(d)(iii). "Undue burden" means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered shall include: (A) The nature and cost of the action needed under this article; (B) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site; (C) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity; (D) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and (E) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity." *Id.*
- 49 N.Y. STATE DIV. OF HUMAN RIGHTS, GUIDANCE ON PREGNANCY DISCRIMINATION AND REASONABLE ACCOMMODATION OF PREGNANCY-RELATED CONDITIONS FOR EMPLOYERS IN NEW YORK STATE (2015).
- 50 N.Y. Labor Law § 206-c.
- 51 *Id.*
- 52 *Id.*



- 53 N.Y. STATE DEP'T OF LABOR, *Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place*, <https://www.health.ny.gov/publications/2028.pdf>.
- 54 N.Y. Senate Bill No. S4211 (2019), <https://legislation.nysenate.gov/pdf/bills/2019/S4211>.
- 55 N.Y. STATE DEP'T OF HEALTH, BREASTFEEDING BILL OF RIGHTS (2016) <https://www.health.ny.gov/publications/2028.pdf>.
- 56 N.Y. Exec. Law §§ 292(26), 296(1)(a).
- 57 *Id.* (defining “familial status” as “(a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or (b) one or more individuals (who have not attained the age of eighteen years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals, or (2) the designee of such parent.”).
- 58 *Id.*
- 59 *Id.*
- 60 *Id.*
- 61 N.Y. Work Comp. App. § 380. Compensation currently is up to 55% of salary, capped at \$746.41 (for 2019) for employees who have worked twenty-six consecutive weeks (or 175 days part-time). The leave provision is being phased in and the leave period and amount will be twelve weeks and 67% of salary by 2021. N.Y. Work Comp. § 204(2)(a).
- 62 Jackson Brainerd, *Paid Family Leave in the States*, 25 NAT'L CONFERENCE OF STATE LEGISLATURES, 31 (Aug. 2017), <http://www.ncsl.org/research/labor-and-employment/paid-family-leave-in-the-states.aspx>.
- 63 N.Y.C. Admin. Code § 8-107(1)(a); Cameron v. N.Y.C. Dep't of Educ., No. 15-CV-9900 (KMW), 2018 WL 1027710, at \*10 (S.D.N.Y. Feb. 21, 2018) (citing Chauca v. Abraham, 841 F.3d 86, 90 n.2 (2d Cir. 2016), as amended (Nov. 8, 2016)).
- 64 See, e.g., N.Y.C. Council Civil Rights Committee, *Committee Report: Proposed Int. No. 974-A*, 3 (June 25, 2013), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=2551307&GUID=34F5D3EF-39F5-478C-8208-CD0BF66DE4C6>; N.Y.C. Local Law 78 (2013).
- 65 Sarah Jane Glynn, *Breadwinning Mothers are Increasingly the U.S. Norm*, CENTER FOR AMERICAN PROGRESS (2016), <https://www.americanprogress.org/issues/women/reports/2016/12/19/295203/breadwinning-mothers-are-increasingly-the-u-s-norm/>.
- 66 Hearing Transcript at 37–38 (Testimony of Dina Bakst, A Better Balance); A BETTER BALANCE, *Pregnant Workers Fairness*, <https://www.abetterbalance.org/our-campaigns/pregnant-workers-fairness/> (last visited June 18, 2019).
- 67 N.Y.C. COMM'N ON HUMAN RIGHTS, LEGAL ENFORCEMENT GUIDANCE ON DISCRIMINATION ON THE BASIS OF PREGNANCY: LOCAL LAW NO. 78 (2013); N.Y.C. ADMIN. CODE § 8-107(22), 2 (2016) (hereinafter “*Legal Enforcement Guidance on Pregnancy Discrimination*”), [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy\\_InterpretiveGuide\\_2016.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf) (“related medical condition” is defined as “the state of seeking to become pregnant; any medical condition that is related to or caused by pregnancy or childbirth, including, but not limited to, infertility, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, miscarriage, lactation; and recovery from childbirth, miscarriage, and termination of pregnancy.”).
- 68 N.Y.C. Admin. Code § 8-107(22); *Legal Enforcement Guidance on Pregnancy Discrimination* at 4.
- 69 See generally, *Legal Enforcement Guidance on Pregnancy Discrimination*.
- 70 See generally, *id.*
- 71 *Id.* at 6
- 72 *Id.* at 8
- 73 *Id.* at 8-9
- 74 N.Y.C. Local Law 185 (2019); N.Y.C. Admin. Code §§ 8-107(2), 8-107(22)(b).
- 75 N.Y.C. Local Law 186 (2019); N.Y.C. Admin. Code § 8-107(22)(c).
- 76 N.Y.C. COMM'N ON HUMAN RIGHTS, *Lactation Accommodations* (2018), <https://www1.nyc.gov/site/cchr/law/lactation.page>.
- 77 N.Y.C. Local Law 1 (2016). Other cities and states have recognized caregiver status in anti-discrimination law, including: Alaska, Minnesota, New York, New Jersey, and Washington, D.C.. Cynthia Thomas Calvert, *Caregivers in the Workplace: Family Responsibilities Discrimination Litigation Update 2016*, CENTER FOR WORKLIFE LAW (2016), <https://worklifelaw.org/publications/Caregivers-in-the-Workplace-FRD-update-2016.pdf>.
- 78 N.Y.C. Admin. Code §§ 8-102, 8-107(1)(a) (The term “caregiver” means a person who provides direct and ongoing care for a minor child or a care recipient. As used in this definition:
1. Care recipient. The term “care recipient” means a person with a disability who: (i) is a covered relative, or a person who resides in the caregiver's household and (ii) relies on the caregiver for medical care or to meet the needs of daily living.
  2. Covered relative. The term “covered relative” means a caregiver's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver as designated by the rules of the commission.
  3. Grandchild. The term “grandchild” means a child of a caregiver's child.
  4. Grandparent. The term “grandparent” means a parent of a caregiver's parent.
  5. Parent. The term “parent” means a biological, foster, step- or adoptive parent, or a legal guardian of a caregiver, or a person who stood in loco parentis when the caregiver was a minor child.
  6. Sibling. The term “sibling” means a caregiver's brother or sister, including half-siblings, step-siblings and siblings related through adoption.
  7. Spouse. The term “spouse” means a person to whom a caregiver is legally married under the laws of the



- state of New York.
8. Child. The term “child” means a biological, adopted or foster child, a legal ward or a child of a caregiver standing in loco parentis.
  9. Minor child. The term “minor child” means a child under the age of 18.
- 79 Hearing Transcript at 78 (Testimony of Amanda Bransford, Make the Road New York); see, e.g., Written Testimony of Laura Renga Fry and Sara Jones; Hearing Transcript at 107 (Testimony of Luz Schreiber).
  - 80 Hearing Transcript at 78 (Testimony of Amanda Bransford, Make the Road New York).
  - 81 Hearing Transcript at 53 (Testimony of Divya Sundarm, Community Voices Heard); see Written Testimony of Veronica Cook and Anne Nacinovich, Legal Services N.Y.C.).
  - 82 Hearing Transcript at 78 (Testimony of Amanda Bransford, Make the Road New York); see Dina Bakst & Phoebe Taubman, *The Pregnancy Penalty, How Motherhood Drives Inequality & Poverty in New York City*.
  - 83 Hearing Transcript at 78 (Testimony of Amanda Bransford, Make the Road New York).
  - 84 See Hearing Transcript at 53 (Testimony of Divya Sundarm, Community Voices Heard) & 78 (Testimony of Amanda Bransford, Make the Road New York).
  - 85 See, e.g., *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015); *Durham v. Rural/Metro Corp.*, No. 4:16-CV-01604-ACA, 2018 WL 4896346, at 1 (N.D. Ala. Oct. 9, 2018), appeal docketed, No. 18-14687 (11th Cir. Nov. 7, 2018).
  - 86 Written Testimony of Dr. Chinyere Anyaogu.
  - 87 *Id.*
  - 88 *Id.*
  - 89 Hearing Transcript at 70–74 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance).
  - 90 Domestic workers do, however, have a right to paid sick leave. N.Y.C. Admin. Code § 20-913. Domestic workers are also protected from gender-based harassment under the City Human Rights Law. See N.Y.C. Admin. Code § 8-102.
  - 91 Hearing Transcript at 71 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance).
  - 92 Lauren Smith Brody, *When the Nanny Needs Maternity Leave*, N.Y. TIMES (Dec. 27, 2017), <https://www.nytimes.com/2017/12/27/well/family/new-york-family-leave-nannies-maternity-leave.html>.
  - 93 Hearing Transcript at 72 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance).
  - 94 *Id.* at 71.
  - 95 *Id.*
  - 96 *Id.* at 70–74.
  - 97 *Id.* at 72–73.
  - 98 Hearing Transcript at 80 (Testimony of Amanda Bransford, Make the Road New York) & 98–100 (Testimony of Kajori Chaudhuri, New York City Commission on Human Rights).
  - 99 See Hearing Transcript at 70 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance).
  - 100 See *id.*
  - 101 Hearing Transcript at 51 (Testimony of New York State Assembly Member Michael Blake).
  - 102 See Hearing Transcript at 73 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance).
  - 103 Hearing Transcript at 40 (Testimony of Dina Bakst, A Better Balance), 74 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance), 92 (Testimony of Susan Crumiller, Crumiller P.C.).
  - 104 Hearing Transcript at 102–04 (Testimony of Lauren McGlothlin, Outten & Golden LLP).
  - 105 Hearing Transcript at 38 (Testimony of Dina Bakst, A Better Balance) & 104–05 (Testimony of Lauren McGlothlin, Outten & Golden, LLP).
  - 106 Hearing Transcript at 40 (Testimony of Dina Bakst, A Better Balance) & 81 (Testimony of Amanda Bransford, Make the Road New York).
  - 107 Hearing Transcript at 41 (Testimony of Dina Bakst, A Better Balance).
  - 108 Hearing Transcript at 66 (Testimony of Dr. Susan Vierzahalek, New York State Breastfeeding Coalition) (discussing how there are “fabulous laws and policies,” but the most vulnerable need to be educated and supported on them).
  - 109 Written Testimony of Seher Khawaja, Legal Momentum; see Written Testimony of Alicia West (discussing how despite advances, women are still being “shoe-horned into a work culture that is designed primarily for men.”).
  - 110 Hearing Transcript at 43 (Testimony of New York City Councilwoman Carlina Rivera), 61 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee), 64, 69 (Testimony of Dr. Susan Vierzahalek, New York State Breastfeeding Coalition), 102 (Testimony of Lauren McGlothlin, Outten & Golden LLP) (highlighting biases and stigma surrounding pregnancy and caregiving issues); Written Testimony of Melissa Maldonado-Salcedo, PhD.
  - 111 See Written Testimony of Seher Khawaja, Legal Momentum; Written Testimony of Alicia West; Written Testimony of Melissa Maldonado-Salcedo, PhD; Hearing Transcript at 43 (Testimony of New York City Councilwoman Carlina Rivera), 61 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee), 64, 69 (Testimony of Dr. Susan Vierzahalek, New York State Breastfeeding Coalition), 102 (Testimony of Lauren McGlothlin, Outten & Golden LLP).
  - 112 See Written Testimony of Lisa Yakuboff.
  - 113 Hearing Transcript at 83 (Testimony of Amanda Bransford, Make the Road New York).
  - 114 Hearing Transcript at 93 (Testimony of Susan Crumiller, Crumiller P.C.).
  - 115 This includes individual healthcare needs, as well as other individual physical, emotional, or spiritual needs. See e.g., Hearing Transcript at 108 (Testimony of Ruth Schreiber).
  - 116 Hearing Transcript at 93–94 (Testimony of Susan Crumiller,



- Crumiller P.C.); see Written Testimony of Department for the Aging (identifying conflicts between caregivers' work and caregiving responsibilities).
- 117 Hearing Transcript at 94 (Testimony of Susan Crumiller, Crumiller P.C.).
- 118 Hearing Transcript at 114 (Testimony of Rocky Chin, AARP).
- 119 N.Y.C. COMM'N ON HUMAN RIGHTS, *New York City Commission on Human Rights Public Hearings*, <https://www1.nyc.gov/site/cchr/law/cchr-hearings.page> (last visited June 18, 2019).
- 120 Hearing Transcript at 61 (Testimony of Sevonna Brown, Black Women's Blueprint & Co-Chair of N.Y.C. CEDAW Committee) & 77 (Testimony of Alanna Sakovits, Virginia & Ambinder).
- 121 Hearing Transcript at 61 (Testimony of Sevonna Brown, Black Women's Blueprint & Co-Chair of N.Y.C. CEDAW Committee) & 77 (Testimony of Alanna Sakovits, Virginia & Ambinder).
- 122 Hearing Transcript at 77 (Testimony of Alanna Sakovits, Virginia & Ambinder).
- 123 *Id.*
- 124 *Id.*
- 125 Hearing Transcript at 93 (Testimony of Susan Crumiller, Crumiller P.C.); Written Testimony of Mayor's Office for People with Disabilities.
- 126 Hearing Transcript at 89 (Testimony of Allie Bohm, New York Civil Liberties Union).
- 127 Hearing Transcript at 42 (Testimony of Dina Bakst, A Better Balance).
- 128 On June 16, 2019, the State legislature passed a bill which will remove the four-employee minimum from the State Human Rights Law. See N.Y. Senate Bill No. S6577 (2019).
- 129 Hearing Transcript at 70 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance). There is no four-employee minimum for claims of gender-based harassment in employment. N.Y.C. Admin. Code § 8-102.
- 130 Hearing Transcript at 70 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance).
- 131 On June 16, 2019, the State legislature passed a bill amending the general obligations law which will prohibit employers from including any terms or conditions that would prevent the disclosure of the underlying facts and circumstances to a claim in any settlement or agreement whose factual foundation involves any unlawful discrimination, unless the complainant prefers such condition. See N.Y. Senate Bill No. S6577 (2019).
- 132 Written Testimony of New York State Assembly Member Aravella Simotas.
- 133 *Id.*
- 134 Hearing Transcript at 45 (Testimony of New York City Councilwoman Carlina Rivera).
- 135 N.Y.C. Res. 0312-2018.
- 136 Hearing Transcript at 117 (Testimony of Rocky Chin, AARP); see also AARP, THE FUTURE OF FAMILY CAREGIVING (Sept. 2018), [https://s18672.pcdn.co/wp-content/uploads/2018/09/AARP-NY\\_Family-Caregiving-Whitepaper\\_finalpages-2.pdf](https://s18672.pcdn.co/wp-content/uploads/2018/09/AARP-NY_Family-Caregiving-Whitepaper_finalpages-2.pdf).
- 137 AARP, THE FUTURE OF FAMILY CAREGIVING (Sept. 2018).
- 138 Hearing Transcript at 117 (Testimony of Rocky Chin, AARP).
- 139 N.Y. S2311A (2009-10); see also N.Y. STATE DEP'T OF LABOR, ABOUT THE DOMESTIC WORKERS BILL OF RIGHTS, <https://labor.ny.gov/legal/laws/pdf/domestic-workers/about-domestic-workers-law.pdf>.
- 140 Hearing Transcript at 45 (Testimony of New York City Councilmember Carlina Rivera).
- 141 Hearing Transcript at 38-39 (Testimony of Dina Bakst, A Better Balance), 83 (Testimony of Amanda Bransford, Make the Road New York), 93 (Testimony of Susan Crumiller, Crumiller P.C.).
- 142 See Hearing Transcript at 38-39 (Testimony of Dina Bakst, A Better Balance), 83 (Testimony of Amanda Bransford, Make the Road New York), 93 (Testimony of Susan Crumiller, Crumiller P.C.).
- 143 Hearing Transcript at 39 (Testimony of Dina Bakst, A Better Balance); see also, N.Y.C. COMM'N ON HUMAN RIGHTS, *Law: Sexual Harassment*, <https://www1.nyc.gov/site/cchr/law/sexual-harassment-training-main.page> (last visited Apr. 19, 2019).
- 144 Hearing Transcript at 39 (Testimony of Dina Bakst, A Better Balance).
- 145 Hearing Transcript at 39 (Testimony of Dina Bakst, A Better Balance) & 93 (Testimony of Susan Crumiller, Crumiller P.C.).
- 146 Hearing Transcript at 37 (Testimony of Dina Bakst, A Better Balance), 81-82 (Testimony of Amanda Bransford, Make the Road New York), 88-89 (Testimony of Allie Bohm, NYCLU); Written Testimony of National Women's Law Center.
- 147 Hearing Transcript at 88-89 (Testimony of Allie Bohm, NYCLU).
- 148 *Id.*; Written Testimony of National Women's Law Center.
- 149 Written Testimony of National Women's Law Center.
- 150 Hearing Transcript at 88-89 (Testimony of Allie Bohm, NYCLU); Written Testimony of National Women's Law Center.
- 151 Written Testimony of National Women's Law Center.
- 152 *Id.*
- 153 *Id.*
- 154 Hearing Transcript at 40 (Testimony of Dina Bakst, A Better Balance).
- 155 See, e.g., Written Testimony of Sherlivia Thomas-Murchison (discussing importance of outreach).
- 156 Hearing Transcript at 40 (Testimony of Dina Bakst, A Better Balance).
- 157 Written Testimony of Amanda Bransford, Make the Road New York; Hearing Transcript at 74 (Testimony of MARRISA SENTENO, National Domestic Workers Alliance); Interview with Chanel Porchia, Ancient Song Doula Services (Feb. 25, 2019).
- 158 Written Testimony of Melissa Maldonado-Salcedo, PhD.





- 159 Hearing Transcript at 58 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee).
- 160 *Id.*
- 161 Hearing Transcript at 115–16 (Testimony of Rocky Chin, AARP).
- 162 Written Testimony of Christopher Mason, Mason Law, PLLC.
- 163 Written Testimony of Seher Khawaja, Legal Momentum.
- 164 Written Testimony of Dr. Chinyere Anyaogu.
- 165 The term “obstetric violence” has been adopted by advocates to describe and condemn the extent to which women experience abuse, coercion, and disrespect while giving birth. Elizabeth Kukura, *Obstetric Violence*, GEORGETOWN L. J., 721 (2018), <https://georgetownlawjournal.org/articles/261/obstetric-violence/pdf>.
- 166 Hearing Transcript at 56–62 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee).
- 167 Hearing Transcript at 110–11 (Testimony of Onieka Bogle, National Advocates for Pregnant Women); see Hearing Transcript at 62 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee) (discussing how pregnant women can be re-traumatized during prenatal care).
- 168 Hearing Transcript at 111 (Testimony of Onieka Bogle, National Advocates for Pregnant Women).
- 169 See Hearing Transcript at 62 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee) & 86–87 (Testimony of Ameena Ali, GRRACEE).
- 170 Hearing Transcript at 62 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee).
- 171 See Hearing Transcript at 58–59 (Testimony of Sevonna Brown, Black Women’s Blueprint), 111–13 (Testimony of Onieka Bogle), 119–25 (Testimony of Dr. Chinyere Anyaogu).
- 172 Hearing Transcript at 58–59 (Testimony of Sevonna Brown, Black Women’s Blueprint).
- 173 Hearing Transcript at 58 (Testimony of Sevonna Brown, Black Women’s Blueprint), 124–25 (Testimony of Dr. Chinyere Anyaogu); Interview with Chanel Porchia, Ancient Song Doula Services (Feb. 25, 2019).
- 174 Hearing Transcript at 58 (Testimony of Sevonna Brown, Black Women’s Blueprint & Co-Chair of N.Y.C. CEDAW Committee).
- 175 Memorandum from John B. Mattingly, Comm’r, N.Y.C. Admin. of Children’s Servs., Safety Planning for Newborns or Newly Discovered Children Whose Siblings Are in Foster Care: Child Safety Alert #14 (Revision) (June 5, 2008) (hereinafter “Child Alert 14”), <https://perma.cc/L2CZ-Z64X>.
- 176 Written Testimony of The Bronx Defenders.
- 177 See Child Alert 14 at 1, 3.
- 178 Written Testimony of The Bronx Defenders.
- 179 “Social hold” is a colloquial term used to describe the practice of a hospital separating new parents from their child immediately following birth while a report to the State Central Register of Child Abuse and Maltreatment or an ACS investigation is pending. See *Paredes v. City of New York*, No. 40592/88, 1989 WL 1715714 (N.Y. Sup. Ct. Apr. 19, 1989). Social holds may result when a safety planning conference does not happen until after birth.
- 180 Written Testimony of The Bronx Defenders.
- 181 *Id.*; Emma S. Ketteringham, Sarah Cremer & Caitlin Becker, *Healthy Mothers, Healthy Babies: A Reproductive Justice Response to the “Womb-to-Foster-Care Pipeline”*, 20 CUNY L. REV. 77, 103 (2016) <https://academicworks.cuny.edu/clr/vol20/iss1/4>. There is some evidence that early separation of mothers and infants negatively affects the health of both parties. *How Mother-Child Separation Causes Neurobiological Vulnerability Into Adulthood*, ASS’N FOR PSYCHOLOGICAL SCIENCE, <https://www.psychologicalscience.org/publications/observer/obsonline/how-mother-child-separation-causes-neurobiological-vulnerability-into-adulthood.html> (“early maternal separation can result in a series of traumatic emotional reactions during which the child engages in an anxious period of calling and active search behavior followed by a period of declining behavioral responsiveness”); Raylene Phillips, MD, *Uninterrupted Skin-to-Skin Contact Immediately After Birth*, MEDSCAPES, [https://www.medscape.com/viewarticle/806325\\_4](https://www.medscape.com/viewarticle/806325_4) (“From a baby’s perspective, separation is life threatening.”); P.H. Leiderman & M.J. Seashore, *Mother-Infant Neonatal Separation: Some Delayed Consequences*, 33 CIBA FOUND SYMP. 213–39 (1975), <https://www.ncbi.nlm.nih.gov/pubmed/1045982> (describing long-term negative psychological impact on mothers of early separation from infants).
- 182 Written Testimony of The Bronx Defenders; see N.Y. Soc. Serv. Law § 397(2)(a) (establishing the duty of social service officials to preserve family life wherever possible when dealing with cases of neglect); *id.* at § 417 (hospitals, law enforcement, child protective services, and other specific agents are enabled to take appropriate measures if a parent, guardian, custodian, or other person responsible for the child’s care presents an imminent danger to the child’s life).
- 183 Written Testimony of The Bronx Defenders.
- 184 *Id.*
- 185 Telephone conference between the Commission and ACS (July 1, 2019).
- 186 *Id.*
- 187 *Id.*
- 188 Written Testimony of The Bronx Defenders.







**NYC** Commission on  
Human Rights

Bill de Blasio  
Mayor

Carmelyn P. Malalis  
Chair/Commissioner