

NEW YORK CITY COMMISSION ON HUMAN RIGHTS
- - - - -X
PUBLIC HEARING
PREGNANCY AND CAREGIVER DISCRIMINATION

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January 30, 2019
CUNY School of Law
2 Court Square
Long Island City, New York 11101
5:53 p.m.

BEFORE:

- CARMELYN P. MALALIS, Chair and Commissioner
- JACQUELINE M. EBANKS, Executive Director
- ANA OLIVEIRA, Human Rights Commissioner
- CATHY ALBISA, Human Rights Commissioner
- DR. DEBORAH L. KAPLAN, Assistant Commissioner

Douglas F. Colavito, Court Reporter



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2 DEAN MARY LU BILEK: Good evening. I'm
3 not used to being behind the podium; so I'll
4 try to bring myself closer to you with my
5 enthusiasm. Despite the fact the podium is in
6 front of me. My name is Mary Lu Bilek, and
7 it's my privilege to be the dean of the city's
8 only public law school, the law school devoted
9 to creating access to legal education and to
10 creating lawyers who do social justice and
11 public interest work. I want to thank the
12 Commission on Human Rights for all the work
13 they do, but -- also for, in particular,
14 holding this public hearing and holding it here
15 at the law school. I am so happy to be
16 standing here at a time when there are people
17 in the world who understand that the support
18 for pregnancy and child care is not just about
19 women, and where we understand that women's
20 rights and human rights and civil rights that
21 promote better conditions, better
22 relationships, better children who grow up to
23 be better adults and better citizens, and
24 better economic conditions for all of us.

25 I'm also really proud to be standing here

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2 at a moment when the commission is doing
3 something that is an integral to this law
4 school, which is recognizing that better laws
5 and better customs come from engaging with the
6 people that the law works on. And so this
7 moment is your moment, and I'm not going to say
8 any more but to commend Commissioner Malalis
9 and her staff. Some of them are our alums,
10 including Alice Fitch [ph.], to say hello to
11 old friends, like Cathy Albisa, who taught here
12 for -- for many years, and to look forward from
13 hearing all your voices. Thank you. Thanks.

14 MS. SOOHOO: I'm Cindy Soohoo, and I'm the
15 co-director of the Human Rights and Gender
16 Justice Clinic. The clinic is also
17 cosponsoring this event along with the law
18 school, and I want to add my thanks to Mary
19 Lu's, to the commission, for organizing this
20 hearing and for letting us be a part of it. As
21 many of you know, our clinic was founded other
22 25 years ago by Professor Rhonda Copelon to
23 address this historic lack of attention paid to
24 rights violations typically suffered by women.
25 Our work has been guided by human rights and

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2 reproductive justice principles that recognize
3 that we all have a right to bodily autonomy, to
4 decide whether and when to have children, and
5 to parent the children that we have in safe and
6 sustainable communities. And we all have the
7 right to be treated with dignity and respect.

8 And that's why I'm so excited about today's
9 hearing and the dialogue -- and our dialogue on
10 pregnancy and caregiver discrimination. And I
11 hope that our discussion today will be informed
12 by a human rights vision that not only

13 recognizes how the capacity to become -- to be
14 pregnant and/or being a caregiver can result in
15 discrimination, but also commits us to ensuring
16 that all pregnant people and people caring for
17 children and family members have the support
18 that they need and that they are treated with
19 dignity and respect. And in doing or work I

20 think we have to recognize that gender
21 intersects with other identities, like race,
22 income, immigration status, sexual orientation,
23 and disability, to make certain people doubly
24 vulnerable to discrimination and less likely to
25 have their voices heard. So we need to pay

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2 close attention to the challenges and realities
3 of people trying to parent and care for their
4 families from all labor sectors and from all
5 walks of life. And only by doing this can
6 we change the way that we understand and
7 recognize discrimination and develop new
8 solutions, recognizing that we all benefit when
9 our communities and workplaces support
10 pregnancy and caregiving.

11 So today we are lucky to have a keynote
12 speaker who has made it her life's work to
13 research how discrimination manifests itself in
14 the workplace and how to build workplaces that
15 support employees with caregiving
16 responsibilities. Cynthia Thomas Calvert is a
17 nationally recognized employment lawyer. She's
18 an expert and pioneer in the field of family
19 responsibilities discrimination and a coauthor
20 of the only legal treatise on FRD. Cynthia
21 served as a deputy director of Hastings Law
22 School's Center for Work Life Law and remains a
23 senior advisor to the center. In 2010 she
24 founded Workforce 21C, which helps employers
25 advance women and manage pregnant employees and

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2 employees who care for family members. She is
3 a frequent speaker, writer, and trainer in FRD,
4 bias flexible work arrangements, diversity, and
5 inclusion. Please welcome me -- welcome me in
6 -- join me in welcoming Cynthia Thomas Calvert.

7 MS. CALVERT: Thank you, Professor Soohoo,
8 and my thanks to Commissioner Malalis and to
9 the commission for inviting me to come this
10 evening and share some thoughts about how we
11 can better protect pregnant women and employees
12 who care for family members. I deeply respect
13 the city's very broad human rights law and the
14 work of the commission in ensuring that it
15 reaches its potential, and I'm really honored
16 to be here tonight at this hearing.

17 I'd like to start by giving you a
18 thumbnail sketch, maybe a little bit more than
19 that, of the origin story for caregiver
20 discrimination. About 20 years ago Joan
21 Williams, who is a law professor, and she also
22 is the founding director of the Center for Work
23 Life Law, she was focusing her research on why
24 women were not advancing in the workplace. We
25 had all these women's initiatives. We had all

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2 these antidiscrimination laws. We had zillions
3 of pieces of advice for women about how to get
4 ahead, and yet women were still stalled and not
5 getting to leadership positions. So she
6 focused her research on mothers, and,
7 specifically, she started by looking at the
8 expectations that employers have of their
9 employees. They want them to be committed 110
10 percent to the job available 24/7, never taking
11 time off for childbearing or for child rearing.
12 And she contrasted that with the expectations
13 of the employees, which is they should be able
14 to have a successful career and a meaningful,
15 fulfilling family life. In addition to this
16 clash of expectations, she looked at the
17 unconscious biases that we all have about
18 mothers and how that affected women in the
19 workplace. The biases are things that we carry
20 around with us but usually are not very aware
21 of it, and there are things such as women are
22 going to be more committed to their children
23 than to their jobs. Women are not going to be
24 as competent once they become mothers. They
25 are not going to be ambitious. They won't be

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2 dependable and things of that sort. And then
3 she combined all of that with a dose of social
4 psychology research about how those biases
5 affect personnel decisions within the
6 workplace. She said that it affects decisions
7 such as whether to hire someone, whether to
8 promote them, how much to pay them, whether to
9 give them a second chance when they screw up,
10 whether to give them an opportunity, whether to
11 give them training. And, of course, what the
12 research has shown is that women don't get as
13 many opportunities. They don't get cut as much
14 slack as men do, and mothers get even less than
15 that. Now, being a law professor, Joan did
16 what law professors do. She started looking at
17 the courts and at the legislatures to see what
18 remedies were out there for women, and, also,
19 she was broadening this to looking at pregnant
20 women. So not just mothers but also women who
21 were about to become mothers. And she looked
22 at sex discrimination cases, and she could see
23 very clear evidence of discrimination against
24 mothers. She saw things like employers telling
25 mothers they needed to choose whether they

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2 wanted to be a good employee or a good mother,
3 telling their recruiters not to hire mothers
4 and telling women that they belonged at home
5 with their children. And she wrote a law
6 review article, as law professors are want to
7 do, and she talked about this maternal law
8 discrimination and how Title 7, the sex
9 discrimination law, the federal sex
10 discrimination law, can be used to address, at
11 least in part, some of these issues. And I
12 entered the picture around that time. And Joan
13 and I continued to research what was happening
14 to mothers, and they can be working groups of
15 lawyers and social psychologists and business
16 experts. We talked with employers and
17 employees, and we did a lot of legal research.
18 And in addition to looking at maternal law
19 discrimination, we gathered data about what was
20 happening to men in the workplace when they
21 became caregivers. If fathers were actively
22 involved in their children's lives, if they
23 were taking time off to stay home with sick
24 children, or if they were, heaven forbid,
25 working flexibly for childcare reasons, they

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2 could face discrimination that was even more
3 blatant than the discrimination that the women
4 were facing. As one example, there was a state
5 trooper who wanted to be the primary caregiver
6 for his newborn child, and his female
7 supervisor said to him, no, God made women to
8 have children, and unless his wife was in a
9 coma or dead, he could not be the primary
10 caregiver. And, of course, we found many other
11 examples men being ostracized at work when they
12 became involved fathers, being punished with
13 rotating shifts or very stressful amounts of
14 work and being set up for termination. And we
15 heard similar things about employees who
16 weren't parents, but who were involved with
17 providing care for family members who had
18 disabilities or for aging or sick parents. And
19 we looked at what was happening with pregnant
20 women, and we were just overwhelmed by the
21 sheer number of cases and complaints that we
22 reviewed. They involved very overt
23 discrimination, but also very subtle
24 discrimination by employers all because women
25 were expecting.

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2 So we took all this evidence and ran over
3 to the EEOC, and we said, look, there's this
4 really big problem, and it's affecting a lot of
5 employees. And the laws that you administer
6 can be used to address at least some of these
7 problems. And so the EEOC held hearings, and
8 they did more research, and they issued, in
9 2007, enforcement guidance on the unlawful
10 disparate treatment of workers with caregiving
11 responsibilities, and caregiver discrimination
12 was born. We also call it family
13 responsibilities discrimination because we had
14 an HR focus group back then, and some of them
15 told us that they didn't understand what the
16 term "caregiver discrimination" meant. They
17 thought that was, you know, a nanny or maybe it
18 was a nurse that you hired to come into the
19 home. But we use those terms interchangeably
20 in our work.

21 So as Joan and I were researching, we saw
22 there were a large percentage of the pregnancy
23 discrimination cases involved employers who
24 were refusing to provide accommodations to
25 pregnant women who needed them. And,

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2 unfortunately, that's something that hasn't
3 changed. We still see that in our work today.
4 And we realized that the Pregnancy
5 Discrimination Act really wasn't doing what it
6 needed to do in order to get these women the
7 accommodations they needed, and that was
8 largely because of the way the courts were
9 interpreting the Pregnancy Discrimination Act.
10 So we started looking at the Americans with
11 Disabilities Act, which had recently been
12 amended. And we started looking at how that
13 could be used to help pregnant women even
14 though pregnancy by itself is not a disability.
15 But what we found is many of the conditions
16 that pregnant women ordinarily experienced can
17 qualify as disability. It can include
18 migraines, high blood pressure, swollen hands,
19 and swollen feet. It could be severe vomiting,
20 migraines, depression, but, also, it can be
21 conditions that make it so that women can't
22 lift during their pregnancy, or it could be a
23 high-risk pregnancy itself. And if these
24 situations, if these conditions are
25 disabilities, then that means the employers

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2 can't discriminate based on them. And it means
3 they need to provide reasonable accommodations
4 so that the women who have the disabilities can
5 work.

6 And so we hosted more working groups, and
7 we brought together pregnancy advocates and
8 lawyers, and we started educating lawyers all
9 across the country about how to bring these
10 cases. And then in the spring of 2015, the
11 U.S. Supreme Court decided the case of Young
12 versus Unit Parcel Service and held that indeed
13 the Pregnancy Discrimination Act did require
14 employers to accommodate pregnant women if they
15 accommodated people who were not pregnant
16 unless the employers had a really good reason
17 not to do so. But even so, even with these two
18 laws, we still found that women were having a
19 really hard time getting the accommodations
20 that they needed, and this was really all
21 because of the way the courts were applying the
22 laws. So from this description so far, it
23 probably sounds like we were the only ones out
24 there working on these issues all by ourselves,
25 but nothing could be further from the truth.

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2 There have been many other groups and
3 individuals who worked hard to expand the
4 protection for caregivers and for pregnant
5 women. We've been advocacy groups that have
6 been expanded public knowledge and lobbied for
7 legislative changes and plaintiff's law firms
8 that took a chance on bringing cases based on
9 these new claims, somewhat outlandish claims.
10 Consultants who nudged their employers towards
11 fairer workplaces and employers who had the
12 wisdom to try to reduce discrimination, and
13 then, of course, agencies such as the
14 commission that have pushed for effective laws
15 and then have put the enforcement teeth behind
16 those laws to make sure that they did what they
17 could do. So now I know that any time that you
18 mention just a few people or a few groups, you
19 are in danger of offending a lot of people that
20 you don't mention, but I feel that I do need to
21 recognize Dina Bakst and A Better Balance and
22 also the Women's Rights Project of the ACLU.
23 They worked very hard and very effectively to
24 change. Work life law may have started the
25 ball rolling, but they really pushed it forward

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2 and pushed it forward hard. And one of the
3 things that our esteemed colleagues at Better
4 Balance and some other groups have done is they
5 began working to pass pregnant workers fairness
6 acts all around the country and including here
7 in New York City. And these laws are far more
8 comprehensive and far more specific than the
9 Pregnancy Discrimination Act and the Americans
10 with Disabilities Act, and they made it
11 possible for a lot of pregnant women to get
12 accommodations that they otherwise couldn't
13 have had. So it's been a real leap forward.
14 And A Better Balance and some others also
15 worked to add caregiver status or family
16 responsibilities as a protected category to
17 anti-discrimination laws all across the country
18 and, again, here in New York City. And this
19 also has just been a tremendous leap forward.
20 It really changed the way that women and -- and
21 now -- and men are protected in the workplace.

22 So let me just skip forward a little bit
23 to the present time and look at the question of
24 where are we now with respect to pregnancy
25 discrimination and caregiver discrimination.

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2 Has anything really changed? Because we've
3 been working on this now for, you know, 10, 20
4 years. And it's really easy to be pessimistic.
5 From my vantage point things are improving a
6 little bit, but there's just so much more to be
7 done. And I'm saying that based on three
8 sources of data. The first is at the Center
9 for Work Life Law, we have a database of
10 caregiver cases and pregnancy cases from all
11 across the country. And we have put as many
12 cases as we could find into that database, and
13 right now we have about 7,000 cases. And I
14 took a quick look at the database before I came
15 over here today, and I saw that in the last 18
16 months we added a thousand cases. So that
17 gives you an idea the discrimination against
18 caregiver and against pregnant women. It's
19 still, you know, very real. It's happening a
20 lot.

21 The second is Work Life Law has a hotline
22 for employees to call when they think that
23 they're facing this type of discrimination, and
24 A Better Balance also has a hotline, an
25 excellent hotline. And we know from what we

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2 hear on the hotline that very few instances of
3 discrimination actually make it to an agency or
4 actually make it to the courts. So when you
5 think about those 7,000 cases in our day to
6 day; so those are just the tiniest tip of the
7 iceberg.

8 And, third, we provide assistance to
9 lawyers across the country who represent
10 plaintiffs in these cases. And, also, we give
11 information to lawyers who work with employers
12 who want to prevent discrimination. So we get
13 to hear from them what's happening in their
14 workplaces and take their temperature. And,
15 unfortunately, I'm sorry to report that not a
16 lot seems to have changed. So these sources
17 give us an idea of, you know, what's going on,
18 what employees are facing today, and here are a
19 couple of things I've taken away from that.

20 First is, mothers still face a lot of
21 discrimination. The recent issues that we've
22 been seeing, that we've been dealing with
23 include mothers having offers of employment
24 withdrawn when they ask for specific schedules
25 so that they can take care of their kids,

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2 giving mothers difficult schedules that they
3 can't manage with child care arrangements, and
4 it seems for some of those as if the employers
5 are hoping that they will quit. Denying others
6 transfers and remote work that they need that
7 would help them to better blend work and
8 family. And mothers being disciplined more
9 harshly than other employees for the exact same
10 conduct. We've also seen mothers being paid
11 less and mothers not getting severance payments
12 when they are let go or receiving smaller
13 severance payments.

14 Recent issues for fathers also include the
15 same type of punitive scheduling and the denial
16 of transfers and the denial of remote work if
17 they are requesting those for family reasons.
18 So one bright spot that we see is more fathers
19 have been able to take paid paternity leave and
20 face less discrimination for doing that, and
21 many employers seem to have gotten the message
22 that they need to provide the same amount of
23 bonding time for men as they do for women. The
24 one thing we can't overlook is this is mostly
25 in white collar jobs, not in blue collar, and a

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2 lot of it is due, in my view, to the economy
3 now that there is much more of a war for talent
4 employers are using things like this paid
5 paternity leave to attract and retain
6 employees. So discrimination against pregnant
7 women still remains rampant. The number of
8 charges filed with the EEOC has gone down, but
9 the number of cases in the courts, which is
10 both state and federal, shows that the number
11 still continues to rise at a far greater rate
12 than the number of employment cases overall.
13 And, of course, you know, we see that calls for
14 pregnant women and pregnant women who need
15 accommodation to our hotline remain very, very
16 high. So there is a bright spot. We've had
17 several good situations where women have called
18 our hotline or other hotlines, such as A Better
19 Balance's hotline. And they have said we need
20 some help getting accommodations. A letter has
21 been written by a lawyer and sent to the
22 employers, and they actually have provided the
23 accommodations. That's happened in recent
24 memory more than a dozen times, and more than
25 half of those we were we were in a jurisdiction

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2 that had Pregnant Workers Fairness Act. And I
3 think that shows how effective those laws are.
4 And it shows that they are helpful not just to
5 the employees, but they are also helpful to the
6 employers, because it gives them certainty. It
7 lets them know what they can and they cannot
8 do, and having that kind of clarity makes it
9 much more likely to get it done.

10 So one area that's not very bright is
11 breastfeeding. Women who need to express milk
12 during the day report that they are still
13 having a lot of difficulty getting breaks to do
14 that, getting clean, private spaces to do that,
15 and that they are being harassed when they do
16 take breaks. New York City has been a leader
17 in ensuring that women who are nursing get the
18 accommodations that they need. The rest of the
19 country really needs to step up. And Work Life
20 Law just issued a report on this.

21 And, lastly, one area where discrimination
22 appears to be increasing that's worth noting is
23 in the area of elder care. Employees who care
24 for sick and aging parents are reporting that
25 they are being harassed at work. They have to

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2 jump through hoops in order to be able to take
3 leave. They have been denied flexible work and
4 remote work and have been given difficult
5 schedules. And this is going to become more
6 and more of a problem as our population ages
7 and as seniors want to age in place but don't
8 have the financial resources to pay for help to
9 help them to do that. And so family members
10 step in. And, interestingly, about two-thirds
11 of those family members who are stepping in are
12 in the workforce, and 25 percent of them are
13 millennials, and over the 40 percent of them
14 are males. So this involves a lot of different
15 types of employees, and it's going to be a huge
16 issue for employers, but what we are seeing is
17 many of those employers are totally unaware of
18 this coming problem, and those who are aware
19 have no plans for how to deal with it. And
20 there are very few protections for these kinds
21 of elder caregivers. If they work in
22 jurisdictions that don't have caregiver status
23 or family responsibilities in their
24 anti-discrimination laws. Those who work in
25 New York City are very lucky not only do they

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2 have caregiver status as a protected category
3 in the human rights law, but they also have a
4 very expansive definition of who is a care
5 recipient, and that covers most of the family
6 situations that an employee could possibly be
7 facing.

8 So, you know, where that is bottom line is
9 there's still a lot of work to be done. And
10 the issues that we are going to be talking
11 about in this hearing tonight are so
12 fundamentally important to that work. We're
13 looking at people's lives. We're looking at
14 their livelihoods. We're looking at their
15 mental health and their physical health and
16 their families and their family's health. And
17 we have to end the culture that says it's okay
18 to make employees choose between their work and
19 their family. Coming here tonight to testify
20 is a terrific first step toward ending that
21 culture, and I applaud those of you who are
22 here to speak and those who are here to listen,
23 and I particularly applaud the commission for
24 creating this opportunity for us all to be
25 heard. Thank you very much.

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2 MS. MALALIS: Good evening, everyone, and
3 welcome. My name is Carmelyn P. Malalis. I'm
4 the chair and commissioner of the New York City
5 Commission on Human Rights, and it is my great
6 pleasure to welcome you all here tonight for
7 what I think is an extremely important hearing.
8 I am -- you know, now that I'm in government,
9 I'm always very pleasantly surprised when
10 people come out to spend time with government,
11 because I know that people have different
12 relationships with government, and today I
13 think we all managed to kind of just wish away
14 the odd 30 second blizzard that hit New York
15 City. I'm going to attribute that to all of
16 you. So I thank you for being here tonight. I
17 want to thank, of course, Professor Cynthia
18 Calvert for your remarks and your really kind
19 of decades long leadership to the issues that
20 we're going to be discussing tonight. I often
21 refer to her colleague, Professor Joan
22 Williams, as one of the mothers of the movement
23 on addressing pregnancy and family
24 responsibilities related workplace
25 discrimination, and, you know, the history that

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2 Professor Calvert gave is kind of just a
3 snippet of the work that she and the Center for
4 Work Life Law have put into this, and, also,
5 you know, much gratitude, of course, as she
6 said, goes to the commitment of advocates
7 nationally and locally. And she mentioned Dina
8 Bakst from A Better Balance. And I could say
9 personally just from my own time as an advocate
10 how much gratitude goes to Dina and to A Better
11 Balance for the work they've put into this, who
12 have really done an incredible job at creating
13 the awareness about the challenges that people
14 face in these many situations. And I'm -- I'm
15 grateful to A Better Balance and specifically
16 to Dina for being here to testify tonight. So
17 thank you for that.

18 I also thank Professor Cindy Soohoo, who
19 is the director of CUNY's law -- their gender
20 justice and human rights clinic, for partnering
21 with us tonight and for making this hearing
22 possible. I want to thank the New York Women's
23 Foundation for their support and all their
24 doing in resource allocation for this event.
25 And, of course, thank you to CUNY School of Law

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2 and Dean Bilek, who is a common partner to the
3 Commission on Human Rights. You know, I want
4 to thank you and the incredible events and
5 facilities teams who -- who really worked with
6 us to make sure this hearing and other events
7 that we've had here are coordinated and work
8 seamlessly. You all understand the importance
9 that human rights has in New York City and in
10 our country. And we at the commission are very
11 proud to boast that we have had many and have
12 many CUNY Law School alums, including our own
13 deputy commissioner for law enforcement in our
14 ranks. So we are deeply appreciative to CUNY
15 Law for its generous support tonight and for
16 their continued support of their graduates.

17 You know, as I was reflecting on the
18 history that brought us to convene today's
19 hearing, I had to sigh, kind of a long sigh, at
20 the dizzying nature of the past two years that
21 we have been experiencing in the area of human
22 rights. For people who have been engaged in
23 the work of promoting human rights in the
24 country, we have felt a massive realignment of
25 accepted norms, of power structures, and of the

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2 narratives being told. And this movement
3 occurs both in the negative and the positive,
4 right, and in different directions. And as we
5 have seen and sadly continue to see the erasure
6 of rights and the discounting of basic dignity
7 on the federal level. Grassroots movements,
8 activists, coalitions, elected official, local
9 governments, like ours, are stepping to build
10 new visions for the future. A little over a
11 year ago we were here in this very room holding
12 a hearing on sexual harassment. The first
13 hearing the commission has held on that topic
14 in several decades. And at that hearing I said
15 we are experiencing a national reckoning
16 challenging the status quo speaking truth to
17 power and seeing power structures crumble upon
18 us. And at that time, we convened the hearing
19 to collect testimony from a diversity of
20 workers, workplaces, people of different
21 identities, from domestic workers to restaurant
22 workers, from workers in the construction
23 trades to people in the modeling industry. And
24 we publish a report several months later with
25 policy recommendations and best practices. And

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2 we are now implementing new legal protections
3 against sexual harassment in the workplace.

4 And we owe deep gratitude and recognition to
5 Tarana Burke's Me Too movement, which served to
6 propel into public discussion the prevalence of
7 sexual harassment and sexual assault and

8 continues to transform the social consciousness
9 on sexual harassment and violence, upending
10 accepting norms, pushing for legal, social, and

11 transformational justice. And as the Me Too
12 movement continues, women are yet again
13 challenging workplace norms and expectations.

14 They are joined by men, nonbinary people and
15 allies and struggles to challenge gender-based
16 injustice that manifest in many forms. And as

17 someone who has been engaged in gender justice
18 for many years, I offer my gratitude for the Me

19 Too movement, which I believe has served as a
20 catalyst for people, primarily women, to come
21 forward with their courageous stories of

22 pregnancy, breastfeeding, and caregiving

23 discrimination and to compel public discussions

24 of these forms of discrimination and how these

25 forms of discrimination have also served to

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2 undermine many women's progress in the
3 workplace. This conversation is about people
4 being able to be treated with dignity, respect,
5 and humanity for their whole selves as pregnant
6 people, as parents, as providers of care to
7 their family members. Workplace norms have
8 been built and are perpetrated on the
9 assumption that workers are men and that men
10 are not primary caregivers. Women, men, and
11 nonbinary people are often forced to push back
12 against these norms at great risk and at great
13 personal cost. And when we are talking about
14 pregnancy, child birth, breastfeeding, caring
15 for or bonding with one's newborn or caring for
16 a sick relative, it's particularly grievous.
17 It's unacceptable that people are putting their
18 pregnancies at risk to continue working.
19 People are losing their jobs or forced to take
20 unpaid leave just as they are adding newborns
21 to their family. It's unacceptable that people
22 are unable to care for their relatives with
23 disabilities or their young children without
24 facing discrimination at work. And that is why
25 we are here tonight. One of the reasons I took

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2 this position was to have the ability to
3 enforce the Pregnant Workers Fairness Act, one
4 of the first local laws in the country
5 mandating a reasonable accommodation for
6 pregnant workers. So basic, so commonsensical.
7 It passed, thanks to many of the people in this
8 room, and it's an incredible tool to in the
9 fight to ensure that workers are not putting
10 their lives or their pregnancies at risk to
11 stay on the job. In 2016 the commission
12 published legal enforcement guidance on
13 pregnancy discrimination and accommodations,
14 where we made it explicitly clear that
15 reasonable accommodations are required,
16 required not only for pregnant, but for
17 recovery from child birth, pumping on the job,
18 abortion, miscarriage, IVF, and other medical
19 conditions related to pregnancy. We also
20 provided real, transparent guidance to
21 employers to build policies and practices that
22 conformed with the law.

23 And, also, in 2016 we worked with the
24 advocates, our partners in the administration,
25 and the city council to add protections against

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2 discrimination on the basis of caregiving
3 status to our already very protective city
4 human rights law. Our city's law serve as a
5 model to jurisdictions around the country of
6 what can be done, what we can do at the local
7 level, and our hope is that some day at the
8 federal level these protections will also
9 exist. And while legal protections are
10 foundational, effective enforcement is
11 critical. The commission is committed to hear
12 how we can do our work better. That is why we
13 bring together these hearings. Because we
14 cannot do our work without you and your input.

15 And I want to recognize a few fundamental
16 things here as well. As is the case in so many
17 areas, pregnancy and caregiving discrimination
18 impact people in different ways. People of
19 color, low-wage workers, immigrants, lesbian,
20 gay, bisexual, and transgender people, people
21 with disabilities, all face intersecting and
22 overlapping oppressions. We center these
23 experiences tonight as we continue this work
24 moving forward.

25 I also want to recognize that while much

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2 of the focus of tonight is on the workplace,
3 because rights to accommodations under our
4 human rights law were made explicit in this
5 context, we know that pregnant people have
6 faced injustices beyond the workplace, in the
7 healthcare system, the prison system, and in
8 other spaces. And we may hear testimony in
9 these areas tonight, and we welcome that.

10 People who have heard me speak before have
11 probably also heard me talk about how personal
12 the experience, the fight for human rights is
13 to me. And the subject matter tonight is no
14 different. Because, like most people, I don't
15 live my life in a vacuum as just one identity
16 or with one single perspective. And like most
17 people, I also exist at the intersection of
18 many different experiences. That existence is
19 informed by the experience of watching my two
20 hard-working parents balance their work outside
21 our home with their responsibilities to me and
22 my sister inside our home. Oftentimes meaning
23 that dinner for us was at 10 or 11:00 at night
24 or that my parents had very little sleep. I'm
25 also informed by my experience as person who

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2 has been a pregnant working mom managing a
3 demanding career as a litigator. As a nursing
4 mom, pumping during 15-minute breaks during a
5 deposition or in a cramped airplane bathroom on
6 the way for business travel, and as the mother
7 of two young children often struggling to make
8 it home in time to spend minutes with my kids
9 before they actually go to bed. I know that
10 the challenges faced by people who are pregnant
11 and who caregivers, those challenges are real
12 and more so and much more devastating to people
13 with far less privilege than I. So I'm eager
14 to hear about to learn about how those
15 experiences tonight should affect the work that
16 the Commission of Human Rights does every day.
17 Tonight we will be hearing testimony for
18 advocates of workplace rights and advocates for
19 gender birth and reproductive justice. From
20 doctors, midwives, and doulas, from elected
21 officials and their offices, from mothers and
22 other caregivers. Bringing together this
23 community of people to discuss pregnancy and
24 caregiving discrimination allows us to shed
25 light on these intractable issues. It gives

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2 voice to people's lived experiences, and it
3 helps us to think creatively about what more we
4 can do to tackle these problems.

5 I thank you all deeply for your presence
6 here tonight and for those who will be sharing
7 their stories and for the stories of their
8 clients and patients. Sharing these stories is
9 often painful. These are personal stories
10 affecting people at their most vulnerable times
11 of their life.

12 With this, I'm also very happy to and
13 honored to introduce the panelists who will be
14 hearing tonight's testimony. So our panelists,
15 and I'm going to start with my immediate left
16 here, is Cathy Albisa, cofounder and executive
17 director of the National Economic and Social
18 Rights Initiative, often called NESRI. Cathy
19 Albisa is also one of the commissioners at the
20 New York City Commission on Human Rights.

21 To her left we have Jacqueline Ebanks, the
22 executive director for the commission on gender
23 equity here in New York City.

24 To her left we have Dr. Deborah Kaplan,
25 assistant commissioner bureau of maternal

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2 infant and reproductive health at the New York
3 City Department of Health and Mental Hygiene.

4 And to her left we have Ana Oliveira, CEO
5 and president, New York Women's Foundation,
6 and, also, Ms. Oliveira is one of our New York
7 City commission -- commissioners.

8 So thank you, all, for being here tonight.
9 I thank you in advance for your testimony, and
10 we will begin.

11 MS. BAKST: Good evening. Commissioner
12 Wallace and esteemed panelists, thank you so
13 much for convening this incredibly important
14 public hearing on pregnancy and caregiver
15 discrimination and your unparalleled dedication
16 to enforcing the city human rights law and
17 these issues in particular. And thank you to
18 my colleague, Cynthia Calvert, for your
19 partnership, thought leadership, and tremendous
20 body of work on this issue. It's been
21 incredible to work with you.

22 My name is Dina Bakst, and I'm cofounder
23 and co-president of A Better Balance, a
24 national nonprofit dedicated to ensuring that
25 all workers can care for themselves and their

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2 family without jeopardizing -- without

3 compromising their economic security.

4 Combating pregnancy and caregiver

5 discrimination and the economic injustice

6 perpetuates for low income mothers, especially

7 women of color who face multiple forms of

8 discrimination, has been central to our mission

9 since Day 1. Here in New York City, as Cynthia

10 mentioned, we worked on drafting both the

11 Pregnant Workers Fairness Act, which marks its

12 fifth anniversary today, and New York City's

13 caregiver discrimination law, and we have been

14 proud to partner with the commission on

15 enforcement of these and other crucial laws,

16 including New York City's excellent new sexual

17 harassment and equal pay laws. The written

18 testimony I submitted with my colleague, Sarah

19 Brafman, offers detailed lessons learned since

20 the passage of these laws and key

21 recommendations. In the interest of time, my

22 testimony will highlight some key takeaways and

23 recommendations for improvement.

24 As a highlighted in a devastating 2018 New

25 York Times series featuring three of our

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2 clients, every day in America pregnant women
3 face the impossible choice between maintaining
4 a healthy pregnancy and earning a paycheck.

5 Consider for example the pregnant cashier who
6 is rushed to the ER when she fainted on the job
7 because her boss would not let her drink water,
8 or another retail worker pushed off the job in
9 her trimester after requesting light duty to
10 avoid miscarriage and wound up in a homeless
11 shelter because she could no longer afford
12 rent. These are just some of the real stories
13 we heard from callers who reached out to us
14 through our free confidential hot -- legal
15 hotline in 2011 and 2012. We were desperate to
16 provide clear answers to them, like, of course,
17 your boss must allow you to carry a water
18 bottle or take extra bathroom breaks so you
19 don't develop a urinary infection, but that
20 wasn't possible. The existing framework of
21 civil rights laws permitted too many pregnant
22 workers, especially women in low wage and
23 physically demanding jobs, to be forced out and
24 robbed of critical income when they needed it
25 most.

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2 The solution was clear, amend the law to
3 explicitly require employers to provide
4 reasonable accommodations to workers with
5 medical needs arising from pregnancy, child
6 birth, and related medical conditions,
7 including lactation. As I wrote in the January
8 2012 New York Times op-ed, the health and
9 economic consequences of failing to do so for
10 women, families, and our economies are grave.
11 The response was amazing. Congress introduced
12 the federal Pregnant Worker Fairness Act, and
13 New York State immediately introduced a city
14 version of the bill. Thankfully, the council
15 moved fast and passed the city PWFA in late
16 2013, and the law went into effect on January
17 30, 2014, exactly five years ago today. The
18 commission later issued critical enforcement
19 guidance, a key contributor to the law's
20 success and has provided both workers employed
21 and employers a clear understanding of their
22 rights and their obligations under the law.

23 Today 19 states and four localities, most
24 recently South Carolina, have passed similar
25 laws, mostly with bipartisan and often

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2 unanimous support, as well as support from the
3 business community. New York City pioneered
4 not just a law but a movement.

5 As soon as the law went into effect, we
6 began to see in 2014 Angelica Valencia [ph.]
7 Was working at a potato packing factory in the
8 Bronx when she became pregnant. In order to
9 reduce the risk of miscarriage, her doctor
10 advised her not to work overtime. But after
11 making the simple request, she was sent home
12 without pay. We took her on as a client with
13 the city law squarely on her side with a letter
14 to her company informing them of their
15 obligations under the law. Days later she was
16 returned to work and made whole with no
17 protracted legal battle, just a clear law that
18 helped her and her employer resolve the matter
19 quickly. We've empowered countless other women
20 to use information about the law to secure the
21 accommodations they need. The PWFA is working
22 in key ways we have much more to do.

23 We offer three recommendations to
24 strengthen enforcement of the pregnancy law.
25 First, the commission should fast track

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2 pregnancy accommodation complaints, especially
3 when the worker's health is at risk. When a
4 pregnant worker is denied an accommodation,
5 their economic secure -- not just their
6 economic security, but their health and the
7 health of their pregnancy may be at risk. They
8 need immediate relief, but too often long
9 delays often over a year exacerbate these
10 risks. Therefore, the commission should
11 prioritize resolution of these claims. As
12 such, the commission should expand its new
13 gender-based harassment unit, a unit designed
14 to fast track -- to fast track harassment
15 complaints to include pregnancy accommodation
16 complaints. The city can and must devote the
17 appropriate resources to ensuring pregnant
18 workers are able to vindicate the rights and
19 get the accommodations they need. Moreover,
20 the commission should dedicate resources to
21 mediate pregnancy accommodation disputes to try
22 and resolve disputes more expediently. This
23 will, of course, require additional capacity --
24 capacity. We strongly urge the mayor and city
25 council to provide the commission with adequate

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2 funding to do so.

3 Second, the commission would proactively
4 investigate pregnancy discrimination in --
5 especially in low wage and male-dominated
6 industries, where pregnant workers are likely
7 to face the highest forms of discrimination,
8 and put employers on notice that pregnancy
9 discrimination will not be tolerated.

10 After our client, Shadel Reyes [ph.],
11 informed her boss in a Manhattan restaurant
12 that she was pregnant, he cut her hours and
13 told her she couldn't work because, quote, she
14 had a treasure inside of her and needed to stay
15 home and rest. In 2019 this flagrant
16 paternalism must end.

17 Lastly, the commission should increase
18 public education and outreach efforts. Too
19 many women are still in the dark about their
20 rights despite this truly clear law on their
21 side. The commission should engage in a
22 renewed public education campaign for the PWFA
23 and pregnancy discrimination, and I applaud the
24 commission for holding this hearing to draw
25 attention to both the law and the role of the

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2 commission.

3 In addition to targeting employers, the
4 commission should also outreach to the -- do
5 more outreach to the healthcare community. The
6 city law has served as a model for other states
7 around the country. Now, it's time for
8 congress to act swiftly to pass the PWFA to
9 every pregnant worker no matter their ZIP code
10 to have the right to reasonable accommodations
11 to stay safe and healthy on the job. This
12 measure transcends political and ideological
13 affiliation. It's supported by workers and
14 businesses alike. It's time to make the
15 federal PWFA the law of the land.

16 Just a word on caregiver discrimination, I
17 don't want to take too much time. Like the
18 PWFA, the 2016 caregiver discrimination law has
19 brought relief and clarity for many. Still,
20 more education about and enforcement of the
21 laws is urgently needed, especially within city
22 agencies. Our client, Karina Flate [ph.], a
23 single mother and sole caregiver for her
24 daughter with special needs, is one such city
25 employee who has suffered immensely because of

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2 the city's discrimination against her based on
3 her status as a caregiver. Like the PWFA, we
4 urge with commission to do a proactive
5 investigation and to city agencies prioritizing
6 caregiver discrimination cases that involve low
7 wage workers.

8 Again, the commission should do more
9 outreach and education about the law. Far too
10 few workers are able to take advantage and are
11 simply uninformed about the law's protection.

12 And, finally, the commission should amend
13 the law to keep -- and to provide affirmative
14 accommodations to caregivers who are able --
15 who are providing care for dependents with
16 disabilities. This is an important area to
17 improve the accommodation protection for
18 caregivers.

19 We thank the commission for holding
20 today's hearing and taking the time to consider
21 additional steps that need to be taken to stamp
22 out pregnancy and caregiver discrimination in
23 the city. And we look forward to continuing to
24 partner with you in ensuring no worker is ever
25 forced to choose between caring for themselves

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2 and their families and maintaining their
3 economic security. Thank you very much.

4 MS. RIVERA: Dear commissioners, esteemed
5 guests, advocates, and, of course, everyone
6 here for taking their time today. I want to
7 thank you so much. My name is Carlina Rivera.
8 I am a councilwoman for the New York City
9 council, and I want to thank everyone in
10 advance and, of course, you, Commissioner, for
11 sharing your stories, your experiences, and
12 personally having to step up in my own family
13 as a caregiver and being a woman of color and
14 knowing how disproportionately they are
15 affected. It means a lot that we are taking the
16 time to be detailed, and we are really going
17 just above and beyond to address such an
18 important issue in New York City. So thank you
19 to the New York City Commission on Human Rights
20 for holding this important hearing on workplace
21 discrimination faced by pregnant workers and
22 workers with family responsibilities. As chair
23 of the New York City council's women's caucus,
24 I have worked to address these discriminatory
25 practices by strengthening existing laws and

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2 ensuring that the Commission on Human Rights
3 has all the tools they need to pursue effective
4 enforcement. In 2019 there is simply no reason
5 a New Yorker should ever have to face
6 harassment, lower pay, limited career
7 advancement, or a lost job simply because they
8 decided to start a family or assist their loved
9 ones.

10 Last year I joined my colleague, Laurie
11 Cumbo, and others to introduce a package of
12 legislation addressing gaps and protective
13 policies around workers who need space at work
14 for lactation. Women can face stigma for
15 nursing in the workplace, even though state and
16 federal law permit nursing in public, which can
17 lead to challenge for mothers, for working
18 mothers, to find the time or the private space
19 to breastfeed. I'm proud that my bill in the
20 package, Counsel Introduction 905, requires
21 employers to establish lactation accommodation
22 policies and post them in the workplace just as
23 they would for any other workers' rights
24 statute. I also cosponsored Council Member
25 Jumaane Williams' Boss bill, which passed

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2 earlier this month and will prohibit employment
3 discrimination in New York City based on an
4 individual's sexual and reproductive health
5 decisions.

6 In addition to this legislation, I am
7 currently examining how we as a legislative
8 body can provide increased protections for
9 caregivers and domestic workers. I voted to
10 pass Council Resolution 312, which calls for
11 the amendment of the State Paid Family Leave
12 Act to provide workers with 100 percent of
13 their average weekly wages.

14 New Yorkers deserve full pay when taking
15 care of a child, particularly when the cost of
16 living is so high in the five boroughs. We're
17 also working in the council to fund groups
18 organizing around this issue. And I am very,
19 very proud to be one of the people at the table
20 really pushing forward these decisions.

21 We still need to do more, including
22 expanding upon New York City's groundbreaking
23 2010 domestic workers bill of rights and
24 providing more financial assistance to those
25 who are pregnant, raising young children, or

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2 working as a caregiver. But I am proud that
3 the New York City council is recognizing that
4 every New Yorker deserves equal protection
5 under the law with regard to familial status
6 and health.

7 I also look forward to working with this
8 commission, advocates, and legal organizations
9 that worked to inform the public and employers
10 of the rights that we have codified.

11 I appreciate this opportunity to submit
12 this testimony and to speak before you. As
13 always, I invite anyone with concerns,
14 recommendations, or questions about these
15 issues and their rights to contact my office
16 and those of my colleagues. We are going to
17 continue to stand with those who have done so
18 much around this issue and just fight to ensure
19 that there are basic human rights for all.
20 Thank you so much.

21 MR. BLAKE: Good evening, commissioners
22 and all those in attendance. My name is
23 Michael Blake. I have the pleasure and honor
24 of serving as the assembly member of the 79th
25 District in the South Bronx, where according to

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2 the 2010 census women make up approximately 55
3 percent of our district constituencies, 43
4 percent of whom are living within poverty. As
5 we continue to address the root cause of
6 poverty in our district and across New York
7 City, it is especially troubling that the
8 unfair and apathetic workplace practices often
9 contribute to a loss of income and financial
10 hardship. Low income women are struggling to
11 care for their families because they care for
12 others, as you know very well. It's especially
13 true for pregnant women and caregivers who
14 often face workplace discrimination due to
15 parenting, pregnancy, or care for their
16 families in need. This discrimination that
17 regularly is occurring, while pervasive
18 throughout our city, often impacts communities
19 of color the hardest. For many New Yorkers
20 financial stability often relies on one's
21 personal circumstances staying the same without
22 interruption of major life events. But when
23 life does happen and a family member requires
24 long-term or around-the-clock care,
25 middle-class and working families are often

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2 forced to take time off of work and alter work
3 schedules to serve as caregivers.

4 Allow me to give some specific points
5 today. And what I'm testifying on today I will
6 submit in writing as well for your future
7 education. In the 79th District,
8 overwhelmingly, our constituents work in
9 education, social services, healthcare. Our
10 largest employer, for example, is Bronx
11 Lebanon, now BronxCare, but our second largest
12 employer is actually Golden Crust. So they
13 tend to miss on both sides; so continue to eat
14 beef patties across New York City. We
15 appreciate that.

16 It is unconscionable that those who
17 dedicate their life to taking care of others
18 would find themselves unable to take care of
19 their own. As a reminder that we know well, as
20 indicated in the Atlantic Magazine article two
21 years ago, 47 percent of Americans will not
22 have and do not have \$400 if an emergency would
23 happen. Once again, 47 percent of Americans do
24 not have \$400 in an account if an emergency
25 were to occur. So bringing it back to our

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2 district. In the case of a constituent, like
3 Asia Holmes [ph.], who became the guardian of
4 her nephew, Jeanine, who on his fifth birthday
5 was shot and -- by a stray bullet in the head.
6 Asia asked her employer healthcare provider for
7 family leave, a flexible work schedule so she
8 could attend to Jeanine's medical conditions
9 and care and recovery after the senseless act
10 of violence almost took his life. Fortunately,
11 he is still alive today. We were able to
12 celebrate with him when he had on his Superman
13 costume at his recent birthday. But her
14 employer inexplicably denied her request in
15 spite of the fact that other coworkers in
16 similar positions were afforded flexible work
17 arrangements.

18 Or the case of Terry Herd [ph.], a
19 constituent and the caretaker of her grandson.
20 Terry was unable to keep her job in her housing
21 complex because her supervisor refused to allow
22 her to adjust her work schedule so that she
23 could pick up her grandson from school. After
24 asking to take her lunch break later in the day
25 so she could pick up her grandson and bring him

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2 home, her request was inexplicably denied.

3 Terry chose to resign due to her employer's

4 inflexibility because she knew that her

5 daughter had no other childcare options and

6 after-school programs were cost prohibitive.

7 This kind of workplace discrimination against

8 caretakers and pregnant workers place enormous

9 financial and emotional strain on families.

10 Many women depend on their family and their job

11 for their livelihood for their dependents and

12 are therefore vulnerable to manipulation by

13 employers. It's one of the reasons why we

14 produce legislation this past week as a

15 recognition and in spite the shutdown, for

16 example, those that are contractors, the

17 janitors, and security guards are not getting

18 backpay, and that kind of attentiveness that we

19 learned. So we must extend workplace

20 protections to all women, especially low-income

21 women, who are more susceptible to

22 discrimination and less likely to know their

23 rights in the current state and local laws.

24 There's a necessity for increased public

25 education and know your rights campaigns, as

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2 well as an aggressive enforcement of our
3 existing non-discrimination laws that are
4 needed to protect the rights of working women
5 across our city. This enforcement must
6 especially focus on employers in sectors that
7 employ high number of low-income women and
8 women of color.

9 These are the specific recommendations
10 that we have for today. We are grateful for
11 the opportunity to testify before you, and we
12 look forward to working with you, not just in
13 our district, but to be focused on for the
14 people across our New York City. Thank you,
15 everyone.

16 MS. SUNDARAM: Good evening. My name is
17 Divya Sundaram, and I'm here on the behalf of
18 Community Voices Heard. CBH is a member-led
19 multi-racial organization, comprised of women
20 of color in low-income families across New York
21 State. We tackle tough issues and build power
22 to secure racial, social, and economic justice
23 for all New Yorkers. Through grassroots
24 organizing, leadership development, policy
25 changes, and creating new models of direct

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2 democracy, CBH is working to create an
3 equitable New York State. We were founded 25
4 years ago by a group of eight low-income women
5 of color in New York City. These women were
6 raising children, facing a challenging and at
7 times dehumanizing welfare system, and fighting
8 against a powerful alignment of political and
9 social forces designed to hold them down. Back
10 then our fight was around federal welfare
11 policy and proving that mothers on welfare were
12 hard working mothers who cared for other
13 children also trying to hold down long-term
14 employment. When CBH first led the fight to
15 reform the work experience program, WEP, one of
16 the critical drawbacks of that program was
17 childcare. At the time parents who had to
18 complete work requirements in order to receive
19 public assistance were relied heavily on the
20 ACS and other childcare providers in order to
21 fulfill their requirements. The restrictions
22 imposed on caregivers, it was ludicrous. CB
23 worked -- CBH worked to change that. And we
24 have long fought to address the discrimination
25 that women face while they struggle to build

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2 and maintain civility at home in order to
3 provide for their children or other loved ones.
4 As the city considers this issue today, we urge
5 you to think about how pregnancy and caregiver
6 discrimination affects low-income New Yorkers.

7 While pregnancy and caregiver
8 discrimination impacts all workers, low-income
9 families are especially affected. Over 57
10 percent of low-income working families are
11 headed by single parents, the vast majority of
12 whom work. Lower income workers are also more
13 likely to provide care to their aging parents
14 than those in higher income brackets. In
15 recent years we've also seen a shift in what
16 types of jobs low-income folks pursue, from
17 manufacturing jobs towards service center jobs.
18 Jobs which are more likely to be part time and
19 low wage, and they create either rigid work
20 schedules with no flexibility or unpredictable
21 schedules with no fixed hours from week to
22 week. This makes planning for caregiving far
23 more difficult. New York has made advances in
24 creating more safeguards for pregnant women and
25 caregivers, but there is still work to be done.

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2 On behalf of CBH I thank the commission
3 for the opportunity to testify on how we can
4 continue to address this issue, and we look
5 forward to organizing and building power with
6 women and men across New York and in this room
7 to ensure that we are not penalized at work for
8 the care that we give at home. Thank you.

9 MS. EBANKS: Question regarding how widely
10 available is the -- is information about the
11 pregnancy fairness -- discrimination fairness
12 act and for your members and knowing that
13 people planning events or family and there are
14 many things that we take into consideration,
15 and we heard calls from public education
16 campaigns. How widely available, how
17 accessible is this information as low wage
18 earners really begin to plan for the families
19 that they hope to have? Can you -- can you
20 talk a little bit about that?

21 MS. SUNDARAM: Yeah. I can definitely try
22 to address that. I will preface this by saying
23 that CBH hasn't done too much in this specific
24 area. A lot of our work currently has been
25 focused on housing. But I will say that from

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2 what I've spoken to members about what I heard
3 from our membership, the resources available
4 are not well-known because just the bureaucracy
5 that is New York City government is often
6 difficult to navigate. That's definitely
7 something we are working to address through
8 some of our civic engagement programs, you
9 know, just trying to figure out how to navigate
10 the system.

11 MS. EBANKS: And equally important the
12 city could do a lot by making that information
13 available as they interact with your members;
14 right?

15 MS. SUNDARAM: Right. And I think part of
16 that is working with community-based
17 organizations, like CBH, who already have
18 connections in these communities, who know the
19 members, know people, who can bring them into
20 spaces where they can connect with folks from
21 the commission, for example, on this issue
22 specifically and what resources are available,
23 and rather than having the city do this on
24 their own working with other community-based
25 organizations is especially critical.

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2 MS. EBANKS: Thank you.

3 MS. SUNDARAM: Thank you.

4 MS. BROWN: Good evening. My name is
5 Sevonna Brown. I'm the co-executive director
6 of Black Women's Blueprint. I'm also the
7 co-chair for the NYC for CEDAW committee,
8 ending, elimination, discrimination against
9 women.

10 Our work at Black Women's Blueprint is
11 centered on advocating for survivors of sexual
12 violence. Our culturally specific work of
13 protecting women and girls in New York City and
14 nationally. I'm joined by Panther. He may
15 speak.

16 So I want to talk about trauma-informed
17 and survivor-centered approaches. As I see
18 they can drastically reduce not just maternal
19 mortality and morbidity of pregnancy related
20 issues that many women face while in the
21 workplace. And we view this across the
22 continuum, right, from the conception to
23 postnatal, postpartum. Black Women's
24 Blueprint's, sexual violence intervention and
25 reproductive justice projects really create new

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2 possibilities for the first ever framework that
3 merges anti-violence and reproductive justice.
4 This project in theory and practice is really
5 rooted in black feminist principles. The
6 knowledge that sexual violence is reproductive
7 violence. So beyond intersectional we see
8 reproductive justice and sexual violence
9 interventions as a tandem to liberatory
10 frameworks for modeling holistic approaches to
11 addressing maternal mortality and morbidity.
12 And the continued health crisis that we see
13 black women facing here in New York City
14 nationally and internationally.

15 And so the goals really are to shift the
16 paradigm in sexual violence and reproductive
17 justice fields to merge a conversation on
18 maternal mortality and prioritize how violence
19 against women as we know particularly in sexual
20 violence that survivors show up to the world
21 with 150 consequences of sexual violence;
22 right? And so that can look like postpartum
23 depression. It can look like instability in
24 work. It can look like dropping out of a
25 historically black campuses or universities.

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2 And so how does survivorship and reproductive
3 justice, reproductive health really merge.

4 Also looking at the ways that we can shift
5 institutional culture within hospitals and
6 medical institutions so that where women are
7 getting their prenatal support and childbirth
8 education if they are leaving in the middle of
9 the day for work, that they are not
10 experiencing a re-traumatization in a prenatal
11 visit or with their OB/GYN, and then having to
12 go back to work and to sit at their desk and to
13 refocus and to not be reprimanded for the way
14 that they show up within those 150
15 consequences. Also looking at transforming the
16 landscape of our political dialogue. How we
17 expand policy and legislation that addresses
18 maternal mortality and morbidity, looking at a
19 traumatic one to intersectional lens.

20 Providing a holistic and actual full spectrum
21 services that set the standard of care for
22 survivors centered on trauma-informed work in
23 New York City hospitals. And inspiring a
24 decrease in maternal mortality and morbidity in
25 New York City through the direct services, a

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2 relationship with the city's hospitals, the
3 public health agencies, and how we create a
4 standard of norms for pregnant people for
5 prenatal folks when they show up to their work
6 and their workplace.

7 So thank you so much for the opportunity
8 to testify and to bring in the voices of
9 survivors, as black women and women of color
10 are predominantly impacted and
11 disproportionately impacted by survivor
12 experiences. Thank you so much.

13 DR. KAPLAN: Thank you so much, and I have
14 a question for you -- is it on? Is my mic on?

15 Could you say a little -- thank you so
16 much for that perspective. And could you say a
17 little more about where you had seen the
18 intersection between sexual violence and
19 surviving -- being a survivor of sexual
20 violence and pregnancy discrimination, how that
21 might show up in the workplace or in seeking
22 care.

23 MS. BROWN: Yeah. I think one of the
24 things that happens often is that we look at
25 family leave as postpartum -- as postpartum

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2 support, but the ways that survivorship and
3 trauma actually impacts in the prenatal phases.
4 Often survivors, in particular, might feel a
5 disembodiment or disassociation with one's self
6 as they are pregnant. So how does that impact
7 the ability to focus at work, to show up to
8 work on time; right? It's not just nausea and
9 morning sickness that impacts the whole mind,
10 body, and spirit of a pregnant person, but
11 their whole spectrum of life experiences. And
12 so I think that that's important to consider
13 when we are thinking about how do we set up a
14 space of care, a holistic landscape, an
15 ecosystem support that looks at a
16 trauma-informed lens to ensure that folks can
17 show up to work and stay there and be there and
18 supported there.

19 DR. KAPLAN: Thanks.

20 One follow-up question. And what -- how
21 might you with that -- what might be some
22 actions to take that could address that in
23 terms of education, in terms of employers, in
24 terms of way the -- the commission and others
25 could make sure not only is there awareness,

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2 but that this is something that impacts how
3 people are treated. Are people thinking of
4 that as a possibility in terms of work
5 performance and a way to safely address it in a
6 way that supports people in those situations?
7 What might be some steps that could be taken,
8 do you think?

9 MS. BROWN: I think normalizing and
10 institutionalizing pregnancy rights within
11 workplaces, rights with providing training and
12 technical assistance for staff, upper
13 management, supervisors, so that they can start
14 to implement things, not just like lactation
15 rooms or nursing rooms, but also prenatal --
16 prenatal meditation rooms or prenatal
17 stretching rooms; right? And many doulas and
18 midwives have profound models for well women or
19 well person-centered care that can be easily
20 implemented, I think, and institutionalized in
21 policies and procedures in workplaces.

22 DR. KAPLAN: Thanks a lot.

23 MS. BROWN: Thank you.

24 MS. MALALIS: You know, one thing that I
25 want to make sure that you're aware of is one

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2 of the -- you know, we oftentimes talked about
3 the power of the New York City human rights
4 law, and thanks to some of the folks in this
5 room, the way that the law was created and,
6 frankly, the way we interpret the law is quite
7 broad. So our laws speak not just to
8 pregnancy, but also childbirth-related
9 conditions. So, you know, for situations that
10 occur for you -- for your membership or the --
11 the -- organizations that you may work with, I
12 would always encourage folks to contact the
13 Commission on Human Rights if there are
14 situations at work or people are requesting
15 accommodations and for some people that could
16 even mean time off.

17 MS. BROWN: Right.

18 MS. MALALIS: And let us know about those
19 situations. Sometimes in those situations our
20 office is able to work with employers or work
21 with folks who call in. Sometimes there is a
22 law enforcement group, but that is always
23 something I like to emphasize about our law.
24 We are not just restricted to the period of
25 pregnancy.

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2 MS. BROWN: Right.

3 And finding a way to normalize it so that
4 there's -- so childbirth and pregnancy is not
5 looked at as like an illness or a disability;
6 right? But that we actually have a framework
7 to think about, you know, the spectrum of
8 experience for a pregnant person.

9 MS. MALALIS: Thank you so much. I assume
10 this is his first hearing.

11 DR. VIERCZHALEK: Good evening. Thank you
12 very much for the invitation to all of you. My
13 name is Susan Vierczhalek. I work as a
14 pediatrician and the director of the newborn
15 nursery and breastfeeding program at Bellevue
16 Hospital. The population I -- I work with are
17 mostly families from low-income backgrounds
18 that very -- from very diverse backgrounds and
19 many recent immigrants, many non-English
20 speakers. So it's a -- but one of our -- what
21 I'd like to focus on through is breastfeeding
22 in this -- for this hearing. I do spend much
23 time on that. I'm the chair of also the New
24 York State Breastfeeding Coalition and have
25 done a bit of advocacy work around the state.

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2 And, you know, we've -- I think in -- in the
3 21st century we've gotten beyond the health
4 benefits of breastfeeding. It's pretty much
5 accepted as the normal -- the normal way for
6 humans to feed and nurture their infants, as
7 well as a basic human rights for both children
8 and mothers. But we know that while our
9 breastfeeding initiation rates have really
10 increased drastically over the past few years
11 and particularly in New York City, we are very
12 proud that close to 90 percent of our new
13 mothers initiate breastfeeding. The rates of
14 exclusive breastfeeding and duration drop off
15 very drastically after birth if you look at the
16 numbers. And when I -- when I talk to people
17 from other states, when I, you know, work on
18 some committees with other states, I'm always
19 bragging about New York. I mean, we've done --
20 we past lots of legislation. Our health
21 department has been very proactive in really
22 working to -- to promote this as a normal
23 thing. Our hospitals and our -- have greatly
24 improved the care and the education we give,
25 but there's still this tremendous drop-off.

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2 We're working in the community, you know, and
3 many, many programs. I won't list all of them,
4 but the home visiting programs, our, you know,
5 outreach programs within some of the
6 communities, the community empowerment and so
7 on. Just -- just many, many programs to try to
8 really reach out to some of our most vulnerable
9 population, and as well as so much of the
10 legislation we passed, you know, in the state.
11 But still I hear day after day mothers, new
12 mothers coming in, well, yeah, I'm
13 breastfeeding, but not when I go out because
14 it's too uncomfortable. And mother -- you
15 know, coming to the clinic needing some help.
16 We have wonderful, nurturing breastfeeding
17 counselors. Let Nicole come in and help you.
18 Well, no. I need to go to work. When? This
19 afternoon with a five-day old baby. I mean, I
20 also work with many of the other preterm
21 infants and special needs infants. And, again,
22 just recently, you know, we're always so proud
23 when a -- a -- you know, a mother has a preterm
24 infant, very proud mother able to breastfeed
25 this baby and express milk, and just went back

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2 to work as a teaching assistant. And she's
3 losing her milk supply because she's not able
4 to -- so we hear the stories over again. So I
5 guess the bottom line is: CDC reported a few
6 years ago two-thirds of new mothers who
7 initiate breastfeeding are not able to achieve
8 their breastfeeding goals nationally. So I
9 guess we still -- we still have lots of work to
10 do. We have some fabulous laws and policies,
11 as you've heard time and time again,
12 enforcement, outreach to the most vulnerable.
13 You know, people who have privilege tend to
14 have access to this support and -- that they
15 need, but more outreach and more innovation.
16 So thank you.

17 MS. EBANKS: One minute. Sorry about --
18 so is the connection here that the drop-off is
19 a consequence of having to return to work?

20 DR. VIERCZHALEK: I think it's a
21 combination of factors. Certainly, work is a
22 large part of it. And I -- and I know that's
23 kind of the focus. But sometimes it's lack of
24 support. It's, you know, our hospitals, again,
25 are doing so much better than they were --

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2 yeah, we still have work to do, but so much
3 better. But really helping more and more new
4 moms launch, get started, initiate. And for,
5 you know, some -- some family -- some of them
6 -- some moms go home and have a lot of family
7 support. Some don't. Some are relatively
8 isolated. Some have mental health challenges.
9 Some have other, you know, kinds of challenges,
10 and, as I said, we -- I'm proud of the work
11 that we do in our pediatric clinic. We do a
12 very intensive follow-up with those moms, but
13 still we are not. So it's a variety of
14 factors. The stress of not always having the
15 help that we needed.

16 MS. MALALIS: Dr. Vierczhalek, am I
17 pronouncing that correctly?

18 DR. VIERCZHALEK: Yes.

19 MS. MALALIS: I just want to say thank you
20 so much for coming out to testify tonight.

21 You know, years ago I sat on a task force
22 on pregnancy-related accommodations put
23 together by the Center for Work Life Law, and
24 we were joined by folks in the medical
25 profession, because, you know, that is a very

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2 helpful, you know, information as we're
3 thinking about these things in the legal
4 context. Practical things that have to happen.
5 So this may not be your usual space to be, but
6 I'm very thankful for your input. Thank you
7 for this.

8 DR. VIERCZHALEK: Thank you so much.

9 DR. KAPLAN: I just have one other
10 question. Thank you so much for your
11 testimony.

12 And could you say a little -- you know, I
13 think we have terrific laws in New York City
14 and New York State, but we know that the
15 reality of the workplace is they're often --
16 workplaces are not supporting people who want
17 to express milk at the workplace, and that the
18 enforcement is key. From your vantage point,
19 and from the stories, the many stories I'm sure
20 you hear from your patients, and maybe even
21 employees that, you know, what -- what -- what
22 more can be done? You said outreach. Do you
23 have any other specific thoughts on what more
24 could be done to ensure that the -- our great
25 laws are actually being put into place,

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2 especially for low-income workers?

3 DR. VIERCZHALEK: Well, some of the other
4 speakers have mentioned this word, and it's a
5 word I like, and I think it's normalized. This
6 has to become the norm, not the exception, not
7 the icing on the cake, not the special extra
8 thing that you do. It's the norm -- it's the
9 normal thing and to be valued. How we get
10 there, I think little by little. I think we're
11 getting there. And I don't have one answer for
12 you, but I think we're getting there little by
13 little. Thank you.

14 MS. SENTENO: Good evening. Thank you,
15 commissioners, for -- and everyone else that is
16 here tonight. My name is Marissa Senteno. I'm
17 the enforcement program manager for the
18 National Domestic Workers Alliance. That means
19 I organize domestic workers, housekeepers,
20 childcare workers, and home caregivers around
21 the enforcement of their labor rights here in
22 New York. And at NDWA we are a nation -- we
23 are the nation's leading voice for dignity and
24 fairness for more domestic workers in the
25 United States. And through our worker-led

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2 enforcement initiative, I lead up a team of
3 domestic worker leaders. We go out into the
4 community, talking to other domestic workers
5 wherever we can find them. So that's in parks,
6 libraries, churches. And within this past year
7 alone, with my team of domestic worker
8 communities we've spoken to and made contact
9 with over 1,000 workers. We've been able to
10 screen over 250 workers around workplace
11 violations and have brought in 100 workers to
12 our monthly domestic worker-focused legal
13 clinic. And I'm grateful to be able to talk
14 about the issue of pregnancy discrimination and
15 caregiver discrimination amongst the domestic
16 workforce because, as an industry that's so
17 vital to the well-being of the rest of New York
18 City's workforce, domestic workers themselves
19 are not protected in the pregnancy
20 discrimination because they are not included in
21 the human rights law. There is a four or more
22 employer -- employee to employer count. So
23 that means that when the domestic workers come
24 forward with being pregnant, they face a lot of
25 real repercussions. The domestic workforce,

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2 like I mentioned, which is childcare,
3 housekeeping, and caregiving, it's very
4 physical labor. It's very intimate labor. And
5 there is a large power differential between
6 employers and employees. And with our many
7 conversations with domestic workers, we found
8 that the -- the repercussions is very real. To
9 give a sense, we found that for many domestic
10 workers, they feel that they have to hide
11 pregnancies from their employers for as long as
12 possible, because when they do disclose their
13 pregnancy, they are subject to being fired
14 without any repercussions. They are willing to
15 forego the vital prenatal care because their
16 employers tell them they have to schedule
17 appointments on their own time without regard
18 to the fact that domestic workers are
19 low-income women of color and don't have the
20 option to schedule off-hour appointments, and
21 their wait times are generally much longer
22 because community clinic -- based clinics, you
23 know, have longer times in general.

24 Health issues go unchecked and are
25 exacerbated because they are having to hide

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2 their pregnancy and not being allowed to seek
3 preventative medical care, thus they are forced
4 out of a job when their health suffers, or they
5 are just fired from the job because their
6 health suffered. I had a worker share with me
7 their high-risk pregnancy which could have been
8 reasonably managed had she been able to be
9 allowed to go seek the proper care resulted in
10 her losing her job. She couldn't find a new
11 job because imagine being a pregnant domestic
12 worker. It's impossible to find a new job.
13 And she had to move out of state in order to
14 seek help from other family members and really
15 wishes that she could come back to New York
16 City and work, but she cannot do so. We found
17 that workers have also sometimes have to be put
18 into question about their right to choose.
19 When they have -- we heard workers who tell us
20 that when they told their employers, their
21 employers ask them, well, what if I pay for
22 your abortion. Because they prioritize the
23 care, the employers care of their own children
24 over the nanny's right to choose. And so
25 domestic workers are judged really harshly

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2 around their choices to have a family, and
3 that's just not about them being a domestic
4 worker. It's about them being women of color.
5 It's about them being low income. And so those
6 -- those issues come in with every time they
7 have to make these very hard choices. The
8 safety and health of workers is very tied very
9 much to discrimination, because the more
10 physical components of the industry, like
11 repetitive motion, heavy weight bearing
12 movements, if you are a caregiver or a house
13 cleaner being on one's hands and knees and
14 exposure to harmful chemicals affect the
15 well-being of domestic workers, and they are
16 not protected as such.

17 So, in short, what I would like to and I
18 will be submitting my more full testimony
19 shortly, is that we recommend that the
20 elimination -- that elimination of the form or
21 employee to employer human rights law. Also,
22 that the city, the commission can provide
23 support and resources for domestic worker
24 employers. Like how to make this possible for
25 domestic workers to take paid maternity leave,

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2 to provide appropriate guidelines around
3 accommodations. And there is a definite need
4 for education and outreach. I literally just
5 learned about, you know, I do this every day,
6 about the Pregnancy Fairness Act, and it also
7 applies to (indiscernible) you know, employment
8 workspaces. So those are my comments for
9 today, and thank you very much.

10 MS. SAKOVITS: Good evening, and thanks
11 for taking the time to address this important
12 issue. My name is Alanna Sakovits. I'm an
13 attorney with the workers-side law firm
14 Virginia & Ambinder. We represent workers with
15 their harassment, discrimination, and unpaid
16 wage claims.

17 Pregnancy discrimination is one of the
18 most common and most insidious forms of
19 discrimination that our law firm handles. A
20 New York Times article reported that according
21 to a 2014 analysis by the University of
22 Massachusetts, each child chops 4 percent off a
23 woman's hourly wages while men's earnings
24 increase 6 percent after they become fathers.
25 Pregnancy discrimination may account for at

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2 least part of this. Far too often women from
3 those minimum wage white color jobs contact us
4 with stories so familiar they could follow a
5 script. Shortly after a woman reveals her
6 pregnancy, she begins to receive negative
7 performance reviews at work, is passed over for
8 promotional opportunities, is excluded from
9 work assignments, involving travel, client
10 meetings, networking, and social events with
11 coworkers even if it's drinks after work.
12 Requests for accommodations are ignored, and
13 women are written up for excessive absences
14 even those absences that are for
15 pregnancy-related doctor appointments.
16 Supervisors and coworkers speculate about
17 whether she will return to work after giving
18 birth, and more than once we heard that there's
19 an office-wide betting pool on whether the
20 woman will return after parental leave.
21 Eventually, for those women who aren't
22 terminated prior to taking parental leave, they
23 attempt to return to work only to be informed
24 that their position has been eliminated. They
25 are told that their return date has been pushed

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2 back, and after speaking to several HR
3 representatives, they are told that their job
4 no longer exists. This is the employer's
5 effort to say that it's not the employee who's
6 being terminated; it's just their position.
7 They may be offered the opportunity to apply
8 for alternate positions only to find out that
9 no comparable position exists or to not even be
10 selected for an interview even if they had
11 worked for the company for more than a decade.
12 They may be offered freelance work in place of
13 their full-time salary job with benefits. In
14 nearly every such case that we have seen, we
15 received the exact same response from the
16 offending employers. The termination was part
17 of a reorganization, although it quickly
18 becomes apparent that the only position
19 eliminated in this reorganization was the
20 pregnant woman's. Additionally, for the many
21 women who are terminated before giving birth,
22 they are faced with the arduous task of
23 searching for employment with increasingly
24 visible pregnancy. As employers are ostensibly
25 less likely to hire a woman who is visibly

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2 pregnant, they are often condemned to months of
3 unemployment with very little chance of
4 reentering the job market until after giving
5 birth. These examples are an amalgamation of
6 the cases we have handled, and though the facts
7 may vary, the story arc is the same, and it
8 begins with a pregnant woman and it ends with
9 an unemployed one.

10 For these reasons we have two requests.
11 That in recognizing the unique challenge a
12 pregnant woman faces in entering the workforce
13 and the irreparable harm she may suffer
14 remaining unemployed while pregnant and in the
15 interest of deterring and curtailing this
16 irrebuttable presumption of discrimination be
17 applied to employers who terminate women during
18 a then known of pregnancy. And that the New
19 York City Human Rights Law require employers to
20 adopt a pregnancy discrimination prevention
21 policy and training for employees.

22 Thank you for your time.

23 MS. BRANSFORD: Good evening. Thank you
24 for holding this hearing, and thank you so much
25 for having me here to testify tonight. My name

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2 is Amanda Bransford, and I'm a workplace
3 justice attorney at Make the Road New York. We
4 represent hundreds of low wage workers each
5 year, mostly immigrant workers. And we
6 frequently see clients who have been
7 discriminated against at work because they are
8 pregnant or have caregiver responsibilities.

9 Pregnancy and caregiver discrimination hit
10 low wage and immigrant workers especially hard.
11 Many low wage workplaces do not have any
12 written or formal anti-discrimination policies.
13 Few train their managers or staff on how to
14 identify or report unlawful discrimination.
15 Low wage jobs are often physically demanding
16 requiring workers to be on their feet for long
17 hours or to carry heavy objects or to be
18 exposed to chemicals, like cleaning supplies
19 and nail salon products. Low wage jobs also
20 tend to be inflexible with ridged hours and no
21 personal time. And low wage earners have less
22 money to pay when a family member needs care
23 and are less likely to have a safety net if
24 they are fired.

25 One of my clients worked at a fast food

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2 restaurant. Her manager made it clear that she
3 was hostile to accommodating pregnant worker's
4 needs. The manager would joke to employees who
5 called in sick, you better not be pregnant. My
6 client became pregnant while working there.
7 She had to call out of her scheduled shift
8 twice because of complications with her
9 pregnancy. The manager fired her over the
10 phone telling her that she couldn't have a
11 pregnant employee who could constantly be
12 feeling unwell. The manager told my client
13 that she had to make a choice between her
14 pregnancy and her job. Because of the lack of
15 training or posted policies, this client did
16 not even know that this discrimination was
17 against the law until she met with a Make the
18 Road lawyer about a different matter. This
19 manager would also cut the afternoon hours of
20 mothers assuming that they would have to leave
21 work to pick their children up from school even
22 if they assured her that they would not. My
23 client filed a complaint with the commission
24 and resolved the case through medication.

25 Later, she heard that another pregnant

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2 employee had subsequently been fired. This
3 causes concern that the confidential nature of
4 the settlement meant that other workers did not
5 know what had happened to our client and that
6 it was illegal.

7 Undocumented workers are particularly
8 vulnerable to workplace discrimination. It is
9 harder for undocumented workers to speak up
10 because they have more to lose, and they
11 threaten and believe that their employer is
12 less likely to respect their rights on the job.
13 They may fear immigration consequence
14 retaliation for trying to enforce their rights,
15 and they will have more difficulty finding a
16 new job if they are fired. An employer may
17 view low wage workers as interchangeable and
18 replaceable. An employer believes he or she
19 can get away with it and may prefer to fire a
20 pregnant worker rather than make
21 accommodations.

22 I had another client who worked in a
23 restaurant who asked for unpaid leave during
24 the final month of her pregnancy because she
25 frequently had to run up and downstairs

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2 carrying plates, and at eight months pregnant
3 she could no longer see her feet and was afraid
4 that she would fall. The restaurant worker
5 fired her -- the restaurant owner fired her.
6 To him it seemed easier to just hire someone
7 new. Workers are people first and they have
8 families, and all workers need to be able to be
9 secure in their jobs regardless of whether they
10 are pregnant and have caregiving
11 responsibilities. Strong legal protections and
12 enforcement are essential to protecting this
13 right, particularly for the low wage immigrant
14 workers, who are the most vulnerable members of
15 the workforce. At a time when immigrant
16 workers are less likely to rely on protection
17 from the federal government, New York City's
18 commitment to protecting its immigrant
19 population is more important than ever.

20 We commend the commission for issuing the
21 strong legal enforcement guidance on
22 discrimination on the basis of pregnancy.
23 Notably, we continue to see clients regularly
24 experiencing the examples of violations
25 provided in the guidance. We urge the

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2 commission to increase and continue public
3 education campaigns, to educate employers about
4 their obligation and workers about their
5 protections against unlawful pregnancy and
6 caregiver status discrimination.

7 Thanks very much for the opportunity to
8 testify tonight.

9 MS. ALBISA: A lot of the -- a lot of the
10 issues you point to are -- are sort of not
11 necessarily specific to the pregnancy. It's
12 sort of the degraded nature of low wage
13 workplaces and enforcement, the crisis of
14 enforcement, the condition, et cetera. But
15 there's obviously a particular urgency during
16 pregnancy, right, for all the reasons that
17 people have flagged here. Besides public
18 education, which we've we all heard a lot of
19 urging, and given that a lot of the questions
20 of enforcement in low wage workplaces is not
21 because employers don't know it's illegal;
22 right? Everyone knows wage theft is illegal,
23 but it's super common. That there -- it seems
24 like something more is required.

25 In your experience, are there any specific

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2 kind of strategies that would address the
3 urgency of that time-sensitive phase of
4 pregnancy that -- in the context of such a
5 degree in enforcement environment that would
6 jump out at you?

7 MS. BRANSFORD: Yeah. I think someone
8 else mentioned earlier the idea of fast
9 tracking pregnancy discrimination cases. It is
10 true that often by the time our cases are
11 resolved, the formerly pregnant person is now
12 the mother of a small child, and the immediate
13 crisis is passed, although she may never make
14 up the damage to her career or the money that
15 she lost. So fast tracking would really help,
16 in addition to public education, especially for
17 undocumented workers who are increasingly
18 afraid to access any government agency. It's
19 really important that they know that the New
20 York City commission doesn't ask about
21 immigration status and that their immigration
22 status isn't going to be held against them or
23 even inquired about. That's something that we
24 have to reassure our clients they would --
25 thank you.

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2 MS. ALI: Good evening. Thank you,
3 commissioner, distinguished guests, and those
4 that are here to testify on behalf of this
5 powerful topic. My name is Ameena Ali. I am a
6 naturopathic doctor and home born midwife for
7 the last 29 years, and I hold a Ph.D. in human
8 service in rural and indigenous midwifery
9 science and practices. I am a Gulf War veteran
10 that has served 11 years in service, but what
11 I'm most proud of is being the mother of six
12 beautiful girls. And I am the grandmother of
13 13 beautiful babies, and one is due in August,
14 and 11 of them were home birthed. That's a
15 great effort that I hold dear, and one of the
16 reasons why I needed to be here today. As
17 founder of GRRACEE or Gestational and
18 Reproductive Resource Alliance Center for
19 Education and Empowerment and the National
20 Doula Academy, our first case with Amnesty
21 International fought against maternal shackling
22 while incarcerated. This profile case was that
23 of a mom actually allowed to return back to the
24 job that she was given before going to jail,
25 but was fired subsequently because the external

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2 pelvic brace that she wore to work was said to
3 be unsightly at the job. The brace was
4 required because her left hip came out -- came
5 out of place and accidentally broke while she
6 was shackled during her birth. The broken leg
7 that was seen by the person firing her was
8 hidden under a pair of pants. That leg belong
9 to her boss, which was, of course, a man.

10 Introduced in -- on August 1st, 2001, sponsored
11 by Dick Tracy and Orrin Hatch, the Dream Act is
12 an American legislative proposal for a
13 multiphase process for qualifying undocumented
14 minors in the United States. That the first
15 grant conditional residency and upon meeting
16 further qualifications permanent residence. In
17 my work as founder of CAUUHT, which is Crimes
18 Against Underserved, Undocumented, and the
19 Humanly Trafficked, we service these statements
20 whom -- many of whom are teen survivors of
21 undocumented, sexually trafficked, and
22 incestuous pregnancies themselves, and this act
23 further limits the jobs that they can get once
24 properly documented. As a mother of -- excuse
25 me. As a member of the Global Alliance for the

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2 Rights of Older People, I work in support of
3 women that are over 40 and are inaugural
4 birthers. And that just means you had your
5 first child an after the age of 40. And they
6 tend to age out of careers because it assumed
7 that they are going to retire to care for this
8 new child or not going to return to their
9 career so late in life. Or they're aged out of
10 remote work contracts, telecommuting
11 opportunities given to younger gestational
12 women. This creates a demographic of maternal
13 ageism by not allowing them opportunity to age
14 in place with their baby. Career-wise, with
15 the same accessibility to the upward
16 professional mobility that they had in their
17 younger career.

18 Lastly, and to provide a solution to this,
19 as you have in front of you, okay, at current
20 as the 2019 ambassador for the International
21 Model UN Association held in Hanoi, Vietnam
22 this year and in my tribal work for the UN
23 women for the Republic of the Gambia, we have
24 developed 5 white papers, 20 programs, and 12
25 sustainable human, humanitarian empowerment

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2 goals. And those are the she goals that are
3 listed. And on the very back of that packet
4 that was handed to you, the She Goal Number 8,
5 which is module entitled Triggered Traumas,
6 Tragedies, and Triumphs, and this emphasizes
7 solutions to gestational moral injury. This is
8 the physiological, psychological, social
9 culture, and spiritual aspects of birth work to
10 trauma to categorically deal with the individual
11 subjective consequence and conscience that lies
12 in direct with result of an act of avoidable
13 yet intentional professional immoral
14 transgression. This produces profound
15 emotional shame and crippling esteem. This
16 sets up other mental or behavioral health
17 issues which can trigger worse in postpartum
18 depression, delaying the return to work and
19 compounding the very truth to trauma that we
20 are testifying to today.

21 Thank you very much.

22 MS. BOHM: Thank you for the opportunity
23 to testify today. My name is Allie Bohm. I'm
24 a policy counsel at the New York Civil
25 Liberties Union. On behalf of our more than

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2 141,000 members in New York State and our
3 nationwide counterpart, the ACLU, I wish to
4 express our support to the commission's legal
5 enforcement guidance on discrimination on the
6 basis of pregnancy and to encourage the
7 commission to codify that guidance into a
8 formal rule. My written statement contains
9 stories of some of the NYCLU's clients who've
10 experienced pregnancy discrimination in the
11 workplace, but in the interest of time, my oral
12 testimony will focus on the key provisions of
13 the guidance that we think are most important
14 to include in a formal rule. Of utmost
15 importance, the guidance treats pregnancy
16 accommodations as a category of their own,
17 requiring employers to accommodate pregnant
18 women regardless of whether and to what extent
19 other employees are accommodated. This frees
20 pregnant women from the need -- I'm sorry --
21 pregnant workers from the need to find
22 co-workers who are more favorably treated in
23 order to vindicate their rights. It is a major
24 innovation that obviates much of the confusion
25 experienced by both workers -- I'm sorry --

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2 workers, yes, also employers and more
3 importantly courts under federal law, and it
4 should be included in any formal rule.

5 Another innovation in the guidance of
6 which the commission should be particularly
7 proud is the cooperative dialogue. It is
8 particularly important given the power
9 differential between employers and employees
10 that the guidance places an affirmative
11 obligation on the employer to initiate a
12 cooperative dialogue to explore the full
13 universe of possible accommodations. And it is
14 valuable for both the employer and the employee
15 that as the employee's conditions change, they
16 may request new accommodations, decline
17 accommodations that are not needed or desired,
18 or terminate accommodation when they are no
19 longer needed.

20 We also really appreciate that the
21 guidance puts the burden on the employer to
22 either provide an accommodation or demonstrate
23 that providing the accommodation, any possible
24 accommodation would either pose an undue
25 hardship or prevent the employee from

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2 fulfilling the essential requisites of the job.
3 Importantly, the guidance indicates, and I'm
4 going to read this language so that I don't get
5 it wrong, that in raising this defense, an
6 employer must also show that there are no
7 comparable positions available for which the
8 employee is qualified that would accommodate
9 the employee and that a lesser position or an
10 unpaid leave of absence is either not
11 acceptable to the employee or would pose an
12 undue hardship. This is one area that the
13 commission should approve upon in a formal
14 rule. The rule should be even more explicit
15 that a pregnant worker who requires a temporary
16 transfer is nonetheless considered able to
17 perform the essential requisites of the job.

18 My written statement includes other
19 provisions of the guidance that of the NYCLU
20 and the ACLU also appreciate and hope will
21 remain in the final rule.

22 With the balance of my time I want to
23 raise one more thing the commission could do to
24 support expectant and parenting workers. We
25 are thrilled that New York enacted a paid

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2 familiarly leave law. However, New Yorkers of
3 different races, genders, and career paths
4 continue to experience paid leave differently.
5 We urge the commission to collect data about
6 all employees and particularly city employees
7 who are not covered by the paid leave laws
8 access to paid family leave.

9 Thank you for the opportunity to testify.
10 The NYCLU and the ACLU stand ready to assist or
11 to answer any questions as you consider
12 codifying the guidance into a final, formal
13 rule and perhaps future data collection.

14 MS. MALALIS: You will be happy to hear
15 that the guidance is in the process of being
16 transformed into a formal rule. And we hope
17 that in the coming months we will be able to
18 announce actually a public hearing for that.

19 MS. BOHM: Excellent. Thank you very
20 much.

21 MS. CRUMILLER: Hi. My name is Susan
22 Crumiller, also a lawyer. I'm the founder and
23 owner of Crumiller P.C., a law firm that
24 focuses on representing plaintiffs and
25 pregnancy and caregiver -- I'm sorry, pregnancy

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2 gender discrimination cases. I'm also on the
3 executive committee of the board of directors
4 of the Gender Equality Law Center or GELC.
5 GELC is a not-for-profit law and advocacy
6 organization whose mission is to advance law
7 and policies to combat gender-based
8 discrimination, including pregnancy and
9 caregiver discrimination.

10 I testified before this committee in both
11 capacities and as a mother. I also base my
12 testimony on conversations with many fellow
13 members of the New York affiliate of the
14 National Employment Lawyers Association, a
15 plaintiffs employment bar association, who have
16 a wide range of experience handling pregnancy
17 and caregiver discrimination cases. I just
18 want to say it's really a privilege and joy to
19 be able to advise my clients regularly, how
20 fortunate we are to live in a city which such
21 excellent laws, which demonstrate our strong
22 progressive values and our commitment to
23 justice. So thank you.

24 Naturally, there's always a gap between
25 the laws as they are and as we want them to be.

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2 We at GELC and other attorneys in the field
3 agree that two concrete practical solutions
4 will most directly and dramatically improve the
5 commission's ability to have a positive impact.

6 First, as some of my colleagues have
7 noted, we need a fast-track mechanism for
8 pregnant workers who are looking to maintain
9 their jobs. With the commission's current
10 unfortunately glacial pace in handling
11 complaints, it is impossible to achieve
12 anything other than retroactive remedial
13 measures. The commission needs more than one
14 mediator. And it needs a system for expedited
15 review designed to facilitate resolutions that
16 are proactive, not reactive.

17 Second, the caregiver discrimination
18 provision of the New York City Human Rights Law
19 must be amended to include the requirement that
20 employers offer a reasonable accommodation to
21 employees with caregiver responsibilities,
22 including a cooperative dialogue process, and
23 there's two reasons why this is crucial.

24 First, caregiving imposes a unique set of
25 demands on one's time and availability in

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2 response to often unpredictable needs.

3 Practically speaking, as an attorney attempting
4 to prove discrimination, there can be no
5 meaningful comparator rendering it virtually
6 impossible. Even when you absolutely know that
7 people's attitudes changed based on your new
8 identity, for example, as a working mom, it's
9 impossible to examine an employer's treatment
10 and assess whether this treatment is disparate
11 without a control group and none exist when
12 evaluating caregiver status. So, in theory, to
13 prove Jane is being discriminated against for
14 having to leave work early to pick up her
15 children or work from home when her baby is
16 sick, we would need to find a Bob, whose
17 employer was totally cool with him leaving
18 early to go to his sports game with his bros.
19 Obviously, Bob and his super chill man boss are
20 mythical, thankfully, but Jane and her
21 employer, of course, are not. Perhaps, more
22 importantly, institutionalizing this kind of
23 cooperative dialogue concerns another even more
24 powerful way to prevent problems before they
25 arise. It could enable many of the disputes we

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2 practitioners see to be resolved before they
3 get to the attorneys and the commission, saving
4 resources and, more importantly, saving jobs
5 and eliminating costly turnover.

6 Thank you for listening.

7 MS. EBANKS: May I ask a question here?

8 MS. CRUMILLER: Of course.

9 MS. EBANKS: Thank you so much for this.

10 What do you think is the lost opportunity by us
11 not having this fast-track mechanism that you
12 talk about? You know, what do you think is the
13 lost opportunity or therefore the possibility
14 to encourage employers, for profit employers,
15 to move more aggressively around this area?

16 MS. CRUMILLER: I think there are many
17 employers who approach these situations from a
18 place of laziness or apathy. But I also think
19 there are a lot of employers who see their
20 employees with maybe a new focus on their
21 family responsibilities, and they are afraid
22 that the employee doesn't really care anymore,
23 isn't dedicated anymore, and they are afraid of
24 being taken advantage of. So I think having
25 that dialogue earlier on would be a preventive

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2 measure. With respect to fast tracking of the
3 pregnancy cases, you know, naturally, the
4 financial loss, the job -- the loss of a job
5 during pregnancy is devastating. I mean,
6 pregnancy is an emergency. Having a baby,
7 you're in an emergency situation. And, of
8 course, rectifying that later on is better than
9 nothing, but my clients and the clients of --
10 we, plaintiff discrimination attorneys, they
11 really love their jobs. They don't want to
12 lose their jobs. They take pride in the work
13 they do and what they create and the
14 relationships that they built. So I think any
15 kind of earlier intervention in the process can
16 only be a good thing. You know, much as, for
17 example, devoting money towards legal services
18 to prevent homelessness ends up saving more
19 money. I think it's kind of a similar thing
20 where turnover is costly for the employers who
21 are also losing out on human potential when
22 maybe if they were a little better educated or
23 better pushed in the right direction they
24 could, kind of, get over what is, by
25 definition, a temporary situation for a better

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2 permanent solution.

3 MS. MALALIS: You know, I'm going to --
4 I'm going to add, since a few people have
5 mentioned it, you know, currently, at the
6 commission, we do identify some cases for
7 immediate intervention or fast tracking. We
8 don't have -- you know, it's not a specific
9 category of cases, like pregnancy related. So
10 they do including pregnancy related --
11 pregnancy related, some things in housing, or
12 otherwise, where because of the factual
13 circumstances or the urgency of the -- the
14 issue they are flagged for that. I think it is
15 very helpful at this hearing to hear so many
16 people identifying this as a specific area
17 where we need to be building resources to be
18 able to do more fast tracking. So I appreciate
19 you and others who have identified that. Thank
20 you.

21 MS. PERMILLER: Thank you.

22 MS. CHAUDHURI: Good evening. My name is
23 Kajori Chaudhuri, and I'm the Bronx community
24 service center director at the Commission on
25 Human Rights. My colleagues and I work

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2 tirelessly to raise awareness about civil
3 rights in the city and to fight discrimination.
4 I passionately do this work as I know up close
5 and personal what it feels like to be
6 discriminated, to be treated less than because
7 of pregnancy. I am grateful to my colleagues
8 here who encouraged me to share my personal
9 story today.

10 A few years ago I worked at a reputed
11 social service agency and loved my job. I
12 advocated and advanced women's rights. A few
13 months into the job I found out I was pregnant
14 with twins. I vividly remember that day. A
15 plethora of emotions ran through me. I was
16 grateful for working in a women's rights agency
17 and felt confident in my abilities to provide
18 for my growing family. At the same time, as an
19 immigrant with no social support system, I was
20 petrified of the thought of twin pregnancy
21 motherhood. One of the first things I did was
22 to inform my employer so that we could plan
23 better for my parental leave. Sadly, I was
24 diagnosed with gestational diabetes, and I
25 needed accommodations. My employer asked me to

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2 provide documentation stating I was fit to
3 work. At the time that the request was
4 granted, I remember starting to feel that I was
5 being treated differently. Things did not feel
6 right. Nonetheless, I brushed those feelings
7 aside thinking I was being supersensitive
8 because of the pregnancy. Subconsciously, we
9 often internalize our oppressions, and, in
10 retrospect, I know I did the same. Around the
11 time the organization lost a major source of
12 funding that was unrelated to my program, they
13 restructured staffing, and my employment was
14 terminated. It was based on an unwritten
15 practice of last hired, first fired. Though,
16 in reality, I won't the last one hired. The
17 pain of losing my livelihood and being
18 punished, I believe, because of my
19 pregnancy-related medical condition hurt
20 deeply. The irony was I worked for a nonprofit
21 that was a pioneer of women's rights, and yet
22 they failed to extend the same rights to their
23 own employee. I felt betrayed, hurt, confused.
24 Back then my immigration status was tied to my
25 job. The optional trauma was compounded by the

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2 possible threat of losing legal status. I also
3 wasn't aware of my rights or the resources of
4 the commission. I knew what happened to me was
5 not right, but I didn't know I had any
6 recourse. My story is not unique, and today
7 I'm submitting this testimony on behalf of my
8 sisters who provide the crux of the labor in
9 nonprofit sectors.

10 Nonprofits play a crucial role in our
11 society, and leadership in such organizations
12 means to uphold the basic dignity and value of
13 their pregnant employees and be held
14 accountable for discriminatory actions. The
15 work I do at the commission is deeply personal,
16 and my life's mission is to ensure that the
17 information I didn't have back then is now
18 available to all pregnant women. I hope my
19 story can help strengthen the employer
20 accountability that is lacking in this sector
21 and ensure that pregnant employees are treated
22 with dignity and provided necessary
23 accommodations.

24 Thank you for the opportunity to submit my
25 testimony.

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2 MS. MCGLOTHLIN: Good evening, and thank
3 you to the commission for all of us here today.
4 My name is Lauren McGlothlin, and I'm an
5 associate attorney at the law firm Outten &
6 Golden. At Outten & Golden we represent
7 employees in all areas of employment law,
8 including when they have been discriminated or
9 retaliated against by their employers for being
10 pregnant, for taking leave, for requesting
11 reasonable accommodations based on pregnancy or
12 related medical conditions, or for exercising
13 caregiving responsibilities. In our practice
14 we observe pregnancy and caregiver
15 discrimination and retaliation taking place in
16 the workplace every day and within all
17 industries across all areas. Although many
18 cities and states like New York City and state
19 across the country are beginning to enact
20 legislation to provide greater protection for
21 pregnant individuals and caregivers, we found
22 that, actually, this is not correlated with the
23 decrease in discrimination and retaliation
24 cases, you know, coming to our firm or
25 appearing. In fact, we believe that there is

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2 still significant need to address these issues
3 as do many of the other testifiers here today.
4 There is many biases and stigmas surrounding
5 pregnancy and caregiving issues, some of which
6 we observed in the course of representing our
7 clients, which I'd like to share with you
8 today.

9 First, we noticed that many issues remain
10 regarding accommodation, stereotyping, and
11 hostility around subsequent pregnancies and
12 caregiving duties. We've noticed that an
13 employer's intolerance often increases as the
14 family grows. We find employees coming to us,
15 and in some cases their employers are usually
16 complying with pregnancy and caregiver laws
17 when they are accommodating the employee for
18 the first time as in for the first birth of the
19 child or for caring for, you know, that initial
20 family member. However, the second, third, or
21 fourth leave accommodation is often viewed as
22 an inconvenience. The parent or caregiver is
23 viewed as a less valuable employee in many
24 cases, and leave is now viewed as a forefront
25 of everyone's mind.

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2 Some other important observations we've
3 noticed, issues of accommodation related to
4 pregnancy continue to be an issue for
5 employees, particularly with respect to work
6 from home arrangements. We found that
7 employers are often comfortable with approving
8 work from home arrangements for employees for
9 any reason other than pregnancy. Employers
10 often exhibit biases and make assumptions that
11 women working from home because they are
12 pregnant or on the basis of pregnancy or
13 related medical condition are not actually
14 working, which, as we all know, is not the
15 case.

16 Similarly, confusion and intolerance
17 remains around the implementation of pumping
18 accommodations, as many of us have touched on
19 today. We represented many people across the
20 spectrum both, thank you, low income and upper
21 level employees where the issues range. In the
22 lower level, as in with service workers, we
23 find that the issue is that they are without
24 the luxury of a pumping room altogether. They
25 are not in workplaces where employers are

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2 providing a physical space of any sort. On the
3 other end of the spectrum, we find that the
4 time that women take to pump often shows up in
5 the performance evaluations and that they are
6 deducted or penalized for it.

7 We have a few recommendations for you
8 today, one of which is, as many of our
9 colleagues have already stated, we implore you
10 to continue to educate both employers and
11 employees about employee's rights and
12 employer's obligations under the many city and
13 state laws. So many laws, especially in New
14 York City and State, have been enacted this
15 year. We have, you know, the New York City
16 Temporary Schedule Change Law. We have the
17 Paid Family Leave Benefits Law, which continues
18 to be amended. We have the paid sick -- Sick
19 and Safe Leave Law, and then we have the new
20 lactation laws rolling out in March of this
21 year. And I think that based on our
22 representation, it's clear that, you know,
23 employees want to take advantage of these laws
24 to help them, and many employers, not all but
25 many, want to do the right thing, but many of

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2 them, including and especially the smaller
3 businesses, such as the nail salons, the local
4 grosser, the local dry cleaner, they don't know
5 their obligations. They don't have the benefit
6 of having an outside external legal counsel to
7 help navigate the legal realm for them. So we
8 would continue to implore the commission to
9 continue educating employees and employers
10 alike about their responsibilities and about
11 their rights.

12 And, lastly, as one of my colleagues
13 mentioned, we too advocate that -- that the --
14 that the New York City Human Rights Law add a
15 reasonable accommodation and cooperative
16 dialogue sections to the caregiver provision.
17 And we would appreciate if the commission
18 continued to advocate for such.

19 Thank you so much for your time.

20 MS. SCHREIBER: Hi. Good evening. My
21 name is Ruth Schreiber [ph.]. I'm grateful to
22 be testifying before this committee. I want to
23 thank the Great Spirit, creator of life, and
24 the fire that makes all life and takes care of
25 life. I want to thank my mother for carrying

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2 me for nine months in pregnancy, birthing me
3 and caring for my life, and still supporting
4 and taking care of me as I'm healing from an
5 injury right now. Thanks to all our ancestors
6 who came before us, those who have carried life
7 so we would be possible.

8 I am the proud mother of a 15-year-old
9 teenager. I'm a writer, educator, dancer, and
10 a long-time childcare education and human
11 rights activist and community organizer. In
12 1998 and 1999 I was part of a campaign to
13 defend open admissions. It was a victory for
14 the civil rights movement to keep CUNY
15 admissions open to all. We have lost that. In
16 2009 and 2010 I launched a campaign to defend
17 childcare rights at Hunter and CUNY to make our
18 colleges a more child friendly place. In 2009,
19 along with other parent/students, we sued
20 Hunter College and CUNY for cutting childcare
21 services and space. We lost our case before
22 the New York State Supreme Court, but we raised
23 awareness about parent rights. I have also
24 worked as an immigrant rights, health rights,
25 housing rights, neighbor rights, human rights

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2 organizer locally and nationally. I was a
3 national civic engagement courier for Right to
4 the City Alliance in 2012, whose mission was to
5 bring human rights more accessible and a
6 reality to all people, especially marginalized
7 people living in the city.

8 Life is possible when we allow ourselves
9 to be pregnant of hope. I give thanks to all
10 those who are pregnant with this idea to give
11 birth to this event. Thank you for opening
12 space and make this hearing possible. My most
13 profound gratitude to honorable New York City
14 Commission on Human Rights for allowing me to
15 share my experience on pregnancy discriminating
16 at the nonprofit workplace. I worked at
17 Literacy, Inc. As a community manager for the
18 Fordham area in the Bronx. As a community
19 manager, I cared for the literacy development
20 of children and supported parents in supporting
21 their children's reading and writing skills at
22 home. I was fired by the Literacy, Inc. A
23 little over a month after I suffered an
24 accident that resulted in the injury of my
25 coccyx and loss of a planned pregnancy for

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2 which I was hospitalized in the emergency room.

3 Even in the hospital I did not stop my

4 fundraising efforts for Literacy, Inc. While I

5 was on heavy pain medication, I fundraised, and

6 I raised a little bit more than \$1400 while I

7 was in bedrest and under the effects of

8 morphine. When I received the notice right

9 after New Year's regarding my job termination,

10 I was still and still am in deep grieving,

11 mourning, and coping with deep emotional,

12 spiritual, and physical pain. I was unable to

13 return to work due to my health condition. I

14 was so heartbroken. I loved my job. I love

15 books. I love children. I love my community.

16 I think we have lost part of our heart and soul

17 to this capitalist money machine making system.

18 We have lost part of our humanity in this

19 bureaucracy that demands time sheets, clocking

20 in, weekly meetings, supervision, check-ins,

21 performance evaluations, monthly reports, and

22 the day-to-day grinding to earn a so-called

23 living. I hope that all workplaces can become

24 safe and supportive spaces conducive to the

25 carrying and caretaking of all life and living

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2 beings. Right now many places are cemeteries
3 of the spirit, where people give up their value
4 in exchange for a paycheck. We have lost our
5 soul at the workplace. We keep our hearts shut
6 and quiet and silence our true human being in
7 order to stay productive and check off all our
8 tasks in our to do list. What are we doing if
9 the workplace is not a place for a mother, if
10 the workplace is hostile to those who invest
11 and give their life to the raising of other
12 lives? What have we become? Where are we
13 going? This is a wake-up call. Let's take
14 back our humanity. Let's take back our hearts
15 chosen and planned pregnancy, the carrying of
16 life, the caretaking of life after birth is a
17 blessing and should be protected by everybody.
18 I pray for our hearts to expand to love and
19 understand that we need one another to survive.
20 We cannot live and thrive without each other.
21 We must learn to live interdependently
22 supporting the most vulnerable first. Mothers
23 to be and all caretakers should become more
24 fully protected by the law and by everyone.

25 Thank you for attention. May all stay

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2 blessed and protected.

3 (Speaking in another language.)

4 MS. BOGLE: Good evening. I want to thank
5 you for this opportunity to testify before you
6 today, and good evening to everyone else in the
7 audience. Unlike everybody else here who spoke
8 about their experience in the workplace, I'm
9 actually here to speak of my personal
10 experience becoming a mother for the very first
11 time.

12 I'm sorry. I am here with the support of
13 the National Advocates for Pregnant Women, who
14 I reached out to after my experience at the New
15 York-Presbyterian Hospital, and in the interest
16 of time, I'll just start with -- I'll just
17 start in the labor room. I had went into labor
18 prematurely and gone to New York-Presbyterian
19 Hospital and was given the epidural. However,
20 I had an allergic reaction to the epidural and
21 began itching really bad, and despite our
22 efforts to get the medication to stop the itch,
23 it wasn't until I began pulling off the
24 monitors that the nurses came in but only to
25 put the monitors back on, not to provide me

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2 with the -- with the anti-itch medication.

3 Eventually, my partner and I were able to
4 advocate that we needed the medication if my
5 baby and I were supposed to be healthy. We
6 were given the medication and progressed along.
7 The attending at the time did the vaginal exam.
8 At that time I was four centimeters dilated, 90
9 percent effaced. At the next check I was told
10 that I was seven or eight centimeters dilated
11 and 90 percent effaced. At about 2 p.m. We
12 started. I was told that I needed to have a
13 cesarean section done because the labor was not
14 progressing. We informed the attending at the
15 time that we wanted the opportunity to have a
16 natural child birth. And the attending
17 insisted that he needed to do the procedure to
18 go ahead with the cesarean section, and we were
19 adamant that we wanted to continue trying to
20 have a natural delivery.

21 Unbeknown to me I was psychiatrically
22 evaluated. The psychiatrist came into the
23 room, introduced himself, and basically
24 conducted a psychiatric exam, which I later
25 found out after I -- I have no records that

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2 they found me incompetent to make the decision
3 not to have the cesarean section.

4 However, about three hours after nobody
5 attended to us, no doctor, no nurses. Because
6 we were refusing to do the cesarean section, we
7 were told by one of the nurse that they turned
8 off the Pitocin. So I was there for three
9 hours, no Pitocin, nobody was attending to me,
10 and I wasn't even aware of -- that this was
11 going on.

12 I called 911 because there was just no
13 other -- all our efforts to speak to medical
14 staff had gone unaided. The police came and
15 spoke to us. But my reason for calling 911 was
16 to get the attention of the medical staff,
17 which did happen. The medical director for the
18 hospital came into our room, and I was able to
19 speak to her. And just to explain that we were
20 normal sane people who wanted to have our first
21 baby, our first son, naturally. And,
22 fortunately, she listened to us, and we started
23 the Pitocin, and my son was born within the
24 hour fine, except he was premature, but he was
25 well.

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2 And I just wanted to share my experience
3 with the hope that you can use your position of
4 influence to effect changes to the way the
5 hospitals go about just randomly giving out
6 cesarean section as if they are gifts, and I
7 thank you.

8 MS. EBANKS: I just want to thank you, Ms.
9 Bogle, for making that testimony. And I'm glad
10 that your son is doing well. And I feel your
11 pain that you had to have such a challenging
12 time during childbirth. But thank you for
13 persevering, and I'm glad that everything is
14 well.

15 MS. BOGLE: Thank you.

16 MR. CHIN: Good evening. My name is Rocky
17 Chin. I am a member of the AARP and New York
18 State executive council as a volunteer.

19 On behalf of our 800,000 members of -- in
20 New York City alone, many of whom are
21 caregivers, thank you, Commissioner Malalis and
22 commissioners and special experts here for this
23 opportunity to testify. Now, I've been
24 listening to all the testimony, and this is a
25 little bit maybe different, but I think it's

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2 important to add this to the testimony.

3 Copies of the recent AARP report you
4 should have. This is here. I have a few
5 copies for some people in the audience. It's
6 entitled The Future of Family Caregiving. And
7 my full testimony has been submitted for the
8 record. So I'm just excerpting some.

9 Workers with caregiving responsibilities
10 for an adult relative make up an increasing
11 proportion of the labor force. Most family
12 caregivers work at a paying job. In New York
13 the face of an unpaid family caregiver is a
14 53-year-old woman caring for a 79-year-old
15 loved one and working full or part time.
16 Millennial caregivers ages 18 through 34 are
17 now also on the front lines of caring for an
18 aged loved one. Some of this -- this was
19 actually mentioned before that some 29 percent
20 of all caregivers are millennials and equally
21 likely to be male or female. 73 percent report
22 holding down a paying job while providing care
23 for or an ill or aging family member. 53
24 percent work at full-time jobs, which is, like,
25 43 hours a week. We are only at the beginning

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2 of a broader caregiving crisis. So far, we
3 heard about what women face, but this is a
4 broader crisis when we talk about caregiving in
5 general.

6 New York City's Department for the Aging
7 estimates there are 1.1 million adults over the
8 age of 65, roughly 13 percent of the city's
9 population, who receive unpaid care from a
10 loved one. That number will rise to 1.4
11 million by 2040. So as its population ages,
12 who will provide the care? A 2016 AARP
13 caregiver study, which I referred to look at, the
14 financial cost burden of caregiving and found
15 that caregivers spent an average of nearly
16 \$7,000 a year on caregiving expenses, and these
17 out-of-pocket expenses represent an average of
18 20 percent of their income.

19 In addition to financial stress, unpaid
20 family caregivers also face emotional burnout.
21 Employers have a role to play in the caregiving
22 conversation. We want employers to learn about
23 the benefits of creating a caregiving friendly
24 workplace and, obviously, then
25 anti-discrimination workplace, and the kinds of

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2 policies and programs many employers are
3 putting in place to boost not only
4 productivity, but also to retain employees. I
5 have included two of the fact sheets that were
6 developed by AARP with a northeast business
7 group on health from your packet. The first
8 sheet for employees is for employees to share
9 with their employers. And the second is for
10 employers to share with their employees. Each
11 contains a link to the website, where the full
12 toolkit resides.

13 Caring for an older loved one is becoming
14 a common occurrence in everyday life. And our
15 unpaid family caregivers are all too often
16 struggling to keep up. AARP continues to fight
17 on all levels of policy that benefits unpaid
18 family caregivers. We also believe that
19 employers have a role, and we want to
20 facilitate that conversation and identify best
21 practices that not only support the caregiver,
22 but also make some business sense. Hopefully,
23 you'll evaluate some of the information
24 provided as part of the testimony, and AARP
25 looks forward to working with the commissioner

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2 and also the elected officials in addressing
3 this important issue. And I should mention
4 there are some very specific recommendations,
5 policies, legislative recommendations that AARP
6 have launched this legislative session in
7 Albany, two of which I'll just mention briefly.
8 The tax credit, which has not yet been put into
9 legislative form, but to give basically relief.
10 So if New York did that would be piping the
11 way, I think.

12 And the other is to increase funding for
13 Medicare services, which are really lacking,
14 and this is really the one to address because a
15 lot of people take off from work. They get
16 very stressed. And they need really some rest
17 for themselves, and I personally was surprised
18 that millennials actually are a big percentage
19 of caregivers being a baby boomer myself.

20 Thank you very much.

21 MS. EBANKS: I wanted to ask: Is it
22 around the healthcare costs, and how does that
23 intersect with the caregiving responsibilities
24 that you eluded in a bit about Medicare? Is
25 there anything else we should be mindful of in

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2 terms of healthcare costs?

3 MR. CHIN: Well, absolutely. I mean, this
4 is a larger conversation of healthcare costs.
5 AARP and I think a growing number of elected
6 officials and civic engagement folks believe
7 that people should try to stay in their homes,
8 not have to move into -- prematurely into, you
9 know, nursing homes and so forth. This has
10 been proven by all these studies. And yet we
11 don't have that fabric, that network,
12 especially outside of New York City, and New
13 York City, ironically, as I live here, tends
14 to, at least for people who have the income, be
15 somewhat friendly to people who are Asian,
16 although not subways and things like that. But
17 TeleHealth is one big issue and also, of
18 course, the cost of healthcare. The cost of
19 healthcare is a big issue. But, increasingly,
20 the cost which I have mentioned, which is
21 people having to take off from work, people
22 losing their jobs, people not being able to
23 pursue their careers, predominantly women, but
24 not just women, because they have to take care
25 of their loved ones. It could be a spouse, or

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2 it could be a family member or parent.

3 MS. EBANKS: Thank you.

4 MR. CHIN: Thank you.

5 MS. ANYAOGU: Good evening. My name is
6 Chinyere Anyaogu. I'm an OB/GYN in the
7 Bronx health and hospital, North Central Bronx
8 Hospital. I come not in my official capacity
9 as the vice chair of OB/GYN there. I come here
10 as a medical professional, a wife, a mother, a
11 female who has been and spent a lot of time
12 taking care of women who are -- have
13 significant access to care issues and/or under
14 or uninsured. So no other condition has been
15 so able to affect life or result in death in
16 young women as pregnancy. No other condition
17 is so rife with lack of accommodation and
18 attention. Women are suffering through the
19 most difficult part of their life with lack of
20 support from the time they need the support is
21 the time they get it the least. Minority women
22 are 4 to 12 times more likely to die from
23 complications of childbirth and pregnancy. So
24 human rights in pregnancy is actually a matter
25 of life and death.

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2 You know, I could go on. I actually
3 didn't know I was going to present here until
4 two days ago. So what I have is my stories. I
5 have a patient who was a postal worker whose
6 very job description prevented her from being
7 able to comply with the advice that we had
8 given her to decrease her physical activity and
9 walking long distances. She wouldn't do what
10 we said because she would lose her job, and
11 that was the job that she use to take care of
12 herself and her family. And so every other
13 week she would come exhausted and broken trying
14 to complete her route with her mailbag. And
15 every time she would come, we would tell her,
16 you can't keep doing this. You're going to
17 have your baby early, which she had. The
18 patient had chronic hypertension in pregnancy,
19 who told me if I kept having her come to see
20 the way I was she was going to lose her job,
21 and I told her she wouldn't lose her job
22 because there are laws against that, and she
23 laughed. And I didn't even realize that she
24 had been fired until she told me nonchalantly
25 at 28 weeks that it was okay because she didn't

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2 have to work anymore because she was fired.

3 And her renal disease had progressed to the

4 point where she needed a biopsy, and she

5 eventually was a patient for a transplant after

6 the pregnancy.

7 Or the patient who had placenta previa

8 anterior section -- a prior section placenta

9 previa, which is a placenta growing over the

10 scar of the uterus. And during the course of

11 the pregnancy, we both knew I was going to have

12 her go somewhere else. And I told her, this is

13 what could happen, and you could lose your

14 uterus, and I need you to build up your blood

15 count, and she did all these things. And she

16 went to where she decided she wanted to go,

17 which is not where I referred her to go to have

18 her surgery. And I didn't hear from her, and

19 she came back Sunday without an appointment

20 waiting. And people told me, you know, this

21 patient's been coming. She wanted to talk to

22 you, but she didn't register. It's a woman who

23 just said she had to talk to you. And I often

24 stay late on Tuesdays because a lot of my

25 patients work, and they can't come during eight

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2 hours. And she showed up because she knew I
3 was going to be there. One of the days I was
4 actually able to be there when she expected me
5 to. And she came, and she said, you know, she
6 had the baby. I'm like, great, how did it go.
7 And she looked at me, and she started crying.
8 And I didn't ask her why. And I let her talk
9 about what had happened. But I already knew it
10 was the most horrible experience. And she had
11 a hysterectomy, but that wasn't the problem.
12 The problem was we have to have people to
13 advocate for patients who can't do it for
14 themselves. Because it makes no sense to have
15 a law that does nothing because it's on the
16 books. And the people who need it the most are
17 unable to have the support that it gives
18 because they are unwilling to engage or they
19 don't have someone to engage for them.

20 And, you know, care providers, they do
21 try, and they're social workers, and I'm sure
22 there's, like, a whole barrage of facilities
23 that are supposed to take care of these things,
24 but are they really? Because if women are
25 dying 4 to 12 times more than they should, then

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2 maybe they are not.

3 So what I bring forward to your panel is I
4 hope that we have the ability to advocate for
5 the patient when she cannot advocate for
6 herself. But it's an act of step, because it
7 requires us actually trying to find those who
8 most need it and then stepping in and letting
9 them know what it is that they may know or not
10 be able to access themselves.

11 I had a vaginal delivery. I had a vacuum
12 delivery. I had a C-section. I breastfed
13 exclusively. And I had a postpartum
14 complication. And I couldn't have had all
15 these things and be where I am and worked and I
16 guess thrived if I didn't have the village of
17 the support of the people, the family, and the
18 persons and all that it is that is required
19 that the village that it is to make a woman
20 able to be a mom and a family member and not
21 have to die during that period. And I remember
22 as a resident, because some of the other
23 speakers spoke about how they have to hide that
24 they're pregnant because they are afraid
25 they're going to get fired. I wasn't going to

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2 get fired, but I was a resident, and I wanted
3 to have my baby when I did because I felt if I
4 didn't, I could possibly end up dying, and I
5 hid the fact that I was pregnant until I was
6 26. Because the statistics showed that I would
7 be a perfect preeclamptic postpartum
8 complication. And in my head that's what I
9 held. And so at the time that I felt it was
10 going to be the most likely time that would be
11 the best time for me to get pregnant, I did,
12 but I happened to be an intern. And being an
13 intern in 2000 and -- 1998 is not a skip in the
14 park. We've come a long way. And I hid that
15 pregnancy, and I breastfed in the equipment
16 room, because that's the only place I could go
17 that no one else would see me. And we do have
18 laws for -- to encourage breastfeeding, and we
19 have breastfeeding rooms, but we need to do
20 more, and we need to be able to make caregiving
21 more caring. We have to bring the education to
22 the medical students, the residents, the
23 doctors who are working, the nurses who have
24 already worked, and people like me who went
25 through the time where they did it, and they

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2 did okay. So they think it may be okay to do
3 that; it's not. So we have to do better.

4 Thank you.

5 MS. MALALIS: Thank you. I just want to
6 express my deep gratitude for you coming out
7 tonight and testifying. As, you know, I said
8 earlier, I think especially on this topic
9 having the input of -- of the medical
10 profession is so necessary. And I'm deeply
11 grateful for you coming here and bringing the
12 stories of your patients. So thank you very
13 much.

14 DR. KAPLAN: I want to thank you so much
15 for coming and bringing your critical voice and
16 your perspective both as a mom and woman and a
17 doctor and bringing your patients into the
18 room, and thank you.

19 MS. ANYAOGU: You're welcome.

20 MS. ALBISA: And I would add, because I
21 think we are all deeply moved by the work you
22 do. And as someone who is truly on the front
23 lines, seeing the devastating impacts, we would
24 love to keep a dialogue with you and people
25 like you as we evolve this work. We need your

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2 insights.

3 MS. ANYAOGU: Thank you.

4 MS. MALALIS: Okay. It is my
5 understanding that that concludes our testimony
6 for this evening. I know it is -- it is late.
7 I want to extend my gratitude to everyone who
8 has -- who has stayed the course and stayed
9 with us here throughout the evening. I know
10 that for many people here, you have had to
11 forego your own childcare and caregiving
12 responsibilities tonight in order to be here,
13 and I have a deep appreciation for that. I
14 want to thank my commission staff who are here
15 tonight. You heard from one of our commission
16 staff who gave testimony in her personal
17 capacity. And to me it is -- you know, it kind
18 of just emphasizes how the work is personal for
19 many of us at the agency that many people at
20 the Commission on Human Rights, if not all the
21 folks at the Commission on Human Rights, are
22 here doing this work within government because
23 it is important to us professionally, but it's
24 also very important to us personally. I'll
25 also say that it underscores for me as a woman

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2 of color and in government, you know, the
3 importance of representation.

4 One of the things I love to share one of
5 probably the most memorable experiences for me
6 professionally here at the agency is that when
7 we were drafting the legal enforcement guidance
8 on pregnancy accommodations and related -- and
9 childbirth and related medical conditions. We
10 had about, you know, seven to ten people
11 working on guidance. All of the people who
12 worked in the guidance, I think but one, were
13 people who had been pregnant, were pregnant at
14 the time, and had much to say on the practical
15 realities and challenges faced by people in the
16 workplace because of these conditions, and it
17 was so incredibly important that these people's
18 experiences were contributing to what would
19 then become legal enforcement guidance and what
20 will soon become rule making within the, you
21 know, most important city in the world, I
22 think. And so I want you all to know that.

23 I want to also thank all the folks here
24 who are the -- behind the scenes folks who make
25 things happen. The folks who have been working

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2 the facilities here, to CUNY, of course, to the
3 folks providing translation services and taking
4 the down record for us. My gratitude again to
5 Professor Calvert, who made her way here from
6 D.C., to Cindy Soohoo, and, again, to everybody
7 else who made time to be here. I want to do
8 special thanks to Dana Sussman, who is there in
9 the back, who a lot of folks know leads a lot
10 of the commission's efforts in gender justice
11 and for whom -- without whom I can definitely
12 say this hearing would not have taken place.
13 So thank you to Dana. And thank you, of
14 course, to my panelists for all the work that
15 you have put into this and you will be putting
16 into what will come out of this testimony. We
17 -- we tried the commission to be very
18 responsive to what we hear from people and from
19 agencies that are working in this area or in
20 the areas that we work in. People will note
21 that after a sexual harassment hearing, many of
22 the recommendations that people made during
23 that hearing actually then were transformed
24 into actual practice at the agency or were
25 turned into actual legislation in the city.

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2 And my hope is that you will see after this
3 hearing many of the recommendations that are
4 made here will also manifest similarly.

5 So thank you, all, again for being here
6 tonight.

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10 (Time noted: 8:28 p.m.)

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C E R T I F I C A T E

I, Douglas F. Colavito, a Certified Court Reporter and Notary Public of the State of New York, do hereby certify that the transcript of the foregoing proceedings, taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.

Douglas F. Colavito

DOUGLAS F. COLAVITO

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