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Joint Legislative Hearing on the 2023 Executive Budget Proposal: Workforce and Labor Development
March 1, 2023

Testimony of Meghan Racklin
Senior Staff Attorney
A Better Balance

Thank you to the Committee Chairs, Senator Ramos and Assembly Member Joyner, for the opportunity to provide testimony today. My name is Meghan Racklin and I am a Senior Staff Attorney at A Better Balance. A Better Balance is a legal nonprofit headquartered in New York City. We are proud to have led advocacy efforts to pass groundbreaking work-family protections in New York State, including New York paid sick time and emergency paid sick time, the Women’s Equality Agenda, including the Pregnant Workers Fairness Act, as well as lactation, equal pay, and sexual harassment protections. Most relevant to my testimony today, A Better Balance was at the forefront of the movement to pass New York’s paid family leave law in 2016.

Passage of New York’s paid family leave law in 2016 was a groundbreaking achievement, building on the preexisting structure of New York’s longstanding temporary disability insurance program. Together, paid family leave and temporary disability insurance constitute New York’s paid family and medical leave program. But while New York’s passage of paid family leave paved the way for other states to pass paid family and medical leave laws, **New York’s paid family and medical leave program now lags far behind.** The 2016 passage of paid family leave built on the preexisting temporary disability insurance program, but left benefits for one’s own serious health condition untouched—**benefits remain stuck at a mere \$170** per week, where they have been since 1989—and failed to extend important employment protections to the benefits for one’s own health. At the same time, seven years after paid family leave passed, it is now clear that paid family leave’s benefits and protections also need improvements to truly meet the needs of all workers.

As we explain in our recent report, *[The Time Is Now: Building the Paid Family and Medical Leave New Yorkers Need](#)*,¹ there is an urgent need to build on the progress New York’s long history as a leader on work-family issues and transform New York’s existing program into a truly modern paid family and medical program that meets the needs of all New Yorkers. To do so, **S2821A/A4053A, sponsored by Senator Ramos and Assembly Member Solages must be included in the FY 2023-2024 budget.**

¹ MEGHAN RACKLIN & MOLLY WESTON WILLIAMSON, WITH CONTRIBUTION FROM SHERRY LEIWANT, DINA BAKST, AND CASSANDRA GOMEZ, *THE TIME IS NOW: BUILDING THE PAID FAMILY AND MEDICAL LEAVE NEW YORKERS NEED* (2023), <https://www.abetterbalance.org/the-time-is-now>.



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New York's Program Needs Four Key Updates

New York's existing paid family leave and temporary disability insurance program could be transformed into a modern paid family and medical leave program with four key updates:

1. Create a Progressive Benefit for Workers' Own Health and Caregiving Needs

New York's temporary disability benefits program was one of the first of its kind in the nation, giving workers a legal right to monetary benefits for serious off-the-job illnesses or injuries. Since the 1970s, the law has also provided benefits for pregnancy-related needs and recovery from childbirth, which make up nearly 30% of claims for benefits for one's own serious health condition. In 2016, New York passed a job-protected paid family leave law that ensures benefits are provided to bond with a new child, care for a seriously ill loved one, or address the impact of military deployment. However, the passage of paid family leave left the existing benefits for one's own serious health needs exactly as they were, at a rate that is woefully inadequate to enable workers to pay their bills while taking the time they need to recover from a serious illness or injury. At the same time, since 2016, eight additional states (including Washington, D.C.) have passed their own paid family and medical leave programs, most utilizing progressive wage replacement measures that result in more equitable benefits, and leaving New York's paid family leave benefit lagging behind.

The inadequacy of the paid benefit for one's own serious health needs has two parts. First, the cap (the maximum amount of money a worker is entitled to receive per week) has not been raised in decades—it has been stuck at \$170 since 1989. This is woefully out of step with the state programs passed in the wake of New York's paid family leave law, and woefully inadequate to workers' needs. In contrast, the cap on paid family leave benefits is currently \$1,131.08 per week—almost \$1,000 more per week than the maximum benefit for workers' own serious health needs.

The profoundly outdated benefit cap for workers' own serious health needs has also obscured the impact of an equally significant limitation on worker benefits. New York's wage replacement rate (the percentage of their own income workers receive) for benefits for workers' own health needs is also dangerously low. The wage replacement rate is 50% of the worker's average weekly wages, a relic of the 1949 enactment of the program. Today, because of the low cap on benefits, under current law, virtually all workers in the state receive less than 50% of their income—often much less—when they cannot work for their own health needs. But even if the cap were raised to an appropriate level, without changes in the wage replacement rate, workers would still only be entitled to receive half of their regular income in benefits—not enough for many workers to pay their bills. Indeed, paid family leave's higher wage replacement rate of 67% of a worker's average weekly wages is itself outdated, seven years after it was put into



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place. With a flat 67% wage replacement rate for all workers (up to a cap), low-income workers will often struggle to make ends meet. New York’s flat wage replacement rate is an outlier among modern paid family and medical leave programs. Nearly all of the paid family and medical leave laws passed in the wake of New York’s pathbreaking 2016 law use a progressive wage replacement rate—meaning that all workers receive a higher percentage of their wages up to a point, and a lower percentage of their wages above that point, up to the total benefits cap. In effect, progressive wage replacement increases benefits for all workers while ensuring that lower-income workers receive a higher overall percentage of their wages than do higher-income workers.

New York should update its paid family leave and temporary disability insurance wage replacement rates as specified in S2821A/A4053A, such that all workers taking family leave or leave to care for their own health receive 90% of their average weekly wage up to an amount equal to 50% of the statewide average weekly wage, and 67% of their average weekly wage above an amount equal to 50% of the statewide average weekly wage (up to an overall cap of 67% of the statewide average weekly wage, the same as the current overall cap for paid family leave benefits). This would transform New York’s program into one on par with more modern state paid family and medical leave programs and would make a real difference to New York workers. With this change, a New York worker whose average weekly wage is 50% of the statewide average weekly wage or less—approximately \$844.10 in 2023—will get 90% of their average weekly wages when they take paid family leave or leave to care for their own health. A worker whose average weekly wage is more than 50% of the statewide average weekly wage will get 90% of their average weekly wage up to 50% of the statewide average weekly wage—currently approximately \$844.10—then will get 67% of what they make above that, up to an overall maximum of 67% of the statewide average weekly wage. This ensures that all workers receive 90% of their average weekly wages up to the same cutoff point, with higher-income workers also able to receive additional benefits above that point, although no worker will receive more than 67% of the statewide average weekly wage which means the benefit structure will be fair to all workers both in benefits received and cost of the system.

2. Protect Workers’ Jobs During Medical Leave

Improvements to benefits alone, as described above, are crucial, but on their own are not enough—in its current form, New York’s law fails to give those who take leave for their own health the employment protections they need. As a result, unless they are covered by another law that prohibits retaliation or job loss while on leave, workers can legally be fired while they are away from work and receiving benefits due to their own serious health condition. At A Better Balance, we frequently hear from callers to our free legal helpline who are shocked to find that, contrary to many people’s reasonable assumption when collecting benefits that the state of New



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York guarantees, if those benefits are received due to their own serious health condition, their job is not necessarily protected—in sharp contrast to paid family leave, which provides employment protections as well as monetary benefits.

Without employment protections, workers may forgo needed leave—even when benefits are available—for fear of losing their job and sacrificing their long-term economic security. When workers are faced with a need for treatment for a serious illness or injury but do not have job-protected leave available, many delay or forego treatment, risking their health for the sake of their economic security—a tradeoff no one should have to make. New York law already guarantees workers the right to return to work following paid family leave. Similarly, workers taking paid family leave are protected against retaliation and have the right to continuation of their health insurance. Yet New York’s paid leave program does not guarantee these same rights to workers who need time off for their own serious health needs, even where workers are entitled to income replacement benefits for those same needs under state law. This results in an absurdly mismatched system in which, for instance, a worker who takes time off to care for a parent who is recovering from surgery has a right to return to their job after leave but a worker who takes time off because they are recovering from surgery does not have an equivalent right. Similarly, a parent who takes time off from work to bond with a new baby has the right to keep their health insurance, while a woman who takes time off from work when her doctor prescribes bedrest to help maintain a healthy pregnancy, has no right to keep her health insurance under New York law. Without a clear right to continuation of health insurance while workers receive state-guaranteed benefits for their own serious health needs, many workers are forced to risk their health insurance coverage just when they need it most.

While some New York workers may be able to receive employment protections through the federal Family and Medical Leave Act (FMLA) while receiving state benefits for their own health, the FMLA alone does not sufficiently meet New York workers’ needs. The FMLA has onerous requirements that a worker must meet in order to qualify for coverage, meaning that many workers are unable to benefit from those protections. Because of the FMLA’s coverage requirements, approximately 44% of workers in the private sector nationwide are not covered by the FMLA. Those excluded include a disproportionate number of low-income workers and part-time workers. Relying on the FMLA to fill the gap left by current New York law’s lack of employment protections and continuation of health insurance for workers’ own health needs does not work, and its failures fall disproportionately on those workers who are already in economically-precarious positions—who are, due to the impact of systemic racism, overwhelmingly workers of color—leaving unacceptable inequities and unacceptable risks for workers. To truly provide New Yorkers with a medical leave program that works for them, New York must enact S2821A/A4053A, creating robust employment protections to accompany the benefit for one’s own serious health needs, equivalent to those already available for paid family leave.

3. Meet the Needs of Today's Workforce by Creating Portable Paid Family Leave Benefits and Covering the Unemployed and Non-Standard Workers

The nature of work is changing, with more workers moving from job to job, combining multiple sources of income, or working outside traditional employer/employee arrangements. Workers can no longer rely on the security of a single long-term job to pay their bills. Instead, many workers, especially low-income workers, must move from job to job or piece together income from multiple sources, and many workers face periods of unemployment. These shifts call for urgent updates to New York's paid family leave benefit. Under current law, New York's paid family leave benefit—a benefit which is fully paid for via workers' own contributions—fails to meet workers' needs. This is because New York's paid family leave benefit is not portable. These benefits do not remain accessible to employees as they move from job to job or face periods of unemployment, and workers lose access to benefits when they leave a particular job. The law must be changed to meet the needs of today's—and tomorrow's—workforce and ensure workers can keep the benefits they have paid for.

Currently, workers cannot qualify for paid family leave benefits until they have been employed by their current employer for nearly six months. If they start a new job, they must start this clock over from scratch. If they are laid off or their job ends, they lose their benefits altogether, even if they had been eligible for and paid for benefits for years. This is especially egregious because premiums for paid family leave are paid for exclusively by New York workers; employers do not contribute to those premiums.

At the same time, benefits remain difficult to access for those who are self-employed, including the many women who choose to work for themselves so that they can dictate their own work schedules while they manage family caregiving responsibilities. In the landmark 2016 New York paid family leave law, the state recognized the increasing importance of this sector of the workforce, and made the addition to New York's law of the ability of self-employed workers to voluntarily opt in to coverage if they wanted to. This was a powerful move by the legislature, but regulatory choices have made it all but impossible for most self-employed workers to access the paid family leave coverage the law theoretically gave them access to. The Department of Financial Services imposed a restrictive timeline for self-employed workers who want to opt into coverage: they need to opt in to coverage by purchasing an insurance policy within 26 weeks of becoming self-employed or by January 1, 2018, whichever is later. Those who do not meet that deadline may still theoretically opt in, but they must pay for coverage for a full two years before they are able to access any paid family leave benefits. Unsurprisingly, many self-employed workers are unwilling or unable to do so, meaning that they are in effect shut out of the opportunity to get the paid family leave coverage promised to them by the law. These workers—and the countless more like them across the state—deserve the meaningful opportunity to



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participate in New York’s paid family leave program if they wish to, and concerns about self-employed workers strategically only opting in to coverage when they had a specific anticipated need for leave (such as expecting a new child) and then opting out of coverage as soon as their own need passes can be better addressed in other ways that meet the needs of self-employed workers without burdening the program.

At A Better Balance, we frequently hear from callers to our free legal helpline who are distressed and surprised to discover that they are unable to access paid family leave benefits when they start a new job or face periods of unemployment, or that they are unable to opt into the program as a self-employed worker because of an arbitrary deadline they knew nothing about. At the same time, triggering events for payment of benefits under paid family leave generally occur only a few times in any individual’s working life and are often unpredictable. Accordingly, workers may have paid premiums for years but if they have recently changed jobs or lost their jobs when a paid family leave event occurs, no benefits will be paid—shutting them out entirely of a benefit they have paid for.

New York must update the paid family leave benefit to make it more accessible to workers at all phases of their working lives, ensuring that workers in our changing economy can use the benefits they have paid for. Our laws should reflect the reality of today’s workforce and ensure that workers can access the benefits they have paid for when they need them, and S2821A/A4053A would make that a reality. Specifically, the law should provide that workers can combine jobs to meet workforce attachment requirements—meaning that, for instance, if they have worked at one job for long enough to qualify for benefits, then leave and begin a new job, they should maintain their eligibility for benefits, rather than needing to start from scratch. In addition, the law should ensure that workers can access benefits while unemployed, since workers who are unable to work due to a need to care for a loved one or bond with a new child are likely to be ineligible for unemployment benefits. The law should also provide a clear route for self-employed workers to easily opt in when they need benefits, combined with a requirement that they continue paying into the program for a period of time after opting in, even if their need for leave passes.

4. Ensuring that All Workers Can Care for Their Loved Ones

Currently, New Yorkers can use paid family leave to receive benefits and take job-protected leave when they are caring for a seriously ill spouse, domestic partner, child or stepchild, parent or stepparent, parent-in-law, grandparent, grandchild, or, beginning in 2023, sibling. This is a strong definition but unfortunately it still fails to meet the needs of all New Yorkers. Many people do not have accessible relationships with biological relatives or a long-term romantic partner and may, instead, have close relationships with chosen family members—loved ones with whom the worker has no biological or legal relationship. In fact, the vast



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majority of Americans care for or are cared for by loved ones to whom they may not have a legal or biological connection.

Accordingly, it is crucially important to ensure that New York’s paid family leave program accounts for the needs of today’s New York families. Chosen families form when two or more individuals form a close, family-like relationship—such as friends who have become like siblings or a neighbor who cares regularly for an elderly individual—these treasured, lifelong relationships should be captured in the paid family leave law. To enable all New Yorkers to take the time they need to care for their closest loved ones, it is clear that the family definition used for paid family leave must be expanded to include chosen family.

This is especially crucial for LGBTQ individuals, who are much more likely to rely on chosen family members for care. New Jersey, Washington State, Connecticut, Oregon, and Colorado already provide coverage in their paid family and medical leave programs for chosen family. For New York to continue to provide a safe and welcoming environment for all families, it is crucial that the state’s paid family leave program adopt a family definition, as included in S2821A/A4053A, that meets the needs of today’s families.

Updating New York’s Program Is Necessary to Meet the Needs of Workers

In the absence of a modern paid family and medical leave program, too many New Yorkers struggle to care for themselves and their loved ones while maintaining their economic security. The gaps in New York’s program result in notable absurdities; for instance, a woman whose doctor prescribed bedrest during her pregnancy would only be eligible for the meager \$170 temporary disability insurance benefit and would risk losing her job and her health insurance if she follows her doctor’s advice—but a family member who seeks time off to care for her would be eligible for a much higher benefit rate and would have a right to return to work following leave and continuation of their health insurance while they are on leave. This is an untenable situation that leaves many New Yorkers vulnerable.

Updating New York’s program to create a truly modern paid family and medical leave program is crucial to addressing New Yorkers’ needs. Improving the benefit level and creating employment protections for one’s own serious health needs is critical to addressing the needs of pregnant workers and addressing the Black maternal health crisis, in particular, since the temporary disability insurance program is the program that encompasses workers’ needs related to pregnancy, childbirth, pregnancy loss. Ensuring a meaningful monetary benefit and employment protections will mean that pregnant people in New York can afford to take the time they need to protect their own health and the health of their pregnancy—for instance, to attend prenatal appointments or for pregnancy complications—and to recover from the full range of pregnancy outcomes, including childbirth, stillbirth, and miscarriage.



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Updating New York’s program will also ensure that it can meet the needs of workers with disabilities and those who care for them. Approximately 1 in 5 New Yorkers has a disability, and many more New Yorkers—including many with disabilities themselves—care for someone with a disability. People with disabilities and those who care for people with disabilities want to work but in order to ensure they can do so, they need and deserve a paid family and medical leave program that works for them, allowing workers with disabilities to maintain employment even when they may need time to attend to their medical needs, ensuring that people with disabilities and their families can maintain their economic security. Due to persistent structural inequality, people with disabilities are disproportionately lower-income, and families with members with a disability are disproportionately likely to experience financial difficulties, making updated benefits for particularly important for those with disabilities and those who care for them, as they can scarcely afford unpaid or poorly paid leave. At the same time, the lack of employment protections for leave due to one’s own serious health needs is a major barrier to employment for people with disabilities, making added employment protections particularly necessary.

Improvements to the program are also urgently needed by the LGBTQ community. LGBTQ New Yorkers, especially older LGBTQ New Yorkers, have particular medical needs that may require leave—in 2020, 60% of people living with HIV were over the age of 50, estimated to be up to 73% by 2030—making job-protected medical leave and modern paid family leave particularly important as these New Yorkers care for their own health and their loved ones. LGBTQ households are more likely to experience poverty than their non-LGBTQ counterparts, and (despite the fact that LGBTQ workers report working more than their non-LGBTQ counterparts) LGBTQ people, and particularly transgender people, are more likely to receive unemployment benefits, indicating unstable access to employment. This makes livable and portable benefits particularly important for LGBTQ New Yorkers.

These improvements will also be of critical importance to those dealing with substance abuse issues and those that care for them, military families, and more. The updates to New York’s program proposed in S2821A/A4053A would create a program that truly works for all New Yorkers.

Additional information about all of these urgently-needed improvements, as well as the impact these changes would have on New York workers, including pregnant and postpartum workers, workers with disabilities, workers dealing with long-COVID and other consequences of the pandemic, LGBTQ workers, and more, is available in our report, *The Time is Now*.

[New York’s Program Can Be Updated at Low Cost to Workers, Employers, and the State](#)

These changes to New York’s paid family leave program are urgently needed and overdue, and they can be made at low cost to employees, employers, and to the state. Paid family



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leave is fully funded via small payroll deductions from employees and the modest but crucial improvements to paid family leave proposed in S2821A/A4053A can be funded without increasing the current payroll tax rate. Temporary disability insurance benefits are a shared employer employee cost, with employee contributions capped at \$0.60 per week. The statutory \$0.60 per person per week cap on employee contributions is higher than the low premiums currently required to provide temporary disability benefits. For example, the New York State Insurance Fund (NYSIF) is among those providing disability insurance policies to employers who operate in New York. Currently, they charge a gender-neutral standard rate of \$0.14 per \$100 of payroll, capped at \$0.48 per person per week for coverage that meets the minimum statutory requirements. Since premiums can be covered without exceeding the allowable deductions from employees' paychecks, employees of many employers have likely been shouldering most or all of the cost of temporary disability insurance benefits, even though the statute is intended to require employers and employees to share costs. In other words, while New York's system was intended to share costs between employer and employees, in practice the low premiums resulting from the lagging benefit amounts mean that workers may have been paying more than their fair share for years. The significantly improved, urgently needed benefits proposed in S2821A/A4053A will be funded by employees' \$0.60 cent per week contributions with employers covering the remaining cost, at a rate of approximately \$0.80 per employee per week. Improving the benefit while preserving the existing cost-sharing structure, as proposed in S2821A/A4053A, will restore the balance that was always intended by the statute by ensuring that employers begin paying part of the costs, and it will do so at the incredibly affordable rate of approximately \$0.80 per employee per week—more than fair given that medical leave benefits both employees and employers by keeping employees healthy and safe, increasing productivity and reducing costly employee turnover.

The budget impact is also a minor expense, particularly in light of the urgent need for these updates. Fully implement and administer the program will require \$35 million in the FY 23 budget, approximately 7% of the cost of the updated paid family leave and temporary disability insurance benefits.

Conclusion

We urge you to include S2821A/A4053A in the FY 2023-2024 budget. New Yorkers need and deserve a modern paid family and medical leave program that meets their needs, enabling themselves to care for their loved ones without sacrificing their economic security. They should not have to wait for one any longer.

We also note that these urgent improvements to New York's paid family leave and temporary disability insurance system are one change among many that are needed to help New Yorkers manage the rising cost of living and the competing demands of work and care. We also



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support the inclusion, in the New York State FY 23-24 budget, of the EmPIRE Worker Protection Act, funding for the Unemployment Bridge program, funding the Raise Up New York proposal with respect to child care and the indexing of the New York minimum wage.