



My name is David Tracey. I am the Firm Managing Partner at Sanford Heisler Sharp McNight, LLP, and a member of NELA/NY. I submit this testimony on behalf of NELA/New York and in strong support of Int 0871-2024, which would amend the City Human Rights Law to extend reasonable workplace accommodations to caregivers.

By way of background, the National Employment Lawyers Association (NELA) is a national organization of attorneys dedicated to the vindication of employees' rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA's New York State affiliate. My firm, Sanford Heisler Sharp McNight, LLP, is a national law firm that focuses on representing plaintiffs in public interest cases, including civil rights, employment, and whistleblower matters. An important part of my work involves representing workers with employment discrimination claims, including claims of caregiver discrimination.

Workers in New York City, like workers elsewhere in America, face a caregiving crisis.¹ Data from the AARP indicates that in "New York, an estimated 2.2 million caregivers are providing 2.1 billion hours of care to their loved ones each year."² Moreover, "[n]early seven in ten current and former caregivers (68%) say they worked while they provided care."³ This data matches national trends. A recent survey from Harvard Business School found that seventy-three percent of employees reported having some kind of caregiving responsibility.⁴

As a bar association of lawyers who represent employees, NELA/NY members regularly support clients who face discrimination because of their statuses as caregivers. A father of a child

¹ See e.g. Evelyn Nakano Glenn, *Forced to Care: Coercion and Caregiving*, 1-2 (2010) (describing the care crisis that has evolved since the 1970s)

² AARP, Voters Ages 40 and Older in New York State: Their Attitudes and Opinions about Caregiving and Long-Term Care, 1 available at <https://www.aarp.org/pri/topics/ltss/family-caregiving/new-york-caregiving-voter-survey>.

³ *Id.* at 2.

⁴ See Joseph B. Fuller & Manjari Raman, *The Caring Company*, 2 &12 available at <https://www.hbs.edu/managing-the-future-of-work/research/Pages/the-caring-company.aspx> (reporting that 73% of survey respondents juggled caregiving and work responsibilities).

with special needs who is denied a job because the employer assumes he will not be able to work nights and weekends. New mothers who face heightened scrutiny at work, or lose their jobs, after returning from maternity leave. An employee struggling to care for a parent, spouse, or child while simultaneously meeting the demands of their employer. These are the kinds of challenges our caregiving clients face.

In 2016, New York City took the critical step of protecting caregiver status under the Human Rights Law. New York City law now provides broader and clearer protections for caregivers than available under state or federal law: no employer can discriminate against employees because they are caregivers.

Yet the promise of the 2016 amendment remains incomplete. Protecting caregivers from discrimination—though a necessary step—is not by itself sufficient to promote equal access to employment opportunity. With today’s caregiving crisis, many workers are driven from their jobs simply because they are confronted with unaccommodating workplaces that make it impossible to balance the needs of work and caregiving responsibilities. A 2019 Harvard Business School Report found that “nearly one-third of employees said that they had voluntarily left at least one job because of an inability to balance work and care responsibilities.”⁵ A 2024 AARP/S&P Global Survey found similar results: twenty-seven percent of respondents reduced their hours due to adult caregiving obligations; 15.5% stopped working all together.⁶ The bottom line is that without accommodations, many caregivers cannot work at their full potential—or at all.

For decades, federal, state, and city law have relied on the concept of reasonable accommodation to address this very kind of problem. Reasonable accommodations remove “workplace barriers that keep [employees] from performing jobs which they could do with some form of accommodation.”⁷ They promote the goal of equality by making the workplace accessible. Thus, failing to provide a reasonable accommodation *is itself a form of discrimination*. The Americans with Disabilities Act makes this plain: its definition of “discriminate” expressly includes “not making reasonable accommodations.”⁸ Similar reasonable accommodation provisions are found in various federal, state, and local statutes, which protect characteristics such as disability, pregnancy, religious observance, and status as a survivor of domestic violence.⁹

⁵ Joseph B. Fuller & Manjari Raman, The Caring Company, 6, *available at* <https://www.hbs.edu/managing-the-future-of-work/research/Pages/the-caring-company.aspx>

⁶ S&P Global, Working while caregiving: It’s complicated, 5, *available at* <https://www.aarp.org/pri/topics/work-finances-retirement/employers-workforce/employer-caregiving-survey/>

⁷ EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA, *available at* <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

⁸ 42 U.S.C. § 12112 (5)(A).

⁹ *See, e.g.* 42 U.S.C. § 12112 (5)(A) (disability); 42 U.S.C.A. § 2000gg-1 (pregnancy); 42 U.S.C.A. § 2000e (j) (religion); N.Y. Exec. L. § 296(3)(c), (2-a)(d), (14), (18)) (disability), N.Y. Exec. L. § 296(3)(a) (pregnancy-related conditions), N.Y. Exec. L. § 296(10) (religious observances), N.Y. Exec. L. § 296(22)(c)(1) (domestic violence victim status); N.Y.C. Admin Code § 8-107(3)(a) (religion); N.Y.C. Admin Code § 8-107(15) (disability); N.Y.C. Admin Code § 8-107(22) (pregnancy, childbirth, or a related medical condition); N.Y.C. Admin Code § 8-107(27)(b) (status as a victim of domestic violence, sex offense, or stalking).

Caregiver status is well-suited to join the list of characteristics demanding reasonable accommodation.

Finally, it is noteworthy that promoting reasonable accommodations for caregivers will also promote racial and gender justice. As scholar Evelyn Nakano Glenn notes in her book on the history of caregiving in America, “Women of color, especially African American women, are more likely to have to combine elder and disabled care with employment outside the home.”¹⁰ A 2021 report from the New York City Comptroller and A Better Balance echoed this observation. Although women were twice as likely as men to take time off work due to childcare responsibilities, they generally had less flexibility in their jobs. This imbalance was greatest for women of color who generally took more time off work than white women for childcare, and yet had even less access to flexible schedules.¹¹ While not a panacea for such entrenched inequalities, reasonable accommodations for caregivers is a tool that can help narrow this significant gap in opportunity.

In sum, NELA/NY strongly supports Int 0871-2024. Affording caregivers a right to reasonable accommodation will help New Yorkers weather the ever-growing care crisis, ensure that caregivers have equal employment opportunity, and help address the entrenched gender and racial inequities in caregiving responsibility.

¹⁰ Evelyn Nakano Glenn, *Forced to Care: Coercion and Caregiving*, 1-2 (2010) (describing the care crisis that has evolved since the 1970s)

¹¹ N.Y.C. Comptroller & A Better Balance, *Our Crisis of Care: Supporting Women and Caregivers During the Pandemic and Beyond*, 6-7 (2021), available at <https://www.abetterbalance.org/our-crisis-of-care-survey/>.