



# Zalkind Duncan & Bernstein LLP

ATTORNEYS AT LAW

August 7, 2020

The Honorable Patricia D. Jehlen  
Joint Committee on Labor and Workforce Development  
24 Beacon St., Room 424  
Boston, MA 02133

RE: S. 2869

Dear Chair Jehlen:

We appreciate the opportunity to voice our support of S. 2869, An Act to protect working parents during the COVID-19 emergency. We are attorneys who routinely represent employees who have experienced discrimination on the basis of gender, pregnancy, and caregiving responsibilities. Although most of these clients are women, many are men who attempt to take parental leave or share childcare responsibilities. We have seen how employment practices that penalize employees who have childcare responsibilities work to push women out of the workforce. Because of the COVID-19 pandemic, we are currently experiencing the challenges of having to provide full-time childcare to our own children while working full-time at our jobs. However, unlike many of our clients and other working parents in the Commonwealth, we are fortunate enough to be able to work remotely and maintain our employment while caring for our families. We are deeply concerned for those parents whose jobs are incompatible with providing care and supervision for young children at a time when many childcare centers and schools in the Commonwealth are closed and when remote learning seems likely for most schools in the fall.

Since the COVID-19 pandemic hit the Commonwealth, we have spoken to many employees—predominantly women—who are in the impossible situation of being required to return to work while their children’s schools and daycares are closed. We have heard from mothers who are essential workers who have lost their jobs because they could not report to work without childcare for their children. As schools in Massachusetts prepare for a fall that will be either partially or entirely remote, more working parents will find themselves in the impossible position of having to provide childcare for their children while being expected to return to their jobs. Parents who work in service industries and essential jobs that cannot be performed remotely will be particularly hard-hit by the lack of childcare. The data already shows that 58% of essential workers have been providing care to a

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dependent family member during the pandemic.<sup>1</sup> This is not a problem unique to Massachusetts; around the country employment lawyers and those who study women's participation in the workforce have sounded the alarm about the way the COVID-19 pandemic is affecting mothers' participation in the workforce.<sup>2</sup>

There is substantial research demonstrating that women who leave the workforce even temporarily in order to provide childcare often have a difficult time re-entering the workforce.<sup>3</sup> Women who take even a year out of the workforce experience substantially decreased annual earnings compared with women who do not take time out of the workforce, and higher earning losses than men who take time out of the workforce.<sup>4</sup>

While women in Massachusetts have made progress in workforce participation and pay relative to their male counterparts, they are far from equal.<sup>5</sup> The passage of S. 2869 is necessary to prevent a significant backslide in the progress women in Massachusetts have made. Without job protection, mothers who have to leave the workforce during this pandemic to care for their children are likely to experience prolonged absences from the workforce, and a concurrent reduction in earning power if and when they do manage to return to work. It is also critical to ensure that men who take on childcare responsibilities during the pandemic are not penalized in the workplace. Substantial research has shown that when men share

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<sup>1</sup> Massachusetts Commission on the Status of Women, *Impact of COVID-19 and Related Policy on Massachusetts Women and Girls* (April 2020), <https://www.mass.gov/doc/mcsw-covid-19-report-april-2020-0/download>.

<sup>2</sup> Joan C. Williams, *Real Life Horror Stories from the World of Pandemic Motherhood*, N.Y. Times (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/opinion/mothers-discrimination-coronavirus.html?smtyp=cur&smid=tw-nytopinion>; Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. Times (June 3, 2020), <https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html>; Anu Madgavkar et al., *COVID-19 and gender equality: Countering the regressive effects*, McKinsey & Company (July 15, 2020), <https://www.mckinsey.com/featured-insights/future-of-work/covid-19-and-gender-equality-countering-the-regressive-effects#>; Allison Robinson, *COVID-19 is causing a backslide in workplace gender equality. Here's how to stop it*, Fortune (Aug. 3, 2020), <https://fortune.com/2020/08/03/covid-19-working-moms-gender-equality-backslide/>.

<sup>3</sup> Marianne Hayes, *Working Moms Confess: I Opted Out and Paid the Price for It*, Forbes (Aug. 20, 2015), <https://www.forbes.com/sites/learnvest/2015/08/20/working-moms-confess-i-optimized-out-and-paid-the-price-for-it/#2df2c32a257b>; Kelly Wallace, *Moms 'opting in' to work find door shut*, CNN (Aug. 13, 2013), <https://www.cnn.com/2013/08/13/living/parents-mothers-opt-to-work/index.html>.

<sup>4</sup> Stephen J. Rose & Heidi Hartmann, *Still a Man's Labor Market: the Slowly Narrowing Gender Wage Gap*, Institute for Women's Policy Research (Nov. 26, 2018), <https://iwpr.org/publications/still-mans-labor-market/>.

<sup>5</sup> Institute for Women's Policy Research, *the status of women in Massachusetts 2015*, <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/factsheet-massachusetts.pdf>.

in childcare responsibilities, they are closer to their children, household chores are more equitably divided, and their female partners experience less stress and anxiety.<sup>6</sup> Now, more than ever, public policy should support the efforts of families who need to divide and conquer their childcare responsibilities.

We encourage the Legislature to ensure that this important bill includes enforcement mechanisms for employees who are illegally terminated. Allowing the law to be enforced by the Attorney General or through the remedies provided by the Wage Act, as the Legislature provided for the Domestic Workers' Bill of Rights, would promote swift and effective enforcement during the pandemic.

Our clients and other members of our communities are struggling to maintain their employment while caring for their children in this unprecedented time. The passage of S. 2869 will help working parents maintain a foothold in the workforce, and reduce the impact the pandemic has on women's economic status and equality in the Commonwealth.

We thank you for the opportunity to be heard on this bill.

Sincerely,



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<sup>6</sup> Nathaniel Popper, *Paternity Leave Has Long-Lasting Benefits. So Why Don't More American Men Take It?* (Apr. 17, 2020), <https://www.nytimes.com/2020/04/17/parenting/paternity-leave.html>.