

**Testimony Before the House Labor & Industry Committee,
Pennsylvania General Assembly
In Opposition to House Bill 861 (preemption of local laws protecting workers)**

**Submitted by Amal M. Bass, Staff Attorney, Women's Law Project
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Thank you to Chairpersons Kauffman and Galloway, and members of the Committee, for inviting me to present this testimony in opposition to HB 861. I am a staff attorney at the Women's Law Project, a nonprofit, legal advocacy organization based in Philadelphia and Pittsburgh that seeks to advance the legal status of women and girls through impact litigation, public policy advocacy, community education, and individual counseling.

At the Women's Law Project, we address a variety of legal issues, including workplace discrimination. We advocate for fair workplace legislation at all levels of government, including at the local level. We strongly oppose HB 861. This bill would prohibit local governments from passing laws to meet the needs of their communities and would decrease the quality of life for working people and their families across the Commonwealth, including in Philadelphia, where HB 861 would retroactively strip workers of their right to paid sick days.

The Women's Law Project testified in support of Philadelphia's paid sick days ordinance, which City Council passed and the Mayor signed on February 12, 2015 after a thorough, multi-year process that drew upon the recommendations of a Task Force representing many perspectives on the issue, including employers.¹ The local law that resulted from this process provides forty hours of earned paid sick time in a calendar year for workers of employers with ten or more employees, and it provides unpaid sick time to workers of smaller employers. It also provides paid leave to employees whose absence is related to domestic violence, sexual assault,

¹See Transcript, Hearing Before the Committee on Public Health & Human Services, Council of the City of Philadelphia, February 3, 2015, *available at* <http://legislation.phila.gov/transcripts/Public%20Hearings/health/2015/ph020315.pdf>.

or stalking. This ordinance is vital for the health and well-being of women and their families in Philadelphia and the surrounding counties, giving paid sick leave to more than 200,000 workers.²

The benefits of paid sick leave are clear. Access to paid sick days not only gives workers the ability to take care of themselves and their families, but it also helps businesses by improving employee morale, increasing productivity, and reducing turnover at work.³ People with paid sick days visit emergency rooms less often and utilize health screenings and preventive care more often, reducing medical costs in the future.⁴ Access to paid sick days also saves lives. The American Public Health Association estimates that 7 million influenza infections and 1,500 deaths during the 2009-2010 H1N1 pandemic were the result of people working while sick.⁵

In 2015, Pittsburgh joined Philadelphia in recognizing these benefits when it used its home rule authority and its authority to pass public health laws to pass a modest earned paid sick leave ordinance.⁶ However, the Pennsylvania Restaurant and Lodging Association has challenged this local law, halting its implementation, in a lawsuit currently before the Pennsylvania Supreme Court.

My colleagues from the Women’s Law Project and attorneys from the Partnership for Working Families filed a friend-of-the-court brief in this case on behalf of fifty-one

²Findings, Chapter 9-4100, Phila Code, *available at* <https://phila.legistar.com/LegislationDetail.aspx?ID=2101250&GUID=5D12D54D-B1A7-4446-B646-95BE528F771C&FullText=1>.

³ Inst. for Women’s Policy Research, *Paid Sick Days Benefit Employers, Workers, and the Economy* (July 2016), <https://iwpr.org/publications/paid-sick-days-benefit-employers-workers-and-the-economy/> (last visited Mar. 20, 2018).

⁴ See National Partnership for Women & Families, *Paid Sick Days Lead to Cost Savings for All* (July 2017), <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-lead-to-cost-savings-savings-for-all.pdf>.

⁵ Am. Pub. Health Ass’n, *Support for Paid Leave and Family Leave Policies* (2013), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/11/05/support-for-paid-sick-leave-and-family-leave-policies>.

⁶ Paid Sick Days Act, Pittsburgh Ordinance 27-2015, http://apps.pittsburghpa.gov/co/Paid_Sick_Time_Legislation_Text.pdf

organizations committed to women’s health and safety in support of Pittsburgh’s paid sick days law.⁷ In this brief, they discuss how a lack of paid sick leave disproportionately harms low-wage women workers and people of color, saying:

The lack of paid sick days protection inflicts severe distress on low-wage workers who cannot afford to lose even a single day’s pay. These workers are, disproportionately, women and people of color. In particular, low-wage women workers, who continue to bear a disproportionate share of the caregiving responsibilities for children and other family members, suffer the stress of competing demands from job and family. For families confronted with a cancer diagnosis, a sudden disabling condition, or the onset of an addiction, where caregiving responsibilities are immediate and a matter of life or death, paid sick leave is a compelling necessity.

While Pittsburgh continues to fight for this compelling necessity for its workers, HB 861 threatens to take away legislation that has already gone into effect for Philadelphia’s workers. If passed, HB 861 will force Philadelphia’s workers to work while sick, to pass contagious illnesses to co-workers and customers, to forego necessary relief to address domestic violence, sexual assault, or stalking, to skip health screenings and medical appointments, and to sacrifice taking care of their sick loved ones who need them.

Local paid sick days ordinances are not the only local laws that HB 861 threatens. It also threatens local efforts to implement laws related to wage equity, fair work scheduling, and anything else related to the workplace, not only in Philadelphia and Pittsburgh but in municipalities across the Commonwealth. HB 861 is very broad and aims to preempt a wide range of laws, including, *but not limited to*, “employer policies or practices” regarding:

- (1) Wages, other compensation or benefits.
- (2) Hiring or termination of employees.
- (3) The workplace.

⁷ Brief of *Amici Curiae* Fifty-One Organizations Committed to Women’s Health and Safety, In Support of Appellants and for Reversal (Feb. 15, 2018), *available at* <http://www.womenslawproject.org/wp-content/uploads/2018/02/WLP-Brief-Amici-Curiae-51-Organizations-57-64-WAP-2017-FINAL.pdf>

- (4) The relationship between employers and employees. [and]
- (5) Sick and vacation leave for an employee.⁸

Many municipalities in Pennsylvania have passed local laws that prohibit discrimination in the workplace. More than forty municipalities in Pennsylvania have local ordinances prohibiting discrimination on the basis of many protected characteristics, including sexual orientation, which our employment laws at the state and federal levels, Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act, do not explicitly cover.⁹

Several municipalities, including Ambler Borough,¹⁰ Bridgeport Borough,¹¹ Carlisle,¹² Dickson City,¹³ Mount Lebanon,¹⁴ Kennett Square Borough,¹⁵ Narberth Borough,¹⁶ Phoenixville,¹⁷ Royersford,¹⁸ Stroudsburg,¹⁹ and Wilkes-Barre,²⁰ passed anti-discrimination laws after 2015, and could trigger HB 861's retroactive preemption. The bill could also prohibit every municipality in the state from altering or adding to their antidiscrimination provisions in the future and could subject these municipalities to liability for having passed legislation to help

⁸ HB 861 (Sess. 2017), § 305(f).

⁹ See Equality Pennsylvania, <https://equalitypa.org/municipalities-with-nondiscrimination-ordinances/> (last visited Mar. 20, 2018).

¹⁰ Ambler Borough, Montgomery County, Ordinance No. 1098 (Enacted May 17, 2016), http://boroughofambler.com/download/code_of_ordinances/ordinances_passed_after_july_17_2012/Ordinance-1098-Human-Relations-Committee.pdf

¹¹ Bridgeport Borough, Montgomery County, Ordinance No. 2008-002 (Enacted April 24, 2018), <https://www.ecode360.com/documents/BR0518/source/LF1016846.pdf#search=discrimination>

¹² Borough of Carlisle, Cumberland County, Carlisle Code Chapt. 83 (Enacted Dec. 8, 2016).

¹³ Dickson City Borough, Lackawana County, Ordinance 4-1016 (Enacted June 14, 2016), <http://dicksoncityborough.org/documents/O-2016-04.pdf>

¹⁴ Mount Lebanon, Allegheny County, Chapter III § 1103, (Enacted Nov. 14, 2017), <https://www.mtlebanon.org/DocumentCenter/View/3864/III>.

¹⁵ Kennett Square Borough, Chester County, Municipal Code Art. IX (Enacted Mar. 16, 2017).

¹⁶ Narberth Borough, Montgomery County, Ordinance No. 1000 (Enacted June 21, 2017), <https://www.ecode360.com/documents/NA0447/source/LF989909.pdf#search=discrimination>

¹⁷ Phoenixville, Chester County, Municipal Code Chapt 6, Part 11 (Enacted Mar. 15, 2017).

¹⁸ Royersford, Montgomery County, Municipal Code §§ 341-350 (Enacted Mar. 28, 2017).

¹⁹ Borough of Stroudsburg, Monroe County, Municipal Code §§ 1-381 - 1-388.

²⁰ Wilkes-Barre, Luzerne County, Municipal Code §§ 14-1 -3 (Enacted Sept. 15, 2016).

their communities.²¹ Meanwhile, the General Assembly fails to enact any legislation to address the needs of workers, despite overwhelming support for such laws.²²

Municipalities must retain the power to respond to the needs of their residents. HB 861 removes decision-making authority from local governments, which are closely connected to their communities, and prohibits local innovation that keeps communities healthy and allows local economies to thrive. HB 861 would prohibit local efforts to respond to urgent problems, such as sexual harassment in the workplace and the opioid crisis. For example, this bill would prevent municipalities from providing reasonable time off from work to individuals with substance use disorders and their family members, who may need time off to help their loved ones.

HB 861 would undo and prohibit progress at the local level, taking rights away from the citizens of Pennsylvania without filling the void with statewide legislation. Justice Louis Brandeis said that states are the “laboratories of democracy,”²³ which can experiment with social and economic policies for the benefit of the country as a whole. Similarly, municipalities are the laboratories of democracy for the state. While we wait for the Pennsylvania General Assembly to pass legislation that uniformly raises labor and employment standards for everyone in the Commonwealth, it is important for our local governments to retain the power to respond to the needs of their people. Thank you.

²¹ HB 861 (Sess. 2017) § 305(d).

²² See, e.g., Nat’l Partnership for Women & Families, *New Poll & Website Analysis Show Candidates Benefit from Prioritizing Family Friendly Workplace Policies* (Dec. 2016), <http://www.nationalpartnership.org/news-room/press-releases/new-poll-and-website-analysis-show-candidates-benefit-from-prioritizing-family-friendly-workplace-policies.html>.

²³ *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (Brandeis, J., dissenting).