

Conversations with the Experts

Paid Sick Leave



Sherry Leiwant

Bio: Sherry Leiwant is a co-founder and Executive Director of A Better Balance: The Work and Family Legal Center. From 1996 until 2005, Sherry was a senior staff attorney at NOW Legal Defense and Education Fund running the State Advocacy Project, working on issues intersecting women's rights and poverty, including reproductive health, violence and child care. Prior to joining NOW Legal Defense Fund, she spent 12 years as a senior staff attorney at the Welfare Law Center, a national legal organization doing litigation and public advocacy on a variety of income support issues around the country. Prior to that, she was a staff attorney at the Department of Health Education and Welfare and an Assistant US Attorney in the Southern District of New York. She has taught at various law schools, most recently as an Adjunct Professor of Law at CUNY School of Law teaching upper level classes on civil rights. Sherry graduated from Princeton University and from Columbia University School of Law. She has three children and has served on the Boards of Bank Street College of Education and Basic Trust Infant and Toddler Center.

An Interview with Sherry Leiwant

By Judi Casey and Karen Corday

Casey: Please tell us about A Better Balance (<http://www.abetterbalance.org>).

Leiwant: We are a legal advocacy group founded in New York City by a group of lawyers who had all worked together at the NOW Legal Defense Fund. Our expertise was in civil rights, women's rights, and poverty law issues. We came to realize that the next really important women's rights issues revolved around work and family and the problems that women face when balancing the two. In 2005, we were incorporated into a 501(c)(3) organization. We work on a range of legal strategies to promote workplace flexibility and deal with discrimination against caregivers. We are particularly interested in valuing the work of caring for families. Our mission statement is to "promote equality and expand choices for men and women at all income levels so that they may care for their families without sacrificing their economic security."

The three main issues that we address are paid family leave and sick days, family responsibilities discrimination, and flexibility, which includes equity for part-time workers, flexible scheduling, and telecommuting. We differ from a lot of organizations in that we focus on public involvement in these issues, particularly crafting legislation and thinking about systematic ways to address the problem of work-life balance; we don't concentrate on voluntary initiatives by private employers. We focus on New York, but we also do a lot of work nationally, particularly on paid leave.

Casey: Why is the issue of paid sick days so important?

Leiwant: The case for paid sick days is strong from many perspectives—work-family, public health, and basic minimum working standards. At this point, nearly half of the American full-time workforce, or 59 million workers, have no paid sick time at all. Seventy percent of workers can't use their paid sick leave to care for sick children or other family members. This is a particular problem for low-wage workers, who tend to be in more rigid working environments and at the same time significantly less likely to have paid sick time than other workers. Only one in five low-income workers nationwide has paid sick time, and in New York, the statistics are even worse. Nancy Rankin did a study in which she found that sixty-five percent of New York's working poor,

forty-five percent of the near-poor, and thirty-two percent of New Yorkers with higher income have no paid sick leave. These are surprising statistics for people who take for granted that if they or their children are sick, they can take time off. It's an important issue for children and working families, because if parents have no paid sick time, they will often send sick children to school or day care. Many studies indicate that sick children, particularly those with chronic illnesses, benefit from parental care.

On the other side of the issue, many employees lose their jobs or face disciplinary action for taking sick days in workplaces that don't have them, either to care for themselves or sick family members. Furthermore, for low-income workers, even losing a day of pay can be a tremendous problem.

The public health case is extremely strong on this issue. We've done some focus groups in New York and have been working with the Manhattan Borough President's Office to see where the problems lie and what people's attitudes are on the issue. What's come to the fore is that lots of employees who have a great deal of contact with the public do not have sick days, particularly restaurant workers. Nancy Rankin's study found that eighty-four percent of restaurant workers in New York do not have paid sick time. For all of these reasons, we think this is an important issue.

Casey: How do you advocate for paid sick days?

Leiwant: We are a legal organization, so we've been principally engaged in drafting laws and providing legal advice and research to campaigns for paid sick days. A lot of legal issues do come up, particularly on the local level, because of preemption issues. Preemption means we can only legislate at the local level on issues the state has not yet legislated, and at the state level, we can only legislate on issues the federal government has not yet legislated about. This gets very complicated.

The paid sick days movement is very new. Basically, it started with San Francisco's referendum in November of 2006, which was passed overwhelmingly by San Francisco voters. This law requires all businesses with ten or more employees to provide nine paid sick days per year, with smaller businesses required to provide five sick days annually. In January of 2007, a group of advocates, communications people, and grassroots activists convened and discussed what was needed to work on campaigns for paid sick days around the United States. Many movements came out of this conference. Those grassroots groups, particularly ACORN and 9 to 5, have taken the lead in organizing, and we are working with and supporting them.

Casey: Who funds A Better Balance?

Leiwant: We have funding from the Public Welfare Foundation specifically for our sick days work. We also have some funding from Ford through ACORN, and several other grants, including one from Merrill Lynch. We have raised some private funds.

Casey: Besides San Francisco, is there local, state, or federal legislation around paid sick days?

Leiwant: Washington, D.C. just passed a law that in addition to paid sick days allows for "safe days," which is paid time off for victims of domestic violence. There are also laws in committee in Massachusetts, and there will soon be proposed laws in Connecticut, Minnesota, Missouri, and California. In Milwaukee, Wisconsin, we are about to file a referendum that will be on the ballot in November. We're also in the very beginning of working on the issue in New York City.

At the federal level, there's a bill called the Healthy Families Act that was proposed by Ted Kennedy in the Senate and Rosa DeLauro in the House of Representatives that provides seven days of paid sick days per year for workers who work twenty or more hours per week for businesses with fifteen or more employees. This was first proposed in 2004, and it doesn't appear to have much of a chance of passage this year.

Casey: Do you have some model legislation that lays out recommendations for paid sick leave?

Leiwant: Yes. We have worked with the National Partnership for Women and Families and Greg Assay, who is responsible for enforcing San Francisco's paid sick leave law. The three of us put together a model bill. We also have a manual for dealing with surrounding issues, which is available, free of charge, to anyone who requests it. The model law is in many ways based on the San Francisco law, and considers the lessons learned from crafting that law. It's the starting point for most of the states in which laws are being proposed. There are some differences between the model law and the Healthy Families Act as well as the Massachusetts proposed law. The two main differences are to whom the law applies—our model has no threshold in terms of who is covered, while the Healthy Families Act does—and the accrual method. The San Francisco law and the

model law allow workers to earn their sick time as they work—one hour of paid sick time for each thirty-five hours worked, for instance. This method allows part-time workers to benefit as well, and there's no question of when the benefit kicks in. The Healthy Families Act, Massachusetts, and Washington, D.C. do a straight number of days, and in the Healthy Families Act, part-time workers are excluded.

Casey: How can interested policy makers get involved in working for or against paid sick days?

Leiwant: Well, I think the Chambers of Commerce has “against” covered!

Casey: What are their concerns?

Leiwant: The business arguments against paid sick days come down to cost to businesses and abuse of the benefit by employees. We have arguments against both of these. We use the example of presenteeism; sick workers on the job are not good for businesses. In our Barnard report, we cited interviews of human resources practitioners in larger firms, and they reported presenteeism as a problem. There have been estimates of a savings of \$8 billion if all employers gave paid sick days because of increased productivity and lower turnover. Again, Vicky Lovell has done a lot of work on this topic for the Institute for Women's Policy Research; she did a cost benefits analysis for us in New York, and concluded that paid sick days would not be a cost to employers when factoring in productivity and retention.

In terms of abuse, Vicky did another study in which she found that people who have seven days of paid sick leave take an average of 1.8 days per year. We could use more studies on this topic.

Casey: And what about policy makers who want to advocate for paid sick days?

Leiwant: The key is public education. Most people don't realize how many workers do not have paid sick days or what a huge public health issue it is. When you say that restaurant workers don't have sick days, people tend to get concerned! The business community is very nervous about the passage of this legislation, and I think only public education will calm their nerves.

Casey: What are some of the business benefits of paid sick days?

Leiwant: The business benefits are a good workplace where workers feel as if they are taken care of and that their employer is sympathetic to their needs. This came up a lot in our New York focus groups. Workers would say, “I know my employer also has a family, so he should understand that occasionally I need to take time off to take care of my family.” That empathy factor is very important in retention; employees who feel that their employer cares about them are more likely to want to stay at their workplace. There's also the public health concern—if workers don't have paid sick leave, they are likely to come into work sick, make other employees sick and be less productive.

Casey: How can workplace practitioners bring this issue to the attention of their employers?

Leiwant: Look at the studies on productivity and retention and see the business case. There's also a movement to have a bank of paid time off that employees can use for sick days, vacation days, or whatever else they need; that may be a good solution for those who are concerned with the possibility of abuse. Many younger workers seem to prefer the bank of unspecified days off; they're generally healthy and they can use the days for vacation. On the other side of the argument, many feel that there should be specified days off so people don't hoard their days off and come to work sick.

Anyone who has children knows that if your child is sick, you want to stay home with them. I used to squirrel my sick days away to use for my kids. Many workplaces have paid sick days for their employees, but don't allow them to use the days to care for sick family members. This is an issue that HR should look at closely.

Casey: What types of work-family research can better inform our understanding of paid sick days?

Leiwant: I think it would be really helpful to know how workers use their sick time, such as in Vicky Lovell's aforementioned study. It would be interesting to know if workers use them for themselves or to take care of family members, and to what degree. There isn't a lot of data on this subject. We also don't know a lot about what kinds of policies workplaces have; that would help a lot in terms of knowing how to structure public policy.

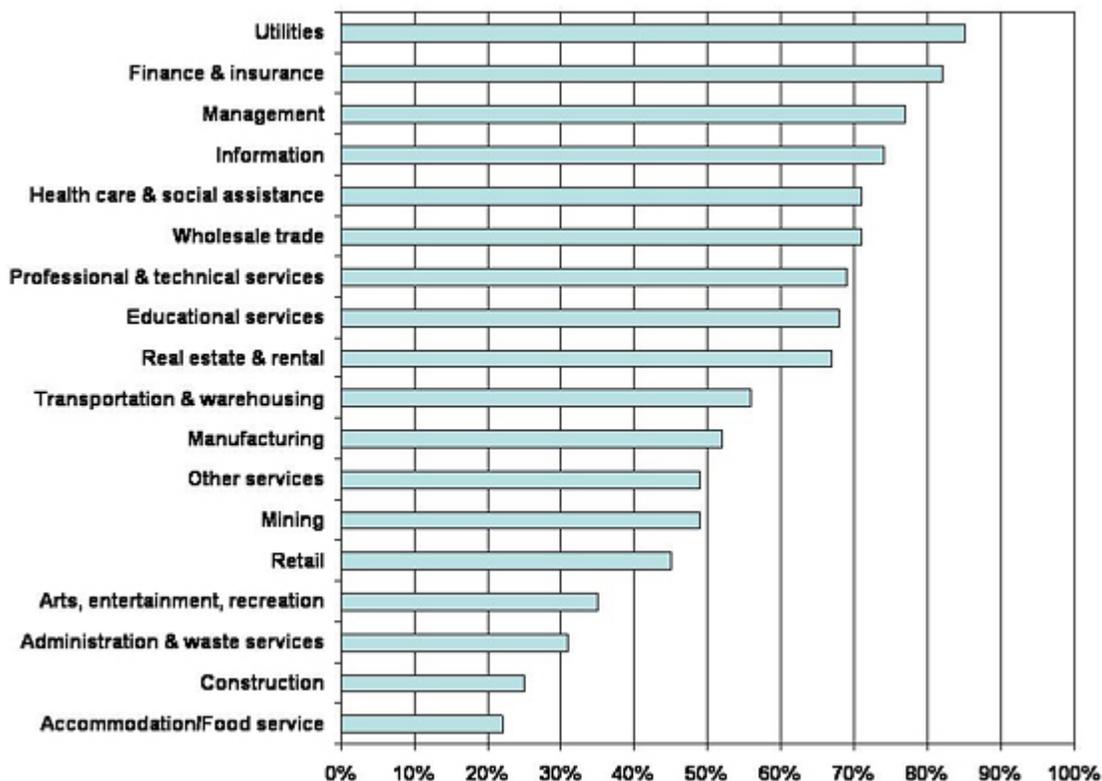
Casey: How do countries outside of the United States handle paid sick days?

Leiwant: The United States is really an outlier on this issue; it's rare in the rest of the world to not provide paid sick days for workers. At least 145 countries require employers to provide paid sick leave to their employees for short or long-term illness, with 127 providing a week or more annually.

Casey: Why is the United States so different from the rest of the world?

Leiwant: Work-family advocacy is a new concept in this country; it's starting to change a bit, but there's a long way to go. In many places in the world, there's an assumption that the government will do more for workers than it is expected to do in the United States. However, this is a public issue, and I think it should be addressed through public policy and law. We have trust in the marketplace, and that's all well and good, but half of our workers are not getting paid sick days from the marketplace.

Percentage of Workers with Employer-Provided Sick Days, by Industry, 2006



Source: Association of Community Organizations for Reform Now (ACORN). (2007). *Working sick, getting stiffed: How some of America's biggest companies fail their workers and jeopardize public health*. Retrieved from the National Partnership for Women & Families:

http://www.nationalpartnership.org/site/DocServer/Working_Sick_Getting_Stiffed_2007.pdf?docID=2083

Additional Resources Related to Paid Sick Days

CLASP: Get the Prescription: Child Care Workers Need Paid Sick Days: This 2006 publication from the Center for Law and Social Policy (CLASP) discusses the need for paid sick leave for child care workers.

- http://www.clasp.org/publications/get_prescription.pdf

CLASP: Here's a Tip: When Restaurant Workers Don't Have Paid Sick Days, It Hurts Us All: This fact sheet by Jodie Levin-Epstein of CLASP details the public health risk that arises when restaurant and hotel workers come to work sick as a result of not having paid sick days.

- http://www.clasp.org/publications/heres_a_tip.pdf

Economic Costs of Expanding the Family and Medical Leave Act to Small Businesses: Bruce D. Phillips of the National Federation of Independent Business "focuses on estimation of three kinds of costs for small business owners that would be caused by an expansion of the FMLA: labor costs, management costs and various fees. The results of the analysis suggest that an expanded version of the FMLA would have serious, negative effects on the small business sector."

National Partnership for Women and Families: Paid Sick Days: An Advocate's Toolkit: Includes detailed fact sheets, legislative reviews, helpful resources, additional resources, and recent news headlines and press materials.

- http://www.nationalpartnership.org/site/PageServer?pagename=psd_index

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