

Testimony of JoAnn Kamuf Ward
Deputy Commissioner of Policy and External Affairs
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
June 26, 2023

Introduction

Good morning Chair Williams, Public Advocate Williams, and committee members. I am JoAnn Kamuf Ward, Deputy Commissioner of Policy and External Affairs at the New York City Commission on Human Rights. Joining me today for questions is Hillary Scrivani, Senior Policy Counsel. Thank you for convening today’s hearing on employment discrimination. I will share a brief overview of the New York City Human Rights Law, the Commission’s work, and speak about the five amendments to law that are on today’s agenda — Intros. 84, 811, 812, 422, and 864.

The Human Rights Law

Our agency enforces the New York City Human Rights Law – one of the broadest and most protective civil rights laws in the country. The Law prohibits discrimination in the areas of employment, housing, and places of public accommodation. Today the Law includes twenty-seven protected categories, including age, gender, sexual orientation, gender identity, religion, disability, race, and national origin. That number will grow this fall, with the addition of height and weight as protected categories. Since the start of Fiscal Year 2022, five amendments to the Human Rights Law expanding employment protections have either taken effect or been signed into law:

- Local Law 4 of 2021, which broadens the scope of the Fair Chance Act, which prohibits employment discrimination against individuals based on criminal legal system involvement, by extending the protections to current employees and limiting the criminal history information employers can consider in making employment decisions;
- Local Law 88 of 2021, which extends Human Rights Law protections to domestic workers even if they are the sole employee in a workplace;
- Local Law 59 of 2022, which requires employers advertising jobs in New York City to include a good faith pay range in job advertisements;
- Local Law 31 of 2023, which amends the definition of “domestic violence” to include economic abuse; and
- Local Law 61 of 2023, which adds height and weight as a protected categories.

The Commission on Human Rights

To fulfill the Commission’s dual mandate of enforcement and fostering intergroup relations, the Commission’s two largest units are the Community Relations and Law Enforcement bureaus.

The Community Relations Bureau sits at the center of our prevention efforts, and is responsible for outreach, education, and training. This work is done through a wide array of partnerships with community groups, sibling agencies, and individual stakeholders. In FY 22, the Commission

reached a record number of New Yorkers by engaging with 107,136 individuals through 1,794 conferences, workshops, and trainings. The Community Relations Bureau's outreach and education efforts are complemented by our communications campaigns and public facing resources, which distill the provisions of the Human Rights Law.

The Law Enforcement Bureau conducts testing, launches investigations, initiates complaints, enters settlements, and takes cases to trial to address individual and structural discrimination. Individuals who believe they have experienced discrimination or harassment and want to seek redress have two paths. Anyone can report discrimination directly to, and seek resolution at the Commission, or they can file a complaint in court.¹ When a report is made to the Commission, those claims are assessed by staff in the Law Enforcement Bureau, and if the claims are within the Commission's jurisdiction, there may be a pre-complaint resolution or a complaint can be filed and investigated by the Law Enforcement Bureau. When a case is filed directly in court, the Commission is not involved, and the case moves forward in the judicial system.

Cases that are investigated by the Law Enforcement Bureau can be resolved in several ways. A conciliation agreement is a settlement agreement made between the Commission and a covered entity to resolve claims under the Human Rights Law. Settlements can include damages, civil penalties, and affirmative relief, such as policy changes. Matters that are not settled or mediated may be referred to trial at the Office of Administrative Trials and Hearings. After trial, an administrative law judge issues a Report and Recommendation, and the Commission's Office of the Chair reviews that document and issues a final Decision and Order. For cases that are filed in courts, resolution falls outside the purview of the Commission, but judicial orders or settlements are potential outcomes.

In FY 22, the largest number of inquiries received were in employment. Under the City Human Rights Law, employees in New York City have the right to a workplace free from discrimination and harassment, including gender-based harassment. Notable for today, the Human Rights Law also requires employers to provide reasonable accommodations based on four categories: (1) disability, (2) pregnancy, childbirth, and related medical conditions (including lactation); (3) religion; and (4) status as a victim of domestic violence, sexual assault, or stalking. Each of these categories are defined in the Human Rights Law.

Proposed Legislation

The Commission has long been committed to equity in the workplace. I will turn now to the proposed bills.

Intro 422 requires covered employers to maintain records of reasonable accommodation requests that are made in writing by employees. Currently, the Human Rights Law requires that if an employer learns, either directly or indirectly, that an individual requires a reasonable accommodation, the entity has an affirmative obligation to engage in a "cooperative dialogue" and

¹ NYC Admin. Code §§ 8-109 and 8-502.

provide a determination in writing. This bill would apply to all requests for workplace reasonable accommodations covered by the Human Rights Law. The Administration supports the intent of the bill to preserve documentation regarding requests and resolution, consistent with the Americans with Disabilities Act and other relevant laws.

Intro. 812 would extend the time period that employees have to file complaints in court alleging discrimination to six years. Currently, the statute of limitations for a private right of action is three years. The Administration looks forward to discussions with the Council about how to balance the interests of redressing discrimination and the interests represented in the current limitation period.

Intro. 811 would prohibit and void “no rehire” provisions in mediation and conciliation agreements between employers and the Commission, and in settlement agreements between private parties in state or federal court. The Administration supports the goal of protecting New Yorkers from unfair or retaliatory agreements that limit their future opportunities, and looks forward to discussions with Council about how to balance this goal with legitimate interests that may lead to “no rehire” provisions to resolve workplace disputes.

Intro. 864 would render unenforceable and void any and all agreements that shorten the statute of limitations for filing a case with the Commission or filing a complaint in court. The Administration supports the intent of this bill to prevent covered entities from using coercive contract terms that limit the timeframe in which potential aggrieved parties can seek redress for violations of the Human Rights Law consistent with contract law principles.

Lastly, Intro. 84 would require employers to hold an “onboarding meeting” for employees returning from parental leave to discuss the conditions and expectations of employment following the employee’s return to work. Employers would be required to keep records of each meeting for 5 years. Intro 84 charges the Commission with issuing guidelines for such meetings, including the timeline, topic, relevant rights and responsibilities, goals, and duration. The Administration supports the aim of ensuring that employees returning to work from leave know what rights and protections they have, and the Law Department is reviewing the structure contemplated in this bill. Consistent with the Human Rights Law, CCHR has previously crafted guidance about legal protections for pregnant workers, and has developed a model lactation policy that support these aims for individuals seeking accommodations. CCHR also has a fact sheet on anti-discrimination protections for individuals with caregiver responsibilities which explains that individuals with caregiving responsibilities cannot be treated differently than other employees.

Individuals may take leave for a variety of reasons, and workplaces may have different obligations relating to the basis of the leave, as well as depending on the size of the workplace and internal leave policies, among other factors. The Commission does not administer any parental or other leave laws or enforce employer application of parental leave. Generally, provisions of parental leave in NYC workplaces stem from federal and state laws, as well as voluntary employer policies. We look forward to learning more about the intended impact of these bills, and to working with

Council, the Public Advocate, and sibling agencies to achieve the goal of ensuring all employees have awareness of workplace rights.

Conclusion

In closing, the Commission is committed to preventing and combating employment discrimination in New York City and ensuring that individuals who experience discrimination and harassment have venues for redress. We appreciate the Council's attention and commitment to addressing this issue, and we welcome your questions.