

**Testimony of Damion Stodola
General Counsel
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
June 18, 2018**

Good afternoon, Chairperson Eugene and members of the Committee on Civil and Human Rights. My name is Damion Stodola, and I am the General Counsel at the New York City Commission on Human Rights (“Commission”). I am joined by Policy Counsel, Zoey Chenitz. On behalf of the Commission, we thank you for convening this afternoon’s hearing and are grateful for the opportunity to speak today in support of Intros 799 and 136-A.

Under the leadership of Commissioner and Chair Carmelyn P. Malalis, the New York City Commission on Human Rights works to enforce our City Human Rights Law, one of the most protective anti-discrimination laws in the country. During her tenure, the Commission has consistently championed legislation like the two bills being considered today and other mechanisms that afford the law’s protections to more New Yorkers, clarify the agency’s expansive interpretation of the law consistent with its construction provision and restoration acts, and generally further the goals of combating discrimination and harassment in key areas of City living. The two bills being considered today expand protections for people who seek reasonable accommodations by protecting them from retaliation by employers, housing providers and providers of public accommodations; and clarify the broad reach of employment protections to independent contractors.

These bills touch on important areas of the Commission’s work. Under the City Human Rights Law, individuals are entitled to reasonable accommodations in employment based on their religious beliefs, disability, pregnancy, childbirth, or related medical condition, and status as a victim of domestic violence, sex offenses or stalking. Individuals with disabilities are also entitled to reasonable accommodations in housing and in public accommodations. These rights foster inclusion and help make our workplaces, homes, and public spaces open, accessible, and productive environments for New Yorkers.

Beyond accommodations, employment discrimination as a whole constitutes a significant portion of the Commission’s work, representing approximately 51% of all complaints filed at the Commission in calendar year 2017. With recent amendments to the City Human Rights Law regarding sexual harassment, the Commission is poised to address an even broader range of workplace discrimination. The bills that we are discussing today will further ensure that New York City, home to the largest economy in the country, continues to lead the way in protecting the rights of workers.

Int. 799 – in relation to prohibiting retaliation against individuals who request a reasonable accommodation under the City’s human rights law

The Commission believes that Intro 799 closes a clear loophole in the NYCHRL and fully supports its introduction. The Commission strongly supports Intro 799, which would make it an

unlawful discriminatory practice to retaliate against a person for requesting a reasonable accommodation based on religious beliefs, disability, pregnancy, childbirth, or related medical condition, and status as a victim of domestic violence, sex offenses or stalking.

State courts interpreting the City Human Rights Law's existing retaliation provision have held that a request for reasonable accommodation is not a "protected activity" which can give rise to a retaliation claim.¹ As a result, an individual who requests and receives an accommodation, but is also targeted for negative treatment because of their request (for example, by being assigned less desirable work hours or losing special privileges from their housing provider) may be unable to establish a retaliation claim under the current City Human Rights Law. This omission in coverage makes the City Human Rights Law less protective in this respect than federal law.² Indeed, the daylight between the City Human Rights Law and federal law on this is oddly out of place given the City law's history, policy, and liberal rule of construction provided under the restoration acts.

By making clear that requesting reasonable accommodations is a protected activity, Intro 799 will allow people to come forward and communicate with their employers, landlords, and other covered entities about their needs with the knowledge and confidence that they cannot be punished merely for asking. For these reasons, the Commission fully supports Intro 799.

Int. 136-A – in relation to protections for workers under the city's human rights law

Intro 136-A would clarify and identify the list of workers who are protected under the City Human Rights Law. The Commission already interprets the City Human Rights Law to cover independent contractors and all interns. Such coverage is broader than federal law, which often excludes these workers from coverage,³ and broader than state law, which covers interns but not independent contractors.⁴ However, during a public hearing that the Commission held on sexual harassment in the workplace in December 2017, the Commission heard from many individuals who were unaware of existing protections for independent contractors under the City Human Rights Law. Therefore, this amendment would provide additional clarity around these protections,

¹ See, e.g., *Witchard v. Montefiore Medical Ctr.*, 103 A.D.3d 596, 596 (1st Dep't 2013); *Brooks v. Overseas Media, Inc.*, 69 A.D.3d 444, 445 (1st Dep't 2010); *McKenzie v. Meridian Capital Grp., LLC*, 35 A.D.3d 676, 677-78 (2d Dep't 2006); *Hernandez v. Weill Cornell Med. Coll.*, 48 Misc. 3d 1210(A), 2015 WL 4173697, at *2 (N.Y. Sup. Ct. Bronx Cnty. 2015).

² See, e.g., *Weixel v. Bd. of Educ. of City of N.Y.*, 287 F.3d 138, 149 (2d Cir. 2002) (recognizing request for accommodation as a protected activity under the Rehabilitation Act and the ADA).

³ See, e.g., *Weinberg v. Consol. Edison Co. of N.Y.*, 590 F. App'x 97, 97 (2d Cir. 2015) (affirming decision holding that independent contractor was not protected under Title VII); *York v. Ass'n of Bar of City of N.Y.*, 286 F.3d 122, 126 (2d Cir. 2002) (rejecting claim of unpaid intern under Title VII).

⁴ See *Scott v. Massachusetts Mut. Life Ins. Co.*, 86 N.Y.2d 429, 434 (1995) (holding that independent contractor was not protected under NYSHRL); see also Exec. L. § 296-c (covering interns).

which is particularly necessary given the changing nature of employment in New York City, including alternative work arrangements and increased outsourcing. In this regard, the Commission expresses its gratitude to Council Member Lander for his September 2016 report, Raising the Floor for Workers in the Gig Economy, which underscored some of the challenges that freelancers and independent contractors face and raised awareness about the ever-changing nature of New York's work force and the need for the law to evolve in order to protect these workers.

The Commission looks forward to working with the Council to further refine the language of Intro 136-A to define the relevant time period for assessing whether an employer meets the jurisdictional requirements to fall within the coverage of the City Human Rights Law and to provide clear protections for independent contractors and other categories of workers who are often vulnerable to discrimination and harassment yet excluded from coverage under civil and human rights laws.

The Commission supports an approach that does not rely on the categorical rejection of workers based on their job title or on the corporate form of their employer, and instead aims to meaningfully address discrimination as it is experienced and expand accountability for discriminatory acts to those entities and individuals with the power and resources to effect change. The spirit of these changes reflects this philosophical shift, which we support. The proposed amendments raise potential legal questions that the Commission will need to research further and we look forward to the opportunity to provide feedback once we have completed our review.

Overall, I wish to reinforce the Commission's support for legislation that provides greater protection against discriminatory acts in all spaces throughout the City and our appreciation for City Council's ongoing attention to and efforts to strengthen employment protections. The Commission thanks Chair Eugene and the members of the Committee for calling this hearing. We look forward to working with the Council on these bills and thank each of you for your partnership in strengthening and advocating human rights in our city. I look forward to your questions.