

Testimony of Dana Sussman
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New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
November 19, 2018

Good morning Chair Eugene, and members of the Committee on Civil and Human Rights. I am Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy at the New York City Commission on Human Rights, and I am pleased to be here to discuss Intro. 863, which seeks to protect employees from discrimination on the basis of sexual and reproductive health decisions.

The bill defines reproductive and sexual health decisions to include “any decision by the employee to receive services which are arranged for or offered or provided to individuals relating to the reproductive system and its functions, including, but not limited to, fertility-related medical procedures, family planning services and counseling, including, but not limited to, access to all medically approved birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, sexually transmitted disease testing and treatment, abortion procedures and HIV testing and counseling.” The Commission and the Administration support the goals of the legislation, and the right to be free from discrimination based on one’s decision to become pregnant, to undergo fertility-related medical procedures, to terminate a pregnancy, and/or to seek treatment for sexually transmitted infections, including HIV/AIDS.

The Commission has prioritized the areas of pregnancy discrimination and disability discrimination over the last several years. The New York City Pregnant Workers Fairness Act, which created an explicit right to a reasonable accommodation in the workplace for “pregnancy, childbirth, and related medical conditions,” went into effect in 2014. The Commission has broadly interpreted these protections to include accommodations for not only pregnancy and childbirth, but infertility treatment, miscarriage, abortion, recovery from childbirth, and lactation.

In 2016, the Commission published legal enforcement guidance on pregnancy discrimination that explicitly clarifies the Commission’s broad interpretation of these protections and provides transparency about one’s rights and responsibilities under this provision of the City Human Rights Law. The Commission’s caseload of pregnancy discrimination cases has steadily increased in recent years, and the Commission has resolved several significant cases in this area. I’ll share two examples briefly. Earlier this year, the Commission settled a case on behalf of a worker at Whole Foods for failing to accommodate her during her pregnancy. The worker had a high-risk pregnancy and was advised by her doctor to work shorter shifts. Whole Foods denied her the accommodation and then terminated her when she was hospitalized with pregnancy complications. The Commission required that the employer pay the worker a total of \$35,000 in damages for back pay and emotional distress, nearly \$6,000 in attorney’s fees to her counsel, and \$25,000 in civil penalties to the City of New York. The agreement also requires Whole Foods to change its policies with regard to employee attendance and accommodations to comply with the City Human Rights Law and train all human resources employees on the updated policies. Last year, the Commission resolved a case on behalf of a flight attendant who worked for Endeavor

Air, which operates out of JFK, and who was denied a place to pump breastmilk close to where she worked. The Commission obtained \$20,000 in emotional distress damages for the flight attendant, collected \$10,000 in civil penalties, and required nationwide policy changes on pregnancy and lactation accommodations and training for its New York City-based staff.

The Commission is supportive of the goals of Intro. 863, to the extent it comports with existing law, and is committed to ensuring that New Yorkers do not face discrimination based on their very personal choices to become pregnant, to have an abortion, to seek treatment or counseling for sexually transmitted infections. The Commission recommends that the protections proposed in the bill in the context of employment be extended to housing and public accommodations. The Commission also looks forward to discussing with Council meaningful strategies for effectively notifying covered entities of their obligations and individuals of their rights under the City Human Rights Law. We are grateful for the opportunity to present today and to partner with Council to move the bill forward.

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Thank you for convening this hearing today on this important issue. I look forward to your questions.