



Testimony of JoAnn Kamuf Ward
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Before the Committee on Civil and Human Rights on the Challenges Related to Post-Pandemic Return to Work.
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Good afternoon Chair Williams and members of the Committee on Civil and Human Rights. I am JoAnn Kamuf Ward, Deputy Commissioner of Policy and External Affairs at the New York City Commission on Human Rights. It is my pleasure to join you today to testify regarding the Commission's work and the Human Rights Law protections that apply in the employment context. I am joined by Sapna Raj, Deputy Commissioner of the Law Enforcement Bureau at the Commission, and my colleagues at the Equal Employment Practices Commission.

The Commission is the local civil rights enforcement agency that enforces the New York City Human Rights Law, which is one of the broadest and most protective anti-discrimination and anti-harassment law in the country, covering nearly all aspects of city living, including housing, employment, and public accommodations. By statute, the Commission has two main functions. First, the Commission's Law Enforcement Bureau (LEB) enforces the City's Human Rights Law, by investigating complaints of discrimination, initiating its own investigations on behalf of the City, and utilizing its in-house testing program to identify entities that violate the Human Rights Law. Second, the Community Relations Bureau (CRB) fosters intergroup relations. Working in close collaboration with community partners, CRB provides free workshops and trainings on individuals' rights and the obligations of businesses, employers, housing providers, and leads bias response efforts, and restorative justice work.

COVID-19 and the Commission on Human Rights

Before turning to workplace protections under the Human Rights Law, I want to highlight some of the important work that the Commission has undertaken to address the uptick in discrimination and bias that have occurred since the onset of COVID-19. Throughout the pandemic the Commission's work continued uninterrupted.

For the duration of remote work, the Law Enforcement Bureau was able to conduct intakes and testing by telephone and online. The Commission adjusted to the pandemic to perform intakes remotely and filed 643 complaints in FY21 and 105 in the first quarter of FY22. Since the onset of COVID 19, the Community Relations Bureau has continued community engagement by partnering with stakeholders on trainings and events, establishing a first line of defense through education and outreach, providing techniques to safely de-escalate a bias incident, hosting community forums and townhalls, and educating communities of their rights and protections under the Human Rights Law. The Commission also held virtual town halls, in partnership with sister agencies and City Hall, highlighting workplace rights related to COVID-19. The Commission conducted 1,683 trainings in FY21 and 390 in the first quarter of FY 22,

reaching 125,757 New Yorkers. The Commission also developed and disseminated guidance on the roles and obligations of employers and public accommodations and the rights of all New Yorkers.

The Commission, like all city agencies, fully returned to the office in September of 2021, consistent with City policy and guidance developed by the Department of Citywide Administrative Services. Since then, the Commission has continued the use of some of the virtual tools we developed during the height of COVID-19, but in the past several months, the Commission has had the ability to re-engage in-person in communities, including through days of visibility in all five boroughs, resource fairs, business corridor outreach, and community forums, among other activities. Throughout the phases of the COVID 19 pandemic, the Commission has provided guidance to employers and employees on their workplace rights under the Human Rights Law, and it is those rights I will turn to now.

Employment Protections

New York City's Human Rights Law has extensive employment protections that prohibit discrimination against individuals on the basis of 21 protected classes, including age, national origin, disability, gender, race, sexual orientation, conviction record, caregiver status, and pregnancy, among others. The Law generally applies to employers with four or more employees and covers hiring, job postings and interviews; salary and benefits; and the terms and conditions of employment.

To comply with the Human Rights Law, employers must ensure that policies and practices, including those implemented in response to COVID-19, do not discriminate against workers based on their race, religion, national origin, citizenship, immigration status, and disability, or other protected status, or treat workers less well on the basis of a protected category.

Reasonable Accommodations

The Human Rights Law also requires employers to provide reasonable accommodations based on four categories: (1) disability, (2) pregnancy, childbirth, and related medical conditions; (3) religion; and (4) status as a victim of domestic violence, sexual assault, or stalking. Each of these are defined in our law.

Disability includes "physical, medical, mental or psychological impairment, or a history or record of such impairment." The obligation to provide a reasonable accommodation on the basis of disability extends to conditions directly related to COVID-19 and underlying conditions for which exposure to COVID-19 may pose a particular risk of complication. Under the Human Rights Law, accommodations related to religion include requests based on creed and religion, including, but not limited to, the observance of any particular day or days or any portion thereof as a sabbath or holy day or the observance of any religious custom or usage.

In the employment context, a reasonable accommodation is a change that meets an employee's specific needs and allows them to continue to fulfill the essential functions of their job. An accommodation can include many different things, such as a change in work schedule, providing ergonomic equipment, telework, accessibility modifications to workspaces, allowing time to pray, and granting leave from work that is calibrated to meet an employee's individual needs. If any employee requests a reasonable accommodation on the basis of disability, pregnancy and related conditions, religion, experience with gender-based violence, or an

employer knows that an individual may benefit from an accommodation on one of these bases, an employer must engage in cooperative dialogue and provide a reasonable accommodation unless doing so would create an undue hardship for the employer. The cooperative dialogue is a good faith effort to understand an individual's needs and limitations, how it relates to essential job functions, and the impact of a request on the employer. Under the City's Human Rights Law, an accommodation is considered reasonable unless an employer can show that the requested accommodation would cause an "undue hardship." The undue hardship analysis generally includes looking at the nature and cost of the accommodation, the number of employees, and the impact on business operations. An employer may decline an accommodation that presents an undue hardship. An employer may also decline an accommodation based on a disability if providing it would present a direct threat to workplace health or safety.

In order to protect health and safety of their businesses, employers can take reasonable steps to foster safe return to office for all employees. Measures should be consistent with guidance from public health authorities and up to date medical research and knowledge. Safety measures should also be equally applicable to all employees. In implementing safety measures, employers should provide reasonable accommodations consistent with the processes and protections I have discussed.

The Human Rights Law does not require employers to provide accommodations based on an employee's status as a caregiver or based on the needs of another. However, discrimination based on an employee's caregiver status is unlawful under the Human Rights Law, and employers must ensure that they are not discriminating against caregivers. Caregivers should be afforded the same benefits, privileges, and conditions of work as all other employees. In addition, other state and federal laws may govern parents' and caregivers' ability to stay home to care for children and may protect against retaliation for choosing to do so.

Bringing Reasonable Accommodation Claims to the Commission on Human Rights

Employers are the first stop for employees seeking reasonable accommodations in the workplace. If an accommodation is denied, an individual can contact the Commission to file a complaint or conduct a pre-complaint intervention. Individuals can also file claims with the State Division of Human Rights, and the Federal Equal Employment Opportunity Commission.

When the Commission staff assess that an aggrieved person has a claim under the City's Human Rights Law and a complaint is filed, an investigation is initiated. The Commission can also initiate its own investigation based on public information, tips, and referrals. When initiating its own investigations, the Law Enforcement Bureau often takes steps before filing a complaint, including sending the business a cease-and-desist letter, or requests for information on their policies and practices.

If a complaint is filed regarding an accommodation or another protection in the Human Rights Law, LEB investigates by gathering data and documents, and conducting interviews of witnesses, employees, or others with relevant information. Ultimately, LEB reaches a determination as to whether the evidence it has gathered supports the allegations in the complaint. If LEB finds probable cause, it prosecutes the respondent business in a hearing at NYC Office of Administrative Trials and Hearings (OATH). Before initiating the prosecution,

LEB attempts to settle, or conciliate, the case. If the case does not settle, then OATH will hold a hearing, and issue a report and recommendation. Then the Commissioner of CCHR will issue a final decision dismissing the case or ordering relief for the complainant.

Through conciliation and decisions and orders, the Commission can award money damages for the complainant, including lost wages, emotional distress damages, and attorneys' fees; and issue monetary civil penalties that are paid to the general fund of the City of New York. The Commission also has the authority to order affirmative relief, including posting notices of rights, engaging in cooperative dialogue, creating, or revising policies, conducting trainings, and more.

Thank you for this opportunity to discuss the ways the Human Rights Law protects New York's workers. We look forward to continuing the Commission's work in collaboration with the Adam's Administration, sibling agencies, and the Council.