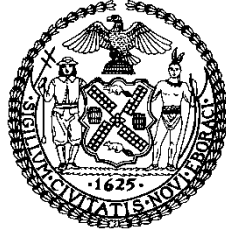


Committee on Civil and Human Rights
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THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON CIVIL AND HUMAN RIGHTS

Hon. Mathieu Eugene, Chair

November 19, 2020

PROPOSED INT. NO. 1684-A:

By Council Members Ayala, Chin, Louis, Kallos, Eugene, Diaz, Vallone, Rose, Adams and Rosenthal

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to requiring the commission on human rights to create a poster on age discrimination and requiring city agencies to display the poster

ADMINISTRATIVE CODE:

Amends Chapter 1 of title 8 by adding new section 8-134

PROPOSED INT. NO. 1685-A:

By Council Members Ayala, Chin, Louis, Kallos, Eugene, Diaz, Vallone, Rose, Adams and Rosenthal

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to providing age discrimination training to city agencies

CHARTER:

Amends Chapter 35 by adding new section 815.2

I. INTRODUCTION

On November 19, 2020, the Committee on Civil and Human Rights, chaired by Council Member Eugene, held a vote on Proposed Introduction Bill Number 1684-A (Int. 1684-A), in relation to requiring the commission on human rights to create an anti-discrimination poster that includes age discrimination, and requiring city agencies to display the poster and Proposed Introduction Bill Number 1685-A (Int. 1685-A), in relation to requiring age discrimination training to city agencies. In October 2019, the Committee heard a previous version of these bills, and testimony was received from the New York City Commission on Human Rights (CCHR), advocacy groups and other stakeholders to provide feedback on this bill. This feedback has informed the changes to the bills. Int. 1684-A and Int. 1685-A both passed with 5 votes in the affirmative, no negatives, and no abstentions.

II. BACKGROUND

Nationwide, older adults are increasingly the victims of age discrimination in the workplace. Age discrimination, according to the United States Equal Employment Opportunity Commission (EEOC), “involves treating an applicant or employee less favorably because of his or her age.”¹ During fiscal year 2019 (FY19), age discrimination represented 21.4 percent of complaints made to the EEOC, with 15,573 total complaints filed² and most of which were filed by women.³ In FY20, CCHR received 125 inquiries in relation to age-related discrimination, 92

¹ *Age Discrimination*, U.S. Equal Employment Opportunity Commission, available at <https://www.eeoc.gov/laws/types/age.cfm>.

² *EEOC Releases Fiscal Year 2019 Enforcement and Litigation Data*, U.S. Equal Employment Opportunity Commission, Jan. 20, 2019, available at <https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2019-enforcement-and-litigation-data>

³ Paula Span, *He Called Older Employees ‘Dead Wood’ Two Sued for Age Discrimination*, *The New York Times*, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/health/age-discrimination-ohio-state.html>.

of which were related to employment.⁴ Moreover, of the 49 age discrimination-related claims in FY20, 40 of them were employment-related.⁵ In a recent national survey conducted by the American Association of Retired Persons (AARP) of adults older than 45, 61 percent of respondents indicated that they have seen or experienced age discrimination in the workplace, and 38 percent of these respondents indicated that such discrimination is “very common.”⁶ Nineteen percent of these respondents indicated that they were not hired due to their age, and 12 percent indicated that they were not promoted because of their age.⁷

A 2016 study conducted by ProPublica and the Urban Institute found that 28 percent of stable, longtime employees sustain at least one layoff by their employers between turning 50 and leaving work for retirement.⁸ The study also found that 28 percent of those who had been working in long-term, full-time jobs when they entered the study were laid off at least once.⁹ Additionally, 15 percent reported that they stopped working because their pay, hours, treatment from supervisors or other conditions had deteriorated.¹⁰ Another 13 percent of these older workers entered retirement unexpectedly, which the researchers say suggests the workers likely were forced out of their jobs.¹¹ Overall, 56 percent of workers over the age of 50 in long-term, full-time positions lost their jobs involuntarily.¹² Furthermore, workers that are pushed into retirement are more likely to

⁴ *NYC Commission on Human Rights, “CCHR Annual Report 2020”* New York City Commission on Human Rights, 2020, available at

www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf.

⁵ *NYC Commission on Human Rights, “CCHR Annual Report 2020”* New York City Commission on Human Rights, 2020, available at www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf.

⁶ Rebecca Perron, *The Value of Experience Study*, AARP, July 2018, available at <https://www.aarp.org/research/topics/economics/info-2018/multicultural-work-jobs.html?CMP=RDRCT-PRI-OTHER-WORKJOBS-052118>.

⁷ Kimberly Palmer, *10 Things You Should Know About Age Discrimination*, AARP, available at <https://www.aarp.org/work/on-the-job/info-2017/age-discrimination-facts.html>.

⁸ Gosselin, Peter. “If You’re Over 50, Chances Are the Decision to Leave a Job Won’t Be Yours.” *ProPublica*, 28 Dec. 2018, www.propublica.org/article/older-workers-united-states-pushed-out-of-work-forced-retirement.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

be unemployed longer than younger people, and when they find a job they will typically earn 25 percent less on average than their previous salary.¹³

Age discrimination also persists in New York City as the number of NYC older adults in the workforce continues to increase. According to a 2017 report released by New York City Comptroller Scott Stringer, from 2005-2015, the number of working older adults increased by 62 percent, and, specifically, the number of seniors in the City's labor force increased from 13 percent to 17 percent.¹⁴ Although recent data is limited, in 2015, the Robert N. Butler Columbia Aging Center and the New York Academy of Medicine reported that there were more than 700,000 individuals, aged 55 and older, in NYC's workforce.¹⁵

Notably, digital platforms have recently come under scrutiny for their online job recruitment practices. According to The New York Times, corporations such as Verizon, Amazon, Goldman Sachs, and Facebook have placed recruitment ads limited to certain age groups on Facebook.¹⁶ Advocates argue that such practice is discriminatory against older workers, and experts are concerned that these recruitment practices may violate the federal Age Discrimination in Employment Act.¹⁷

¹³ Fisher, Bridget. "52% Of Older Workers Forced into Involuntary Retirement - The New School SCEPA." *Scepa*, The New School SCEPA, 14 Sept. 2020, www.economicpolicyresearch.org/jobs-report/september-2018-unemployment-report-for-workers-over-55.

¹⁴ New York City Comptroller Scott M. Stringer, *Aging With Dignity: A Blueprint for Serving NYC's Growing Senior Population*, New York City Comptroller Bureau of Policy and Research, March 2017, available at https://comptroller.nyc.gov/wp-content/uploads/documents/Aging_with_Dignity_A_Blueprint_for_Serving_NYC_Growing_Senior_Population.pdf.

¹⁵ *Age Smart Employer NYC "Resource Guide"*, The Robert N. Butler Columbia Aging Center & The New York Academy of Medicine, Feb. 2015, available at <https://www.mailman.columbia.edu/sites/default/files/pdf/agesmartemployerfactsheets.pdf>.

¹⁶ Julia Angin, Noam Scheiber, and Ariana Tobin, *Facebook Job Ads Raise Concerns About Age Discrimination*, The New York Times, Dec. 20, 2017, available at <https://www.nytimes.com/2017/12/20/business/facebook-job-ads.html>.

¹⁷ Id.

With the COVID-19 pandemic, age discrimination has only worsened for older Americans. Company layoffs have disproportionately targeted individuals in protected categories. As of September 2020, unemployment rates for people over the age of 55 have increased from 3.3 percent prior to the pandemic to 26.4 percent.¹⁸ An employee in New York filed suit challenging his termination, alleging he was among the first laid off as his employer made cuts during the pandemic and was selected because of his age.¹⁹

This, then, seems to be the current state of age discrimination in the workplace; although the population of older workers continues to grow rapidly, technology and stereotypical views toward the aging population make it potentially easier for employers to effectively discriminate against these same workers based on age—often leading to harmful consequences.

Consequences and Effects of Age Discrimination

Stereotypes and Bias

Despite anti-discrimination laws, older workers continue to face discrimination and harassment due to their age. Discrimination is experienced at all stages of employment—hiring, firing, training, and promotion—and is often perpetrated because of stereotypes about older workers.²⁰ Academic research shows that negative preconceptions about older workers persists, despite evidence that disproves them.²¹ These stereotypes include assumptions such as: older workers being less flexible, alert, and productive; or needing to take more sick leave days because

¹⁸ Jennifer Schramm, “September 2020 Employment Data Digest,” AARP Public Policy Institute, available at: <https://www.aarp.org/ppi/info-2020/employment-data-digest.html>

¹⁹ By Gregory P. Abrams, Esq., Taylor L. Haran, Esq., Samantha M. Rollins, Esq., and Katrina W. Forsyth, Esq., “Coronavirus lawsuits on the horizon: Termination and discrimination,” Westlaw, 2020 WL 4463392, available at: [https://1.next.westlaw.com/Document/I151671f1d6c311eabea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/I151671f1d6c311eabea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=(sc.Default))

²⁰ *NYC Commission on Human Rights “2017 Year End Review”*, NYC Commission on Human Rights, available at <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/2017YearEndReviewFINAL.pdf>, p. 3.

²¹ Victoria A. Lipnic, *The state of age discrimination and older workers in the U.S. 50 years after the Age Discrimination in Employment Act (ADEA)*, U.S. Equal Employment Opportunity Commission, June, 2018, available at <https://www.eeoc.gov/eeoc/history/adea50th/report.cfm>.

of health issues.²² This is despite the fact that some research “suggests that older workers are [actually] generally more productive, because of their higher levels of organization, commitment and loyalty.”²³ This incorrect bias against older workers is one of the causes of age discrimination. In a worldwide study conducted by Deloitte Consulting, for instance, 41 percent of the surveyed companies stated that they considered their aging workforce to be a competitive disadvantage.²⁴ These negative assumptions results in older workers being undervalued, and less likely to be offered career development or promotion opportunities.²⁵

Financial Security

The financial security offered through steady, fairly-paid work is often denied to older workers because of discrimination and bias. The long periods of unemployment or underemployment many of these workers face have severe consequences on their financial health. For example, a recent paper has shown that the bankruptcy rates for older Americans has increased between 200 and 300 percent (depending on the age bracket) since 1991.²⁶

The biases and stereotypes that operate to either fire or prevent older workers from finding the employment they need and desire also push these workers into early retirement. According to

²² Geoffrey Wood, Adrian Wilkinson and Mark Harcourt, *Age discrimination and working life: perspective and contestations – a review of the contemporary literature*, *International Journal of Management Reviews*, 2008, p. 7; see also Nathaniel Reade, *The surprising truth about older workers*, *AARP the Magazine*, Sept. 2015, available at <https://www.aarp.org/work/job-hunting/info-07-2013/older-workers-more-valuable.html>; and Neelie Verlinden, *Aging workforce challenges: trends. Statistics and impact*, *Digital HR Tech*, available at <https://www.digitalhrtech.com/aging-workforce-challenges/>.

²³ Geoffrey Wood, Adrian Wilkinson and Mark Harcourt, *Age discrimination and working life: perspective and contestations – a review of the contemporary literature*, *International Journal of Management Reviews*, 2008, p. 8.

²⁴ Mark Miller, *Companies need older workers: here's why*, *Reuters*, June 21, 2018, available at <https://www.reuters.com/article/us-world-work-olderworkers/companies-need-older-workers-here-is-why-idUSKBN1JH15F>.

²⁵ Geoffrey Wood, Adrian Wilkinson and Mark Harcourt, *Age discrimination and working life: perspective and contestations – a review of the contemporary literature*, *International Journal of Management Reviews*, 2008, p. 8.

²⁶ Deborah Thorne, Pamela Foohey, Robert M. Lawless and Katherine Porter, *Graying of U.S. bankruptcy: fallout from life in a risk society*, Aug. 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226574.

data from the Equal Employment Opportunity Commission (EEOC), 55 percent of all of the age discrimination-related charges in 2018 involved unfair dismissal.²⁷ When newly-retired workers turn to Social Security earlier than they had planned, either as a substitute for or supplement to employment income, they are financially penalized because the benefit is calculated according to the age when an individual starts accessing it. As one author articulates, “[w]orkers who retire at age 62 suffer a 25 percent cut in their monthly Social Security benefit for the rest of their lives compared to workers who retire at age 66, and a 32 percent decrease when compared to workers who retire at age 70.”²⁸

Health and Wellbeing

In addition to financial security, continued employment for older people provides a range of benefits for an individual’s health and wellbeing. Research has shown improvements in the ability to sustain levels of cognitive functioning over longer periods for people who are able to work past the age of 65.²⁹ Maintaining employment also helps tackle a sense of isolation and build a stronger sense of self-worth. For example, according to a U.S. Senate Special Committee on Aging report, “[o]lder workers are more likely than younger workers to report that their job provides personal fulfillment and a sense of being needed and valued, as well as opportunities to learn new skills and remain physically, cognitively, and socially active.”³⁰ Meanwhile, “[f]orced

²⁷ Victoria A. Lipnic *The state of age discrimination and older workers in the U.S. 50 years after the Age Discrimination in Employment Act (ADEA)*, U.S. Equal Employment Opportunity Commission, June, 2018, available at: <https://www.eeoc.gov/eeoc/history/adea50th/report.cfm>.

²⁸ Patricia G. Barnes, *An epidemic of age discrimination*, *Aging Today*, Jan. 21, 2015, available at <http://www.asaging.org/blog/epidemic-age-discrimination>.

²⁹ Special Committee on Aging, *America’s aging workforce: opportunities and challenges*, *United States Senate*, Dec., 2017, available at <https://www.aging.senate.gov/imo/media/doc/Aging%20Workforce%20Report%20FINAL.pdf>, p. 20.

³⁰ *Id.*

retirement correlates with significant declines in mental and physical health that can lead to shortened life spans.”³¹

While the benefits of working later in life extend beyond a person’s financial bottom-line, so do the negative consequences of age discrimination. The median age for retirement in the United States is 62 years old.³² Ideally, a worker that is retiring would want to have the means to support themselves financially after leaving the workforce. However, a 2019 study conducted by the Center for Retirement Research at Boston College found that less than half of Americans have enough savings to maintain their planned standard of living into retirement.³³ An earlier retirement than planned, or earlier than is needed in order to be financially stable after leaving the workforce, could therefore have disastrous consequences to the financial security of those aging out of the workforce.

Discrimination, in general, has many negative effects on mental and physical health and wellbeing, and the age discrimination experienced by older workers shows similar negative consequences.³⁴ Research shows that this is especially true for older women in the workforce, as they often face gendered age discrimination.³⁵ Such research has found that women who have

³¹ Victoria A. Lipnic, *The state of age discrimination and older workers in the U.S. 50 years after the Age Discrimination in Employment Act (ADEA)*, U.S. Equal Employment Opportunity Commission, June, 2018, available at <https://www.eeoc.gov/eeoc/history/adea50th/report.cfm>.

³² “2019 Retirement Confidence Survey Report.” *Employee Benefit Research Institute*, 23 Apr. 2019, available at www.ebri.org/docs/default-source/rcs/2019-rcs/2019-rcs-short-report.pdf.

³³ Munnell, Alicia H., et al. “How Would More Saving Affect the National Retirement Risk Index?” *Center for Retirement Research at Boston College*, Boston College, Oct. 2019, crr.bc.edu/wp-content/uploads/2019/10/IB_19-16.pdf.

³⁴ Tetyana P. Shippee, Lindsay R. Wilkinson, Markus H. Schafer, and Nathan D. Shippee, *Long-term effects of age discrimination on mental health: the role of perceived financial strain*, *Journals of Gerontology*, March 14, 2017, available at <https://academic.oup.com/psychsocgerontology/advance-article/doi/10.1093/geronb/gbx017/3069149>, p. 1.

³⁵ *Id.* at 2.

experienced age discrimination experienced an increase in depressive symptoms and that the perceived financial strain of this discrimination has often perpetuated these symptoms.³⁶

Age Discrimination Complaints at the New York City Commission on Human Rights

An individual who believes that they have been discriminated against in their employment because of age can file a complaint with CCHR. Members of the public may file a complaint with the Commission's Law Enforcement Bureau (LEB) or a lawyer may file a complaint with the LEB on a client's behalf.³⁷ After a complaint is filed, the Commission's LEB investigates the allegations to determine whether probable cause exists to credit the allegations of unlawful discrimination.³⁸

If LEB makes a finding of probable cause, LEB may litigate the case at the Office of Administrative Trials and Hearings.³⁹ At various stages of the process, the Commission also offers alternative resolutions such as mediation or conciliation.⁴⁰ Further, the Commission may pursue various remedies in the resolution of a complaint, including ordering an employer to cease and desist from engaging in unlawful conduct, reinstating an employee, providing an accommodation, requiring respondents to take actions such as trainings, and ordering pay for lost wages, emotional distress damages, and civil penalties.⁴¹

³⁶ Tetyana P. Shippee, Lindsay R. Wilkinson, Markus H. Schafer, and Nathan D. Shippee, *Long-term effects of age discrimination on mental health: the role of perceived financial strain*, *Journals of Gerontology*, March 14, 2017, available at <https://academic.oup.com/psychsocgerontology/advance-article/doi/10.1093/geronb/gbx017/3069149>.

³⁷ *Assistance for the Complainant*, NYC Commission on Human Rights, available at <https://www1.nyc.gov/site/cchr/enforcement/assistance-for-the-complainant.page>.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

III. BILL ANALYSIS

Int. No. 1684-A

Section 1 of this bill would require CCHR to create an anti-discrimination rights and responsibilities poster that addresses the forms of discrimination prohibited by the City's Human Rights Law, including age discrimination, and which explains how to contact the Commission. The bill would require city agencies to conspicuously display this poster in employee breakrooms and other common areas for employees. The Commission would also be required to include informational resources on age discrimination, all of which must be made available on the Commission's website, as part of its regular outreach and education efforts.

The bill provides that the local law would take effect 120 days after it becomes law.

Int. No. 1685-A

This bill would require all City agencies to provide age discrimination training to their employees every two years. The training would be developed by the Department of Citywide Administrative Services and the Commission on Human Rights.

The bill provides that the local law would take effect 120 days after it becomes law.

Proposed Int. No. 1684-A

By Council Members Ayala, Chin, Louis, Kallos, Eugene, Diaz, Vallone, Rose and Adams

A Local Law to amend the administrative code of the city of New York, in relation to requiring the commission on human rights to create an anti-discrimination poster that includes age discrimination, and requiring city agencies to display the poster

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 8 of the administrative code of the city of New York is amended by adding a new section 8-134 to read as follows:

§ 8-134 Anti-discrimination poster. a. The commission shall create an anti-discrimination rights and responsibilities poster that addresses the forms of discrimination prohibited by the city human rights law, including age discrimination, and which explains how to contact the commission. The commission shall also include as part of its regular outreach and education efforts informational resources on age discrimination. Such poster and educational resources shall be made available on the commission's website.

b. Every agency shall conspicuously display the poster created by the commission pursuant to this section in employee breakrooms or other common areas where employees gather.

§ 2. This local law takes effect 120 days after it becomes law.

Proposed Int. No. 1685-A

By Council Members Ayala, Chin, Louis, Kallos, Eugene, Diaz, Vallone, Rose and Adams

A Local Law to amend the New York city charter, in relation to providing age discrimination training to city agencies.

Be it enacted by the Council as follows:

Section 1. Chapter 35 of the New York city charter is amended by adding a new section 815.2 to read as follows:

§ 815.2. Age discrimination training. a. The department, in consultation with the commission on human rights, shall create training, including materials, to identify, prevent and eliminate age discrimination in the workplace.

b. The head of each agency, in consultation with the department, shall ensure that each employee of such agency receives age discrimination training biennially. Such training may be provided in combination with other training on equal employment provided to the agency's employees.

§ 2. This local law takes effect 120 days after it becomes law.