NYC Commission on Human Rights

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22 Reade Street
New York, NY 10007

**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**
**December 12, 2024**

## Introduction

Good afternoon Chair 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 Katherine Carroll, Deputy Commissioner of the Law Enforcement Bureau and Hillary Scrivani, Senior Policy Counsel. Thank you for convening today's hearing on employment discrimination. We are excited to speak about the New York City Human Rights Law and specifically the agency's work combatting discrimination in employment. I will briefly talk about the New York City Human Rights Law, and then speak about the five bills that are on today's agenda: Intros. 808-A, 1064, 871, 982, and 984. Three bills relate to the Human Rights Law; two on pay transparency, which is already part of the New York City Human Rights Law, and one that expands upon the Human Rights Law's caregiver protections. The other two bills focus on collection and analysis of private employer pay and retention data, and involve multiple agencies.

The Commission has been enforcing New York City's anti-discrimination protections and raising awareness of these protections for decades.[1] This Administration has also invested significantly in pathways to advance equity for New Yorkers through an array of new initiatives.

## Agency Mandate and Structure

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. Community Relations reached 142,398 people in FY 24, raising awareness of New Yorkers rights and obligations under the Human Rights Law.
The Law Enforcement Bureau conducts testing, launches investigations, initiates complaints, enters into settlements, and takes cases to trial to address individual and structural discrimination.

In FY 24, the Law Enforcement Bureau fielded over 13,000 inquiries from members of the public. The highest number of inquiries and claims are in the area of employment.

## The Human Rights Law

The New York City Human Rights Law today is one of the most robust civil rights laws in the country. The Law prohibits discrimination in three main areas- employment, housing, and places of public accommodation. The Law includes more than twenty-seven protected categories,

[1] https://www.nyc.gov/site/cchr/about/commissions-history.page; https://www.nyc.gov/assets/cchr/downloads/pdf/Unlocking-The-Power-and-Possibility-of-Local-Enforcement-of-Human-and-Civil-Rights.pdf.

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including age, gender, sexual orientation, gender identity, religion, disability, race, and national origin. Today our teams are also preparing to roll out the fair chance housing act - one of the newest changes to the law, which builds on employment provisions to prohibit discrimination based on criminal legal system involvement in housing.

**Employment Protections**

The Human Rights Law codifies that employees in New York City have the right to a workplace free from discrimination and harassment in the protected categories I have mentioned, and more. The Law applies to employers with 4 or more employees or one or more domestic workers, as well as independent contractors, and interns.

Notable for today's hearing, it has been illegal to discriminate on the basis of caregiver status in employment since 2016. Workers have frequently faced a "caregiver penalty" that can include losing pay, losing hours, or losing a job because of responsibilities as a caregiver for children, for adult family members, or for both.[2] Negative consequences are amplified for women-identifying caregivers, particularly women of color, as well as low wage workers.[3] The prospect of reasonable accommodations for caregivers has been explored by the Commission for several years. In a 2019 townhall on pregnancy and caregiver discrimination hosted by the Commission and partners, stakeholders called for such an amendment,[4] and reasonable accommodations for caregivers have been included as legislative priorities for the agency in recent years.

Importantly, in order to foster inclusive workplaces, the Human Rights Law 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 separate provisions of the Human Rights Law. In any workplace covered by the Human Rights Law, a request for a reasonable accommodation triggers the obligation of an employer to engage in an individualized cooperative dialogue to assess employee needs and limitations and to identify if there are accommodations available to allow the employee to do their job. If an employer can demonstrate an undue hardship, an accommodation does not need to be granted.

Since the start of FY 22, seven amendments to the Human Rights Law's employment provisions have either taken effect or been signed into law. These include expansion of fair chance employment protections; the addition of the new protected categories of height and weight; the codification of rights of domestic workers; as well as two amendments to the Law regarding pay transparency, and most recently, changes to lactation policy requirements.

The Human Rights Law aims to protect against root causes of discrimination that impact both employees in the workplace and job applicants. Hiring practices that may seem neutral on their face can perpetuate inequity, and lead to the exclusion of qualified candidates. The City's Human Rights Law strives to ensure that businesses focus on the skillset of an applicant, which in turn

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[2] https://www.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Report.pdf; https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf.
[3] https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf.
[4] https://www.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Report.pdf.

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cultivates dynamic and inclusive workplaces. Specifically relevant to the bills being heard today, the New York City Human Rights Law has required employers to include a good faith pay range in all job advertisements in New York City since November 2022. This amendment built on the Law's protections against hiring practices that have disproportionately impacted the wages and opportunities afforded to women and people of color, such as the salary history and credit history bans.

The Commission is committed to ensuring that the Human Rights Law enables equitable access to job opportunities and that New Yorkers can enjoy workplaces that are free from discrimination. I will turn now to the proposed bills.

**Proposed Legislation**

For 808-A and 1064, the Administration supports enhancing transparency in pay for prospective and current employees. More transparency can address the information gap between employers and employees and level the playing field on the job market, ensuring that all employees have a fair opportunity for promotion and professional growth. A lack of transparency has long perpetuated differential pay and career trajectories across gender, race, and age.

Intro. 808-A would amend the Human Rights Law's existing pay transparency requirement in several ways. Currently, employers with 4 or more employees must include a good faith pay range in job advertisements. Intro 808-A adds a requirement that employers include a description of the job and non-wage compensation, such as benefits, bonuses, and equity. Intro. 808-A also codifies the factors that employers must take into account factors when determining the pay range, such as qualifications, and the amounts paid by those currently holding equivalent positions. Where employers deviate from the range in the final pay for a position, 808-A requires employers to keep written records of the reasons for doing so. Finally, 808-A includes disclosure provisions: (1) employers that choose not to advertise a job must disclose the pay range and non-pay compensation to prospective candidates at any point in the hiring process; and (2) employers must disclose the current range of pay and non-monetary compensation to employees for their current job or substantially similar jobs upon request, at least once a year. The Administration supports the intent of 808-A and is keen to enhance job seeker information and to balance that objective with the reality of how job postings are created and disseminated. We look forward to further discussions with the Council on approaches to increase pay transparency, and to learning more from stakeholders.

Intro. 1064 is also an amendment to the NYC Human Rights Law. This bill would require employers of 100 or more employees to "make reasonable efforts" and inform all employees of new job opportunities at the same time, and prior to selecting a candidate for a job. Additionally, Intro. 1064 would require such employers to make efforts to inform co-workers of new hires with the name of the individual selected, their job title, and for internal hires, their prior job title. The Administration supports efforts to ensure new job opportunities are known to all qualified candidates, but has some concerns about potential harmful impacts of sharing individual information and creating disincentives for non-traditional hires. We look forward to further discussions about meeting the objectives of Intro 1064.

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Intro. 871 would amend the Human Rights Law to require covered entities to provide a reasonable accommodation on the basis of caregiver status. Currently the Law recognizes that in order to fulfill the essential functions of their job, employees are entitled to reasonable accommodations on four bases that were already mentioned.

At present, caregivers are a protected category under the New York City Human Rights Law, but there is no affirmative obligation for employers to provide reasonable accommodations on the basis of caregiving status. The Administration strongly supports the aim of ensuring that New Yorkers are not forced to choose between caring for children or adult family members and working by adding reasonable accommodations to the Human Rights Law, and is committed to addressing the well documented "caregiver" penalty that impacts many careers. Legislation that promotes the ability of caregivers to meet their job requirements without unjust consequences has the potential for significant positive outcomes.

While the Administration supports the intent of 871, there are several elements that warrant further exploration to make an accommodation protection for caregivers workable in the Human Rights Law framework. As currently drafted, the bill would require reasonable accommodations based on caregiver status in employment, housing, and places of public accommodations. Since this is an employment hearing, we are focused on the employment considerations.

As a preliminary matter, the unique considerations regarding persons with disabilities and people that are caregivers warrant creating a standalone section for caregivers, as for the other four areas of reasonable accommodations. This signals that there may be different considerations for employees and employers regarding the basis for an accommodation request. It should be clear for caregivers what their rights are and what the process for an accommodation request would be, and the provisions should be drafted to maximize clarity in an emerging area of legal protections. We look forward to speaking further with Council about this legislation.

Intro. 982 would require employers with over 25 employees to submit to the Department of Consumer and Worker Protection (DCWP) employee information related to pay, location, job title, and identifying information such as gender, race, and birth year. Additionally, these employers would be mandated to submit to DCWP a digital self-certification regarding understanding of, and compliance with, federal, state and local equal pay laws as applicable. Intro. 982 calls on this agency and the Commission on Gender Equity to work with DCWP to develop the affirmations and ways to collect them.

Intro. 984 would require the Office of Data Analytics (ODA), in consultation with DCWP and the Commission to annually collect data and conduct a study of employers with at least 150 employees, with the aim of identifying disparities on the basis of protected categories regarding pay and benefits; employment rates; and retention. In addition to collecting this data, Intro. 984 requires annual analysis of the data, including a description of every statistical methodology used; and recommendations for creating and implementing pay, employment, and retention equity action plans to address the disparities that are surfaced. The bill would require that recommendations be publicized to employers. While the Administration supports the intent of advancing pay equity and employee retention across New York City, these bills raise legal, policy, and operational concerns.

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**Conclusion**

In closing, the Commission aims to address discriminatory policies and practices that harm employees in the workplace and job applicants. We appreciate the Council's time and attention and welcome your questions.

a better balance
Offices in New York, Tennessee, Colorado, and Washington D.C.
abetterbalance.org | info@abetterbalance.org

**Committee on Civil and Human Rights**

**New York City Council**

Public Hearing on Int. 0871-2024: Extending reasonable workplace accommodations to caregivers

Written Testimony of A Better Balance: The Work & Family Legal Center

Submitted on December 13, 2024 by Chelsea Thompson, Staff Attorney and Elizabeth Gedmark, Vice President

## Introduction

A Better Balance is a national legal advocacy organization headquartered in New York City. A Better Balance is the leading legal nonprofit dedicated to work-family justice, and we use the power of the law to ensure all workers can care for themselves and their loved ones, without sacrificing their economic security. Through legislative advocacy at the local, state, and national level, we have advanced supportive work-family policies like reasonable accommodations for pregnancy, paid sick time, and paid family and medical leave. We also directly represent workers who contact us through our free helpline with questions about their legal rights.

We are writing to offer comments on Int. 0871, a measure to expand the existing right to reasonable accommodations for disability to workers with caregiving responsibilities.

We thank Councilmember Hanks for sponsoring this bill and the Committee on Civil and Human Rights, in particular Chair Dr. Nantasha Williams, for holding the hearing on this important topic.

## I. Currently the Human Rights Law provides anti-discrimination protections for caregivers, but not an affirmative right to accommodations

In 2015, we testified before this Council about the devastating impact that discrimination based on caregiver status can have on working families, especially on women and in particular women of color. [1] Women still overwhelmingly shoulder the burden of caregiving for minor children, spending twice as much time as men on childcare and household work,[2] even as mothers make up an increasing percentage of the workforce. Women are the primary breadwinners for 40% of households with children under the age of 18, and 70% of working mothers will be the primary earner at some point during the first eighteen years of motherhood.[3] The burden of both working

[1] A Better Balance, Testimony Before the New York City Council Civil Rights Committee (Sept. 21, 2015), https://www.abetterbalance.org/wp-content/uploads/2016/11/Caregiver_Testimony_9-20-15.pdf.
[2] GENDER EQUALITY POLICY INSTITUTE, THE FREE-TIME GENDER GAP 2 (2024), https://thegepi.org/GEPI-Free-Time-Gender-Gap-Report.pdf.
[3] NAT'L PARTNERSHIP FOR WOMEN AND FAMILIES, AMERICA'S WOMEN AND THE WAGE GAP 3 (2024), http://www.nationalpartnership.org/ourwork/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf.

and being the primary care provider falls even harder on women of color. Four out of five Black mothers are breadwinners for their family, and two out of three Native American mothers are breadwinners for their families.[4]

In our 2015 testimony, we shared the story of Yvette, a single mother of three who lost her job at a grocery store where she had worked for eleven years after her boss changed her shifts. Yvette's boss now required her to work on Saturdays, even though she had no childcare during the weekends and the cost of securing it would have wiped out her wages for the day. When Yvette explained the situation to her boss and tried to work out alternative shift times, her boss refused even though he had granted schedule flexibility to other employees who didn't have caregiving responsibilities. Yvette would be out of work for another 8 months.

Inspired by stories like Yvette's, in 2015 the New York City Council passed one of the first caregiver anti-discrimination laws in the nation, leading the way in making sure that caregivers receive the same benefits of employment as their coworkers. However, as important as this law was, it still fell short of providing the kind of help that caregivers desperately need. Under the current anti-discrimination standard, caregivers only have a right to accommodations for caregiving needs if their boss would make the same accommodations for other similarly-situated employees. Not only is this a difficult legal standard to meet, as no two employees are identical, it does not require employers to take affirmative steps to help their employees balance work and family responsibilities.

These kinds of accommodations are often well within an employer's power to give. Adjusting an employee's start time to accommodate childcare drop-off, allowing employees to work remotely while they look for long-term care for an elder, reassigning an employee to a different location so they can be closer to the place where an adult they are responsible for attends daycare—for employers, these kinds of changes would require minimal adjustments to their way of doing business. For workers, they would mean everything.

## II. Post-pandemic, New Yorkers face a growing crisis of care and need accommodations to balance work and family demands

Providing caregivers the changes they need in their workplace has never been more imperative. In 2021, A Better Balance released a report in partnership with the NYC Comptroller's Office that provided insight into the daily struggles New Yorkers were facing balancing caregiving and making an income during the COVID-19 pandemic, as daycares and schools closed across the country.[5] In our survey of over 1,200 New Yorkers, we found that more than half of working women caring for children had to cut back on their hours during the pandemic, compared to one in three men.[6] Women were also twice as likely to need to take leave from work due to child care

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[4] MASON E. SHAW ET AL., INST. FOR WOMEN'S POL'Y RES, HOLDING UP HALF THE SKY: MOTHERS AS WORKERS, PRIMARY CAREGIVERS, & BREADWINNERS DURING COVID-19. 3 (May 2020), https://iwpr.org/wp-content/uploads/2020/07/Holding-Up-Half-the-Sky-Mothers-as-Breadwinners.pdf.

[5] A BETTER BALANCE, OUR CRISIS OF CARE: SUPPORTING WOMEN AND CAREGIVERS DURING THE PANDEMIC AND BEYOND (March 2021), https://www.abetterbalance.org/wp-content/uploads/2021/03/Crisis_of_Care_Report_031521.pdf.

[6] *Id.* at 6.

responsibilities.[7] Women of color in particular were struggling to balance work and family responsibilities, reporting lower access to workplace flexibility during the pandemic.[8] People of color also experienced retaliation for requesting workplace flexibility at nearly twice the rate of white respondents,[9] and people with income below $50k also experienced higher rates of retaliation.[10]

Our report reflected a national trend that the childcare crisis created by the COVID-19 pandemic was driving parents out of the workforce, and impacting women disproportionately.[11] However, working parents were not the only ones who suffered during the pandemic. A growing proportion of workers also have caregiving responsibilities for adult family members, such as parents, grandparents, and other adult loved ones.[12] Our survey found that one in four respondents who provided care to a parent or other adult had to reduce or change their work hours, or even quit, during the pandemic.[13] Low-wage respondents in particular were impacted by the increasing care needs created by the pandemic, and one in three respondents with income below $50,000 reported having to cut back on work.[14]

Parents and in particular mothers were slow to regain the jobs lost during the pandemic, and only recently did employment levels among mothers surpass pre-pandemic employment.[15] However, skyrocketing childcare costs have made the impossible choices many caregivers faced during the pandemic the new normal. Compared to before the pandemic, 22% more workers report working part-time or missing work due to childcare problems.[16] The demands of caring for an aging population are also anticipated to have an impact on workforce participation and stability of employment for caregivers, which again, are more likely to be women.[17] More and more Americans are providing unpaid care for an adult, and this number will only increase in years to come.

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[7] *Id.*
[8] *Id.*
[9] *Id.* at 20.
[10] *Id.* at 17-18.
[11] Liana Christian Landivar & Mark deWolf, U.S. Department of Labor, *Mothers' Employment Two Years Later: An Assessment of Employment Loss and Recovery During the COVID-19 Pandemic* (May 2022), https://www.dol.gov/sites/dolgov/files/WB/media/Mothers-employment-2%20-years-later-may2022.pdf.
[12] According to a 2022 report, 1 in 5 U.S. workers now provide assistance for a parent or other adult family member, providing on average 20 hours of caregiving services per week on top of their full-time jobs. DEBRA LERNER, ROSALYNN CARTER INSTITUTE FOR CAREGIVERS, INVISIBLE OVERTIME: WHAT EMPLOYERS NEED TO KNOW ABOUT CAREGIVERS 4 (Jan. 2022), https://rosalynncarter.org/wp-content/uploads/2022/03/Invisible-Overtime-White-Paper.pdf.
[13] A BETTER BALANCE, OUR CRISIS OF CARE, *supra* note 5 at 13.
[14] *Id.*
[15] Erin George, U.S. Department of Labor Blog, *Mothers' employment has surpassed pre-pandemic levels, but the child care crisis persists* (May 6, 2024), https://blog.dol.gov/2024/05/06/mothers-employment-has-surpassed-pre-pandemic-levels-but-the-child-care-crisis-persists.
[16] KPMG, *The parental work disruption index: A new measure of the childcare crisis* (Sept. 30, 2024), https://kpmg.com/us/en/articles/2024/september-2024-the-parental-work-disruption-index.html.
[17] AARP & NATIONAL ALLIANCE FOR CAREGIVING, CAREGIVING IN THE US 11 (May 2020), https://www.aarp.org/content/dam/aarp/ppi/2020/05/full-report-caregiving-in-the-united-states.doi.10.26419-2Fppi.00103.001.pdf.

Our economy's reliance on family caregivers is only growing, and yet employers aren't adapting to this change. Employers have the power to enable their employees to provide care to their families and to work. Even a little flexibility goes a long way, but without a caregiver accommodations law, supporting employees with caregiving responsibilities is entirely up to an employer's discretion. As the calls to our helpline show, not enough employers are rising to the occasion.

Take for example Nikia, who called our helpline asking about her rights as a caregiver. Nikia works full-time for a New York City-based nonprofit. Like many parents, she struggled to find daycare for her newborn that was compatible with her work schedule, but eventually found one that was open late enough that she could make it there after work with minimal adjustments to her schedule. However, Nikia's employer refused to let her leave work just thirty minutes before the end of the workday in order to make it to her daycare in time. Instead of supporting an employee of three years, her employer questioned why she wasn't getting more help from family.

"I feel like I can't be a full-time employee and a mom," Nikia told us. "I'm not naïve, I know I have a job to do. I'm okay with taking a reduction in pay if that is what it takes to get to my baby on time." Nikia pointed out that her employer's expectation that family can help is outdated, as retirement becomes harder for many workers. "You can't expect grandparents to be able to provide care, my parents still have to work."

## III. Passing a right to accommodations for all caregivers is critical to keep caregivers in their jobs

On our helpline, we frequently hear from workers facing similar struggles, trying to balance the demands of caregiving and their need to make an income. Nikia's story shows that the changing landscape of care requires employers to adapt, or risk losing skilled employees. Int. 0871 has the potential to help caregivers balance work and family responsibilities, improving the job stability and economic power of women and in particular women of color, who disproportionately suffer when caregiving and employment prove incompatible. A right to accommodations could keep caregivers in the workforce, providing valuable labor and skills, and drive workplaces to make the changes necessary to respond to the ongoing crisis of care.

A Better Balance wholeheartedly supports the passage of a caregiver accommodations law, but we have several reservations, which we look forward to discussing further, about the particular approach of Int. 0871.

In the New York City Human Rights Law (HRL), "caregiver" is defined broadly to include not only parents of minor children (with or without disabilities), but also caregivers for adults with disabilities who share a familial relationship with their caregiver, or who reside with the caregiver and rely on them for care.[18] This definition importantly includes the diverse forms of kinship through which New Yorkers build their families, including chosen family and extended family.[19]

[18] N.Y.C. Admin. Code § 8-102.
[19] N.Y.C. Admin. Code § 8-107(17).

A Better Balance is fully behind providing an affirmative right to accommodations for all caregivers as defined in the HRL, which is also the clear intent Int. 0871 states in the preamble. However, we have concerns about whether the current approach and wording of the bill itself unambiguously accomplishes that end. In addition, Int. 0871 doesn't address the specific accommodation needs of caregivers (which can differ from the needs of people with disabilities) or processes for obtaining these accommodations. This merits further discussion with stakeholders and regulatory bodies such as the NYC Commission on Human Rights to develop a comprehensive and tailored approach for caregivers.

**Conclusion**

In conclusion, A Better Balance supports the creation of a legal right to accommodations for working caregivers, as defined in the HRL. Such a law would help the many employees we speak to who find themselves in an impossible position, torn between their work and care responsibilities. It would further gender and racial equity, increase the economic stability of workers with families, and bring about necessary change in New York City workplaces. We look forward to working with Councilmember Hanks and other members of the City Council on developing a law that rises to the moment and addresses the urgent needs that caregivers face in the workplace. Thank you for your time, and thank you again to Councilmember Hanks and to the Committee for your work on furthering this important area of the law.

ACEC New York

American Council of Engineering Companies of New York

**Testimony of the American Council of Engineering Companies of New York**

**Concerns about Introductions 982, 1064, and 808**

**December 2024**

**About ACEC New York:** The American Council of Engineering Companies of New York (ACEC New York) is an association representing nearly 300 engineering and affiliate firms with 30,000 employees in New York. Our members design the mechanical, electrical, energy performance, structural, plumbing, civil, environmental, fire protection and technology systems of buildings and infrastructure for public and private owners across New York. Our members have a concentrated presence in New York City.

ACEC New York has a history of providing feedback to the city from the perspective of the *licensed professional engineering businesses* who design city buildings and infrastructure, for policymakers to consider as laws are implemented.

**ACEC New York is opposed to these bills as presently drafted. In summary, the bills create unreasonable administrative burdens on businesses in New York City without creating commensurate benefit to employee pay transparency, and without necessarily increasing pay transparency at all. As with existing laws that require businesses to submit data to city agencies, agencies themselves indicate inadequate resources to make meaningful use of the data that is collected.**

**Intro. 808** expands existing requirements to include "*non-wage compensation"* in job listings (such as bonuses, benefits, stocks, bonds, options and equity or ownership, if any).

a. **Non-wage compensation is often case-specific and unknown at the time of job listing.** For example:
    1 Non-wage benefits, in many instances, are performance-based and are not defined at the time of hire.
    2 A member firm may have an applicant who will require relocation assistance. This would be specific to individuals and not applicable across all candidates. This is considered a recruiting cost, and to offer that (via job listing) to employees with the same title irrespective of whether the individual candidate must relocate is unreasonable.
    3 In this job market and for some hard to fill positions, a sign-on bonus may be warranted. This is considered a recruiting cost, and is generally specific to the compensation a potential employee is forfeiting at their prior position. This cannot be addressed in a posting.

**We have overarching privacy concerns on behalf of the 300 member firms and 30,000 employees our association represents regarding Intro 982 and Intro 1064.**

**Int 0982-2024**: requires employers to report to the Department of Consumer and Worker Protection information relating to *each* employee: salary and wages for the previous calendar year; the month and year the employee was hired; job title; gender; race and ethnicity; birth year; the borough in which the

employee works; whether the employee is a member of a labor union; whether the employee works more than 35 hours per week, less than 35 hours per week, or on a seasonal or temporary basis; and whether the employee is a manager, and to do so annually.

a. **Administrative Burden on Employers:** annual reporting, combined with the detailed nature of the required information, will impose significant burdens on employers, especially for smaller businesses covered by the bill, which may not have or have limited Human Resource Information Systems (HRIS). Additionally, many employers are already required to submit an annual EEO-1 Report and this bill creates an additional reporting obligation; HR employees will therefore spend more time reporting vs. their HR-related job functions.
b. **Data Accuracy and Potential Misinterpretation:** Ensuring the accuracy of demographic data, such as race and ethnicity, can be challenging, especially if employees do not self-identify. Additionally, aggregated data may not account for regional variations in pay due to Cost of Living differences between "upstate" or out-of-city workers traveling to NYC, which is common in our industry, to work occasionally and workers who are employed Full Time in NYC.
c. **Potential for Legal Exposure**: Employers may face risk of legal claims if data is misinterpreted, or discrepancies are identified without context.
d. **Timeline Feasibility:** With the first report due February 1, 2025, employers will struggle to prepare and collect data in time, especially considering all of the end of year processes such as annual increases/evaluations, W-9 prep, etc.
e. **Privacy and Proprietary Business Information:** The bill as drafted provides no prohibition on the release of the highly sensitive information required to be provided. While the agency may choose to apply FOIL exemptions, that is not the same as a requirement that they do so and even FOIL exemptions are subject to interpretation and litigation. The information required to be provided is extremely intrusive and sensitive for the employees as well as the employers and subjects them to the risks of fraud and other scams as well as invasion of privacy. For the companies, it is disclosure of very sensitive information which can compromise their ability to recruit and retain staff but also their ability to effectively propose on City design contracts. At a minimum, the bill should include strict prohibition of disclosure, with criminal penalties, comparable to those in the Internal Revenue Code.

**Int 1064-2024** requires employers to make efforts to notify current employees of job opportunities prior to selecting a candidate for the role.

a. **Operational Feasibility:** Requiring employers who have chosen not to post publicly on their websites to notify all employees of job opportunities, especially in large organizations, can be logistically challenging and resource-intensive.
b. **Unintended Workplace Dynamics:** Announcing information about the selected candidate may lead to perceived privacy violations by employees. It may also lead to resentment between units, or within a single unit, or a sense of favoritism, harming workplace morale and cohesion. Additionally, the selected candidate may feel targeted or singled out, including possibly against their wishes, by having their name announced Company-wide or Unit-wide, especially if they did not consent to disclosure. Separately, a company may intentionally choose to fill a position only from the outside, for example because it wants technical, recent overseas or government experience, or simply to bring fresh approaches to the organization. The decision to do so could create disharmony in the workplace among current employees not eligible to apply

c. **Timing and Impact on Hiring Processes:** Mandating pre-selection notifications could delay hiring, particularly for roles requiring urgent filling, such as project-based positions. It may also deter external candidates from applying if the perception is that internal candidates receive preference regardless of merit, qualification, skills or experience.
d. **Disclosing former job title doesn't convey meaningful information:** There are soft skills (leadership experience, former team size, past project size, specific job needs) that are not captured by "former job title" which the bill requires to be disclosed to fellow employees of new hires. Different businesses assign job titles in different ways, liberally, sparingly, and so forth. Requiring employers to report the former job title of newly selected employees to their fellow employees does not convey meaningful information in most cases.

These bills lack specific details and clear implementation guidelines, leaving much open to interpretation and exposing employers to liability and potential penalties. If passed at all, the agency should be required to adopt Rules prior to the law being effective.

Contact for any questions: bill@acecny.org

CENTER FOR INDEPENDENCE OF THE DISABLED, NY

MANHATTAN | 1010 Avenue of the Americas, Suite 301, New York, NY 10018
tel: 212.674.2300 fax: 212.254.5953 vp: 646.350.2681

QUEENS | 80-02 Kew Gardens Road, Suite 400, Kew Gardens, NY 11415
tel: 646.442.1520 fax: 357.561.4883

www.cidny.org

**Addressing Equity and Discrimination in the Workplace**

December 13, 2024

To the Committee on Civil and Human Rights:

My name is Molly Senack, and I am testifying today on behalf of the Center for Independence of the Disabled, New York (CIDNY) as their Education and Employment Community Organizer. This testimony is supported by Sharon McLennon Wier, Ph.D., MSEd., CRC, LMHC, Executive Director of CIDNY.

In the last two years, significant efforts have been made in NYC to increase the hiring and workplace retention rates of people with disabilities. Local Law 12, enacted in January 2023, requires all NYC agencies to develop (and eventually implement) a five-year plan to ensure that each agency's workplace, programs, and services are accessible to people with disabilities. Additionally, in the summer of 2023, Mayor Adams announced an initiative to support career advancement for people with disabilities. It includes the creation of a Center for Workplace Accessibility and Inclusion and the expansion of the existing NYC: ATWORK, both of which aim to remove barriers to people with disabilities seeking employment. This initiative is happening in conjunction with an expansion of NYC's 55-a program, which allows qualified people with disabilities to be hired for municipal civil service positions without having to take qualifying exams.

The Council is now considering legislation that will contribute to these efforts to improve and expand employment opportunities for people with disabilities, including those working for private employers:

- **Int 808** would require job listings to include information on promotion and transfer opportunities, as well as on salary range and benefits (including health insurance, paid time off, and paid disability insurance), allowing more employees to begin developing career plans earlier in the job seeking process.
- **Int 871** would extend reasonable workplace accommodations to caregivers.
- **Int 982** would improve wage transparency by requiring employers to report certain employee demographic information to the Department of Consumer and Worker Protection (DCWP).
- **Int 984** would require the DCWP, the Office of Data Analytics (MODA), and the NYC Commission on Human Rights (CCHR) to conduct an annual study of pay and employment disparities among employees, which would include recommendations on how to address and correct those disparities.

- **Int 1064** would require employers to notify their employees about promotional opportunities.

Requiring employers to provide this kind of employment transparency will ensure employees are aware of all available opportunities, and requiring employers to report on the results of their efforts will ensure those employers are held accountable for addressing any systemic disparities. While this has the potential to benefit all NYC employees, it is critical for people with disabilities.

In 2022, only 34.8% of disabled people between the ages of 16-64 were employed in the United States. According to the Bureau of Labor Statistics, people with disabilities are less likely to work in traditionally higher paid managerial or professional positions than people without disabilities- 37.4% compared to 43.9% respectively. Employees with a disability are almost twice as likely to only work part-time as people without a disability (30% vs 16%), and according to the American Community Survey, people with disabilities in NYS are also almost twice as likely as people without disabilities to live below the poverty line (30% vs 17%).

While the reasons behind these statistics are both numerous and nuanced, there is no doubt that bias is a significant contributing factor. Many of the practices involved in applying, hiring, and training for jobs and subsequent promotions are implicitly discriminatory, and as a result, people with disabilities can experience disproportionate difficulty obtaining and retaining well-paying jobs.

We thank the Council for your time and effort, and support the passage of these pieces of legislation. However, we do also ask that disability status be specifically included as a part of the comprehensive data publication required under **Int 982**. Doing so would not only help shed light on the success of the employment expansion measures put forth by the City, but also on the impact that the intersection of race, gender, and disability has on wage parity, job retention and advancement, and overall representation. Without the inclusion of disability status, the picture provided of the city workforce will be incomplete, and any efforts to improve and expand employment opportunities for people with disabilities will be hindered by the omission.

Sincerely,

Molly Senack (She/Her)
Education and Employment Community Organizer
Center for Independence of the Disabled, New York
Email: msenack@cidny.org  Phone: (917)-415-3154

**Testimony from the Contractors Association of Greater New York**

**NYC Council Committee on Civil and Human Rights**

**December 12, 2024**

Thank you, Chair Williams and members of the Committee on Civil and Human Rights, for the opportunity to submit testimony today.

I am the Managing Director of the Contractors' Association of Greater New York, Inc., also known as CAGNY. CAGNY is a multi-employer association of some of the leading construction managers and general contractors operating in the metropolitan New York area, including Turner Construction, Cauldwell Wingate Company, LLC, Hunter Roberts Construction Group, Pavarini McGovern, and Plaza Construction. CAGNY members are among the most talented, top-quality construction firms in the world, prioritizing safety, innovation, and efficiency. Due to the nature of our industry, our members are also party to collective bargaining agreements.

Our members support diverse and inclusive workplaces, and we applaud the Council for holding this important hearing on discrimination in the workplace. However, we have significant concerns about the bills being considered by the Committee today, particularly Int. 808 (Brooks-Powers), Int. 982 (Caban), and Int. 1064 (Williams). The sweeping mandates proposed by these bills will cause administrative and practical problems for both corporate and union hires throughout our industry, which has a complex employment landscape. Additionally, we note that many of the laws passed, which are intended to aid workers contain no funding or process for data analysis and for enforcement of the bills.

Int. 808 (Brooks-Powers) expands the current Pay Transparency Act significantly, and requires information that is largely unknowable at the start of the hiring process. Particularly in our industry, it would slow hiring significantly if employers were required to post the full suite of benefits, bonuses, stocks, and bonds. This delay in the hiring process would inevitably cause slowdown in housing production, which we know is a major priority of the City.

Int. 982 (Caban) would add a significant reporting requirement for employers while providing no funding or requirement for the agency to process, analyze, and utilize the information, or funding for DCWP to enforce the bill at large. These requirements are also an intrusion into both company and employee privacy, and would interrupt the autonomy of a private business to do their work. The bill simply adds administrative burden, and therefore, cost to employers. Many employers in the construction industry are small – 25-40 employees – companies and the mounting administrative costs are forcing many minority and small business owners to go out of business or to leave New York.

Int. 1064 (Williams) would be very difficult to carry out within many industries, construction included where candidates are referred by unions pursuant to hiring hall provisions in a collective bargaining agreement. Additionally, notifying current employees with information about a selected candidate would invade the privacy of the selected candidate, and put an administrative strain on many businesses. We are also concerned about the lack of guidance put

forth about the process that would occur if this bill and those above took effect, and NYC agencies' ability to enforce them effectively.

Together, these bills will significantly increase the administrative burden on all New York City employers. Many employers have left the state entirely in recent years; it is estimated that the state has lost close to $1 trillion since 2020 due to companies moving their headquarters to other states. Additionally, economy is still recovering from the COVID-19 pandemic, and we need businesses of varying sizes to stay and invest in our communities. The continued departure of NYC businesses will also decrease much-needed tax revenue for city programs.

We look forward to continued partnership with the Council and future discussions related to these issues. Our team is available if members of the Council have any questions.

Thank you very much for your time and consideration.

Respectfully submitted,

Aislinn S. McGuire
Contractors Association of Greater New York

Advocates of the Food Industry Since 1900

FOOD INDUSTRY ALLIANCE OF NEW YORK, INC.

111 Washington Avenue - Suite 200, Albany, NY 12210 (518) 434-1900

**Testimony from the Food Industry Alliance of New York**
**NYC Council Committee on Civil and Human Rights Hearing**

**December 12, 2024**

The Food Industry Alliance of New York (FIA), the premiere trade association representing the full spectrum of the retail food industry, appreciates the opportunity to submit this testimony today regarding industry concerns related to Int. 808 and Int. 982.

**Int. 808 – Enhanced Pay Transparency and Compensation Disclosure**

Aimed at helping jobseekers by adding new mandates specific to the NYC Pay Transparency Law, this proposal creates significant compliance concerns and new administrative burdens on business.

Under the proposal, employers would be required to clarify how they determine pay ranges for posted positions and retain written records for three years when offering pay outside the initially posted range. Job postings would also need to include detailed descriptions of the position, promotion or transfer opportunities, as well as benefits and non-salary compensation such as bonuses, equity, or ownership. Additionally, employers would need to provide compensation information to current employees annually and upon request for equal or substantially similar roles.

Specifically, FIA is concerned with the lack of definition related to "non-wage compensation" and the requirement to list all non-salary benefits. Levying new mandates on the employer community should not lack clarity. Focusing on the mandate for employers to list all non-salary or non-wage compensation and benefits for each job advertisement is immediately problematic as most vacation, sick time and health benefits are commonly understood and provided for.

The proposal also includes a subjective requirement for employers to disclose compensation ranges—both monetary and non-monetary—for their current job titles as well as any positions requiring equal or substantially similar skill, effort, and responsibility. This provision introduces uncertainty, as determining what is "equal" and "substantially similar" is inherently subjective.

For independent grocers and other small businesses, these added administrative burdens and compliance requirements introduced by this legislation could be particularly challenging. Ironically, this proposal could harm the very types of small businesses the City Council frequently seeks to support. It is also worth reminding the committee that many of these

disclosures are already common in job advertisements or addressed during the interview process, making these additional requirements redundant.

**Int. 982 – Employer Reporting Requirements to Improve Wage Transparency**

This bill would impose new reporting obligations on employers with over 25 employees in NYC, aiming to improve wage transparency through detailed data collection.

Employers would be required to report salary and wages earned by each employee for the prior calendar year, along with demographic information such as gender, race, ethnicity, and birth year. The data would also need to include job titles, union membership, borough of employment, and whether employees work full-time, part-time, or seasonally. These reports would be submitted annually, starting February 1, 2025, with additional digital affirmations of compliance with federal, state, and local equal pay laws required every three years.

Besides noting that this legislation vastly supersedes any current state or federal requirements, this bill raises concerns about the administrative burden and legal risks it could impose on employers. The necessity of such detailed reporting, given the existing pay transparency laws, is questionable. Furthermore, the purpose of collecting this data and how it would benefit NYC is unclear, particularly when weighed against the risk of exposing employers to potential frivolous litigation.

While FIA supports initiatives to promote equity and fairness, these bills introduce additional complexities for employers that outweigh their benefits. We urge the Council to consider our concerns and offer to be a resource to the Council on these and other matters impacting the City's retail food industry.

Respectfully submitted,

Michael P. Durant
President/CEO
Food Industry Alliance of NYS, Inc.

**Testimony of FPWA**

**Presented to:**
**New York City Council**
**Committee on Civil and Human Rights**
**Oversight Hearing on Discrimination in the Workplace**
**Hon. Chair Nantasha Williams**
**December 12, 2024**

**Jennifer Jones Austin**
**Executive Director/CEO**

**Prepared By:**
**Funmi Akinnawonu, Senior Policy Analyst**

40 Broad Street, 5th Floor
New York, New York 10004
Phone: (212) 777-4800
Fax: (212) 414-1328

We are grateful to Chair Nantasha Williams and the New York City Council Committee on Civil and Human Rights for holding this oversight hearing on discrimination in the workplace, and for the opportunity to provide written comments on behalf of FPWA (Federation of Protestant Welfare Agencies).

FPWA is an anti-poverty policy and advocacy organization committed to advancing economic opportunity, justice, and upward mobility for New Yorkers with low incomes. Since 1922, FPWA has driven groundbreaking policy reforms to better serve those in need. We work to dismantle the systemic barriers that impede economic security and well-being, and strengthen the capacity of human services agencies and faith organizations so New Yorkers with lower incomes can thrive and live with dignity.

**The successful administration of human rights and worker protection laws is necessary to protect economic security**

Discrimination in the workforce is an economic security issue because employment discrimination is costly[1] to workers. It undermines career trajectories due to lack of promotions, loss of wages, job turnover, and the adverse physical and mental health outcomes associated with employment discrimination. It also prevents workers from building essential wealth, or the wealth necessary to be financially secure today, save for the future, and address an unexpected crisis.

Currently, FPWA is engaged in on-going research and advocacy concerning the impacts of discriminatory workplace behaviors on the lives of New Yorkers, including occupational segregation (overrepresentation and underrepresentation of specific demographics in labor sectors), wage deprivation (intersecting wage-related harms such as wage suppression, wage theft, and the perpetuation of wage gaps), and job quality (including access to benefits, scheduling, and workplace safety, among other features of employment). We are thankful that the New York City Commission on Human Rights (CCHR) and the New York City Department of Consumer and Worker Protection (DCWP) provide redress for those experiencing discrimination in employment.

The recognition of protected classes such as race, gender, sexual orientation, or immigration status is essential to addressing systemic harms of occupational segregation, wage deprivation, and poor job quality. Low-wealth workers who are often crowded into low-income professions, face tremendous challenges to assert their civil rights or to change employment. Low-wealth workers would benefit from the recognition of socioeconomic class as a protected class under the New York City Human Rights law (NYCHRL). Advancing justice for those negatively impacted by occupational segregation, wage deprivation, and low-job quality is necessary to ensure that all New Yorkers can create essential wealth. City government must sufficiently fund CCHR and DCWP to address employment discrimination issues in New York City.

**NYC must increase funding for CCHR and DCWP to support the administration of anti-discrimination employment law**

CCHR needs increased funding to enforce anti-discrimination employment law. Underfunding has severely hampered CCHR and threatens to undermine its important work.

[1] https://equitablegrowth.org/the-importance-of-anti-discrimination-enforcement-for-a-fair-and-equitable-u-s-labor-market-and-broadly-shared-economic-growth/#:~:text=The%20effective%20enforcement%20of%20anti%2Ddiscrimination%20laws%20is%20essential%20to,affects%20workers'%20labor%20market%20outcomes.

NYCHRL, administered by CCHR, prohibits many forms of discrimination, including discrimination in employment, and creates civil enforcement mechanisms for those seeking to address the violation of their rights. It also provides resources to educate New Yorkers about their civil rights. This law is comprehensive, including a more expansive list[2] of protected classes than comparable civil rights laws at the state and federal level, and serving as a model for other jurisdictions. We commend city government for routinely reviewing and expanding the list of protected classes, and modeling, for other jurisdictions, both a proactive and reactive approach to protecting the civil rights of constituents. However, the underfunding of CCHR prevents the agency from addressing all the complaints it receives in a timely manner.

FPWA's NYC Funds Tracker[3] shows that funding to CCHR and DCWP has fluctuated in recent years but has declined in the last few budget cycles. [4] Between FY20 and FY23 the budget for CCHR increased from $14,158,000 to $15,207,000 but fell to $13,847,000 in FY25. Between FY20 and FY23, the budget for DCWP rose from $39,390,000 to $64,458,000 but fell to $59,796,000 in FY25. The decreasing budgets are concerning, particularly in the case of CCHR, whose current funding levels are far too low to meet its mandate.

We are heartened to see that Chair Nantasha Williams introduced a bill (Intro 1137) concerning the budgets of CCHR and DCWP last week and look forward to discussing it at a future hearing, because the underfunding of CCHR and DCWP impacts the agencies' performance. In FY24 40% of CCHR cases were administratively closed, down from 42% in FY23 and 56% in FY22. While this number is trending in the right direction, it is alarming that an agency tasked with protecting the civil rights of New Yorkers is administratively closing so many cases instead of deciding the cases on the merits. [5] In CCHR's most recent Mayor's Management Report (MMR), the agency noted a desire to increase testing for attempted NYCHRL violations in employment, housing, and disability accommodations. Unfortunately, between FY23 and FY24 the number of tests conducted by CCHR decreased from 1,433 to 1,303. Testing is an important part of collecting evidence of discrimination and deterring employers from discriminating against employees. The underfunding of CCHR's budget is also detrimental to CCHR staff and can create burnout.

In addition to CCHR, DCWP enforces many labor protections[6] for workers. According to DCWP's 2024 MMR[7], the number of worker protection complaints to the DCWP Office of Labor Policy & Standards (OLPS), which enforces labor protections, increased from 439 in FY23 to 1,581 in FY24, partly due to a new complaint filing portal DCWP launched in May 2023, and implementation of the app-based restaurant delivery worker minimum pay rule. We are grateful that DCWP continues to innovate its services and implement new laws under its purview. DCWP also has a mandate to educate, partly through the Office of Financial Empowerment (OFE), which supports low-income New Yorkers to build assets and improve their financial health. OFE increased their financial counseling clientele from 8,829 clients in FY23 to 11,622 in FY24. This agency also refers cases to other agencies with enforcement powers in anti-

[2] https://www.nyc.gov/site/cchr/law/the-law.page
[3] https://www.fpwa.org/nycfundstracker/#Dashboard
[4] https://www.fpwa.org/nycfundstracker/#Dashboard
[5] https://www.nyc.gov/assets/operations/downloads/pdf/mmr2024/cchr.pdf
[6] https://www.nyc.gov/site/dca/workers/workersrights/know-your-worker-rights.page#:~:text=You%20have%20the%20right%20to%20receive%20at%20least%20an%20hourly,for%20being%20sent%20home%20early.
[7] https://www.nyc.gov/assets/operations/downloads/pdf/mmr2024/dcwp.pdf

discrimination employment law, such as CCHR. Funding for this agency is also vital to protecting New Yorkers against employment discrimination, and in the next few years the expansion of the capacity of this agency and all agencies that address labor issues will become more important.

**Funding for CCHR and DCWP will be even more vital for workers if the EEOC rolls back protections**

We commend the Committee on Civil and Human Rights for this hearing's timeliness following the 2024 election cycle, which has raised new concerns about federal civil rights protections. During the first Trump Administration, the Department of Justice (DOJ) took opposing stances from the U.S. Equal Employment Opportunity Commission (EEOC) on several workplace discrimination issues. This includes a federal case concerning whether gender identity is covered under Title VII of the 1964 Civil Rights Act, and DOJ indicating it would not enforce EEOC's guidance concerning discrimination on the basis of criminal history.[89] If something similar happens during a second Trump Administration, the implementation of the Fair Chance Act[1011] by CCHR, which makes it illegal for most employers in New York City to ask about the criminal records of job applicants, will be even more crucial for New Yorkers.

During the first Trump Administration, there was a sharp decline in the number of cases pursued by EEOC, after the administration appointed a new EEOC Chair in 2019. [12] While the work of CCHR and DCWP is always urgent, the urgency has increased, as New Yorkers cannot afford a budget issue to stand between them and possibly their only forums for asserting many of their civil rights. City government must be accountable to its constituents. In this moment, recognizing a potential increased need for the services of CCHR and DCWP, city government must act to increase funding.

**We urge City Council to pass the bills being considered in this hearing and urge the city to increase funding to CCHR and DCWP to support administration**

As we have stated, CCHR and DCWP are vital to the administration of civil and human rights law. While we are supportive of these bills, and believe they will positively impact New Yorkers, we must stress that sufficient funding of these agencies is necessary to administer new laws along with their existing responsibilities.

We urge City Council to pass Intro 0808 clarifying the pay and compensation information required for job postings and requiring employers to document and retain records of deviations from the posted salary range. This law would empower workers as they seek employment to have the information necessary to make financially sound decisions for themselves and their families and preserve evidence of potential violations by employers.

This bill along with Intro 0982 setting reporting requirements to DCWP for employers with more than 25 employees and aimed at increasing wage transparency, and Intro 0984 requiring the Office of Data Analytics (MODA), DCWP, and CCHR, to conduct an annual pay and employment equity study on private

[8] https://news.bloomberglaw.com/daily-labor-report/biden-era-workplace-bias-policies-under-threat-with-trump-doj
[9] https://news.bloomberglaw.com/daily-labor-report/biden-era-workplace-bias-policies-under-threat-with-trump-doj
[10] https://www.nyc.gov/site/cchr/law/fair-chance-law.page
[11] https://www.nyc.gov/site/cchr/law/fair-chance-law.page
[12] https://www.thenation.com/article/society/janet-dhillon-eeoc/

employers with 150 or more employees, will aid in the advancement of fair wages for workers both individually and systemically.

We also urge City Council to pass Intro 1064 requiring notification to employees of job opportunities prior to selecting a candidate for the role and providing current employees with information about the selected candidate for employers with more than 100 employees. This will both empower employees to seek promotions and potentially help them work towards promotion, and help employees retain information necessary to prove discrimination when applicable.

Finally, we urge City Council to pass Intro 0871 which extends the right to reasonable workplace accommodations to caregivers, as defined in the NYCHRL. Extending these accommodations to caregivers ensures that caregivers are not excluded from the workplace protections that New York City has for those with disabilities.

Thank you for the opportunity to submit testimony to this hearing. At FPWA we are invested in both preventing employment discrimination and advancing justice for those who face it. CCHR and DCWP serve important roles in the protection the civil rights and the economic security of New Yorkers. We look forward to continuing to work with the City Council to champion funding for these vital agencies and support the essential work highlighted in these bills.

LEGALMOMENTUM®
The Women's Legal Defense and Education Fund™

December 12, 2024

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL'S COMMITTEE ON CIVIL AND HUMAN RIGHTS**

**Written Testimony Submitted by Seher Khawaja, Director of Economic Justice, on behalf of Legal Momentum, The Women's Legal Defense and Education Fund**

Good morning Chair Williams and members of the Committee on Civil and Human Rights. Thank you for convening this hearing. My name is Seher Khawaja, and I am the Director of Economic Justice at Legal Momentum, The Women's Legal Defense and Education Fund.

I'm testifying today in support of Intros. 808-A, 982 and 984. Together, these pay transparency bills have incredible potential to address gender- and race-based pay inequity, and we thank Council Members Brooks-Powers, Cabán, and Farías for their leadership. Additionally, while we support the goals behind Intros. 1064 and 871, we think additional considerations should be taken into account to make these protections effective.

For over five decades, Legal Momentum has been at the forefront of using the law to advance gender equality in all spheres of life, including the workplace. In the past years, we have been grateful for the City Council's partnership in enacting pioneering legislation to advance pay transparency in New York City, efforts that have since reverberated across the state and the country.

Because we have a clear roadmap for how the rights of women and people of color will soon be systematically degraded at the federal level, we are once again at a critical moment for New York City to lead to strengthen protections for those who are most vulnerable and to empower our workers and employers to embrace workplace practices that advance accountability instead of nepotism. This requires bold legislative action as well as increased funding for our local agencies that enforce our labor and anti-discrimination protections, including the NYC Commission on Human Rights (CCHR) and the NYC Department of Consumer and Worker Protection (DCWP).

In New York City, women across all races and education levels still earn less than men in almost all occupations and industries.[1] While the City made initial progress towards closing the overall pay gap, this progress has both stalled and excluded women of color, who continue to be left far behind. In 2022, Black women earned only 57 cents for every dollar made by a White man in New York City, and that figure drops to only 54 cents for Latinas. These figures are indefensible.[2] We need to act with urgency to close the gender and racial pay gaps, and while pay inequity is a multifaceted problem that requires a multipronged approach, pay transparency is one essential piece to closing the gap. Intros. 808-A, 982 and 984 are critical in this respect.

[1] L.K. Moe & Robert Noble, *Executive Summary: Unequal Ground: The Impact of Industrial and Occupational Segregation on Women's Economic Outcomes in New York City* 1 (2024), https://wccny.org/wp-content/uploads/2024/07/WCC-Unequal-Ground-Exec-Summ-DIGITAL_July17.pdf.
[2] L.K. Moe, *Closing the Gender Pay Gap: Why Pay Equity Has Stalled in New York and the Urgent Need for Action* 1 (2023), https://wccny.org/wp-content/uploads/2024/02/WCC-Gender-Pay-Equity-Exec-Summary_Final_SinglePages.pdf.

**Intro. 808-A**

It has been two years since our pay transparency law was enacted, and we now know, based on both qualitative and quantitative assessments, that it works and is essential to closing the gender and racial pay gaps. Through our Helpline, we hear regularly from women about how accessing pay ranges in job postings has had a game-changing impact, empowering women and people of color to better advocate for themselves and driving employers to develop more fair and equitable pay practices. Expert studies demonstrate that occupational pay gaps are closing more quickly in states with pay transparency legislation,[3] and that pay transparency is reducing pay inequities across gender, ethnicity, sexual orientation, and other dimensions.[4]

Having tracked how the law is working and ways in which employers are trying to circumvent it, we also know that it can be improved and strengthened. Intro. 808-A would make six important amendments to our law to address existing loopholes and outstanding gaps.

- First, employers and workers alike have expressed widespread frustration that the current standard that requires that salary ranges be in "good faith" is vague and unhelpful. As we have seen play out, this standard encourages overbroad and inaccurate ranges. Intro. 808-A would amend the standard to clarify that a salary range should be based on objective factors like job responsibilities, requisite skills, and the organizations budget. This standard pushes employers to price the job and not the person, limiting the role of unconscious bias in salary-setting.

- Second, under the current law, the posted pay range may not reflect what employers ultimately pay for the position, leaving us with zero transparency in those scenarios. When employers pay outside the range, we have no way to track by how much and whether it was for legitimate reasons. To close this problematic loophole, 808-A correctly requires employers to keep a record if they pay outside the posted range, a critical compromise that safeguards against eliminating transparency entirely.

- Third, for decades we have outlawed pay discrimination while denying employees the basic information that would allow them to assess whether they are being paid unfairly. This is an absurd scheme that 808-A would correct by requiring that employers disclose pay ranges to existing employees for their current positions. Recently, we received a call from a woman who believed that she was being paid less for doing substantially similar work as her White counterparts because she was Black. When she asked her employer for information about her job description and the current salary range for her position so she could get a better sense of whether her pay was fair, her employer told her she was not entitled to that information. Withholding this information from employees insulates employers while breeding distrust and unnecessary litigation. An employee shouldn't have to file a lawsuit in order to access basic information about the pay range for their job.

[3] Chris Martin, *The Pay Gap Is Shrinking Faster in 4 of the 6 States with Pay Transparency Laws*, Syndio (Jan. 25, 2024), https://synd.io/blog/gender-pay-gap-by-occupation/

[4] Tomasz Obloj & Todd Zenger, *Research: The Complicated Effects of Pay Transparency*, Harv. Bus. Rev. (Feb. 8, 2023), https://hbr.org/2023/02/research-the-complicated-effects-of-pay-transparency.

- Fourth, it is well established that women and people of color suffer substantial financial loss because they aren't offered benefits that are provided under the table to their counterparts or because they cannot access or even ask about benefits like paid family leave because of the very real risk of retaliation.[5] One of our former clients, who worked for a prominent tech company, was being paid approximately $20,000 less than her male coworker, a sizable gap for a woman starting her career, and a gap that was only compounded by the fact that she was also receiving significantly fewer stock options than him. By requiring employers to post broader forms of compensation (beyond base salary) and core benefits, this bill provides much needed transparency around these additional drivers of inequity. We know this can be done without much burden because we have seen it done by big and small employers alike, both in online postings and postings in in store windows.

- Fifth, this bill will require the posting of a job description, which is important for several reasons. Job descriptions play a critical role in helping candidates and CCHR assess whether a salary range is legitimate because the factors in the job description should explain the salary range. Normalizing the use of job descriptions by all employers also creates clarity for employers and workers and it empowers workers, particularly lower-wage workers, to better track a common form of exploitation or wage theft, since workers often find their job duties materially expand while their salaries remain stagnant.

- Lastly, since the law was enacted, we have heard about employers attempting to evade compliance by hiring informally without using a job posting. Since there is no reason why a candidate hired without a job posting should be denied salary range information, Intro. 808-A would close this unintended loophole, making clear that in the absence of a posting, employers must disclose the pay range for the position to candidates upon request at any point during the hiring process.

These provisions are critical and not unprecedented, having been enacted already in states across the country. A number of states already require or will soon require disclosure of additional forms of compensation and benefits, including Colorado, Illinois, Maryland, Minnesota, New Jersey, and Washington State. Similarly, a number of states require or will soon require disclosure of pay ranges to existing employees, including California, Connecticut, Massachusetts, Rhode Island, and Washington State.

It is essential that these new provisions apply consistently to all businesses, big and small. Based on our experience, workers for small businesses, from the bodega to the nail salon, are often some of the most vulnerable workers, including immigrants, women, and people of color, and they are often subject to some of the most severe pay violations. These workers deserve the same transparency as any other worker, including access to a job description and information about broader compensation and benefits. We therefore strongly oppose any attempts to amend or revise the law in a way that would exclude

[5] *See*, Josie Cox, *The Bonus Blind Spot in US Pay Transparency*, BBC (Oct. 27, 2022), https://www.bbc.com/worklife/article/20221025-the-bonus-blind-spot-in-us-pay-transparency; Boris Hirsch & Philipp Lentge, *Non-Base Compensation and the Gender Pay Gap*, IZA Institute of Labor Economics (July 2021); Michelle Travis, *Large Companies Are Falling Short on Paid Parental Leave Transparency*, Forbes (Sept. 24, 2024), https://www.forbes.com/sites/michelletravis/2024/09/24/large-companies-are-falling-short-on-paid-parental-leave-transparency/.

these workers or make information less accessible to these workers and recommend that small businesses be granted additional supports rather than exemptions to ease compliance.

**Intros. 982 & 984**

Intros. 982 and 984 would set forth a complimentary scheme that would require larger employers in New York City to first report important pay and demographic data to the City and for the City to carry out a pay equity analysis of this data. Based on our extensive research of pay data reporting schemes, which are taking hold around the globe, our key takeaway is that they can play a vital role in driving employer accountability and closing the gender pay gap, if done thoughtfully.[6]

Pay data reporting serves a number of critical functions. Most notably, pay data reporting drives employers to compile and look at their own pay and demographic data, creating a much-needed opportunity for employers to assess internal trends and identify and address problematic disparities without litigation.[7] Expert analysis of this type of pay and demographic data brings visibility to and helps us to better understand the problematic dynamics of pay inequity, including occupational segregation.[8] Employer reporting also supports enforcement of equal pay protections by providing relevant agencies with a useful snapshot of an employer's pay practices to inform investigations.[9] However, to meaningfully address gender- and race-based disparities, reporting requirements and agency analysis must be practical, streamlined, and thoughtful with the goal of driving systemic change in employer practices.

To be effective, we therefore recommend that these bills do the following:

- Apply to larger employers with at least 100 or more employees, to ease the burden on smaller employers who may have limited infrastructure to comply with new reporting requirements. Employers with 100+ employees must already comply with federal EEO1 reporting requirements and will have some infrastructure already in place.
- Define the terms "employer" and "employee" to address jurisdictional concerns that may arise with respect to employees outside New York City.
- Define the terms "employer" and "employee" to include all positions, including managerial level positions.
- Eliminate the employer self-certification, which is unhelpful.
- Require disclosure of pay quartiles by gender as well as race and ethnicity, where feasible. This breakdown will provide an important picture of occupational segregation within a given workplace.
- Require employers to calculate and report mean and median pay gaps based on gender. Based on our consultations with experts who advise employers on compliance with existing reporting

[6] *E.g.*, Jack Blundell, *Wage Responses to Gender Pay Gap Reporting Requirements* 3 (Ctr. for Econ. Performance, Discussion Paper No. 2, 2021), https://cep.lse.ac.uk/pubs/download/dp1750.pdf.
[7] Nat'l Acads. of Scis., Eng'g, & Med, *Evaluation of Compensation Data Collected Through EEO-1 Form* 292–93 (2023), https://nap.nationalacademies.org/catalog/26581/evaluation-of-compensation-data-collected-through-the-eeo-1-form.
[8] *Id.*
[9] E.g., Grace Gedye, *Here's What You Need to Know About California's New Pay Transparency Law*, CAL. MATTERS (Dec. 21, 2022), https://calmatters.org/economy/2022/12/california-pay-transparency-law/.

requirements, this disclosure motivates employers to pay greater attention to their internal pay data and practices and to correct disparities that cannot be justified.

- Make employer figures on mean and median pay gaps and pay quartiles publicly accessible. Based on our expert consultations, public disclosure, which is already required for larger companies in the UK, has proven to be an effective driver of employer accountability.[10] U.S. companies with a UK presence already engage in public reporting.[11]
- Require disclosure of each employee's base annual or hourly salary and hours worked per week. This figure provides a useful comparison point since reliance on W2 figures alone can create distortions, particularly when an employee is not employed throughout the year.
- Ensure that the bill anticipates the infrastructure required to effectively carry out the data analysis, including a streamlined reporting form, an online reporting system, and an online system and staff for collecting and analyzing the data. The data analysis should be assigned to an agency that has or will have the expertise and capacity to carry out the analysis, and the data should be accessible by all agencies that can use the information, including CCHR.
- Include an enforcement mechanism to ensure that the law has teeth and that employers will comply. Inconsistent data reporting will undermine the value of the data collected.
- Provide sufficient time for agencies to prepare for carrying out annual data collections and analysis and for employers to put in place necessary systems for annual reporting.

**Intro. 1064**

Intro. 1064 would make it a discriminatory practice to fail to make reasonable efforts to make a job opportunity known to all employees and to make certain basic information about a selected candidate available to existing employees. While we think this is a worthwhile goal that advances the spirit of transparency, the bill raises several concerns. First, by creating a scheme that requires specific disclosures regarding new hires alone, the bill would establish an inequitable form of transparency that lacks uniformity and raises potential privacy implications with respect to those candidates whose information is disclosed.

Requiring disclosures that only apply to selected candidates for a job opening also does not promise to address gender- or race-based inequities. While the bill's stated intention is to guard against racial discrimination, new hires are just as likely to be people of color who are thus just as likely to be the subjects rather than the beneficiaries of any transparency afforded under this bill.

Lastly, if enacted, we recommend that the provision be crafted as an affirmative requirement that employers must comply with under the Administrative Code instead of crafting it as violation with non-compliance constituting "an act of discrimination." Because this bill provides no clear protection based

[10] Minna Cowper-Coles et al., *Bridging the Gap? An Analysis of Gender Pay Gap Reporting in Six Countries* 9–11 (2021), https://www.kcl.ac.uk/giwl/assets/bridging-the-gap-an-analysis-of-gender-pay-gap-reporting-in-six-countries-summary-and-recommendations.pdf; Emma Duchini, et al., *Pay Transparency and Gender Equality* 20–21 (CAGE Working Paper No. 482, March 2022), https://warwick.ac.uk/fac/soc/economics/research/centres/cage/manage/publications/wp482.2020.pdf.

[11] *E.g.*, Bank of America, *2023 UK Gender Pay Report* (2023), https://about.bankofamerica.com/content/dam/about/report-center/gpgr/2023/2023_UK_Gender_Pay_Report.pdf; Apple, *UK Gender Pay Gap Report* (2023) https://www.apple.com/legal/more-resources/docs/uk-gender-pay-gap-report-2023.pdf;

on a protected characteristic and one's status as an existing employee is not a protected characteristic under the NYC Human Rights Law, codifying a violation of these requirements as a forms of discrimination risks undermining the existing framework of our anti-discrimination protections.

**Intro. 871**

Intro. 871 would amend the administrative code of the city of New York by extending reasonable workplace accommodations to caregivers. Having long advocated on behalf of caregivers, who are disproportionately women and people of color, we recognize the profound challenges and financial penalties that caregivers face within the workplace and are strongly in favor of legislative efforts to provide much needed supports, accommodations, and flexibility to caregivers. However, having drafted and enforced reasonable accommodation provisions that go beyond the disability context, it is our experience that these provisions are complex and raise unique considerations, thus requiring more detailed and targeted legislative guidance to implement them effectively. To account for the fact that caregiver accommodations are not identical to disability accommodations, we recommend that a caregiver accommodation, if enacted, should be incorporated under its own section of the human rights law. This section should contemplate the scope and parameters of the accommodation so that employers can realistically afford the accommodations and that workers obtain a meaningful benefit.

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We thank the Council for its time and consideration. We are here as a resource and look forward to our ongoing work with the Council to strengthen protections for gender equity.

**NYC City Council Committee on Civil & Human Rights**
**Preliminary Budget Hearings - Public Testimony**

**Testimony of**
**Make the Road New York**

**December 12, 2024**

My name is Cristobal Gutierrez and I am a Lead Attorney for the Workplace Justice and Trans, Gender Non-Conforming, Intersex and Queer (TGNCIQ) Justice Projects at Make the Road New York ("MRNY"). MRNY is pleased to submit this testimony to the New York City Council Committee on Civil & Human Rights urging the City to restore funding to the New York City Commission of Human Rights ("Commission") so that the Commission may fully enforce the law against discriminatory actors. In light of the upcoming change in the Federal Administration, adequate funding has never been more crucial to combat the anticipated onslaught against undocumented and immigrant New Yorkers.

MRNY is a non-profit community-based membership organization with over 28,000 low-income members dedicated to building the power of immigrant and working-class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services, including legal services for workplace justice, immigration, and housing issues. MRNY's five community centers, including centers in the New York City neighborhoods of Jackson Heights, Bushwick, and Port Richmond, provide a broad array of support to thousands of New Yorkers every year. Our workplace justice legal team represents hundreds of workers each year in cases to enforce their workplace rights and provides community rights education that reaches thousands more. We are part of the Human Rights Law Working Group and are here representing our common interests.

The NYC Human Rights Law (the "Law") is one of the most comprehensive anti-discrimination statutes in the nation, embodying the city's commitment to inclusion, as our city represents such inclusion to the world. The Commission is responsible for enforcing this law and safeguarding

the rights of New Yorkers, particularly the most vulnerable. New Yorkers have consistently demonstrated their support for the Law's spirit and expansion, as evidenced by more than 45 amendments made by the City Council since 2013.[1]

The Commission is tasked with enforcing protections for an increasing number of protected categories—including those based on immigration status, religion, national origin, source of income, criminal history, and pregnancy—but its resources are grossly inadequate. The Commission is critically understaffed. Moreover, while the Commission's mandate has expanded, its budget has been slashed, leaving it unable to function effectively or fulfill its mission. For instance, the number of complaints has increased from over 10k to over 14k, an increase of just under 130% yet the staff has dramatically decreased. We are urgently calling on you to take action to preserve this essential institution.

Generally, we are supportive of the bills under consideration that advance the rights of workers, such as the ones presented and analyzed at this hearing. However, we want to make sure that this Committee and this City Council understands that if these bills are not supported by a significant increase in budget, they will be dead letters since they will be unenforceable for those they are meant to protect.

At MRNY, this situation is especially troubling, as our community—largely made up of low-wage immigrants, many of whom are undocumented—relies on a strong and capable Commission to enforce anti-discrimination protections. All too often, MRNY's immigrant clients are discriminated against on account of their race, national origin, gender identity and perceived immigration status. Because of the vulnerability of these clients' statuses, commonly they are unaware of their rights and are subjected to more exploitation.[2] Based on MRNY's experience during the 45th President's administration, employers were emboldened to engage in further exploitation, retaliation and coercion against immigrant workers. Workers' fear of retaliation sky-rocketed and educating workers about their rights became increasingly difficult. When these workers finally do come forward, a sparsely resourced Commission would only further demoralize these community members. Because of the Commission's lack of resources, we currently have two distinct cases of immigrant women who were raped by their respective employers and filed charges with the NYC Commission on Human Rights. Since 2016 and 2018 these women continue to await adjudication of their claims from a Commission on life support. Our clients continue to carry their trauma without resolution. For undocumented women, the risk

[1] *See Amendments to NYC Human Rights Law*, New York City Human Rights Commission, https://www.nyc.gov/site/cchr/law/amendments.page#:~:text=A%20Local%20Law%20to%20amend,%2C%20housing%2C%20and%20public%20accommodations (last visited Dec. 11, 2024).

[2] *See* Elizabeth Kristen et al., Workplace Violence and Harassment of Low-Wage Workers, Berkeley Journal of Employment and Labor Law, 169-204, at 186-89 (2015).

of sexual harassment is even higher due to the fear of deportation,[3] and this vulnerability is compounded if the worker is transgender.[4]

It is critical for New York City to have a strong, well-resourced Commission to protect its workers, tenants, and consumers. As we face potential changes at the federal level that could disproportionately harm vulnerable populations, including immigrants, the need for a strong Commission is even more urgent. We strongly urge you to act now to ensure that this vital institution is not further weakened by reinvesting the resources we know are needed for robust enforcement.

Since March of this year, the New York City Human Rights Law Working Group has been asking this City Council to double the Commission's budget in order to restore it to it's pre-pandemic funding levels. The Commission's current budget is infinitely small compared to its immense mission and we have seen first hand the Commission's current inability to carry out its enforcement mandate. Despite the Commission's herculean mandate to address discrimination in our City, were the Commission's budget to double **it still would not even constitute 0.01% of the City's total budget.**

Our budget ask for FY2025 is as follows:

- **Secure $3 million in new funding for the Commission's Law Enforcement Bureau**
    - This funding would increase capacity at the Law Enforcement Bureau (LEB) to mirror staffing levels in 2018, which requires adding at least 34 attorneys, one assistant commissioner, as well as support staff;
- **Lift hiring restrictions and create new positions that allow the Commission a one-to-one replacement for any staff turnover**
    - Currently, the Commission can only hire 1 staff member for every 2 vacancies, which hinders its ability to quickly staff up to match the urgency in rehabilitating the agency;
- **Implement competitive salary rates**
    - Low salaries and large caseloads are unappealing; to attract and retain expertise, the Commission must be allowed to raise salaries to remain competitive.

A diminished Commission will lack the capacity to adequately safeguard immigrant, undocumented and TGNCIQ workers, undermining the authority that New Yorkers have

[3] *See* Marin, L. et al. Workplace Sexual Harassment and Vulnerabilities among Low-Wage Hispanic Women, Centers for Disease Control and Prevention (March 14, 2023). https://stacks.cdc.gov/view/cdc/128469/cdc_128469_DS1.pdf

[4] Rabelo, V. C., & Cortina, L. M. (2014). Two sides of the same coin: Gender harassment and heterosexist harassment in LGBQ work lives. Law and Human Behavior (March 14, 2023) https://www.researchgate.net/publication/263205758_Two_Sides_of_the_Same_Coin_Gender_Harassment_and_Heterosexist_Harassment_in_LGBQ_Work_Lives

repeatedly entrusted to the Commission in order to effectively combat discrimination. Restored funding is now urgent.

Thank you.

Cristobal Gutierrez
Lead Attorney,Workplace Project and TGNCIQ Justice Project
Make the Road New York

MOTION PICTURE ASSOCIATION

**To:** Council Member Nantasha Williams
**From:** Josh Levin, Vice President, Northeast Region, Motion Picture Association
**Date:** December 12, 2024
**Subject:** Committee on Civil and Human Rights Hearing regarding Intro. 0808 and Intro. 1064

On behalf of its member companies, The Motion Picture Association (MPA) is submitting comments to the New York City Council Committee on Civil and Human Rights for Intro. 0808, regarding salary transparency regulations, and Intro. 1064, regarding job promotion transparency. MPA is the trade association for the leading producers and distributors of movies, television, and streaming series. MPA's members include Netflix Studios, LLC; Paramount Pictures Corporation; Prime Amazon MGM Studios; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Discovery.

We wish to express our concerns regarding the legislation being considered, which, if passed and signed into law, would present challenges for industries that support a unionized workforce, such as the film and television industry, which abides by a collective bargaining agreement (CBA) that is negotiated among over 80 unions nationwide every three years. During this CBA process, salary minimums are stipulated creating the opportunity for good-paying jobs with benefits. What is not stipulated is a maximum salary. This is due to the nature of specific high-wage individuals, with similar job titles across the industry, who are covered by individual contracts instead. Given the privacy concerns of these contracts, the stipulations of these bills would present legal challenges for compliance.

We aim to be a resource in this legislative process and hope that, there will be continued dialogue with stakeholders to reach a consensus that honors the aim of this bill while respecting individuals' privacy and the collective bargaining process.

Sincerely,

Josh Levin
Vice President, State Government Affairs
Northeast Region
Motion Picture Association

**December 12, 2024**

**Comments of Nelson Eusebio**
**Director of Government Affairs**
**National Supermarket Association (NSA)**

*Before the*

**New York City Council Committee on Civil and Human Rights**

*Regarding*

**Int 982 and Int 871**

Chair Williams and members of the Committee on Civil and Human Rights – thank you for the opportunity to submit testimony today on the National Supermarket Association's concerns regarding Int 982 on compliance with equal pay laws and Int 871 regarding extending reasonable workplace accommodations to caregivers. My name is Nelson Eusebio and I serve as Director of Government Relations for the National Supermarket Association (NSA). NSA is a trade organization representing the interests of independently owned supermarkets in New York City and beyond. In the five boroughs, NSA advocates for more than 400 supermarkets and 15,000 employees.

The NSA is opposed to Int 982 and Int 871, along with the broader package of employer mandate bills under consideration. These bills would impose significant and disproportionate burdens on independent supermarkets that are already navigating economic challenges and regulatory pressures.

Int 982 proposes that employers with more than 25 employees must file annual reports with the Department of Consumer and Worker Protection (DCWP) detailing employee compensation data. The scope and requirements of this bill are deeply problematic for small and medium-sized supermarkets. Supermarkets typically experience high employee turnover rates, with many workers employed on a temporary, seasonal, or part-time basis. Constantly updating and managing compensation and demographic data for a transient workforce adds unnecessary complexity to already demanding operations. Furthermore, the reporting mandates require businesses to collect, verify, and report detailed demographic and salary data. This will create a significant administrative and financial burden for our members, who often operate with limited

resources. Unlike large corporations, independent supermarkets lack the infrastructure to comply with rigorous reporting mandates without diverting critical resources away from operations.

Int 871 mandates reasonable accommodations for caregivers but lacks clarity on what these accommodations would entail, particularly in fast-paced and labor-intensive industries like retail and grocery. Supermarkets rely on employees to perform tasks such as stocking shelves, unloading deliveries, and managing customer service. Without specific guidelines, employers will face significant uncertainty on how to comply and leave businesses vulnerable to noncompliance. The category is also so expansive that it would apply to most employees and requiring unclear reasonable accommodations for an entire workforce will be nearly impossible to comply with.

Int 982 and Int 871, and related bills would exacerbate existing challenges for the supermarket industry, including rising costs, inflation, labor shortages, and competition from larger retailers. Independent supermarkets are already working tirelessly to support their employees while meeting the needs of the communities they serve. These new mandates risk jeopardizing the viability of these essential businesses.

We urge this committee to oppose the bills and consider the unintended consequences of these proposals on small businesses, particularly independent supermarkets that form the backbone of many local economies. Thank you for the opportunity to testify.


My name is David Tracey. I am the Firm Managing Partner at Sanford Heisler Sharp McNight, LLP, and a member of NELA/NY. I submit this testimony on behalf of NELA/New York and in strong support of Int 0871-2024, which would amend the City Human Rights Law to extend reasonable workplace accommodations to caregivers.

By way of background, the National Employment Lawyers Association (NELA) is a national organization of attorneys dedicated to the vindication of employees' rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA's New York State affiliate. My firm, Sanford Heisler Sharp McKnight, LLP, is a national law firm that focuses on representing plaintiffs in public interest cases, including civil rights, employment, and whistleblower matters. An important part of my work involves representing workers with employment discrimination claims, including claims of caregiver discrimination.

Workers in New York City, like workers elsewhere in America, face a caregiving crisis.[1] Data from the AARP indicates that in "New York, an estimated 2.2 million caregivers are providing 2.1 billion hours of care to their loved ones each year."[2] Moreover, "[n]early seven in ten current and former caregivers (68%) say they worked while they provided care."[3] This data matches national trends. A recent survey from Harvard Business School found that seventy-three percent of employees reported having some kind of caregiving responsibility.[4]

As a bar association of lawyers who represent employees, NELA/NY members regularly support clients who face discrimination because of their statuses as caregivers. A father of a child with special needs who is denied a job because the employer assumes he will not be able to work nights and weekends. New mothers who face heightened scrutiny at work, or lose their jobs, after

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[1] *See e.g.* Evelyn Nakano Glenn, *Forced to Care: Coercion and Caregiving*, 1-2 (2010) (describing the care crisis that has evolved since the 1970s)
[2] AARP, Voters Ages 40 and Older in New York State: Their Attitudes and Opinions about Caregiving and Long-Term Care, 1 *available at* https://www.aarp.org/pri/topics/ltss/family-caregiving/new-york-caregiving-voter-survey.
[3] *Id.* at 2.
[4] *See* Joseph B. Fuller & Manjari Raman, The Caring Company, 2 &12 *available at* https://www.hbs.edu/managing-the-future-of-work/research/Pages/the-caring-company.aspx (reporting that 73% of survey respondents juggled caregiving and work responsibilities).

returning from maternity leave. An employee struggling to care for a parent, spouse, or child while simultaneously meeting the demands of their employer. These are the kinds of challenges our caregiving clients face.

In 2016, New York City took the critical step of protecting caregiver status under the Human Rights Law. New York City law now provides broader and clearer protections for caregivers than available under state or federal law: no employer can discriminate against employees because they are caregivers.

Yet the promise of the 2016 amendment remains incomplete. Protecting caregivers from discrimination—though a necessary step—is not by itself sufficient to promote equal access to employment opportunity. With today's caregiving crisis, many workers are driven from their jobs simply because they are confronted with unaccommodating workplaces that make it impossible to balance the needs of work and caregiving responsibilities. A 2019 Harvard Business School Report found that "nearly one-third of employees said that they had voluntarily left at least one job because of an inability to balance work and care responsibilities." [5]A 2024 AARP/S&P Global Survey found similar results: twenty-seven percent of respondents reduced their hours due to adult caregiving obligations; 15.5% stopped working all together.[6] The bottom line is that without accommodations, many caregivers cannot work at their full potential—or at all.

For decades, federal, state, and city law have relied on the concept of reasonable accommodation to address this very kind of problem. Reasonable accommodations remove "workplace barriers that keep [employees] from performing jobs which they could do with some form of accommodation."[7] They promote the goal of equality by making the workplace accessible. Thus, failing to provide a reasonable accommodation *is itself a form of discrimination*. The Americans with Disabilities Act makes this plain: its definition of "discriminate" expressly includes "not making reasonable accommodations."[8] Similar reasonable accommodation provisions are found in various federal, state, and local statutes, which protect characteristics such as disability, pregnancy, religious observance, and status as a survivor of domestic violence.[9]

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[5] Joseph B. Fuller & Manjari Raman, The Caring Company, 6, *available at* https://www.hbs.edu/managing-the-future-of-work/research/Pages/the-caring-company.aspx

[6] S&P Global, Working while caregiving: It's complicated, 5, *available at* https://www.aarp.org/pri/topics/work-finances-retirement/employers-workforce/employer-caregiving-survey/

[7] EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA, *available a*t https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada

[8] 42 U.S.C. § 12112 (5)(A).

[9] *See. E.g.* 42 U.S.C. § 12112 (5)(A) (disability); 42 U.S.C.A. § 2000gg-1 (pregnancy); 42 U.S.C.A. § 2000e (j) (religion); N.Y. Exec. L. § 296(3)(c), (2-a)(d), (14), (18)) (disability), N.Y. Exec. L. § 296(3)(a) (pregnancy-related conditions), N.Y. Exec. L. § 296(10) (religious observances), N.Y. Exec. L. § 296(22)(c)(1) (domestic violence victim status); N.Y.C. Admin Code § 8-107(3)(a) (religion); N.Y.C. Admin Code § 8-107(15) (disability); N.Y.C. Admin Code § 8-107(22) (pregnancy, childbirth, or a related medical condition); N.Y.C. Admin Code § 8-107(27)(b) (status as a victim of domestic violence, sex offense, or stalking).

Caregiver status is well-suited to join the list of characteristics demanding reasonable accommodation.

Finally, it is noteworthy that promoting reasonable accommodations for caregivers will also promote racial and gender justice. As scholar Evelyn Nakano Glenn notes in her book on the history of caregiving in America, "Women of color, especially African American women, are more likely to have to combine elder and disabled care with employment outside the home."[10] A 2021 report from the New York City Comptroller and A Better Balance echoed this observation. Although women were twice as likely as men to take time off work due to childcare responsibilities, they generally had less flexibility in their jobs. This imbalance was greatest for women of color who generally took more time off work than white women for childcare, and yet had even less access to flexible schedules.[11] While not a panacea for such entrenched inequalities, reasonable accommodations for caregivers is a tool that can help narrow this significant gap in opportunity.

In sum, NELA/NY strongly supports Int 0871-2024. Affording caregivers a right to reasonable accommodation will help New Yorkers weather the ever-growing care crisis, ensure that caregivers have equal employment opportunity, and help address the entrenched gender and racial inequities in caregiving responsibility.

[10] Evelyn Nakano Glenn, *Forced to Care: Coercion and Caregiving*, 1-2 (2010) (describing the care crisis that has evolved since the 1970s)

[11] N.Y.C. Comptroller & A Better Balance, Our Crisis of Care: Supporting Women and Caregivers During the Pandemic and Beyond, 6-7 (2021), *available at* https://www.abetterbalance.org/our-crisis-of-care-survey/.

My name is Miriam Clark. I am a partner in the law firm of Ritz Clark & Ben-Asher LLP. I have represented New York employees for more than 35 years. I am also a former president of NELA/NY and current Chair of NELA/ NY's Legislative Committee. The National Employment Lawyers Association (NELA) is a national organization of attorneys dedicated to the vindication of employees' rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA's New York State affiliate.

According to a 2024 report by the Institute for Women's Policy Research, the wage gap between white men and women, especially Black and Latina women, is increasing.

> Latina women faced the largest gender racial wage gap, being paid just 59.2 cents on the dollar paid to White men, an amount slightly worse than in 2022 when the ratio was 61.4 cents. Black women earned 65.8 cents on the dollar compared to White men, down from 67.4 percent in 2022. Black and Hispanic/Latina women earn less, largely due to their over-representation in some of the lowest-paying occupations in the Service sector, i.e., health care support, personal care, child care, and food service. But even in these lower-paying jobs, White men still outearn women.[1]

[1] https://iwpr.org/new-report-women-earn-less-than-men-in-all-occupations-even-ones-commonly-held-by-women/
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Traditional complaint-based legislation has not succeeded in eroding this gap, in large part because when compensation remains hidden, applicants and employees have no way of knowing whether they are facing pay discrimination based on race, gender, national origin, or membership in other protected classes. Lawyers and enforcement agencies are understandably reluctant to bring pay discrimination claims without such hard pre-suit evidence of pay disparity.[2] Moreover, even when claims are successfully brought against individual companies, these expensive, difficult and time-consuming suits have little effect on the behavior of those employers lucky enough not to be snagged.

One solution that has been shown to lessen the pay gap is salary transparency legislation.[3] This is because salary transparency laws force employers to use objective criteria in setting wages, rather than making subjective, one-off decisions, which often incorporate implicit gender and racial biases. Salary transparency laws also limit the extent to which individual bargaining positions affect compensation, since women and minorities are often disfavored in such settings. For example, studies show that women applicants are often less willing to take the risk of

[2] The federal and state Equal Pay Acts require that for a plaintiff to make out a prima facie case, she must identify a comparator who is paid more than she. 29 U.S.C. § 206(d); NY CLS Labor § 194. Title VII and the New York State and City discrimination laws also require that for a plaintiff to show she is a victim of disparate treatment, she must identify someone to whom she can reasonably compare herself. See e.g. Suri v. Grey Global Group, Inc., 2016 N.Y. Misc. LEXIS 5328 (Sup. Ct. N.Y. Cty. 2016), aff'd in part and reversed on other grounds, Suri v Grey Global Group, Inc., 164 A.D.3d 108 (1st Dept. 2018).

[3] *See e.g.* Baker, et al, *Pay Transparency and the Gender Gap*, National Bureau of Economic Research, 2019, revised 2021. https://www.nber.org/system/files/working_papers/w25834/w25834.pdf

negotiating for higher compensation than are men, [4] while Black applicants are viewed negatively when they attempt to do so.[5]

The changes contained in the current bill are necessary to achieve that transparency.

Need for objective standards

This bill requires that posted salary ranges be based on objective standards, including the compensation of workers currently employed in similar jobs and the amount currently budgeted for the role. This addition to the legislation is crucial. Under the current law, it is widely reported that employers have been posting ranges that are so wide that they offer no useful information at all to job-seekers or employees. [6]

Need to describe all forms of compensation

Employers are increasing replacing wage compensation with non-cash compensation, such as stock, options, RSU's and the like. A recent report by Morgan Stanley notes that public companies in the U.S. are increasingly paying employees with stock rather than cash, making workers into shareholders. [7]When employers are allowed to omit from job postings, stock, and options and other non-cash forms of compensation, employers can pick and choose which favored employees have access to these valuable perks – often based on implicit biases that disfavor women, especially women of color. On the other hand, the availability of crucial

[4] "… (W)omen have been found to be less willing than men to negotiate and compete and to be more risk averse." Blau, Francine & Kahn, Lawrence. (Sept. 2017). *The Gender Wage Gap: Extent, Trends, and Explanations*. Journal of Economic Literature. 55(3), 836. https://pubs.aeaweb.org/doi/pdfplus/10.1257/jel.20160995

[5] See e.g. Hernandez et al, *Bargaining While Black, The Role of Race in Salary Negotiation,* American Psychological Association (2019) https://www.apa.org/pubs/journals/releases/apl-apl0000363.pdf

[6] See https://www.cnn.com/2022/11/14/success/pay-transparency-wide-salary-ranges/index.html

[7] https://www.morganstanley.com/im/publication/insights/articles/article_stockbasedcompensation.pdf

benefits such as disability insurance or paid maternity leave, can be fundamental to applicant decision-making (especially those applicants who are likely to need maternity leave). But female employees are often reluctant to ask questions about such benefits, for fear of signaling to prospective employers that they might be pregnant, or have a disability, and therefore be viewed as less desirable candidates.[8]

Need for job descriptions

When employers are permitted to post jobs without job descriptions, workers may be lured into accepting positions that sound "executive" or "managerial track", but which, when filled by female workers, especially women of color, end up involving large amounts of administrative or even menial work.[9] Assignment to these tasks, described in an article in the *Harvard Business Review* as "non-promotable", can lessen employee chances for promotion.[10] The requirement that job descriptions be posted helps ensure that the same job carries the same requirements and promotional opportunities for workers of all races and genders.

Need to provide compensation information to current employees upon request

[8] For examples of numerous articles in the popular press giving advice to candidates about backhanded ways to try to decipher firm parental leave policies while being too afraid to ask directly, see https://www.image.ie/self/how-to-find-out-about-maternity-leave-before-accepting-a-job-158778; and https://money.com/maternity-leave-ask-in-job-interview/.; https://advicewitherin.com/advice/3-sneaky-ways-to-ask-about-benefits-in-a-job-interview. The articles assume the reader to be aware of rampant discrimination against pregnant women and advise candidates in general to steer clear of asking about maternity benefits, suggesting instead that they try to decipher this information from websites of other companies, or other people who may have worked for the company at one time, or by asking vague questions in the hopes they will lead to specific answers..

[9] See e.g. the facts set forth in Suri v. Grey Global Group, Inc., supra at *7 (Plaintiff claims that Cirullo discriminated against her by treating her like a secretary…asking her to set up meetings..even when she was not invited to the meetings and assigning her work to lower level males)

[10] "Studies of industry and academia (by Irene De Pater and colleagues; Sara Mitchell and Vicki Hesli; and Joya Misra and colleagues, as well as many others) have shown systematic gender differences in how work is allocated, with women spending relatively more time than men on non-promotable tasks and less time on promotable ones. These differences matter because they help explain why, despite women's significant educational and general workplace advances, we continue to find vastly different promotion trajectories for men and women." https://hbr.org/2018/07/why-women-volunteer-for-tasks-that-dont-lead-to-promotions

Salary transparency for current employees allows employees to make informed choices about their possibilities for growth and advancement. It also allows employees and employers to flag and address potential examples of failures of pay equity – for example, a highly qualified employee mysteriously frozen in a position near the bottom of her pay range.

In conclusion, NELA NY strongly urges that the Council pass Intro 808-A, as a crucial step toward achieving the pay equity that New Yorkers deserve, and justice requires.

NYC | HOSPITALITY ALLIANCE

December 12, 2024

**NYC Hospitality Alliance Comments on:**

Int. 808 – In relation to information required in job listings
Int. 871 – In relation to extending reasonable workplace accommodations to caregivers
Int. 982 – In relation to compliance with equal pay laws
Int. 1064 – In relation to requiring transparency concerning promotional opportunities

The NYC Hospitality Alliance is a not-for-profit organization representing thousands of restaurants, bars, and nightclubs across the five boroughs that would be affected by **Int. 808, Int. 871, Int. 982 and Int. 1064.** We are very concerned about these proposed bills and urge the City Council to consider our thoughtful comments and their serious implications and consequences for small businesses.

## Int. 808 – In relation to information required in job listings

We appreciate the positive intent behind this proposed legislation, which tries to provide jobseekers and workers with more transparency regarding the positions they seek. However, the level of detail required, the lack of clarity in certain provisions, and administrative burden will create significant compliance challenges, particularly for small businesses.

### Job Descriptions and Posting Requirements

Most small businesses in the restaurant, bar, and nightclub industries do not maintain formal written job descriptions for every position. The corporate structure is very flat, and the jobs generally follow industry standards. Moreover, the nature of small business operations often requires flexibility, with job duties expanding and contracting based on attendance level among colleagues and business levels. Requiring formal job descriptions creates significant administrative problems and expenses as written job descriptions create obligations and burdens under law, including the Americans with Disabilities Act, federal and state wage and hour laws, and EEO laws and regulations. Many of the City's restaurants are small business owners are struggling and added expenses for lawyers and human resource departments simply are not in the budget. The proposed requirement for employers to create, update, and post job descriptions would be an undue burden on small businesses, creating administrative complexities and increasing the risk of unintentional noncompliance.

### Lack of Definition for "Non-Wage Compensation

The term "non-wage compensation" is not clearly defined in the proposal. It is unclear whether this includes bonuses, commissions, tips, profit sharing, or other forms of cash compensation.

The proposal does not specify whether non-cash compensation should be included, nor whether employers are expected to list specific amounts or simply indicate eligibility for this compensation. This ambiguity will lead to confusion and compliance issues for employers.

**Listing All Non-Salary Benefits**

The proposed mandate for employers to list all non-salary or non-wage compensation and benefits for each job advertisement is also problematic. While benefits like paid sick leave, vacation, and health insurance, are commonly understood, these benefits and others are generally already provided for in offer letters where employees have an opportunity to weigh the entire package being offered.

**Subjectivity in Compensation Ranges**

The proposal also includes a subjective requirement for employers to disclose compensation ranges—both monetary and non-monetary—for their current job titles as well as any positions requiring equal or substantially similar skill, effort, and responsibility. This provision introduces uncertainty, as determining what is “equal” and "substantially similar" is inherently subjective. For small businesses, this creates a risk of unintentional violations, as compliance would depend on interpretations that may differ from one case to the next.

While the goals of this legislation are well-intentioned, the proposed requirements impose significant administrative burdens on small businesses, with vague or undefined terms that may lead to confusion and potential noncompliance. We urge the City Council to reconsider certain provisions of this proposal to make sure it is workable and fair for businesses of all sizes. However, any additional mandates like these will only increase the already significant challenges and burdens small businesses face in their efforts to survive and contribute to New York City's economy and thus the City Council should reconsider this proposed legislation.

**Int. 871 – In relation to extending reasonable workplace accommodations to caregivers**

This proposal seeks to amend the City Human Rights Law to require employers, regardless of size, to provide reasonable accommodations to employees who are caregivers. Under the current framework of the City Human Rights Law, a “reasonable accommodation” is defined as any change to the work environment or duties that allows an employee to perform their job, as long as it does not result in “undue hardship” to the business. Courts have held that unpaid leaves of up to 12 months with job protection are per se reasonable accommodations. Similarly, it has been determined that requiring employers to hire additional staff or reassign current employees to accommodate a caregiver is also reasonable. While certain reasonable accommodations are not problematic, when viewed in the broader context, certain requests can place significant burdens on businesses, particularly in the context of caregiving responsibilities.

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Under the City Human Rights Law, a "Caregiver" is defined as any individual who provides direct and ongoing care for:

1. A minor child, or
2. A person with a disability who is either a relative or a person residing in the caregiver's household, and who relies on the caregiver for medical care or assistance with daily living.

It is important to note that the definition of "disability" under City law is extremely broad. In practice, almost anyone can be considered “disabled” under the law, including individuals with temporary conditions (such as a cold or a minor injury), which further expands the scope of caregiving responsibilities.

**Potential Consequences of Expanding Caregiver Accommodations:**
If this proposal is passed, employers will be required to provide reasonable accommodations not only for employees who care for children, but also for those who care for individuals with disabilities. While this is a laudable goal, it carries a risk of abuse and unintended consequences, particularly for businesses that rely on flexible staffing arrangements.

- **Disruption of Work Schedules:**
  One of the most significant concerns is the potential for employees to request schedule changes that may not align with the needs of the business. For instance, an employee working in the back of house (BOH) of a restaurant might request to avoid dinner shifts Monday through Thursday due to childcare responsibilities, opting instead for lunch shifts that better suit their personal schedule. While such a request may be framed as a "reasonable accommodation," it could create operational challenges, particularly in restaurants where employee availability is already constrained.

- **Increased Leave Requests:**
  Employees could also request leave to care for a relative who is temporarily ill, even if they have no available sick leave or vacation days left. Given the broad definition of “disability,” employees could potentially claim caregiving responsibilities for any minor illness or condition affecting a family member, leading to frequent, unpredictable absences. While it may seem reasonable for an individual caregiver, it can disrupt business operations, especially when employees in critical positions are absent.

- **Disproportionate Impact on Non-Parents or Non-Caregivers:**
  As more employees seek accommodations, non-parent employees or those without caregiving responsibilities may be forced to take on less desirable shifts, such as evening or weekend hours. Over time, this could create resentment and discord within the workplace, as employees without caregiving responsibilities are burdened with the more difficult shifts, while those with caregiving responsibilities receive preferential treatment.

- **Impact on Small Businesses:**
  Small businesses may find it difficult to accommodate these requests without facing undue hardship. The logistics of rearranging schedules, hiring additional staff, or transferring employees can be particularly challenging for businesses with limited resources. The additional strain on operations could result in higher operational costs and diminished efficiency, undermining the business's ability to function effectively.

While the intent behind providing reasonable accommodations for caregivers is to promote fairness and support employees in balancing work and caregiving responsibilities, the practical impact on businesses, particularly small businesses, must be carefully considered and understood.

**Int. 982 – In relation to compliance with equal pay laws & Int. 1064 – In relation to requiring transparency concerning promotional opportunities**

We recognize that both Int. 982 and Int. 1064 are drafted to apply only to employers with 25 or more employees and 100 or more employees, respectively. Based on this, we believe the City Council's intent is to exempt small businesses, acknowledging that these mandates would impose unreasonable expectations and significant administrative and financial burdens. Such mandates include:

- Requiring employers with 25 or more employees to give the city the following information about each employee: salary and wages earned for the previous calendar year; the month and year the employee was hired; job title; gender; race and ethnicity; birth year; the borough in which the employee works; whether the employee is a member of a labor union; whether the employee works more than 35 hours per week, less than 35 hours per week, or on a seasonal or temporary basis; and whether the employee is a manager. The first report would be due on February 1, 2025, and subsequent reports would be required annually thereafter. Employers covered by this bill would also have to submit a digital affirmation to DCWP every three years, which certifies the employer's compliance with federal, state, and local equal pay laws.

- Require employers with more than 100 employees to notify their current employees of job opportunities prior to selecting a candidate for the role. This bill would also require employers to provide current employees with information about the selected candidate hired for the job.

However, we urge the City Council to consider that many small businesses—particularly those in the restaurant, bar, and nightclub industries—are highly labor-intensive and often employ more than the threshold number of workers given both the part-time nature of the work and 7 day a week schedules. For instance, a small restaurant can easily exceed 25 employees, while larger establishments may have 100 or more.

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Furthermore, many local business owners operate multiple restaurants or bars, with a combined employee count that may trigger compliance with these proposed regulations.

Imposing these mandates on such businesses would be incredibly difficult and costly, and it would disproportionately harm the very types of small businesses that the City Council often seeks to support. The practical realities of managing a restaurant, bar, or nightclub—ranging from a lack of administrative support, employee turnover, financial resources, and more—make compliance with these proposals extremely challenging. It is not feasible for these businesses to collect and submit all of the proposed employee information to the city, nor implement these mandates when announcing job opportunities, and sending notices out to employees when hiring someone.

Most restaurants and bars do not have human resource departments or a dedicated person to manage these mandates. If enacted, it will result in violations and gotcha fines issued to small businesses.

We respectfully ask that the City Council re-evaluate the potential negative impact on these businesses and, should this legislation advance, eliminate any provisions that would extend to eating and drinking establishments.

**Conclusion:**

Thank you for your time and consideration of our comments. We trust that the City Council will continue to recognize the needs of small businesses as it proceeds through the legislative process with these bills.

If you have questions, please contact our executive director Andrew Rigie at arigie@thenycalliance.org.

**December 12, 2024**

**Testimony of Sandra Jaquez**
**President**
**New York State Latino Restaurant Bar & Lounge Association (NYSLRBLA)**

*Before the*

**New York City Council Committee on Civil and Human Rights**

*Regarding*

**Employer Mandates – Int 982 and Int 871**

Thank you, Chair Willaims and members of the Committee, for the opportunity to provide testimony. My name is Sandra Jaquez, and I am the President of the New York State Latino Restaurant Bar & Lounge Association (NYSLRBLA). Our association represents hundreds of small, Hispanic- and minority-owned restaurants and nightlife establishments across New York City. These businesses employ thousands of New Yorkers and play a pivotal role in the city's economy, especially within immigrant and minority communities.

We submit this testimony to express serious concerns regarding Int 982 and Int 871, which are a part of a broader package of employer mandates under consideration. Together these bills represent a series of employer mandates that will impose significant operational and financial challenges on small businesses in the hospitality industry. While the intent of these bills may be well-intended, their practical impact must be carefully considered, especially for small and minority-owned businesses navigating immense economic challenges.

Int 982 mandates annual reporting of detailed employee wage information and requires digital certification of compliance with equal pay laws. While we support equal pay for all employees, the proposed requirements do not account for the realities of running small hospitality businesses. Hispanic-owned restaurants and bars are often family-operated businesses with limited administrative capacity. This level of reporting places a disproportionate burden on

small businesses that are already stretched thin. Additionally, the hospitality industry can have high turnover rates and employees frequently move between jobs or work, making it extraordinarily difficult to gather, organize, and report data year after year without errors. Compliance costs and enforcement risks associated with Int 982 could divert critical resources away from small businesses operating on thin margins.

We also have serious concerts regarding Int 871, which requires businesses to provide reasonable accommodations for employees with caregiver status. While we respect the goal of supporting caregivers in the workplace, this bill lacks clarity regarding its implementation in industries like ours, where roles are hands-on and schedules are carefully balanced to meet operational demands. It is unclear how accommodations for caregivers would apply to servers, bartenders, kitchen staff, and other front- and back-of-house positions. Requests to change shifts or take extended leave could severely disrupt restaurant and bar operations. The bill's broad definitions pose serious concerns. Accommodating one employee's schedule could result in others being assigned undesirable shifts, creating discord within the workforce. Small businesses simply lack the resources and flexibility to hire additional staff or restructure operations to meet such requests without incurring significant hardship.

Other bills included in the package, such as Int 808 and Int 1064, also pose concern for our industry. Int 808's requirements for job listings to include highly detailed wage and benefit information, and Int 1064's mandate regarding transparency in promotional opportunities, would further strain small businesses in our industry. Most small restaurants and bars do not have formal job descriptions or promotional pathways in the same way that large corporations do. Complying with these requirements would demand resources and expertise that many small businesses simply do not have.

The combination of these mandates add yet another layer of operation strain for small businesses. We respectfully urge this Committee and the full City Council to reconsider these bills and work collaboratively with small business stakeholders to find solutions that promote fairness without threatening the survival of local businesses. Thank you for considering this testimony, and we look forward to continued dialogue on these important issues.

NEW YORK STATE RESTAURANT ASSOCIATION

## Regarding Intros 808-A, 871, 982, 984, and 1064

Good afternoon. My name is Kathleen Irwin, and I am the NYC Government Affairs Manager for the New York State Restaurant Association (NYSRA). We are a trade association representing food and beverage establishments in New York City and State. We are the largest hospitality trade association in the state, and we have advocated on behalf of our members for over 85 years.

NYSRA supports workplaces free from discrimination. We support the goals of pay equity and the ability for workers to experience fair hiring practices. To that end, NYSRA did not oppose Local Law 32 of 2022, which initially introduced the requirement to publish minimum and maximum pay rates in job listings. Today, City Council is considering a set of introductions that would create a number of new obligations for employers in New York City, including the restaurants we represent. The provisions of these introductions raise quite a few concerns for us today, and we address each introduction below.

In Intro 808-A, NYSRA does not take issue with including a basic job description and a list of possible benefits in a job posting. However, section c) would require employers to compile and issue to employees, as often as annually, data on "the current range of compensation, including base salary and other forms of monetary and non-monetary compensation for such employee's current job title and any other positions requiring equal or substantially similar skill, effort, and responsibility that are performed under similar working conditions. For non-cash compensation the range shall be calculated using the units of such non-cash compensation." This provision would create a serious burden, both due to the work of calculating the value of non-cash compensation, but also due to the internal logistics of having to create a stratification scheme of jobs based on vague, "skills, effort, responsibility" criteria while meeting the realities of the actual workplace.

Turning to Intro 871, the administration noted today that there are already anti-discrimination protections for caregivers. If City Council wishes to extend reasonable accommodations to this category, there must be some acknowledgement of how much farther-reaching and broad this category is, as currently defined, compared to other categories afforded reasonable accommodations. For this reason, if City Council moves forward with Intro 871, there must be extremely concrete and fair parameters in place to guide what a "reasonable accommodation" can look like, and importantly, what "satisfy the essential requisites of a job" will mean in the context of something as common as being a caregiver. We also heard an inclination from the administration to refine the definition of caregiver for this purpose, which we would support.

In today's hearing, the administration expressed concerns with sharing individual information, as Intro 1064 would require. While we do not take issue with the requirement to inform employees about job openings, the obligation to make notice on the same calendar day and the obligation to share information about the eventual hire are both additional administrative burdens on

employers. It bears noting that 100 employees – in a very labor-intensive industry like the restaurant industry – does not necessarily designate a "big" employer. The administrative capacity of independently-run food service businesses is limited, and is sometimes just the owner trying to meet all legal and HR compliance responsibilities on their own.

Though Intro 984 does not directly regulate the restaurant industry, it does call upon the city to conduct a study of private employers. We would like to know if this introduction is meant to create a reporting obligation to the city, or if the city intends to conduct this study without creating new obligations for employers. As we elaborate below, reporting obligations for restaurant owner/operators is both exceedingly burdensome and creates privacy concerns.

Finally, we oppose Intro 982. First and foremost, it would be extremely burdensome to compile and report the information enumerated in Intro 982 about every employee every year. As we mentioned above, independent business owners tend to wear many hats, including legal and HR, and are often solely responsible for all their administrative compliance. Besides the major logistical imposition, this introduction claims that personally identifiable information will not be collected, but goes on to say that month and year of hire, job title, birth year, and gender, race, and ethnicity *will* all be collected. For most businesses, let alone a 25-person workplace, that is certainly enough information to identify an employee. Beyond that, requiring employees to share this information – much of which relates to protected classes – with their employer and then with a city agency is intrusive and raises privacy concerns for workers. In the shifting national and local environment around immigration, and thinking about a restaurant workforce that is a stronghold for immigrant workers, requiring all workers to report their race and ethnicity to the government is likely to raise alarm bells. Based on our understanding, this granular information would also be subject to FOIL requests, heightening our privacy concerns.

We understand and share the goals of fostering fair workplaces free from discrimination. We hope that the logistical concerns we raised today can be resolved before final versions of any of these introductions proceed. Thank you for taking our feedback into consideration, and as always we intend to be a partner to the Council in this important work.

Respectfully Submitted,

Kathleen Reilly Irwin

NYC Government Affairs Manager

New York State Restaurant Association

401 New Karner Road

Albany, New York 12205

PARTNERSHIP for New York City

**Testimony of the Partnership for New York City**

**New York City Council**
**Committee on Civil and Human Rights**

**Proposed Int. 808-A, Int. 871, Int. 982, Int. 984, Int. 1064**

**December 12, 2024**

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Thank you, Chair Williams and members of the committee for the opportunity to testify on legislation impacting employers. The Partnership for New York City represents the city's business leaders and largest employers. Our members employ about a half million people in the city and deliver approximately $236 billion in annual economic output. We work with government, labor, and the nonprofit sector to promote economic growth and maintain the city's prominence as a global center of opportunity, upward mobility, and innovation.

The legislative proposals being heard today are more in the long series of unfunded government mandates that have added to the cost, complexity, and risk of operating a business or nonprofit institution in New York City. This is partly why New York is the most expensive city in American for residents and businesses alike.

Local mandates are not the best way to solve society problems like wage inequity and gender parity, most of which are already addressed in federal and state law. We strongly urge the Council to take this into account when you consider each of the bills on today's agenda. A far better approach would be a voluntary collaboration with employers to encourage best practices, which are already in place at most of our large employers.

**Proposed Int. 808-A**

This legislation, sponsored by Majority Whip Selvena Brooks-Powers, would expand the salary transparency requirements enacted under Local Law 32 of 2022. This law only took effect in November 2022 and we do not yet have data on its impact (*e.g.*, whether it has resulted in greater pay equity, the challenges associated with compliance, or even the extent to which employers are aware of its existence). As a result, the rationale for expanding the law is unclear.

Majority Whip Brooks-Powers' has been responsive to many of our concerns, but the updated version still includes requirements that are difficult for employers to implement. These include:

- Disclosing to an employee annually upon request the compensation range (salary and other monetary and non-monetary compensation) for all employees with the same "job title and any other positions requiring equal or substantially similar skill, effort, and responsibility that are performed under similar working conditions." It is unclear how an employer would determine which positions would be equal or substantially similar to each employee's position, but this would certainly be a costly and time-consuming effort

for large employers, extremely difficult for small employers, and nearly impossible for unsophisticated employers. The information provided to employees could easily cause confusion and dissatisfaction if they misinterpret the disclosed ranges as typical salaries, when there could be a variety of circumstances that included in these ranges. Also note, employees covered by a collective bargaining agreement should be exempt from this provision since the terms of their employment are dictated by the union contract.

- Requiring employers to record the reason for offering a salary outside the posted range and retain the record for 3 years would be administratively difficult for employers to record and it is unclear what benefit it would offer.

- The specific list of factors the bill would suggest the employer use to determine what the employer believes it will pay is non-exhaustive, so it does not really clarify anything for the employer or the regulator.

- It is unclear how exhaustive the list of non-salary compensation and the list of benefits would need to be. The list of benefits may vary depending on the location (*e.g.*, there is a NY program for paid family leave, but this does not exist in all jurisdictions).

**Int. 871**

This legislation, sponsored by Council Member Hanks, would require nearly all employers to offer reasonable accommodations to their employees who are caregivers. Many of the Partnership's members and other employers in the city already offer flexibility, services, and support for caregivers. They recognize the difficulty in balancing work and caregiving responsibilities. That said, extending the current requirement to provide reasonable accommodation for disabilities to caregiving could be disruptive to workplaces. There is enormous potential for operational difficulties from inconsistent work hours, reduced productivity, and difficulty coordinating schedules. Not all employees will be eligible for or able to receive accommodations and this may harm morale among employees generally. We ask the Council not to move forward with this unprecedented requirement.

**Int. 982**

This legislation, sponsored by Council Member Caban, would create an excessive data collection and reporting burden for employers without any obvious benefit. The bill would require employers with 25 or more employees to report for each employee:

- salary and wages earned
- month/year of hire
- job title
- gender, race and ethnicity
- birth year
- borough of employment
- union membership

- full-time/part-time status
- managerial status

This goes far beyond what is required by the federal government or any state or locality, most of which only apply to employers with 100 or more employees and only request aggregated data. It would require many employers to make significant changes to systems and processes to collect and report the information required. The benefits that could be gained from analysis of this data cannot possibly outweigh the burden on employers of collecting and reporting this data as well as the unknown potential liability.

The bill would also require employers to affirm to DCWP that they are complying with federal, state, and local equal pay laws every three years. Since this does not change employers' responsibility to comply with equal pay laws, it is unclear what purpose this would serve other than to add more paperwork for employers.

**Int 984**

This legislation, sponsored by Council Member Farias, would require various city agencies to conduct an annual study on private employers with 150 or more employees designed to identify pay and employment disparities. It is unclear how the agencies would conduct this study and what data would be used.

**Int. 1064**

The Partnership understands the goal of this legislation, sponsored by Chair Williams, is to provide transparency around job openings to existing employees and provide an opportunity for internal candidates to obtain promotions. We support this goal, but it is unclear how the provisions of the bill would achieve them. What is certain is that implementing this proposal comes with a high administrative burden for employers that would cause delays in hiring.

The legislation requires an employer to "make reasonable efforts to make a job opportunity known to all employees on the same calendar day and prior to the date on which the employer makes a selection decision." It is unclear what an employer would have to do to satisfy this requirement and how the requirement applies to employees or job opportunities outside of New York City.

There are some positions and situations where it is important not to widely distribute a job posting. Sometimes the search for a new hire is purposely done quietly, and confidentiality is important. For example, when a senior leader is leaving, it can be disruptive to their entire team, and the search for a replacement may take a long time. The employer may not want to publicize the impending departure so far in advance. Similarly, where an employer is planning a reorganization or considering replacing a critical employee, they may need to conduct a search for a replacement without informing the employee.

Int. 1064 would also require an employer to "announce, post or otherwise make known" a new hire's name and previous and new job title to, "at a minimum, the employees with whom the employer intends the selected candidate to work with regularly, within thirty calendar days after such candidate begins working in the position[.]" It is standard practice for employers to

introduce new hires to other employees, so it is hard to imagine why it would be necessary to make this a legal requirement. In addition, "employees with whom the employer intends the selected candidate to work with regularly" is vague. For a large employer, a new employee would "regularly work with" many other employees. Determining this group of employees would be a manual process for each position, creating a huge administrative task every time a new employee is hired. It is unclear what benefit this provision would serve and how this benefit would outweigh the burden on the employer.

The information provided about a new hire also has to include "information on how employees may demonstrate interest in similar job opportunities in the future." It is unclear what kind of information an employer would provide under this requirement. We understand that the goal of this provision is to help employees identify promotional opportunities, however the language would apply to all positions. This one-size-fits-all approach would result in employers having to provide information that is not actually relevant to employees. There is clearly no purpose, for example, in an employer providing information on how an employee who has the same job as a new hire can demonstrate interest in the new hire's job.

Finally, the definition of "job opportunity" has caused some confusion. Members have questioned whether this is intended to apply to so-called "in-line" or "in-seat" promotions (*i.e.*, those that are a standard or reasonably expected progression for an existing employee) or jobs available to interns who have previously worked for an employer in hopes of getting a job after completion of the internship.

The Partnership recommends the Council seriously weigh the potential benefits of these bills against the certain burden they will impose on employers. We are happy to provide any additional information that would be helpful and to work with the Council on voluntary ways to achieve their goals for equity.

Thank you.

**Testimony before the**
**NYC Council Committee on Civil and Human Rights**
**Chair, Council Member Nantasha Williams**
**December 12, 2024**

Thank you, Committee Chair Williams and members of the **NYC Council Committee on Civil and Human Rights** for holding today's hearing on a group of important bills to address wage equity. I am Beverly Neufeld, President and Founder of PowHer®New York (PowHer®NY), a 501c3 entity which is a network of over 100 gender and racial justice organizations working collectively on economic equity for New York women.

PowHer®NY has been leading an almost twenty year Equal Pay Campaign during which we helped to shift attitudes, assumptions and policies to address gender and racial wage and opportunity discrimination. Key partners in this work include: Legal Momentum, CWA Local 1180, NELA/NY, Community Service Society, A Better Balance and HCMoneyball.

Today's bills once again challenge society to confront past, engrained practices and systemic wage discrimination and to take action to end inequitable pay through greater transparency. In my testimony, I will first address Int. 808A, followed by commentary on Ints. 982 and 984.

## Int. 808-A will strengthen Local Law 59 (2022) and address important omissions:

New York City government has already embraced the imperative and rationale for increased pay transparency with Local Law 59 in 2022 which requires salary range disclosure. Int. 808-A offers essential amendments. PowHer®NY fully endorses those amendments and thanks its sponsor, Majority Whip Council Member Brooks-Powers, for her diligence in proposing comprehensive, needed changes to the current law which align with other states' pay transparency laws.

**Key changes proposed by Int. 808-A:**

The proposed amendments would improve the current law in the following ways:

1. **Provides much needed clarity on how employers should determine the salary range** included in job advertisements, in order to discourage the use of overbroad ranges and maintain transparency if employers pay outside the posted range. *High profile employers are still purposefully posting overbroad ranges to thwart transparency and the "good faith" standard has been criticized by workers and employers for being too vague. Need to replace the broad and meaningless "good faith" language with meaningful parameters. "An accurate range that the employer actually intends to pay for the position"*
2. Enhance consistency with NYS requirements by mandating that employers **disclose a job description alongside the range,** which is critical in providing context to any pay range and in helping identify legitimate versus overbroad pay ranges. *Disclosure of job descriptions is essential so that workers can assess where they fall within the range and ensure that employers aren't increasing their job responsibilities while their pay remains stagnant.*

3. Ensure that broader forms of pay discrimination are accounted for by requiring employers to **disclose not just base pay but any broader forms of compensation offered such as bonuses as well as core benefits,** including health benefits, sick time, and paid family leave. *Discriminatory pay disparities are the product of gaps in base pay as well as gaps in other forms of compensation, including bonuses. To effectively tackle pay discrimination, employers must be required to disclose basic information about broader forms of compensation*
4. Extend transparency requiring **employers to disclose pay ranges not only to applicants but to existing employees** upon request, but no more frequently than annually.
   *Disclosure of pay ranges to existing employees is essential to addressing pay inequity - our equal pay law is not effective unless women and people of color have access to basic pay information that allows them to determine whether they are being paid fairly.*
5. Ensure transparency even among employers who choose not to post a job advertisement by **mandating disclosure of the pay range to a candidate upon their request at any point during the hiring process**. *Some employers have tried to skirt requirements by engaging in direct recruitment without job postings. To close this loophole, it's essential the law would empower candidates to request pay range information in circumstances where there is not a job posting.*
6. Require employers to **be transparent about salaries if they ultimately pay outside the range.** *To the extent employers pay outside the range without disclosure, we lose transparency completely. Amendments to the law must discourage this practice.*

## Int 982 (Caban) and Int 984 (Farias) will expand NYC's municipal pay data reporting to the private sector to create broader transparency and align with international and national trends:

Pay data reporting is already in effect in the European Union, the United Kingdom, Canada, and many other countries, as well as in multiple U.S. states. (See Pages 5 to 9) **New York City has the opportunity to be a leader in the dynamic movement for broader pay data transparency.**

**With this testimony, the PowHer®NY Network hopes to underscore just how widespread support for pay data transparency is.** We want our city to join this rapidly unfolding movement as a leader and as a progressive model for the rest of the country. The introduction of Int 982 and 984 is a momentous development and we congratulate the sponsors, Council members Caban and Farias, for their forwarding looking legislation. PowHer®NY is aware that the text of the current bills will be amended, and we commit to being a resource to the sponsors and the Council to refine the bills and develop comprehensive and effective legislation akin to current laws that promote transparency and equity.

**New York City has established itself as a leader in pay equity legislation on the national stage**. PowHer® New York (PowHer® NY) was proud to be part of New York City's early passage of a salary history ban and, more recently, the salary range disclosure law that had ripple effects across the nation and set off a wave of cities and states passing similar laws. We celebrated the New York City Council's commitment to pursuing pay equity when it passed Local Law 18 in 2019, which required collecting, analyzing, reporting pay data and ultimately closing gender and racial pay gaps for the municipal workforce. (See Page 11)

Our city now has an opportunity to join and *lead* an important growing movement of pay equity legislation that is reaching across the globe. Following the momentum of NYC's municipal workforce pay data analysis, the New York City Council should **extend the call for gender pay gap transparency to the private sector with effective pay data reporting legislation.**

Over the last few years, pay data reporting has gathered momentum because it **holds employers accountable to worker pay equity**. Even decades since the federal Equal Pay Act of 1963 went into effect, New York state's hard working women still only earn 88 cents to every dollar a man earns, with even wider pay gaps for Black, Latina, and Native women in our state. And **closing the gender and racial pay gap** is not only a question of equality and workers' rights– it is also a question of **strengthening our economy, and economic security for families, by improving incomes for marginalized workers.**

Requiring employers to report their pay data by gender, race, and ethnicity is an important tool to uncover and address wage inequality. In Europe, **the E.U. Pay Transparency Directive (2023)** requires E.U. employers of over 100 employees to report their median unadjusted gender pay gaps, as well as the proportion of men and women in each of four quartile pay bands (See Page 5). The **United Kingdom's Equality Act (2017 Regulations)** and **Canada's Employment Equity Act** require very similar reports, but also make this information available to all, so the public can hold employers under scrutiny for the outcomes of their pay practices (See Page 5 and 6). This means that **numerous international businesses, including many that also operate in New York City, are already reporting on their pay data for employees in Europe, the UK, Canada, and elsewhere.** As well, the EU directs companies to evaluate pay beyond equal pay for equal work to the international standard of equal pay for work of equal value, as well as other factors beyond the scope of US employers current evaluations. Syndio, a leading workplace equity platform which provides PowHerNY with guidance, offers information on the EU directive**.**

The movement for pay data reporting legislation has also taken hold in the United States. **California, Illinois, and Minnesota have passed and implemented pay data reporting requirements** in recent years (See Pages 8 and 9). Even without the pressure of legislation, shareholder advocacy has pushed many major U.S. businesses to join the wave of pay data transparency in the annual **Arjuna Capital Racial and Gender Pay Scorecard** (See Page 10).

**New York State has also already demonstrated a strong political will to support pay data transparency**. In 2022, the Equal Pay Disclosure With Respect To State Contracts Act (S2239/A5773) passed in the Senate (49 to 14) and in the Assembly (113 to 34). Another data reporting bill, S8345/A8449, passed in the Senate (42/19) and in the Assembly (106 to 92). Both were vetoed by Governor Hochul (See Page 11).

The efforts of pay equity advocates in Europe, Canada, and other states have provided us with a wealth of examples of pay data reporting legislation to learn from. Drawing from these examples, a comprehensive approach to a New York City pay data reporting bill should consider **opportunity gaps and occupational segregation,** which can be identified with reports of gender/racial representation in pay bands or job levels, and **public disclosure of pay data analysis by employer or industry,** an effective method of increasing employer accountability. We encourage further exploration of existing pay data reporting laws in Europe, Canada, and the U.S., and have compiled the most important points of these laws below.

Despite increasing momentum and widespread attention to pay data transparency rules, the future of the U.S. movement is in jeopardy. With vocal opposition to efforts for diversity, equity, and inclusion in the

workplace, **the incoming presidential administration could seriously threaten our decades of hard work and progress in pay equity.** After all, in 2019 the first Trump Administration quashed the promising developments in Equal Employment Opportunity Commission (EEOC) pay data collection, known as EEO-1 Component 2 added in 2016 (See Page 10). **NYC must do all it can to protect workers, women, and people of color in New York City, and to promote equity and expand opportunities for all workers through our laws.**

## Background Information



## Benefits of Pay Data Transparency

Pay data transparency is key to corporate accountability, workplace equity, and worker interests, and is also beneficial for businesses and the wider economy.

- **Pay data transparency holds businesses accountable to close pay gaps,** and to comply with the Equal Pay laws that have already been in place federally and in New York for over 50 years, without placing the burden on employees to discover gaps and take on expensive lawsuits.
- **Pay data transparency helps businesses identify opportunity gaps & occupational segregation,** and incentivizes them to recruit more diverse employees into higher paying roles, when they collect and report race and gender data by pay bands.
- **Pay transparency helps businesses.** Encouraging fairer pay setting practices increases employee trust, job satisfaction, engagement, worker productivity, retention, and profitability.

- **Pay transparency has broad public benefits.** As pay reporting practices become the norm, they will help with reducing the gender pay gap, thus improving incomes for women across the board. Higher earnings will increase tax revenue collections, improve the economy through increased spending, and reduce demand on public dollars.

# Pay Data Reporting Globally

## UK: 7 Years of Public Gender Pay Gap Reporting

UK Equality Act 2010, Regulations 2017 requires all private employers with more than 250 employees working within the UK to report their pay gap analysis annually. These reports are made available to the public, on company websites and through the UK government's gender pay gap service.
Annually, these companies must report:

- The difference between mean/median **hourly pay** of male and female employees
- The difference between mean/median **bonus pay** paid to male and female employees
- The proportions of male and female employees paid bonus pay
- The proportions of male and female employees in lower, lower middle, upper middle and upper **quartile pay bands.**
- A written statement on the company's website, explaining the organization's view of why the pay gap is present, what they've done to analyze it, and their plans to close it.

The information of company gender pay gap reports **must be accessible to employees and the public,** so employees, competitors, and the media can hold them under scrutiny.

The U.K. government importantly provided companies with **detailed information on how to normalize their data**, making internal compliance easier and data more consistent.

Numerous international businesses, including many that also employ workers in New York City, already report gender pay gap data in the U.K., suggesting that similar reporting in our City is possible.

See UK gender pay gap reports for: Bank of New York Mellon, BlackRock, Deloitte, Microsoft, Bank of America, Citigroup
Outcomes: Gender pay gap closes by one fifth after reporting introduced (lse.ac.uk)

## European Union: A Broad & Comprehensive Pay Transparency Directive

The European Union's Pay Transparency Directive was passed in 2023. It requires all EU companies to share pay data on work of equal value and "take action if their gender pay gap exceeds 5%". The 24 Member States have until June 7, 2026, to implement the Directive into their own law.

**Company size**

- Companies with more than 250 employees report their gender pay gap yearly
- Companies with 100-250 employees report every 3 years
- Companies will report to their relevant national authority

**Report Content**

- Overall unadjusted mean and median pay gap
- Mean and median pay gap in "complementary and variable" pay (i.e. bonuses)
- The proportion of female and male workers receiving bonuses
- The proportion of female and male workers in each quartile pay band
- The pay gaps between "categories of workers" (i.e., workers performing the same work or work of equal value), calculated from both base pay and bonus pay
- If the pay gap is more than 5% (and not for objective criteria), companies must make a **joint pay assessment** cooperating with workers' representatives.

The directive also makes it compulsory for employers to inform applicants about starting salary or pay range, prohibits employers from asking about salary history, allows employees to ask for average pay levels by sex for employees doing the same work, and requires that pay and career progression criteria must be gender neutral.

Pay transparency in the EU - Consilium
Infographic: Why pay transparency can help reduce the EU's gender pay gap - Consilium

## Canada: New Public Website Comparing Pay Gaps of Federally Regulated Private Sector Employers

In February 2024, Canada launched Equi'Vision, a **publicly available** data visualization tool that provides easily comparable data on representation rates and pay gaps of **federally regulated private-sector employers with 100 or more employees**. It offers data on 4 designated groups under the *Employment Equity Act*: women, Indigenous peoples, persons with disabilities, and members of visible minorities.

Equi'Vision data is submitted by employers with 100 or more employees as part of their annual reporting to the Labour Program under the *Employment Equity Act.* Employers subject to the Employment Equity Act must include in their annual reports:

- **hourly wage gaps**
- bonus pay gaps
- overtime pay gaps and overtime hours gaps.
- representation and pay gap information for the employer's overall workforce, as well as for parts of that workforce **by occupational group, employment status, industry, and location.**

More information: Minister O'Regan launches first of its kind pay transparency website: Equi'Vision - Canada.ca

## SAMPLE UK REPORTS - EXCERPTS

### AMERICAN EXPRESS 2023

| HOURLY GENDER PAY GAP | | |
|---|---|---|
| | MEAN | MEDIAN |
| 2023 | 12.8% | 14.5% |
| 2022 | 12.6% | 14.2% |

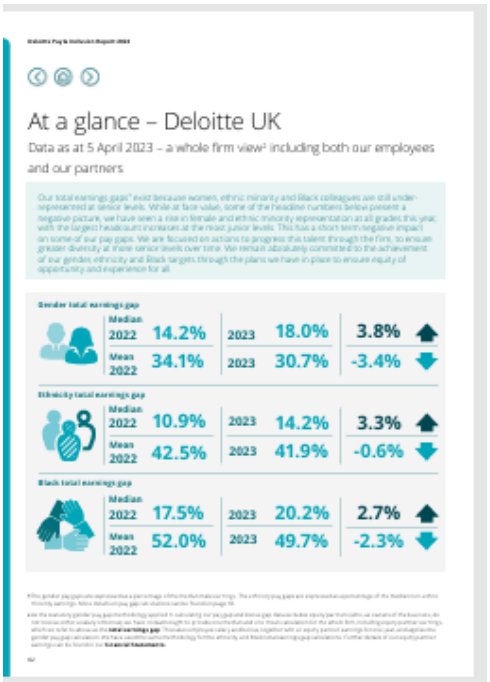
| BONUS PAY GAP | | |
|---|---|---|
| | MEAN | MEDIAN |
| 2023 | 36.2% | 34.0% |
| 2022 | 38.9% | 35.7% |

| % W/M IN THE WORKFORCE | | |
|---|---|---|
| | WOMEN | MEN |
| 2023 | 54% | 46% |

| % RECEIVING A BONUS | | |
|---|---|---|
| | WOMEN | MEN |
| 2023 | 91% | 92.8% |

| % OF EMPLOYEES IN EACH PAY QUARTILE | | |
|---|---|---|
| WOMEN | | MEN |
| | UPPER | |
| 43% | | 57% |
| | UPPER MIDDLE | |
| 57% | | 43% |
| | LOWER MIDDLE | |
| 58% | | 42% |
| | LOWER | |
| 57% | | 43% |

### DELOITTE UK 2023



At a glance – Deloitte UK

Data as at 5 April 2023 – a whole firm view[2] including both our employees and our partners

Our total earnings gaps[1] exist because women, ethnic minority and Black colleagues are still under-represented at senior levels. While at face value, some of the headline numbers below present a negative picture, we have seen a rise in female and ethnic minority representation at all grades this year, with the largest headcount increases at the most junior levels. This has a short-term negative impact on some of our pay gaps. We are focused on actions to progress this talent through the firm, to ensure greater diversity at more senior levels over time. We remain absolutely committed to the achievement of our gender, ethnicity and Black targets through the plans we have in place to ensure equity of opportunity and experience for all.

Gender total earnings gap

| | | | | |
|---|---|---|---|---|
| Median | 2022 14.2% | 2023 18.0% | 3.8% | ▲ |
| Mean | 2022 34.1% | 2023 30.7% | -3.4% | ▼ |

Ethnicity total earnings gap

| | | | | |
|---|---|---|---|---|
| Median | 2022 10.9% | 2023 14.2% | 3.3% | ▲ |
| Mean | 2022 42.5% | 2023 41.9% | -0.6% | ▼ |

Black total earnings gap

| | | | | |
|---|---|---|---|---|
| Median | 2022 17.5% | 2023 20.2% | 2.7% | ▲ |
| Mean | 2022 52.0% | 2023 49.7% | -2.3% | ▼ |

Pay Report 2023

At a glance – gender pay gap

Headline gender pay figures for Deloitte UK (excluding equity partners)

| Deloitte UK | Median | Mean |
|---|---|---|
| Gender pay gap | 17.1% | 15.1% |
| Gender bonus pay gap | 34.7% | 45.7% |

Proportion of males and females receiving a bonus payment

# Pay Data Disclosure in the United States

## California: Pay Band & Job Category Reporting by Gender, Race and Ethnicity

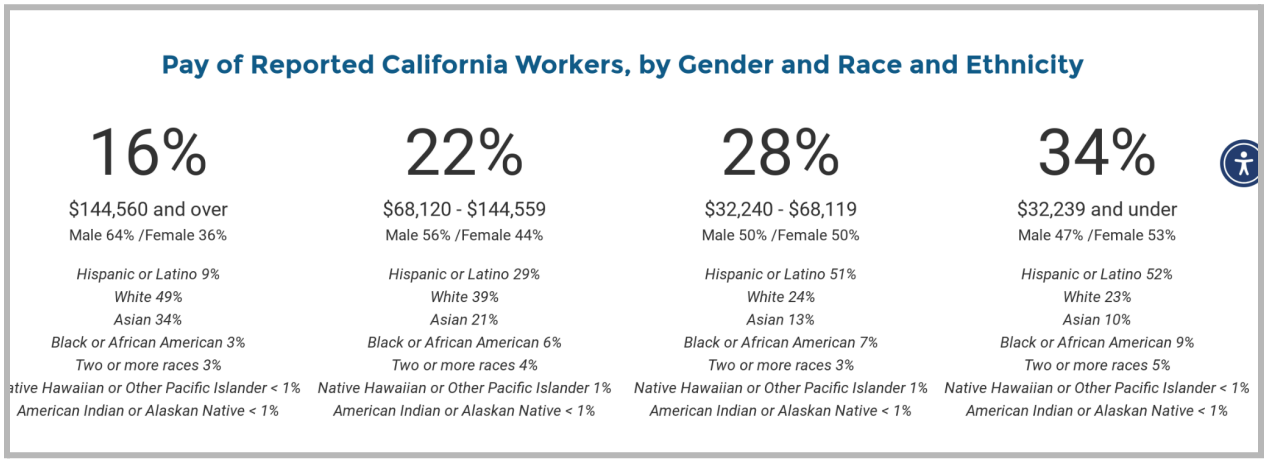
In California according to Cal. Gov. Code 12999, private employers of **100 or more employees** must submit a yearly pay data (EEO-1) report to the CA Department of Fair Employment and Housing. The pay data report shall include the following information:

1. The number of employees by race, ethnicity, and sex in each of the EEO-1 report's **10 job categories**
    a. Executive or senior level officials and managers.
    b. First or mid-level officials and managers.
    c. Professionals.
    d. Technicians.
    e. Sales workers.
    f. Administrative support workers.
    g. Craft workers.
    h. Operatives.
    i. Laborers and helpers.
    j. Service workers.
2. The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the **pay bands** used by the United States Bureau of Labor Statistics in the Occupational Employment Statistics survey.
3. Within each job category, for each combination of race, ethnicity, and sex, **the median and mean hourly rate.**

**The State of California's Civil Rights Department publishes an Annual Report summarizing the results from over 8 million covered employees**. Results from Annual Pay Data Reports (ca.gov).

California's pay bands **do not always accurately reflect hourly pay -** the W-2 data they collect can reflect gaps in income over a year**.** This law **doesn't require publishing anonymized individual raw data** where results could show hourly pay.

Example:



## Illinois: Collection of Employee-level Demographic & Wage Data

Implemented starting in 2023, amendments to the Illinois Equal Pay Act require private **employers of 100 or more Illinois employees** to submit demographic and wage data per their EEO-1 report to the Illinois Department of Labor every year.

Illinois law requires anonymized employee-level data reporting instead of aggregate workforce data, including the employee's title, race, gender, ethnicity, and salary.

In March 2024, the Equal Pay Registration Certificate requirement took effect, obligating employers to recertify every two years by verifying the following:

- That female and minority employees are not paid consistently below average compensation for male and non-minority employees;
- That job classifications are not governed or restricted by sex;
- That wage disparities are corrected once identified;
- The frequency of wage and benefit evaluations to ensure compliance; and,
- The business' standard for determining compensation (e.g., market pricing, state prevailing wage, union contract, performance pay system)

More information: Equal Pay Registration Certificate (EPRC) - FAQS (illinois.gov)

## Minnesota: State Contractors Get Equal Pay Certified

Starting in 2014, certain Minnesota state contractors must apply for an Equal Pay Certificate with the Minnesota Department of Human Rights (MDHR) **every four years**. The application requires the business's chairperson of the board or chief executive officer to submit a signed statement that they are in compliance with Minnesota & federal equal pay laws. They **may be subject to an audit from the MDHR, for which they must provide data on salaries of male and female employees in each major job category.**

Criteria for State contractors that must apply:

- Have **40 or more full-time employees in Minnesota**
- Have a contract for over $500,000 with Minnesota state departments and agencies
- Have a contract with Cities, Counties, Townships, and other Political Subdivisions, for a capital project funded by General Obligation bonds that exceeds $1,000,000. (New June 2023)
- Have a contract with University of Minnesota for a capital project funded by General Obligation bonds that exceeds $500,000. (New June 2023)

Sec. 363A.44 MN Statutes
Equal Pay Certificate / Minnesota.gov
Greater Economic Equity for Women: The WESA Legacy – Women's Foundation of Minnesota

## Investor Advocates: Calls for Disclosure as Corporate Best Practice

**Over the last 10 years, investors have filed at least 175 shareholder proposals at more than 93 companies, and engaged many more through shareholder dialogues, to publicly disclose their gender pay gap data.**

The Arjuna Capital Racial and Gender Pay Scorecard collects disclosures of adjusted and unadjusted mean and median pay gaps from many major U.S. companies, and ranks them based on their level of disclosure.

17 companies in the 2024 Scorecard (or 13%) disclosed their unadjusted median gender pay gaps within the last 2 years: Adobe, Amalgamated, American Express, Best Buy, BNY Mellon, Chipotle, Citigroup, Home Depot, Lowe's, Mastercard, Microsoft, Pfizer, Schlumberger, Starbucks, Target, Thermo Fisher Scientific, and Wyndham Hotels & Resorts.

59 companies disclosed their adjusted gender pay gaps, and 7 companies have committed to disclosing their gender median pay gaps in the next year: Amgen, BlackRock, Kroger, NextEra Energy, Visa, Walmart, and Walt Disney.

## United States: EEO-1 Component 2 Data Collection Put on Hold under Trump Administration in 2019

The Equal Employment Opportunity Commission (EEOC), has collected annual data reporting through the EEO-1 Component 1 report since 1966. Private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, must report annually, submitting general workforce demographic data, including data by job category and sex and race or ethnicity, to the EEOC.

The EEOC added a more detailed pay data collection component to the EEO-1 form in 2016, known as "Component 2". Component 2 requirements of EEO-1 were in effect from 2017-2018 but were **discontinued under the Trump Administration in 2019.**

Component 2 expanded upon Component 1 data collection by requiring employers to submit a breakdown of hours worked and granular pay information from Box 1 of employee W-2s, also by ethnicity, race, and sex. With this information, the EEOC could identify companies that are not in compliance with equal pay laws.

Understanding EEO-1 Reporting: Components 1 & 2 | Trusaic - JDSupra
The National Academies' Evaluation of Compensation Data Collected Through the EEO-1 Form

## New York State: Legislature Approves Pay Data Disclosure

**The Equal Pay Disclosure With Respect to State Contracts Act** (S2239/A5773)
Senator Brad Hoylman and Assemblymember Deborah Glick advanced S2239/A5773 calling for state contractors to disclose data on employee compensation by gender, race, ethnicity, and other relevant data to the New York State Comptroller. The Comptroller would annually submit a report on the data collected to the Governor, the Legislature, the Attorney General, and several state agencies, and the annual reports and the data contained in them would be available for public inspection. In 2022, the bill passed in the Senate (49 to 14) and in the Assembly (113 to 34). It was not signed by Governor Hochul.

**Filing EEO-1 report information with the NY Secretary of State** (S8345/A8449)
Senator Leroy Comrie and Assemblymember Amy Paulin advanced S8345/A8449, a bill which would have those companies which are required to file an Employer Information report EEO-1 with the federal Equal Employment Opportunity Commission (EEOC) to file substantially similar information with the New York Secretary of State. The Secretary of State would post this information on its website, making it easily available to the public.

In 2022, the bill passed in the Senate (42/19) and in the Assembly (106 to 92). Governor Hochul vetoed the bill.

## New York City: LL 18 (2019) Kicks-Off Pay Disparities Analysis in the Municipal Workforce

The 2024 NYC Workforce Pay Disparity Report includes data for municipal wages up to 2021, as maintained by the Council's innovative Pay Equity Law (Local Law 18 of 2019), which requires the Mayor's Office of Data Analytics (MODA) to publicly report New York City municipal employee pay data on the Office's open source analytics library and provide the Council with direct access to the data to facilitate its own annual statistical analysis.

Last year, the Council passed a package of bills to expand the 2019 law and require city agencies to conduct an analysis of compensation data and measures to address pay disparity and occupational segregation, providing greater real-time access to city employment data that will allow for more timely analysis.

An interactive webpage with the findings is available here:

NYC Council Releases 2024 Pay Disparity Report Showing Continued Wage Disparities in City Workforce

**Contact: Beverly Neufeld, President | PowHer®New York | bev@powherny.org | www.powherny.org**

Dec. 13, 2024

The Honorable Nantasha Williams
Chair, Committee on Civil and Human Rights
New York City Council
250 Broadway Suite 1734
New York, NY 10007

Dear Chair Williams:

On behalf of SHRM, I am writing to the New York City Council's Committee on Civil and Human Rights ("the Committee") to share our perspective on Int 0871-2024, Int 0808-2024, and Int 0982-2024, which were discussed at the Committee's hearing on Dec. 12, 2024.

As the trusted authority on all things work, SHRM is the foremost expert, researcher, advocate, and thought leader on issues and innovations impacting today's evolving workplaces. With over 340,000 members in 180 countries, SHRM touches the lives of more than 362 million workers and their families globally.

We appreciate the City Council's efforts to address critical issues impacting the workforce, including supporting caregivers and ensuring pay transparency and pay equity. Below, we offer our insights and recommendations on the proposed legislation under consideration by the Committee.

**Int 0871: Extending Reasonable Workplace Accommodations to Caregivers**

SHRM strongly supports the principle of providing reasonable accommodations to employees for the purposes of caregiving. Human resources (HR) professionals are acutely aware that every day, millions of workers across the country struggle to find reliable, high-quality, and affordable care for their aging family members, children, and/or loved ones with disabilities. According to SHRM research,[1] 1 out of every 4 individuals in the workforce lacks access to reliable care for their loved ones, and these individuals often face significant challenges balancing work and caregiving responsibilities. Furthermore, 52% of workers find it difficult to balance work and home commitments.

Today, an estimated 53 million family caregivers in the U.S. support loved ones by providing safe, engaging environments for children and youth, and/or tending to the needs of adults experiencing chronic conditions or illnesses related to aging and disability.[2] Approximately 61% of family caregivers also hold full- or part-time jobs.[3] Their caregiving responsibilities often conflict with their paid work responsibilities, dynamically impacting the productivity of businesses, the asset-building potential of individuals who are providing care for a loved one

[1] SHRM's 2021 American Workforce Road Map Study (unpublished)
[2] AARP 2020 Caregiving in the U.S. Research Report
[3] See AARP 2020 Caregiving in the U.S. Research Report, supra note 2

alongside their paid work, and the quality of support for those loved ones, as indicated in the following data:

- The Council on Aging notes that 70% of employee caregivers struggle at work. These employees forgo promotions, reduce their work hours, or leave the workforce altogether. The financial impact is staggering: Annually, employees lose up to $3 trillion in wages and benefits.[4]

- Businesses can lose as much as $34 billion each year due to employees' need to care for loved ones ages 50 and older, according to a Harvard Business School report titled *The Caring Company*.[5] AARP estimates that U.S. employers spend $6.6 billion to replace employees who leave because of caregiving responsibilities and also lose nearly $6.3 billion to workday interruptions related to caregiving.[6]

The problem of working while caregiving is even more pronounced for women and people of color: Of the 53 million family caregivers in the U.S., anywhere from 53% to 68% are women. Within communities of color, Black (66%), Hispanic (61%), and Asian American (58%) individuals are performing this caregiving role of "invisible labor." Moreover, female caregivers may spend as much as 50% more time providing care than male caregivers, which is likely a factor in women being twice as likely as men to leave the workforce due to caregiving responsibilities.

These dynamics add to the need for more support for this group of employees. With Social Security benefits calculated on lifetime earnings, leaving the workforce due to caregiving responsibilities not only results in the loss of wages and matching contributions to employer-sponsored retirement plans, but also results in lower Social Security benefits that are calculated based on an individual's lifetime earnings. These dynamics translate to caregivers losing an average of $237,000 in earnings over their lifetime, according to a 2023 Urban Institute study.[7]

The Recognize, Assist, Include, Support, and Engage (RAISE) Family Caregivers Act Advisory Council found that the loss of income connected to family caregiving amounts to an estimated $522 billion each year.[8] SHRM recognizes the vital role that caregivers play in supporting their families and communities. That is why we created Generation Cares, a cross-sector coalition dedicated to improving the quality and quantity of care for older adults, people with disabilities, and children. Generation Cares is elevating the vital work of our caregivers, responding to their growing need for training and career opportunities, and advocating for the HR professionals who support our caregiving workforce.

Extending reasonable accommodations to caregivers, as proposed in Int 0871-2024, aligns with our commitment to fostering inclusive and supportive workplaces. We support open communication between employers and employees to address accommodation needs effectively

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[4] https://www.help4seniors.org/programs-services/working-caregivers.
[5] https://www.hbs.edu/managing-the-future-of-work/research/Pages/the-caring-company.aspx
[6] https://www.aarp.org/work/employers/employers-support-working-caregivers/
[7] Urban Institute's 2023 Lifetime Employment-Related Costs to Women of Providing Family Care Research Report.
[8] https://www.shrm.org/advocacy/generation-cares

and fairly. However, it is essential to ensure that the implementation of this bill does not create undue hardship for employers, particularly small and medium-sized businesses. Additionally, we urge the Council to be mindful of the likely rise in accommodation requests and the resulting administrative duties that will primarily impact employers and HR professionals.

**The actions we do recommend taking are being pioneered by the SHRM Foundation:**
Founded in 1966, the SHRM Foundation empowers human resources as a force for social good. As the nonprofit arm of SHRM, the SHRM Foundation believes that HR holds a unique position to lead change. The organization mobilizes and equips HR professionals to ensure the prosperity and thriving of talent and workplaces. The SHRM Foundation works by widening pathways to work for more skills-first candidates and more kinds of talent; tackling societal challenges, with a current focus on workplace mental health and wellness; and strengthening the HR field with even more diversity, growth, and readiness to address these needs. The SHRM Foundation works with SHRM, courageous partners, and bold investors to generate awareness, action, and impact to build a world of work that works for all.

In the area of caregiving, the SHRM Foundation is leading the way to accelerate support for family caregivers in the workplace by curating best practices, convening employers, and communicating workplace innovations, with a focus on the unique care needs of older adults.

Across various social issues, the SHRM Foundation has demonstrated that employers can effect significant change when thoughtfully engaged at scale. By providing opportunities for increased knowledge, collaboration, and convening across geographies, industries, and business sizes, the SHRM Foundation is leading significant advances in hiring practices, workforce health, and other issues impacting society and business. The SHRM Foundation uses a co-creation model that engages business leaders and subject matter experts, resulting in the adoption of beneficial changes at scale. Recent initiatives include military and disability hiring, mental health, and increasing diversity in the HR field.

The SHRM Foundation has a proven history of convening and collaborating across sectors and has already built a strong foundation for our work in the family caregiving space by promoting the following policies:

- **Become Care Aware:** Drive awareness among private-sector employers of the unique challenges facing family caregivers, especially those caring for older adults.

- **Convey the Business Case**: Communicate the economic cost to employers that family caregiving is having and explain why investing in support and benefits is good for their bottom line.

- **Collaborate with Employers:** Work with employers to identify the specific needs, gaps, and potential solutions impacting their employees and businesses.

- **Curate for Small, Midsize, and Large Companies**: Identify best practices in supporting family caregivers at work by engaging small, midsize, and large employers at the industry, regional, and sector levels.

- **Convene Private-Sector Employer Thought Leadership:** Educate private-sector employers about offering proven education, support, and benefits to their employees who are family caregivers, especially those caring for older adults.

- **Celebrate Solutions by Employers:** Recognize exemplary employers for family caregivers, thereby setting a threshold level for other employers to emulate.

We look forward to working with our private- and public-sector partners on addressing caregiving challenges, which is essential for creating a more engaged, productive, and resilient workforce. Employers who support caregivers see benefits such as increased retention rates, improved employee well-being, and enhanced organizational loyalty. Moreover, government policies that address caregiving needs can help close the workforce participation gap, boosting economic sustainability.

**Int 0808-A: Information Required in Job Listings**

SHRM has long recognized the importance of transparency in job listings and compensation practices, with SHRM research indicating about 70% of organizations that list pay ranges in job advertisements said it has led to more people applying for their jobs, and 66% said it has increased the quality of applicants.[9] Additionally, SHRM research has found that among U.S. workers, 82% are more likely to consider applying to a job if the pay range is listed in the job listings, and 73% are more likely to trust organizations that provide pay ranges in job postings than ones that do not.

While SHRM supports the goal of enhancing transparency, we have some concerns about the potential administrative burdens and unintended consequences that may arise from the requirements outlined in Int 0808-A.

One area of concern SHRM would like to highlight is the bill's requirement that employers maintain written records justifying any deviation from the posted range for three years. While a listed salary range should be made in good faith and be as accurate as possible, there are legitimate business practices that may lead to deviations from the posted salary. Imposing excessively rigid restrictions on an employer's ability to offer competitive pay and benefits could have unintended negative consequences for workers and organizations alike.

The mandate that employers provide and maintain written records justifying pay deviations, while seeking to promote transparency, could pose significant administrative challenges, particularly for smaller businesses that may lack the resources to manage such detailed recordkeeping. While intended to ensure organizations are abiding by the ranges set, this requirement may lead to organizations forgoing more detailed salary negotiations, which may lead to reduced overall compensation for workers. Additionally, maintaining these records for a

[9] 2023 Equal Pay Day Research, SHRM

minimum of three years adds to the complexity and cost of compliance, potentially diverting resources from other critical HR functions.

To illustrate, smaller businesses often operate with limited HR staff who are already managing multiple responsibilities. The additional burden of documenting and justifying salary deviations could overwhelm these teams, leading to inefficiencies and potential compliance issues. Moreover, the requirement to retain these records for three years necessitates robust data management systems, which may be cost-prohibitive, especially for smaller employers.

Furthermore, the requirement to disclose nonsalary compensation and benefits in job advertisements, while commendable, may inadvertently limit employers' flexibility in negotiating compensation packages that best suit individual candidates' needs and preferences. For example, some candidates may prioritize flexible working arrangements, more vacation time, or professional development opportunities over immediate financial compensation. By rigidly defining compensation packages in job listings, employers may miss out on attracting top talent who value these nonmonetary benefits.

We recommend a balanced approach that promotes transparency while giving employers the flexibility to attract and retain top talent. One potential solution could be to provide guidelines for employers on how to present compensation information in a way that is both transparent and flexible. For instance, employers could be encouraged to list a broader range of potential benefits and compensation options, allowing candidates to understand the full scope of what is available without constraining the negotiation process.

Additionally, SHRM suggests implementing a phased approach to compliance, where smaller businesses are given additional time and support to meet the new requirements. This could include providing resources and training to help these businesses develop the necessary recordkeeping systems and processes.

Moreover, SHRM cautions against overlegislating and creating additional layers of liabilities that create compliance pitfalls. Too many onerous requirements may lead to stifled and overly rigid pay practices that unduly reduce the bargaining powers of workers and organizations alike. SHRM has continuously advocated that organizations drive positive change from within. Employers should be empowered to develop and implement transparent compensation practices that align with their unique business models and cultures. By fostering an internal culture of transparency and fairness, organizations can naturally enhance trust and engagement among employees.

**Int 0982: Compliance with Equal Pay Laws**

SHRM believes that all employees should receive fair compensation for their work, regardless of gender, race, or other protected characteristics. SHRM has long supported efforts to increase pay equity, consistently advocating for organizations to move beyond data collection by translating

that data into actionable insights, analyzing it through an inclusive lens to uncover hidden biases, and identifying potential systemic barriers that hinder fair and equitable outcomes.

We recognize that Int 0982 aims to enhance wage transparency by requiring employers to report detailed employee information to the city's Department of Consumer and Worker Protection. While we support the goal of improving wage transparency, we have significant concerns about the potential administrative burdens, privacy issues, and unintended consequences associated with the extensive reporting requirements outlined in this proposed legislation.

Under this proposal, employers would need to allocate significant additional resources to track and submit the required data, which may be particularly challenging for small businesses with limited resources. Moreover, the publication of employer certifications could subject organizations to increased scrutiny and legal risks, even when disparities in reported data are based on legitimate business considerations. These challenges underscore the need for an approach that balances transparency objectives with the operational realities faced by employers. We encourage the Council to consider an alternative approach that emphasizes education, advocacy, and best practices, rather than imposing burdensome reporting requirements.

By focusing on empowering employees with knowledge about compensation processes, supporting employers in implementing equitable pay practices, and fostering a culture of personal advocacy and allyship, the goals of wage transparency and equity can be achieved more effectively and sustainably. Below are some strategies that balance these objectives:

<u>Employee Education</u>

- Developing programs to educate employees about the compensation process is a crucial step. Transparency about how pay is determined and the factors that influence salary decisions empowers employees to understand their compensation and advocate for themselves effectively. For instance, an employer might host annual workshops to explain how salary structures are developed, including considerations such as market trends, performance metrics, and job classifications. These initiatives can help demystify pay practices and build trust between employees and management.

<u>Engagement with Compensation Specialists</u>

- Encouraging employers to work with compensation specialists and HR professionals ensures the development of fair and equitable pay practices. These experts can guide organizations in creating compensation strategies aligned with industry standards and best practices. For example, a company that engages a compensation consultant may identify and address pay disparities by benchmarking salaries against industry data and adjusting compensation structures accordingly. Such measures can enhance equity while reducing the risk of legal challenges.

<u>Personal Advocacy and Partnership</u>

- Promoting a culture of personal advocacy and partnership within organizations fosters a supportive and inclusive workplace environment. Employees should be encouraged to leverage their skills and negotiate compensation based on their contributions. For instance, an organization might provide training on negotiation techniques and recognize

employees who actively contribute to creating an equitable workplace. This approach empowers individuals to achieve fair compensation while enhancing overall morale and engagement.

In conclusion, SHRM supports the intent behind Int 0982 but urges the Council to consider practical implications and potential unintended consequences. By focusing on education, advocacy, and actionable resources, we can promote wage transparency and equity in a manner that benefits both employees and employers.

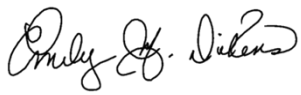
**SHRM Is Your Partner and Resource**

SHRM commends the Council's commitment to addressing critical issues such as caregiving, pay transparency, and pay equity. We share your vision of fostering fair, inclusive, and equitable workplaces across New York City. At the same time, we encourage the Council to thoughtfully evaluate the potential unintended impacts of the proposed legislation. By engaging collaboratively with HR professionals and the broader employer community, the Council can craft solutions that are both practical and impactful.

As a trusted partner and resource, SHRM is ready to provide expertise and support to the Council on all matters affecting work, workers, and workplaces. We look forward to continuing this important dialogue and working together to create a thriving future for New York City's workforces and employers alike.

Thank you for your commitment to public service.

Sincerely,



Emily M. Dickens, J.D.
Chief of Staff, Head of Government Affairs,
and Corporate Secretary, SHRM

Cc: Members and staff of the New York City Council's Committee on Civil and Human Rights

THE LEGAL AID SOCIETY CIVIL

Rebekah Cook-Mack
Employment Law Unit
49 Thomas Street, 5th Floor
New York, NY 10013
rcook-mack@legal-aid.org
212-298-5311



December 12, 2024

**The Legal Aid Society's Testimony Regarding the Importance of the New York City Commission on Human Rights and the Need for Increased Funding**

**Submitted by Rebekah Cook-Mack, The Legal Aid Society**

Thank you for the opportunity to present this testimony. I am a Staff Attorney in the Employment Law Unit of The Legal Aid Society.

The Legal Aid Society is the oldest and largest not-for-profit public interest law firm in the United States, working on more than 300,000 individual legal matters annually for low-income New Yorkers with civil, criminal, and juvenile rights problems. The Society also brings law reform cases that benefit all New Yorkers. The Society delivers a full range of comprehensive legal services to low-income families and individuals in the City. Our Civil Practice has local neighborhood offices in all five boroughs, along with centralized citywide law reform, employment law, immigration law, health law, homeless rights, consumer rights, and family law practices. Many of these units represent people experiencing discrimination who are impacted by the work of the Commission.

The Society's Employment Law Unit represents low-wage workers in employment-related matters such as claims for violations of leave laws, unpaid wages, claims of discrimination, and unemployment insurance hearings. Our clients are overwhelmingly people of color living paycheck to paycheck. The Unit conducts litigation, outreach, and advocacy designed to assist the most vulnerable workers in New York City, among them, low-wage workers who are sexually harassed; discriminated against based on race, national origin, immigration status, pregnancy, disability, sex, sexual orientation, gender identify, age, domestic violence, or criminal background; or denied reasonable accommodations needed due to pregnancy or disabilities.

The LGBTQ+ Unit of the Legal Aid Society seeks to address systemic issues impacting Legal Aid's LGBTQ+ clients through public education, advocacy, legislation, and impact litigation. It also provides trainings to Society staff on the New York State and New York City Human Rights Law's protections for LGBTQ+ people.

The Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change. The Law Reform Unit's representation of clients benefits more than 1.7 million low-income families and individuals in New York City, and the landmark rulings in many of these cases have state-wide and national impacts.

The Society is a steering committee member of the NYC Human Rights Law Working Group, a coalition that advocates New Yorkers who have been discriminated against. Members primarily assist low-income New Yorkers who seek to enforce their civil and human rights in the areas of housing, employment, credit, public accommodations, and more. Coalition members are lawyers, paralegals, organizers, and other advocates. Members work at non-profits, at public interest law firms, and in the private sector. What unifies the Coalition is our belief that a well-funded Commission is essential to the flourishing of New York City and to the safety, well-being, and success of all New Yorkers. The Legal Aid Society is proud to work with this dedicated group of New York City advocates to address the crisis at the Commission.

## I. Importance of the Commission

As the proposed legislation under discussion today exemplifies – Council is committed to the work of the Commission and to expanding the protections it enforces. To meaningfully impact the lives of New Yorkers, the City Council's commitment to the work of the Commission and the enforcement of anti-discrimination laws must include adequate funding so that Legal Aid and other organizations can be sure that when we refer a New Yorker who has faced discrimination, their case will be investigated promptly and thoroughly.

Unfortunately, today, the Commission does not function as a partner protecting the people of New York City and bringing bad actors to justice. Its staff has not kept pace with its responsibilities and, even as its purview has grown, its budget has shrunk significantly in recent years. Non-profits, like The Legal Aid Society, used to file regularly in the Commission because it allowed us to help more people. Today, we

rarely do. We are hesitant to refer pro se individuals there because the waits are too long and the outcomes are poor. This leaves New York's most vulnerable residents without a practical avenue to protect their rights and disproportionately impacts people of color.

Without adequate funding and the ability to attract and hire staff to fill openings – New Yorkers who have been discriminated against will go without justice. Without funding, the laws Council has passed will not reach their intended effect. **Without attention now, the cost of this disinvestment to vulnerable New Yorkers will become acute as Federal Agencies retreat from this arena, and they have nowhere else to turn.**

Reinvigorating the Commission and rebuilding its staff will take time and requires immediate funding and focus. We ask you to act now so that the Commission can rebuild and prepare to meet the needs of New Yorkers – especially undocumented workers - under the new administration.

## II. Staffing Crisis at the Commission

In 2018, the Law Enforcement Bureau had 47 staff attorneys. **Today, the Commission has less than half of the staff attorneys it had in 2018 – just 21 staff attorneys in the LEB serving the entire City today and attempting to enforce the strongest human rights law in the country. It has one person serving as a data analyst.** Support and managerial staff suffered similar reductions in personnel. Because limited staff means limited intake appointments, New Yorkers wait **six months** for an intake appointment to speak with an agency attorney. During this time, the statute of limitations for their claims may run out, denying them a chance at justice outright, and their situation at best remains unaddressed.

## III. Reinvest in the Commission

The Commission cannot eliminate and prevent discrimination when understaffing is so acute that it closes cases for "administrative convenience" rather than resolves cases after years of inaction. **The Commission is in crisis. We call on the City to:**

1. **Restore the Commission's Budget to Pre-Pandemic Levels**

What would be a significant budget increase for the Commission is an insignificant rounding error for the City. Without a course correction the Commission cannot recover. But even doubled, **the Commission's entire budget would remain less than 0.01% of the City's total budget.**

2. **Exempt the Commission from Any Hiring Freeze, Allotments System Hiring, or Other Limits on Hiring and Allow it to Hire Experienced Attorneys.**

   The City must lift hiring restrictions so that the Commission is no longer subject to a two-to-one hiring replacement scheme by which it can only hire one person for every two departures. This policy is responsible for accelerating the crisis facing the Commission. Remaining staff are forced to take on more work with no relief. This citywide budget measure has a disproportionate impact on the Commission because it is so small. With less than twenty LEB staff attorneys, four departures could reduce the LEB unit by ten percent while saving the City virtually no money. The Commission must be exempt from this policy. It must be encouraged to promptly replace any departing staff members.

   Further, rather than hiring the most junior attorneys, the Commission should hire experienced attorneys at the top of the PayScale to attract the best talent. The Commission will not be able to rebuild if it offers its employees jobs promising low salaries and large caseloads.

**This is a moment of urgency.** Without intervention the situation will deteriorate still further. In the current political climate, this cannot be allowed. Today's underfunded and understaffed Commission is not positioned to meet the needs of New Yorkers when the Federal Administration changes. It is not positioned to meet the needs of the undocumented New Yorkers who may reasonably fear the repercussions of filing complaints with a federal agency or in court. The Commission is failing New Yorkers and must be rescued.

We thank the Council for its consideration of this testimony. For more information or to address concerns, please feel free to contact me at rcook-mack@legal-aid.org or (212) 298-5311.

Thank you, Council Members. My name is Dr. Solange Charas. I am a human capital subject matter expert with a PhD in Governance, an MBA in Accounting and Finance and a BA in Economics. I have served as the top HR executive for three for-profit organizations, as a board director for two public companies, and held senior roles at EY and Arthur Andersen. I am a Distinguished Principal Research Fellow at the Conference Board and am an active member of the Technical Committee that creates and monitors human capital standards at ISO – the International Organization for Standardization. I am currently a full-time Professor of Practice at Columbia University's Masters of Human Capital Management program. Today I stand in solidarity with PowHerNY equal pay committee and want to talk to you about the research evidence that exists related to the benefits of pay transparency for workers, organizations and the community at large.

What you're considering today is not a new topic. In an ever-evolving human capital-centric business environment, it is frequently considered by the SEC, the World Economic Forum (WEF), and the majority of the top governance monitoring agencies like the Sustainability Accounting Standards Board (SASB), European Financial Reporting Advisory Group (EFRAG), Corporate Sustainability Reporting Directive (CSRD), International Financial Reporting Standards (ISFR) and ISO. This topic is being discussed in the boardrooms and management suites of every company in America and around the world. Transparency in all matters human capital, including the matter you're taking up today, is a topic of great importance, not only to investors and management, but to employees, customers, and prospective employees. It is just a matter of time before organizations must be transparent in all matters, including human capital matters, and especially those in Europe and Asia – given the legislations passed in these two areas of the globe, requiring human capital reporting. This topic has been the focus of extensive research in the academic community – to study its impact on sustainable financial outcomes.

This document will address pay transparency from a research/academic perspective, providing evidence from peer-reviewed articles reflecting the rigor of the research process, showing validity and reliability in those research findings related to the varied effects that pay transparency has on business performance, influencing employee motivation, organizational dynamics, and compensation strategies.

The topics covered will include:

1. Employee Retention and Recruitment;
2. Enhanced Fairness and Trust;
3. Pay Satisfaction and Employee Morale;
4. Employee Motivation and Effort;
5. Better Monitoring and Accountability;
6. Balanced Effort Allocation;
7. Impact on Perceptions of Organizational Justice and Behavior;

8. Social Comparison and Pay Adjustments;

There is a preponderance of academic research that demonstrates that pay transparency is beneficial for organizations, employees and society at large. The "exercise" of reporting provides important insights for organizations to understand their performance related to pay equity issues (gender, ethnic) that they would not necessarily analyze. Research shows that transparency about organizational policies and practices to employees generate the behaviors that drive better organizational outcomes. Organizations can use transparency to improve not only human capital performance, but ultimately, business performance, as research has shown that lower attrition, higher engagement, and longer tenure positively impact business outcomes, as shown in these papers:

- "Business-unit-level relationship between employee satisfaction, employee engagement, and business outcomes: a meta-analysis". Harter, Schmidt, and Hayes (2002). *Employee satisfaction and engagement are critical factors influencing business outcomes at the business-unit level*.
- "Top-management-team tenure and organizational outcomes: The moderating role of managerial discretion". Finkelstein and Hambrick (1990). *Finkelstein and Hambrick's work explores how the length of time executives spend in their roles influences strategic decisions and organizational performance, with a particular focus on the role of managerial discretion*.
- "Organizational Tenure and Job Performance" Ng and Feldman. (2010). *Longer organizational tenure is generally associated with improved in-role performance and citizenship behaviors. Employees with more extended tenure tend to perform better in their core tasks and are more likely to engage in behaviors that benefit the organization, such as helping colleagues and volunteering for extra work*.

These effects are particularly important in the public sector, where there is an abundance of evidence that shows that pay transparency in the public sector is associated with positive employee attitudes, potential wage compression at higher salary levels, and a reduction in the gender pay gap.

- "Pay Transparency and Its Effects: A Comparative Analysis of Public and Private Sector." Braje and Kuvac (2022). *Public sector employees have a more positive attitude towards pay transparency than private sector employees*.
- "Making Performance Pay Work: The Impact of Transparency, Participation, and Fairness on Controlling Perception and Intrinsic Motivation". Wezel, Krause, Vogel. (2017). *Fair, participatory, and transparent design increased intrinsic motivation*.
- "Pay Transparency and the Gender Gap". Baker, Halberstam, Kroft, et. al. (2019). *Salary disclosure laws reduced the gender pay gap by 20-40%*.

Key Effects of Pay Transparency

1. **Employee Retention and Recruitment**: Transparency can impact retention, particularly of high-performing employees, by providing them with insights into their productivity relative to peers. This can either encourage or discourage retention based on the perceived fairness of compensation.
    - According to Habibi in "**Pay Transparency in Organizations**" (2020) *increasing the firm's value of retaining its most productive workers makes transparency more favorable*.
2. **Enhanced Fairness and Trust:** Pay transparency helps close pay gaps, such as the gender pay gap, and reduces employee turnover by fostering a sense of fairness and trust between employees and management. It also allows employees to make more informed decisions about their career paths and compensation expectations.
    - According to Cullen in "**Is Pay Transparency Good**" (2023), *the researcher found that pay transparency policies can narrow coworker wage gaps and increase employee motivation and productivity. An additional finding, which benefits organizations, is that pay transparency can lead to overall lower average wages*.
    - In Brown, Nyberg, Weller, Strizver, "**Pay Information Disclosure: Review and Recommendations for Research Spanning the Pay Secrecy–Pay Transparency Continuum**" (2022), consistent with the theory of information asymmetry and based on research reviewed, a new integrative definition ("pay information disclosure") anchors both current and future research. *By viewing pay information disclosure research in an information asymmetry context, with its focus on the causes and consequences of unequal access to information, their research examines motives for and outcomes of pay information disclosure benefits for individuals, organizations, and society.*
3. **Pay Satisfaction and Employee Morale:** Increased pay transparency, such as the CEO pay ratio disclosure in the U.S., has been linked to higher pay satisfaction among employees. This is particularly true for those who previously had less access to pay information. In addition, transparency can lead to justified requests to correct pay disparities, thereby improving employee morale and reducing unjustified grievances
    - According to Carter, LaViers, Sandvik, and Xu in "**Employee Responses to Increased Pay Transparency: An Examination of Glassdoor Ratings and the CEO Pay Ratio Disclosure**" (2023), they found *evidence that the mechanism behind the observed increase in pay satisfaction is a change in*

*workers' reference wages. Specifically, there is a stronger effect on pay satisfaction for employees who had less pay information available to them through other sources prior to the disclosures. Their results are among the first to document a positive effect of increased pay transparency on employee morale.*

- In Maggio and Marandola's research "**Employees' reaction to gender pay transparency: an online experiment**" (2022), they found that *overall pay transparency does not disrupt employees' performance. They found that pay transparency increased justified pay correction requests and decreased unjustified ones.*

4. **Employee Motivation and Effort:** Transparency can affect employee motivation differently based on their relative pay standing. Employees who perceive themselves as underpaid may reduce their effort, while those who see their pay as fair or above average may be motivated to maintain or increase their performance.
    - According to Avdul, Martin, Lopez in "**Pay Transparency: Why it is Important to be Thoughtful and Strategic**" (2023*), pay transparency can yield benefits such as helping to close pay gaps, reducing employee turnover, and elevating trust with management and others*.
    - According to Fan, Wu, Chen and Tang in "**The implications of pay transparency in the presence of over- and underconfident agents**" (2023), *pay transparency can entice employees to improve job performance, with the optimal payment scheme (base and incentive pay) and support recruitment strategy and outcomes.*
5. **Better Monitoring and Accountability:** Pay transparency enhances shareholder monitoring of company boards, leading to improved use of relative performance evaluation (RPE) and better alignment of compensation with company performance
    - Bushman in "**Cash-based bonus plans as a strategic communication, coordination and commitment mechanism**" (2021), *emphasizes the idea that cash-based bonus plans play an important communication role in which a board's performance measure choices reveal to outsiders the firm's commitment to specific strategic objectives and facilitate the coordination of behavior across executives inside the firm. Public observability of bonus plans then provides a basis for investors and competitors to assess a firm's strategic direction, and for investors to hold managers accountable for strategy execution.*
6. **Balanced Effort Allocation**: Pay transparency enables organizations to achieve a more balanced allocation of effort among employees by allowing them to

collectively enforce fair compensation practices, which can lead to stronger employment relationships

- According to Fahn and Zanarone, in "**Pay Transparency Under Subjective Performance Evaluation**" (2021), *transparency enables the employees to collectively sanction the organization for reneging on subjective incentives. Collective enforcement allows the transparent organization to use strong employment relationships to "cross-subsidize" weak ones, achieving a more balanced allocation of effort than under pay secrecy.*

7. **Impact on Organizational Justice and Behavior**: Pay transparency can influence perceptions of fairness and justice within an organization. While it can enhance procedural justice and reduce counterproductive behaviors when processes are transparent, it may increase negative behaviors if outcome transparency reveals pay disparities perceived as unfair.

    - In SimamTov-Nachlieli and Bamberger's research, "**Pay communication, justice, and affect: The asymmetric effects of process and outcome pay transparency on counterproductive workplace behavior**" (2020), *process pay transparency reduced counterproductive workplace behavior, while outcome pay transparency increased it.*

8. **Social Comparisons and Compensation Adjustments**: Pay transparency can reduce the level of social comparisons among employees. Given that many employees share data amongst themselves, pay transparency serves to legitimize the organization's decisions regarding pay levels, diminishes the perception of pay biases, and supports effective information dissemination related to competitive pay. In addition, research has found that legislating pay transparency increases earnings for women, especially those with college degrees, and reduces the gender wage gap.

    - According to Kim in "**Pay Secrecy and the Gender Wage Gap in the United States**" (2015), *the study finds that women with college degrees increase their pay by 3 percent in states that have outlawed pay secrecy, and reduce the gender wage gap by 5–6 percent or by 12–15 percent, depending on the specification and population of workers examined. In addition, she found that organizations that have a policy of pay transparency are able to better stay within their salary budgets as one-off salary negotiations are eliminated by salary transparency.*

**Conclusion**

Salary transparency offers several benefits for organizations and employees, including promoting fairness, reducing turnover, and enhancing trust. Specifically, it is instrumental

in closing pay gaps, reducing employee turnover, enhancing trust and motivation and improving wage negotiations. The benefits extend to employees and importantly to organizations (both public and private sector) through enhanced engagement, longer tenure, more productivity, more effective recruiting, and ultimately cost containment.

**From:** New York City Council
**To:** Testimony
**Subject:** [EXTERNAL] Thu, Dec 12 @ 1:00 PM - Committee on Civil and Human Rights
**Date:** Thursday, December 12, 2024 12:22:46 PM

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[redacted]

Attendee will be: Testifying in-person
[redacted]
Attendee name (Zoom name): Sharon Brown Jeter
Attendee email (Zoom account): [redacted]
Attendee phone number: [redacted]
Hearing: Thu, Dec 12 @ 1:00 PM - Committee on Civil and Human Rights
Subject of testimony: Defend Israel by Returning Judeo Christianity, Prayer, Bible, Church, Choir back into all schools. Remove idolatry and idolatrous homosexuality that goes with Islam etc. School shootings with cease and all of the problems that we see in schools will end. and we need to display American flags and judeo-christian flags and Jewish flags in school and teach about the Jewish heritage and Christian heritage of our nation. As well as the Indians and pilgrims both Judeo Christian that sounds very Thanksgiving Day and indigenous day. Books with pornographic content cannot be shown in school. We must kick out the UN and the WHO world health organization from our schools and the defunct mental health system that pushes all of the evils of idolatry and anti-Semitism and homosexuality and anti-christianity and anti morals.
Organization: Other
Organization if "Other": Rose of Sharon Enterprises
Accommodations: None

If a testimony was uploaded, it will be in the attachments.

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# THE CITY OF NEW YORK

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**I represent:** CCHR

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**Name:** Hillary Scrivani, Senior Policy Counsel

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**Name:** Hilary Wilson

**Address:** [redacted] Brooklyn, 11226

**I represent:** Community Service Society of NY

**Address:** 633 Third Ave, 10th FL, 10017

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**Address:** [redacted]

**I represent:** _____

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**I represent:** _____

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*Date:* 12.12.24

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**Name:** Seher Khawaja

**Address:** 32 Broadway, Suite 1801, NY, NY

**I represent:** Legal Momentum

**Address:** see above

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**Name:** Hiram Clark

**Address:** [redacted] NY NY 10006

**I represent:** NELA-NY

**Address:** 90 Broad St #3 NY NY 10004

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*Date:* 12/12/2024

**(PLEASE PRINT)**

**Name:** Beverly Neufeld

**Address:** [redacted] NY 10543

**I represent:** Power NY

**Address:** PO Box 2033, 450 Lexington Ave NY NY 10017

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