

Testimony of JoAnn Kamuf Ward
Deputy Commissioner, Policy and External Affairs
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights on Int. 1208-A
December 2, 2021

Good morning Chair Eugene and members of the Committee on Civil and Human Rights. I am JoAnn Kamuf Ward, Deputy Commissioner of Policy and External Affairs at the New York City Commission on Human Rights. It is my pleasure to join you today to testify in support of the intent of Intro 1208-A, which would amend the City's administrative code to require employers to post the salary range on all job postings. I am joined today by my colleague, Katherine Greenberg, Special Counsel at the Commission.

The Commission is the local civil rights enforcement agency that enforces the New York City Human Rights Law, one of the broadest and most protective anti-discrimination and anti-harassment laws in the country, with 27 protected categories, and which covers housing, employment, and public accommodations. The Human Rights Law also prohibits discriminatory harassment and bias-based profiling by law enforcement. By statute, the Commission has two main functions. First, the Commission's Law Enforcement Bureau enforces the City Human Rights Law by investigating complaints of discrimination from the public, initiating its own investigations on behalf of the City, and utilizing testing to help identify violations of the Law. Second, through the Community Relations Bureau, which is comprised of Community Service Centers in each of the City's five boroughs, the Commission provides workshops and trainings on New Yorkers' rights and the obligations of businesses, employers, and housing providers under the City Human Rights Law, working with community partners and sister agencies. In the last six and a half years of this Administration, the Commission has implemented over 30 amendments to the City Human Rights Law. The Law has been expanded to institute one of the nation's first salary history inquiry bans, prohibit criminal history discrimination in employment, expand protections against sexual harassment and ensure rights of pregnant and nursing people, including lactation accommodations. Additionally, our law prohibits retaliation against individuals who seek to oppose discrimination, file a discrimination complaint, or participate in a related investigation.

Despite the COVID-19 pandemic, the Commission's work has continued, expanded, and pivoted to address new challenges, including: racial disparities in access to healthcare, housing, and essential needs; the needs of frontline workers who have disabilities or are pregnant and seek accommodations to continue to do their jobs safely; as well as the rise in anti-Asian bias, and acts of discrimination against all New Yorkers. In Fiscal Year 21, the Commission resolved 896 cases and assessed a record \$9.74 million in damages and penalties for violations of the City Human Rights Law. In addition to resolving cases for monetary relief, the Commission has shaped restorative justice remedies to repair the harm experienced by individuals and communities impacted by the discrimination. For example, in instances of employment discrimination, the Commission has negotiated resolutions that require respondents to invest in a

paid internship, apprenticeship, or employment pipeline opportunities for underrepresented groups, and to engage with community-based organizations to facilitate broader recruitment efforts. The Commission has established a cooperative approach to businesses and public accommodations to foster Human Rights Law compliance. In many instances involving first-time violators of the City Human Rights Law, where no complainant was harmed by a violation, the Commission has sought to educate businesses about their legal obligations and work with them in creating non-discriminatory policies and practices, rather than levying fines.

The Commission's staff remained steadfast in efforts to vindicate New Yorkers' human rights, and worked to uphold the Human Rights Law as we weathered a pandemic. However, discrimination remains a reality. The agency also continued to receive a high number of reports of discrimination, with 9,055 such reports in FY 2021, and 10,015 in FY 2020. Consistent with prior years, the most reported instances of discrimination were related to disability, gender, and race.

Some discrimination is intentional. Yet, discrimination can also be the result of practices that have a disproportionate impact on particular individuals and groups. The City Human Rights Law seeks to eliminate barriers to equity and to strengthen dignity and equality for all New Yorkers.

The Commission staunchly supports pay equity as well as the enactment of legislation that increase pay transparency, which is vital for equity.

The City Human Rights Law already contains several provisions that protect against unequal treatment in the terms and conditions of employment, including compensation.¹ These protections apply to most employers, and prohibit discrimination on the basis of many protected characteristics including, but not limited to, actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, and sexual orientation.² With respect to disparate pay, the City Human Rights Law provides that it is an unlawful discriminatory practice for an employer, employee, or agent thereof to discriminate against someone in compensation or in the terms, conditions or privileges of their employment because of their protected characteristic(s).

Discrimination in pay or terms of employment, however, can be difficult to detect, as employees are often hesitant to share salary information with colleagues, and often do not realize – and are unable to know – that they are being compensated at lower rates for comparable work. Recognizing this reality, local and state governments, including in New York, are taking steps to advance pay equity through policy initiatives. The New York City Human Rights Law was expanded in 2017 to ban inquiries into salary history for the purpose of encouraging pay equity across the City. That law prohibits an employer from inquiring about an applicant's salary

¹ N.Y.C. Admin. Code § 8-107(1).

² See *id.* § 8-107(1) (prohibiting unlawful discriminatory practices in employment and covers entities including employers, labor organizations, employment agencies, joint labor-management committee controlling apprentice training programs, or any employee or agent thereof); *id.* § 8-102 (“The term ‘employer’ does not include any employer with fewer than four persons in the employ of such employer,” except claims for gender-based harassment apply to employers of all sizes.).

history, including important and often overlooked fringe benefits. An employer may not rely on prior salary history to determine salary, unless the job applicant volunteers that information. This amendment to the Human Rights Law recognizes that “inquiring about salary history during the hiring process . . . often creates a cycle of inequity and discrimination in the workplace, which perpetuates lower salaries specifically for women and people of color.”³

Intro 1208-A represents a welcome step toward leveling the playing field for employees, and for women, people of color, and other New Yorkers who have historically been – and continue to be – harmed by wage disparities. Wages impact individual’s daily expenses and define what is affordable; wages also determine quality of life in the short term, and one’s ability to accrue equity over generations. Action to address pay inequity today will have long term benefits.

In 2019, the Commission convened a public hearing on pay equity, working with the sister agencies, the Commission on Gender Equity, the Department of Consumer and Worker Protection, as well as the Sex and Law Committee at the New York City Bar Association. Together, we gathered input from New Yorkers, and drafted a report.⁴ This hearing, and our work in this area, have together emphasized that federal, state, and local legislative and policy changes are needed to foster fairness and equity. The 2019 hearing testimony underscored that, although New York City has robust workplace protections, workers across and within industries continue to be inequitably compensated.⁵ Testimony emphasized that New Yorkers experience wage disparities as the result of persistent differential treatment in the workplace based on gender, class, race, immigration status, national origin, gender identity, sexual orientation, and other identity characteristics. More specifically, a lack of transparency in compensation enables pay inequity to persist.⁶ In jurisdictions where there is mandated wage transparency, the pay gap between men and women decreases, and more women are hired and promoted in leadership.⁷

Testimony during the public hearing revealed that wage disparities are elusive and offered a range of recommendations, which include the need for increased transparency surrounding pay, such as posting salary ranges for job classifications.⁸ Additionally, there was support for employer reporting of pay data and demographic information, as well as periodic audits.⁹

Testimony also suggested that there is a need for greater services and supports for individuals that have been most impacted by wage disparities and underpayment, including raising the minimum wage, and expansion of access to affordable childcare, as well as outreach and training programs that enhance career development and workplace readiness. The Commission looks

³ N.Y.C. Admin. Code § 8-107(25); *see also* N.Y.C. Comm’n on Human Rights, “Salary History Questions During Hiring Process are Illegal in NYC,” <https://www1.nyc.gov/site/cchr/media/salary-history.page>

⁴ *See generally* Challenges in Obtaining Pay Equity in the Workplace: A Report on New York City’s 2019 Public Hearing on Pay Equity (2020),

https://www1.nyc.gov/assets/genderequity/downloads/pdf/pay_equity_report_2020_final.pdf.

⁵ *See generally id.*, at 20-31.

⁶ *Id.* at 22.

⁷ *Id.* at 22-24; *see, e.g.*, n. 77 (quoting testimony and referencing a report on legislation in Denmark that requires “firms to provide gender disaggregated wage statistics . . . reduces the gender pay gap, primarily by slowing the wage growth for male employees”).

⁸ *Id.* at 35.

⁹ *Id.* at 33.

forward to working with the City Council, as well as sister agencies, to fulfill the intent of Intro 1208-A, and to working on complementary initiatives that promote gender and racial equity and advance pay equity in New York City.

Thank you again for the opportunity to speak today. My colleague, Katherine Greenberg and I look forward to discussing Intro 1208.



New York Staffing Association Statement Proposed City Council Int. No. 1208-A

Int. No. 1208-A would make it unlawful for employers, including staffing agencies, to “post a listing for employment” within the city of New York, in any media, “without stating the minimum and maximum salary for such position.” Compliance with the salary range requirement in media postings would present serious operational and business challenges for temporary staffing agencies.

The New York Staffing Association supports the goal of promoting fair and transparent hiring processes for all individuals irrespective of gender. But the unique nature of the staffing business and temporary employment must be considered lest individuals be dissuaded from applying for those jobs. Fortunately, as explained below, existing New York state law provides a solution that addresses the concerns of staffing agencies while satisfying the aims of 1208-A.

Staffing agencies cannot, when solicitating potential candidates, practically determine at that stage the range of wages an individual might be paid. To meet their client’s need for temporary workers quickly and efficiently, staffing agencies must solicit a wide range of potential job applicants for the purpose of creating a large pool of pre-qualified candidates. To build such a pool, initial solicitations via the media must, of necessity, be based on general job descriptions (“accountant,” “administrative assistant”) that do not consider the widely different background, skills, and experience of specific individuals. Thus, no meaningful wage ranges can be provided at that juncture.

The New York legislature addressed this problem in the Wage Theft Prevention Act [New York Labor Law Section 195.1(e)] and in [guidelines](#) issued by the state Department of Labor. The state expressly recognized the special needs of temporary help firms and thus allowed staffing agencies to provide prospective workers with a reasonable range of hourly wages they may likely earn—but only after the individual has applied for temporary work, has been interviewed and skills tested, if appropriate, and has provided information relating to their qualifications. Based on that information, the staffing agency is then able to provide a range of pay rates offered to similarly situated employees.

We respectfully urge the City Council to modify 1208-A to incorporate by reference the provisions of the New York Wage Theft Prevention Act and expressly provide that compliance by a staffing agency with the provisions of that Act will be deemed to be compliance with 1208-A.

December 2nd, 2021

Testimony of the NYC Hospitality Alliance on

Intro. 1208 A Local Law to amend the administrative code of the city of New York, in relation to prohibiting employers from posting job listings without minimum and maximum salary information

The NYC Hospitality Alliance is a not-for-profit association that represents thousands of restaurants and nightlife establishments throughout the five boroughs, and we submit the following comments to express our concern with [Int. 1208](#), a Local Law to amend the administrative code of the city of New York, in relation to prohibiting employers from posting job listings without minimum and maximum salary information.

At a time when our city's restaurants, bars, clubs are trying to recover from the devastating effects of the pandemic which sees no end in sight, it's worrisome that the City Council wants to add another administrative burden on small businesses, while at the same time so many Council Members are saying that they're already over-regulated. Furthermore, this proposal does not include a warning and a cure period for first time violations. It does not require a government to conduct a business education campaign, and it will undoubtedly result in more fines and lawsuits for small businesses.

There are also practical concerns with the legislation. First, not all jobs have a minimum and maximum salary as they are negotiated based on various factors, and most workers in the hospitality industry earn an hourly wage, not a salary. Second, workers in restaurants and nightlife earn tips, which fluctuate every shift, so an accurate maximum wage cannot be provided in a job listing. This proposed legislation also doesn't consider how an employer would list the income earned from overtime pay, commissions and bonuses, which cannot be included in a maximum salary posting since they are often based on future unknown factors that may not be available when a job posting is listed.

Thank you for consideration of our comments.

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



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Testimony to the Committee on Civil and Human Rights
Hearing On Intro 1208A
From the New York City Anti-Violence Project (AVP)
December 2, 2021

Good afternoon, Chair Eugene and the other members of the Committee on Civil and Human Rights, Council Members Perkins, Dromm, Lander, and Barron. My thanks to you, and the sponsors of Intro1208A, Council Members Rosenthal, Brannan, Adams, Rose, Brooks-Powers, and to Public Advocate Jumaane Williams. My name is Catherine Shugrue dos Santos, and I am the Deputy Executive Director for Programs at the New York City Anti-Violence Project (AVP). I am grateful to be testifying at this hearing in support of Intro 1208A, which would support economic justice by promoting salary transparency in job listings, a practice in which AVP already engages. We stand in a crucible time in a global pandemic that relentlessly morphs and changes, creating new challenges around economic, racial, and gender justice, and makes AVP's work that much more important. My testimony today lays out AVP's commitment to salary transparency, as the most reliable predictor of pay equity, and our own efforts in this regard.

In our economy, even in New York, where diversity is part of our city's core identity, pay gaps that correlate with gender, race, and ethnicity are the norm, not the exception; salary secrecy is one tool that employers use to uphold the status quo of race-, gender-, and ethnicity-based pay differentials. AVP is the only LGBTQ-specific anti-violence agency in New York City, and the largest organization in the country dedicated exclusively to working with LGBTQ and HIV-affected survivors of all forms of violence. The majority of those we serve and support (65%) are queer and trans communities of color, who face disproportionate rates of employment discrimination and subsequently disproportionately high rates of unemployment poverty, and homelessness. AVP's work has a special focus on intimate partner violence (IPV), sexual violence (SV), hate violence (HV), hookup/pick-up/dating violence, stalking, and institutional violence, all of which impact survivors' physical, emotional, and financial safety, health, and wellness. AVP contracts with HRA as the City-Wide provider of non-residential domestic violence services to LGBTQ communities, and we are the only LGBTQ-specific rape crisis center in New York State. We operate a 24/7 hotline that is bilingual in English and Spanish and provide legal services, counseling, and community organizing and advocacy to our community.

AVP's staff reflects the communities we serve and support, and identifies as overwhelmingly part of LGBTQ communities; the majority also identify as people of color. For non-profits, mission-driven organizations, and human services agencies, salary transparency helps us align our actions with our values when it comes to how much people are paid for their work. Sharing salary information is part of an ongoing process at AVP to work toward equity and justice in compensation. AVP's Management Team unanimously agreed to move toward salary transparency from the first time the topic was brought to the group, believing that knowledge is power, especially when it comes to how you make a living.



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AVP works from a trauma-informed and anti-oppressive approach, both in our work with LGBTQ and HIV-affected communities we serve and support, and internally, in our systems and structures for staff and volunteers. As part of this commitment, AVP strives to compensate all of our staff fairly and equitably. Over the past five years, AVP has created, published, and adhered to a salary scale for all levels of positions; included salary information in job postings; and identified and adjusted pay gaps within and among salary bands. Building on this work, most recently, we have implemented full salary transparency across the organization. **Every AVP staff member has access to salary information across the organization.**

Salary transparency directly combats this secrecy that allows discrimination and inequity to flourish. While conversations about salary, across hierarchy and among staff members can be uncomfortable and difficult, at AVP, we believe these intentional and honest discussions build trust and promote pay equity. Salary transparency is the best predictor of pay equity, and AVP is committed to continuing to engage in open dialogue with our staff and supporters and to continue to take action to address inequities as they are identified, working to ensure fair compensation for our staff members, including negotiating a collective bargaining agreement. Salary transparency is an important step on this journey, and Intro 1208A is an important step towards salary transparency City-wide, by ensuring that salary ranges for open positions are clearly posted as part of job listings. This is especially important in the non-profit sector, which is predominantly staffed by those who reflect the communities served and supported by non-profits in this City: Those who hold intersecting identities as people of color, women, immigrants, low-income people, people living with disabilities, and LGBTQ people. Notably, all of these communities face wage disparities due to systemic bias and discrimination. This Council knows well the challenges non-profit organizations face due to funding structures that devalue our work in the best of times, and which have become more difficult during the pandemic.

We appreciate the Council's past support of AVP, and our work with and for LGBTQ and HIV-affected survivors of violence. AVP looks forward to our continued partnership with the Council to ensure that NYC's LGBTQ communities have access to culturally responsive, inclusive, and affirming safety, support, and services, during and after this pandemic. We appreciate the Council's consistent support of AVP, and our work with LGBTQ and HIV-affected survivors of violence, particularly during this tumultuous time. Thank you to the Committee for the opportunity to testify. And thank you to Council Members Rosenthal, Brannan, Adams, Rose, Brooks-Powers, and to Public Advocate Jumaane Williams, for sponsoring Intro 1208A, as an important step towards ensuring pay equity in New York City.

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December 2, 2021

TESTIMONY ON INT. 1208 AND THE BENEFITS OF PAY TRANSPARENCY LAWS BEFORE THE NEW YORK CITY COUNCIL'S COMMITTEE ON CIVIL AND HUMAN RIGHTS

Submitted by Seher Khawaja, Senior Attorney, Economic Empowerment on behalf of Legal Momentum, The Women's Legal Defense and Education Fund

Good morning Chair Eugene and members of the Committee on Civil and Human Rights. My name is Seher Khawaja, my pronouns are she/her/hers, and I am a Senior Attorney at Legal Momentum, The Women's Legal Defense and Education Fund.

For over five decades, Legal Momentum has been at the forefront of using the law to advance gender equality, including pay equity. We applaud the City Council for its pioneering work in this area and are encouraged by Int. 1208 and efforts to mandate pay disclosure in New York City.

The purpose of my testimony today is to shed light on the critical role that pay disclosure laws play in advancing pay equity, particularly for women, people of color, and other vulnerable workers. Today, women of color and women in low-wage work continue to face the most sizable and stagnant pay disparities. And under our existing laws, these women bear the burden and risk of identifying, challenging, and correcting gender-based pay discrimination, alone and in the dark.

Despite the passage of groundbreaking legislation on equal pay at the state and local levels, pay secrecy continues to undermine the efficacy of these laws. The prevalence of pay secrecy prevents employees from identifying disparities and allows employers to endorse pay equity in theory without having to implement it in practice.

To address these longstanding barriers, Legal Momentum, in coalition with partners like PowHer New York, has been advocating for laws at the local, state, and federal level that mandate pay range disclosure up front when positions are posted. These laws serve various critical functions:

- They standardize salary setting to eliminate opportunities for employers to inject overt and implicit biases when making salary decisions, which research shows that employers do.
- They curtail exploitative wage practices, which thrive when we don't know what employers pay their workers and which disproportionately impact women who are overrepresented in low-wage work.
- They breathe life into our existing equal pay laws by giving workers information to identify potential pay disparities and by allowing employers to avoid those disparities by setting pay in advance based on objective factors rather than subjective assessments.



- They create efficiencies for employers, helping them establish more streamlined and fair pay practices, can increase employee retention and productivity, and avoid problematic pay disparities and potential liability.
- They help level the playing field for workers, giving women and people of color more leverage in the hiring process since research shows these workers are in a better position when they have information regarding compensation.

A strong pay disclosure law should:

- Mandate disclosure of pay ranges to those seeking a job, to applicants, and to existing employees.
- Require ranges be “reasonable” and based on a range that an employer actually relied upon.
- Cover broad disclosure of pay, including salary, benefits, and other forms of compensation.
- Establish a simple, effective, and efficient enforcement mechanism with straightforward penalties for violations to ensure compliance and accountability.
- Not require proof of discrimination or discriminatory intent.
- Include concrete safeguards against retaliation for anyone asserting their rights under these laws.
- Include public education to ensure that employees and employers are aware of their rights and obligations under the law to facilitate compliance.

As we tackle pay inequity, under the shadow of the COVID-19 pandemic, we must recognize that our current culture of pay secrecy is unjust, inequitable, and thus unsustainable.

Legal Momentum is happy to serve as a resource and we thank you for this opportunity to speak to this important issue.

Good morning, my name is Julia Elmaleh-Sachs and I am a plaintiff's side employment attorney at Crumiller P.C. I am here today to testify on behalf of NELA-NY, the New York affiliate of the National Employment Lawyers Association, working with PowHer NY.

As employees' attorneys, we regularly represent employees who are subjected to discriminatory treatment and practices at work. Most of our clients are women and people of color who seek to remedy unlawful conduct they have been subjected to by their supervisors and company executives. Such unlawful or discriminatory treatment sometimes includes pay disparities, for the same or substantially similar roles and responsibilities. As an example, one of my former clients learned that she was making significantly less than her male counterparts only by happenstance, when she came across an excel spreadsheet in the course of regular business that contained salary information for all employees. Prior to that, she had no idea she was being underpaid. Had the employer posted the salary range of her role at the outset, she could have negotiated a fairer compensation and the company could have avoided a long, drawn out and costly lawsuit.

Salary range information would be immensely useful to employees in other ways as well. Say an employee asks for a raise after they have taken on extra responsibility and is told that a raise is simply not possible because they're already at the top of their salary band. That employee may simply leave the company. Alternatively, she might stay and be paid less than some of her peers at her detriment. If employees have access to salary range information from the start of their employment, they can make informed decisions when accepting a position or applying for a promotion. By intentionally keeping employees in the dark about salary range information, employers have unfair leverage over their employees and can (and often do) more easily pay certain disfavored employees less than they deserve.

The point of this bill is to create much needed transparency around an often-taboo topic. Similar to the state wage notification law, where employees are made aware of their hourly and overtime rates, this bill would simply endow employees with earning potential information.

NELA NY and PowHer previously supported the NYC salary history ban, which became effective in 2017, and which mandated that NYC employers cannot ask about an applicant's salary history during the hiring process. Like the salary history ban, this bill will help employees advocate for themselves based on their merits and qualifications, and it will help employers retain talent and avoid unnecessary litigation down the line.