Committee on Civil and Human Rights:

Jayasri Ganapathy, *Senior Legislative Counsel*

Wiam Diouri, *Policy Analyst*

Jack Kern, *Senior Finance Analyst*



**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER OF THE**

**GOVERNMENTAL AFFAIRS DIVISION**

**Andrea Vazquez, Legislative Director**

**Rachel Cordero, Deputy Director, Governmental Affairs**

**COMMITTEE ON CIVIL AND HUMAN RIGHTS**

**Hon. Nantasha Williams, Chair**

**June 22, 2022**

**Oversight: CCHR and EEPC: Challenges Related to Post-Pandemic Return to Work**

1. **INTRODUCTION**

On June 22, 2022, the Committee on Civil and Human Rights (the Committee), chaired by Council Member Nantasha Williams, will hold an oversight hearing on the challenges that the New York City Commission on Human Rights (CCHR) and the Equal Employment Practices Commission (EEPC) are facing related to post-pandemic return to work. This hearing presents an opportunity to discuss EEPC and CCHR’s processes during the COVID-19 pandemic, guidance they provided, and identify measures they are taking to evaluate accommodations as employees return to the office. Those invited to testify include representatives from EEPC, CCHR, advocacy and community organizations, and members of the public.

1. **BACKGROUND**
	1. *Equal Employment Practices Commission*

 The New York City EEPC was established by the 1989 amendment to the New York City Charter. It is tasked with reviewing, evaluating, and monitoring the

employment procedures, practices, and programs of any city agency and department of citywide administrative services to maintain an effective affirmative employment program of equal employment opportunity for minority group members and women who are employed by or who seek employment with city agencies.[[1]](#footnote-1)

 As part of its duties, the EEPC also reviews affirmative employment plans of each city agency and provides recommendations to ensure such agencies are in compliance with City, State and Federal regulations and requirements.[[2]](#footnote-2) It advises city agencies in their efforts to increase employment of minority group members and women and establishes a compliance procedure to monitor the implementation of its audit recommendations.[[3]](#footnote-3)

 Notably, the EEPC is not authorized to investigate individual complaints of employment discrimination.[[4]](#footnote-4) Instead, EEPC utilizes audit, evaluation, and monitoring processes to provide a mechanism that ensures each city entity institutes and maintains appropriate employment opportunity laws designed to prevent missteps that could lead to allegations of employment discrimination.[[5]](#footnote-5) Additionally, EEPC reviews reports submitted by the Department of Citywide Administrative Services (DCAS) to ensure equal employment opportunities for city employees, and fair and effective affirmative employment practices.[[6]](#footnote-6)

* + 1. *Process before COVID*

 In accordance with the requirements of the City Charter, the EEPC Board of Commissioners (“Board”) meets at least once every eight weeks or eight to ten times a year. Prior to the COVID-19 pandemic, these meetings were conducted in person.[[7]](#footnote-7)

 After a review and analysis of documents, records and data, the EEPC issues Preliminary and Final Determination Letters, which delineate audit findings and corrective actions, if any, a municipal entity should take to achieve compliance with city, state, federal EEO laws, regulations, policies and procedures. In 2019, the EEPC tied its previous record number of audits, reviewing and evaluating the practices of 51 agencies and issuing 44 determinations of compliance.

* + 1. *Shift to Telework*

 Following the March 2020 stay at home order in New York City,[[8]](#footnote-8) the EEPC conducted operations remotely.[[9]](#footnote-9) At its May 7, 2020 meeting, the Board discussed how the Commission would continue operating remotely or with limited in-office staff.[[10]](#footnote-10) The Board noted that the EEPC’s work continued with two preliminary determinations being sent out just prior to the meeting.[[11]](#footnote-11) They also stated that the Commission staff were moving forward and mimicking their in-office work regardless of issues that could arise in a telework environment, such as childcare demands.[[12]](#footnote-12) The Board specifically noted that its non-essential staff were able to telework and the Commission had plenty of work pending as their 2019 and 2020 audits were incomplete at that time.[[13]](#footnote-13)

 In reviewing the mission related work of the EEPC, Board members reported that some agencies requested extensions to achieve compliance with EEPC audits due to documents being unavailable in remote work settings.[[14]](#footnote-14) The Board stated that they provided leniency for agencies where the agency heads could commit to compliance actions taking effect when the staff returned to in-person work.[[15]](#footnote-15) The Board also discussed tackling the additional burdens that result from workplaces shifting to telework and whether the workforce impact could be examined in future audits.[[16]](#footnote-16)

 In its 2020 Annual Report, the EEPC acknowledged that it participated in the City’s remote work strategies by working with City entities to make critical work processes compatible with telework.[[17]](#footnote-17) The Report noted that the Board conducted virtual meetings at which it approved plans and voted on determinations and resolutions.[[18]](#footnote-18) In 2020, the EEPC issued 30 Determinations of Compliance to city entities that implemented corrective actions.[[19]](#footnote-19) While a commendable achievement in the midst of a pandemic, this is fewer than the numbers shared in 2019. However, the Commission has not provided an explanation for this downward trend. Additionally, according to the report, the EEPC’s report on underutilization, required by Local Law 13 of the year 2019 was delayed due to lack of resources and COVID-19 linked logistical burdens.[[20]](#footnote-20)

 Pursuant to the 2021 Annual Report, the challenges that the EEPC faced at the outset of the COVID-19 pandemic continued into 2021, but the Commission successfully executed its mission.[[21]](#footnote-21) Adaptive measures taken by the EEPC included staggered staff schedules to enable social distancing and office modifications.[[22]](#footnote-22) Additionally, the Board resumed in person meetings in June 2021 but continued to live stream the meetings to allow for remote attendance by interested parties.[[23]](#footnote-23) The 2021 Annual Report also mentioned that the EEPC utilized technology necessary to perform its work remotely and as a result issued a record 50 Determinations of Compliance.[[24]](#footnote-24) There is no indication of whether this technology was widely available in 2020 or how robustly it was used, considering the disparity in the Determinations of Compliance issued between the two years.

* + 1. *Return to work accommodations*

 Over the past two years, EEPC’s meetings and reports indicate it has tackled the challenges posed by the COVID-19 pandemic. In the most recent agency diversity plans, which are reviewed by EEPC, some city entities indicated that parts of their diversity plan efforts were delayed due to the pandemic and budgetary constraints.[[25]](#footnote-25) Additionally, with the move to telework in early 2020, shortly after the launch of the EEPC Sexual Harassment Prevention and Response Audit in 2019, it is unclear how the Commission’s recommendations and audits were impacted. The COVID-19 pandemic has also changed the landscape of accommodations and disabilities in the employment context. During the pandemic, federal and local entities provided guidance regarding the classification of COVID-19 as a disability that requires accommodations. Further information is necessary to better understand how EEPC is currently carrying out its mission and the challenges it is facing.

*b. New York City Commission on Human Rights*

As many New Yorkers return to some form of on-site work, concerns regarding health, safety, and accommodations in the workplace may arise. As an agency tasked with handling discrimination complaints, CCHR has released guidance on what is considered discriminatory in relation to COVID-19.

1. *Current guidance and accommodations*

With respect to employment protections, CCHR states that,

Employers must not discriminate against or harass employees with actual or perceived infection with COVID-19, or based on an actual or perceived history of such infection. It is also illegal for an employer to harass or discriminate against an employee based on the presumption that they have contracted or are more likely to contract COVID-19 due to their actual or perceived race, religion, national origin, disability, or another protected status.”[[26]](#footnote-26)

Due to its status as a disability, an individual with COVID-19 (or perceived infection, history of infection, or disabilities related to COVID-19), may be entitled to reasonable accommodations from their employer.[[27]](#footnote-27) CCHR also adopted the Equal Employment Opportunity Commission’s (EEOC) guidance, “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act,”[[28]](#footnote-28) as well as specific parts of EEOC’s guidance, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.”[[29]](#footnote-29)

According to their guidance on reasonable accommodations,[[30]](#footnote-30) CCHR recognizes certain underlying conditions, identified by the New York City Department of Health (DOH),[[31]](#footnote-31) based on CDC guidelines,[[32]](#footnote-32) for which exposure to COVID-19 may pose a risk of complication. Should an employee have one of these underlying conditions, they may request an accommodation from their employer. Examples of such accommodations may include remote work, a change in schedule, regular testing as an alternative to vaccination, and/or providing personal protective equipment (PPE).[[33]](#footnote-33) Reasonable accommodations should be granted when appropriate, unless doing so would pose an undue hardship.[[34]](#footnote-34)

Factors considered when determining whether an accommodation would create an undue hardship include: nature and cost, financial resources of the facility or facilities involved, number of persons employed at the facility or facilities, effect on resources, or other impact(s) of the accommodation on the facility or facilities, location, type of operations or operation of the covered entity, geographic separateness, and/or administrative or fiscal relationship of the facility in question.[[35]](#footnote-35) CCHR also states that retaliation against an employee due to a request for reasonable accommodation is a violation of the NYCHRL.[[36]](#footnote-36)

1. *Enforcement Through Telework*

On October 23, 2020, the Committee held an oversight hearing on CCHR’s response to the pandemic.[[37]](#footnote-37) CCHR testified that in March of 2020, it moved swiftly to set up their internal operations to remote settings over the course of one weekend, in order to keep serving New Yorkers as safely as possible during the COVID-19 pandemic.[[38]](#footnote-38) CCHR also released guidance that actual or perceived COVID-19, and/or a history of having COVID-19, is a disability and therefore protected from discrimination.[[39]](#footnote-39) Furthermore, this protection also covers discrimination within housing, employment, and public accommodations. [[40]](#footnote-40)

With respect to employment protections, CCHR states that,

Employers must not discriminate against or harass employees with actual or perceived infection with COVID-19, or based on an actual or perceived history of such infection. It is also illegal for an employer to harass or discriminate against an employee based on the presumption that they have contracted or are more likely to contract COVID-19 due to their actual or perceived race, religion, national origin, disability, or another protected status.[[41]](#footnote-41)

While CCHR does break down the inquiries it has received by protected classes in its annual report,[[42]](#footnote-42) it does not specify which complaints are specific to post-pandemic return to on-site work, nor does it specify this context for the number of complaints and/or investigations it has pursued or successfully closed.

**III. CONCLUSION**

At today’s hearing, the Committee will discuss any challenges faced by New Yorkers during post-pandemic return to on-site work within government agencies and in the private sector. The Committee will hear testimony from the New York City Commission on Human Rights and the New York City Equal Employment Practices Commission with the intention of receiving information about relevant challenges and possible solutions to help better protect the rights of all New Yorkers during this transitionary period and beyond.

1. N.Y.C. Charter § 830. The EEPC is an independent commission with two commissioners appointed by the mayor, two by the council, and a fifth member who is jointly appointed by the Mayor and the NYC Council and who serves as the Chair of the EEPC for a four year term. City agencies that are funded (in whole or part) by the City treasury, agencies with a majority of board members appointed by the Mayor, or agencies that have a majority of board members serve as city officers are subject to EEPC evaluation. [↑](#footnote-ref-1)
2. N.Y.C. Charter § 831*.* [↑](#footnote-ref-2)
3. N.Y.C. Charter § 831. [↑](#footnote-ref-3)
4. This task falls to the agency’s EEO office, DCAS or CCHR. Equal Employment Practices Commission. *About the EEPC*. NYC.Gov. *Available at* <https://www1.nyc.gov/site/eepc/about/about.page>. [↑](#footnote-ref-4)
5. Equal Employment Practices Commission Annual Report 2019, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual-report-2019.pdf> [↑](#footnote-ref-5)
6. N.Y.C. Charter § 814. [↑](#footnote-ref-6)
7. At the meetings, the Board adopts and approves audit-related Resolutions what detail corrective actions and compliance-related Resolutions that confirm a city entity implemented the corrective actions. The Board also deliberates on issues and trends that require further investigation, public hearings, or recommendations to the Mayor, City Council and Department of Citywide Administrative Services to improve the City’s EEO programs. [↑](#footnote-ref-7)
8. N.Y.C. Emergency E.O. 103, N.Y.C. Office of the Mayor. (Mar. 25, 2020) *Available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-103.pdf> [↑](#footnote-ref-8)
9. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-9)
10. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-10)
11. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-11)
12. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-12)
13. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-13)
14. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-14)
15. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-15)
16. EEPC 239th Public Meeting. May 7, 2020. *Available at* <https://youtu.be/tj8b8GkC1fE>. [↑](#footnote-ref-16)
17. Equal Employment Practices Commission Annual Report 2020, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual-report-20201.pdf> (p. iii). [↑](#footnote-ref-17)
18. Equal Employment Practices Commission Annual Report 2020, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual-report-20201.pdf> (p. iii). [↑](#footnote-ref-18)
19. Equal Employment Practices Commission Annual Report 2020, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual-report-20201.pdf> (p. iii). [↑](#footnote-ref-19)
20. Equal Employment Practices Commission Annual Report 2020, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual-report-20201.pdf> (p. iii). [↑](#footnote-ref-20)
21. Equal Employment Practices Commission Annual Report 2021, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual_report_2021.pdf>. [↑](#footnote-ref-21)
22. Equal Employment Practices Commission Annual Report 2021, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual_report_2021.pdf>. [↑](#footnote-ref-22)
23. Equal Employment Practices Commission Annual Report 2021, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual_report_2021.pdf>. [↑](#footnote-ref-23)
24. Equal Employment Practices Commission Annual Report 2021, *available at* <https://www1.nyc.gov/assets/eepc/downloads/pdf/reports/annual_report_2021.pdf>. [↑](#footnote-ref-24)
25. *See* Mayor’s Office FY 21 Diversity Plan wherein the entities indicated their workplace programs to improve diversity or workplace development were put on hold. *See* also DOB FY 21 Diversity Plan and FDNY FY 21 Diversity Plan noting that diversity recruitment efforts were delayed due to budgetary constraints. [↑](#footnote-ref-25)
26. *COVID-19 & Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-26)
27. *COVID-19 & Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-27)
28. *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*. U.S. EEOC. (March 21, 2021) *Available at*: https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act [↑](#footnote-ref-28)
29. *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*. U.S. EEOC. (Last updated March 14, 2022) *Available at*: https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws [↑](#footnote-ref-29)
30. *COVID-19 &Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-30)
31. *COVID-19: Prevention and Groups at Higher Risk. NYC DOH*. Available at: https://www1.nyc.gov/site/doh/covid/covid-19-prevention-and-care.page [↑](#footnote-ref-31)
32. *Medical Conditions.* Centers for Disease Control and Prevention. (Last updated May 2, 2022) Available at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html [↑](#footnote-ref-32)
33. *COVID-19 &Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-33)
34. *COVID-19 &Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-34)
35. N.Y.C. Admin. Code § 8-102 [↑](#footnote-ref-35)
36. *COVID-19 &Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-36)
37. All testimony given by CCHR during the October 23, 2020 Committee on Civil and Human Rights hearing can be found at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4652271&GUID=C962EA10-0949-43A5-A3E9-2CED02366671&Options=&Search>= [↑](#footnote-ref-37)
38. All testimony given by CCHR during the October 23, 2020 Committee on Civil and Human Rights hearing can be found at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4652271&GUID=C962EA10-0949-43A5-A3E9-2CED02366671&Options=&Search>= [↑](#footnote-ref-38)
39. All testimony given by CCHR during the October 23, 2020 Committee on Civil and Human Rights hearing can be found at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4652271&GUID=C962EA10-0949-43A5-A3E9-2CED02366671&Options=&Search>= [↑](#footnote-ref-39)
40. *COVID-19 &Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-40)
41. *COVID-19 &Employment Protections*. New York City Commission on Human Rights. (November 1, 2021) *Available at:* https://www1.nyc.gov/site/cchr/community/covid-employment.page [↑](#footnote-ref-41)
42. *Fiscal Year 2021 Annual Report.* CCHR. Available at: https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHRAnnualReport2021.pdf [↑](#footnote-ref-42)