NYC Commission on Human Rights

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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 & Committee on Consumer and Worker Protections
February 29, 2024

Introduction

Good morning Chairs Williams and Menin, Public Advocate 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 Hillary Scrivani, Senior Policy Counsel. Thank you for convening today's hearing. We are excited to speak about the New York City Human Rights Law, and highlight some of the agency's work that addresses discrimination and advances equity.

The Human Rights Law prohibits discrimination on the basis of more than 25 protected categories in housing, employment, and public accommodations. Protected categories include age, disability, gender, race, national origin, religion, criminal history. The most recent amendment adds height and weight discrimination protections. In the past several years, the Human Rights Law was expanded in several ways to address critical barriers to equity for New Yorkers.

I will give an overview of the Commission's dual mandate and the Human Rights Law's antidiscrimination provisions that operate to address historical and ongoing disparities, with a focus on employment and housing.

First, the Commission engages in outreach and education to raise awareness of the Human Rights Law's protections and to strengthen relationships with and between communities. This is done primarily through our Community Relations Bureau. In FY23, the Commission Relations Bureau reached 132,507 people through 2,172 workshops, trainings, and events. The Bureau's prevention work is done through a wide array of partnerships with community groups, sibling agencies, and individual stakeholders.

Engaging with and hearing from New Yorkers is a critical component of preventing discrimination and translating legal protections into change in the lives of our community members. To this end, we have engaged in participatory research projects to inform our work and the work of sibling agencies over the past decade. For example, in this past year, the Commission partnered with the Center for Family Life in Brooklyn to bring together members of worker owned cooperatives for interviews and focus groups. Participants, who were predominantly immigrant women, dedicated their time to share information about the employment landscape of cooperatives, identify avenues to ensure awareness of human rights law protections, and to highlight areas for greater collaboration and trust building. The outcomes from that project are captured in a FY23 publication which is informing the Commission's strategic planning.

Second, individuals who believe they have experienced discrimination or harassment in violation of the Human Rights Law can report discrimination directly to the Commission, or they can file a complaint in court.[1]. The Law Enforcement Bureau launches investigations, initiates complaints, enters settlements, and takes cases to trial to address discrimination. In instances when there are antidiscrimination protections in state and federal law, individuals can choose additional forums to seek redress. In FY23, the Law Enforcement Bureau fielded 12,548 inquiries from members of the public. The highest number of claims that come before the Law Enforcement Bureau relate to the protected categories of disability and gender.

In light of the topic of today's hearing, I want to spotlight portions of the Human Rights Law, and the Commission's work that specifically seek to eliminate barriers to equity.

Equity in the Workplace

The Human Rights Law has a number of provisions that enhance equitable hiring and employment for New Yorkers. The Human Rights Law was amended in 2022 to require employers post a good faith wage range in job ads. This provision complements the prohibition on employer inquiries into applicant's salary history during the hiring process. Together, these provisions level the playing field for job seekers by enhancing transparency into pay practices. Pay transparency allows job applicants to assess whether salaries reflect the value of their work, and the salary history ban curbs hiring practices that have long contributed to wage disparities and hindered access to opportunities and economic mobility for women and people of color. There are two further employment provisions of the Law that are critical to economic mobility and are vital for New Yorkers to thrive. Since 2015, the Human Rights Law has prohibited employers from asking about a job applicant's credit history – recognizing that credit history typically has no relevance to the skills and qualifications of job applicants. The Commission is also proud to enforce New York City's Fair Chance Act, which prohibits employers from asking questions regarding an applicant's involvement with the criminal legal system until after an employer makes a conditional job offer. This is a matter of racial equity given the disproportionate impacts of the criminal legal system in communities of color – nationally and in our city. These are just a portion of the Law's employment protections. Accommodations in employment are also a foundation of workplace equity.

Equity in Housing

In the arena of fighting discrimination in housing, the Commission has longstanding expertise. The Law has some of the most expansive protections for persons with disabilities, and ensuring accessibility in housing – at no cost to persons with disabilities – is one of the most active areas of Law Enforcement at the Commission. The Human Rights Law's prohibition on source of income discrimination in housing also constitutes a central piece of the Human Rights Law, and is a priority for this Administration because it is a cornerstone of access to permanent housing for New Yorkers. Over the past two years, raising awareness of housing provider obligations, and voucher holders' right to housing have been a significant focus of outreach, marketing and campaigns, and enforcement. The Commission is also preparing to ensure that all New Yorkers – housing providers, and residents – know that NYC will prohibit discrimination based on

[1] NYC Admin. Code §§ 8-109 and 8-502.

criminal records in housing beginning in 2025, as the result of Fair Chance Housing Legislation adopted in December of last year. The Human Rights Law also prohibits discrimination in all aspects of the sale and rental of housing.

Equal Enjoyment of Public Spaces

Finally, the Human Rights Law prohibits public accommodations from discriminating against individuals on the basis of a protected category. The most prevalent types of discrimination that come to the Commission are in relation to persons with disabilities seeking accessible services and reasonable accommodations.

Proposed Legislation

Intro 401 seeks to address discriminatory lending by amending the City Human Rights Law to prohibit differential rates for loans and credit issued in New York City on the basis of several of protected categories. Intro 401 also requires the Commission to undertake a number of tests and investigations regarding discriminatory lending practices. The Administration supports the goal of ensuring equitable access to credit, and the objective of cultivating intergenerational wealth for all New Yorkers regardless of identity. The Administration is currently reviewing the legislation and the impacts of city efforts to legislate in the complex area of credit, which is largely regulated by a patchwork of federal and state laws and where an array of government entities have oversight authority to identify and address discrimination, and other aspects of credit. This hearing is a welcome opportunity to hear from stakeholders today on this important topic.

Intros 242 and 279. The Administration's positions on these bills establishing a truth and reconciliation process and a reparations taskforce remain as expressed in testimony by the Mayor's Office of Equity and Racial Justice at the Juneteenth bill package hearing this past September. In summary, the Administration supports a truth, healing, and reconciliation process, as well as a taskforce to study reparations but would like to see greater alignment between these efforts, extend their timeline, and ensure adequate resources and expertise are imbedded into any commission or taskforce that is developed to effectuate these goals. (Testimony attached).

Intro 69 would render unenforceable and void any and all agreements that shorten the statute of limitations for filing a case with the Commission or filing a complaint in court, including agreements that are currently in place. The Administration supports the public policy aim of preventing coercive contract terms that contravene the rights of New Yorkers to pursue claims of discrimination within the time frames allowed by the New York City Human Rights Law. The Law Department continues to review how the current draft comports with Constitutional contract law principles and New York caselaw. In doing so, the Administration is analyzing legal considerations regarding the bill's retroactive application to contracts that are already in place. The Administration looks forward to working with Council to ensure New Yorkers maintain the ability to vindicate their rights.

Conclusion

In closing, the Commission is committed to preventing and combating discrimination in New York City, and ensuring that individuals who experience discrimination and harassment in

housing, employment, and public spaces in violation of the human rights law have avenues for redress. We appreciate the Council's attention and commitment to addressing these issues, and we welcome your questions.

Testimony of Assistant Commissioner Carlos Ortiz
New York City Department of Consumer and Worker Protection
Before the Committees on
Consumer and Worker Protection and Civil and Human Rights
Oversight Hearing on Fair Lending Practices

February 29, 2024

Introduction

Good afternoon, Chair Menin, Chair Williams, and members of the Committees on Consumer and Worker Protection, and Civil and Human Rights. I am Carlos Ortiz, Assistant Commissioner for External Affairs at the Department of Consumer and Worker Protection (DCWP), and I am joined by our Associate General Counsel, Andrew Schwenk.

Our agency's mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. While we do not regulate banks and lending services, our work does focus on improving New Yorkers' financial health and our enforcement of key consumer protections. And, since the start of the Administration, we have helped deliver $319 million to the pockets of New Yorkers, across all our areas of work.

Consumer Protection Enforcement

DCWP is committed to protecting consumers from deceptive or predatory trade practices in the marketplace and ensuring that consumers have relief if their rights have been violated. We accomplish this through robust enforcement of our licensing laws, and of the City's hallmark Consumer Protection Law. For example, we license ~470 used car dealerships across the five boroughs and regulate specific requirements dealers must adhere to regarding our consumer protection standards. These include price display requirements, various disclosure requirements, including a financing disclosure, and a prohibition on false advertising. Moreover, under the Consumer Protection Law, all businesses are prohibited from engaging in deceptive or unfair trade practices.

Under Mayor Eric Adams' Administration, we have announced major victories on behalf of consumers through proactive investigations into used car dealerships, in total securing more than $7 million in restitution and civil penalties in this specific area of work. A recent highlight of our work into used car dealerships was just announced this past January, concerning an entity known as 26 Motors. Our agreement secured $1.5 million in restitution for consumers, required the closure of five dealerships, and barred five individuals from owning a used car dealership for five years. We have also brought significant cases against for-profit colleges, under the Consumer Protection Law, such as Berkeley and ASA College, for running misleading and deceptive advertising. In just those two cases alone, we secured close to half a million dollars in civil penalties, as well as $20 million in debt relief for New Yorkers. Each of these cases drives home the message to New Yorkers that this Administration will continue to protect and support working people in our city. We also strive to ensure that New Yorkers are educated on their rights and protections. Since the start of the Administration, we have held more than 1,400 outreach events, reaching over 105,000 attendees to educate New Yorkers about DCWP.

Financial Empowerment

DCWP also offers innovative programs and services to support New Yorkers in improving their financial health. One of our key programs is our network of Financial Empowerment Centers. Residents across all five boroughs can visit, for free, one of more than 37 Financial Empowerment Centers to receive confidential, one-on-one, professional financial counseling. Our trained financial counselors help clients navigate their finances, create a budget, open safe and affordable bank accounts, and so much more.

Our financial coaching and counseling places an emphasis on financial education to help clients reach both short-term and long-term financial goals. Clients that come to our centers looking for assistance with loans are provided with an in-depth understanding of their rates, terms and possible risks involved. We also offer additional options for clients to find safe and affordable financial products, including bank accounts.

Since the inception of the Financial Empowerment Centers, we have served nearly 77,000 New Yorkers, helping them reduce their cumulative debt by ~$106 million and increase their savings by ~$12 million in total. We are incredibly proud of our financial empowerment programs and the successes that New Yorkers have achieved.

Conclusion

As I mentioned earlier, DCWP is committed to protecting and enhancing the economic lives of New Yorkers and we look forward to working with this Council to find new and innovative ways to continue doing so. Thank you again for the opportunity to speak with you today, and I look forward to your questions.

Testimony of NYC Mayor's Office of Equity Commissioner Sideya Sherman

Before the Committees on Civil and Human Rights and Cultural Affairs, Libraries, and International Intergroup Relations

Regarding the Juneteenth Legislative Package

September 19, 2023 – 10:00am

Chair Williams, Chair Ossé, members of the Committees on Civil and Human Rights, Cultural Affairs, Libraries, and International Intergroup Relations, distinguished members of City Council and the public: good morning. I am Sideya Sherman, Commissioner of the New York City Mayor's Office of Equity. I am joined today by Sreoshy Banerjea, Executive Director at the New York City Public Design Commission; JoAnn Kamuf Ward, Deputy Commissioner for Policy and External Affairs at the New York City Commission on Human Rights; Silvia Montalban, Chief Citywide Equity and Inclusion Officer at the New York City Department of Citywide Administrative Services; and other representatives from the administration.

Thank you for this opportunity to discuss the Council's Juneteenth legislative package, which seeks to advance racial equity and justice through truth and repair. This administration is committed to upholding these values, as we work to foster a fairer and more equitable city.

Foundational Values

Last November, New Yorkers voted overwhelmingly to embed racial justice in the heart of city government, passing all three ballot measures proposed by the Racial Justice Commission. Included in the ballot measures is a new preamble for our New York City Charter, which, for the first time, introduces a set of foundational values to guide how we govern and serve the public. In the preamble, New Yorkers acknowledge "the grave injustices and atrocities that form part of our country's history" and the government's responsibility to "act intentionally to remedy these past and continuing harms and to reconstruct, revise and reimagine our foundations, structures, institutions, and laws to promote justice and equity for all New Yorkers."

The Office of Equity is steadfast and focused on uplifting these profound values throughout government as we lead implementation of these recently passed measures. This includes developing the city's first citywide racial equity plan, consisting of measurable goals and strategies for structural reform across all city agencies. The charter calls on all public servants to

reorient our roles to bring in practices of repair. With this shared commitment, we express our support for the spirit and intent of these bills and look forward to discussing them further with the Council this morning.

There are eight bills in this package. I appreciate your patience as we discuss and share overarching comments.

Int 1082, CM Louis: *creates a task force to consider the impact of slavery and past injustices for African Americans in New York City and reparations.*

The legacy of slavery in our city and country requires that we thoughtfully document past harms and integrate approaches for repair. To achieve the most meaningful impact, we believe this bill could benefit from further refinement to align and address potential overlap with Intro 1073 – which calls for a Truth & Reconciliation Commission -- and the recently passed reparations taskforce bill that awaits Governor Hochul's signature at the state level. We also recommend extending the implementation timeline and that the start date is timed to fall more than one year after the city issues its first citywide racial equity plan.

Executing this work with the rigor it deserves requires significant staffing power, legal resources, research, and academic expertise. For example, California's reparations task force undertook two years of work with considerable staff resources and support from the California DOJ. More than one year would be required to lead this vital work in our nation's largest city, with one of its longest histories.

Int 1073, CM Hudson: *would create a truth, healing, and reconciliation process.*

Our charter's preamble recognizes "the profound physical, emotional, social, and psychological harm and trauma to individuals, families, and communities" and charges us to "reconstruct, revise and reimagine our foundations, structures, institutions, and laws to promote justice and equity for all New Yorkers." Truth and reconciliation commissions can be a powerful vehicle for promoting racial equity and justice.

As stated earlier in my testimony, we recommend the Council consider refining this bill to address potential areas of overlap with Int 1082. We also share the same concerns regarding

allowing an adequate timeline to ensure appropriate staff resources and quality execution of this work.

From a statutory perspective, Bill 1073 tasks the Commission on Racial Equity (CORE) to lead this work, which may fall outside CORE's intended focus as presently defined in the charter. CORE is not written into law as a watchdog or as a fact-finding body. As reflected in the Racial Justice Commission's report, CORE was developed in response to New Yorkers who "desired to have City government more directly reflect community priorities and, to the extent possible, incorporate community power directly into decision-making." CORE's essential charter-mandated duties include identifying community equity priorities and responding to the citywide racial equity plan. CORE's current composition reflects this goal. This process will require additional resources, access to experts, and ample time. We recommend that the Council consider how to best work with CORE to leverage its resources and clarify within the bill which body would implement the reconciliation process after a plan is created.

We support the aim and intent of both bills and would happily continue working with the Council to identify or review paths forward.

Int 1101, CM Farias: *requires the Mayor's Office of Racial Equity to create anti-racism training for employees of human services contractors used by human services agencies.*

Our city's robust human service sector provides critical social services to New Yorkers in need. It is crucial that those who selflessly serve our city's diverse communities understand anti-racism and can incorporate best practices into their work. We support this bill with caveats.

Fueled by the pandemic, the human services sector has experienced considerable strain over the past few years. The Administration has worked diligently to improve how we do business with nonprofits, creating a new Office of Nonprofits, clearing over $6 billion in backlogged payments, and embarking on the reform recommendations outlined in the Joint Task Force to Get Nonprofits Paid on Time. To ensure this requirement is a true value add for employees and New Yorkers by extension, the city would need to invest significant resources and allow ample time for implementation. We also suggest resolving the ambiguity of "covered employee" by applying the requirement to all employees involved in providing services, including managers. We don't think anti-racism or anti-discrimination should only be for front-line workers.

Int 1118, Williams: *Requires the Department of Citywide Administrative Services (DCAS) to annually create anti-racism and anti-racial discrimination training for all city workers. Agencies can satisfy this requirement with alternative training if approved by the Mayor's Office of Racial Equity and CCHR.*

The preamble directs our government: "Vigilance is required to prevent the recurrence of past or worsening of continuing harms." DCAS implements an "Everybody Matters" training biannually that helps employees recognize different types of discrimination and racial inequity, introduces anti-racism concepts, and is mandated EEO training. To expand city employee understanding of racism and how it can show up in our work, we recommend that the Office of Equity and CCHR partner with DCAS to help build upon their existing "Everybody Matters" training to introduce a new and expanded anti-racism module. This module would also help city employees understand the recent racial justice charter amendments and the citywide racial equity planning required by law.

We support recognition of the painful history of slavery that endures through our city and country today, as well as highlighting and uncovering the often-underappreciated history of resilience, courage, and community-building by the city's Black communities across generations. In this spirit, the city, led by the Department of Cultural Affairs, looks forward to working with the Council to advance **Int 1150 (Marte, 13)** - *in relation to establishing a New York City freedom trail.* Furthermore, DOT and NYC Parks look forward to further discussions with the Public Advocate to identify an appropriate location for the sign, in response to Intro 934 **(Public Advocate Williams)** - *which requires the Department of Transportation to place a sign at Wall Street and Pearl Street marking the establishment of New York's first slave market in 1711.*

With respect to **Int 716 (CM De La Rosa)**, *which would create a school diversity monitor within CCHR, the City's Human Rights Commission*, and **Int 1085 (CM Nurse)**, *which would task the Public Design Commission (PDC) within six months to conduct a public works review and create a removal plan*, we have concerns regarding appropriateness of the agencies identified and alignment with existing efforts and requirements.

The administration shares the Council's commitment to increasing diversity across our school system and ensuring equitable educational opportunities and outcomes. However, Int 716, which places an oversight monitor at CCHR, is inconsistent with CCHR's core functions of civil law

enforcement outreach on the Human Rights Law's protections. Further, the critical work outlined in 716, which includes identifying the complex root causes of inequities is potentially duplicative of current and ongoing administration efforts to advance educational equity, including work of agencies like New York City Public Schools, and the newly mandated citywide racial equity planning process, requiring agencies to disaggregate data by race, establish goals, and build strategies to achieve racial equity through structural reforms.

We support the intent of **Int 1085** to reevaluate, recontextualize, and foster greater diversity in the city's art collection. We should note that the Public Design Commission considers applications related to permanent public art in the city's collection following the process outlined in the City Charter, which requires a public meeting and vote by the PDC, among other steps. The city owns approximately 2,500 pieces of art. The PDC would need a significant commitment of resources to conduct extensive research, likely in phases, and begin the collaborative process of creating and issuing new guidance on items in the city collection, requiring significantly more than six months to develop.

As part of the city's broader efforts to create a public art collection that better reflects our city's diversity, PDC is committed to promoting equity and diverse narratives through art, including by partnering with Black Gotham Experience to expand the City Hall tour program, focusing on the untold histories and impact of the African diaspora. The Commission recently approved the addition of a monument honoring Shirley Chisholm in Prospect Park, which is the first artwork in a larger project to honor more women in our public realm. Earlier in 2018 and 2021, following the 2018 Mayoral Monument Commission report, the PDC also approved the removal of the Teddy Roosevelt Statue at the American Museum of National History and the J. Marion Sims Sculpture at Central Park. The PDC advanced these actions through its existing application, public hearing, and vote cycle.

We look forward to discussing these bills and the full Juneteenth bill package further in today's hearing. Thank you again for the opportunity to comment and for these bold proposals to create a more just city. We welcome your questions.

Testimony before the
New York City Council Committee on Civil and Human Rights
Regarding
Int. 0069-2024

February 29, 2024
Presented By
Julia Rosner (Manhattan Legal Services)

This testimony is submitted on behalf of Legal Services NYC (LSNYC). LSNYC welcomes the opportunity to provide commentary on this important addition to the legislation and is thankful for the invitation to make this submission.

LSNYC is an anti-poverty organization that seeks justice for low-income New Yorkers as one of the principal law firms for low-income people in New York City. As the largest civil legal services program in the country with community-based offices and numerous outreach sites located throughout the city's five boroughs, LSNYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low-income New Yorkers. For more than fifty years, we have helped our clients meet basic human needs and challenged the systemic injustices that keep them poor. We ensure low-income New Yorkers have access to housing, health care, food, and subsistence income providing help that benefited 115,000 New Yorkers and their family members. LSNYC provides free legal services to thousands in New York City low-wage workers every year. We now comment on the needs of these workers in New York City.

Manhattan Legal Services is a constituent corporation of LSNYC. Recognizing the need to provide crucial services to low-wage workers, we created an Employment Law Project to enforce and advance the rights of workers in New York City. The Project has helped non-

union and union low-wage workers including building superintendents and porters, nannies, housecleaners, retail employees, fast food workers, assistant teachers, and home health aides facing employment issues such as discrimination, retaliation, unpaid sick pay, medical leave and wage theft. MLS is submitting this written testimony based on our experience representing clients and specifically low-wage workers who unknowingly waive their statute of limitations under New York City's Human Rights Law.

Protecting the Statute of Limitations Under New York City Human Rights Law is Critical

The City Council through the decades has created and expanded the rights of employees to be free from discrimination and sexual harassment in the workplace. Undoubtedly, New York City has some of the strongest laws in the nation, but employers have created an unscrupulous method to circumvent the robust protections by unilaterally shortening the statute of limitation to file any complaint from three years to periods as short as six months. Large, medium, and small employers regularly insert a clause in their employee contracts that state all claims against the employer—including discrimination and sexual harassment claims under New York City Human Rights Law—must be brought within a short timeframe, sometimes six months, of the wrongdoing. New York courts have upheld these employment contract provisions and held that a six-month period to bring an employment claim is reasonable, even for claims involving discrimination.[1] However, low-wage workers lack bargaining power when signing employment contracts and, in our experience, are often unaware of the contractual terms that they are agreeing to. As a result, in actual practice, many low-wage workers unknowingly waive their rights to bring employment claims under the New York City Human Rights Law.

Today I am going to tell you about our client, Mr. C, a low-wage immigrant worker who contacted our office about five months after his separation from employment, seeking

[1] *See, e.g., Ortegas v. G4S Secure Sols. Inc.*, 65 N.Y.S.3d 693, 693 (N.Y. App. Div. 2017); *see also Hunt v. Raymour & Flanigan*, 963 N.Y.S.2d 722, 723–24 (N.Y. App. Div. 2013); *Vega v. Fed. Exp. Corp.*, No. 09 Civ. 7637, 2011 WL 4494751, at *6 (S.D.N.Y. Sept. 29, 2011); *Keller v. About, Inc.*, No. 21 Civ. 228, 2021 WL 1783522, at *3 (S.D.N.Y. May 5, 2021).

legal assistance with his unemployment insurance benefits hearing. Mr. C had worked for a large, multinational transportation company as a handler for almost seventeen years. Essentially, Mr. C loaded and unloaded packages from his truck and other trucks all day, five days a week. In his last year of employment, Mr. C was in intense pain on the job for many months and was diagnosed with a torn rotator cuff. Mr. C was granted medical leave for the required rotator cuff surgery. Mr. C's doctor cleared him to return to work with a reasonable accommodation at the end of his medical leave. After receiving Mr. C's request for a reasonable accommodation, the employer never engaged in an interactive process with Mr. C and stated it had no accommodation for him. The employer placed Mr. C on unpaid leave. Three months after being placed on unpaid leave and six months after his rotator cuff surgery, Mr. C was cleared to return to work without limitations. The employer informed Mr. C that it had filled his position and had no other positions available for him, and unilaterally placed him on an unpaid administrative leave to apply for open positions with the company, after which he would be terminated.

MLS quickly identified that Mr. C had claims against his former employer for disability discrimination based on failure to provide a reasonable accommodation and adverse employment action. MLS filed a charge with the Equal Employment Opportunity Commission on Mr. C's behalf within the proscribed 300-day filing period. The EEOC issued a probable cause finding on or about March 7, 2019. In August 2019, the EEOC issued a right to sue letter. In November 2019, MLS filed a federal discrimination case on Mr. C's behalf in the Southern District of New York, bringing disability discrimination claims under federal, state, and city law.

During the litigation, the employer produced Mr. C's original employment contract from when he first applied for a job in 2000, which he had signed. Mr. C had limited to no recollection of the contract and was wholly unaware of its provisions. The contract was written in small font and in language that was difficult for Mr. C, who had limited English proficiency, to understand. He did not recall ever receiving a copy of the employment contract. At the end of the contract there was a provision that stated an employee must file

all claims within six months of the wrongdoing. Solely because of this shrewdly placed clause, Mr. C's claims under New York City Human Rights Law and New York State Human Rights Law were dismissed by the court. However, his federal claims could not be dismissed because the United States Supreme Court has ruled that such employment contract provisions cannot shorten the statute of limitations for federal claims.
While Mr. C had the benefit of legal counsel and preserved his federal claims, there are limited legal services available for low-wage workers in employment cases. Indeed, it took Mr. C over five months after his employment ended to find legal representation at MLS. With a significantly shorter statute of limitations period, many low-wage workers will be barred from enforcing their rights under the New York City Human Rights Law.

We thank the City Council for addressing this important issue.

Respectfully submitted,

/s

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LSNYC | Manhattan Legal Services

NELA/NY

ADVOCATES FOR EMPLOYEE RIGHTS
NATIONAL EMPLOYMENT LAWYERS ASSOCIATION

Testimony of Anne L. Clark, on behalf of NELA/NY

In Support of Int. 69

Good afternoon. Thank you for the opportunity to provide this testimony for today's hearing.

I am Anne Clark, the Managing Partner of Vladeck, Raskin & Clark PC, where I have been representing employees for thirty years. I am also a member of the Legislative Committee of the National Employment Lawyers Association, New York affiliate.

I am here to support Int. 69, an important bill to prevent employers from circumventing New York City's robust laws against discrimination. As part of a carefully constructed law to advance those strong public policies, the New York City Human Rights Law provides aggrieved people three years to file in court (N.Y.C. Admin. Code § 8-502(d)), three years to file a claim of gender-based harassment with the City Commission on Human Rights (N.Y.C. Admin Code. § 8-109(e)), and one year to file all other claims with the City Commission (N.Y.C. Admin. Code § 8-109(e)). The Council is currently considering extending the period to file in court to six years.

However, some employers require employees to sign contracts of adhesion that significantly shorten those limitation periods. Several large employers mandate a limitations period of only six months. It would be bad enough if these contracts of adhesion merely made it more difficult for employees to vindicate their rights. But many of these employers include the provisions in employment *applications*. Even sophisticated employees are unlikely to recall having signed such a provision when they encounter discrimination on the job at a later point. Thus they, and their lawyers, believe they have a much longer time to file claims and are likely to miss the shortened deadline entirely. In essence, the employers are trying to write themselves out of the civil rights laws.

The public policies recognized by the City Council should bar enforcement of these contractual limitations for claims under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et seq. Unfortunately, courts have not stepped in to stop employers from re-writing the civil rights laws, which is why this bill is so important. The first case in which a New York

intermediate appellate court allowed a shortened statute of limitations under the City Human Rights Law is Hunt v. Raymour & Flanigan, 963 N.Y.S.2d 722, 724 (2d Dept. 2013). The court in Hunt, however, relied exclusively on breach of contract cases,[1] and did not address the public policies underlying the civil rights statues. Other courts then relied on Hunt to permit these clauses, without considering important public policies. See, e.g., Ortegas v. G4S Secure Solutions (USA), Inc., 65 N.Y.S.3d 693 (1st Dept. 2017).

The City Human Rights Law embodies polices that go well beyond the interests of private parties to a contract. The New York City Council found and declared "that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institution and foundation of a free democratic state." N.Y.C. Admin. Code § 8-101.

In contrast to New York courts, the New Jersey Supreme Court has ruled such provisions unenforceable, for reasons that support passage of Int. 864. See Rodriguez v. Raymours Furniture Co., Inc., 225 N.J. 343 (2016). The public policy underlying the New Jersey Law Against Discrimination ("LAD") is the same as the policies at the heart of the City Human Rights Law. Both statutes have language that battling discrimination is a concern for all citizens and a free democratic state. Id. Both statutes also "cast a wide net in crafting what is included among" violations. Id. at 356; N.Y.C. Admin. Code § 8-107.

Both statutes also have an election of remedies, with the option of filing in court or with the City's administrative agency, with a shorter limitations period for the administrative filing for claims other than gender-based harassment. Rodriguez, 225 N.J. at 358; N.Y.C. Admin. Code §§ 8-109(e), 8-502. Both statutes also permit an employee to initially file with an administrative agency but then dismiss the agency filing for administrative convenience and file in court. Rodriguez, 225 N.J. at 358; N.Y.C. Admin. Code § 8-112. The New Jersey Supreme Court found important public policies vindicated by allowing employees the opportunity to first seek informal resolution with the agency, with the option of litigation, and that encouraging agency filings permits the agency to perform its broad law enforcement mandate, representing the public that is injured by discrimination. Rodriguez, 225 N.J. at 359-60.

The New Jersey Supreme Court found that state policy overrode the freedom to contract for reasons that apply with equal force to the City Human Rights Law. The Court found that the shortened statute of limitations undermined the integrated nature of the statutory avenues and election of remedies. Id. at 361-62.

There are important practical reasons why the City Council previously decided that three years is the right period of time for employees to have to vindicate their rights in court and is now considering a six-year period. Employees may not realize at first that they have been discriminated against. If they do, they may not know how to find an attorney or otherwise pursue an action. Employees may be dealing first with trying to find a new job or heal from the trauma they have experienced. They may be dealing with a disability or pregnancy or domestic violence situation that is part of the discriminatory conduct. For similar reasons, the City Council determined that

[1] Jamaica Hosp. Med. Ctr. v. Carrier Corp., 772 N.Y.S.2d 592 (2d Dept. 2004); John J. Kassner & Co. v. City of New York, 46 N.Y.2d 544, 550-51 (1979).

one or three years was the appropriate amount of time for individuals to file with the City Commission. As those who file with the City Commission are more likely to lack the resources to retain counsel and may be less knowledgeable about their rights, having sufficient time to file is even more crucial.

The existing three year period, and proposed six year period, also serve another important function. As hard as it can be to file in court within six months of being fired, a dismissal is often the culmination of a history of discriminatory acts. Employees may be repeatedly passed over for promotion or be demoted, for example, and decide that they do not want to rock the boat, that keeping their job is too important to risk speaking up, much less filing a lawsuit against their current employer. If employees in such situations are then fired, and decide to take action, a years-long statute of limitations will allow claims for the other discriminatory acts that preceded the employment termination.

Even after an employee finds an attorney, there are benefits to having ample time before having to file in court. It is in both parties' interest if a matter can be resolved informally, without litigation, but those discussions take time. If there is sufficient time, the employer can investigate the claims that are being asserted and may decide to settle with that employee and take steps to discipline employees who violated the law and improve its internal policies and procedures. The full time limit under the City Human Rights Law also ensures that the employee's attorney can conduct her own investigation before filing in court.

Most importantly, as the New Jersey Supreme Court recognized, a shortened statute of limitations "effectively eliminates claims." Id. at 363. Most employees come to an attorney not realizing they signed a waiver of the usual statute of limitations, which, if upheld, could lead to the dismissal of otherwise meritorious claims. Id. Unless the attorney had dealt with that specific employer before, even an experienced attorney would think there is ample time to file in court. In contrast, most breach of contract claims involve a business filing a lawsuit based on the provisions of the contract that contains the shortened limitations period, putting the plaintiff on notice.

Moreover, a dispute involving a commercial contract does not implicate the important public policies of the City Human Rights Law, which is to be "construed liberally for the accomplishment of [its] uniquely broad and remedial purposes," and for which "[e]xceptions to and exemptions from" the Law are to be "construed narrowly in order to maximize deterrence of discriminatory conduct." (N.Y.C. Admin Code. § 8-130).

I speak from experience about the dangers of these provisions. In early 2020, an employee who had been fired came to me with an age discrimination claim, after he had spent a few months pursuing an internal appeal through the employer's procedures. He is sophisticated and educated. He, not surprisingly, had no recollection that the online application he had submitted contained language agreeing to limit the statute of limitations to file in court to only six months. I had not litigated with this employer before, so assumed that we were subject to the usual statutes of limitations and acted accordingly. We filed in court just over a year after our client was fired, after exhausting the administrative requirements for a federal claim. Later, the employer argued that because of the language in the online application, his claims, including his City Human Rights Law claim, should be dismissed. The court found that the employer waited too long to raise the

issue and ruled against it. However, our client came very close to having valid claims dismissed for reasons having nothing to do with the merits.

In conclusion, it is essential that the City Council pass Int. 864, not only to allow employees and their attorneys ample time to prepare for filing in court or with an agency, but to prevent these employers from leaving employees with no avenue at all for pursuing valid claims.

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