

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CIVIL RIGHTS

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June 20, 2012
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HELD AT: 250 Broadway
Committee Room, 14th Floor

B E F O R E:
DEBORAH ROSE
Chairperson

COUNCIL MEMBERS:
Julissa Ferreras
Margaret Chin
James G. Van Bramer

A P P E A R A N C E S (CONTINUED)

Bill Heinzen
Deputy Counselor
New York City Office of the Mayor

Mitchell Hirsch
Unemployed Worker Advocate
National Employment Law Project

Karen Cacace
Supervising Attorney, Employment Law unit
Legal Aid Society

Ed Ott
Distinguished Lecturer, Labor Studies
Murphy Institute of the School of Professional Studies
City University of New York

Michelle Holder
Senior Labor Market Analyst
Community Service Society of New York

Shira Gans
Scott Stringer
Manhattan Borough President

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2 CHAIRPERSON ROSE: This hearing is
3 now called to order. Good morning, my name is
4 Debbie Rose and I am the Chair of the Committee on
5 Civil Rights and today we'll be holding our first
6 hearing on Introductory bill number 814, a Local
7 Law to amend the Administrative Code of the City
8 of New York in relation to prohibiting
9 discrimination based on one's unemployment status.
10 I'd like to thank my colleagues for joining me
11 here today at today's hearing: Council Member
12 Julissa Ferreras and Council Member Margaret Chan.

13 And I'd like to thank my staff,
14 counsel, Julene Beckford, and policy analyst,
15 Damien Butvick, for all of their hard work that
16 they've put into this hearing.

17 Nationwide, the unemployment rate
18 stands at 8.2%, it is significantly higher in the
19 Black and Hispanic communities at 13.6% and 11%
20 respectively. In New York City, the unemployment
21 rate hovers around 8.8%--the highest of all
22 metropolitan areas in the entire state. At a time
23 with the unemployed outnumber--where the
24 unemployed outnumber vacant positions 4 to 1, the
25 jobless already face enough adversity just trying

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to make ends meet.

Unfortunately, many job hunters face discrimination simply because they are unemployed. Some companies at staffing agencies actually screen out the unemployed from their list of candidates, generally, for no substantive reason--for no substantive reason. In a four-week review of four major job posting websites, the National Employment Law Project found 150 instances of companies or staffing agencies using language explicitly requiring that candidates be currently employed. While many companies and staffing agencies oppose imposing such limitations, some defend the practice, citing the need for stable job histories and candidates motivated by a desire, not need, for new employment. Whatever the reason, discriminating against the unemployed is unfair, but this population has no protections against this type of discrimination and employers have no incentive to stop this practice.

To address this issue, Council Members Comrie and Gentile introduced Intro number 814, which we will be hearing today, and, if

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2 passed, Intro number 814 would prohibit employers
3 from basing employment decisions on an employee's
4 or a prospective employee's unemployment status or
5 history, an employer would only be permitted to
6 use one's unemployment status information when
7 making an employment decision if that information
8 that is substantively job-related where the
9 employer has a bona fide reason--or where the
10 employer has a bona fide reason for doing so.
11 Employers would also still be permitted to inquire
12 about prospective employee's demotions and
13 terminations during the interview process.

14 Finally, Intro number 814 would
15 prohibit the use of language in job advertisements
16 stating that being currently employed is a
17 requirement or that unemployed candidates will not
18 be considered. Discrimination against the
19 unemployed only serves to perpetuate a precarious
20 situation for those who can least afford it. I
21 believe that Intro number 814 will go a long way
22 for eliminating this practice in New York City.

23 And with that, we will call our
24 first panel to provide testimony. And would you
25 please speak into the mic and state your name for

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2 the record. Is it on? Press that button, yeah.
3 Yeah. I don't see the light on it. Okay.

4 BILL HEINZEN: Okay? All right,
5 thank you very much. Good morning Chairperson
6 Rose and Members of the Council, my name is Bill
7 Heizen, and I serve as Deputy Counselor to the
8 Mayor. Thank you for the opportunity to testify
9 today regarding Intro 814, which would amend the
10 New York City Human Rights Law to make it illegal
11 for employers to consider an individual's
12 unemployment status in hiring and other employment
13 decisions without a bona fide and substantially
14 job related reason for doing so, or to post job
15 advertisements indicating that the unemployed need
16 not apply for a position.

17 The Administration shares the
18 Council's concern for the needs of those who have
19 been unemployed for long periods of time due to
20 circumstances beyond their control because being
21 unemployed can have a devastating effect on an
22 individual and on his or her family. Therefore,
23 we support the idea set forth in one provision of
24 the bill, that job postings and advertisements
25 should not indicate that the unemployed need not

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2 apply, but we believe that any provision codifying
3 such a prohibition would need to include certain
4 amendments to clarify that employers may expressly
5 seek recent relevant work experience.

6 In partnership with the Council,
7 the Administration has taken aggressive steps to
8 stimulate the economy and mitigate unemployment
9 throughout the City. Mayor Bloomberg and the
10 Department of Small Business Services have
11 aggressively expanded workforce development and
12 job placement efforts through the expansion of the
13 City's Workforce One centers. In 2011, these
14 centers connected New Yorkers with a record number
15 of jobs, up from just a few hundred annually
16 earlier in the Administration. These efforts,
17 along with investments in infrastructure and
18 economic activities in all five boroughs, have
19 allowed New York's economy to significantly
20 outperform the rest of the country. Since the
21 onset of the national recession, the United States
22 has gained back only 40% of the private sector
23 jobs it lost, but New York City has now recovered
24 more than 200% of the private sector jobs we lost.
25 In fact, New York City has created twice as many

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2 private sector jobs as the next ten cities in the
3 United States combined.

4 It is possible that an employer may
5 wrongly equate a person's unemployment status with
6 the person, without any further review of his or
7 her ability to do the work expected. This is
8 wrong and should not happen, but, while we support
9 the job posting proposal, we do not believe that
10 amending the City's Human Rights Law to prohibit
11 employers from considering unemployment status
12 with respect to hiring and other employment
13 actions is the way to prevent this problem or to
14 help people who are unemployed.

15 The City's Human Rights Law is well
16 recognized as one of the broadest civil rights
17 laws in the nation, but we are concerned that
18 expanding it to add the unemployed as another
19 protected class would create more litigation than
20 jobs and would do nothing to address the
21 underlying problems. Indeed, adding this category
22 blurs the line between irrational discrimination,
23 which the Human Rights Law is supposed to address,
24 and more complicated employment decision-making
25 processes that can legitimately rely on multiple

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2 factors. Unlike other bases for discrimination
3 prohibited by the Human Rights Law, such as race,
4 religion, or sex, which should never be relevant
5 to hiring and employment decisions, a person's
6 unemployment status may, in certain situations, be
7 relevant to employers when selecting qualified
8 employees. For this reason, investigating and
9 determining whether prejudice against the
10 unemployed motivated a potential employer could
11 present significant feasibility and operational
12 challenges both for the Commission on Human Rights
13 and for the courts.

14 The lessons from our neighboring
15 jurisdictions are helpful in this regard. For
16 example, the Connecticut legislature considered
17 passing a similar bill that would have prohibited
18 consideration of unemployment status in hiring
19 decisions. The Connecticut Commission on Human
20 Rights and Opportunities publicly opposed the
21 bill, noting, while it is possible to substantiate
22 race or age bias in a company, how such could be
23 determined for the unemployed is hard to imagine.
24 The Connecticut Commission was concerned that,
25 even if 1% of those unemployed filed a claim under

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2 the bill, the agency's caseload would nearly
3 double. In response to these concerns and the
4 expected surge of new litigation, the Connecticut
5 legislature revised the bill to one that would
6 only prohibit discrimination based on unemployment
7 status in job posting and advertising.

8 Other jurisdictions, such as Oregon
9 and New Jersey, have taken a similar approach and
10 have passed laws that prohibit job postings that
11 list current employment as a job requirement, but
12 which provide for administrative enforcement
13 instead of creating a private right of action.

14 In addition to these general
15 concerns, we also have some specific concerns with
16 respect to the bill as drafted. For example,
17 section one defines unemployment status to include
18 the ambiguous and undefined term "recent
19 unemployment," which appears to expand the scope
20 of the bill unnecessarily. The Council may want
21 to consider either defining unemployment status as
22 current unemployment or setting a specific time
23 period to define the word "recent," for example,
24 three months, so it is clear that someone who may
25 have been unemployed at one time in the past is

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2 not protected by this bill. We note that
3 Washington D.C., which is the only other
4 jurisdiction we are aware of to prohibit
5 unemployment discrimination in hiring decisions,
6 only protects those who are currently unemployed
7 and provides much more extensive guidance, we
8 believe, for employers in avoiding improper hiring
9 decisions.

10 Additionally, section two of the
11 bill would prohibit discrimination in employment
12 decisions relating to termination, promotion,
13 demotion, and discipline, but we question how
14 unemployment status would affect those decisions,
15 improperly or otherwise, since the individual
16 would not be unemployed when faced with any of
17 these decisions, any of these scenarios.

18 Moreover, a person who was recently unemployed
19 would typically be a less likely candidate for
20 promotion than a person who has been working
21 within an organization for a longer period of
22 time.

23 Further, although the bill does
24 contain an exemption for employers who consider
25 unemployment status information where it is

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2 substantially job-related and where the employer
3 has a bona fide reason for doing so, we fear this
4 exception will be confusing for employers as it
5 appears to set forth two different standards and
6 does not provide adequate guidance for employers.
7 In order to protect the many legitimate reasons
8 that employers may have for considering
9 information related to an individual's past
10 employment or lack thereof, the Council may want
11 to consider allowing employers to use unemployment
12 status information where the employer has a
13 legitimate reason for doing so.

14 We also think it is important to
15 clarify that an employer may exercise a preference
16 for candidates based on their amount of
17 experience, or seek a candidate with a certain
18 number of years of recent and relevant experience.

19 Lastly, the Council may want to
20 consider a clearer statement regarding this
21 Introduction's impact on other laws, particularly
22 the Civil Service Law, which requires, for
23 example, that an individual already be serving in
24 a title in order to be eligible for a promotion to
25 a higher title in their career path. Other

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2 jurisdictions that have legislated in this area
3 have provided express protections for employers
4 that wish to promote from within.

5 Unemployment is a serious concern
6 in New York City, but the City's approach should
7 not be left to the ups and downs of litigation.
8 Rather than further broadening the Human Rights
9 Law, which cannot in itself curb unemployment, we
10 support a targeted approach that would prohibit
11 the most discriminatory job postings. This would
12 supplement the City's ongoing efforts to stimulate
13 job growth and prevent unemployment at its source.

14 Thank you very much for allowing me
15 to testify, and I'm happy to answer your
16 questions.

17 CHAIRPERSON ROSE: Thank you so
18 much. It's clear that the Administration doesn't
19 support some of the major components of this
20 proposed bill, so do you think that there is
21 another place in the Administrative Code to
22 provide provisions for people who find themselves
23 in this position?

24 BILL HEINZEN: Well we do support
25 the posting requirement, which I think was the

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2 motivation for--I believe was the motivation for
3 this legislation or at least was the motivation
4 for similar legislation, the fact that some
5 companies were just stating simply unemployed need
6 not apply, and we support the prohibition against
7 those type of postings.

8 CHAIRPERSON ROSE: So do you think
9 that other protections should exist for this
10 population?

11 BILL HEINZEN: Well there's a wide-
12 -I mean, there are protections that exist to the
13 extent if they fall into other protected classes,
14 but we don't think amending the Human Rights Law
15 to add the protected class of unemployed will be
16 effective in reducing unemployment, and if
17 anything, dilutes the current Human Rights Law,
18 further strains the resources of the courts and
19 the Human Rights Commission.

20 CHAIRPERSON ROSE: So you feel that
21 the Human Rights Law now covers enough protected
22 classes so that this--there is no need to make
23 this a protected class?

24 BILL HEINZEN: I'm not going to say
25 that the Human Rights Law as it stands is secure

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2 for unemployment, it certainly isn't and it's not
3 intended to be, but I don't think amending the
4 Human Rights Law to prohibit job discrimination on
5 the basis of unemployment status will be effective
6 in combating unemployment.

7 CHAIRPERSON ROSE: And your reason
8 for not thinking that we should give this a
9 broader classification or make it a protected
10 class is because of litigation concerns?

11 BILL HEINZEN: That's one aspect of
12 it because, as I understand the legislation, as it
13 stands now it would create a private right of
14 action. In addition to administrative enforcement
15 by the Human Rights Commission.

16 CHAIRPERSON ROSE: If some of the
17 changes were made, if there were some changes made
18 to this bill, would the administration support
19 this bill?

20 BILL HEINZEN: I am sure that Al
21 Moen to my left is telling me don't negotiate a
22 bill in a hearing right now, or thinking it.
23 However, we are always happy to sit down and talk.
24 And we've looked at this issue and we've looked at
25 what other jurisdictions are doing and we've

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2 researched the issue as well, we'd be very happy
3 to sit down and talk with you and with your
4 staffers. And as I said, there is a portion of
5 the bill that we support, it's we have concerns
6 about amending the Human Rights Law and adding
7 unemployment status as a protected class.

8 CHAIRPERSON ROSE: How does a
9 person get a job if they can't get a job?

10 BILL HEINZEN: I'm not sure that
11 suing is the way. I understand your question, but
12 I don't think suing is the best way to get that
13 job, if the reason they're suing is because
14 they're saying they were discriminated against
15 because they're unemployed. I don't think
16 empowering individuals with a private right of
17 action is going to be an effective way at
18 increasing the overall employment rate.

19 CHAIRPERSON ROSE: But you are in
20 agreement that there should be language about the
21 advertising for jobs.

22 BILL HEINZEN: Yes, we would
23 support that.

24 CHAIRPERSON ROSE: And that
25 language would be what? What would that language

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2 be exclusive of or inclusive of? The language--
3 okay, so you're in favor of the language that's in
4 the bill.

5 BILL HEINZEN: We're in favor of
6 the language but we would like to add--we would
7 suggest that it also include provisions that make
8 clear that employers can consider relevant
9 experience.

10 CHAIRPERSON ROSE: Oh, it's just--
11 Council Member Chin, do you have some questions?

12 COUNCIL MEMBER CHIN: Yeah.

13 CHAIRPERSON ROSE: Thank you.

14 COUNCIL MEMBER CHIN: Thank you,
15 Madam Chair. In your testimony you gave the
16 examples about Connecticut, and what really kind
17 of made me take notice is that if the Commission
18 was concerned that even 1% of those unemployed
19 file a claim, that their caseload would double. I
20 don't think that's really a good excuse, I mean,
21 like, it means that it just shows that it's a big
22 problem, that people are getting, you know,
23 discriminated because they're unemployed. So I
24 guess to really look at that, it's not among
25 caseload, how do we solve this problem so people

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2 who want to work can, you know, get a job? And I
3 know that you--the Administration agree with the
4 posting and maybe some of the issue about
5 explaining more, like what recent unemployed mean
6 and things like that, but we have to find a way so
7 people who felt that they were discriminated
8 because of unemployment have a place to go and get
9 some resolution and get some assistance. So if we
10 don't enact the law to protect them, then where
11 else can they do administratively, maybe you can
12 elaborate more on that, like a place where people
13 can go and get some assistance.

14 BILL HEINZEN: Well if you had the
15 anti-posting provision and if you had
16 administrative enforcement by the Human Rights
17 Commission against the anti-posting and
18 advertisement provision, I would think that would
19 be pretty significant because, for the most part,
20 the gatekeeper on this--the entry point, the
21 threshold for this problem of people not even
22 being considered because of their unemployment
23 status comes with what we've seen have been
24 postings that have said expressly unemployed need
25 not apply, so if you're addressing it there, then

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2 I feel like you're addressing a lot of the
3 problem. But, again, we don't think that amending
4 the Human Rights Law to include unemployment
5 status as a protected class is a way to address
6 unemployment.

7 COUNCIL MEMBER CHIN: The other
8 thing is that the Human Rights Commission, I mean,
9 they come before us many time and they don't have
10 the resource. I mean, one of the things that if
11 they would take an active role, I mean, just like
12 the Fair Housing Law, when you see those kind of
13 advertising, it's not just--they can't just say,
14 okay, you advertise so you violate the law, they
15 actually have to do testings to sort of like build
16 a case. So in this situation it's sort of like a
17 similar, I mean, if somebody posts that but you
18 still got to sort of like maybe send out people to
19 test them to see they actually implement what they
20 post.

21 BILL HEINZEN: Well I think if
22 someone in advertising for housing said, you know,
23 Jewish people need not apply, should not apply for
24 housing in this building, I don't think they would
25 need to do an investigation, I think that would

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2 be, on its face, would be a violation. But
3 definitely, they typically--advertising doesn't
4 say that for housing and they do do a lot of
5 undercover investigation.

6 If your question is whether there's
7 a role for the Human Rights Commission and in
8 enforcement of this, an investigation, I think the
9 answer is yes.

10 COUNCIL MEMBER CHIN: But I think
11 there are incidents where the Human Rights Law
12 were expanded to cover different protected class,
13 right? I mean--

14 BILL HEINZEN: Absolutely.

15 COUNCIL MEMBER CHIN: --source of
16 income, that was added recently because people
17 with Section 8 vouchers were getting
18 discriminated? So I mean, there are some
19 similarity there in terms of people are getting
20 turned away because of their certain status, and
21 in this case it's because they're unemployed. So
22 I think, you know, to really--

23 BILL HEINZEN: [Interposing]
24 There's precedent for it, we don't support it. We
25 don't support expanding the Human Rights Law in

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that way.

COUNCIL MEMBER CHIN: Okay. So--

[Crosstalk]

CHAIRPERSON ROSE: --source of
income?

BILL HEINZEN: No, for unemployment
status.

COUNCIL MEMBER CHIN: Okay. Well I
think we'll just continue the dialogue with the
Administration. Thank you.

BILL HEINZEN: Thank you.

[Pause]

CHAIRPERSON ROSE: --you, Council
Member Chin. We've been joined by Council Member
Van Bramer. And for the record, we have testimony
from Council Member Vincent Gentile which we will
submit into the record.

I would just like to ask you, how
would the Commission enforce the prohibition on
advertising?

BILL HEINZEN: I would beg your
indulgence, if we could come back to you with an
answer to that, I can't lay out the enforcement
strategy right now, but I think that could be part

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of the conversation we would have.

CHAIRPERSON ROSE: Oh, well since you begged, I guess I'll have to comply.

BILL HEINZEN: Thank you.

CHAIRPERSON ROSE: Yes, but this is important--

BILL HEINZEN: Understood.

CHAIRPERSON ROSE: --especially since we're not going to enter them as a protected class. How this will be enforced is going to be very important, especially in light of Council Member Chin's remarks. We have in the past added to protected classes and enforcement of the advertisement piece is going to be very key.

So with that, you will come back and give us that information. And I'd like to thank you for your testimony.

BILL HEINZEN: Thank you very much.

CHAIRPERSON ROSE: Thank you. And we're going to call the next panel. Mitchell Hirsch from the National Employment Law Project, Karen Carsie, did I say that wrong? Oh, Cacace, I'm sorry, the Legal Aid Society. Ed Ott from the Murphy Institute at CUNY. Thank you.

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2 And once you get situated, you can
3 decide which order you'd like to go in, just
4 identify yourself and use the microphone. Thank
5 you.

6 MITCHELL HIRSCH: Shall I proceed?

7 Good morning.

8 CHAIRPERSON ROSE: Good morning.

9 MITCHELL HIRSCH: My name is
10 Mitchell Hirsch and I'm an unemployed worker
11 advocate with the National Employment Law Project.

12 Chairperson Rose and Members of the
13 Committee, thank you for this opportunity to
14 testify in support of this measure, bill number
15 814, that will help remove an unfair barrier to
16 employment opportunities for unemployed job
17 seekers.

18 A disturbing trend has emerged
19 among employers and staffing firms in the last few
20 years: That of refusing to even consider the
21 unemployed for available job openings, regardless
22 of their qualifications. Excluding unemployed
23 workers from employment opportunities is unfair to
24 workers, and it's bad for the economy. The
25 National Employment Law Project commends this

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2 Committee, the measure's sponsors, and the New
3 York City Council for taking up this important
4 legislation and issue.

5 Persistent high levels of
6 unemployment have combined with a very tight job
7 market to make the prospect of finding new work
8 for unemployed job seekers an extraordinarily
9 difficult challenge. Even with modest
10 improvements in the job market, there are still
11 nearly four unemployed job seekers for every job
12 opening. Nationally, 5.4 million workers have
13 been jobless for six months or more, and 70% of
14 them, 3.8 million, have been out of work for a
15 year or more. Here in the New York, Northern New
16 Jersey, Long Island metropolitan area, 789,000
17 were reportedly unemployed in April of this year,
18 including 345,000 in New York City alone. At a
19 time when the average duration of unemployment is
20 close to 40 weeks, we should be doing all we can
21 to open up job opportunities. Thus, it is
22 profoundly disturbing to see deliberate exclusion
23 of the jobless from being considered for such
24 opportunities.

25 Reports of these exclusionary

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2 practices in the job market began to surface in
3 2010. Press accounts reported job announcements
4 explicitly stating, quote, no unemployed
5 candidates will be considered, unquote, others
6 requiring that applicants, quote, must be
7 currently employed, unquote. Around the same
8 time, through our website at unemployedworkers.org
9 we began to hear from people seeing similar job
10 postings online and from others who were shocked
11 when they were told by recruiters and staffing
12 agency representatives that, despite their
13 qualifications, they would not be referred for
14 interviews for positions because they were not
15 currently employed or because they'd been
16 unemployed for a certain period of time.

17 In the spring of last year, NELP
18 conducted a 4-week survey of online job posting
19 sites and found more than 150 examples of ads
20 containing explicitly exclusionary language. In
21 July last year, we detailed these findings in a
22 report called Hiring Discrimination Against the
23 Unemployed, which received prominent news coverage
24 and helped bring the issue to national attention.
25 Since then we've worked with lawmakers at all

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2 levels to address this pernicious problem,
3 including members of the U.S. House and Senate who
4 introduced the Fair Employment Opportunities Act
5 of 2011, with New York Senator Kirsten Gillibrand
6 one of the initiating Senate sponsors.

7 Still, the problem of
8 discriminatory job market practices that exclude
9 otherwise qualified unemployed job seekers from
10 job opportunities persists, and we continue to
11 hear from workers who have been confronted with
12 these practices. Theresa Mancusi, 55-year old
13 woman from Maryland, lost her compliance
14 administrator job when her employer lost a
15 contract re-bid. She reports recently seeing a
16 job posting for which she was well qualified, but
17 that it stated, quote, qualified candidates will
18 have previous experience working in an
19 administrative capacity within the past six
20 months, unquote. And when following up with a
21 recruiter regarding open positions recently, she
22 reports being told by the recruiter that their
23 clients will ask to see resumes only of people
24 currently working.

25 A seasoned public relations

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2 professional in New York City reported to us
3 seeing a PR job with a law firm posted online.
4 She sent her resume and contacted the recruiter
5 but was told, quote, I can't refer you for this
6 job, we can't send anybody who has not been in a
7 permanent position for more than three months. I
8 don't make the rules, unquote.

9 From people in the greater New York
10 area, we receive similar stories. Kim Keough, a
11 human resources and benefits specialist in
12 Connecticut with 20 years of experience who lost
13 her job reports pursuing a job posting for which
14 she was entirely qualified, only to be told that
15 she was summarily disqualified because she was
16 unemployed. Quote, my client only wants to look
17 at employed candidates, unquote, the recruiter
18 informed her.

19 Ellen Pinney, a 56-year old New
20 Jersey woman, was laid off from a management
21 position she'd had for 17 years. Ms. Pinney has
22 been actively seeking full-time work while caring
23 for an elderly parent and taking a variety of what
24 she calls handywoman jobs. With a college degree
25 and 30 years employment history, she writes of her

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2 struggle to find work, how her savings have been
3 depleted, how she has rented out her home and
4 moved in with her elderly father. She reports
5 that she made more as a teenager in 1971 than she
6 did last year. And she says she was stunned when
7 told recently by a representative of a
8 professional staffing firm, quote, the company she
9 was representing would not interview any
10 professional not presently working, unquote.

11 The devastating effects of being
12 denied access to employment opportunities by such
13 discriminatory practices that serve no rational
14 purpose are exacerbating the personal suffering of
15 those who need jobs most. Those who would argue
16 that these are isolated occurrences and that these
17 practices are by no means widespread have been
18 well disputed by leading figures in the recruiting
19 and human resources fields. Rich Thompson, vice
20 president of learning and performance for Adecco
21 Group North America, the world's largest staffing
22 firm, told CNNMoney.com in June 2010 that
23 companies' interest only in applicants who are
24 currently working, quote, is more prevalent than
25 it used to be, I don't have hard numbers, unquote,

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2 he said, quote, but three out of the last four
3 conversations I've had about openings, this
4 requirement was brought up, unquote. Similarly,
5 Lisa Chenofsky Singer, a New Jersey human
6 resources consultant specializing in media and
7 publishing jobs, commented that, quote, most
8 executive recruiters won't look at a candidate
9 unless they have a job, even if they don't like to
10 admit it, unquote. According to Ms. Singer, the
11 first question she is generally asked when
12 recommending a candidate is whether the candidate
13 is currently working, and if the candidate is
14 unemployed, the recruiter is not interested.

15 A survey reported in October 2011
16 by SmartRecruiters, a firm that markets free
17 recruiting software, found that, quote, 82% of
18 recruiters, hiring managers, and human resources
19 professionals report the existence of
20 discrimination against the unemployed, unquote.
21 Among those surveyed by the company, quote, 55% of
22 recruiters and HR managers have personally
23 experienced resistance when presenting qualified,
24 yet unemployed, candidates to clients, unquote.

25 It is clear that discriminatory

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2 exclusion of applicants for jobs simply because
3 they are unemployed is a harmful and unfair
4 barrier to employment. NELP applauds Council
5 Members Comrie and Gentile for introducing this
6 bill, and commends all the co-sponsors and this
7 Committee for pursuing this legislation that will
8 help keep the doors of employment opportunity open
9 to all qualified job seekers, regardless of their
10 current employment status. Passing this
11 legislation is not only the right thing to do, but
12 it will also send a strong message to employers,
13 recruiters, and staffing firms nationwide that it
14 is time to stop all discriminatory practices that
15 exclude unemployed workers.

16 I thank you for this opportunity
17 and would be happy to answer any questions you
18 might have.

19 CHAIRPERSON ROSE: Thank you.

20 KAREN CACACE: Good morning, my
21 name is Karen Cacace and I'm the Supervising
22 Attorney for the Employment Law unit at The Legal
23 Aid Society. I am here to speak in favor of the
24 proposed amendment to the Administrative Code of
25 the City of New York which would prohibit

1
2 discrimination based on one's employment status.

3 The proposed amendment is
4 particularly significant for our clients who are
5 some of the most vulnerable New Yorkers. The
6 Legal Aid Society is a not-for-profit public
7 interest law firm that delivers the full range of
8 legal services to low income individuals in New
9 York City. The Society has local neighborhood
10 offices in all five boroughs of New York City,
11 along with centralized citywide law reform,
12 employment law, immigration law, health law, and
13 homeless rights practices. The Employment Law
14 unit provides representation, community education,
15 and advice to low wage workers regarding
16 employment issues, including: Unemployment
17 insurance benefits; minimum wage, overtime and
18 other wage and hour issues; and discrimination
19 issues, including discrimination affecting persons
20 with criminal records and discrimination affecting
21 persons due to their medical or family
22 responsibility issues.

23 Since the economic downturn, the
24 Employment Law unit has seen a steep rise in the
25 need for its services. Currently, the Employment

1
2 Law unit receives over 50 calls per week to its
3 helpline from low income New Yorkers with
4 employment law issues. The majority of these
5 calls are from New Yorkers who are currently or
6 were recently unemployed. Many of our clients
7 have difficulty replacing their former jobs and
8 remain unemployed for a substantial period of
9 time. Discrimination against these job seekers
10 based on their employment status is entirely
11 unwarranted. The systemic economic crisis results
12 in workers being unemployed for a longer period of
13 time through no fault of their own. Since there
14 is no correlation between an individual's
15 employment status and his or her ability to
16 perform a job, employers should be precluded from
17 making such a generalization and discriminating
18 against the very people who are most in need of
19 employment.

20 Our experience is consistent with
21 statistics reported by the New York State
22 Department of Labor. As of April 2012, New York
23 City had the second highest unemployment rate of
24 any region in the state at 8.8%. And, with a 12%
25 unemployment rate, the Bronx has the highest rate

1 of unemployment of any county in New York State.

2 Unemployment has also
3 disproportionately affected persons of color. At
4 hearings held before the EEOC on this issue last
5 year, it was reported that the unemployment rate
6 for blacks in the United States was over 15% and
7 for Hispanics was almost 12%. Given these
8 statistics, any discrimination against people who
9 are unemployed has a disparate impact on people of
10 color and, in turn, their communities. This sort
11 of discrimination can intensify the impact of the
12 recession on communities that were already hardest
13 hit by depriving people in those communities an
14 opportunity to get back into the workforce and
15 earn income that they will be able to spend in
16 their neighborhoods.

17 Accordingly, it is important that
18 the City Council take steps to ensure that
19 unemployed New Yorkers do not face unwarranted
20 discrimination in their attempts to reenter the
21 workforce. The Legal Aid Society is in favor of
22 the proposed amendment to the New York City
23 Administrative Code because it will protect job
24 seekers from any unwarranted bias that employers
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1
2 may have against the currently or recently
3 unemployed.

4 Thank you.

5 CHAIRPERSON ROSE: Thank you.

6 ED OTT: Morning, Council Member
7 Rose, Council Members, good to see you all again.
8 My name is Ed Ott, I'm a Distinguished Lecturer at
9 the Labor Studies at the Murphy Institute of the
10 School of Professional Studies of the City of New
11 York. Our institute concentrates on labor and
12 urban studies, providing undergraduate and
13 graduate degrees to working New Yorkers.

14 I'm here today in support of Intro
15 814. This is one of those proposals that, on
16 first glance, seems inconsequential and maybe even
17 unnecessary. Upon giving it some thought, I
18 decided that this proposed change to the
19 Administrative Code is important and very
20 necessary.

21 We have in this city what seems to
22 be intractable unemployment problem. The official
23 numbers of unemployed have hovered around 8 to 10%
24 for several years. For Afro-American men, youth,
25 first time job seekers, and those who may have

1
2 been impacted when the financial system went bust,
3 the numbers can be dramatically higher. The
4 Members of this Council have worked hard to assist
5 those seeking work by supporting workforce
6 development programs, restoring child care
7 funding, and finding ways to keep those who are
8 employed on the payroll.

9 Others refer to the current
10 situation of near double digit employment as the
11 new normal. There is nothing normal about not
12 having a job. Employment, or lack of it, goes
13 right to the heart of how individuals are
14 perceived by society and how working people are
15 evaluated by landlords, banks, credit agencies,
16 and potential employers. For these reasons, I
17 think that it would be helpful if Intro 814 would
18 be passed into law.

19 The reduction of unemployment
20 requires both expectation and support. We want
21 people to seek out jobs, we want working people to
22 be self-sufficient, and we expect them to treat
23 looking for work like a full time job. When
24 people are trying to meet that expectation, they
25 should not have obstacles thrown in their way.

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2 The requirement of being currently employed used
3 by some employers in order to get a new job is an
4 unfair barrier to a person seeking work. It has
5 the effect of marginalizing the unemployed and
6 discouraging first time job seekers. It can
7 appear to the person seeking work that gaining
8 access to employment is like trying to get into an
9 exclusive club for members only.

10 Advertisements and job postings
11 that include must be currently employed are the
12 velvet rope at entry to the job market. Even a
13 highly qualified applicant, this restriction
14 cannot be overcome. Lenny Bruce would have
15 described this conundrum as, first they break your
16 legs and then they laugh at you because you can't
17 dance.

18 Intro 814 won't solve the problem
19 of protracted unemployment, but it will remove one
20 barrier that working people should not have to
21 face.

22 Thank you for your time.

23 CHAIRPERSON ROSE: Thank you for
24 your testimony, thank all of you.

25 Could you tell me what portions of

1
2 the bill you think would be most effective and
3 have the greatest impact on unemployed workers?

4 MITCHELL HIRSCH: I think the
5 extension of the scope of the bill beyond just the
6 posting of job ads is essential. The simply
7 limiting it to the prohibition of that kind of
8 exclusionary job posting does little or nothing to
9 address the underlying problem. And the
10 underlying problem, it's almost like the job
11 postings are the tip of the proverbial iceberg
12 here, the issue is, for whatever reason,
13 employers, some employers, tell their recruiters
14 or their HR departments that we only want to
15 consider people who are currently working or we
16 won't look at people who have been out of work for
17 three months or more, or something like that.
18 It's the, not just the velvet rope of the job
19 posting itself, but the very door being open to
20 being considered for employment, and that's where
21 I think it's important to go beyond just the job
22 postings to the underlying practice.

23 I'll give you another example that
24 I didn't bring up in my testimony, recently there
25 was a piece in the Wall Street Journal online, a

1
2 column by David Wessel on the issue of companies
3 using screening software in their job application
4 process where the software is programmed to
5 essentially filter out people who either have
6 certain keywords in their responses or who don't
7 have certain keywords in their responses. And
8 we've heard from workers who have used some of
9 these sites--and this is just another
10 manifestation of the problem which doesn't show up
11 as a job posting--where if they did not fill out
12 the field for, you know, current employment, then
13 the entire process just shut down and they
14 couldn't even submit their resume. So it goes
15 beyond the issue of ads only and I think it's
16 essential to find a way to adequately address the
17 underlying practices.

18 ED OTT: Just a little bit to add
19 to that, if you go back several years ago,
20 Community Service Society did a study in the city
21 of really deep-rooted unemployment, there were
22 pockets in the city, particularly among black men,
23 young black men, where unemployment's as high as
24 70%. There are in this city, if you include
25 restaurants, about half a million retail jobs,

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2 many, many of those are entry level positions
3 where there's absolutely no reason where
4 employment status should be a barrier, and yet
5 what you really find in that industry is that low
6 wage workers who are disproportionately impacted
7 in this process, they move from job to job within
8 the industry and people who are not currently
9 employed can't even break in at the most entry
10 level job where the training is minimal,
11 experience is not really required, to try to get
12 at this.

13 And this is where I disagree with
14 the City and agree with Council Member Chin, is
15 that if 1% of the people filed a case because this
16 becomes a protected class, maybe it would solve
17 the problem. You know, the fact that it's going
18 to be an expense to government, well, I'm sorry,
19 sometimes it's expensive to protect people who
20 have been marginalized in the system and that
21 shouldn't be a concern. And so I would go to
22 section two, right to the heart, and say we should
23 support it and not negotiate it out of this bill.

24 You want employers--and he's right
25 about the velvet rope of the advertising is what

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2 it is, but there are other things that need to be
3 done, including the investigation. If
4 consistently people are barred from entry level
5 positions, what's the incentive for young people
6 to go to work? I mean, I hate to say it, working
7 class people aren't stupid, they'll enter the
8 underground economy in its various forms if they
9 have to, they're going to do what they have to do
10 to feed themselves and their families. So getting
11 at this as a protected class really is key. This
12 bill is not something that should just be
13 negotiated away easily.

14 KAREN CACACE: Just briefly to add,
15 I agree with what they both said about the
16 postings not being enough and I think the reason
17 is because it would be so easy to take the
18 postings down and still engage in the
19 discrimination. And so I think that's why you
20 need the private right of action because that
21 allows you to find out what companies are actually
22 doing and if it's just they'll take all the
23 resumes but then they'll throw away all the ones
24 for people who aren't currently employed, I think
25 that is something that should be illegal and you

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should have a private right of action for it.

CHAIRPERSON ROSE: Why are employers not trying to hire the unemployed? What's the reasoning, what's the motivation behind it?

ED OTT: I don't know, I grew up working class in the city, my mother taught me at 12 years old never quit a job 'til you have a job. When you become unemployed, I'm sorry, we criminalize the poor in this country and unemployment is the first step towards that, when you're unemployed, an employer figures there is a reason, you must have done something, and I don't think that we've gotten past that. It's also particularly in a city like this, we have a large service sector, it's easier to pick up somebody that's already been trained in another work situation than have to deal with all that. The assumption is you're working and I won't have to pay any attention to you at all. But it's a ongoing protracted problem and people fall into unemployment. You know, five years ago, six years ago we created this process that when people are on welfare for a certain amount of time, a

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2 government assistance, the clock runs out. And
3 what we're doing is we're going back to building a
4 permanent underclass of people that do not have
5 access to jobs. We spend millions, this Council
6 helps us, millions of dollars on workforce
7 development and a big part of that is just trying
8 to overcome barriers that employers set up and
9 teaching workers how to get around it once you're
10 trained.

11 CHAIRPERSON ROSE: So the
12 Administration's discussion about many of the
13 unemployed already fall into a protected class,
14 was that a valid point?

15 KAREN CACACE: Well I think it's
16 many of the people who are unemployed may also
17 fall into one of the other protected classes, but
18 that doesn't mean that the discrimination that
19 they're facing--

20 [Crosstalk]

21 CHAIRPERSON ROSE: --of that.

22 KAREN CACACE: --to those other
23 protected classes, it could very well be due to
24 the fact that they are unemployed, and that right
25 now is currently not protected, it's entirely

1
2 legal to say, even though this person is
3 qualified, we don't want them because they don't
4 currently have a job and that's what the bill
5 would address and that's why it's important to
6 pass the legislation.

7 ED OTT: You fall into a vicious
8 cycle. You know, you're a high school graduate,
9 African American male, you can't get that first
10 job. After a year or two, you're really out of
11 the system, there's nothing there for you, you're
12 always trying to start. So from that point of
13 view, yeah, there are other protected classes that
14 are disproportionately impacted by this evaluation
15 of employers that you must have employment. The
16 Bronx is top of the list in this state for a
17 reason, it's not disconnected to its population
18 and we should own up to it and deal with it.

19 The problem I have, and I
20 understand why the Administration has concerns,
21 but the truth of the matter is that's the
22 responsibility of government. If they're not
23 going to be the final arbiter of justice in this
24 thing, well who is going to be? And if it's
25 expensive, too damn bad, let's solve the problem.

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2 CHAIRPERSON ROSE: And for the
3 other panelists, what do you think about, you
4 know, the Administration's concerns about this
5 bill? Do you feel they're legitimate?

6 MITCHELL HIRSCH: I understand
7 where the Administration is coming from in terms
8 of, you know, a fear of litigation and that type
9 of thing, but I think it's premised actually on a
10 misconception about the intent of the bill, if I
11 might. 'Cause I heard the Administration say that
12 it essentially would prohibit employers from
13 considering someone's employment status or
14 unemployment status in making hiring decisions,
15 and that's not true. It does not prohibit
16 employers from taking employment history or
17 someone's unemployment status into account in
18 making a decision about one candidate being more
19 qualified than another candidate--employers would
20 still be able to decide who they want to hire.
21 The problem is in getting in the door and, unless
22 legislation which goes to these underlying
23 practices of exclusion at the door is enacted,
24 then employers will say, okay, I guess it's fine
25 if we continue doing this, whereas, if you do an

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2 act, legislation along these lines--and I would
3 say stick with what you've got, we'd certainly,
4 you know, be willing, by the way, to have our
5 staff attorneys work with Council Members to re-
6 craft new language, should that be necessary,
7 happy to help with that, if needed. But the need
8 is really to address the underlying practice, and
9 if the Council were to enact this legislation or
10 something along these lines that goes beyond the
11 job postings itself, then it would also--it would
12 be like the bully pulpit, it would say to
13 employers and staffing firms, you know what, you
14 now have an incentive if you've been, you know,
15 not doing this all along, you're good; but if you
16 have been doing this, you need to stop. And that
17 I think in and of itself will go a long way to
18 opening up these doors of opportunity. 'Cause
19 employers don't want, you know, to be known as
20 somebody who's, you know, discriminating against
21 anybody.

22 CHAIRPERSON ROSE: Are there any
23 protections out there now for New Yorkers who are
24 being discriminated against because of
25 unemployment status?

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MITCHELL HIRSCH: No.

KAREN CACACE: No.

CHAIRPERSON ROSE: No. And if enacted, how would this bill be enforced? How do you see this bill being enforced?

ED OTT: I mean, just by observation with these bills, one of the problems you're going to have is we always try to do the right thing and then we don't put any money in for enforcement. We have to think about that 'cause, let's assume the City is right, that even if 1% of the people who are stuck in this problem decided to file a case, yeah, it's going to require resources. Look, I'm not indifferent to the cost of things, but what price is fairness? We want to end this problem.

And I would agree the bill itself, many employers will obey the law, you know, just decide we're not running ads like that, we're not doing job postings like that, and we can move on to the next issue. But if they file, there'll be an initial cost, yeah, you're going to have to--at some point, we'll be back in the budget process with legal services trying to scrounge up the

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resources to get this done, but it's necessary.

I don't think that on an issue like this that going into it, the fear that people are actually going to file a case should force you to negotiate down important sections of the bill. Let's find the resources. And you could have a start date, we can anticipate what the cost might be, and try to build it in to the agencies that really work on this stuff. But I mean, you know, I'm tired of coming to government [off mic] and saying, well it's going to be a cost to government; yeah, it is.

CHAIRPERSON ROSE: Do you think that there's any best way to enforce this or--

KAREN CACACE: Well I would just--

CHAIRPERSON ROSE: --how do you see this being enforced?

KAREN CACACE: Well certainly the Legal Aid Society would be--you know, we're available, the Employment Law unit, these are the kinds of cases that we're already handling under the other provisions of the Administrative Code that are in effect and we would certainly be able to take on these cases for New Yorkers who were

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2 suffering this type of discrimination. What I
3 would like to echo what Mitch said though is that
4 the--I think the first and most important thing is
5 that, once you make it illegal, there will be a
6 big group, hopefully, of employers that will start
7 to comply and will on their own want to comply
8 with the law. And I don't think you get that if
9 you just take down the postings because then
10 they're complying just if they don't have the sign
11 in the window, but there's no other law for them
12 that they would be violating if they're actually
13 still discriminating based on employment status.
14 You need the full law so that the practice is
15 illegal, and then you need the private right of
16 action so that there is some force to it.

17 CHAIRPERSON ROSE: Thank you.

18 KAREN CACACE: Sure.

19 CHAIRPERSON ROSE: Under what
20 circumstances do you think it would be reasonable
21 for an employer to base an employment decision on
22 an individual's unemployment history?

23 ED OTT: Can't think of one.

24 CHAIRPERSON ROSE: Can't think of
25 one.

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ED OTT: I can't think of one.

They have all the criteria that they need. The qualifications for the job in some cases where the skill level goes up, the qualifications are the qualifications. But whether I'm unemployed or not, unless you're in an industry that's so technically current that your skills may no longer be current, but that comes under qualifications, other than your current employment status.

The truth of the matter is it's a rigged game. Employers have all of the power and all of the screens that they need to finally get there. The danger is, and what I like about what this bill gets at, if this bill encourages people who have been out of work or first-time job seekers in particular to not be intimidated right at the very beginning, because I'm not working, nobody's going to hire me, you really don't want that. I mean, you can talk to parents after parents where their children have come graduated high school or college and they're sitting on the couch paralyzed by the process. This goes towards helping that process.

Look, I'm an old-school person,

1
2 right? I've been in the labor movement for 42
3 years. Working's better than not working, and we
4 want to send that message to people. We should
5 not create artificial barriers that discourage
6 them from even trying to engage an employer. And
7 many people, once they get in the door, the
8 employer will find that, in fact, they can do this
9 job and that they're just what we're looking for.
10 So why bar them at the door?

11 CHAIRPERSON ROSE: Thank you.
12 Council Member Chin?

13 COUNCIL MEMBER CHIN: Yeah, thank
14 you. I just wanted to, like, maybe to pursue a
15 little bit more, 'cause I don't think everything
16 is focused on litigation, right? 'Cause if this
17 is law and people know that they're being
18 discriminated, they can file a complaint and it
19 could be resolved administratively, isn't that
20 true?

21 KAREN CACACE: Yes.

22 MITCHELL HIRSCH: That's in the
23 Administrative Code.

24 KAREN CACACE: Right, they go to
25 the--

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COUNCIL MEMBER CHIN: Right, so--

KAREN CACACE: --they could file with the Human Rights Commission, yes.

COUNCIL MEMBER CHIN: Yeah, so that's one of the first thing people can do if they're educated about that, you know, there is a lot to protect them and they can file a complaint. So it's not everybody is going now is going to file lawsuits against the City or against the employer. So I think, you know, by having the law, it's the education part, I think is so critical, that people know that they're protected, that they have a right to speak up. And I think ultimately that will encourage them to continue to look for employment when they feel like they're being protected.

So I think the resource thing, you know, yes, maybe this is a way for us to get more funding to the Human Rights Commission because they really need to have the resources to be able to kind of resolve this problem. So I think for us, it's maybe to guard against that everything has to be around, you know, litigation.

MITCHELL HIRSCH: I agree, I think

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2 that's an exceptionally good point because filing
3 a complaint is, as I understand, the bill as
4 written is the--with the Commission would be the
5 route of redress. And knowing that people have
6 that available to them, I think is a powerful
7 incentive to employers and staffing firms and
8 recruiters to ensure that they're not the ones
9 barring folks from being considered for jobs just
10 because they don't currently have a job.

11 I think it will do an immense
12 amount of good in the recruiting and HR
13 communities for them to be able to, you know, look
14 themselves in the mirror and say, you know, we're
15 going to do the right thing.

16 COUNCIL MEMBER CHIN: And also they
17 could advise the employer, you know, if you do
18 this, you're violating the law. So this way, I
19 think ultimately it will be very good at the end.
20 Thank you for your support.

21 MITCHELL HIRSCH: Thank you.

22 CHAIRPERSON ROSE: Thank you,
23 Council Member. And thank you for your testimony.
24 If there's anything that you would change about
25 this legislation--is there anything that you would

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change about this legislation?

MITCHELL HIRSCH: I would like to speak with our staff attorneys and have them contact the Committee staff and see if there are things that we might consider working on with you.

CHAIRPERSON ROSE: Thank you, thank you all for your testimony.

MITCHELL HIRSCH: Thank you.

KAREN CACACE: Thank you.

CHAIRPERSON ROSE: And our next panel is Michelle Holder from Community Service Society, and Shira Gans from Manhattan Borough President's office. Thank you. Sure.

[Pause]

FEMALE VOICE: [Off mic] Borough President Scott Stringer.

[Off mic]

CHAIRPERSON ROSE: I'd just like it to be stated for the record that Council Member Comrie also submitted a statement to be entered into the record in support of this legislation. And if you would identify yourself and speak into the mic, you can begin. Thank you.

MICHELLE HOLDER: Okay. Good

1
2 morning, my name is Michelle Holder, I am Senior
3 Labor Market Analyst at the Community Service
4 Society of New York. Oh, I'm sorry, I thought she
5 wanted to talk, sure. Okay. Thank you,
6 Committee, for this opportunity to testify on
7 behalf of the Community Service Society, where I
8 serve as the senior labor market analyst, as I
9 just mentioned. CSS is an 168-year old
10 organization that works to advance upward mobility
11 for low income New Yorkers through research,
12 advocacy for systemic change, litigation, and
13 launching model programs. Though the nation is
14 ostensibly in a recovery period, unemployment
15 remains persistently high in New York City. The
16 current national unemployment rate is 8.2%, but in
17 the city it has edged close to the 10% mark,
18 currently standing at 9.7%. While both the
19 country and the city have certainly experienced
20 recessions as well as high unemployment in the
21 past, the things that make the recent recession
22 unique are both the sheer magnitude of job loss,
23 as well as the length of sustained high
24 unemployment. After the recession of the early
25 1990s, New York City's unemployment rate averaged

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2 over 10% for two years. However, for the last
3 three years, the city's unemployment rate has
4 averaged 9% or higher, and unless it comes down
5 substantially during the next six months, we may
6 be in for a fourth year of over 9% unemployment.

7 There are currently 159,000 more
8 people unemployed in New York City than there were
9 at the start of the recent recession, almost
10 50,000 more than at the same point during the
11 recovery of the early 1990s. Indeed, there are
12 345,000 total unemployed city residents, as my
13 colleague at NELP mentioned. Half of these former
14 workers are among the long-term unemployed, out of
15 work for six months or more. Because of the
16 length and breadth of joblessness caused by the
17 recession, it is important that the unemployed are
18 given equal opportunity in hiring and with the
19 federal bill on this issue currently stalled, it
20 is imperative that the City Council take local
21 action and pass a law prohibiting discrimination
22 based on one's unemployment status.

23 CSS applauds the City Council for
24 attempting to address this issue--discrimination
25 against the unemployed does exist. As the

1
2 National Employment Law Project documented in a
3 report released last year, which they've already
4 mentioned, employers and staffing firms across the
5 country have been explicit in job advertisements
6 about excluding the unemployed for consideration.
7 As NELP pointed out in the report, this practice
8 may be occurring for two reasons: Number one,
9 prospective employers assume job candidates
10 already working have a stronger work ethic and
11 fresher skill sets than candidates who are
12 unemployed; number two, discriminating in this
13 fashion reduces the number of job applications an
14 employer must review. The practice of
15 discriminating against the unemployed is so
16 widespread that already the District of Columbia
17 and several states, including New Jersey,
18 Maryland, and Oregon, have enacted legislation
19 either banning discriminatory job ads outright or
20 discrimination against considering the unemployed
21 for job openings.

22 In forthcoming research from CSS on
23 long-term joblessness in New York City,
24 preliminary findings show the following: Last
25 year, New Yorkers were unemployed for an average

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2 of 41 weeks, almost 10 months; half of these
3 unemployed have been out of work for more than six
4 months; and more than a third have been out of
5 work for a year or more. In addition, analysis of
6 2011 data in this research shows some demographic
7 groups are more affected than others with regard
8 to long-term employment: Unemployed persons ages
9 55 to 64 have the longest average duration of
10 unemployment--47 weeks--and the highest percentage
11 of those who have been out of work for more than
12 six months--60%. Among racial and ethnic groups,
13 black New Yorkers have the longest average
14 duration of unemployment--also 47 weeks--and the
15 highest percentage of those who have been out of
16 work six months or more--58%. Older women are out
17 of work longer than any other demographic group in
18 the city. Women ages 55 to 64 are out of work an
19 average of 49 weeks--almost a year--and 55% are
20 out of work a year or longer.

21 Finally, CSS's annual survey of low
22 income New Yorkers, The Unheard Third, found that
23 65% of unemployed low income New Yorkers reported
24 they have been out of work for more than six
25 months, and 56% have been out of work for a year

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or more.

From our research and data, it is clear: Hiring discrimination against the unemployed will result in disparate employment outcomes for the older unemployed, older women, and black New Yorkers, therefore, it is imperative that the City Council pass a law to prohibit discrimination based on one's unemployment status. In addressing this issue, New York City would be in the vanguard of those municipalities and states hoping to put an end to this egregious practice, and could perhaps inspire our state legislators to follow suit.

In addition, CSS urges the Council to ask the state to take advantage of a provision in the Middle Class Tax Relief and Job Creation Act of 2012 that would allow states to use unemployment benefits as temporary wage subsidies to create hiring incentives for unemployed workers. I would be happy to provide further information or data as it relates to this issue if needed, and can be reached, and my number and e-mail is on my testimony. Thank you very much.

SHIRA GANS: Hello, my name is

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2 Shira Gans and I'm testifying on behalf of the
3 Manhattan Borough President Scott Stringer.

4 I want to thank Chairperson Rose
5 and the Committee on Civil Rights for allowing me
6 the opportunity to testify in support of Intro
7 number 814 banning discrimination against the
8 unemployed. In October of last year, I called on
9 the State legislature to pass a similar ban into
10 law. I am gratified to see the Council stepping
11 up and showing leadership on this important issue.
12 Discrimination against the unemployed can affect
13 thousands in this troubled economic climate.

14 The May unemployment rate of 9.7%
15 actually belies the true extent of the problem.
16 Discouraged workers are leaving the workforce,
17 giving up on even looking for a job. Nationally,
18 5.4 million have been out of work six months or
19 more--that's 40% of the total unemployed. It is
20 unconscionable to further victimize these job
21 seekers. It is also counterproductive. Hiring
22 policies that exclude the unemployed can only make
23 long-term unemployment more intractable and
24 suppress economic recovery. Further, this type of
25 discrimination disproportionately affects

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2 communities of color. In the third quarter of
3 2011, the unemployment rate was 14.9% for Black
4 New Yorkers and 10.7% for Hispanic New Yorkers, as
5 compared to 6.4% for Caucasians.

6 A review of job postings by my
7 office last October uncovered dozens of examples
8 of New York City job listings in industries
9 ranging from finance to law to hospitality that
10 required candidates to be currently employed.
11 These findings mirrored a July 2011 report issued
12 by NELP, which we've already discussed here today.

13 President Obama has included
14 language in the American Jobs Act to ban
15 discrimination based on employment status, and New
16 York State Assemblyman Keith Wright has also
17 introduced a bill to ban this form of
18 discrimination, but these bills have yet to be
19 passed into law. New Jersey has already succeeded
20 in banning this practice. New York cannot wait
21 for Congress or the State legislature to protect
22 our workers and we cannot afford to lag behind our
23 neighbors in combating discrimination. That is
24 why it is imperative that the City Council pass
25 this legislation.

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2 Last October, I also called on New
3 York to join Connecticut, Hawaii, Washington,
4 Oregon, Illinois, and Maryland in banning the use
5 of credit checks in hiring. As with employment
6 status, there is no evidence that credit history
7 predicts job performance. Using credit checks as
8 a hiring tool creates an unfair hurdle for
9 thousands struggling in this economy and unfairly
10 excludes individuals whose credit was damaged by
11 layoffs, medical bills, or other circumstances
12 outside their control.

13 In 2011, 67,000 New York State
14 residents defaulted on loans and almost 14,000
15 filed for bankruptcy. Further, experts have
16 argued that these checks disproportionately impact
17 minorities. The Equal Employment Opportunity
18 Commission has expressed concern that using credit
19 as a metric in hiring discriminates against people
20 of color.

21 Simply put, in this economy,
22 employment status and bad credit are not a
23 reflection of a candidate's merit. New York's
24 promise and hope for economic recovery are
25 undermined when a person can't find work for

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2 reasons outside their control, or when good people
3 find they cannot escape the troubles of the past.
4 I urge the City Council to consider amending Intro
5 18 to prohibit employers from discriminating
6 against job seekers on the basis of their credit
7 history, as well as employment status.

8 Thank you again for the opportunity
9 to testify.

10 CHAIRPERSON ROSE: Thank you both
11 for your testimony. Could you tell me what you
12 think of the Administration's suggested amendments
13 to this bill?

14 MICHELLE HOLDER: I don't agree
15 with it. I believe, from my understanding of the
16 Administration's position, that what they would
17 like removed from this bill is the portion that
18 would cover outright discrimination against
19 unemployed. I think that what they want is the
20 provision that just covers discriminatory ads and
21 I just don't think that's sufficient. And as I
22 said in my testimony, discrimination against the
23 unemployed will disproportionately affect certain
24 communities, communities with which CSS is
25 concerned about, so I don't agree with the

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Administration's position.

CHAIRPERSON ROSE: Are there any amendments or any additions that you would make to this bill? Do you think that this bill is strong as written in terms of protecting the unemployed?

SHIRA GANS: I would just make, you know, the call for the addition that we mentioned in our testimony which would be to expand the protections, take this opportunity and also ban discrimination based on credit history, which is something that, in our research last October, we found that, coupled with employment based on unemployment status, there's a lengthy history of employers using credit as an indicator in terms of screening folks or as part of an employment background check. And because of the rate of foreclosures, issues around health insurance, and other things that can happen when people are chronically unemployed or don't have access to health insurance, you know, blemishes on people's credit records is not necessarily an indication of whether or not they would be a suitable employee, and so we think that that should be included as well.

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2 CHAIRPERSON ROSE: I do believe
3 that legislation has been introduced by, I think,
4 Council Member Lander regarding that. Do you
5 think that there's some point--at what point would
6 a person know or feel that they could go to the
7 Human Rights Commission to make a complaint?

8 MICHELLE HOLDER: Well you mean
9 aside from seeing an ad that says outright--

10 CHAIRPERSON ROSE: Right, yes.

11 MICHELLE HOLDER: --unemployed need
12 not apply.

13 CHAIRPERSON ROSE: Right.

14 MICHELLE HOLDER: Yeah, I think
15 that that is difficult to determine, as is other
16 forms of discrimination. Discrimination can be
17 very subtle in how it appears, and so I think that
18 that's a concern. However, if one can prove that
19 one was discriminated against based on the fact
20 that they were recently unemployed, then I don't
21 believe that they would pursue the avenues for
22 retribution if that weren't the case.

23 SHIRA GANS: And I would recommend,
24 you know, making sure that if this becomes law,
25 that it's integrated into city services and not

1 [off mic] just as a bill, and so as the
2 Administration lauds SBS and their extensive
3 workforce development efforts, I would also
4 encourage that those career counselors and job
5 placement officers are trained in this kind of
6 discrimination law and can empower job seekers to
7 know their rights. And I would similarly
8 encourage that that be integrated into any kind of
9 employment services offered by NYCHA and by NHRA
10 as well.
11

12 And to the previous question about
13 the Administration's comments, I think that it's a
14 little bit--you know, to prove any kind of
15 discrimination in a hiring practice is always
16 going to be challenging. And a previous life
17 before this role, I was a federal investigator at
18 the Equal Employment Opportunity Commission, and
19 it's always challenging even on a protected class
20 that has a rational basis to prove that that's why
21 an employer didn't offer you the job, but that's
22 not a legitimate reason to not include that,
23 though I would agree that it's probably one of the
24 challenging cases to bring and prove because
25 there's not going to be a huge record there to

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2 draw from, especially if you can't compare. But I
3 don't think, again, that that's necessarily a
4 reason not to include that.

5 MICHELLE HOLDER: And I would also
6 add that I think there is some telltale questions,
7 such as are you currently employed or unemployed,
8 that's a telltale question; also, if you're
9 unemployed, why are you unemployed; if you're
10 unemployed, how long have you been unemployed. I
11 think questions like that begin to smack of there
12 is an issue here with that person's unemployment
13 status. So I do think there are certain, as I
14 said, telltale questions that a prospective
15 employer would ask that I think would begin to
16 give an inkling of what's going on.

17 CHAIRPERSON ROSE: That's a great
18 point because that was the Administration's claim,
19 that there's not enough to tell if, in fact,
20 that's the reasoning behind the lack of getting
21 the call.

22 Are there any other recommendations
23 that you would have for the Council in terms of
24 making this stronger, or even do you think that we
25 should entertain the conversations to eliminate

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some portions of this bill?

MICHELLE HOLDER: Again, I would say that if this bill is amended to exclude the provision regarding outright discrimination against unemployed and it's simply relegated to prohibiting discriminatory job ads, I think that takes a lot of teeth out of this bill. That is not to say that prohibiting discriminatory job ads is not--would not be a great thing, it would be, but I think that we need to understand what the unemployed are up against and I think that that particular provision to me is the most important.

I think employers have gotten the message, whether or not they are in states or localities where there is legislation banning discriminatory ads, but, you know, they certainly haven't gotten the message in terms of outright discrimination, that that is hard for an unemployed person to detect.

SHIRA GANS: I guess I would say it's always good to entertain conversations. I'm not an attorney, but I would say that it's important to ban the postings, but if that is where the bill stops, then it is still legal to

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discriminate based on employment status and that would not--that would be a giant hole.

Some of the things that were mentioned in terms of using that in terms of promotion and demotion, I don't have the bill language in front of me, but that seemed like a valid point.

And I do think, actually, you know, maybe to disagree slightly that those kinds of questions as to why you are not employed--in your question before, is there any reason why that would be relevant--if you were fired for inappropriate behavior or for incompetence or for not meeting a certain standard, then, yeah, I might say that would be relevant. And so kind of reducing the stigma of being able to engage in a dialogue, oh, I was laid off because my company laid off 400 people, or because, you know, this is part of an industry that's shrinking, or whatever the reason is to have that dialogue, I don't think it's the same as asking someone on the phone, how old are you, and something like that in terms of those kinds of protected classes.

So, you know, I do think it's

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2 important to understand some of the aspects of
3 where employers come from and having that dialogue
4 can only help increase any kind of compliance with
5 this, would be my thoughts.

6 CHAIRPERSON ROSE: And for the
7 Community Services Society, has anyone come to you
8 and their complaint has been that they were not
9 granted an interview because they have been
10 unemployed for some duration of time?

11 MICHELLE HOLDER: Well in my
12 position, I wouldn't necessarily know that, but we
13 do have a litigation unit that I could consult
14 with to find out, in fact, if anyone and any one
15 of our constituents has approached the
16 organization and said they feel they've been
17 discriminated against because they're unemployed.
18 But I'm in the policy and research department--

19 CHAIRPERSON ROSE: Oh, okay, I'm
20 sorry.

21 MICHELLE HOLDER: --and so they
22 wouldn't come to me. No, that's okay, but I can
23 certainly check for you.

24 CHAIRPERSON ROSE: Okay.

25 MICHELLE HOLDER: Right.

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CHAIRPERSON ROSE: Borough

president's office, have you had any constituents that have come to the borough president's office?

SHIRA GANS: I can't speak to that, I know that we partnered with NELP and I believe, actually, Community Service Society, when we brought this issue up in October and had several individuals who spoke at a press conference that we held that had these experiences and we have the experience similar to what NELP did of just scouring Craigslist and immediately finding dozens of examples. So but I'm also in the policy unit, so I don't do constituent service.

CHAIRPERSON ROSE: So there were people who were able to determine that they were being discriminated against because of long-term unemployment or because of the language in the advertisement?

SHIRA GANS: I think it was more folks who had been discouraged by the prevalence of that language in advertisements, and then people in the credit check experience, 'cause that was all packaged for us, who had been about to get a job and then, due to a credit check, had been

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2 denied.

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CHAIRPERSON ROSE: Well, Margaret,

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do you have...? Well I'd like to thank you both for

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your testimony. And hearing no other speakers,

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this meeting is now adjourned. Thank you all for

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coming.

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[Gavel]

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature *Tammy Wittman*

Date July 18, 2012