

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL RIGHTS

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March 17, 2014
Start: 10:10 a.m.
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HELD AT: Council Chambers
City Hall

B E F O R E: Darlene Mealy
Chairperson

COUNCIL MEMBERS:
Mathieu Eugene
Daniel Dromm
Deborah L. Rose
Andy King
James Vacca

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

Gale Brewer
Manhattan Borough President

Cliff Mulqueen
New York Commissioner on Human Rights

Rachel Bien
Outten and Golden LLP

Craig Gurian
Fair Play Legislation

Peter Walsh
Intern Labor Rights

Michael Franklin
Fair Pay Campaign

Maurice Pianko
Internjustice.com

Christina Isnardi
NYU Student

Christopher Zara
International Business Times

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2 CHAIRPERSON MEALY: Good morning. I
3 am Councilwoman Mealy, and I am the chair of
4 the Committee on Civil Rights. Today we'll be
5 hearing Introductory Bill Number 173, a local
6 law to amend the Administration Code of the
7 City of New York in relations to prohibition of
8 discrimination against interns. I am pleased
9 to be joined today by the bill sponsor, Council
10 Member Vacca, as well as my fellow Committee
11 Members and that's Danny King and we have--Andy
12 King. I apologize. I have a friend--our
13 Council Member Andy King and we have in our
14 audience our Borough President Gale Brewer of
15 Manhattan. This bill was introduced--and we
16 are joined by Council Member Mathieu Eugene of
17 Brooklyn. This bill was introduced in response
18 to the press coverage of the recent court's
19 finding that protections against work place
20 discrimination under the city's human rights
21 law do not extend to unpaid interns. The
22 purpose of this bill is to ensure that unpaid
23 interns are protected from discrimination and
24 harassment. I'd like to thank everyone for
25 joining us today and I look forward to hearing

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2 All of your testimony on what I believe is a
3 very important piece of legislation. With that,
4 I would like to give my colleague, Council
5 Member Jimmy Vacca, the opportunity to say a
6 few words, his opening.

7 COUNCIL MEMBER VACCA: Thank you. Thank
8 you, Chair Mealy for holding this hearing on this
9 important piece of legislation, and I want to thank
10 my partner, Borough President Gale Brewer, who I'm
11 introducing this legislation with today. We're going
12 to hear testimony on this legislation that would
13 amend New York City's human rights law to define the
14 term intern in order to prohibit employers from
15 discriminating against interns on the basis of
16 protected categories. Intern programs are extremely
17 beneficial to both employers and employment seekers,
18 in both the public and private sector. We have
19 thousands of interns serving throughout our city in
20 various capacities, public, private, and nonprofit.
21 An intern has the potential to gain invaluable
22 experience and skills, and in many cases, internships
23 lead to jobs. Internship programs give employers the
24 opportunity to cultivate talent while potentially
25 increasing workplace productivity. Both Borough

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2 President and I can speak from experience, internship
3 programs in our offices have yielded incredible
4 results. In fact, two of my staffers with me right
5 now are former interns in my office. Interns are
6 valued members in the workplace and the law should
7 reflect that. While many places of employment have
8 detailed anti-discrimination and sexual harassment
9 policies that are meant to also cover paid and unpaid
10 interns, there is a glaring hole in New York City's
11 human rights law that may be interpreted to exclude
12 unpaid interns. In fact, in one recent high profile
13 case, an intern for a television network, Ms. Wang
14 [phonetic] was subjected to sexual harassment by her
15 employer. When she attempted to bring an employment
16 discrimination claim under New York City's human
17 rights law, the judge found that the current laws
18 protection of employees does not extend to unpaid
19 interns. In other words, Ms. Wang was unable to
20 bring a discrimination claim under current human
21 rights law simply because she had not been
22 compensated for her work. The hole in this law is so
23 big you could drive a Mac truck through it. That's
24 why this Council needs to act. Like most people who
25 read about this case, I was dumbfounded by the

1 decision because I know that interns can be
2 vulnerable if not more vulnerable to harassment than
3 any other employee and this decision drove that
4 possibility home. No employee, paid or unpaid, should
5 have to feel that they're not equally protected by
6 the law if they are subjected to a hostile work
7 environment. Intro 174 is intended to expand these
8 protections to unpaid members of the workforce. The
9 bill would simply define the term intern in New York
10 City's human rights law in order to prohibit
11 employers from discriminating against interns on the
12 basis of their actual or perceived age, race, creed,
13 color, national origin, gender, disability, marital
14 status, partnership status, sexual orientation,
15 alienage or citizenship status, or status as a victim
16 of domestic violence, sex offenses or stalking. The
17 state of Oregon is the only municipality to currently
18 define intern in its human rights law, and there are
19 similar pending laws in the state of New York and
20 California. If passed, New York City would be one of
21 the first local governments to enact this law, making
22 us a trailblazer in the area of intern rights. I
23 look forward to today's testimony. I hope to work
24 closely with the Administration and the Council
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1 leadership in advancing this piece of legislation and
2 I want to thank again Chair Mealy for her hearing
3 today. Thank you, Chair.

4 CHAIRPERSON MEALY: Thank you. We will
5 be--we will have the next testimony by our Manhattan
6 Borough President, Gale Brewer.

7 GALE BREWER: Thank you very much. I am
8 Gale Brewer, the Manhattan Borough President, former
9 member of this great body, and it's an honor to be
10 here. I want to thank Chair Mealy and certainly my
11 buddy and colleague Jimmy Vacca who has just given an
12 eloquent example of why this bill is needed. You both
13 have, and I thank you. So I'm going to talk about
14 Intro 173. Some of you know I have about 30 years of
15 public service. I've had thousands and thousands of
16 interns, and I have to say they're fondly referred to
17 as the Brew Crew, but more importantly, with their
18 participation I think as your interns have we've
19 saved lives, we've kept tenants in their homes. We
20 obtained one shot deals to do that. We've created an
21 AIDS friendly neighborhood. We've organized
22 associations and NYCHA developments. We've helped
23 seniors in different ways. We've mapped the condition
24 of street trees. We've helped people get bed bug
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2 exterminations. We've dealt with taxi issues and
3 claims. The list goes on and on as to what interns
4 do and learn as a result of the opportunities that
5 any good management situation gives them, and yet, we
6 have learned that not every intern work in a
7 supportive environment as we learned and Council
8 Member Vacca mentioned, and others. So I ask that we
9 pass Council 173, Intro 173. As was stated, this
10 bill would explicitly protect interns from
11 discrimination or harassment in the workplace.
12 Currently the federal judge's interpretation of the
13 city's human rights law leaves unpaid interns
14 unprotected because they are not legally defined as
15 employees. When an unpaid intern in a New York City
16 media office was sexually harassed by her boss
17 starting in 2010, she filed suit, and the court
18 ruled--though, however, the court ruled that she had
19 no legal claim due to her unpaid status as was
20 mentioned earlier. This exception in the New York
21 City human rights law violates the spirit of the law
22 protecting employees from discrimination and
23 harassment on the basis of factors including gender,
24 race, age, sexual orientation, disability, marital
25 status, military status and domestic violence. It

1 fails to protect those often students working at a
2 business or agency in furthering of their education
3 from discrimination or harassment, and interpreting
4 the law to allow discrimination or harassment of
5 interns could lead to a less supportive and failed
6 working environment for all employees. We must
7 ensure that unpaid interns have the full protection
8 of the New York City human rights law as all other
9 workers do. And I noted that just recently in the
10 Times there was a discussion about colleges and
11 unpaid internships. So there's a lot of importance, I
12 think, in terms of this issue because we need to make
13 sure that as colleges re-evaluate how they place
14 students in intern--unpaid internships, that it's a
15 safe environment when students are in these
16 internships. And I think it's a very competitive
17 world out there, as we know only too well. And it's
18 my impression that more and more grad schools,
19 colleges, and workplace environments are looking for
20 somebody who has done an internship, but if it's not
21 safe and free of harassment, then I think people will
22 think twice about doing that and that will not give
23 them a fair advantage in the future. So thank you
24 very much for this opportunity. I'm very honored to
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2 be co-sponsoring this with my colleague, Council
3 Member Vacca, and I look forward to the testimony
4 from others. Thank you so much.

5 CHAIRPERSON MEALY: Thank you. Cliff
6 Mulqueen, New York City Commissioner on Human Rights
7 will be our next statement.

8 CLIFF MULQUEEN: Madam Chair and members
9 of the Council, good morning. Thank you for the
10 opportunity to speak regarding Intro 173, which would
11 amend the New York City human rights law to include
12 interns among the group of individuals protected from
13 employment discrimination under the city law.

14 CHAIRPERSON MEALY: Is your mic on?

15 CLIFF MULQUEEN: It is on. Is that better?

16 CHAIRPERSON MEALY: Okay.

17 CLIFF MULQUEEN: The Commission and the
18 Administration welcome this effort to address the
19 effects of the district decision in Wang versus
20 Phoenix Satellite Television which brought this issue
21 into the limelight. We support the Council's effort
22 to protect this class of vulnerable individuals and
23 we look forward to working with the Council to ensure
24 that interns are not subject to discrimination. To
25 this end, we would like to work with the Council

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2 staff on the definition of intern to ensure that it
3 will further the intent of the legislation without
4 creating difficulties of proof that would impede
5 enforcement. In addition, we believe the draft does
6 not provide as much protection for interns as the
7 council might intend. For example, subdivision D of
8 the introduction lists several areas of the city's
9 human rights law where the protection would apply,
10 which creates the implication that other provisions
11 of the law will not be applicable. For example,
12 protections against retaliation are not included in
13 the draft as it exists. We recommend instead the use
14 of general language about interns that triggers their
15 coverage by all relevant employment discrimination
16 provisions of the law. We look forward to working
17 with the Council. I'll be happy to answer any of your
18 questions.

19 CHAIRPERSON MEALY: Yes, I--my colleague
20 Jimmy Vacca would like to ask you a question.

21 COUNCIL MEMBER VACCA: Thank you very
22 much. I'm open to making the law more inclusive. I do
23 want retaliation covered in it. That's wording that
24 we have to look at that I'm willing to look at that
25 in the days ahead. Let me talk to you about

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2 education and outreach. Hopefully, upon passage of
3 this law, what do you propose to do in so much as
4 education and outreach? How do you think we can put
5 together and education and outreach program so that
6 the interns are aware that this law does exist should
7 we be successful in enacting it.

8 CLIFF MULQUEEN: Well, as we do with all
9 the protected classes of the law, especially we've
10 had three new enactments last year. We include and
11 focus on those asp--or those changes in all of our
12 presentations. We do hundreds of conferences and
13 workshops throughout the year and this information
14 would be included in all of those. We do a lot of
15 work in schools, so again, this change in the law
16 should have come to fruition, will be included in
17 those. We can go to places like colleges or other
18 places where interns come from essentially, so high
19 schools, colleges. We would make an effort to speak
20 in those venues to reach as many people that may be
21 effected by this new law.

22 COUNCIL MEMBER VACCA: I know in New York
23 City, as I indicated in my testimony, we have tens of
24 thousands of interns. Do you have any more exact
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2 estimate of how many interns we have in the public
3 and private sector, total in New York City today?

4 CLIFF MULQUEEN: I don't have that number
5 and I believe the Administration was trying to come
6 up with that number prior to the testimony and I'm
7 not sure that they were successful.

8 COUNCIL MEMBER VACCA: Can you describe to
9 us whether or not there have been interns who've come
10 to the Human Rights Commission complaining about
11 instances as per my legislation, the areas my
12 legislation talks about, and where the New York City
13 Commission may have said that we don't have
14 jurisdiction or you may have referred them somewhere
15 else because of a jurisdiction issue?

16 CLIFF MULQUEEN: I don't recall any
17 instance where that occurred. I do recall an instance
18 where an auxiliary police came, you know, volunteer
19 and we turned that individual away because they were
20 not an employee of the city. I don't recall an
21 instance of an intern, but that doesn't mean it
22 hasn't happened, and the records that we keep for
23 people that we turn away are paper records, so we
24 would have to go through thousands of pieces of paper
25 to figure out whether that ever happened.

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2 COUNCIL MEMBER VACCA: Your complaints are
3 on paper still? They're not in a computer program?

4 CLIFF MULQUEEN: The complaints are on a
5 computer program. If you file a complaint, then
6 those records are kept on paper. They're not in a
7 computer database anywhere.

8 COUNCIL MEMBER VACCA: The complaint is on
9 paper.

10 CLIFF MULQUEEN: Of course, the complaint
11 is on paper, but then it's also kept in a database
12 that we can search.

13 COUNCIL MEMBER VACCA: It is?

14 CLIFF MULQUEEN: Yes. If we don't file a
15 complaint, if someone comes to us and we can't assist
16 them, we don't file a complaint on their behalf.
17 Those records, the details of those records are kept
18 on paper. They're not kept in any computer database
19 anywhere.

20 COUNCIL MEMBER VACCA: Okay. I mean, the
21 question may be academic because interns are not
22 aware that the Human Rights Commission is now a
23 recourse for them, which probably it is not right now
24 because they're not covered. At a certain point in
25 time there would be a recourse for them that--

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2 CLIFF MULQUEEN: [interposing] Correct,
3 and then we would have to make a huge effort of
4 education, go to the places where these interns are
5 to let them know that they do have rights and that
6 we're available to assist them.

7 COUNCIL MEMBER VACCA: Okay. Okay. Thank
8 you.

9 CHAIRPERSON MEALY: Thank you. We were
10 joined by Debbie Rose of Staten Island. Good to have
11 you. And you said a lot of interns, what is your
12 agency doing in regards to social media to start
13 informing them when this bill passes.

14 CLIFF MULQUEEN: Well, as you know from
15 our budget testimony last week we have a Facebook
16 page. We have a Twitter account that we use. We've
17 tried to make our website more friendly to younger
18 generations by putting videos on there that they can
19 look at, make it more interactive and easier to
20 navigate. So those are the things that we're doing
21 right now.

22 CHAIRPERSON MEALY: Do you know any other
23 jurisdiction that had problems with--well not--tried
24 to come back discrimination against interns?
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2 CLIFF MULQUEEN: I think as Council Member
3 Vacca mentioned, Florida has a law now and there are
4 other jurisdictions that are looking at passing laws.

5 CHAIRPERSON MEALY: Have y'all saw
6 anything that y'all could take from those--

7 CLIFF MULQUEEN: [interposing] I'm sure--

8 CHAIRPERSON MEALY: other cities?

9 CLIFF MULQUEEN: as we're working together
10 on this introduction we could look at some of those
11 laws and see what works and what doesn't work.

12 CHAIRPERSON MEALY: I think by now we
13 should be looking at them already. We know this is
14 coming in to play, so we should get ahead of the cart
15 and start seeing how we can make sure our interns are
16 really covered.

17 CLIFF MULQUEEN: The Administration is
18 already looking at some of the other jurisdictions
19 that have these protections or are working on these
20 protections. So again, as we move forward and we're
21 working together on this, we can look at those and
22 see how best to proceed and see what's working, see
23 what's not working.

24 CHAIRPERSON MEALY: Okay, I have to
25 piggy-back on my colleague. If someone takes a case,

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2 come in and put a claim in and they have to look back
3 to see if they ever did file with the Human Rights
4 Commission--so you're saying you would have to go
5 back and look through thousands of papers in regards
6 to get the information, because that is--that may
7 help someone's case. So you would have to manually go
8 back through that--are y'all thinking about updating
9 any of that information?

10 CLIFF MULQUEEN: Again, as you know, we
11 have that--we've developed a inquiry software so that
12 we can report on inquiries. So if someone--if an
13 intern, for example, came to our office in 2010 and
14 tried to file a complaint with us and we said that
15 we're sorry the law doesn't protect you and, you
16 know, we tried to refer them somewhere or just said
17 sorry there's nothing we can do. We would have their
18 name, for example. So if someone came in after this
19 law passes, I could do a search of their name and I
20 would know that they came in. The actual--I don't
21 know that we're able to search in the comments box.
22 We're able to search for key words, for example, in
23 that program. That's something we'll have to work on
24 so that we can search key words in the details of
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2 what the complaint was to come up with that
3 information.

4 CHAIRPERSON MEALY: Okay. It's going to
5 come a time, probably.

6 CLIFF MULQUEEN: Yes, there will.

7 CHAIRPERSON MEALY: We have a question by
8 my colleague, Andy King of the Bronx.

9 COUNCIL MEMBER KING: Good morning Deputy
10 Commissioner. I want to thank you for your testimony
11 today and I appreciate you spending time with us. I
12 just have a couple of questions, nothing too in
13 depth, but I'm just curious.

14 CHAIRPERSON MEALY: Could I say Happy St.
15 Patrick's Day.

16 COUNCIL MEMBER KING: Yeah.

17 CHAIRPERSON MEALY: Everyone. Sorry about
18 that.

19 COUNCIL MEMBER KING: For all of us who
20 have--

21 CHAIRPERSON MEALY: [interposing] You have
22 on green, beautiful.

23 COUNCIL MEMBER KING: Yes, thank you. For
24 all of you--

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2 CHAIRPERSON MEALY: [interposing] Keep up
3 the good work.

4 COUNCIL MEMBER KING: who are not wearing
5 your green outside, we know you have green in your
6 pockets. So you're represented. So, thank you. But I
7 wanted to know, first of all, I'd like to know from
8 your office, how many interns do you have in your
9 office?

10 CLIFF MULQUEEN: Right now we have three.
11 Yeah, three right now.

12 COUNCIL MEMBER KING: Okay. We had a
13 hearing, I believe a couple weeks back and
14 Commissioner Gatling was here, and one of the
15 questions and the challenges that was discussed about
16 how large your agency is and how you're able to cover
17 the work assignments that come through your office.
18 I'd like to know, you talked about changes in
19 subsection D, is there any other changes other than
20 subsection D that you would like to see implemented
21 or adjusted in Intro 173 that would make your job
22 that much more simpler or that would eliminate any
23 obstacles that you have that can put more teeth in it
24 if you deem necessary?

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2 CLIFF MULQUEEN: Again, I think I
3 mentioned in my testimony the actual definition of
4 what a intern is. There might be some issues, for
5 example. There seems to need to be a relationship
6 between the internship and the course of study. I'm
7 not sure why that's necessary, and that's just--that
8 creates another fact that the Commission would have
9 to overcome in proving our case. So if it's not
10 really necessary to be in the definition, why create
11 that hurdle? There were several other sections
12 besides retaliation, which I think arrest and
13 conviction record are not mentioned in your list of
14 sections that are covered. So there were some other
15 sections where, you know, if you want to have the
16 full coverage then you might want to consider, but
17 again, we can talk about that as we're moving forward
18 and working together on this.

19 COUNCIL MEMBER KING: I would love, I
20 think the community would love to hear some
21 additional suggestions that you might have. That
22 would, again, put the teeth in that you need so when
23 you have to implement it with how big a staff or how
24 small a staff or with the interns that you have and
25 making sure that you know we get this right the first

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2 time. I don't think there's anybody from the
3 Administration or from the Council or yourself or
4 anyone sitting out here that would disagree that this
5 is necessary. It's the right thing to do, and I'm
6 looking forward to us having 100 percent compliance
7 with everyone who is in the room to have the right
8 conversation. I do have another question. Has your
9 office ever had any harassment complaints against it
10 from interns?

11 CLIFF MULQUEEN: No.

12 COUNCIL MEMBER KING: No, at least we know
13 we're on the right page. Well, I just want to thank
14 you again for your time and again, Happy St. Patty's
15 Day.

16 CLIFF MULQUEEN: Thank you.

17 COUNCIL MEMBER KING: Thank you for your
18 testimony, and thank you Madam Chair again for
19 leading this conversation.

20 CHAIRPERSON MEALY: Thank you. We have one
21 more question from our colleague, Debbie Rose.

22 COUNCIL MEMBER ROSE: Hi, Deputy
23 Commissioner. I have a couple of questions. When we
24 say unpaid interns, would that preclude an intern
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2 that was getting maybe a stipend for car fare or
3 something?

4 CLIFF MULQUEEN: Again, you use the term
5 wages in the introduction. There's no definition of
6 what wages are in the human rights law. So again,
7 that should be a conversation we have moving forward.
8 When you say does not receive wages, what exactly do
9 you mean or what constitutes a wage?

10 COUNCIL MEMBER ROSE: So that might be--
11 that's another suggestion for us in terms of this
12 legislation that we should look at. And are you
13 aware of any statistics that are available about
14 discrimination complaints that were filed by interns
15 but dismissed besides Wang versus Phoenix Satellite
16 TV?

17 CLIFF MULQUEEN: I am not, no.

18 COUNCIL MEMBER ROSE: And so if an
19 effected intern works outside of the city, but the
20 intern decision was made within the city of New York,
21 would this proposed legislation apply?

22 CLIFF MULQUEEN: We have that issue also
23 with, you know, the regular paid employee so it's a--
24 there are different opinions in the office. I'm not
25 sure that the law is clear cut, but it would seem

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2 that if a decision was made outside the city that the
3 city would not have jurisdiction. I have, you know,
4 I have--

5 COUNCIL MEMBER ROSE: [interposing] No,
6 no, no. The decision was made within the city, but
7 the intern works outside of the city.

8 CLIFF MULQUEEN: There are cases--the
9 Hoffman case that deals with a situation like that,
10 and again, it would depend on whatever the nexus to
11 the city was. If there was no other nexus to the
12 city, it's possible that the city's human rights law
13 would not protect somebody. And situations like
14 that, we would sometime recommend that the person go.
15 For example, of the person--if the decision was made
16 outside the city, but in New York State, that they
17 would go to the state division or that they would go
18 to the EEOC just so that we're not spending all of
19 our time fighting a jurisdictional issue and we can
20 right to the discrimination, but for example, in a
21 case like this, if we're dealing with an intern who
22 doesn't have the ability to go to the EEOC or go to
23 the state division on human rights, then we would
24 take the case. We would push the issue. We'd see if

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2 we could make some law or make the law clearer on
3 those jurisdictional issues.

4 COUNCIL MEMBER ROSE: So there would be
5 that option available?

6 CLIFF MULQUEEN: I would take the case and
7 push the issue, yes.

8 COUNCIL MEMBER ROSE: Okay.

9 CLIFF MULQUEEN: Unless the law was
10 clearer that we had no jurisdiction.

11 COUNCIL MEMBER ROSE: This legislation
12 states that unpaid interns could either bring an
13 action in court or make a complaint on the Commission
14 on Human Rights, which would do several things. They
15 could issue a order to cease and desist, require an
16 employer to pay award back pay or front pay or pay
17 compensatory damages. If that person decides to file
18 a complaint with the commission, what standard would
19 be used to determine what types of damages would be
20 appropriate?

21 CLIFF MULQUEEN: Whatever damage the
22 individual suffered would be the damages that we
23 would seek to award them. So compen--you know, there
24 may not be any compensatory damages if they're not
25 compensated for the actual work. Let's say there

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2 wouldn't be any back pay or front pay, but there are
3 other types of compensatory damages. There's mental
4 anguish. Anybody that gets discriminated against
5 suffers some mental anguish, some more than others.
6 There may be expenses related to that. There's civil
7 penalties available, the same that would be available
8 at any employment discrimination case.

9 COUNCIL MEMBER ROSE: So there would be no
10 monetary amount attributed to the intern's work.

11 CLIFF MULQUEEN: No, there could be
12 monetary damages. Mental anguish, for example, or
13 pain and suffering, those would be in terms of money.
14 Those would be monetary damages.

15 COUNCIL MEMBER ROSE: Okay. And despite
16 the legislative history that makes it clear that
17 claims under the New York Civil Rights Commission of
18 Human Rights law to be analyzed separate from federal
19 and state discrimination claims and that the federal
20 courts must construe the New York City Commission on
21 Human Rights law provisions broadly in favor of
22 discrimination plaintiffs. The court elected not to
23 do so in Wang's case. Consequently, if enacted, how
24 will this new legislation ensure that the courts will
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2 rely on the New York Commission on Human Rights law
3 rather than federal or state law?

4 CLIFF MULQUEEN: Well, there are no
5 federal or state laws that protect interns. So the
6 courts couldn't look at comparable laws and make
7 decisions. It would only be the city's human rights
8 law at this point that they're looking at.

9 COUNCIL MEMBER ROSE: Okay. So we're
10 making interns a new protected class? Are we--

11 CLIFF MULQUEEN: [interposing] You're
12 actually making them employees, essentially. I mean,
13 you're treating that--this law would treat interns as
14 if they were employees for hire.

15 COUNCIL MEMBER ROSE: So that's why you
16 recommended broadening the definition of intern, so
17 that--

18 CLIFF MULQUEEN: [interposing] Or at least
19 making it--

20 COUNCIL MEMBER ROSE: [interposing] Now,
21 they're covered as employees, as opposed--

22 CLIFF MULQUEEN: [interposing] Under this
23 provision they would be covered as if they were
24 employees. So we would treat interns, unpaid interns
25 the same as we would treat any paid employee.

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COUNCIL MEMBER ROSE: Okay.

CLIFF MULQUEEN: As far as discrimination is concerned. That's what I see this introduction doing.

COUNCIL MEMBER ROSE: Okay. Thank you. Thank you, Madam Chair.

CHAIRPERSON MEALY: Okay. I only have one kind of question from the last hearing we had. How many bilingual people you have on your staff to advertise about laws that are put in place in regards to discrimination. You say you're in schools, so how much--how many bilingual you have?

CLIFF MULQUEEN: We have Spanish-speaking people in each of our offices, and we speak seven other languages in our office.

CHAIRPERSON MEALY: How do you advertise that? What is your advertisement budget?

CLIFF MULQUEEN: Well, I don't--when you say advertise we advertise it by having our--

CHAIRPERSON MEALY: [interposing] Let people know that laws are in place now, how do you let--

CLIFF MULQUEEN: [interposing] All of our literature is available in the seven or eight top

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2 languages spoken in the city. I believe there was an
3 executive order that required all city agency
4 literature to be in these certain languages. All of
5 our literature is available in those languages.

6 CHAIRPERSON MEALY: Where do you put that
7 literature?

8 CLIFF MULQUEEN: When we go out into the
9 community and we speak to people depending on the
10 neighborhood we're going in, we would put--you know,
11 for instance if we were going to Borough Park or
12 we're going to be in China Town, we would have the
13 literature in Asian languages. If we were going to be
14 in Brighton Beach, we would have the literature in
15 Russian.

16 CHAIRPERSON MEALY: So you don't put
17 anything in papers or any small local papers?

18 CLIFF MULQUEEN: We're in the local papers
19 all the time, absolutely.

20 CHAIRPERSON MEALY: Someone has brought up
21 to me where, where would you--in which languages
22 would you put all the--some people speak creole. Some
23 people speak Mandarin, different ones. If you're not
24 in those papers that they read, how would they know
25 about the laws?

1
2 CLIFF MULQUEEN: Well, we are in those
3 papers that they read, and we also--

4 CHAIRPERSON MEALY: [interposing] Who of
5 them?

6 CLIFF MULQUEEN: Off the top of my head,
7 no I can't. I mean, I--

8 CHAIRPERSON MEALY: [interposing] I would
9 really like to know, because someone came up to me at
10 the last hearing and it was very important, because
11 how could you reach the young people if they're not
12 reading the papers that you advertise them in?

13 CLIFF MULQUEEN: Okay. I will give you a
14 list of every foreign language newspaper we were in
15 last year. Our website, though, also is translatable
16 into different languages. We have paper literature
17 that we hand out in various neighborhoods, and
18 depending on the neighborhood, we'll put that
19 language literature out for people to take, whether
20 it be in a library, whether it be in a business. So
21 we are reaching the other than English speaking
22 people in the community.

23 CHAIRPERSON MEALY: But was it an uptake
24 in that legislation that just passed recently?

1
2 CLIFF MULQUEEN: Which one are you
3 referring to?

4 CHAIRPERSON MEALY: About discrimination.
5 Have you had a uptake in complaints in your
6 Administration in regards to--

7 CLIFF MULQUEEN: [interposing] I think we
8 had more complaints last year than the year before.
9 That's, you know, I don't know if that's what that
10 relates to.

11 CHAIRPERSON MEALY: How do you feel you
12 had more this year?

13 CLIFF MULQUEEN: Because the numbers say
14 we filed more complaints than we filed last year.

15 CHAIRPERSON MEALY: do you know what kind
16 of types of complaints really, discrimination--did it
17 drastically increase or was it not that much, just a
18 few?

19 CLIFF MULQUEEN: I think it was under a
20 100, an increase of under 100 complaints.

21 CHAIRPERSON MEALY: Under a 100?

22 CLIFF MULQUEEN: Under a 100, yeah. The
23 statistics, though, the types of discrimination were
24 consistent as we stated last week with 69 percent

1
2 were employment. I think 18 percent were housing. One
3 percent were bias related harassment.

4 CHAIRPERSON MEALY: Okay. Anyone else have
5 any questions?

6 COUNCIL MEMBER ROSE: To sort of clarify--
7 to try to get clarification on the chair's question
8 about the outreach efforts, are these outreach
9 efforts in the various communities, are they pro-
10 active or are they reactive? Are they where you go
11 out and make the communities available of the changes
12 in law without being invited or without it being a
13 community forum, because you do a community education
14 forums, but is it proactive or is it in reaction to a
15 solicitation for information?

16 CLIFF MULQUEEN: It's both, but we're out
17 every day. Our employees are out every day doing
18 presentations, speaking to people. They go to
19 meetings to network to get leads of other groups of
20 people they can speak to. Wherever there's a group of
21 people gathered together, we try and go there and
22 speak to them, but we also react. So when people come
23 to those meetings and we make connections with them
24 or they come to a presentation, they may come to us
25 and say, "Hey, can you come to my group and give a

1 similar presentation?" So we do that as well. So
2 it's both, but we're out every day looking for groups
3 of people anywhere we can find them to talk to them.

4 COUNCIL MEMBER ROSE: Okay. But do you
5 plan some things to get the word out, as opposed to
6 looking for events that are already planned that you
7 can piggy-back on, be a part of? How do you roll out
8 a new bill? You know, once the law changes, how do
9 you roll that out?
10

11 CLIFF MULQUEEN: Again, by including in
12 the presentations that we give to hundreds of
13 thousands of people a year.

14 COUNCIL MEMBER ROSE: So the presentations
15 that you give are--when this law comes, becomes a
16 law, you're going to plan in each of these
17 communities or at all of the schools? What is it
18 that you or the agency itself is going to do to get
19 the work out?

20 CLIFF MULQUEEN: Okay. So we speak at all
21 of the Chambers of Commerce and all of the business
22 improvement districts. So obviously, this is going to
23 affect those individuals and we're going to let all
24 of them know about this if it's enacted. We're going
25 to--we speak at many of the back to work type

1
2 organizations, whether it be Goodwill or Fegs. So
3 we're going to speak to all of those people about
4 their employment rights, so we do it anyway, but
5 we're going to include this in there as a protection
6 that they have. We'll probably--we will probably--we
7 don't do so much work with university students, for
8 example, but we would probably make an effort to do
9 more presentations at the university level or at the
10 high school level to let those individuals know that
11 they're protected.

12 COUNCIL MEMBER ROSE: So every time
13 there's a law that--a change to the civil rights law,
14 do you have a procedure or a check list? These are
15 the people, this is how we roll it out? Is there
16 something that's structured?

17 CLIFF MULQUEEN: I'm not sure that
18 there's anything formalized like a check list--

19 COUNCIL MEMBER ROSE: [interposing] That's
20 what I'm trying--

21 CLIFF MULQUEEN: that says this is what we
22 do first.

23 COUNCIL MEMBER ROSE: to get to. Thank
24 you.

25

1
2 CHAIRPERSON MEALY: Thank you. We've been
3 joined by St. Patty. [laughter] Danny Dromm is here
4 and Happy St. Patrick's day, and would you have any
5 questions?

6 COUNCIL MEMBER DROMM: No, not right now.

7 CHAIRPERSON MEALY: We have no further
8 questions for you.

9 CLIFF MULQUEEN: Thank you very much.

10 CHAIRPERSON MEALY: So we thank you for
11 your time and we're looking forward to expanding this
12 legislation. I'm glad you let us know that it needs a
13 little bit more in it. We appreciate that.

14 CLIFF MULQUEEN: Thank you.

15 CHAIRPERSON MEALY: We only have two more
16 panels. Can I have Peter Walsh, Rachel Bien, unpaid
17 interns, and Gregg Gilbank [phonetic] Gurick
18 [phonetic]? Guierette [phonetic]? Thank you. You
19 could start right away. State your name, please.
20 That's the right button. Okay.

21 CRAIG GURIAN: Here we go. My name is
22 Craig Gurian. Good morning Chair Mealy and Council
23 Members Vacca, Rose, King and Dromm. Council Member
24 Dromm, I think when we last spoke it was about co-op
25 secrecy and how that so terribly impacts on the

1
2 ability of hundreds of thousands of New Yorkers to
3 have their housing rights protected. I'm here today
4 on behalf of Fair Play Legislation. Some of you may
5 know me as the long time Executive Director of the
6 Anti-discrimination Center or as an adjunct professor
7 at Fordham Law School, the principal drafter of the
8 comprehensive 1991 revisions to New York City human
9 rights law and the principal drafter of the 2005
10 local civil rights restoration act. I know there were
11 a variety of questions that were not specific to this
12 bill. I have been working on this for 25 years non-
13 stop. If you have any questions about that stuff I'm
14 happy to answer that. I should point out first of all
15 it is certainly true that the city Commission on
16 Human Rights should be an important resource, but
17 since the Dinkin's Administration, city funded staff
18 for the Human Rights Commission has been cut, not 10
19 percent or 15 percent, but more than 90 percent. You
20 may have heard this at the recent budget hearing. So
21 the Commission currently is in an absolutely no position
22 to do anything even independent of what their goals
23 have and haven't been. We're lucky that under the
24 city human rights law, it's not a city Commission
25 law. It's a city human rights law. There's a private

1 right of action. People can go into court without
2 dealing with the agency and we have since the
3 restoration act made very good progress in court.
4 This is a very well-intentioned bill, and I could
5 tell you that there is nobody on the planet who wants
6 to have more extensive coverage than do I. However,
7 the language currently may undercut the 2005
8 restoration act, which is perhaps the most important
9 piece of civil rights legislation passed by the
10 council in decades. So let me speak about that for
11 just a moment. The restoration act was a response to
12 courts narrowly interpreting the human rights law,
13 and it insisted that all provisions, not some, all
14 provisions be interpret to accomplish what were
15 called the uniquely broad and remedial provision of
16 the law. You have--I've had sent up to you three
17 things. One is a return to Eyes on the Prize. That's
18 the heavy item that describes in great detail the
19 intent and intended consequences of the Restoration
20 Act that's been cited by many courts. You also have a
21 paper that's being included in a forthcoming volume
22 from the University of Michigan Press, and it
23 describes among other things some of the more
24 important judicial developments under the Restoration
25

1 Act. For example, New York City because of the
2 Restoration Act is now the only place in the United
3 States where victims of harassment cannot be kicked
4 out of court because a judge describes that the
5 harassment is not severe or pervasive enough. This
6 over 20 years has been a way that judges have not
7 shown the proper respect the victims of
8 discrimination. We made it clear through legislative
9 history of the Restoration Act and in enhancing the
10 liberal construction provision that we wanted there
11 to be no tolerance for discrimination and that's been
12 accomplished. Finally, the--what I hope is short and
13 sweet, the item that's titled Fair Play with a Fair
14 Play Legislation letterhead. I've taken the liberty
15 of drafting some specific language that I think
16 accomplishes better the purposes of the council here,
17 and there are a couple of options on how to proceed
18 and then some suggested principles for the committee
19 report. Now, it has been said publicly that the
20 council didn't contemplate interns being covered or
21 that there's a glaring hole and with the utmost
22 respect I disagree with that. It's incorrect, and
23 that position may well be used under cut in court
24 attempts to argue otherwise in front of judges,
25

1 because the re--so, my position today is that today,
2 under the law, a proper interpretation of the human
3 rights law does include interns. The court in the Wan
4 [phonetic] case or Wang case said that this was an
5 issue that other courts have decided against interns,
6 but the court repeals had a case before it a couple
7 of years ago, and in that case, the question was what
8 is the scope of the provision against retaliation?
9 What does the word oppose mean, opposing
10 discrimination? That was not a new word in the law,
11 and the New York Court of Appeals, the states'
12 highest court held that that provision like any other
13 was required to be interpreted in the manner most
14 favorable to discrimination plaintiffs. And there's
15 no reason that the word employer or employ should be
16 excluded from that. The City Council didn't write
17 that it's illegal for employers to fail to hire or
18 employed paid people. It didn't say you can't
19 discriminate in the terms and conditions of paid
20 employment. There wasn't that kind of limitation. In
21 the proposed committee language section I have a more
22 detailed description of some of the problems of the
23 Wang decision. In addition, the city human rights law
24 already covers interns in two other ways. There's a
25

1
2 separate provision of the law, 81072 that deals with
3 training provisions and 81074, which is the public
4 accommodations provision. That provision extends to
5 the provision of goods, services, facilities,
6 accommodations and privileges of any kind. If a
7 covered entity is providing some benefit to an
8 intern, like we're going to, you know, we're going to
9 train you. We're going to help you. We're going to
10 give you exposure. That counts as being a provider of
11 a public accommodation. In the end, though, I think
12 now Borough President Brewer and Council Member Vacca
13 are entirely correct that we do need to proceed here,
14 but as we proceed, the most important consideration
15 isn't how you're technically going to define intern.
16 It's something that the council has previously
17 recognized in 1991 and in 2005, that the purpose, the
18 broad purpose of the law is to prevent discrimination
19 from polluting workplaces. It's not just a particular
20 employer or employee. It's the workplace that's
21 supposed to be completely free of discrimination, and
22 where this particular court's decision to stand, the
23 Wang Court, the largest workplace in New York City
24 could openly tell perspective interns, "We don't take
25 applications from African-Americans." Wouldn't be

1 anything you can do under that interpretation. "If
2 you intern here, you will be sexually harassed."
3 That's an absurd way to construe the current law. So
4 in fashioning an amendment, we have to keep in mind
5 that the court only found the way it did because it
6 failed to engage in the analysis required by the
7 restoration act already. It didn't say what are the
8 broad purposes of the law. This is not the first time
9 this has happened. We've seen over the course of the
10 last eight years, some trial court judges do this,
11 and then appellate courts correct it. So when the
12 Council acts we have to understand, and this is
13 similar to something that the Commission's general
14 counsel said, "Defining interns as persons for some
15 purposes could be construed as excluding them under
16 other provisions like public accommodations or
17 housing provisions." And remember, the court did not
18 have a problem with a definition of person. It said
19 okay, but there's still not an employment
20 relationship. Two, I think it's a mistake to focus a
21 definition of interns on having to do with training.
22 Aside from the fact that there's already a training
23 provision in the law, would it be okay to
24 discriminate against a volunteer? Like that's--
25

1 that's not okay either. So I think we need the
2 broadest possible language and that language should
3 focus on the overriding goal of preventing
4 discrimination from polluting workplaces at all. So
5 the legislation should make clear that the council
6 believes that the intern decision was wrong under
7 existing law, and it should also make clear that the
8 legislation provides an illustration of the
9 application of the restoration act but does not in
10 any way relieve courts from the obligation to engage
11 in such analysis itself, and it doesn't accept the
12 proposition that the court put forward that the
13 Council's failure to act can be interpreted as an
14 acceptance of existing law. This is something that
15 when the restoration act was before the Council, you
16 had witness after witness coming forward. We were
17 tearing our hair out of our heads because courts
18 would keep on building on past wrong decisions. And
19 the restoration act said you can't do that. So it
20 would be a bitter irony if very narrow corrective
21 legislation were misused by courts to undercut the
22 broad sweep of the law. As you see, just to conclude
23 at this point, the first option, option a, which I
24 think is the best goes ahead and defines employee and
25

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2 employ and employment, and it doesn't matter if it's
3 temporary or permanent. It doesn't matter if it's
4 paid or unpaid. It doesn't matter if it's volunteer.
5 Remember, no one's going to be held liable unless
6 they've engaged in discrimination. So it's not as if
7 there is any reason why anybody who was in that
8 workplace, regardless of what you call them, should
9 be discriminated. The second way of doing it, option
10 B on page three, would put in a provision to the,
11 what's called the construction provision of the law
12 just making clear that these three sections already
13 cover interns. You'll see two additional sections
14 which I think are really important to get into the
15 law explicitly. One, to make sure that everyone
16 understands that exceptions to the law are supposed
17 to be interpreted very narrowly, and finally, that
18 last point, which I know may read a little too lawyer
19 like, but the point of it is that when council, the
20 council makes effort to expand some things, that
21 shouldn't be misused by courts to say the council was
22 fine with everything else. This, I think the prime
23 sponsor would agree, was not an attempt to deal with
24 every problem under the sun. It was an attempt to
25 deal with one problem and we have to make sure that

1 courts don't misinterpret that. So, I appreciate you
2 taking the time to hear my testimony. I'm always at
3 the disposal of the committee to talk about this or
4 anything else, and I'd be happy to take any questions
5 you may have today.
6

7 CHAIRPERSON MEALY: Thank you.

8 RACHEL BIEN: Can you hear me?

9 CHAIRPERSON MEALY: I can hear you now.

10 RACHEL BIEN: Thank you. My name is
11 Rachel Bien, I'm a partner at Outten and Golden LLP,
12 a plaintiff's employment law firm in New York City.
13 Our firm has brought several lawsuits on behalf of
14 unpaid interns, including Glatt [phonetic] versus Fox
15 Search Light Pictures, in which a federal district
16 court granted summary judgment in favor of the
17 intern's finding that they were employees entitled to
18 minimum wages and overtime under the Fair Labor
19 Standards Act and New York labor law. We've also
20 brought several other cases against major private
21 employers, including the Hurst Corp, Kande Nast
22 [phonetic], NBC, Universal and the Charlie Rose show
23 all on behalf of unpaid interns. The City Council's
24 proposal to amend the New York City human rights law
25 to protect interns is an important step in the right

1 direction. However, with my colleague Mr. Gurian, we
2 do not believe that the amendment as it is currently
3 drafted will achieve the Council's goals. First, by
4 requiring an intern to show that she meets all of the
5 criteria in the proposed amendment, in particular the
6 criteria in subsection C. The proposal places the
7 burden on the wrong party. The criteria in that
8 section were developed by the US Department of Labor
9 as requirements that employers must meet to show that
10 their interns are part of a bonafide training program
11 and are not employees entitled to be paid under the
12 federal Fair Labor Standards Act. Interns should not
13 have to prove that they are not employees in order to
14 be protected from discrimination under the New York
15 City human rights law. Second, the proposed amendment
16 as drafted would achieve only a small part of its
17 purpose because it would exclude a large number of
18 interns from protection. In our experience, most
19 interns are not participants in bonafide training
20 programs as the amendment presumes. Many interns do
21 displace regular employees, do not work under close
22 supervision and do perform work that benefits the
23 employer. The proposed amendment would not protect
24 these interns even though they are among the interns
25

1 the council seeks to protect. We believe the
2 amendment should make clear that all interns are
3 covered regardless of whether they can prove that
4 they participated in a bonafide training program.
5 Third, the amendment does not include workers whom
6 employers have classified as volunteers, even though
7 they perform work that benefits the employer.
8 Increasingly private companies are using volunteers
9 as substitutes for paid employees are temporary
10 workers. For example, our firm recently filed a law
11 suit against Major League Baseball, which relied on
12 thousands of unpaid volunteers to staff its all-star
13 events in July 2013 and July 2008 in New York City.
14 These workers should also be protected from
15 discrimination and harassment on the job. In my
16 written testimony I've made two proposals for
17 clarifying that the law applies to a broader swath of
18 interns that are in the current amended definition,
19 as well as making clear that you don't have to be
20 protected from discrimination. You don't have to be
21 paid in order to be protected from discrimination
22 which was really the point of the Wang case. The
23 court said that well because these interns were not
24 paid, then they can't qualify as employees because
25

1
2 there's no employer/employee relationship, and so
3 it's important for the council or the amendment to
4 clarify that. And I think that Mr. Gurian's proposed
5 language does that and does more. I think we are in
6 agreement in terms of some of the changes that really
7 need to be made here. Thank you so much.

8 CHAIRPERSON MEALY: Thank you. Mr. Walsh?

9 PETER WALSH: Good morning. My name is
10 Peter Walsh and I live in the Kensington neighborhood
11 in Brooklyn. Brad Lander is my Council person, and
12 thank you committee members and Council Members for
13 allowing me to speak here today. I also work with the
14 grassroots group, Intern Labor Rights, and we have
15 many of our activists here today that I would like to
16 acknowledge, but I'm speaking here today as an
17 individual, not on behalf of the group. Extending
18 anti-discrimination protections to all interns,
19 trainees and volunteers is very important and I'm
20 thrilled that you are taking on this task. We're very
21 excited. I'm very excited. However, I would
22 respectfully like to suggest that the wording of the
23 proposed local law needs to be changed. The current
24 version risks asking interns to give up their ability
25 to make wage and employment claims and puts an undo

1
2 burden on interns by asking them to unnecessarily
3 prove details about the natures of their internships.
4 None of that is needed to safely prohibit
5 discrimination against interns. Imagine an intern
6 finds herself in a bad internship. She is learning
7 nothing. She's receiving no supervision. Her school
8 is adding no academic training to the internship, and
9 she discovers that she has replaced a paid employee.
10 Is it now okay for her to be discriminated against?
11 No, of course not. But those criteria, right now,
12 are all included in this law. So respectfully I would
13 like to suggest that clauses A, B and C of the
14 proposed law should simply be removed and we should
15 expand this to cover the widest group of people
16 working in the workplace that we can. And I also
17 have, as my colleagues have, provided a simple
18 suggestion of the way in which possibly this law
19 might be revised. Thank you for your time.

20 CHAIRPERSON MEALY: Thank you. Everyone
21 is on the same page.

22 UNKNOWN: No questions.

23 CHAIRPERSON MEALY: Any questions? I'm
24 looking forward. It's very rare. Thank you. No
25 questions? You have Debbie Rose? No.

1
2 COUNCIL MEMBER ROSE: Thank you for the
3 [off mic] of the term employee, intern, and person. I
4 think it's very important that the intent of this law
5 actually be written into the amendment and I
6 appreciate that, and I thank you for clarifying it,
7 because we would hate for the very persons we're
8 trying to protect not to be protected and--

9 CRAIG GURIAN: Thank you Council Member
10 Rose.

11 COUNCIL MEMBER ROSE: Madam Chair, thank
12 you.

13 CRAIG GURIAN: I would just add if I may
14 for a moment. You know, I've seen over time and this
15 morning very sensible questions posed by members of
16 the committee where there haven't been clear or
17 direct answers coming from the Commission on Human
18 Rights, and the reality is that all of these things
19 do have answers to them, you know. There are in
20 court, the state of the law is what the state of the
21 law is, and we can describe that to you on the
22 Commission and what was being described there in
23 fuzzy terms is that actually even though the law is
24 written to permit people to file a complaint as of
25 right. You know, if you believe that you're supposed

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2 to be able to go there, get it stamped like it is in
3 a court clerk's office, and then an investigation has
4 to be done. That is not the way it has been done in
5 the last 12 years. In violation of the law, the
6 agencies policy has been to decide whether somebody
7 is going to be able to file a complaint. And exactly
8 what has been mentioned today has happened, that is
9 people want to file, are ultimately not allowed to
10 file, then they go to court and they can't show that
11 they've done it in time, and there is no mechanism.
12 There's no audit trail to be able to look at all
13 these thousands of inquiries that didn't turn into
14 complaints. I'm sure many of them are--

15 CHAIRPERSON MEALY: [interposing] I did
16 mention a little bit of that for time. Definitely got
17 a--but I did say that in regards to that. So you and
18 I should talk more, that we could maybe get a
19 comprehensive plan, 'cause it's really about
20 enforcement. I don't believe enforcement is really
21 going forward in these agencies. So we can talk about
22 it and come back to the table again.

23 CRAIG GURIAN: Very good.

24 CHAIRPERSON MEALY: So I thank you for
25 your testimony.

1
2 CRAIG GURIAN: If it were any kind of
3 law, other kind of law enforcement, people would
4 understand it, that you have to have a strong
5 deterrent. Civil Rights shouldn't be treated as a
6 second class law. Thank you very much.

7 CHAIRPERSON MEALY: I'm so with you. Just
8 from looking from David, the past Mayor David Dinkins
9 to now, it's almost 90 percent of the funds are gone.
10 So, this new Administration, our Mayor, I hope he has
11 a priority with Civil Rights. So we're going to talk
12 to him in regards to that. And thank you for your
13 time.

14 CRAIG GURIAN: Thank you so much.

15 CHAIRPERSON MEALY: And thank you for all
16 your great work. It was very heavy. Thank you.

17 [laughter]

18 GRAIG GURIAN: Just look at the short
19 piece, you know, the other can be a bookend.

20 CHAIRPERSON MEALY: I'm looking forward.
21 We have our next panel, Michael Franklin, Fair Pay
22 Campaign, Christina Isnardi [phonetic], Maurice
23 Pianko [phonetic]. That's our last panel. While
24 you're getting set up, we have Rose Perlin Authur
25 [phonetic], he put a statement in for the record.

1 Just wanted to state that. Anyone could go first.

2 Please state your name for the record. And Roy Paul
3 also put in a statement for the record, that it is so
4 noted. Thank you. You may begin.

5
6 MAURICE PIANKO: Thank you very much for
7 the opportunity to address you. My name is Maurice
8 Pianko. To my left is Christina Isnardi, Mikey
9 Franklin and Christopher Zara [phonetic].

10 CHAIRPERSON MEALY: Could you put the mic
11 a little close to you?

12 MAURICE PIANKO: Should I start first?
13 Okay.

14 CHAIRPERSON MEALY: Yes, you may.

15 MAURICE PIANKO: I'm the founder of the
16 website Internjustice.com. It's a website that
17 provides a lot of information and legal advice to
18 perspective former and current unpaid interns. We
19 get about 500 unique viewers every week. I've
20 personally been responsible for filing over 12 unpaid
21 intern lawsuits across the country. I deal with many
22 unpaid interns on a regular basis. I've asked to au
23 pine [phonetic] about various unpaid internship
24 issues by academic scholars, but students and I've
25 developed a lot of knowledge about it. In terms of

1 the bill, I--from what my colleagues said previously,
2 I think it needs to be expanded, but I did just want
3 to mention that what I think is crucial over here is
4 that we need definitely greater enforcement. I deal
5 with interns all the time. Many of them are afraid to
6 come forward for wages. So could you imagine if they
7 want to come forward for harassment? Sometimes I tell
8 them not even to come forward for wages, it's not
9 worth. For harassment I'd probably be even less
10 likely to bring it on their behalf because I don't
11 want them to have the repercussions. So I think that
12 that is really the goal here should be to encourage
13 people to come forward and there should be certain
14 protections there for them. That's what I think is
15 the most important thing. As of right now, I've
16 developed a way to basically counteract the lack of
17 the human rights protections for unpaid interns,
18 which what I do right now is file a wage an hour
19 lawsuit simultaneously file a complaint with the EOC,
20 and then once--and basically what I would do is say
21 that just because an employer turns, calls the worker
22 an intern it's meaningless. Under the law, it's 100
23 percent meaningless. It's based on what was
24 performed. So, I think even the Wang case what they
25

1
2 could have done was filed it as an wage an hour case
3 and then brought to the attention that this was not--
4 and therefore, the intern should have been covered
5 under the human rights laws. So that's pretty much
6 all I have to say about that topic. I mean,
7 everything else is in my written testimony that the
8 committee has. But enforcement, I think is the key.
9 As one of the Council Members mentioned about
10 advertisement. I think that's crucial. I think the
11 word needs to get out and I also think that, you
12 know, based on my experience with interns, none of
13 them have had ruined careers by filing a lawsuit, and
14 I think that that needs to be brought out, and I also
15 believe that there's a distinction between nonprofit
16 and government versus for profit. I think for profit,
17 the law is 100 percent clear that 99 percent of the
18 time, the interns need to be paid, they should be
19 paid. Whereas with government and nonprofit, it's not
20 so clear, and the issues that I'm involved in is
21 really only related to the for profit sector and that
22 might be for the committee to decide on. Maybe they
23 can create broader rules related specifically to for
24 profit organizations. Thank you.

25 CHAIRPERSON MEALY: Thank you.

CHRISTINA ISNARDI: Good morning Council

Members and members of the committee. My name is

Christina Isnardi and I'm an undergraduate at NYU and

a self-proclaimed intern advocate. I'm honored to be

standing before you all today to express my approval

for extending the civil rights protections to interns

while also urging the committee to eliminate section

C in the new subdivision 28, broaden the definition

of intern in the amendment to local law. For the past

year I started a successful petition targeting NYU's

career center to remove postings of unpaid

internships that violate the Fair Labor Standards

Act. Through this campaign I spoke with thousands of

students about this issue on campus and they shared

with me their experiences. I've also had the pleasure

to work for unpaid--I've had the pleasure to work for

unpaid internships on my own, and after speaking with

thousands of students on campus and through my own

experience, I can assure you that harassment and

discrimination at internship are tremendous issues. I

think I've had a dozen interns who've come up to me

saying that they had experience with either unwanted

sexual advances or discrimination against them based

on their race or sexual orientation. So but also I

1 would like to say that the definition of interns
2 under section C in the proposed amendment
3 inaccurately describes our position as interns. So
4 under section C, specifically subdivision two, a
5 person is considered an intern if she is performing
6 work that provides experience for the benefit of the
7 intern performing the work. However, personal
8 experience and the National Association of Colleges
9 and Employers dictate that unpaid interns spend the
10 majority of their time doing work that benefits the
11 employer as opposed to the intern because interns
12 perform more clerical and nonessential tasks that
13 develop--instead of tasks that develop employable
14 skills. Section C, subdivisions one, three, and four
15 are also regularly discarded at internships. I can
16 tell you that I've displaced many workers. I have
17 done the work of two or three employees at some point
18 I would like to say. So I've also--the amount of
19 training and oversight, I can tell you I could just
20 go out and get three cups of coffee for myself if I
21 wanted to. There is not a lot of supervision over
22 interns. So I would say all the subsections in
23 Section C, they are regularly discarded at these
24 internships and my experience is just one in hundreds
25

1 of cases like this, maybe thousands. So when they
2 argue that interns who do actually perform the work
3 for the benefit of her employer is thus a
4 misclassified employee under the Fair Labor Standards
5 Act, which--and then they should enjoy workplace
6 protections. However, the Fair Labor Standards Act is
7 really only applicable for for-profit companies that
8 make 500,000 dollars or more annually. The Fair Labor
9 Standards Act then makes exemptions for small
10 businesses, most nonprofits, and many parts of the
11 government, so interns working in these sectors
12 cannot make this claim that they are misclassified
13 employers, and at the same time, these interns will
14 also fail the definition of intern defined in this
15 proposed amendment since they do perform the work of
16 employees, so therefore, interns working maybe for
17 you Council Members, they may fail the amendment's
18 definition of intern while also failing the FOSA's
19 definition of employee. So there's this hole that a
20 lot of interns fall under, if this proposal as is it
21 put forth. So I ask the Council to remove section C
22 in the subdivision 28, so all interns are included in
23 the definition and may receive civil protections at
24 their work. Thank you.
25

1 CHAIRPERSON MEALY: Jimmy Vacca?

2 COUNCIL MEMBER VACCA: I very much thank
3 you for your testimony. You're undergraduate at NYU?

4 CHRISTINA ISNARDI: Yes. Hire me.

5 COUNCIL MEMBER VACCA: I--

6 [laughter]

7 COUNCIL MEMBER VACCA: That's a good one.

8 CHRISTINA ISNARDI: I'm going to be--you
9 know, just got my last semester, so.

10 COUNCIL MEMBER VACCA: You really--you
11 represent your school well and you represent our city
12 well.

13 CHRISTINA ISNARDI: Thank you very much.
14 Thank you.

15 COUNCIL MEMBER VACCA: I'm honored to have
16 you come today.

17 CHRISTINA ISNARDI: Thank you.

18 COUNCIL MEMBER VACCA: That's first of
19 course. I do want to note that in the preparation we
20 did for today's hearing, 63 percent of 2012 college
21 graduates completed at least one internship, and 28
22 percent completed two or more internships. So many of
23 your fellow students at NYU and other schools are out
24 there. Many students get credit for the internship
25

1 based on their major. Many other students will learn
2 and have a good work experience. Many will end up
3 working for the place they intern in. So it's a
4 learning experience, but it's also an introduction to
5 the work world for a lot of undergrads, and what I'm
6 trying to do in this law is to make it as much of a
7 welcomed atmosphere if I can, and to remove any type
8 of possibility that interns would be treated in a
9 disrespectful or inappropriate way. So I appreciate
10 you coming with recommendations. We're going to
11 consider your recommendations and all the others, but
12 I'm very honored to have you.

14 CHRISTINA ISNARDI: Thank you. I'm
15 honored to be here.

16 COUNCIL MEMBER VACCA: I thank you very
17 much.

18 CHRISTINA ISNARDI: Thank you.

19 CHAIRPERSON MEALY: Same. Looking forward.
20 Any other questions. Alright. Our next panel?

21 MICHAEL FRANKLIN: Council, thank you so
22 much allowing my testimony. Please let me apologize
23 for not wearing something green. I failed. Purple
24 ties. A great failure, I apologize. My name is
25 Michael Franklin, I'm the Executive Director and Co-

1 founder of the Fair Pay Campaign. We advocate for the
2 rights of interns. We have members nationally,
3 including thousands here in New York City. While we
4 are chiefly concerned with the issue of fair pay for
5 interns, hence our name Fair Pay Campaign, we also
6 strongly support this bill. We support the suggested
7 revisions proposed by previous speakers, but I won't
8 dwell on those because I think they've been discussed
9 at length already. There are a handful of things I
10 wanted to say are a number of you Council Members
11 mentioned the challenge of educating interns about
12 this issue. I speak to interns pretty much every day
13 through the course of my work, primarily again, about
14 wage issues, but every week I speak to at least one
15 or two interns, largely female interns because women
16 are 77 percent more likely to do unpaid internships
17 according to a 2010 study by Intern Bridge who had
18 received unwanted sexual advances, harassment or
19 other forms of discrimination. I also speak to young
20 people of color who have been discriminated against
21 in their unpaid internships. None of these people
22 presently have recourse. Because of the lack of legal
23 structures, there is--it is incredibly hard to know
24 how many people this affects. Purely on the basis of
25

1
2 my own anecdotal experience, I am led to believe this
3 is a major problem effecting many thousands of
4 interns. There are about 600,000 college students
5 here in New York City. As you mentioned, Council
6 Member Vacca, 62 percent of interns in the class of
7 2013 did at least one internship. About half of all
8 unpaid internships are unpaid, although it varies
9 across industries, and that doesn't include interns
10 who aren't enrolled fulltime in college. So at the
11 very, very lowest estimates, this is a bill that
12 would bring relief and recourse to hundreds of
13 thousands of people here in New York City. For that
14 reason, I cannot stress strongly enough the extent to
15 which I personally and also my organization, the Fair
16 Pay Campaign, support this bill and urge you to pass
17 it. You mentioned during the testimony of the Deputy
18 Commissioner the challenge of educating people about
19 their rights, and that's something that we see very
20 frequently, because the culture of unpaid internships
21 is so deeply engrained, because people are often
22 treated--interns are often treated so poorly in their
23 workplace, they believe they have no recourse to
24 rights. They believe that they have no protection,
25 no right to speak up. I'm thrilled to be joined at

1
2 this panel by other advocates who have convinced many
3 interns that they have the right to speak up. The
4 only thing I would like to say is that I would like
5 to offer the full weight of my organization.
6 Everything that we can do to support and publicize
7 this bill, assuming it passes and you do the right
8 thing and extend these protections to interns, we
9 will do whatever we can to make interns in New York
10 City know that they enjoy the protections they
11 deserve. We strongly urge you to vote for this bill.
12 Thank you very much for your time.

13 CHAIRPERSON MEALY: Thank you. I have no
14 testimony for you. Are you with him?

15 CHRISTOPHER ZARA: Yes.

16 CHAIRPERSON MEALY: Oh, so you're not
17 speaking?

18 CHRISTOPHER ZARA: I was sort of a last
19 minute--

20 CHAIRPERSON MEALY: Well you have to give
21 it to the Sergeant of Arms.

22 CHRISTOPHER ZARA: Okay. Okay.

23 CHAIRPERSON MEALY: No, you cannot testify
24 until you give it to the--the slip in your hand.

25

1
2 CHRISTOPHER ZARA: Well, first of all,
3 thank you for hearing me and I'm not going to dwell
4 too much on pretty much everything that was already
5 discussed I--My name is Christopher Zara, and I'm a
6 Senior Reporter for International Business Times in
7 the Financial District. I cover the unpaid internship
8 issue extensively through my job. I'm here today,
9 though, not as a represented of IB Times, but as
10 someone who cares about the issue. I've spoken to
11 many, many interns over the last few years as I've
12 covered this, this movement is how I like to describe
13 it, including Christina over here and Maurice who
14 have been quoted in my articles. I also speak to a
15 lot of people who are afraid to speak on the record
16 about this issue and I think one of the things that
17 hasn't been discussed is, you know, just the inherent
18 fear that a lot of interns feel when they, you know,
19 they are discriminated against at work. They feel
20 that they're on what's maybe the lowest rung of the
21 totem pole, and I think part of that is perpetuated
22 within the culture at some of these companies. In
23 particular, the glamour industries, media and
24 journalism, arts and entertainment, these are
25 industries that are highly competitive and

1
2 unfortunately, the number of paid jobs just is
3 eclipsed by the number of people trying to break in.
4 It's a sad reality that just sort of creates this
5 kind of supply and demand system where a lot of these
6 interns simply won't get paid jobs in these fields.
7 So there is a desperation among the interns to sort
8 of make any professional connections that they can,
9 and I know that they will put up with things that
10 paid employees will not put up with at their jobs,
11 just because they feel that they're making some sort
12 of headway in their career. I think there's a more
13 fundamental question about whether or not these
14 interns deserve to be paid for their work and, you
15 know, we could debate that, but I think what's not
16 debatable is that interns do deserve basic
17 protections and to deny them that is really to deny
18 them the dignity of honest employment. So I do
19 support the proposed amendment, and it won't settle
20 those fundamental questions but it will go a long way
21 in recognizing and establishing that the people who
22 contribute to what is really an invisible economy are
23 entitled to the same legal protections afforded to
24 every employee that works for the city of New York.
25 So I thank you for your time.

1
2 CHAIRPERSON MEALY: Thank you. You have a
3 question? Okay. Jimmy Vacca.

4 COUNCIL MEMBER VACCA: Ms. Isnardi, you
5 mentioned that you knew of cases yourself, I think
6 you mentioned six was the number, you knew of interns
7 who had endured discrimination or harassment. Were
8 those cases brought to your attention, or those cases
9 that you've heard about on campus, or can you
10 describe a little bit in a generic way what you know?

11 CHRISTINA ISNARDI: Yeah. So I talk to a
12 lot of interns or students at NYU who came up to me.
13 They don't want to file a lawsuit because they feel
14 like they'll be black listed from their employer from
15 their industry. So they've come up to me and said,
16 you know, I was treated like this. I was cat called
17 at work by other employers--employees, I mean. So the
18 majority of the people, those people that I was
19 referring to, yes, they were students at NYU or
20 students in the city that I've talked to who came up
21 to me and said that they were harassed or
22 discriminated against at their internships.

23 COUNCIL MEMBER VACCA: They--these are at
24 least six cases you've heard about in the last year
25 or so?

1
2 CHRISTINA ISNARDI: Yeah, within the last
3 year, yeah.

4 COUNCIL MEMBER VACCA: Within the last
5 year?

6 CHRISTINA ISNARDI: Yeah.

7 COUNCIL MEMBER VACCA: There is a
8 widespread internship program at NYU, would you
9 consider it widespread? I know I see some of the
10 interns here at the council, but I don't know how
11 widespread the program is.

12 CHRISTINA ISNARDI: Yeah, basically
13 everyone at NYU that I know has had at least one
14 internship at some point in their career.

15 COUNCIL MEMBER VACCA: Usually paid or
16 unpaid, or--

17 CHRISTINA ISNARDI: [interposing] It
18 depends.

19 COUNCIL MEMBER VACCA: It depends.

20 CHRISTINA ISNARDI: It depends on the
21 industry. For finance and engineering, they are
22 almost always paid, but for arts and humanities, only
23 around 40 percent are paid.

24 COUNCIL MEMBER VACCA: So, internships are
25 sought after?

1
2 CHRISTINA ISNARDI: Oh, they are very
3 sought after, yes.

4 COUNCIL MEMBER VACCA: Or in demand?

5 CHRISTINA ISNARDI: Yeah. It's a rung in
6 the ladder of success, between college and getting
7 that job. So it's definitely a foot into the door.

8 COUNCIL MEMBER VACCA: I'm interested in
9 that, because you know, a lot of us in the Council
10 try to get interns and we do. Gale Brewer is the
11 classic--she's the classic example of using interns
12 and maximizing interns. But I have to--

13 CHRISTINA ISNARDI: They're useful,
14 aren't they?

15 COUNCIL MEMBER VACCA: Oh, she's
16 fantastic. We all use them, but Gale is the poster
17 lady for interns. But I have to say that there was a
18 time maybe a year or two ago where we just couldn't
19 take anymore one. There was some--I think many are
20 looking for internships because it is a way for them
21 to learn. It is something that looks good on their
22 resume. They want to get back to the public sector,
23 but many of us had a situation where like our DO's
24 and our 250 offices we had no more space for people
25 to sit.

1
2 CHRISTINA ISNARDI: They're in very high
3 demand. Yeah.

4 COUNCIL MEMBER VACCA: Yeah.

5 CHRISTINA ISNARDI: Well, one way to fix
6 that would be to have a set number of paid
7 internship.

8 COUNCIL MEMBER VACCA: Oh, yeah.

9 CHRISTINA ISNARDI: Then you have, you
10 know, you won't have that problem. So just got to put
11 in that plug. Got to put it in.

12 CHAIRPERSON MEALY: I like that.

13 CHRISTINA ISNARDI: Yeah, got to take the
14 opportunity.

15 COUNCIL MEMBER VACCA: Okay, I'm glad
16 you're on that side. On this side, I don't know.
17 Thank you though.

18 CHRISTINA ISNARDI: Thank you very much.

19 COUNCIL MEMBER VACCA: Thank you.

20 CHAIRPERSON MEALY: I just have one
21 question. I'm glad you're open and we will be
22 talking soon. For the business owners, how do you
23 think--what impact do you think the legislation would
24 have on business owners?
25

1
2 CHRISTOPHER ZARA: Are you talking about
3 the people who hire the interns?

4 CHAIRPERSON MEALY: Yes.

5 CHRISTOPHER ZARA: Well, first of all,
6 like we talked about awareness. Part of that would be
7 my job and the media's job to get this information
8 out there.

9 CHAIRPERSON MEALY: Media?

10 CHRISTOPHER ZARA: The media's job to get
11 this information out there to let employers know that
12 interns are employees. I mean, they're basically--you
13 can't treat them as people who aren't, you know,
14 technically working for you. I think that's sort of
15 the mindset of a lot of the higher ups who do hire
16 the interns, especially in media, so it's sort of
17 like--it's like, well you know, they're interns. We
18 can do whatever we want with them and they have no
19 recourse.

20 CHAIRPERSON MEALY: You say you would do
21 the media, but how would you get the employer to deal
22 with the compliance of this law?

23 CHRISTOPHER ZARA: Well, I think just--

24 CHAIRPERSON MEALY: [interposing]
25 Themselves.

1
2 CHRISTOPHER ZARA: I think the knowledge
3 of it. I think them understanding that there is
4 recourse for the interns would I think--

5 CHAIRPERSON MEALY: [interposing] Do a
6 sexual harassment training. Will you do things like
7 that for the whole staff, 'cause in order to make
8 sure this law is really respected, they have to be
9 well informed and then it has to trickle down. Then
10 they know it's consequences afterwards if they do
11 not.

12 CHRISTOPHER ZARA: Yeah, I mean, I think
13 there could be some sort of training programs.

14 CHAIRPERSON MEALY: Well, I put that in
15 your ear. So start getting them ready.

16 CHRISTOPHER ZARA: Yeah, but again, my job
17 as a member of the media would be to get the
18 information out there, and it will be covered. I
19 mean, these kinds of things are covered in especially
20 New York media, everyone from the New York Times all
21 the way down to Gawker and BuzzFeed. Everyone
22 covers--

23 CHAIRPERSON MEALY: How about social
24 media? Facebook?

1
2 CHRISTOPHER ZARA: Of course. Yeah. Of
3 course, and social media as well. I mean, these
4 things are huge on social media.

5 CHAIRPERSON MEALY: Okay.

6 MICHAEL FRANKLIN: May I interject?

7 CHAIRPERSON MEALY: One last.

8 MICHAEL FRANKLIN: There's also a role, I
9 think, for colleges to play in the enforcement of
10 this. Christina and I work together on the campaign
11 at New York University to change their internship
12 posting policy, 'cause many students who are
13 undergraduates find their internships through career
14 centers at their campuses. Thanks to the campaign at
15 NYU, they've completely changed their criteria around
16 internship postings with significantly more
17 oversight, and that's definitely a role that campus
18 career centers can play in ensuring that the
19 internships are posted abide by standards like those
20 that are going to be passed in this law.

21 CHAIRPERSON MEALY: Thank you. And I'm
22 looking forward to this legislation. I thank our
23 sponsor of this bill. I know we going to put some
24 more meat in it, and looking forward to bring it out
25 and y'all getting the word out. And I will be meeting

1
2 with a lot of you to make sure that I'm fully aware
3 that empower me, that we can empower the city. And
4 thank you, and this meeting is now adjourned.

5 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify there is no relation to any of the parties to this action by blood or marriage, and that there is no interest in the outcome of this matter.



Date 04/14/2014