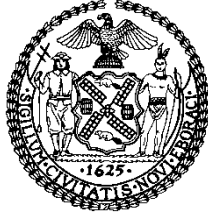


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THE COUNCIL

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February 29, 2016

INT. NO. 921:

By Council Members Cumbo, Crowley, Rosenthal, Chin, Cornegy, Ferreras-Copeland, Johnson, King, Koo, Levin, Mendez, Williams, Barron and Palma

TITLE:

A Local Law to amend the Administrative Code of the city of New York, in relation to ensuring fairness in physical testing

I. INTRODUCTION

On Monday, February 29, 2016, the Committee on Civil Rights (“the Committee”), chaired by Council Member Darlene Mealy, and the Committee on Women’s Issues (“the Committee”) will hear Introductory Bill Number 921 (“Int. No. 921”), in relation to ensuring fairness in physical testing. Those invited to testify include representatives of the Equal Employment Practices Commission (“EEOC”), civil and human rights organizations, and other interested parties.

II. BACKGROUND

Physical ability tests typically ask individuals to perform job-related tasks requiring manual labor or physical skill.¹ These tasks measure physical abilities such as strength, muscular flexibility, and stamina.² Legal challenges have arisen over the years because physical ability tests, especially those involving strength and endurance, tend to screen out a disproportionate number of women and some ethnic minorities.³

There are New York City agencies that require physical tests as prerequisites for employment. For example, after taking a written exam, the New York City Department of Sanitation requires job applicants to take a physical test known as “the Superman test.”⁴ Among various tasks, applicants must drag four 30-pound wastebaskets, one at a time, to a container eight feet away that is modeled after the back of a garbage truck. Applicants must then lift each

¹ U.S. Office of Personnel Management. *Physical Ability Tests*. Available at <https://www.opm.gov/policy-data-oversight/assessment-and-selection/other-assessment-methods/physical-ability-tests/>.

² *Id.*

³ *Id.*

⁴ John Eligon and C.J. Hughes. *Powerlifting Trash Cans as Test of Physical Fitness*. NYTimes. July 21, 2010. Available at <http://www.nytimes.com/2010/07/22/nyregion/22superman.html>. See also Katie Toth. *Want to Become a NYC Sanitation Worker? If You’re Lucky It’ll Only Take Seven Years.* The Village Voice. October 24, 2014. Available at <http://www.villagevoice.com/news/want-to-become-an-nyc-sanitation-worker-if-youre-lucky-itll-only-take-seven-years-6670764>.

basket and dump the simulated trash. The New York Police Department (NYPD) requires that applicants take the “job standard test” (JST), a criterion-valid physical job task assessment that tests for an individual's ability to perform both typical and atypical physical tasks that can be expected to be required of a police officer’s response to either a routine radio run or critical incident.⁵ The JST is a continuous timed event comprised of six stations that must be completed in four minutes and 28 seconds without stopping.⁶

The Fire Department of New York (FDNY) also administers a qualifying physical exam, called the Functional Skills Test (“FST”) to probationary firefighters in the Fire Academy. On December 13, 2013, the New York City Council’s Fire and Criminal Justice Services Committee held a hearing on ways to increase the number of female firefighters in New York City. At the hearing, numerous advocates testified that the FST does not accurately reflect or test skills necessary for firefighters to properly perform on duty.⁷ Specifically, the FST requires probationary officers to run one and a half miles in 13 minutes upon entry to the Fire Academy and 12 minutes prior to graduating.⁸ The United Women Firefighters Association testified that this requirement negatively impacts women probationary firefighters and is an unfair barrier to graduating.⁹ In December 2014, the FDNY stopped requiring probationary firefighters to pass the FST before getting hired.¹⁰ This permits those on probation to fail components of the FST yet still graduate from the Fire Academy.¹¹ Some critics denounced this as a lowering of standards in

⁵ See *NYPD Job Standard Test* at <http://www.nypdrecruit.com/academy-prep/job-standard-test>.

⁶ *Id.*

⁷ Testimony of Sarinya Srisakul, President of the United Women Firefighters Association from New York City Council Fire and Criminal Justice Services Hearing, December 13, 2014.

⁸ Testimony of Sarinya Srisakul, President of the United Women Firefighters Association from New York City Council Fire and Criminal Justice Services Hearing, December 13, 2014.

⁹ Testimony of Sarinya Srisakul, President of the United Women Firefighters Association from New York City Council Fire and Criminal Justice Services Hearing, December 13, 2014.

¹⁰ See Yoav Gonen and Aaron Short. *FDNY drops physical test requirement amid low female hiring rate*. NY Post. December 11, 2014. Available at <http://nypost.com/2014/12/11/fdny-drops-physical-test-requirement-amid-low-female-hiring-rate/>.

¹¹ *Id.*

training protocol.¹² It should be noted that the FDNY is currently comprised of approximately 10,500 firefighters and fire officers.¹³ Of those members, only 44 are women.¹⁴

III. ANALYSIS OF INT. NO. 921

Currently, the New York City Charter (“Charter”) requires EEPC to review the Department of Citywide Administrative Services’ (“DCAS”) standards, procedures, and programs related to equal employment opportunity for employment with City agencies.¹⁵ Pursuant to the Charter, EEPC is required to, among other things, audit and evaluate the employment practices and procedures of each City agency to ensure fair and effective equal employment opportunities for minorities and women.¹⁶

Int. No. 921 would make it a requirement that at least once a year EEPC audit and evaluate all physical tests used by any City agency for hiring or promotional purposes to ensure such tests are fair and provide effective equal employment opportunity for minorities and women.

Int. No. 921 would take effect 30 days upon enactment.

¹² *Id.*

¹³ Irene Chidinma Nwoye. *FDNY Now Has the Most Women Firefighters Ever in its History*. The Village Voice. November 19, 2014. Available at http://blogs.villagevoice.com/runninscared/2014/11/groundbreaking_fdny_now_has_the_most_women_firefighters_ever_in_its_history.php

¹⁴ *Id.*

¹⁵ NYC Charter § 831(d); *see also* NYC Charter § 814(a)(12)(14).

¹⁶ NYC Charter § 831(d)(5).

Int. No. 921

By Council Members Cumbo, Crowley, Rosenthal, Chin, Cornegy, Ferreras-Copeland, Johnson, King, Koo, Levin, Mendez, Williams, Barron and Palma

A Local Law to amend the New York city charter, in relation to ensuring fairness in physical testing.

Be it enacted by the Council as follows:

Section 1. Subdivision d of section 831 of the New York city charter, as amended by local law number 59 of 1996, is amended to read as follow:

d. The commission shall have the following powers and duties:

1. to review the uniform standards, procedures, and programs of the department of citywide administrative services pursuant to paragraphs twelve and fourteen of subdivision a of section eight hundred, fourteen, and to review the plans adopted by city agencies in accordance with the provisions of paragraph nineteen of subdivision a of section eight hundred fifteen, and to provide any such agency or the department of citywide administrative services with such comments and suggestions as the commission deems necessary and appropriate;

2. to recommend to the department of citywide administrative services, all city agencies, or any one or more particular agencies, procedures, approaches, measures, standards and programs to be utilized by such agencies in their efforts to ensure a fair and effective affirmative employment program of equal employment opportunity for minority group members and women who are employed by or seek employment with city agencies;

3. to recommend to any city agency actions which such agency should consider including in its next annual plan as required by paragraph nineteen of subdivision a of section eight hundred fifteen;

4. to advise and, if requested, assist city agencies in their efforts to increase employment of minority group members and women who are employed by or who seek employment with city agencies;

5. to audit and evaluate the employment practices and procedures of each city agency and their efforts to ensure fair and effective equal employment opportunity for minority group members and women at least once every four years and whenever requested by the civil service commission or the human rights commission or whenever otherwise deemed necessary by this commission. In addition, the commission shall audit and evaluate any physical tests used by any city agency, either for hiring or promotional purposes, at least once every year. In so auditing and evaluating, the commission shall utilize the services of non-governmental experts where such use would assist such auditing and evaluating in any way;

6. to make such policy, legislative and budgetary recommendations to the mayor, council, the department of citywide administrative services or any city agency as the commission deems necessary to ensure equal employment opportunity for minority group members and women;

7. to publish by the fifteenth of February of each year a report to the mayor and the council on the activities of the commission and the effectiveness of each city agency's affirmative employment efforts and the efforts by the department of citywide administrative services to ensure equal employment opportunity for minority group members and women who are employed by or seek to be employed by city agencies;

8. to establish appropriate advisory committees;

9. to serve with such other agencies or officials as shall be designated by the mayor as the city liaison to federal, state and local agencies responsible for compliance with equal employment opportunity for minority group members and women who are employed by or who

seek to be employed by city agencies; and

10. to take such other actions as are appropriate to effectuate the provisions and purposes of this chapter.

§ 2. This local law takes effect 30 days after it becomes law.

BC
LS # 3457
9/14/2015