

Testimony of Brittany Saunders  
Deputy Commissioner for Strategic Initiatives, CCHR  
Before the Committee on Civil Rights  
December 13, 2106

Good morning Public Advocate James, Chairperson Mealy and Members of the Civil Rights Committee. My name is Brittany Saunders, and I am Deputy Commissioner for Strategic Initiatives at the City Commission on Human Rights. It is my pleasure to join you this morning to testify in support of Intro 1253, which would amend the City's administrative code to prohibit an employer from inquiring about or relying on a prospective employee's salary history when determining the salary to be offered to that individual. It builds upon Executive Order 21, signed by the Mayor with the support of the Public Advocate last month, which implements similar protections for applicants to City jobs.

At the Commission, our focus is on ensuring fairness through vigorous enforcement of the Human Rights Law and widespread efforts to educate New Yorkers about its protections. Over the course of the last year, we have continued to deliver on Commissioner Malalis' commitment to make the Commission a more energetic, transparent and effective institution. This year saw the expansion of the Human Rights Law to establish protections for caregivers in the workplace. The Mayor also signed Executive Order 16, requiring that all agencies be trained about the right of all New Yorkers to access the single-sex facilities that correspond to their gender identity and that information about these rights be posted publicly. This was followed by the Commission's highly successful "Look Past Pink and Blue" campaign, a public education effort affirming this right that garnered over 62 million impressions across various media platforms. The Commission also issued new legal enforcement guidance concerning the treatment of pregnant workers and became the first anti-discrimination agency in the nation to issue U and T visa certifications. In early fall 2016, with Islamophobic rhetoric and incidents trending upward, the Commission released its "I Am Muslim NYC" campaign. And now, as bias-based incidents have become increasingly common and New Yorkers have become more concerned about the impact of new leadership at the federal level, the Commission is responding in kind, ramping up address and documents reports of intimidation and harassment, focusing workshops and trainings on topics like xenophobia, convening and participating in community forums and more. Our efforts have resulted in over 228 million impressions across print and social media platforms. We are committed to building upon these efforts in the months and years to come.

Local efforts to promote racial and gender equity will only increase in importance in the coming years. Intro 1253 represents an important step forward for women, people of color and others in New York City whose lives are deeply affected each day by pay inequity. The ability to pay for housing, health care, educational opportunities, and the multitude of other costs associated with caring for oneself and one's loved ones is made that much harder when a history of lower pay limits what one is able to demand and earn.

While we as a nation identified the wage gap decades ago and have made some progress in narrowing gaps, disparities still persist. According to the Pew Research Center, among full- and part-time workers nationally, African Americans' median hourly earnings were just 75% that of whites. Women as a whole earned just 83% of what men earned, and among women across all races and ethnicities, hourly earnings trail those of white men as well as men in their own racial or ethnic groups. Progress in closing wage gaps has been uneven across groups.<sup>1</sup> Between 1980 and 2015, the gap in median hourly earnings between white women and white men closed by 22 cents, bringing relative earnings to 82 cents on the dollar. The gap between Asian women and white men narrowed by a similar amount, with Asian women earning 87 cents on the dollar in 2015. In the same period, however, the gap between African-American women and white men narrowed by only 9 cents, bringing their relative earnings to just 65 cents on the dollar. Similarly, the gap between Latina women and white men, narrowed by only 5 cents during the 35-year period, with relative earnings of only 58 cents on the dollar last year.<sup>2</sup> In New York State, similar trends hold. According to the National Women's Law Center, women as a whole make 88.7 cents for every dollar a man makes. For every dollar a white man makes, an African-American woman makes just over 66 cents, a Latina makes 55.5 cents, an Asian woman makes just over 80 cents and a Native American woman makes just under 61 cents.<sup>3</sup>

The New York City Human Rights Law has long prohibited discrimination in employment, which includes differential treatment in pay, benefits, and other terms and conditions of employment based on race, gender, national origin, disability, sexual orientation, gender identity, and many other categories. This type of discrimination, however, is difficult to detect, as employees are hesitant to share information about their salaries with colleagues and often don't realize they are being compensated at lower rates for comparable work. Recognizing this reality, local and state governments are taking further steps to encourage pay equity through creative policy initiatives. This summer, for example, the State of Massachusetts, enacted legislation including a prohibition on inquiries regarding previous salary. And this fall, with the support of Public Advocate James, the Mayor signed Executive Order 21, barring the City of New York from inquiring into an applicant's salary history, except under narrow circumstances, and prohibiting the City from relying on salary history in any case. At the signing, the Mayor also expressed his support for Intro 1253. In doing so, the administration has demonstrated its ongoing commitment to gender and racial equity.

The legislation the Committee is discussing today builds upon that commitment, expanding similar prohibitions to employers beyond the City itself. Intro 1253, as currently drafted, would prohibit an employer from inquiring about an applicant's salary history, including important and often overlooked fringe benefits. The employer may not rely on the salary history to determine the salary amount, unless the individual in question volunteers that information. Importantly,

---

<sup>1</sup> See Pew Research Center, "Racial, gender wage gaps persist in U.S. despite some progress," (Jul. 1 2016), available at <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>

<sup>2</sup> See *id.*

<sup>3</sup> National Women's Law Center, "The Wage Gap, State by State," available at <https://nwlc.org/resources/wage-gap-state-state/>.

however, nothing in the legislation would prohibit an employer from inquiring about or relying on an individual's salary *requirements*. Rather, in the absence of salary history, these demands—likely premised on an applicant's assessment of competitive market rates for similar positions and his or her own experiences in the market—in combination with the employer's assessment of what the role merits and what it can afford to pay would form the basis for salary negotiations. Salary inquiry policies like the one contemplated by the Council simply remove salary histories—which do not necessarily correspond to skill and experience but rather often reflect deep-seated patterns of unequal treatment in the labor market—from the equation.

Such legislation has the potential to bolster the efforts of women, people of color, and others who may be burdened with a history of low pay to more effectively negotiate for compensation that matches their skills and abilities. It will allow New Yorkers to market their skills without previous low compensation artificially limiting their prospects. While the administration wholeheartedly supports the goals of the legislation, it also looks forward to working with the Council to further refine the bill. For example, as currently drafted, a prospective employer could contact a previous employer to gather information about prior salary in order to inform an offer, as long as the employer did not consult the applicant herself or publicly available records. This seems inconsistent with the Council's policy goals and should be addressed. In addition, there may be other improvements that might be identified through future conversations with stakeholders.

Again, we are eager to partner with the Council on this legislation and on further efforts to promote gender and racial equity in the City. Now, more than ever, it is essential that we continue to work on these issues on behalf of New York City residents.



**N·Y·S·A**  
NEW YORK STAFFING ASSOCIATION

December 13, 2016

## FOR THE RECORD

New York City Council  
Committee on Civil Rights  
City Hall  
New York, New York 10007

Re: Int 1253-2016; Prohibiting employers from inquiring about a prospective employee's salary history

Dear Councilmembers:

The New York Staffing Association (NYSA) submits the following comments regarding the above-referenced proposed legislation. NYSA represents New York's staffing firms. These firms placed over 525,000 workers on temporary and contract assignments in 2015, many of whom were placed on assignment in New York City and transitioned into permanent jobs with staffing firm clients.

Temporary and contract staffing is one of America's largest service industries. Private-sector businesses and governments at every level recognize that staffing is the most economical and efficient way to manage the need for temporary and supplemental workers. Employment with a staffing firm affords independence and job flexibility for individuals who enjoy working in diverse job settings, as well as skills training and a bridge to permanent employment for those who are just starting out, changing jobs, or out of work. Temporary and contract employees work in virtually every job category, including industrial labor, office support, health care, engineering, science and information technology, and various professional and managerial positions.

As a general matter, NYSA and its members support and adhere to equal pay practices regardless of gender or other protected class. In that regard, staffing firms' temporary and internal workers' pay rates do not vary depending on gender, but rather on experience and skill sets. Indeed, to attract and retain the best workers—who are staffing firms' most important asset—staffing firms *must* pay competitive wages irrespective of gender.

Nevertheless, we are concerned that the pending legislation would have a significant impact on the staffing industry, particularly with respect to staffing firms' ability to seek prior salary information from internal, temporary and direct hire job candidates, particularly sales and management personnel, who received performance-based compensation such as commissions or bonuses in their prior jobs and which compensation can establish their performance and productivity track records. Absent such information, staffing firms will be unable to effectively verify such candidates' prior performance and assess whether they are qualified for the job.

***Accordingly, we request that the City Council amend the proposed legislation to allow staffing firms and other employers to inquire about candidates' commissions and incentive-based compensation after a conditional job offer is extended.***

110 East 42nd Street, Suite 802 | New York, NY 10017

Phone: 646-723-3215 | Toll Free: 800-264-7029 | Fax: 646-723-3216

info@nystaffing.org | www.nystaffing.org

## **Staffing Firms' Ability to Seek Performance-Based Compensation Information from Candidates**

Staffing firms routinely recruit for and hire recruiters and account managers to work within their firms, and these positions are essential to staffing firms' operations. Similarly, staffing firms often recruit for and place sales personnel with clients, either on a temporary or direct hire basis. All such candidates' past job performance is usually reflected by earned incentive compensation. In order to predict success in the positions for which candidates are applying, therefore, staffing firms must be able to ask about prior incentive-based compensation and assess prior performance. In that regard, it serves neither the candidates' nor staffing firms' interest to hire candidates absent such information, only to thereafter find out that the candidates are not suited for the job.

To illustrate this point, assume a small staffing firm interviews for a sales position and the candidate indicates that, in his prior job, he was responsible for bringing in \$1 million in sales for which he received commission. Without having the ability to verify the candidate's salary information, the firm would have no way of knowing whether such a claim is correct. The firm could then spend six months paying the base salary of the new sales hire only to find out that his/her claims regarding his prior employment are not borne out by his/her current performance. Such result benefits neither the staffing firm nor the worker.

Accordingly, we urge the Council to at least allow staffing firms and other employers to verify commissions and other incentive-based compensation, after a conditional offer is made, just as the Council chose to enact with background check information, to ensure that candidates are right for the job.

Thank you for your consideration.

Sincerely,

New York Staffing Association

Joel Klarreich, Esq.  
General Counsel  
Tannenbaum Helpern Syracuse and Hirschtritt  
Ph: (212) 508-6747  
[jak@thsh.com](mailto:jak@thsh.com)

James Essey, Legislative Chair  
The TempPositions Group of Companies  
Ph: (212) 916-0859  
[jessey@tempositions.com](mailto:jessey@tempositions.com)

John McCarthy, Esq.  
Bolton-St. Johns, LLC  
Ph: (646) 300.3510  
[john.mccarthy@boltonstjohns.com](mailto:john.mccarthy@boltonstjohns.com)



**Testimony of Melanie Stern, Spring Bank  
Before the NYC Council Committee on Civil Rights  
December 13, 2016**

Good morning. My name is Melanie Stern and I am the Community Reinvestment Officer and Director of Consumer Lending for Spring Bank, an award winning community bank based in the South Bronx. I would like to thank the City Council for holding this hearing on this important bill and for the opportunity to present testimony in support.

Spring Bank is a U.S. Treasury Certified Community Development Financial Institution, recognition that our mission and our lending are focused on serving underserved businesses and consumers with transparent and affordable products and services. We are a \$160 million institution and currently have 36 employees working at our Bronx and East Harlem branches.

For Spring Bank, being a responsible community institution also means being a responsible and responsive employer. That is why this year we voluntarily raised the minimum wage of our employees to \$15 an hour before the state's enactment, and why we have adopted a hiring policy in line with Intro 1253. We will no longer be asking candidates for their salary history.

As a small bank we are very dependent on great customer service to compete and we know that employees who are satisfied with their work environment, which includes pay status, will be better employees. We look for the best employees we can find without regard to gender, and as employees ourselves, we all know that being treated fairly affects your outlook at work.

This new policy of not asking for salary history fits squarely within our mission **and** is good for our bottom-line. Spring Bank strongly supports this legislation and hopes that businesses throughout New York City, the New York City Council and the Mayor will understand the value to employees and businesses and support it as well.

Thank you for giving me the opportunity to testify.



69 E 167th St (Gerard Ave)  
Bronx, NY 10452  
[www.springbankny.com](http://www.springbankny.com)

Telephone Banking (888) 251-2384  
Customer Service (718) 879-5000  
Fax (718) 585-4969

### **Board of Directors**

December 13<sup>th</sup>, 2016

Anita Durst

To the Council's Committee on Civil Rights:

David M. Glanstein

Thank you so much for this opportunity to testify on behalf of chashama. New York City's Public Advocate Letitia James' vision of supporting wage equality through Introduction 1253 is incredibly important in helping women and minorities get the fair salaries they deserve.

Michael Maher

Tatiana Nizguretsky

### **Introduction 1253**

Nancy Packes

This bill would prohibit employers from inquiring about a prospective employee's salary history during all stages of the employment process. In the event that an employer is already aware of a prospective employee's salary history, this bill would prohibit reliance on that information in the determination of salary. When employers rely on salary histories to determine compensation, they perpetuate the gender wage gap. Adopting measures like this bill can reduce the likelihood that women will be prejudiced by prior salary levels and help break the cycle of gender pay inequity.

Richard P. Rubinstein

Cindy Scholz

Gavin Steinberg

As a woman, I have felt the effects of discrimination in the work place, with no more evident example than the gender wage gap. I have been offered lower raises than my male counterparts, been offered lower starting salaries, and offered less generous vacation and benefits packages. This, unfortunately, is not a unique situation. Women are the equal, if not main, breadwinner in four out of ten families. Women receive more college and graduate degrees than men. Yet, on average, women continue to earn considerably less. In 2014, female full-time workers made only 79 cents for every dollar earned by men, a gender wage gap of 21 percent.

Introduction 1253 is a huge step forward in reducing that gap. Requesting salary history from potential employees allows employers to perpetuate the cycle of unequal treatment, when past unequal salary becomes the basis for the next. Employer questions about past compensation — often posed to applicants on job forms and in interviews — are believed to contribute to pay disparities between female and minority workers and their male and white counterparts. Many companies set workers' salaries based in part on their past wages, potentially locking in an unequal pay rate in perpetuity. The Executive Order, signed by Mayor de Blasio in November 2016, will tangibly help close the wage gap throughout New York City agencies, and will hopefully be a huge success in continuing the vital conversation on pay equality.

I work with an extraordinary number of talented, intelligent, and thoughtful women. While we all know the pain of the inequality we face in the workplace on a daily basis, we also know the joy of progress and the effort it takes to get there. Introduction 1253 and the Executive Order are clear signs of this progress, and a huge step forward for women, as well as for the City of New York. This also comes at a time, in a very specific political climate, where any success, large or small, is invaluable to those that benefit from it.

I humbly thank New York City Public Advocate Letitia James for her tireless work, for Mayor de Blasio for hearing and responding to this call to action, and the Council's Committee of Civil Rights for hearing our testimony in support of Introduction 1253.

Shannon McPhee  
Development Manager  
chashama  
675 Third Avenue, 32<sup>nd</sup> Floor  
New York, NY 10017  
shannon@chashama.org // (212) 391-8151 ex. 29

Sarah Zolt-Giburne  
Program Assistant  
chashama  
Third Avenue, 32<sup>nd</sup> Floor  
New York, NY 10017  
sarah@chashama.org // (212) 391-8151 ex. 41



**Testimony of Margaret McIntyre on behalf of the  
National Employment Lawyers Association / New York Affiliate (NELA/NY)  
in support of Intro 1253, December 13, 2016**

My name is Margaret McIntyre. I am an attorney who has been representing victims of discrimination for over 20 years, including victims of pay discrimination. As Chair of the Legislative Committee of NELA/NY, a bar association of lawyers who represent employees, I testify today to express our strong support for Intro 1253. Our nearly 400 attorney members have been on the front line of fighting in court to vindicate the civil rights of New Yorkers. We know that pay discrimination is widespread, particularly pay discrimination based on gender and on race, and that 50 plus years of litigation over pay discrimination has not eliminated it. New and creative approaches are called for and this bill is one such approach.

By requiring an employer to consider an applicant's prior salary history only after an offer of employment is made, this bill will prevent an employer from making assumptions about how much the applicant should be paid before even assessing the employee's qualifications and experience – in other words, before the employee's worth has been assessed on the merits. Too often an unfairly low salary in one job follows a person to the next job on the basis of prior salary history alone. In this way, the effects of past discrimination are perpetuated, and the gender wage gap as well as the race-based (on race) continues. This bill will change that.

Yet this bill does not prevent employers from taking prior salary into account, along with other factors, once the employer has made a determination that the employee is not only qualified for the job but is the candidate that the employer wants to hire. This modest change to the procedure of setting pay will make it much more likely that prior salary history will be only one factor among many that the employer uses to set the new employee's pay.

This bill has the potential to protect all employees. For example, it will protect an older employee who has lost a higher-paying job but is willing to take a pay cut to become employed again. Too often people are rejected without consideration if their prior pay was more than what the employer had hoped to offer. A change in the timing of when an employer takes prior salary history into

account will give that person a chance to demonstrate his or her qualifications without preconceived notions about what the person would accept.

In short, when employers consider prior salary history only after assessing an applicant on the merits, it will become more likely that employees will be paid fairly.

I urge the quick passage of Intro 1253.

**Testimony of  
Jacqueline M. Ebanks  
Executive Director  
Women's City Club of New York**

**New York City Council  
Committee on Civil Rights**

**In relation to Intro. 1253: Prohibiting  
employers from inquiring about/relying  
on a prospective employee's salary  
history**

**December 13, 2016**

**City Hall  
New York, New York**

Contact: Jacqueline M. Ebanks, 212.353.8070, ext. 102, [Jebanks@wccny.org](mailto:Jebanks@wccny.org)

## INTRODUCTION

Good Morning Chairwoman Mealy and members of the Committee on Civil Rights. My name is Jacqueline M. Ebanks, and I am the Executive Director of Women's City Club of New York (WCC). WCC is a nonprofit, non-partisan, multi-issue activist organization. We are dedicated to dismantling economic, racial, and gender inequalities through education, issues analysis, advocacy, and civic participation.

Thank you for the opportunity to testify on the proposal to prohibit employers from inquiring about prospective employees' salary histories throughout the employment process.

### **INT. 1253-2016**

WCC has been on the frontlines advocating for civil rights, and in particular, income equality since we were founded more than a century ago. We remain staunchly committed to reducing income inequality and ensuring equal opportunity across all five boroughs in an effort to improve the quality of life for all New Yorkers.

Despite major strides for women's equality throughout the 20<sup>th</sup> Century, there remain deep and troubling gender-equality gaps in our city and in our nation. For example, according to the Institute for Women's Policy Research, women on average continue to earn considerably less than men. In 2015, female full-time workers nationwide made only 80 cents for every dollar earned by men, a gender wage gap of 20 percent.

This despite the fact that women represent nearly half of our nation's workforce. They are the equal - if not the main - breadwinner in four out of ten families. And, they receive more undergraduate and graduate degrees than men. In 2015, the Institute predicted that if change continues at the same slow pace as it has for the last half century, it will take another 44 years — until 2059 — for women to finally achieve pay parity.

Here in New York City, that pay disparity is slightly narrower, at just over 90%, but it still remains a persistent indicator of wage discrimination. A CUNY Institute for State and Local Governance (ISLG) report recently found that the median income for men employed full-time in New York City was \$42,000 – whereas women in full-time positions earned a median income of \$38,423. It is highly unacceptable that we still live in a city and a time when a full-time, working woman makes only 91 cents for every dollar a man earns.

The wage gap cuts even further across color lines: In New York City, for every dollar earned by a white males, African-American women earn only 54 cents, Hispanic women earn only 45 cents, and Asian women earn only 37 cents.

Furthermore, according to recent research by Cornell University, the situation is exacerbated by the fact that when women enter fields in greater numbers, the pay declines for the same jobs that were previously held by men. This leads to the premise that women’s work is not as valued as men’s work.

And, this income disparity plagues women throughout their lives. Lower lifetime career earnings for women translate to substantially lower retirement income than men. Consequently, women face higher poverty rates throughout their adult lives, including into retirement.

The measure under consideration today is a crucial step toward eliminating this persistent wage inequity. Using a person’s salary history to calculate salary offers negatively impacts women as it perpetuates existing wage inequities. It further discriminates against women who may have left the workforce to respond to family caregiving responsibilities, such as taking time off to raise children and/or to care for elderly family members.

Prohibiting employers from using salary history as a measure to determine their salary offers would allow for hiring and promotion decisions to be based on experience and on

equity. This isn't about just doing what the law requires. It's about doing the right thing. It is about basing salary decisions equally on a person's qualifications, experience, and record of achievement as well as business priorities. I cannot stress enough that the continuing existence of wage inequality in New York City is a detriment to ALL New Yorkers--not just women but their families.

By supporting this measure, you are sending a clear signal to this – and future – generations of women and people of color that they should not be disillusioned, that their hard work and commitment to be productive, successful New Yorkers are truly valued.

## **CONCLUSION**

Women's City Club of New York has always been determined not only to level the playing field for women but to remedying generations of economic, racial, and gender disparities so that all New Yorkers have an opportunity to succeed in their careers, in their schools, and in their lives.

Therefore, we are extremely supportive of this proposal to amend the administrative code. Chairwoman Mealy and members of the Committee on Civil Rights, we thank you for the opportunity to testify today, and we hope this legislation will be voted favorably out of committee.

Thank you.



**TESTIMONY**

**Before the NYC Council Committee on Civil Rights**

**In Support of Intro 1253**

**December 13, 2106**

**Submitted by Beverly Neufeld for PowHer New York**

On behalf of PowHer New York, thank you for the opportunity to testify today before the NYC Council Committee on Civil Rights on Intro 1253 sponsored by Public Advocate James regarding banning salary history as an employment practice in the private, non-profit and public sector.

I am Beverly Neufeld, President and Founder of PowHer New York (PowHerNY), a statewide network of individuals and over 100 organizations collaborating to accelerating economic equality for NY women. PowHerNY inspires change and catalyzes collective action through education, advocacy, convening, and social media.

PowHerNY's signature initiative, the Equal Pay Campaign, has been leading pay equity reform in New York for more than a decade. Indeed, over the past 30 years, New York has been seeking legislative and policy remedies to close the gender wage gap. In the 1980's the NYS municipal workforce was evaluated to expose wage discrepancies with a comparable worth analysis and one time pay adjustment. Since 2002, the NYS Fair Pay Act to address comparable worth and wage secrecy, was passed annually in the Assembly, but did not advance in the Senate. Not until 2015, after a multi-year campaign of the PowHer New York network, was a NYS Equal Pay Law, part of the Women's Equality Act, signed into law.

New York leaders and advocates continuing to address this ongoing financial impediment. With this ongoing attention, public education and legislative action, the wage gap in NYS is shrinking, but for women of color, the gap is as large as national averages. Latinas make 56 cents to the dollar earned by white males, 66 cents for African American women. It is imperative that government continues to seek tools to address this persistent and insidious economic injustice. It takes intentional action, including innovative laws, to break centuries old cultural conventions.

One such practice that needs to be addressed is the use of salary history in the employment process. Although commonplace and routine for most employers, it perpetuates and multiplies discrimination from a women's first job through her career. Lower salaries may be the result of: outright discrimination; working in a female-dominated profession where pay is lower precisely because women do the jobs and "women's work" is devalued; reduction in hours in a prior job to care for children or other family members, for example. All penalize the applicant when employers set compensation based on prior salaries, rather than job requirements and merit.

The business community is aware of the perils of using salary history in relation to its bottom line and liability. In a 2013 study, the Society for Human Resource Management (SHRM), the world's largest HR professional society, reported: "HR professionals should be especially attuned to information concerning the impact that a new hire's previous pay has on his or her starting pay. One federal Court of Appeals has stated that paying a male new hire more than a female new hire in the same job based solely on the

new hire's prior salary would violate the Equal Pay Act because such a practice would "contravene Congress' intent and perpetuate the traditionally unequal salaries paid to women for equal work." HR professionals should be prepared to recommend appropriate changes in policy, if needed to strengthen the defensibility of their organization's decision-making process for starting pay. HR professionals should be particularly concerned about the degree of managerial discretion, the use of prior salary and documentation of the rationale for individual starting pay."

Proof of gender bias in wage setting appears in other surveys. Researcher Paula England's study "found that when women moved into occupations in large numbers, those jobs began paying less even after controlling for education, work experience, skills, race and geography. And there was substantial evidence that employers placed a lower value on work done by women. "It's not that women are always picking lesser things in terms of skill and importance," Ms. England said. "It's just that the employers are deciding to pay it less."

Negotiation is cited as a solution, but unconscious stereotyping and discrimination are also at play for women who attempt to negotiate their salaries. As reported by Payscale, "Even candidates who negotiate and advocate strongly for themselves at the salary phase can wind up with a lower offer than someone who happened to earn more at an earlier position ... Contrary to popular belief, it's not because women don't ask...They also pay a higher social penalty when they attempt to negotiate. Making salary history part of the job interview process means that tomorrow's salary depends on yesterday's wages, which makes it harder for female candidates to get paid what they deserve."

Women and families cannot afford the gender pay gap which has life-long financial consequences. It is estimated that the average women losses between \$450,000 and \$1,000,000 over her career because of the gap. The ripple effects include high rates of poverty for children, and for women, who are now approximately two-thirds are breadwinners. Not surprising, poverty during the retirement years is a growing reality.

If we are going to get serious about closing the wage and opportunity, our great city needs to take bold action. Similar legislation has already been passed in Massachusetts and California this summer. As well, Rep. Eleanor Holmes Norton introduced the Pay Equity for All Act of 2016. H.R. 6030 in September. By outlawing the use of salary history in setting earnings, the City Council will remove the veil on one of those seemingly innocuous practices that has noxious effects which robs hard working women of a fair wage and families of a fair chance.

Thank you for your consideration of this important bill.

Beverly Neufeld | President | PowHer New York | bev@powherny.org



**Testimony of Kate Nielson  
State Policy Analyst  
American Association of University Women**

to the

**New York City Council**

in support of

**Intro. No. 1253**

December 13, 2016

Members of the Council, thank you for the opportunity to testify today on the critical issue of pay equity. AAUW appreciates the Council's commitment to equal pay for equal work, and strongly supports the Council's latest efforts to tackle the persistent gender and racial pay gap through the prohibition on using salary history in hiring.

My name is Kate Nielson and I am a State Policy Analyst at the American Association of University Women. Founded in 1881, AAUW has approximately 170,000 members and 1,000 branches nationwide, as well as more than 900 college and university partners across the country. AAUW has long fought to end gender pay discrimination, having released our first report on pay equity in 1913. As early as 1922, AAUW was calling for a gender-fair reclassification of the U.S. Civil Service and a repeal of gender-based salary restrictions in the U.S. Department of Labor's Women's Bureau. In 1955, AAUW supported a bipartisan bill introduced by AAUW member Reps. Edith Green (D-OR) and Edith Rogers (R-MA) requiring "equal pay for work of comparable value requiring comparable skills." Congress eventually enacted the Equal Pay Act,<sup>1</sup> a version of the 1955 bill, in 1963.

Today, AAUW continues its mission to end pay inequality through programing, advocacy, education and research. AAUW's bi-annual report, *The Simple Truth about the Gender Pay Gap* is a seminal work on the gender pay gap. Our Work Smart and Start Smart programs empower women with the skills and confidence to successfully negotiate their salary and benefits packages. Our advocacy work spans local, state, and federal efforts, and we lead the nationwide coalition dedicated to passing the Paycheck Fairness Act, a much needed and long overdue update to that 1963 law. While passage of this critical legislation has been mired in the heightened partisanship of Capitol Hill, AAUW strongly urges that other strategies be pursued that can help to close the gender pay gap. Equal pay legislation at the state and local levels is one such strategy.

With this background and expertise in mind, I am pleased to speak with you today about AAUW's strong support for the Council's latest bill to prohibit the use of salary history when determining future wages. We strongly support bill 1253.

**The Persistent Gender Pay Gap, by the Numbers**

AAUW's strong support for the proposed bill is buttressed by the clear and convincing data that the gender pay gap is not a myth, but rather a pernicious problem that undermines the economic security of American families. To that point, I am pleased to share findings from AAUW's research reports, *The Simple Truth about the Gender Pay Gap* and *Graduating to a Pay Gap: The Earnings of Women and Men One Year after College Graduation*. Our reports provide reliable evidence that sex discrimination

in the workplace continues to be a problem for women, who, on average, when working full-time earn just 80 cents for every dollar a full-time male worker earns. It's math, not myth, and our reports demonstrate just how much this pay gap impacts women, families, businesses and the economy.

As it currently stands, women who work full-time typically earn about 80 cents for every dollar a full-time male worker earns.<sup>2</sup> In New York, that number is 89 percent. Over a lifetime of work (47 years), the total estimated loss of earnings of women compared to men is \$700,000 for a high school graduate, \$1.2 million for a college graduate and \$2 million for a professional school graduate.<sup>3</sup>

Critics charge that pay differences between men and women are simply a matter of personal choices. However, our analysis found that just one year after college graduation, women were paid 82 percent of what their similarly educated and experienced male counterparts were paid.<sup>4</sup> Ten years after graduation, the pay gap widened, and women were paid only 69 percent of what men were paid – despite the fact that women were more likely to obtain an advanced degree.<sup>5</sup> In part, these pay gaps do reflect men's and women's choices, especially the choice of college major and the type of job pursued after graduation. Yet not all of the gap can be “explained away.” After accounting for a litany of factors—college major, occupation, economic sector, hours worked, months unemployed since graduation, GPA, type of undergraduate institution, institution selectivity, age, geographical region, and marital status—there is still a seven percent, unexplained difference in the earnings of male and female college graduates one year after graduation.<sup>6</sup> While detractors like to say that seven percent doesn't seem like such a large difference, I would challenge them to relinquish seven percent of their paycheck for no good reason. I'd further challenge them to forgo the compounding raises, bonuses, and retirement benefits that are often based on salaries. Suddenly, seven percent doesn't seem so inconsequential.

It's important to remember that the pervasive pay gap does not affect all women equally. Most women of color, older women, moms, and women who have achieved higher levels of education experience an even larger pay gap. Compared with salary information for white male workers, Asian American women's salaries show the smallest gender pay gap, at 90 percent of white men's earnings. Meanwhile, compared to white men's wages, African American women are paid 62 percent, Native Hawaiian and Other Pacific Islander women are paid 60 percent, and American Indian and Alaska Native women are paid 58 percent. Hispanic and Latina women experience the largest pay gap, taking home just 54 percent of what white men were paid in 2014. In the same year, for full-time workers ages 20–24, women were paid 92 percent of what men were paid on a weekly basis. But among workers 55–64 years old, women were paid only 76 percent of what their male peers were paid. As a rule, earnings grow as years of education increase for both men and women. However, at every level of academic achievement, women's median earnings are less than men's median earnings, and in some cases, the gender pay gap is larger at higher levels of education.<sup>7</sup> While a college degree greatly improves a women's earning capacity, it does not improve her earnings on the same scale as her male counterparts.

It is increasingly clear that the gender pay gap follows women throughout their lives, and in insidious ways—women who complete college degrees are less able to pay off their student loans promptly, leaving them paying more and for a longer time than men. In 2012, among students who graduated in 2007–08, women working full time had paid off 33 percent of their student loan debt on average, while men working full time had paid off 44 percent of their debt. African American and Hispanic women working full time earn considerably less than their male counterparts, and they struggle to pay off student loans promptly; four years after graduation, they had paid off less than 10 percent of their debt—much less than other women and men.<sup>8</sup>

Paying women equally would not just unburden them from debt more quickly, it could significantly impact the state of poverty in the U.S. A recent analysis found that the poverty rate for working women would be cut by more than half, from 8.2 percent to 4 percent, if women received equal pay to men of the same age, with the level of education, who work the same number of hours, and have the same urban/rural status.<sup>9</sup>

Equal pay is not simply a women's issue—it's a family issue. Between 1967 and 2012, the percentage of mothers who brought home at least a quarter of the family's earnings rose from less than a third (28 percent) to nearly two-thirds (63 percent).<sup>10</sup> Families increasingly rely on women's wages to make ends meet. A majority of mothers are in the paid labor force,<sup>11</sup> and a growing number of them are responsible for supporting their families. For the 40 percent of mothers with children under the age of 18 who are their families' sole or primary breadwinner,<sup>12</sup> the gender pay gap can contribute to poor living conditions, poor nutrition, and fewer opportunities for their children. Despite the discriminatory wages women take home, there's no women's discount on rent, electricity or any of life's other necessities.

Women who take time away from the workforce to care for children—23 percent of mothers, as compared to only 1 percent of fathers, measured 10 years after graduation—often encounter a “motherhood penalty” that extends beyond the actual time out of the workforce. Experimental research has documented that employers are less likely to hire mothers compared with childless women, and when employers do make an offer to a mother, they offer her a lower salary than they do other women.<sup>13</sup> Fathers, in contrast, do not suffer a penalty compared with other men. Many fathers actually receive a wage premium after having a child.<sup>14</sup>

All of these statistics have real world consequences for women, families, businesses and the economy. Unequal pay early in women's careers compounds throughout a lifetime, hindering women as they try to pay off their student loans, contribute to and raise their families, and thrive in retirement. Unequal pay also leads to workplace dissatisfaction, low morale, and higher turnover. But compensating women equally can remedy many of these problems. Paying women the salary they have rightfully earned is not only the fair thing to do, it puts more money into workers' pockets. That additional income can then be infused into the economy, while also alleviating some of the burden on government programs to support those who are struggling to make ends meet. Equal pay is good for women, good for families, and good for the nation.

### **Other State Efforts to Close the Gender Pay Gap**

Research and statistics clearly show the existence of the gender pay gap. Over 50 years ago, Congress passed the Equal Pay Act to remedy the issue. Yet the gap remains. If progress continues at the current rate, we will not achieve pay parity for men and women until 2059.<sup>15</sup> Because Congress is not acting, states are moving forward. In 2015, seven states passed equal pay bills and in 2016, six states approved legislation to close the gender pay gap.<sup>16</sup> These bills advanced in red, blue and purple states – California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, Oregon, Nebraska, New York, North Dakota, and Utah. Legislators approved many different methods to close the gender pay gap. The proposed bill is among good company and follows the trend of states offering increased protections to their workers.

Currently two states – California and Massachusetts – have passed legislation banning employers from relying on prior salary to set future wages.<sup>17</sup> Additionally, last month Mayor Bill de Blasio signed an executive order prohibiting the practice, last week the Philadelphia City Council voted to ban it, and Washington, D.C., Pennsylvania, and New Jersey all have bills pending.<sup>18</sup> It is likely that many additional states and localities will introduce similar bills in the 2017 legislative sessions.

The bills that were successfully passed in 2016 take different approaches to tackling the use of salary history. In Massachusetts, employers are barred from using salary history when screening and hiring workers. In California, if an employer uses discriminatory pay practices, an employee's salary history cannot be used to justify said discrimination. The Massachusetts approach is stronger because it bans the practice outright, while the California approach only comes into play once an employee files a claim. This proposed bill uses the Massachusetts approach.

### **Arguments for Prohibiting Prior Salary**

The proposed bill would protect job seekers from having to disclose their salary history in order to be considered for a job offer. Eliminating the reliance on salary history in setting future wages would go a long way toward closing the pay gap. By banning the use of this practice, all workers will have the opportunity to take home a fairer paycheck based on the work they are doing today rather than jobs they have held in the past.

Since we know pay discrimination starts early in women's careers, relying on prior salary as a marker for future pay only compounds the problem, hurting women and people of color. Relying on salary history to set future salary assumes that prior salaries were fairly established in the first place. But if a worker faced a pay gap, and thus lost wages, at one job – perhaps because of bias or even outright discrimination – basing her next job's salary on the one prior only continues that pay gap. Salary history questions can, in fact, introduce bias and discrimination into the recruitment process of a company earnestly trying to avoid it.

In addition to exacerbating previous discrimination, reliance on salary history also harms individuals who have taken time away from the workforce. The federal government's Office of Personnel Management recently issued guidance corroborating this argument by stating, "Reliance on existing salary to set pay could potentially adversely affect a candidate who is returning to the workplace after having taken extended time off from his or her career or for whom an existing rate of pay is not reflective of the candidate's current qualifications or existing labor market conditions."<sup>19</sup>

Moreover, prior pay has very little to do with a worker's ability to perform in a new position. An employee should be compensated based on what her skills – and the job in question – are worth to the new employer, rather than based on a different job she did in the past or her ability to negotiate. Traditionally, it has been socially expected (and therefore accepted) for men to negotiate for raises because negotiating conforms with the stereotype of men as assertive. But negotiation is especially tricky for women because some behaviors that work for men, like self-promotion and assertiveness, may backfire on women. Our Work Smart salary negotiation workshops have long taught participants to avoid sharing their salary history until after an offer is made. Deflecting those questions mitigates the downstream effects of the gender pay gap; the proposed bill would give women another powerful tool to combat this problem.<sup>20</sup>

Many employers are also seeing the value of basing wages on factors other than prior pay. When hiring managers are forced to look at what the market is paying for a position, as well as the necessary skills and experience for a job, rather than an applicant's current salary and the budget, the process is more likely to yield high-quality candidates. Employers can implement a broad and thorough hiring process that does not rely on unhelpful shortcuts.<sup>21</sup>

## **Additional Recommendations**

The proposed bill could be improved by adding language prohibiting employers from seeking salary history from an applicant's present or past employer as well. This would help to ensure the intent of the law is carried out.

Additionally, section (b), which covers conflicts with federal, state or local law, is unnecessary and should be removed.

Finally, the Council should consider a provision requiring all job postings to include a salary range. This would equalize salaries of new hires and establish pay scales based on the job, not the individual filling the position. The original version of the Massachusetts salary history bill included this language, but it was stricken in the amendment process. The Council in Washington, D.C. is currently considering adding this provision to their bill.

## **Conclusion**

With a record number of women in the workforce and nearly two-thirds of women functioning as primary or co-bread winners for their families, equal pay for women is critical to families' economic security. Despite critics' insistence that the pay gap is a myth, we know the truth: it's math. It's time to pay women equally. America is a nation founded on the ideal that all of us are created equal—that ought to hold true at home and at work. Paying people fairly for the work they do shouldn't depend on their gender, race or ethnicity.

To eliminate the gender pay gap, we need to base salaries on relevant factors, such as job requirements and the skills and experience of the applicant. Past wages have nothing to do with future performance. Relying on salary history can drag along past discrimination and exacerbate the problem. Curtailing this practice will go a long way in our fight for pay equity. AAUW thanks the Council for the opportunity to testify. We strongly support the proposed bill and urge its expeditious passage.

---

<sup>1</sup> Public Law No. 88-38.

<sup>2</sup> American Association of University Women (2016). *The Simple Truth about the Gender Pay Gap*. Washington, DC: AAUW. <http://www.aauw.org/resource/the-simple-truth-about-the-gender-pay-gap/>.

<sup>3</sup> National Committee on Pay Equity. (2014). *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*. [www.pay-equity.org/info-time.html](http://www.pay-equity.org/info-time.html).

<sup>4</sup> Corbett, Christianne, and Catherine Hill. (2012). *Graduating to a Pay Gap: The Earnings of Women and Men One Year after College Graduation*. Washington, DC: AAUW. <http://www.aauw.org/resource/graduating-to-a-pay-gap/>.

<sup>5</sup> Hegewisch, Ariane, and Heidi Hartmann. (2014). *Occupational Segregation and the Gender Wage Gap: A Job Half Done*. Washington, DC: Institute for Women's Policy Research. <http://www.iwpr.org/publications/pubs/occupational-segregation-and-the-gender-wage-gap-a-job-half-done>.

<sup>6</sup> AAUW, *Behind the Pay Gap*.

<sup>7</sup> AAUW, *The Simple Truth*.

<sup>8</sup> Ibid.

<sup>9</sup> Institute for Women's Policy Research (2016). *The Economic Impact of Equal Pay by State*. Washington, DC: IWPR. <http://www.iwpr.org/publications/pubs/the-economic-impact-of-equal-pay-by-state>.

<sup>10</sup> Glynn, Sarah J. (2014). *Breadwinning Mothers, Then and Now*. Washington, DC: Center for American Progress. <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>.

<sup>11</sup> Current Population Survey, reported in U.S. Department of Labor, U.S. Bureau of Labor Statistics. (2015). *Employment Characteristics of Families 2014*. USDL-15-0689. [www.bls.gov/news.release/pdf/famee.pdf](http://www.bls.gov/news.release/pdf/famee.pdf).

<sup>12</sup> Wang, Wendy, Kim Parker, and Paul Taylor. (2013). *Breadwinner Moms*. Pew Research Center. [www.pewsocialtrends.org/2013/05/29/breadwinner-moms](http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms).

<sup>13</sup> Correll, Shelley J., and Stephen Benard. (2007). Getting a job: Is there a motherhood penalty?

*American Journal of Sociology* 112 (5): 1297–1338; Kricheli-Katz, Tamar. (2012). Choice, discrimination, and the motherhood penalty. *Law and Society Review* 46 (3): 557–87.

---

<sup>14</sup> Glauber, Rebecca. (2008). Race and gender in families and at work: The fatherhood wage. *Gender and Society* 22 (1): 8–30; Killewald, Alexandra. (2012). A reconsideration of the fatherhood premium: Marriage, coresidence, biology, and fathers' wages. *American Sociological Review* 78 (1): 96–1.

<sup>15</sup> Institute for Women's Policy Research. Pay Equity & Discrimination. Washington, DC: IWPR. <http://www.iwpr.org/initiatives/pay-equity-and-discrimination>.

<sup>16</sup> American Association of University Women (2016). Where Equal Pay Flourished (and Failed) in 2016. Washington, DC: AAUW. <http://www.aauw.org/2016/10/27/where-equal-pay-flourished-and-failed-in-2016/>; American Association of University Women (2015). 2015 State Equal Pay Legislation by the Numbers. Washington, DC: AAUW. <http://www.aauw.org/2015/08/20/equal-pay-by-state/>.

<sup>17</sup> An Act to establish pay equity. Mass. Sen. 2119. (2015-16). <https://malegislature.gov/Bills/189/Senate/S2119>; Wage discrimination. Cal. Assy. 1676. (2015-16). [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1676](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1676).

<sup>18</sup> Restriction on Inquiries Regarding Pay History. City of New York. Executive Order 21. (2016). [http://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2016/eo\\_21.pdf](http://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2016/eo_21.pdf); Chandler, Michael Alison. (November 14, 2016). "More state, city lawmakers say salary history requirements should be banned." *Washington Post*. [https://www.washingtonpost.com/local/social-issues/more-state-city-lawmakers-say-salary-history-requirements-should-be-bannedadvocates-for-women-argue-that-the-practice-contributes-to-the-nations-pay-gap/2016/11/14/26cb4366-90be-11e6-9c52-0b10449e33c4\\_story.html](https://www.washingtonpost.com/local/social-issues/more-state-city-lawmakers-say-salary-history-requirements-should-be-bannedadvocates-for-women-argue-that-the-practice-contributes-to-the-nations-pay-gap/2016/11/14/26cb4366-90be-11e6-9c52-0b10449e33c4_story.html).

<sup>19</sup> Office of Personnel Management (2015). Additional Guidance on Advancing Pay Equality in the Federal Government. Washington, DC. <https://www.chcoc.gov/content/additional-guidance-advancing-pay-equality-federal-government>.

<sup>20</sup> AAUW, *The Simple Truth*.

<sup>21</sup> Society for Human Resource Management (2016). Banning Salary History Questions: A Game Changer? <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/banning-salary-history.aspx>.



80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | info@abetterbalance.org | abetterbalance.org

**Testimony before the New York City Council Civil Rights Committee  
December 13, 2016**

**Submitted by Sarah Brafman, Legal Fellow  
A Better Balance: The Work and Family Legal Center**

Good morning, my name is Sarah Brafman and I am a Legal Fellow at A Better Balance, the Work and Family Legal Center. ABB is a New York City-based legal advocacy organization dedicated to helping families balance the conflicting demands of work and family. Our mission is to promote equality and expand choices for men and women at all income levels so they may care for themselves and their families without risking their economic security. A Better Balance also runs a free hotline to assist low-income working New Yorkers with pay discrimination, pregnancy discrimination, caregiver discrimination, and other related issues. We receive calls from men and women across the country in response to our advocacy efforts.

First, I want to start by thanking Public Advocate Letitia James for introducing Bill No. 1253 and the Committee for Civil Rights for holding today’s hearing. This bill—which will prohibit employers from asking employees about their salary history or searching public records and reports for applicants’ salary histories—will go a long way in closing the wage gap that persists for women and people of color in New York City.

staff

- Dina Bakst  
*Co-President*
- Sherry Leiwant  
*Co-President*
- Phoebe Taubman  
*Senior Staff Attorney*
- Jared Make  
*Senior Staff Attorney*
- Elizabeth Gedmark  
*Senior Staff Attorney/  
Director, Southern Office*
- Molly Weston Williamson  
*Staff Attorney*
- Cara Suvall  
*Staff Attorney, Southern  
Office*
- Marcella Kocolatos  
*Law Fellow*
- Sarah Brafman  
*Skadden Fellow*
- Pati Garcia  
*Policy Associate*
- Rachel Sica  
*Development &  
Communications Associate*
- Lynn Levy  
*Comptroller*
- Preston Van Vliet  
*National Campaign Organizer  
For the LGBTQ Work -Family  
Project*

board

- Yolanda Wu  
*Board Chair*
- Elizabeth Saylor  
*Vice Chair*
- Eric Berger  
*Treasurer*
- Roslyn Powell  
*Secretary*
- Deirdre Aaron
- Dina Bakst
- Ariel Devine
- Michael Gaebler
- David Garrison
- Alison Hirsh
- Risa Kaufman
- Rhonda Nelson
- Judy Landis
- Sherry Leiwant
- Jenna Segal

## The Wage Gap Persists in 2016, Particularly for Women of Color

In New York City, women in the workforce collectively lose nearly \$5.8 billion each year due to unequal pay.<sup>1</sup> In other words, men in this city make nearly \$6 billion more than women every year. In New York State, the figure is closer to \$20 billion.<sup>2</sup> This gap affects men, women, and children. Women head over 1 million households in New York State, with over 300,000 of those households surviving on incomes that fall below the poverty level.<sup>3</sup> If the wage gap of nearly \$7,000 per year were eliminated in New York State, women could use those funds to pay for approximately six months of rent, or three months of mortgage payments, or a year's supply of groceries for their families.<sup>4</sup> Eliminating the wage gap is not just good for families but also helps drive the economy. When families have more money to spend on necessities, businesses also prosper.<sup>5</sup>

Today, women in New York State only make 87 cents for every dollar earned by a man in the State.<sup>6</sup> And women of color in New York City are even harder hit by the gender wage gap. For instance, Hispanic women only make 46 cents for every dollar a white man in New York City earns. Black women earn 55 cents for every dollar and Asian women, 63 cents for every dollar a white man earns.<sup>7</sup> Black and Hispanic men are also at a disadvantage if they are asked about salary history since, like women, they too

---

<sup>1</sup> Letitia James, N.Y.C. Public Advocate's Office, *Policy Report: Advancing Pay Equity in New York City 2* (2016), [http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/opa\\_pay\\_equity\\_report\\_final.pdf](http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/opa_pay_equity_report_final.pdf).

<sup>2</sup> National Partnership for Women and Families, *New York Women and the Wage Gap 1* (2015), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/9-2015-ny-wage-gap.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> James, *supra* note 1, at 2.

<sup>7</sup> *Id.*

earn less than white men. Black men earn 73 cents for every dollar a white man earns and Hispanic men, 69 cents for every dollar a white man earns.<sup>8</sup>

Finally, it should be noted that women of all educational backgrounds earn less. Nationally, female college graduates earn an average of \$4 less per hour than their male counterparts in their first jobs after college, with women's starting salaries averaging \$16.58 and men's salaries averaging \$20.94.<sup>9</sup> In New York City, women with a college degree earn 16 percent less than men, and women with a post-graduate degree earn 20 percent less than men.<sup>10</sup> Experts warn that unless a concerted effort is made to close the gender wage gap, it could take another 43 years—until the year 2059—to achieve pay equity.<sup>11</sup>

#### **Disclosing Salary History to Employers Contributes to Wage Inequality**

Women begin earning less at the very outset of their careers. The problem is that companies often determine an employee's starting salary based on their previous salary. Thus, if women earn less from the outset, and an employer asks an applicant's salary history to determine base pay, women's lower earning rates follow them throughout their careers. Asking about previous salaries puts women at an immediate disadvantage when it comes to negotiating and setting salary rates.

Basing an offer of pay on an applicant's previous salary especially disadvantages those women that have left the job market to take on family responsibilities,

---

<sup>8</sup> Eileen Patten, *Racial, gender wage gaps persist in U.S. despite some progress*, Pew Research Center (July 1, 2016), <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>.

<sup>9</sup> Teresa Kroeger & Katie Gould, *Straight out of college, women make \$4 less per hour than men—and the gap is getting wider*, Economic Policy Institute (Apr. 26, 2016), <http://www.epi.org/publication/straight-outof-college-women-make-4-less-per-hour-than-men-and-the-gap-is-getting-wider/>.

<sup>10</sup> James, *supra* note 1, at 2.

<sup>11</sup> Institute for Women's Policy Research, *Women's Median Earnings as a Percent of Men's Median Earnings, 1960–2014 (Full-time, Year-round Workers) with Projection for Pay Equity in 2059*, at 1 (2015), <http://www.iwpr.org/publications/pubs/equal-pay-projection-2059>.

compounding the pay penalties women already face off for taking time off.<sup>12</sup> The best way to curb this intrusive and uncomfortable practice, which perpetuates inequality, is to pass legislation prohibiting an employer from asking about salary history.

### **The Proposed New York City Salary History Ban Would Help Close the Gender Wage Gap.**

This bill—which will prohibit employers from asking applicants about previous compensation and benefits or searching records to find an applicant’s previous salary, would be the third of its kind, following a similar law recently passed in Massachusetts and a bill passed by the Philadelphia City Council last week.<sup>13</sup> It would also go hand in hand with the Executive Order Mayor Bill de Blasio signed into law in November of this year prohibiting the city government from asking job applicants about their previous earnings.<sup>14</sup> This law, combined with the Mayor’s Executive Order, would ensure that almost all New York City workers, both private and public, may not be asked about their salary history. Moreover, not only will it help further wage equality in New York City but it will also serve as an important model for other cities in New York State and throughout the United States.

To further the goal of passing a nation-leading bill, we suggest adding stronger language about when and how prospective employees can voluntarily choose to share

---

<sup>12</sup> James, *supra* note 1, at 4.

<sup>13</sup> S. 2119, 189th Gen. Ct., Reg. Sess. (Mass. 2016), <https://malegislature.gov/Bills/189/Senate/S2119>; Tricia L. Nadolny, *Your salary will soon be your secret in Philadelphia*, *The Philadelphia Inquirer* (Dec. 9, 2016), [http://www.philly.com/philly/news/politics/20161209\\_Your\\_salary\\_will\\_soon\\_be\\_your\\_secret\\_in\\_Philadelphia.html](http://www.philly.com/philly/news/politics/20161209_Your_salary_will_soon_be_your_secret_in_Philadelphia.html).

<sup>14</sup> N.Y.C. Office of the Mayor, *Mayor de Blasio Signs Executive Order Banning City Agencies from Inquiring About Salary History of Job Applicants* (Nov. 4, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/863-16/mayor-de-blasio-signs-executive-order-banning-city-agencies-inquiring-salary-history-of>.

wage information. The Massachusetts law, Philadelphia bill, and the New York City Executive Order may provide models of how to do this.

New York City can and should be a leader in closing the pay gap and creating work environments where all people can equally flourish in the workplace. This bill is an important step towards achieving that end and we urge the Council to pass it into law.

Thank you.

The New York City Council  
Committee on Civil Rights  
City Hall  
250 Broadway  
New York City, New York 10007  
Attn. Committee Chair Darlene Mealy

December 7, 2016

Int. No. 1253

Dear Chairperson Mealy:

LatinoJustice PRLDEF respectfully submits this letter in support of the recently proposed bill prohibiting employers from inquiring about a prospective employee's salary history.

LatinoJustice PRLDEF is a national, not-for-profit, nonpartisan legal defense fund that seeks to protect and advance the civil and constitutional rights of the greater *pan-Latino* community in the United States and Puerto Rico. Since its founding in 1972 as the Puerto Rican Legal Defense Fund, the organization has advanced equality under the law and particularly sought to improve how Latinos are treated in American society by promoting civic engagement and fighting for equal rights and equal opportunity in the workforce.

LatinoJustice fervently believes all women, including Latinas, are deserving of equal pay. While white women in New York State earn \$.89 on the dollar to white men, Latinas make just \$.56 on the dollar.<sup>1</sup> Nationally, Latinas are only making 58% of what their white male counterparts make.<sup>2</sup> Women generally make less than men at every education level and in almost every field.<sup>3</sup> For Black women and Latinas, their disadvantage as women of color is further compounded.

The wage gap doesn't just have negative implications for women, but for the economy as a whole.<sup>4</sup> 64% of black families in New York State are single parent households, while for Latinos, 53% are single-

---

<sup>1</sup> *New York*, NATIONAL WOMEN'S LAW CENTER (last visited Nov. 1, 2016, 1:22 PM), <https://nwlc.org/state/new-york/>.

<sup>2</sup> Eileen Patten, *Racial, gender wage gaps persist in U.S. despite some progress*, PEW RESEARCH CENTER (Jul. 1, 2016), <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>.

<sup>3</sup> Catherine Pearson, *America's Pay Gap Could Cost Black Women More Than \$1 Million*, THE HUFFINGTON POST (Aug. 23, 2016 10:15 AM), <https://goo.gl/VD60T2>.

<sup>4</sup> Laura Bassett, *Closing The Gender Wage Gap Would Create 'Huge' Economic Stimulus, Economists Say*, THE HUFFINGTON POST (Oct. 24, 2012, 9:21 AM), [http://www.huffingtonpost.com/2012/10/24/gender-wage-gap-economic-stimulus\\_n\\_2007588.html](http://www.huffingtonpost.com/2012/10/24/gender-wage-gap-economic-stimulus_n_2007588.html).

LatinoJustice PRLDEF  
99 Hudson Street, 14th floor  
New York, NY 10013-2815  
Tel: 212.219.3360  
Fax: 212.431.4276  
800.328.2322

Southeast Regional Office  
523 West Colonial Drive | Orlando, FL 32804  
Tel: 321.418.6354

parent.<sup>5</sup> Nearly three million family households are headed by Latinas in the United States.<sup>6</sup> Equal Pay Day was created as a yearly reminder, that for every year a man works, women have to work an additional number of months in order to make the same salary. This year, National Equal Pay Day occurred on April 12<sup>th</sup>, while Latina Equal Pay Day however fell on November 1<sup>st</sup>. Just as generally women have to work four and a half months to reach the same pay as a white man, Latinas on average have to work an additional 10 months to make the same yearly salary.<sup>7</sup> If that gap were to close and women were to be paid the difference, economist Heidi Hartmann, president of the Institute for Women's Policy Research estimates that the stimulus effect would grow the U.S. economy by at least three to four percentage points.<sup>8</sup> Similarly, approximately 80% of welfare recipients are women, which means that closing the wage gap would allow a larger number of women to stop relying on government assistance and add to the economic boost that higher wages are known to foster.<sup>9</sup>

Int. No1253 in barring previous salary from consideration by prospective employers will particularly help all people of color close the wage gap. Traditionally, black and Latino households make substantially less than white households.<sup>10</sup> Black and Latino men make just 73% and 69% of a white man's hourly wage respectively.<sup>11</sup> The wage gap between white men and men of color has persisted over the last 35 years because hourly wages have remained stagnant except for cost of living increases, while the wage gap for all women regardless of race has only closed slightly due to legislative efforts to prevent gender discrimination in the workplace.<sup>12</sup>

It is imperative that New York City follow in Massachusetts' footsteps and pass an equal pay bill that will aim to ensure that prior salary will not be a factor used against a job applicant. The Massachusetts statute that will go into effect in January 2018 prohibits employers from asking about an applicant's prior salary and using the information about prior salary as a factor to screen applicants.<sup>13</sup> Additionally, employers must obtain written authorization from the prospective employee to confirm prior salary only after an offer with a salary has been made.<sup>14</sup> The Massachusetts law is the first of its type in the country and an example to all progressive cities and states that wish to proactively take steps to protect their residents from gender and racial pay disparity.<sup>15</sup> The bill will help ensure that the wage gap closes at a much faster rate by providing new legislative protections to women who have previously been victims of discrimination as well as women who have been out of the workforce for an extended period of time.

---

<sup>5</sup> *Children in Single-Parent Families by Race*, KIDS COUNT DATA CENTER, (last visited Nov. 1, 2016, 1:22 PM), <http://datacenter.kidscount.org/data/tables/107-children-in-single-parent-families-by#detailed/2/34/false/869,36,868/10,11,9,12,1,185,13/432,431>.

<sup>6</sup> *Latinas and the Wage Gap*, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES (Dec. 2015), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/latinas-wage-gap.pdf>.

<sup>7</sup> Natalie DiBlasio, 'Happy Equal Pay Day,' said no woman ever, USA TODAY (Apr. 12, 2016 2:18 PM), <http://www.usatoday.com/story/tech/2016/04/12/equal-pay-day-inequality-women-gender/82913078/>

<sup>8</sup> Bassett, *supra* note 4

<sup>9</sup> *Id.*

<sup>10</sup> Patten, *supra* note 2

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Mass. Ann. Laws ch. 149, § 105A(c)(2).

<sup>14</sup> *Id.*

<sup>15</sup> Stacy Cowley, *Illegal in Massachusetts: Asking Your Salary in a Job Interview*, THE NEW YORK TIMES (Aug. 2, 2016), <https://goo.gl/t2eKQe>

Int. No. 1253 is an excellent start for New York City to protect women and people of color from wage discrimination. The bill takes significant steps to ensure that an applicant's prior salary history cannot be requested by the potential employer. The legislation also prohibits a public records search of the applicant's salary history.

However, if the applicant willingly discloses their salary history, the bill does not explicitly prohibit the potential employer from using the disclosure in their consideration. This broad exception is fraught with danger that would conceivably harm the very same low wage workers that the bill seeks to protect. Massachusetts Bill S.2119 allows a prospective employer to only use a voluntary disclosure to confirm a prospective employee's salary *after* a salary offer has been made.<sup>16</sup> Int. No. 1253 should be amended to adopt similar language as well as require a disclosure on all job applications that would inform the applicant that their prior salary history cannot be requested, and that they are legally permitted to withhold such information from the potential employer before an offer of employment is made.

Now that Mayor DeBlasio has prohibited city employers from asking about previous salaries, New York City is ready to take the next positive step towards equal pay with all employers. The proposed legislation ensures that New York City remains at the cusp of progressive change.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jose Perez", with a long horizontal flourish extending to the right.

Jose Perez  
Deputy General Counsel

Natasha Lycia Ora Bannan  
Associate General Counsel  
Latino/as At Work (LAW) Project

Melissa Ramos  
Legal Intern

---

<sup>16</sup> Mass. Ann. Laws ch. 149, § 105A(c)(2).



**Testimony on Int. No. 1253  
Prohibiting employers from inquiring about or relying on  
a prospective employee's salary history**

**New York City Council  
Committee on Civil Rights**

**December 13, 2016**

---

The Partnership for New York City is submitting written testimony to the Committee on Civil Rights to reflect the concerns of employers regarding Int. No. 1253. The Partnership is a nonprofit organization of business leaders dedicated to maintaining the city's position as the pre-eminent global center of commerce, innovation and economic opportunity.

The Partnership opposes Int. No. 1253 as an inappropriate intervention by municipal government into the relationship between private employers and their prospective employees. At the same time, employers are overwhelmingly supportive of the goal of achieving gender pay equity in the workplace. New York's employers are competing intensely for talent and skills, regardless of gender. They appreciate the value of a diverse workforce. They support the advancement of women through mentor opportunities, affinity groups and a variety of educational programs.

The basis for determining compensation typically involves a combination of job responsibilities, applicant qualifications and market conditions. During the hiring process, an employer seeks to match a prospective employee's skills, experience and compensation expectations with company and industry standards. Understanding an applicant's salary history early in the hiring process is critical to an efficient and fair recruiting and hiring process. It also helps employers direct applicants to appropriate positions and decreases the chances of a mismatch in expectations. If salary history is not disclosed, it will increase result in a longer, more expensive and less precise hiring process that benefits no one.

Information about salary history also contributes to employer understanding of the labor market and develop appropriate compensation packages for new employees. Employers require data on salaries in their markets to make competitive offers, ensuring they can attract the best talent. Often this data is developed through the hiring process. In addition, many employers want to ensure that new employees or those being promoted are offered some incremental premium over their previous salary, which requires disclosure. This is further complicated when dealing with job candidates whose previous compensation packages exceeded market rates and for highly specialized candidates for whom employers cannot easily find market reference points.

Employers also may want to verify applicants' claims about their prior salaries or other compensation as the basis of new compensation packages. Two common cases illustrate the problem that would be caused by Int. No. 1253's prohibition on employer's requesting or relying on salary history:

- For a position that pays commission, an employer will want to make an offer based on a calculation of the revenue an applicant will produce. It is in the interest of both the employer and the applicant to be able to verify claims about previous success and to understand the potential portfolio of clients and revenue an applicant would be able to bring with them to the new employer.
- Where an applicant must give up accumulated stock interests when leaving a company, a new employer will be expected to compensate the applicant for that loss. The new employer needs to be able to ask the applicant about the value of those stock interests, including as a percentage of the total compensation, and rely on that information to determine the new compensation package to offer.

Finally, it is important to note that many of the city's largest employers operate on a national, if not global, scale and addition of locally imposed regulation creates inconsistency across an organization. For example, Massachusetts recently enacted a law concerning salary history that is very similar to, but not the same as, Int. No. 1253. The Massachusetts law allows an employer to confirm an applicant's salary history after an offer of employment has been made, whereas the city's bill would prohibit asking about or relying on salary information at "any stage of the employment process." The existence of different laws in different jurisdictions will add to the burden of compliance for private employers.

New York City employers are increasingly frustrated by local government's interference in their relationships with their employees when it comes to hiring, compensation and other workplace decisions. Employers see no recognition on the part of local government of the challenges and costs of compliance with dozens of new laws and regulations. The Partnership urges the City Council not to add to this burden by moving forward with this legislation.

Thank you.

**Testimony before the NYC Council Committee on Civil Rights**  
**In support of Intro 1253**  
**December 13, 2016**  
**Submitted by Miriam Altman, CEO & Co-Founder of Kinvoled**

Kinvoled is building a movement that elevates student attendance, one of our youth's most critical Civil Rights. By supporting districts, schools, and nonprofits in creating a community that is inclusive of students, parents, and families of varied backgrounds, research proves that more students attend school.

Kinvoled's mobile and web app, Kinvo, enables K-12 school staff and families to engage through real-time, translated, text messaging. Through open communication and access to simple attendance data, communities work together to ensure students attend school everyday.

As a female CEO and Co-founder of a women-owned, growing business, my cofounder, Alexandra Meis, and I have experienced inequities that many other women also face leaders and small business owners also face.

These inequities are represented in a number of facets of our daily work responsibilities and interactions. However, here, I'll focus on fundraising, an important responsibility of most startup CEOs.

In my role, one of my responsibilities is to ensure that the company has the capital it needs as a start up to test our model and grow our customer base. While we are a proud revenue-generating business, we, like many other start up businesses in tech, have needed to raise financing upfront to develop our product, KiNVO. Fundraising has been one of my greatest professional challenges.

Here are some numbers that might suggest why my experience is not unique among female founders:

Today's venture capital environment clocks some 305 active funds over \$100 million. These funds collectively put \$114 billion to work. Ninety percent of it never sees a female founder. ([inc.com](http://inc.com))

Ninety-four percent of decision makers at venture capital funds are male. ([inc.com](http://inc.com))

Companies with female founders on the team are 63% more likely to be successful than all male teams. ([Forbes.com](http://Forbes.com))

My company has raised about \$1.5M in funding over four years, which pales in comparison to the multimillion dollar rounds of financing that some of my white, male peers founding CEOs have raised. While some of the male-led companies have never earned a dime in revenues, and some have yet to even launch products or prove themselves in the market, Kinvoled has been generating revenues for three years, and has shown more than 50% growth in users and revenues

each year since 2014. We have decided to take the path of raising less money and pushing revenue generation, a path I believe is the smartest for us. However, I have also been pushed down this path because it has been so incredibly challenging to raise financing.

While we've bootstrapped along in the early years, my co-founder and I have taken a major salary hit compared with many male leaders of our peer companies. In the past, we've had to justify paying ourselves a minimal salary. Now, we've taken matters into our own hands, working tirelessly to grow the business so we can determine our own salaries and those of our team members.

As business owners, we are privileged to have the power to fight every day for our wages and to be able to pay ourselves based on the merits of our business and our hard work. However, we know that inequities for women in the workforce span from leadership to entry level roles, from small startups to large corporations.

The fact that New York City is a leading offender of pay inequity is unacceptable. Women need legislation that breaks the cycle of inequity because this change won't happen organically.

Intro 1253 is a necessary piece of legislation that gives our city the opportunity to instead be a leading proponent of equal pay for all, regardless of gender or race.

Fair pay for equal work means not just a stronger social fabric, but also a more robust economy for us all.

My co-founder and I strongly support this legislation, and we commend the efforts of the Public Advocate, Ms. James, in her efforts to fight these injustices for women.

## **MIRIAM ALTMAN**

CEO & Co-Founder



25 Broadway, New York, NY 10004

Phone: [+646.719.0553](tel:+646.719.0553)

[www.kinvolved.com](http://www.kinvolved.com)



---

Learn more about Kinolved in  
**The New York Times**

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Zoey Chenitz

Address: 114 Park Pl. Brooklyn

I represent: Commission on Human Rights

Address: 22 Reade St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1250 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Madame Jean

Address: 69 31st Bronx 10452

I represent: Prig Bank

Address: Seneca

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/13/2016

(PLEASE PRINT)

Name: SARAH ZOLT-GILBURNE

Address: 39-51 46th St. SUNNYSIDE, NY 11104

I represent: Arushana

Address: 675 Third AVE NEW YORK, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Shannon McPhee

Address: 675 Third Avenue, 32nd Fl - 100v

I represent: Chashama

Address: same as above

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/13/10

(PLEASE PRINT)

Name: KRISTINE WALLACE

Address: 200 Monitor St Brooklyn NY

I represent: Ellevate Network

Address: 48 West 25th Street NYC

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/13/10

(PLEASE PRINT)

Name: MARGARET MCINTYRE - NEA/NY

Address: 299 BROADWAY, SUITE 1310

I represent: NEA/NY

Address: 39 BROADWAY, STE 2420 NYC 10006

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: December 13, 2016

(PLEASE PRINT)

Name: Kate Nielson

Address: 1310 L St NW, Suite 1000, Washington, DC

I represent: American Association of University Women

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/13/16

(PLEASE PRINT)

Name: Brittany Saunders

Address: \_\_\_\_\_

I represent: City Commission on Human Rights

Address: 22 Reade Street

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/13/16

(PLEASE PRINT)

Name: BARBARLY NAWFELD

Address: 370 LEXINGTON NYC

I represent: POWHER NY

Address: SAME

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12-13-16

(PLEASE PRINT)

Name: Jacqueline M. Ebanks

Address: 3040 Fly Avenue, Bronx, NY 10469

I represent: Women's City Club of N.Y.

Address: 110 West 40th Street, NY, NY 10018

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1253 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Sarah Brafman

Address: 511 9th St Apt 2, Brooklyn NY 11215

I represent: A Better Balance

Address: 80 Maiden Lane, NY, NY 10038

Please complete this card and return to the Sergeant-at-Arms