

### Testimony: New York City Council Committee on Civil and Human Rights April 23, 2018 at 1:00pm

Good afternoon members of the Committee on Civil and Human Rights, I am Charise Terry, Executive Director of the New York City Equal Employment Practices Commission (EEPC). This Commission, represented by Commissioner Malini Daniel, appears before you today to present testimony on Introduction No. 0755-2018, which would require the EEPC to analyze and report annually on whether agencies are meeting their racial and ethnic affirmative employment goals and, when not, identify the underutilized or adversely impacted groups and provide recommendations on corrective action. It would also require the EEPC to report aggregate, citywide data and provide recommendations to improve diversity in recruitment, selection, retention and promotion of City government employees for five years.

The EEPC is an independent, non-mayoral City agency empowered to monitor and evaluate City agencies to ensure that they maintain effective equal employment opportunity (EEO) for employees and applicants from protected groups. Chapter 36, Section 831(d)(5) of the New York City Charter empowers the EEPC to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunities for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any agency plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action, and monitor the implementation of the corrective action it prescribes.

Agencies which fall under the EEPC's jurisdiction are those which are funded, in whole or in part, by the City treasury; where the majority of the board members are appointed by the Mayor; or where the majority of the board members serve by virtue of being city officers. There are approximately 140 such agencies which consist of the office of the mayor and mayoral agencies, the city council, borough presidents, district attorneys, community colleges, public administrators, and community boards. The City Charter assigns to the EEPC powers and duties which include, but are not limited to, requesting and receiving information and assistance as may be necessary to carry out its provisions, and reviewing and providing suggestions on the uniform standards, procedures and programs of DCAS and city agencies.

The EEPC addresses its mandate, and the requirements of Introduction 0755-2018 through its audits. The EEPC's Employment Practices Audit (EPA), which specifically relates to the proposed legislation, was conducted during 2016 and 2017. The EPA requires agencies to analyze their workforce statistics to determine whether there is underutilization, assess their selection processes to determine whether job qualifications and criteria are job-related and required by business necessity, and develop prospective recruitment and selection strategies that increase employment opportunities in job groups where underutilization is present.

The EPA's methodology includes the collection and analysis of documents, records and data that an agency provides in response to the *EEPC Document and Information Request*; the review of the *Diversity and EEO Plan* and *Quarterly Diversity and EEO Report* for each mayoral agency and similar reports for non-mayoral agencies; and the analysis of utilization data from the *Citywide Equal Employment Database System* (CEEDS), which is provided to the EEPC quarterly by DCAS.

The EEPC's Analysts use the CEEDS data to ascertain the concentrations of race/gender groups within an agency's workforce, as well as underutilization. Where underutilization is revealed, the EEPC's Analysts assess whether an agency has undertaken measures to address it. As part of an audit, the EEPC issues a Preliminary Determination Letter which includes an evaluation of the agency's efforts, requires corrective action, if necessary, and attaches a CEEDS report for reference. In 2016, the EEPC initiated the automation, collection and tracking of agencies' responses during the compliancemonitoring phase of their audits via the use of TeamMate -- an audit management software program. At the end of a four-year cycle, all agencies under the EEPC's jurisdiction would have uploaded their responses using TeamMate, which would facilitate an appropriate comparison.

The EEPC's Board of Commissioners adopts a Resolution whenever a Determination is issued, and again when an agency completes the charter-mandated compliance-monitoring period. Currently, the EEPC's Resolutions, which indicate the corrective actions each agency has received and implemented, are available via the EEPC's Annual Reports, the EEPC's website, the New York City Municipal Archives and Library, and by direct request from the EEPC's office through a Freedom of Information Law (FOIL) request. In addition, the EEPC provides underlying audit documents to the Department of Records and Information Systems for the New York City Municipal Archives and Library and directly in response to EOIL requests.

In short, the EEPC evaluates, monitors, and publishes workforce diversity efforts through its audits. Accordingly, under our current mandate the EEPC performs a substantial portion of what the legislation proposes. Since a separate report, as required by Intro 0755-2018, may create redundancy, the EEPC is open to meeting with the Council and continuing a dialogue on how we may refine our approaches to making our information more accessible.



Lisette Camilo Commissioner

City Council Hearing Committee on Civil Service and Labor Committee on Civil and Human Rights April 23, 2018

Good afternoon Chair Miller, Chair Eugene and members of the City Council Committees on Civil Service and Labor and Civil and Human Rights. I am Dawn Pinnock, and I proudly serve as Executive Deputy Commissioner for the Department of Citywide Administrative Services (DCAS). I am joined today by Sanford Cohen, our Deputy General Counsel. I am pleased to be here today to inform you of DCAS's commitment to improving fairness and equity across the City and to testify about Intros. 752, 755, 756, and 633.

In October of 1987, the City's Department of Personnel (now known as DCAS), established the Bureau of Citywide Equal Employment Opportunity. In 2012, reflecting an expansion of its mission, this bureau became known as the Office of Citywide Diversity and Equal Employment Opportunity (CDEEO) within DCAS. To broaden the reach of the Citywide Office of Diversity and EEO, in March 2018, DCAS merged this office within the Human Capital line of service, renaming it the Office of Citywide Equity and Inclusion (CEI). This merger will improve service delivery, increase compliance with EEO and civil service policies, and increase access to employment and promotion opportunities.

Our primary mission is to ensure that the City's Equal Employment Opportunity (EEO) Policy and EEO related responsibilities under the New York City Charter are followed both in letter and spirit.

CEI provides guidance to agencies on EEO policy, and procedure, applicable law changes, and other EEO-related issues. Toward that end, in addition to providing EEO officers across the City basic training, CEI hosts monthly best-practices meetings to share information and to discuss such topics as proposed legislation, complaint trends, D&I best practices and trends, upcoming training programs, and EEO compliance. Through DCAS' EEO and Diversity

Website, CEI also provides agencies with 24-hour access to standardized procedures, templates, and other resources.

To implement City Charter mandates, the EEO Policy requires agencies to develop annual Diversity and EEO Plans that address recruitment, selection, promotion, complaint handling, training, and activities to prevent employment discrimination. Agencies develop the plans under the guidance of CEI, and they are subject to CEI's review and approval. Agency progress implementing the annual plan is captured in quarterly reports submitted to DCAS, the Mayor, and the Council. Agency Heads are also required to issue an annual EEO and Diversity statement to memorialize their commitment to equitable, fair and inclusive employment and recruitment practices.

Inclusive recruitment and outreach are key to promoting equal employment opportunity. To increase access to municipal employment opportunities, DCAS established the Office of Citywide Recruitment (OCR) in 2015. The Office seeks to generate a pipeline for applicants with the education and experience needed to sustain operations across the City workforce. OCR shares information with historically underserved communities, such as veterans, people with disabilities, the unemployed, and the LGBTQ community, in order to foster greater diversity. Using workforce data, OCR reviews gender distribution, ethnic composition and attrition rates of the workforce to focus its recruitment efforts. Since its establishment, OCR has participated in 360 job fairs and conducted 300 "Civil Service 101" sessions – a training program developed by the OCR team to simplify the civil service process and highlight the benefits of working for the City. Through the job fairs and trainings, OCR has reached over 32,000 job seekers. I am proud that the recruitment team has either participated in a job fair or conducted training in all 51 Councilmanic districts, and have participated in 14 events sponsored by the Council.

These efforts have been complemented by other diversity events supported by the de Blasio administration including the City's first nationwide Diversity and Inclusion Colloquium in October 2016, which drew 150 participants from 67 agencies across 12 municipalities, a citywide job fair in November 2016; the City's first Diversity Job Fair held in partnership with the Mayor's Office for People with Disabilities in November of 2017; the City's first symposium for HR and EEO professionals, which focused on disability etiquette and the 55-a program - a program aimed at providing employment opportunities for individuals with certified disabilities

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in April 2018. We've also engaged CUNY as a partner to increase the diversity of the City's entry-level pipeline.

We are looking forward to working with the Council on Intro 752 on ways in which to build upon the important work performed by this office. We do have concerns about the proposed mandate to set and enforce numerical benchmarks to achieve representation in the workforce proportionate to the characteristics of city residents. The mandate must take into account both the Civil Service Law, which requires appointment pursuant to competitive examination for approximately 90% of the City's workforce, and the requirements imposed by the United States Constitution and federal anti-discrimination statutes for implementing race- and gender-based employment practices.

Workforce demographic data is maintained in the Citywide Equal Employment Database System (CEEDS). CEEDS collects demographic information during the application, onboarding, and employee background investigation processes. These data points are used in compliance reports, the annual Workforce Profile Report, and in ad hoc reports.

CEEDS data is used to prepare federally mandated bi-annual EEO-4 reports, which profile the workforce by gender and ethnicity, salary ranges, job category and agency function. The City's latest report submitted in 2017, shows– among other things – that the share of minority and women officials and administrators increased from approximately 45% in 2007 to 55% in 2017. The next report is due in 2019.

DCAS also provides agencies with quarterly charter-mandated reports that focus on characteristics of the workforce by agency, including job group, civil service title, race/ethnicity and gender, civil service status, pay class (fulltime or part time), new hires, promotions, separations, and utilization, which compares the representation of the incumbent workforce to the available workforce in the labor market, helping to identify overutilization (or overrepresentation) and underutilization (or underrepresentation) of demographic groups within agencies and job groups. In 2015, CEI implemented quarterly interactive workforce diversity dashboards for agencies. The dashboard summarizes the data found in the quarterly charter-mandated reports in an interactive graphic format that makes it easier to communicate key indicators to agency and management leadership.

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With the various reports produced by the office, we are confident that we can work with the Council to ensure that the information required in Intro 755 can improve and build upon our existing work.

#### <u>Training</u>

CEI develops and delivers standardized EEO, diversity, and inclusion training. These courses are consistent with best practices and guidance provided by civil rights enforcement agencies, like the United States Equal Employment Opportunity Commission (EEOC), NYS Division of Human Rights, and the NYC Commission on Human Rights. EEO, diversity, and inclusion trainings are offered year-round and are accessible to all City employees.

CEI provides EEO and diversity training to Agency EEO and Diversity professionals citywide. It provides new EEO Officers an introductory training within two weeks of being on-boarded. It holds a five day "boot camp" training for EEO Officers twice a year.

We also offer more specialized trainings in the following areas: Mentoring, Religion in the Workplace, MicroTriggers, LGBTQ inclusion, Understanding Unconscious Bias, Disability Etiquette, Structured Interviewing and Everybody Matters, which serves as the City's foundational diversity and inclusion training.

We were pleased that Intros 752, 755, and 756 complement so much of the existing work performed by the Office of Citywide Equity and Inclusion and look forward to collaboration with the Council.

#### Intro – Pay Equity

Now that we've discussed in detail the important work that CEI does, I would like to briefly highlight our efforts to ensure fair and equitable compensation across the City. As you are aware, DCAS is also responsible for administering the City's civil service system. For all competitive titles, hiring and promotions are based on merit and fitness as determined by competitive examination, and many of our titles come with pre-determined salaries based on collective bargaining agreements. In certain situations, however, there may be discretion to set a salary within a prescribed salary band. Managers and original jurisdiction employees, approximately 7% of the City's workforce, fall within this category.

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To establish a level playing field for employees serving in titles with limited discretion with respect to salary, Mayor de Blasio issued Executive Order 21 in 2016. This Order removes the reliance of pay history in the calculation of salary offers to applicants, and prohibits hiring managers from inquiring about a candidate's salary history before making a conditional offer of employment. As a result of Executive Order 21, City agencies must assign value to a position based on education, experience and level of technical expertise, rather than a candidate's previous salary history.

Achieving pay equity is an extremely important concern shared by the City Council and this Administration. We support the spirit of Intro 633 to increase the availability of data concerning how the City pays its employees in various job categories by race, ethnicity, and gender groups consistent with the privacy concerns of employees who voluntarily provide demographic information based on the City's commitment that an individual's information will be held in strict confidence. We are also mindful that disclosure of demographic information at the individual level threatens to degrade the accuracy of the data. DCAS has and will continue to work in collaboration with the Council to refine bills where appropriate. Our previous response to Intro 633 (formerly Intro 1536) is evidence of our willingness to find a balance between increased transparency, protecting the privacy of our employees, and avoiding the degradation of the data we collect.

I thank you for the opportunity to highlight the work performed by DCAS' Citywide Equity and Inclusion team with respect to EEO, equity, and inclusion. We look forward to the Council's continued partnership and will gladly answer any questions.

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## The Uniformed EMT's, Paramedics and Inspectors – F.D.N.Y.

Local 2507, District Council 37, AFSCME, AFL-CIO 150-39 14th Avenue, 2nd Floor Whitestone, New York 11357 (718) 371-0310 Fax: (718) 371-0318



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Jennifer Aguiluz John Chiarovano Carl Gandolfo Sammy Gounden Lauren Hartnett Patricia Tanis Dear Chairs Miller and Eugene, and City Councilmembers:

My name is Oren Barzilay, President of Local 2507. Thank you for allowing me to speak today with regards to the need for trasnparency and access to data necessary to ensure our members are protected from discriminatory pay practices.



Carlos a

Our Emergency Medical Servicemembers are predmonitaley of color and include a large precentage of women. Our Fire Inspectors are overwhelmingly of color. They are the ones responsible for inspecting buildings to allow firefighters to do their job. Yet our members also earn almost half what their counterparts on the fire side of FDNY receive.

We applaud this Council's efforts to pass Intro 633. This is much needed legislation and wil go a long way in ensuring the City comply with its obligations to provide data needed to analyze and end discriminatory pay practices.

In particular, I want to emphasize that we need disaggregated data rather then aggregated averages or buckets. Providing simply what some refer to as a City level EEO-4 would mask the problem and does not offer the data in the form that statistical experts need to run the necessary regression analysis to identify when there is pay disparity.

There is no harm to releasing the race and gender of our members. The harm comes in continuing to shroud and keep in the darkness inequity in pay in the City of New York.

Passing this law is critically important, because while it is already the City's responsibility to turn this data over, the City simply will not do so, unless and until it is forced to. Currently right now, as I testify before you, our legal team is in Court, because despite its obligation to do so, the City will not give us records with regards to the race and gender of our members. I know we are not the first union to have to sue to get this information. And I know unions like Local 1180 have been successful. But needing to sue incurs costs, causes delays and creates unecessary adversary between the City and the unions when we should be working together in the shared interest of ending discrimination in the City's workforce.



### UNITED PROBATION OFFICERS ASSOCIATION

118-35 Queens Blvd. Suite 1210 Forest Hills, NY 11375 (212) 274-9950

Dear Chairs Miller and Eugene, Councilmembers:

Thank you for giving me the opportunity to speak in support of Intro 633. My name is Dalvanie K. Powell, President of the United Probation Officers Association. I represent more than 700 Probation Officers and Supervising Probation Officers employed by the NYC Department of Probation and more than 400 retirees of NYC Probation.

We are predominately female and predominately of color. Our members have suffered a severe and chronic suppression of our salaries, we face unrealistic and unfair barriers to promotion and pay increases, and we are undervalued compared to others who serve in law enforcement.

We are entitled to, and need, the data the City refuses to turn over to us with regards to the race and gender of our members, to better understand the problems with pay disparity our members face, so that we can solve the problem.

There is a unity of interest in ending pay disparity, and knowledge is power. Providing this data is the first step in understanding and ending pay disparity in the City of New York.

Some have pushed back claiming that disclosing the race and gender of individuals is an invasion of privacy. But this is just an excuse.

First, all of us, as public employees we already have a lowered expectation of privacy. Our name, position, title, salary and even location of where we work is published on a website for the general public.

So I ask you, how is releasing my gender and race more private? And who here does not know my race and gender?

Of course privacy is important, but it cannot be used as an excuse to avoid an equally important right of all New York City employees which is to work in an environment free of discrimination, and to be paid fairly for the work they do.

I thank the City Council for holding this hearing and hope you will work quickly to pass Intro 633 to ensure the City provides disaggregated data that includes employees' race and gender in addition to the information already provided.

As public employees we give this information to the City voluntarily and with the understanding that it will be used for this purpose. This bill will ensure the City do what it is required to, and help take a step towards full pay equity.



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#### UNIFORMED EMERGENCY MEDICAL SERVICE OFFICERS UNION

Local 3621, DC 37, FDNY, AFSCME, NYSPEC, AFL-CIO

This is the testimony of Vincent Variale before the New York City Council April 23, 2018.

Good afternoon, Chairman and distinguished members of the New York City Council:

My name is Vincent Variale and I am President of Local 3621, The Uniformed EMS Officers Union representing over 500 EMS Lieutenants and Captains of the New York City Fire Department.

Thank you for giving me a chance to speak in support of Intro 633 which would amend the administrative code to ensure disclosure of necessary data to ensure pay equity. I appreciate the actions taken by the City Council advancing legislation to ensure the City provides disaggregated data of race and gender along with pay information to help address pay inequity in the City workforce.

Just to put in perspective how reasonable it is that this information be turned over, I want to explain. When every employee starts working at the City of New York, they fill out a form. One of the pages asks if you would like to voluntarily disclose your race and gender in an EEO section. It is also disclosed that while this will be keep confidential within the agency, it will be disclosed in accordance with the law, such as a request for this data under FOIL. So, this is optional information, voluntarily given which it is expressly disclosed to employees will be turned over to others in accordance with the law. Yet the City claims that giving this information to us, so that our statisticians can perform a regression analysis to determine where discrimination is happening among our ranks would be violating those employees' privacy.

In fact, today, we have to appear in New York State Court in an Article 78 that we had to bring to force the City to turn this data over, despite the fact that other Unions have already won decisions in State Court such as the Communication Workers of America Local 1180 who just a little over a year ago had to file their own suit, which they won, forcing the City to turn this information over.

Many don't have the time or resources to bring affirmative litigation just to force the City to turn over what is already its obligations to turn over. Nor should members have to suffer under discriminatory work conditions while the City drags its heals and ignores the law. I hope this legislation will have the teeth in it necessary to ensure the City turns over this data, in a disaggregated way so that it can be properly used by statisticians. Providing this information in buckets or in averages can't be used to properly determine if there is pay disparity. Thank you.

Respectfully Submitte Vincent Varial

# Testimony of Gloria Middleton, President New York Administrative Employees Local 1180

# Communications Workers of America, AFL-CIO



New York City Council Joint Committee Hearing on Intro. 633 April 23, 2018 Good afternoon Chair Miller, Chair Eugene, and to all the members of these two great committees. My name is Gloria Middleton, President of the Communications Workers of America, Local 1180. I am here to speak on Intro 633, a Local Law to amend the administrative code of the City of New York regarding the reporting of pay and employment equity data. I emphasize the word **Equity**, as that is what I am here to talk about this afternoon. Equity for all New York City workers, especially for women and minorities.

My Local consists of 8,600 active members and 6,200 retirees, of which 80% are women and people of color. I speak today for all of my members who believe in an even playing field where they work providing public services to all New Yorkers. They ask for nothing more than to advance their careers through an equitable competitive civil service system where they can use their experience, skills, and knowledge ... a system in practice and not just theory ... that offers all workers equal opportunity based on what they know, not their gender or race. We are reminded every day by the me too, black lives matter, and times up movements that despite the passage of the civil rights and equal pay acts as the law of the land more than a half century ago, the legacy of racism and misogyny lingers in American culture and the City of New York. These movements are an echo of the words of our first African American woman to be a member of Congress, Shirley Chisolm, who said.

"Racism is so universal in this country, so widespread, and deep-seated, that it is invisible because it is so **normal**."

And in 1969 she said this about sexism,

"Prejudice against women is still acceptable. There is very little understanding yet of the immorality involved in double pay scales and the classification of most of the better jobs as 'for men only."

Unfortunately, for the last 4 years the progressive government of the City of New York has yet to analyze and correct what has for too long been accepted as normal by defending – and thereby perpetuating – unlawful and immoral discrimination in its own personnel practices and policies. The city has been paying women and minorities less than whites and men doing comparable work.

**Time is up.** This legislation confirms that this progressive City Council does not fear conducting an analysis of the discrimination that will lead to corrective action to end this lawlessness by the City government itself. Detractors, despite **claiming** to support a progressive city government, are using the excuse that the liability and potential cost to the taxpayer may be too burdensome. Therefore, they claim, it would be easier to have the City continue violating the law. Again, even after 50 years the wisdom of Shirley Chisholm sums it up well:

"When morality comes up against profit, it is seldom profit that loses."

In December 2013, Local 1180 filed charges with the federal EEOC against the Bloomberg Administration, claiming the suppression of wages for Administrative Managers we were certified to represent a few years earlier by the Office of Collective Bargaining. These Administrative Managers had been in the City's Managerial Pay Plan before they had Local 1180 as their union and it appeared that the minimum salaries had been suppressed once women and people of color started being placed in the title. When they were in the Managerial Pay Plan, they didn't have a union representing them. The minimum wage was suppressed while the maximum wage for the title increased. We also noticed that women of color were at the minimum while men and whites generally tended to be at the maximum. The salary range started at \$53,000 per annum and went to more than \$150,000.

The City's Office of Labor Relations refused to negotiation with us to establish a new salary range for Administrative Managers. We filed, and won, a number of improper labor practices charges against the Bloomberg Administration. After more than a year of negotiations, mediation, and finally binding arbitration, the Arbitrator agreed that the salary had been suppressed and awarded an increase in the minimum salary to \$63,949 for Administrative Managers, but made no determination regarding the issue of discrimination against women and people of color.

While the City was engaging in improper labor practices in negotiations, they were also stonewalling by not providing Local 1180 with the data we needed to confirm our suspicions about discrimination or to show us that our claims were unfounded.

We expected the Bloomberg Administration's strong resistance to our request for data as we continued with the charges at the federal EEOC. We were surprised, as was the judge, by the City's vigorous opposition from a supposed progressive administration committed to government transparency. When we requested pay and employment equity data, we were inundated with nothing more than rhetoric—but no actual data. Transparency that might lead to accountability on the issue of equal pay for equal work apparently didn't fit into the vision of a new progressive administration.

The City rejected our FOIL request, so we went to court. A New York Supreme Court Judge forced the City to release the EEO data that would allow us to analyze the levels of discrimination agency by agency. In April 2015, the US EEO Commission found in our favor that there was reasonable cause to believe there was widespread discrimination against women and people of color in the title of Administrative Manager throughout all City agencies, including NYCHA.

The EEOC calculated that the disparity over time was worth **MORE THAN \$246 MILLION**. As I said on the steps of City Hall on April 3, 2018, with more than 200 Local 1180 members by my side, we are willing to work with this Administration to fix this problem, but it will take both sides cooperating in order to bring this case to a resolution. We are in settlement talks with the City to make our Administrative Managers whole, and have negotiated a process to ensure the salaries do not become stagnant and inequitable.

This is why we **MUST** amend the administrative code of the City of New York in the reporting of pay and employment equity data. The salary of all City employees **is already** available online. Adding gender and racial data will let us all know whether the City is meeting it's publicly stated goals on pay equity and racial discrimination. The City should lead by example and meet the standards it requires others to follow. It is particularly hypocritical that the City requires similar data reporting from contractors doing business **with** the City and **in** the City, enforces anti-discrimination laws against all employers, yet permits its own City agencies to violate laws.

In some instances, the private sector is doing much better. Corporations who take pay equity and racial discrimination seriously, and not just rhetorically and theoretically, are taking action. There was a report on 60 Minutes last Sunday where a CEO named Marc Benioff of Salesforce, a Corporation with \$10 billion in revenue annually, had an earnest desire to achieve pay equity in his company. He gathered the data and did an audit of his company to see if there was a persistent pay gap between women and men doing the same job. Guess what? The audit consistently showed through all departments that there was a wage and pay gap for women vs men. If a multi-billion dollar corporation is willing to do this to achieve pay equity, then shouldn't the supposed most progressive City in the United States be willing to do the same?

Mayor Bill de Blasio pledged in his first State of the City address of his second term to enact policies to make New York City the "fairest big city in America." So, what's taking so long?

TIME'S UP - use Intro 633 to make that happen.

Last year Mayor de Blasio said that it is QUOTE "unacceptable that we're still fighting for equal pay for equal work. The simple fact is that women and people of color are frequently paid less for the same work as their white, male counterparts."

TIME'S UP - use Intro 633 to make that happen.

As the bill exists now, we must make some changes to achieve the goals in the original proposal:

- 1. Establish a Pay and Equity Commission that shall be under the jurisdiction of the Council's Committee on Governmental Operations
- 2. Provide information as set forth in Intro 633 to the Council, the Public Advocate, and the Mayor on matters of pay equity.

- 3. Review and analyze this list in order to eliminate gaps in pay and job inequities
- 4. Recommend legislative, regulatory, and other changes to agency policies to address issues associated with pay and employment equity

The Public Advocate's report published in March of this year regarding pay inequities in New York City's Mayoral agencies is further proof that we need a change.

Honorable Chairs Miller and Eugene, TIME'S UP.

We need to make this change NOW. Thank you for your time.

# FISCAL POLICY INSTITUTE

#### 212-721-5624

Testimony of Jonas J.N. Shaende, PhD

Before the Committee on Civil Service and Labor Committee on Civil and Human Rights New York City Council

### Hearing on Pay and Employment Equity: Data Reporting, Analysis, and Policy

April 23, 2018

I am pleased to be invited to testify today in connection to the proposed amendments to the administrative code of the city of New York, in relation to reporting and analysis of pay and employment equity data. My name is Jonas Shaende. I am the Senior Budget and Policy Analyst at the Fiscal Policy Institute, a nonpartisan nonprofit think-tank that produces research on New York economic, tax, budget, migration, and other policy issues.

Economic inequality driven by race and gender disparities in hiring and compensation have a long history in the United States and are well studied. Despite some progress made over the past several decades, the deep-seated biases tend to persist. They, in part, lead to the perpetually existing income differentials: in 2016 median household income for Black and Hispanic households was only \$38,555 and \$ 46,882 correspondingly, while median household incomes for White households was \$61,349. Similarly, the poverty rates for Blacks and Hispanics of 22 and 19.4 percent are much higher than the 8.8 percent poverty rate of White households. Research has shown that although part of the differential is attributable to differences in educational achievements, after correcting for education there is still a significant difference in earnings that persists. Women tend to earn less than men in nearly all occupational categories.<sup>1</sup> Some reports project Hispanic women to attain pay equity by year 2233 while Black women get there by 2124.<sup>2</sup>

<sup>2</sup> Institute for Women's Policy Research. Oct. 31, 2016. "If Current Trends Continue, Hispanic Women Will Wait 232 Years for Equal Pay; Black Women Will Wait 108 Years."

https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/Q058\_final.pdf

<sup>&</sup>lt;sup>1</sup> Institute for Women's Policy Research. Apr. 9, 2018. "The Gender Wage Gap by Occupation 2017 and by Race and Ethnicity." <u>https://iwpr.org/wp-content/uploads/2018/04/C467\_2018-Occupational-Wage-Gap.pdf</u>

At the same time, the public perception of the issue, does not match and ignores the data.<sup>3</sup> The inaccurate narratives of social, gender, and racial progress oftentimes lead people to believe that the problems with such disparities have either been solved or that they are solving themselves. This may result in systemic policy blindness.

Appropriately capturing and analyzing relevant data can be expected to correct that. The key is in adopting a modern, scientific, data-driven approach. The emphasis on transparency and data analysis is good for the city. We should expect both the public and policy-makers be better informed as a more accurate and consistent evaluation of the existing practices becomes available. Additionally, it may help provide strategic policy guidance for measures combatting unfair practices of inequitable compensation, favoritism, and discrimination.

Employment in the public sector has historically been a reliable pathway to middle class and social mobility. The city of New York employs many workers who are women and/or ethnic minorities and immigrants. It would serve the city well to strengthen its commitment to the principle of consistent and verifiable fairness when it comes to employment and compensation.

It may be possible that some of the hiring, promotion, and pay decisions are affected by biases unintentionally. This is why pulling the relevant unmanipulated data from different agencies and subjecting it to a rigorous statistical analysis is the best option for identifying and monitoring outliers and problem spots. The work required here is technical and the quality of data is a crucial concern. The set of measures discussed in this session (1. reporting of pay and employment equity data, 2. creating an office of diversity and inclusion within DCAS, 3. requiring the equal employment practices commission to analyze and report annually on citywide racial and ethnic classification underutilization and adverse impact, 4. requiring the department of citywide administrative services to review and report annually on the city's efforts to collect racial and ethnic demographic information) are definitely a step in the right direction. Many New Yorkers who work for the city would be positively impacted by these changes.

Thank you for your attention, and I am happy to answer your questions.

<sup>&</sup>lt;sup>3</sup>Michael W. Kraus, Julian M. Rucker and Jennifer A. Richeson. Sept. 26, 2017. "Americans misperceive racial economic equality." *Proceedings to the National Academy of Sciences*. http://www.pnas.org/content/114/39/10324.full.pdf



#### Testimony Before the Joint Hearing of the New York City Council Committee on Civil Service and Labor and Committee on Civil and Human Rights April 23, 2018 By Beverly Neufeld, President of PowHer New York

I am Beverly Neufeld, President of PowHer New York (PowHerNY), a statewide network of over 100 organizations working together to accelerate economic equality for New York's women. Thank you for the opportunity to testify regarding New York City Council <u>Int 633-2018</u> – a local law to amend the administrative code of the city of New York, in relation to reporting of pay and employment equity data at city agencies; and <u>Int 752-2018</u> – a local law to amend the New York city charter, in relation to creating an office of diversity and inclusion within the department of citywide administrative services.

PowHerNY leads the ongoing, twelve-year Equal Pay Campaign for stronger policies to end gender wage and opportunity discrimination. Legislation is a critical tool to ending wage inequity which is why some of PowHerNY's efforts have been directed to passage of key equalizing laws in New York State including the Women's Equality Act, the Equal Pay Act, Paid Leave law, and pro-choice and anti-violence laws. In New York City, we have similarly worked, most recently in support of the successful salary history ban. That law underscores the impact of passing laws in New York City. Our salary history ban is changing hiring practices here, as well as across the country because large companies, doing business in our city, are adopting the policy for their national workforce.

While we commend the Council and Mayor for their work to date addressing inequity, we are all wellaware that more must be done. The bills being discussed today are important next steps because they address municipal employment and will create a roadmap for other cities as well as the private sector. This is timely and of paramount importance because on the federal level workers' rights are under assault, and the Obama era Executive Orders addressing wage inequality and worker protections are being rescinded. If we are to make any progress on wage parity, the cities and states must take bold action.

Despite laws prohibiting gender wage discrimination in 1964, women continue to earn less than men. Federally, the gender earnings ratio for full-time, year-round workers reported in April 2018 is 80 percent. The gap is even greater for African-American women who earn 63 percent of what white men earn and Hispanic women earn 54 percent of what white men earn. In New York State, the overall disparity is the smallest at 89 percent, but 66 percent for African-American women and 56 percent for Hispanic women. Considering New York's relative success closing the wage gap, we are especially failing these groups because New York has the second largest population of women of color.

Public Advocate James' 2016 report states that New York City women fare even worse, especially African American women who earn 55 cents and Latinas who earn 46 compared to white men. The revenue lost annual is estimated at \$5.9 billion. Also, the report revealed significant wage gaps in the city workforce of 18%. While some problems are due to past wage setting practices, there is no excuse not to ensure that equity in pay exists in the NYC workforce. The only way to ensure that is by reporting

and analyzing data, and then addressing problems. Int. 633 will address that and Int. 752, establishing a Diversity and Inclusion Office, can ensure that there is ongoing, sustained attention to wage inequality, not a temporary, one-shot approach to ending systemic discrimination.

The recent 2018 analysis released by Public Advocate James digs deeper into the challenges of the municipal government. It offers compelling evidence of gender wage and opportunity inequality. One of the many important points I'd like to highlight is the recommendation to include comparable worth analysis "to ensure that jobs traditionally held by women are not undervalued compared to jobs traditionally held by men. This analysis would compare the responsibilities, experience, and education necessary for these jobs and review average salaries as a way to determine whether jobs dominated by women or men are compensated appropriately and equitably."

That kind of analysis would require cross-agency assessment and analysis. Currently, I know of no office that has the mandate and funding to accomplish this important review. Int. 633 and/or int. 753 should take on this function.

Another city document, *Leveling the Paying Field*, a best practices resource guide produced by the Commission on Gender Equity with the help of PowHer New York, offers guidance to the public and private sectors. It recommends all employers "Conduct a Pay Equity Evaluations and Corrections; Increase Transparency in Compensation and Advancement Decisions; and Use Bias-Free Advancement Practices" to name a few. As well it says, "Because there is no one cause of the gender wage gap, employers who want to address the gap must employ a variety of approaches. True pay equity requires a change in culture, in hiring and advancement practices, as well as a willingness to address unconscious bias that may exist throughout the workplace."

The guide highlights that of paramount importance is for the employer, whether in municipal government or the private sector, to make a public commitment to gender equity as a core principle and chart a course to accomplish that goal. The work must be led from the top, reach every level of employment, and be sustained and evaluated over time. That is exactly what today's bills can accomplish.

Int. 633 would institute the kind of transparency, data collection, benchmarking, and problem solving that puts New York City in the company of some of forward thinking U.S. corporations. Most notable, an equal pay audit by Salesforce, a cloud computing company, uncovered pay disparities which they have adjusted, at the cost of \$3 million. But this April they acknowledged "the nature of pay equity—it is a moving target..lt must be consistently monitored and addressed."

Other municipalities are also reviewing wage practices. In California, a 2015 state pay audit of municipal workers uncovered a 20.5 gender wage gap. Alexandria, Virginia's audit found an average gender wage gap of 6%. Boston's city workforce wage analysis showed a gender and racial gap. Seattle started in 2013 with a Gender Equality in Pay Taskforce which made recommendations to remedy wage gaps uncovered by a pay audit. Similarly, Spokane is addressing municipal wage equity.

With the government's obligation to use taxpayer's funds in compliance and furtherance of equal pay laws and to be a model employer, Int. 633 and Int. 752 are important next steps for New York City to do just that.

Thank-you



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK Letitia James

#### Testimony of the Public Advocate for the City of New York, Letitia James, Before the Committees on Civil Service and Labor and Civil and Human Rights April 23, 2018

Good afternoon. My name is Letitia James and I am the Public Advocate for the City of New York. The heart of my role as Public Advocate is ensuring that the voices of all New Yorkers are heard, particularly when it comes to the government entities and agencies that exist to serve them. And it appears that many of these entities are doing their own workers a grave disservice by consistently paying women less than their male counterparts.

I want to thank Chairs Miller and Eugene, their staffs, and the committee staffs for holding this important hearing.

My office released a report in 2016 that found that women in New York City earn \$5.8 billion less than men every year. And much to my dismay, we found that the worst offender of this practice was in fact our city government. The gender wage gap among New York City employees was three times as large as the wage gap in the private-for profit sector.

We consider ourselves the most progressive government in the most progressive city in the world, yet we are the ones holding women back -- we are not only paying them less, but also providing fewer opportunities to climb the ladder.

This City took a significant step in closing the private sector pay gap by passing legislation I sponsored to ban employers from requesting salary history from potential employees. When it comes to government jobs, however, salary history questions are already banned by Mayoral Executive Order, and, with most payscales covered by collective bargaining, we must look deeper for the sources of the government gender gap.

That is why I am so proud to be the prime co-sponsor of Council Member Cumbo's bill to closely examine why the pay disparity in New York City Government remains so great.

My office recently did a first-of-its-kind analysis of the entire city workforce to determine exactly how men and women at every agency are paid and found that although women lead roughly half of all City agencies, the hiring, training, promotion and retention of female staff is still a significant weakness within the City workforce. We found that much of the remaining municipal wage gap can be attributed to the fact that a disproportionate percentage of women hold the lowest paying jobs within agencies and are underrepresented in the highest paying jobs.

Formalizing and codifying this type of analysis into law will represent an invaluable policy-making tool and accountability device. But there is still much work to be done to ensure that our government lives up to its values.

We should be conducting objective evaluations of job functions and salaries to ensure that jobs traditionally held by women are not undervalued compared to men, so we can be sure we're paying historically female dominated professions like teachers and social workers fairly in comparison to male-dominated jobs like cops and firefighters. We must increase transparency for hiring and salary decisions, enact family-friendly time and leave policies to ensure our work environments allow flexibility for those with familial responsibilities and we must do a better job of creating opportunities for women to advance within agencies, through additional training, education, and mentoring.

Every City worker deserves equal pay and equal opportunities and it is clear that our City must do more to support women in the workplace. These bills we hear today are a critical step toward that goal and a statement that this Council will not shy away from tackling this systemic problem head on.

I look forward to an interesting and informative discussion of this critical issue and to working with you all on the next steps toward progress.

Thank you for inviting me to this hearing today and giving me the opportunity to testify.



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#### Testimony Before the New York City Council Committee on Civil Service and Labor and Committee on Civil and Human Rights: Intro No. 633, Intro No. 752, Intro No. 755, & Intro No. 756

April 23, 2018

Submitted by: Dina Bakst, Co-Founder & Co-President and Sarah Brafman, Skadden Fellow A Better Balance: The Work & Family Legal Center

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers across the economic spectrum care for their families without risking their economic security. For more than a decade, A Better Balance has been a leading advocate for state and local legislation to end discrimination against caregivers and value the work of caregiving. A Better Balance also hosts a free legal helpline through which we assist hundreds of callers every year, from New York City and around the nation. The majority of our callers are women facing various obstacles at work related to pregnancy, personal illness, and family caregiving responsibilities. Many are low-income women of color who bear the economic brunt of inflexible and discriminatory workplace practices.

We thank the Committee on Civil Service and Labor and Committee on Civil and Human Rights for the opportunity to testify in support of legislation that will help advance gender and racial justice for the New Yorkers we serve. Our testimony is informed by the experiences of our callers as well as our own experience as advocates.



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We are pleased to support all of the bills under consideration at today's hearing addressing gender and racial inequality in New York City. **These are important and necessary measures that will enable the New York City municipal government to be a model employer for the private sector.** Our comments today will focus particularly on Intro No. 633, a bill that would require city agencies to collect and report pay and employment equity data, a crucial measure in the fight for pay equity.

In recent years, the City Council has passed several landmark anti-discrimination laws that are crucial in the fight to advance pay equity. In 2013, the City Council passed the Pregnant Workers Fairness Act, which requires virtually all New York City employers to provide reasonable accommodations for pregnant employees. In 2015, the City Council amended the Human Rights Law to add caregivers to the groups of workers protected from discrimination. In 2017, the City Council banned employers from relying on salary history to determine wages, a practice that perpetuates pay discrimination against women and people of color who historically earn less than white, non-Hispanic men from the outset of their careers. Most recently, just a couple weeks ago, the City Council passed a robust package of legislation to further combat sexual harassment in the workplace. Although all of these laws apply to municipal workers, we know that the pay gap for the City workforce persists.



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As New York City Public Advocate Letitia James found in her 2016 policy report, *Advancing Pay Equity 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. The disparity is especially evident in the municipal workforce. Women employed in New York City's municipal government face a gender wage gap that is three times larger than that of women in the private sector.<sup>2</sup> While, on average, women in the City's municipal workforce earn 92 percent of what men in the municipal workforce earn, when you account for overtime and other pay, the wage gap more than doubles.<sup>3</sup> Moreover, women are concentrated in agencies that comprise the City's lowest paying jobs.<sup>4</sup>

Though unequal pay directly affects women, when women are paid unequally, their families suffer too. 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>5</sup> If the wage gap of nearly \$6,000 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

<sup>&</sup>lt;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. <sup>2</sup> *Id*.

 $<sup>^{3}</sup>$  *Id*. at 9.

 $<sup>^{4}</sup>$  *Id*. at 2.

*<sup>1</sup>a*. at 2.

<sup>&</sup>lt;sup>5</sup> National Partnership for Women and Families, *New York Women and the Wage Gap* 1 (2017), http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2017-ny-wage-gap.pdf.



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mortgage payments, or a year's supply of groceries for their families.<sup>6</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>7</sup>

We support Intro 633's requirement that all city agencies collect pay and employment equity data on job titles and salaries of every employee working for New York City. While we commend this legislation, we recommend that it be expanded in several ways. First, this legislation should be expanded to also require private employers to report on pay and employment equity data, or at the very least should also extend to City contractors.

In January 2017, Governor Cuomo signed Executive Order 162, requiring all state contractors to report information on the job titles, compensation, gender, race, and ethnicity of all their employees in all state contracts.<sup>8</sup> Executive Order 162 requires that all New York State contractors and subcontractors disclose "detailed workforce utilization reports" on a quarterly basis that include the job titles and compensation information for every employee working on a State contract.<sup>9</sup> At the very least, the City should require this same transparency from those that do business with the City. Reporting this data will establish a model of transparency to ensure that contractors are held accountable for gender and race disparities in hiring and compensation. By

<sup>&</sup>lt;sup>6</sup> Id.

 $<sup>^{7}</sup>$  Id.

<sup>&</sup>lt;sup>8</sup> N.Y. Exec. Order 162 (Jan. 9, 2017),

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\_162.pdf. <sup>9</sup> *Id*.



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gathering this data, the City will be able to better tackle the root causes of occupational segregation.

Moreover, in addition to collecting data on the gender and racial makeup of the city workforce, we also recommend that the City collect data on the number of city employees who identify as parents, since we know motherhood, specifically, can be a key driver of pay inequity.<sup>10</sup> Furthermore, the City should also assess whether inflexible scheduling practices or caregiving responsibilities, for example, are having a disproportionately negative impact on women employees, as well as employees of color, and create a plan to reduce any gender and racial disparities. The Public Advocate's 2016 report called for the adoption of policies promoting flexible schedules;<sup>11</sup> collecting data on workplace flexibility is a crucial step towards advancing such policies.

Finally, to address occupational segregation, the City should develop targeted training and employment programs to assist women and girls in overcoming barriers to entering non-traditional fields. Furthermore, such programs should be developed in tandem with programs that encourage the recruitment and retention of women in such fields.

<sup>&</sup>lt;sup>10</sup> See Dina Bakst & Phoebe Taubman, A Better Balance, The Pregnancy Penalty: How Motherhood Drives Inequality & Poverty in New York City 6 (2014).

<sup>&</sup>lt;sup>11</sup> James, *Policy Report*, at 12.



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As the federal government rolls back pay transparency measures,<sup>12</sup> New York City cannot rely on federal wage disclosure laws to solve the problem of pay inequity in our City. The City can and must lead in the fight to end pay inequity. Thank you for considering our recommendations. We are proud to support all the bills under consideration at today's hearing, which would create affirmative obligations for New York City to advance gender and racial justice within the five boroughs.

<sup>&</sup>lt;sup>12</sup> See Ben Penn & Porter Wells, Labor Dept. to Relax Obama Pay Bias Policy, Hand Reins to Businesses (Apr. 19, 2018), https://bnanews.bna.com/daily-labor-report/labor-dept-to-relax-obama-pay-bias-policy-hand-reins-to-businesses; Chris Opfer, Trump Freezes Overtime, Pay Regulations (Jan. 24, 2017), https://www.bna.com/trump-freezes-overtime-n73014450151/.

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