

Committee on Civil Service and Labor
Malcom M. Butehorn, *Committee Counsel*
Kevin Kotowski, *Policy Analyst*
Kendall Stephenson, *Senior Economist*



THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

Jeffrey Baker, *Legislative Director*
Andrea Vazquez, *Deputy Director for Human Services*

COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. I. Daneek Miller, *Chair*

December 19, 2018

PROPOSED INT. NO. 633-A

By Council Members Cumbo, The Public Advocate (Ms. James), Miller, Rosenthal, Koslowitz, Rose, Adams, Gibson, Kallos, Constantinides, Lander, Van Bramer, Powers, Cabrera, Ampy-Samuel, Torres and Lancman

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to reporting of pay and employment equity data

ADMINISTRATIVE CODE:

Adds a new subchapter 7 to chapter 3 of title 3 and a new section 12-2018 to chapter 2 of title 12.

INTRODUCTION

On December 19, 2018, the Committee on Civil Service and Labor, chaired by Council Member I. Daneek Miller will hold a hearing on Proposed Int. No. 633-A, introduced by Council Members Cumbo, The Public Advocate (Ms. James) and Miller, a local law to amend the administrative code of the city of New York, in relation to reporting of pay and employment equity data. The committee first held a hearing on this bill on April 23, 2018. Witnesses that testified at that hearing included the Equal Employment Practices Commission, the Department of Citywide Administrative Services (DCAS), Local 2507, the United Probation Officers Association, Local 3621 and CWA Local 1180.

BACKGROUND

The Wage Gap in the United States

Pay equity is a means of eliminating sex and race discrimination in the wage-setting system.¹ Pay equity means that the criteria employers use to set wages must be sex- and race-neutral.² The discrepancy in wages is represented by the wage gap, which is the average difference between the pay for men and women in the workforce. The most common measure for calculating the gender wage gap is based on the median annual earnings of full-time, year-round workers.³ In 2016, 56.8 of all women participated in the labor force⁴ and women's median annual earnings being 80.5 percent of male earnings.⁵

¹ Pay Equity Information, National Committee on Pay Equity. Accessed on Apr. 4, 2018. Available at: <https://www.pay-equity.org/info-Q&A.html>.

² *Id.*

³ United States Department of Labor, Women's Bureau. Issue Brief: Women's earnings and the Wage Gap. Access on Apr. 18, 2018. Available at: https://www.dol.gov/wb/resources/Womens_Earnings_and_the_Wage_Gap_17.pdf.

⁴ United States Department of Labor, Bureau of Labor Statistics Reports. "Women in the labor force: a databook," November 2017. Accessed on: Apr. 19, 2018. Available at: Women in the Labor Force: A Databook.

⁵ Hegewisch, A. et. al. "The Gender Wage Gap: 2016; Earnings Differences by Gender, Race, and Ethnicity," Institute for Women's Policy Research, Sep. 13, 2017. Accessed on Apr. 11, 2018. Available at: <https://iwpr.org/publications/gender-wage-gap-2016-earnings-differences-gender-race-ethnicity/>.

The wage gap between men and women has come under increasing scrutiny in recent years, with annual events such as “Equal Pay Day” that emphasize that women make significantly less than men for doing the same work in this country.⁶ Equal Pay Day was April 10, 2018; the date symbolizes how far into the year the average women must work to earn what the average man earned in 2017.⁷

Traditional Factors Affecting the Gender Pay Gap

Some of the factors driving the gender wage gap have been labor force participation; occupational title differences (for similar work); education; labor force experience and hours worked; gender differences in formal job training and retention; the impact of gender on the division of labor and on family caregiving; occupations and industries; and labor market discrimination.⁸

Much of the wage gap has been explained by the factors outlined above, and some progress has been made in each of those factors in the five decades since World War II which has seen the women’s labor force participation in the United States increase dramatically,⁹ with women now more likely to have a bachelor’s degree than men,¹⁰ yet these underlying causes have been hard to alleviate, hence there is still a wage gap in America.¹¹

⁶ Shira Tarlo, “What Is Equal Pay Day? Here’s Everything You Need to Know,” (“What is Equal Pay Day?”) NBC News, April 4, 2017. available at: <http://www.nbcnews.com/news/us-news/what-equal-pay-day-here-s-everything-you-need-know-n741391>

⁷ Equal Pay Day Kit, National Committee on Pay Equity. Accessed on Apr. 4, 2018. Available at: <https://www.pay-equity.org/day.html>.

⁸ Francine D. Blau and Lawrence M. Kahn, *The Gender Wage Gap: Extend, Trends and Explanations* (Cambridge, MA, 2016), 11-34.

⁹ *Id at 11.*

¹⁰ Nolan Feeney, “Women are Nor More Likely to Have a College Degree,” TIME, October 7, 2015. Accessed on Apr. 18, 2018. Available at: <http://time.com/4064665/women-college-degree/>.

¹¹ Graf, Nikki et. al. “The narrowing, but persistent, gender gap in pay.” Pew Research Center, April 9, 2018. Accessed on April 11, 2018. Available at <http://www.pewresearch.org/fact-tank/2018/04/09/gender-pay-gap-facts/>.

New York City

While New York State has the smallest wage gap in the nation among men and women working full-time, year round when comparing their median annual earnings, there still exists a gap within the state and the city. Moreover, this gap, the difference between the median annual earnings of men and women working full-time, year-round, is more acute for minority women. For 2016, the wage gap in the city was 85 percent.¹² When compared with the median annual earnings of white men working full-time, year round, the wage gap for black women was 53 percent, 44 percent for Latina women, 74 percent for Asian women, and 76 percent for white women.¹³ According to a recent report by The Public Advocate, the average salary of women at the top ten majority women New York City agencies¹⁴ is \$10,000 less than the average salary of men at the top ten majority male New York City agencies.^{15,16} However, the same report did find that in some agencies, male and female employees of the same rank or position are paid equally and that collective bargaining agreements and civil service examinations can be an effective tool to both address wage equity and other issues related to retention and promotion.¹⁷

¹² American Association of University Women (AAUW), “U.S. Cities Reveal a Wide Range of Gender and Racial Pay Gaps.” December 11, 2017. Accessed on Apr. 19, 2018. Available at: <https://www.aauw.org/article/u-s-cities-reveal-a-wide-range-of-gender-and-racial-pay-gaps/>.

¹³ *Id.*

¹⁴ Department of Education Paraprofessionals, Human Resources Administration/Dept. of Social Services, Department of Probation, Department of Education Administration, Administration for Children’s Services, Landmarks Preservation Commission, Department for the Aging, Mayor’s Office of Contract Services, Department of Youth and Community Development, Department of Education Pedagogical. Public Advocate for the City of New York, “Tipping the Scales. Wage and Hiring Inequity in New York City Agencies.” March 2018. Page 5.

¹⁵ Taxi and Limousine Commission, Department of Parks and Recreation, Department of Transportation, Department of Sanitation, Fire Department, Department of Environmental Protection, Department of Buildings, Police Department, Department of Design and Construction, Financial Information Services Agency. Public Advocate for the City of New York, “Tipping the Scales. Wage and Hiring Inequity in New York City Agencies.” March 2018. Page 5.

¹⁶ Public Advocate for the City of New York, “Tipping the Scales. Wage and Hiring Inequity in New York City Agencies.” March 2018. Page 3.

¹⁷ *Id.* at 6.

The City is actively taking steps to help eliminate this gap and provide for wage equity. In 2016, Mayor Bill de Blasio signed an executive order that eliminated salary history as a requirement when a person applies for a job within a mayoral agency and the City enacted Local Law 67 for the year 2017, which prohibits all New York City employers from inquiring about or relying on a prospective employee's salary history.

“It's the structural barriers to women's progress and enduring social attitudes about a women's place that contribute the most to women's lower pay, according to economic analyses of the wage gap. Understanding these constraints and what causes the gender wage gap is an important first step to change structural barriers”¹⁸

Proposed Int. No. 633-A, BILL SUMMARY

NOTE: The proposed legislation has changed drastically since the first hearing on this bill. One of the biggest changes includes the new section 3-171 in subchapter 7 in section two of the bill. Here, DCAS, in consultation with the Department of Information Technology and Telecommunications, will be required to provide the Council with access to the underlying employment data delineated in section 12-208. This will be accomplished through an application programming interface (API) that will simply allow the data to be viewed by the Council for analysis and not download to Council hard drives. The API approach was taken in order to preserve the integrity and security of the data and address the privacy concerns of the Council. The Council has never before passed a bill where it would have access to such a granular level of detail, but with its expanded data operations unit, the capability now exists for the Council to perform this level of oversight. Moreover, to perform a meaningful analysis, access to such data is necessary.

¹⁸ Sarah Jane Glynn, “Explaining the Gender Wage Gap,” Center for American Progress, May 19, 2014. Accessed on Apr. 18, 2018. Available at: <https://www.americanprogress.org/issues/economy/reports/2014/05/19/90039/explaining-the-gender-wage-gap/>.

Another significant change in the bill is that the burden of analyzing Agency employment records and producing a public report for the Administration rests with the Mayor's Office of Data Analytics (MODA). Traditionally, when a reporting bill requires Agency-wide aggregation of data, DCAS has been the agency tasked with that role. However, the Council feels that MODA, and its role as New York City's civic intelligence center, allowing the City to aggregate and analyze data from across City agencies, is the more appropriate body to collect and analyze employment level data to find pay disparities across the City workforce.

Section 1 is a declaration of legislative intent and findings. The Council finds that it should be the policy of this city to pursue the establishment of equitable compensation relationships between female-dominated, male-dominated, and other segregated titles to eliminate pay disparities in public employment citywide. Further, the Council also finds that pay disparities within the city workforce threaten the terms, conditions and privileges of city employment.

Section two add a new subchapter 7 to chapter 1 of title 3 of the administrative code of the city of New York.

Subchapter 7 would direct DCAS to provide employment data, collected pursuant to section three of this bill, to MODA. MODA in turn will produce an annual report to the mayor and speaker of the council showing aggregated data from every City agency looking at gender, ethnicity and race and \$2.5K, \$5K and \$10K pay bands to find instances of pay disparities. This same report would be posted publicly on the MODA website and the Open NY website. This section would also provide the Council with access to the employment data for 90 days in order for the Council to perform its own in-depth analysis to identify instances of pay disparities within City agencies.

Section three would add a new section 12-208 to chapter 2 of title 12 of the administrative code of the city of New York.

Section 12-208 would pertain to pay and employment equity data. Subdivision b of such section would require that no later than November 30, 2019, and on or November 30 annually thereafter, all city agencies provide DCAS with certain information relevant to pay and employment equity. Such information for each employee within such an agency would include:

1. Agency;
2. Start date;
3. Civil service title;
4. Salary range for such title;
5. Business title;
6. Title classification (title description);
7. Job category;
8. Career level;
9. Base salary;
10. The department of citywide administrative services occupational group code and group name;
11. Whether such employee is a managerial or supervisory employee;
12. Minimum number of years of work experience required for such position;
13. Number of years of work experience of such employee;
14. Highest level of education attained by such employee;
15. Gender;
16. Racial group;

17. Ethnicity;
 18. Date of birth;
 19. Whether such employee is a provisional employee;
 20. Whether such employee is full-time, part-time or seasonal;
 21. Change in personnel status, including but not limited to, appointed, deceased, decrease, demoted, dismissed, increase, promoted, resigned, retired, terminated and transfer; and
 22. Whether such employee was previously employed by the city of New York
- Section 4 of the local law would provide the enactment clause. This local law would take effect immediately.

Proposed Int. No. 633-A

By Council Members Cumbo, the Public Advocate (Ms. James), and Council Members Miller, Rosenthal, Koslowitz, Rose, Adams, Gibson, Kallos, Constantinides, Lander, Van Bramer, Powers, Cabrera, Ampry-Samuel, Torres and Lancman

A Local Law to amend the administrative code of the city of New York, in relation to reporting of pay and employment equity data

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. The council finds that it should be the policy of this city to pursue the establishment of equitable compensation relationships between female-dominated, male-dominated, and other segregated titles to eliminate pay disparities in public employment citywide. Pay disparities within the city workforce threaten the terms, conditions and privileges of city employment. Such disparities can exist based on gender, race or other protected category enumerated in the city of New York's human rights law. The council hereby finds and declares that in order to find and eliminate pay disparities in public employment citywide, it is necessary for the council, pursuant to the charter of the city of New York, to exercise its powers of investigation and oversight over city agencies through access to and analysis of such agencies' pay and employment data. The council, through its committee system will provide an avenue for public engagement on the issue of pay disparity within the city workforce. The council through its committee system and legislative division will provide for the release of findings and analysis on pay disparity.

§ 2. Chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

OFFICE OF DATA ANALYTICS

§ 3-170 General. a. As used in this subchapter, the following terms have the following meanings:

Agency. The term “agency” means any agency, the head of which holds office upon appointment of the mayor and those units within the executive office of the mayor designated by the mayor to be covered by the provisions of chapter 16 of the charter. Such term does not include agencies headed by boards, commissions, or other multi-member bodies, whether appointed by the mayor or otherwise, nor to elected officials, nor to other agencies the heads of which are appointed by officials other than the mayor or by multi-member bodies.

Director. The term “director” means the director of the office of data analytics.

Machine-readable format. The term “machine-readable format” means a non-proprietary format that permits automated processing.

Office. The term “office” means the office of data analytics.

Open source analytics library. The term “open source analytics library” means the website where the source code for data analytics projects are shared and maintained by the mayor’s office of data analytics.

b. All agencies shall cooperate with the office as may be necessary and proper to ensure compliance with this subchapter. The office may request information from any agency it deems necessary to enable it to properly carry out its functions.

c. The director may promulgate such rules as are necessary to carry out the provisions of this subchapter.

§ 3-171 Pay and employment equity data. a. Within 60 days following receipt of the data from the department of citywide administrative services pursuant to section 12-208, the office, in consultation with the department of information technology and telecommunications, shall make

such data available to the council for 90 days through an application programming interface (API) in a machine-readable format as either comma separated value (CSV) or JavaScript Object Notation (json) for which the office shall provide a key to the council.

b. 1. The office shall issue a report to the mayor and speaker of the council no later than May 31, 2020, and no later than May 31 annually thereafter, and shall post such report on the open source analytics library. Such report shall include aggregated data from each agency showing the frequency of full-time, part-time and seasonal employees by agency, EEO-4 job group, pay band, racial group, ethnicity and gender in a format that prevents the disclosure of the racial group, ethnicity and gender of any employee, while maximizing the level of detail at which such data is reported.

2. Pay bands for such report as required by paragraph 1 of this subdivision shall be for \$2,500, \$5,000 and \$10,000; however, the department of citywide administrative services, in conjunction with the office, may determine by rule other appropriate pay bands, if any, that will maximize the level of detail at which data is reported.

c. Ninety days after the second annual report is issued pursuant to subdivision b of this section, the office, in conjunction with the department of citywide administrative services, shall conduct an annual analysis of the data collected pursuant to section 12-208, including comparisons with data from previous years, in order to identify potential disparities based on gender, race or other protected classes as identified in section 8-101, in the following areas:

1. Pay;

2. Employment rates; and

3. Retention rates.

d. The office shall conduct further analysis with relevant agencies where instances of disparities exist. Such analysis shall be included in the annual report as required pursuant to subdivision b of this section.

e. The department of citywide administrative services shall be required to make recommendations on the development and implementation of pay, employment and retention equity action plans to the mayor and speaker of the council based on disparities identified in subdivision d of this section. Such recommendations shall be included in the annual report as required pursuant to subdivision b of this section.

§ 3. Chapter 2 of title 12 of the administrative code of the city of New York is amended by adding a new section 12-208 to read as follows:

§ 12-208 Pay and employment equity data. a. Definitions. As used in this section, the term “agency” means any agency, the head of which holds office upon appointment of the mayor and those units within the executive office of the mayor designated by the mayor to be covered by the provisions of chapter 16 of the charter. Such term does not include agencies headed by boards, commissions, or other multi-member bodies, whether appointed by the mayor or otherwise, nor to elected officials, nor to other agencies the heads of which are appointed by officials other than the mayor or by multi-member bodies.

b. No later than November 30, 2019, and on or before November 30 annually thereafter, each agency, to the extent the department of citywide administrative services does not already have such information, shall provide to the department of citywide administrative services information relevant to pay and employment equity. Such information for each current and former employee within such agency shall be as of the date of hire and shall, to the extent such information is available, include:

1. Agency;
2. Start date;
3. Civil service title;
4. Salary range for such title;
5. Business title;
6. Title classification (title description);
7. Job category;
8. Career level;
9. Base salary;
10. The department of citywide administrative services occupational group code and group name;
11. Whether such employee is a managerial or supervisory employee;
12. Minimum number of years of work experience required for such position;
13. Number of years of work experience of such employee;
14. Highest level of education attained by such employee;
15. Gender;
16. Racial group;
17. Ethnicity;
18. Date of birth;
19. Whether such employee is a provisional employee;
20. Whether such employee is full-time, part-time or seasonal;
21. Change in personnel status, including but not limited to, appointed, deceased, decrease, demoted, dismissed, increase, promoted, resigned, retired, terminated and transfer; and

22. Whether such employee was previously employed by the city of New York.

c. No later than 90 days following receipt of the data collected pursuant to subdivision b of this section, the department of citywide administrative services shall provide such data to the office of data analytics.

d. All agencies shall cooperate with the department as may be necessary and proper to ensure compliance with this subdivision. The department may request from any agency, including the office of payroll administration and financial information services agency, information it deems necessary to enable it to properly carry out its functions.

e. The commissioner may promulgate such rules as are necessary to carry out the provisions of this section.

§ 4. This local law takes effect immediately.

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