



TESTIMONY

Presented by

Edgar J. Yu
Chief of Staff

on

Oversight: Age Discrimination in the Workforce

before the

New York City Council
Committee on Aging & Committee on Civil and Human Rights

on

Tuesday, October 8, 2019
1:00 P.M.

at

Council Chambers, City Hall
New York, NY 10007

Good afternoon, Chair Chin, Chair Eugene, and members of the Aging and Civil and Human Rights Committees. I am Edgar Yu, Chief of Staff at the New York City Department for the Aging (DFTA). I am joined today by Maria Serrano, director of DFTA's Senior Employment Unit. On behalf of Commissioner Lorraine Cortés-Vázquez, I would like to thank you for the opportunity to again provide testimony on the important subject of age discrimination in the workforce.

I'm also joined by Dana Sussman, Deputy Commissioner for Policy and Intergovernmental Affairs and Sapna Raj, Deputy Commissioner for Law Enforcement at the New York City Commission on Human Rights (CCHR). DFTA recognizes the broad intersectionality of age-based discrimination with other protected classes including gender, gender identity, race, citizenship, and disability—just to name a few. We also acknowledge that this type of discrimination, unfortunately, transcends sector and industry. Thus, DFTA is grateful for CCHR's partnership in our ongoing work in this area, and their enforcement of the country's most robust human rights law.

As DFTA testified in September of 2018 before these two committees on this very topic, combatting ageism is among the Department's top priorities and remains an important part of our commitment to serve the 1.64 million older adults who call New York City home. Rather than simply reiterating last year's testimony, which in detail described our senior employment programs and services, I will provide a brief update on those services and then share our Commissioner's commitment and efforts to combatting ageism across all the ways we work to ensure older adults are safe and thriving.

As you know, beyond the wide range of DFTA programs and services, including our network of congregate centers, case management, home-delivered meals, caregiver resources, geriatric mental health services (et al.), older New Yorkers can avail themselves of services through our Senior Employment Services Unit. These include the Title V Senior Community Service Employment Program (SCSEP) and the ReServe Program.

Through the federal-grant funded SCSEP, income-eligible New Yorkers age 55 and older can access job training, job placement assistance, and other invaluable services, all while earning a wage. The program has partnership contracts with more than 400 community-based organizations,

nonprofits, and city government agencies to offer our Title V participants subsidized placements for up-to four years. Additionally, our job development staff work with 300 business entities to facilitate unsubsidized placement of our participants, which is the ultimate goal of this program – direct employment. Through these critical partnerships, participants are directly integrated into the workforce and offered real-life professional training opportunities and experiences. Among the most common job types are home health aide, security guard, and administrative assistant. In FY '19, a total of 440 Title V participants were placed in community assignments or direct employment.

For over a decade, DFTA has also been a partner in the ReServe Program, through which retired professionals—referred to as “ReServists”—can be placed in short-term assignments to help one of our employment partners fill critical gaps. ReServists often have backgrounds in law, social work, teaching, foundation outreach, accounting and IT administration. The term of these assignments typically range between three to twelve months, with an option to extend based on the need of the assigned agency. At present, the city has 242 ReServists.

Beyond our core senior employment services, DFTA also provides opportunities for older adults to engage in meaningful civic causes through our Foster Grandparent Program. New Yorkers, age 55 and older, are offered a paid, non-taxable stipend to serve as mentors, tutors, and caregivers for children and youth with special needs. Our Foster Grandparents serve 20 hours per week at community-based organizations such as daycare centers, after-school programs, elementary schools, and hospitals. In FY '19, we had 321 Foster Grandparents placed at host sites across the city.

While the city is home to 1.64 million older New Yorkers, we are keenly aware that this population is projected to reach 1.86 million—a 20.6 percent growth—by 2040. These workforce and civic engagement programs intend to increase opportunities for older New Yorkers to remain in the workforce. With a growing population, however, there is increased need to ensure we have the right approaches and supports to first prevent ageism and then address instances that occur. Moreover, since DFTA's senior employment population is overwhelmingly older women of color, that need and the other related factors at the root of discrimination are exponentially larger.

In our ongoing effort to combat this problem, all of our employment participants, in addition to job retention and career advancement support, receive annual mandated trainings on equal employment opportunity, and on identifying ageism and how to get support if faced with age-based discrimination. Equally important, we work closely with our participating employers which are carefully screened and selected to help ensure they are age-sensitive, age-competent, and recognize the incredible value and benefits older workers bring to their organization. We firmly believe that this exposure and experience with older workers benefit our employers beyond just the Title V placement. The City of New York is itself a participating employer; the New York City Department of Education, Human Resources Administration, Department of Parks and Recreation, and over a dozen other city agencies partner with us as SCSEP worksites and place many of our participants.

Additionally, DFTA regularly hosts public forums and presentations on ageism awareness and prevention. Our Commissioner sees combating ageism and making New York a city for all ages as a core tenant to her vision. She has worked since stepping into her role to not only maintain important interagency partnerships, but to consider new avenues to supporting older adults in the workplace through our sister agencies. Most recently, Commissioner Cortés-Vázquez participated in CCHR's stakeholder roundtable which convened community-based organizations and advocates from across the city to discuss the subject of age-discrimination. These interagency collaborations underscore the Administration's years-long commitment to combatting ageism.

On behalf of Commissioner Cortés-Vázquez, thank you for your advocacy. We are incredibly grateful to the Committee on Aging as well as the Committee on Civil and Human Rights for championing this important issue. The Council's partnership is a critical part of the city's response to ageism. We also acknowledge the Council's intent of the package of bills introduced to address age discrimination—particularly Intro. 1693 and Intro. 1694 which directly implicate DFTA and our work in this area. There is great alignment between DFTA and the Council in this regard, and we look forward to our continued dialog with the Council on the nuances, practicality, and implementation implications of these bill.

Thank you again. I'm pleased to answer any questions you may have.

Testimony of Dana Sussman
Deputy Commissioner for Policy and Intergovernmental Affairs
New York City Commission on Human Rights
Before the Committee on Aging and the Committee on Civil and Human Rights
October 8, 2019

Good afternoon Chair Chin and Chair Eugene, and members of the Committees on Aging and Civil and Human Rights. I am Dana Sussman, Deputy Commissioner for Policy and Intergovernmental Affairs at the New York City Commission on Human Rights. I am joined today by my colleague, Sapna V. Raj, Deputy Commissioner for Law Enforcement. I am also happy to be joined by my colleagues Edgar J. Yu and Maria Serrano from the Department for the Aging, key partners and collaborators in this work.

Thank you for convening today's hearing on Intros. 1684, 1685, 1693, 1694, and 1695—five pieces of legislation that seek to address age discrimination in the workplace. Before I turn to the legislation, I want to highlight some of the Commission's recent work. The Commission is the local civil rights enforcement agency that enforces the NYC Human Rights Law, one of the broadest and most protective anti-discrimination and anti-harassment laws in the country, now totaling 26 protected categories across nearly all aspects of city living: housing, employment, and public accommodations, in addition to discriminatory harassment and bias-based profiling by law enforcement. Over the past four and a half years, since Commissioner Carmelyn P. Malalis took the helm of the agency, the Commission has implemented 28 changes to the NYC Human Rights Law, including seven new substantive areas of protection, and other statutory expansions of the agency's mandate and scope. At the same time, the Commission is increasingly becoming the preferred venue for victims of discrimination. In Fiscal Year 2019, the Commission fielded nearly 10,000 inquiries from members of the public, via calls, emails, and in-person intakes, the highest in Commission history, resulting in 785 complaints filed and 396 pre-complaint interventions. Also in Fiscal Year 2019, the agency obtained over \$5.3 million in damages for complainants, and nearly \$800,000 in civil penalties, for a combined total of over \$6 million, the highest in the Commission's history and over five times the amount of damages and penalties recovered in 2014, the year prior to start of Commissioner Malalis's tenure. In the past two Fiscal Years, age discrimination cases accounted for nearly \$1.3 million in damages and penalties assessed.

Over the past two years, the Commission has filed 110 complaints on behalf of individuals alleging age discrimination. The vast majority of those cases are in the employment context. In one case, an employee alleged that he had been terminated because of a policy that stated the company could not hire or employ anyone over sixty-five years old. The Commission's Law Enforcement Bureau investigated the matter and tried the case at a hearing before the Office of Administrative Trials and Hearings. After considering the Administrative Law Judge's Report and Recommendation, the Office of the Chairperson at the Commission issued a final Decision & Order, awarding \$70,216 in compensatory damages (including back pay, interest, and emotional distress damages), imposing a civil penalty of \$30,000, and ordering Respondents to modify their policies and undergo training on the NYC Human Rights Law.

The Commission's Community Relations Bureau, which engages in outreach and education on New Yorkers' rights and obligations under the NYC Human Rights Law has partnered with community-based organizations throughout New York City to provide information to older New Yorkers on their rights and as you may be aware, the Commission regularly publishes materials, in multiple languages, and conducts trainings and outreach on discrimination and other protected categories to audiences across the City. In Fiscal Year 2019, the Commission conducted 38 trainings focused on the rights of older New Yorkers, in partnership with organizations such as Sage, Deshi Senior Center, St. Jerome's Hands Community Center, Rain Senior Center, GRIOT Circle, and many others. In addition, Commission leadership spoke at several forums and events on age discrimination throughout the year.

Most recently, on September 16, 2019, the Commission, along with our colleagues at the Department for the Aging, convened a roundtable with age justice stakeholders and experts to discuss how the Commission and DFTA can work more effectively to combat age discrimination in the workplace. Many of the advocates and stakeholders here today were present for a rich conversation, highlighting the protections offered by the NYC Human Rights Law and how the Commission can best serve the communities most vulnerable to discrimination and harassment. Finally, later this month, attorneys from the Commission's Law Enforcement Bureau will be training DFTA staff on the NYC Human Rights Law to ensure that any potential discrimination cases they come across are properly identified and directed to the Commission.

Turning to the bills that are the subject of today's hearing, Int. 1684 mandates that the Commission create a poster addressing age discrimination and requires that all City agencies post it in common areas for employees. I'll note that the Commission created a Notice of Rights that includes information about one's rights broadly under the NYC Human Rights Law, covering all 26 protected categories. As part of all case resolutions against both private and public entities, we require respondents to post this Notice of Rights in an area visible to employees and/or tenants and customers.

Int. 1685 requires that the Commission create a training that city agencies must complete once per year and post information on the Commission's website about age discrimination, how to report violations, and available avenues of relief and action. Int. 1693 establishes a task force to study age discrimination in the workplace chaired by the Commissioner/Chair of the Commission or her designee, and Int. 1695 establishes a testing program targeting age discrimination in the workplace, with at least five investigations per year and requires that the agency produce an annual report on or before June 15.

The Commission supports the intent of the bills and, in recognition of the fact that age discrimination is pervasive, the Commission is actively engaged in policy making, enforcement, and outreach to further highlight the protections under the NYC Human Rights Law with respect to age discrimination in the workplace. Further, many of the Commission's current efforts and future initiatives reflect many of the bills' goals. As I mentioned, the Commission regularly provides training to different audiences, in dozens of languages, across the City, and conducts workshops and outreach to older New Yorkers. The Commission's outreach continues expand. In Fiscal Year 2019, the Commission served nearly 100,000 people through these outreach

activities. In addition, the Commission is already mandated to publish an annual report every year on September 30 and is required to include information on public inquiries received by the Commission, Commission-initiated investigations, complaints filed at the Commission, and the Commission's education and outreach efforts during that fiscal year. You can find the Fiscal Year 2019 report on the agency's website. We welcome the opportunity to work with Council to further our shared goals of aggressively promoting and protecting older New Yorkers' rights in the workplace. My colleague, Deputy Commissioner for the Law Enforcement Bureau, Sapna V. Raj, will now highlight some of the Commission's law enforcement efforts.

Testimony by the New York Legal Assistance Group (NYLAG)
Before the New York City Council's Committees on Aging, Civil and
Human Rights, Regarding Proposed Legislation Concerning Age
Discrimination in the Workforce

October 8, 2019

Good afternoon, and thank you for the opportunity to speak about the pending legislation before the New York City Council. My name is Layla Malamut, and I am a Paralegal in the Employment Law Project at the New York Legal Assistance Group (“NYLAG”). NYLAG is a nonprofit organization dedicated to providing free civil legal services to low-income New Yorkers who cannot afford private attorneys. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-wage workers, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

The Employment Law Project represents workers in cases relating to employment discrimination, wage and hour violations, unemployment insurance benefits, and requests for accommodations or leave. We represent clients in City, State, and Federal agencies, as well as in litigation. The vast majority of our cases involve discrimination, including but not limited to: age, sex, gender identity, sexual orientation, race, national origin, pregnancy, disability, criminal background, military status, and status as a survivor of domestic violence.

NYLAG commends the City Council for holding this hearing and addressing this pressing issue. This legislation could not come at a better time: the U.S. Bureau of Labor Statistics recently found that the fastest growing segment of the American workforce is employees aged 65 and older, as more Americans are choosing to stay in the workforce longer.¹ The average

¹Toossi, Mitra and Torpey Elka: “Older workers: Labor force trends and career options.” *Bureau of Labor Statistics*. <https://www.bls.gov/careeroutlook/2017/article/older-workers.htm> (May 2017).

age of the American worker, according to ADP's 2019 State of the Workforce Report, is roughly 42.² Yet new data indicates that a third of people experience ageism before they turn 45.³ If the average individual retires around the age of 62,⁴ this means that there is a high probability they will experience age discrimination for up to 20 years, or half of their entire career.

Through our work in NYLAG's Employment Law Project, we have become intimately familiar with the patterns and pervasiveness of age discrimination. Our clients have all too often described supervisors who made overt comments targeting their age, complaining that they were "too old" to do their job or asking them when they planned to retire.

Other clients experience ageism on the job in more subtle ways. For example, some employers target older workers by issuing them negative performance evaluations, when these evaluations are really pretext for discrimination. This happened to one of our clients, a 54 year old Pakistani employee at a fast food restaurant chain. His supervisor constantly singled him out for being "lazy and slow," alleging that he had production issues. Still, his supervisor did not explicitly mention his age or use the word "old" in his criticisms, making it easier for the employer to hide behind his pretext.

Another client, age 70, worked in advertising sales. After 25 years of service, he was told he was being fired for not meeting his sales revenue quota. The company tried to hide behind what it claimed to be a neutral policy – a sales quota that assigned workers with more years of experience a higher monthly quota – but it was clear that this policy was being utilized to unfairly penalize older workers. We settled his case after further demonstrating that significantly younger workers who had also consistently missed their quotas were not being similarly disciplined.

Despite the prevalence of age discrimination in the workforce, workers often struggle to find attorneys to represent them. One of the primary reasons for this difficulty is that the Age Discrimination in Employment Act ("ADEA"), the federal law that protects workers 40 years or older, imposes a stringent

² Yildirmaz, Ahu, Ryan, Christopher & Nazaj, Jeff, "2019 State of the Workforce Report: Pay, Promotions, and Retention." *ADP Research Institute*. <https://www.adp.com/resources/articles-and-insights/adp-research-institute/research-topics/-/media/62FB03253C3B4B80A2EE73EB8EC29B82.ashx>

³ Huang, Georgene, "New Research Shows Ageism Starts as Early as Age 42 — Here's How Employers Can Combat Age Discrimination." *Forbes*. <https://www.forbes.com/sites/georgenehuang/2019/09/30/new-research-shows-ageism-starts-as-early-as-age-42--heres-how-employers-can-combat-age-discrimination/#74065bb843f2> (September 30, 2019.)

⁴ Brandon, Emily, "The Ideal Retirement Age, and Why You Won't Retire By Then." *U.S. News & World Report*. <https://money.usnews.com/money/retirement/aging/articles/the-ideal-retirement-age-and-why-you-wont-retire-by-then> (April 15, 2019.)

“but-for” standard of causation for proving discrimination; that is, plaintiffs bear the burden of showing that “but-for” their age, the adverse employment action would not have occurred. This standard is much higher than that of other classes of discrimination, where a plaintiff need only show that their protected trait was one “motivating factor” in the adverse employment action.

The challenge of meeting this standard is particularly exacerbated in “failure to hire” cases, where workers well-qualified for a position are passed over for the job due to their age. In these cases, applicants often lack access to the kind of evidence needed to make a but-for showing, such as evidence that other older, qualified applicants were also rejected, or that a younger applicant was hired in their place.

Further, in our experience, the EEOC has not had a strong record of prioritizing age discrimination cases. That is why the New York City Human Rights Law, and legislation like these proposed bills, are so vital to protecting the rights of older workers. Unlike the ADEA, the New York City Human Rights Law applies to persons of all ages (not just persons 40 years or older), and covers employers that employ four or more employees (as opposed to only employers with 20 or more employees, under the ADEA). In addition, the City law applies the more lenient “motivating factor” causation standard for proving age discrimination, unlike its Federal counterpart.

NYLAG is firmly supportive of all of the City Council’s proposed legislation. We are particularly enthusiastic about Intro 1695, which requires the City Commission on Human Rights (“the Commission”) to conduct regular age discrimination investigations through employment testing programs. As mentioned earlier, one of the biggest challenges to proving that age discrimination has occurred in hiring is a lack of access to information about the ages or qualifications of other applicants. Testing of the kind that this Bill proposes would help detect this more subtle, insidious form of discrimination, and would allow the Commission to shine a light on what we believe is a rampant, yet underreported problem.

I want to once again thank the Committee for inviting me to testify today. I am happy to answer any questions.

Respectfully submitted,

New York Legal Assistance Group

October 8, 2019

**Testimony of The Legal Aid Society, Employment Law Unit
In Support of Proposed Int. 1684, 1685, 1693, 1694, and 1695**

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

Presented by Karen Cacace, Director, Employment Law Unit

Thank you for the opportunity to present this testimony.

The Legal Aid Society is the oldest and largest legal services provider for low-income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low-income New Yorkers with civil, criminal and juvenile rights problems, including some 50,000 individual civil matters in the past year benefiting nearly 125,000 New Yorkers, as well as law reform cases which benefit all two million low-income families and individuals in New York City.

Through a network of neighborhood and courthouse-based offices in all five boroughs and 26 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back-up support and technical assistance for community organizations.

The Legal Aid Society's Employment Law Unit

Through our Employment Law Unit (ELU), we provide legal services to low-wage workers in New York City to ensure that these workers receive fair wages, fair treatment, decent working conditions, and the benefits to which they are entitled if they lose their jobs. These cases involve wage violations, workplace discrimination, including age discrimination, family and medical leave issues, labor trafficking, and unemployment insurance. The ELU represents low-wage workers, including undocumented workers, in individual, group, and class action cases.

Age Discrimination in Employment

The ELU represents many low-wage workers who have suffered employment discrimination based on their age. In a recent case, we represented Ms. S, who worked in a factory. She is currently 65 years old. Her employer fired her after she requested permission to attend a medical appointment. The supervisor who fired her told her that they didn't want her there because she was "old, blind, and lame." Ms. S is neither blind nor lame but she is an older worker. Her employer's discriminatory comment demonstrates the bias older employees may be subjected to: because of their age, they may be unjustly viewed as feeble or unable to continue to perform their work successfully.

We support the proposals described below because they would result in increased enforcement of the Human Rights Law's prohibition on age discrimination. However, as we have explained in prior testimony, although the City Human Rights Law is designed to be extraordinarily protective of workers' rights, it provides no protection for workers employed by small employers. Older workers who are employed in workplaces with less than four employees may be discriminated against because of their age. Thus, a small employer may simply fire an employee because they reach age 50 or 60 or whatever age the employer decides is too old to continue working – regardless of how well that employee is performing her job. This gap in the law should be remedied by amending the Human Rights Law to apply to all employers, not just employers with four or more employees.

Proposed Int. 1684 and 1685 – Poster and Training

The Legal Aid Society supports the proposals to require the City Commission on Human Rights to create a poster explaining the prohibition on age discrimination and to require training for City agencies. However, we believe these requirements should be extended to all employers. Posters raise awareness of workers and provide them with concrete steps to take if they suffer discrimination. The City's most vulnerable workers will benefit from having Human Rights Law protections clearly displayed in their workplaces. In addition, both employees and employers will benefit from training. Training will ensure that managers understand that age is not to be considered a factor in any employment decision and will encourage workers to report any discrimination.

Proposed Int. 1693 and 1695 – Task Force and Testing

The Legal Aid Society supports the proposals to create a task force to address and eliminate age discrimination in the workplace and to establish an age discrimination in employment testing program. As the workforce ages, more workers will be at risk of being subjected to age discrimination. It will be worthwhile to study the shift in the age of workers and focus on strategies to prevent age discrimination. Moreover, testing has proven to increase enforcement in other areas, particularly in source of income discrimination in housing. The testing program could focus on industries that are known to seek a predominantly young workforce.

Justice in Every Borough.

Proposed Int. 1694 – Office of Older Workforce Development

The Legal Aid Society supports the proposal to create an Office of Older Workforce Development. We have found that many of our older clients who are looking for work have difficulty finding new employment due to their age. We periodically hold resume workshops where volunteers assist our clients with creating resumes and searching for jobs. However, many of our clients, particularly older workers, would benefit from a more concentrated and systemic approach to assisting them with finding new employment.

Conclusion

In conclusion, The Legal Aid Society commends the City Council's efforts to enact laws that protect New York City's workers. We support the proposals outlined above. **We also encourage the City Council to amend the Human Rights Law to provide protection for all workers – not just those workers whose employers have four or more employees.**

We look forward to continuing to work together to ensure that all workers, especially low-income and vulnerable workers, have a fair chance to succeed at their jobs and provide for their families.

Respectfully Submitted:

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HUNTER | **Brookdale Center for Healthy Aging**

**TESTIMONY OF RUTH FINKELSTEIN AND CHRISTIAN GONZÁLEZ-RIVERA
OF THE BROOKDALE CENTER FOR HEALTHY AGING, HUNTER COLLEGE
BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON AGING AND CIVIL AND HUMAN RIGHTS**

**JOINT OVERSIGHT HEARING
"AGE DISCRIMINATION IN THE WORKFORCE"**

OCTOBER 8, 2019

My name is Ruth Finkelstein and I'm the executive director of the Brookdale Center for Healthy Aging. I am joined by Christian González-Rivera, our Director of Strategic Policy Initiatives. We are a research center that is part of Hunter College. We are changing the future of aging by supporting innovative research and developing policies and practices for New York City that will become models used around the world. Through this work, we strive to create opportunities for everyone to age as well as anyone can.

We are very pleased to have the opportunity to testify in support of the Council's efforts to recognize that work is an essential part of aging well. We also support the Council's acknowledgement that ageism in the workplace is a major threat to the economic security of older New Yorkers. The age to receive full Social Security benefits has been rising for years and currently stands at 70. Yet age discrimination is pushing people out of the workforce in their 50s and 60s. As it is, Social Security does not provide enough to live on in a high-cost place like New York.

The package of bills that council member Margaret Chin and her co-sponsors have introduced is a great contribution to the fight against age discrimination in the workplace. We'd like to take the opportunity now to express our support for some of the bills and to offer some suggestions that we believe will maximize the potential of the rest.

We support Bill Number 1684, which would require the New York City Commission on Human Rights to create a poster informing workers of their rights that would be displayed at city agencies. If enacted, this bill has the potential to raise awareness about age discrimination. This, in turn will help start the important conversations that can lead to greater cultural awareness of the impact of ageism, one workplace at a time.

We also support Bill Number 1685, which would provide age discrimination training to city agencies. As you know, ensuring that older New Yorkers have access to city services begins with ensuring that the public workers entrusted to deliver those services will treat older adults with the dignity and respect they deserve. However, we believe that the bill should be amended to require the Commission to supplement online training resources with opportunities for experiential training. Brookdale has decades of experience in providing such training to front-line workers at the city and state levels. In our professional experience, face-to-face, experiential training is the most effective way to ensure that this training hits home. Of course, experiential training is much more resource-intensive, so we are recommending that face-to-face training supplement, rather than supplant online resources.

Bill Number 1695 would require the Commission on Human Rights to investigate ageism in the workplace. The idea behind this bill is great, in that it rightly underlines that ageism is one of the “-isms” that the Commission should be combatting. However, as currently written, the Commission’s mandate around ageism would be limited to using just one methodology, matched-pair testing, to test for age discrimination in employment. While the commission has successfully used this method to investigate racism, sexism, and other forms of discrimination, in our professional experience, changing technology in the employment space is making this method obsolete as a tool for investigation. Resumes are increasingly being filtered through algorithms that suppress many of them before they ever reach human eyes. This makes it harder to discern at what point in the hiring process the discrimination is happening. For incumbent workers who suspect that they were fired because of their age, proving wrongdoing on the part of the employer requires placing the firing in the context of the employer’s systems and practices around letting people go. Discrimination is discerned by uncovering a pattern of behavior on the part of an employer that systematically disadvantages one group over another, not from a series of anecdotes based on individual cases.

For instance, our own senior fellow Peter Gosselin’s groundbreaking investigative reporting uncovered a complex employee evaluation system at IBM that was unfairly stacked against older employees. The kind of investigation that uncovered that pattern of discrimination could never come from simply doing matched-pair testing. We at Brookdale have extensive knowledge about these methodologies and stand ready to assist your office, Councilmember Chin, if you would like some friendly, accessible technical support on this matter.

The final two bills, Numbers 1693 and 1694 would create an Age Discrimination Task Force and an Office of Older Adult Workforce Development, respectively. While both are good ideas, we believe that these two bills would be most effective if they were combined into a single bill. To ensure that the task force has the incentive to come up with effective, actionable recommendations for combatting age discrimination, it should be explicitly charged with crafting a blueprint for what this Office of Older Adult Workforce Development should do. The task force report can also issue recommendations to the Council, the New York State Bar, and the state workforce development office. But by having its primary mission be to guide the work of the city’s office of older adult workforce development you ensure that the recommendations in the report will connect to a larger purpose, not just be lost in the ether without teeth or a mandate.

There is precedent for this in the work of the Jobs for New Yorkers Task Force convened in 2014, whose report, *Career Pathways: One City Working Together*, became the blueprint for the efforts of the Mayor’s Office for Workforce Development. While not all the aims of that task force have reached fruition, the report was so much more effective because it was hitched to a mayoral level office that assumed a leading role. It would not have been nearly as effective if it had been simply issued by a stand-alone task force without a clear mandate.

We also recommend that instead of calling for the creation of a separate office of older adult workforce development, the bill should instead call for a Center for Working Older New Yorkers that is organized like a public-private partnership, along the lines of the existing Center for Youth Employment (CYE). As the Council knows well, CYE has created important partnerships over the past five years that have transformed the city’s youth workforce development services. They have created partnerships across city agencies, with philanthropy, employers, and also with the Council that have greatly expanded the reach of workforce development services

for youth and young adults. A similar broad-based effort among partners across sectors aimed at helping older New Yorkers join or re-join the workforce has the potential to be transformative.

As one of New York's premier centers of scholarship and thinking around the challenges and opportunities facing older New Yorkers, we at Brookdale offer ourselves as a resource to you as you hone these bills so they can be as effective as possible in the fight against age discrimination.

Thank you again for the opportunity to testify.



Making New York a better place to age

**New York City Council
Joint Hearing
Committee on Aging, Chair, Council Member Margaret Chin
Committee on Civil and Human Rights, Chair, Council Member Eugene
October 8th, 2019
Oversight - Age Discrimination in the Workforce**

My name is Jenna Gladfelter, and I'm here on behalf of LiveOn NY. LiveOn NY's membership includes more than 100 community-based organizations that provide the core services, such as senior centers and home-delivered meals, that enable older adults to live independently and thrive in their communities.

Thank you, Chairs Chin and Eugene, and the Committees, for the opportunity to testify on age discrimination in the workplace. LiveOn NY would also like to thank Council Member Chin and Council Member Ayala for shining a light on this issue that affects so many, and if left unaddressed, will undoubtedly affect many more.

It is critical that we view aging as the normative life process that it is. In other words: we are *all* aging. We find ourselves in an exciting time in which the future of aging itself is dynamic and evolving. Perhaps like never before, there is no "one size fits all" for the aging process. While previous generations may have lived by a more consistent set of milestones, today we all experience life and aging differently, and therefore deserve the opportunity to thrive in accordance with our own drive, desires, limitations, and values, regardless of age. For some, this may mean an early and long-awaited retirement; for others, a second act in an unexplored career path; for most, however, it means the continued economic pressures of an often unequal society.

This economic reality means that many older adults simply cannot afford the fiscal implications of a frequently age-biased, and at times, discriminatory society and workplace. Even beyond economic pressures, older adults should not be shunted the opportunity to fulfill the innate desire to have utility, be productive, and contribute. According to the U.S. Department of Labor, by the year 2024, workers 55 or older will represent 25% of the workforce. By contrast, in 1994, those 55 and older represented just 11%¹. And yet, while today many people are working longer, age discrimination – particularly in the workforce – is still very real. It is ingrained in stereotypes of how older adults live, behave, and work, which can have a seriously damaging effect on their job opportunities and overall wellbeing.

While age discrimination is highly unreported, the most common cases that are filed involve an individual not being hired due to age, followed closely by being passed over for promotions. These occurrences have a clear fiscal impact on the individual, and may be more common than has been enumerated given the aforementioned lack of reporting. In fact, in a 2017 study by AARP, more than 6 in 10 workers age 45 and older say they have seen or experienced age discrimination in the workplace.² Of those, 91% say that it is a common occurrence.

For already marginalized populations, such as women, immigrants, or minority communities, these age-related injustices only serve to exacerbate existing inequities. Inequities such as lost wages due to

¹ <https://blog.dol.gov/2016/11/18/why-more-people-ages-55-are-working>

² https://www.eeoc.gov/eeoc/history/adea50th/report.cfm#_ftn147



Making New York a better place to age

caregiving, persistent wage gap within communities of color, and lack of pension options for a multitude of workers, means that the financial margins that are so slim that the effects of age discrimination can be devastating.

It is in light of these injustices that LiveOn NY would like to express our strong support for all of the bills being discussed at today's hearing. We applaud Council Members Chin and Ayala for introducing a legislative package aiming to change the narrative around the value of older adults and older workers.

We would also like to respectfully submit several recommendations in an effort to see this legislative package as strong as it can be:

First, as proposed in Intro 1694, we support Council Member Chin's efforts for the City to have a team working to ensure that equity in employment opportunities exists for older New Yorkers. LiveOn would like to submit for consideration that this team be housed within the Office of Workforce Development as a Center for Older Workers, enabling employees to capitalize on existing resources.

Secondly, LiveOn NY looks forward to supporting the work of the task force proposed in Intro 1693, and we applaud Council Member Chin's efforts to create such a body to convene on this key issue. LiveOn encourages the Task Force to include a representative with legal expertise on age discrimination. We believe that having a legal expert who understands the ins and outs of this issue is integral given the status of age as a protected class according to the federal government. LiveOn NY looks forward to learning the findings of the task force, and believes its report could act as a blueprint to inform and embolden the team created through Intro 1694. We believe that, in concert, both bills have a significant opportunity to positively impact the lives of older New Yorkers.

To close, LiveOn NY would like to stress the importance of recognizing the value and contributions of older adults in *all* aspects of the public and private spheres, and to reframe the way we as a society view and treat the oldest among us. Even beyond the workplace, it is imperative that we recognize the value of older adults in society at large, as demonstrated through countless hours of volunteerism, local economic impact, caregiving responsibility, civic and community engagement, and more. In short: it is time that older adults are recognized for their strengths. LiveOn NY looks forward to continued conversations on how to make New York a better place to work and age. Thank you again for the opportunity to testify.

LiveOn NY's members provide the core, community-based services that allow older adults to thrive in their communities. With a base of more than 100 community-based organizations serving at least 300,000 older New Yorkers annually. Our members provide services ranging from senior centers, congregate and home-delivered meals, affordable senior housing with services, elder abuse prevention services, caregiver supports, case management, transportation, and NORCs. LiveOn NY advocates for increased funding for these vital services to improve both the solvency of the system and the overall capacity of community-based service providers.

LiveOn NY also administers a citywide outreach program and staffs a hotline that educates, screens, and provides application assistance for benefits such as SNAP and SCRIE, and also administers the Rights and Information for Senior Empowerment (RISE) program to bring critical information directly to seniors on important topics to help them age well in their communities.

**CITY COUNCIL HEARING
AGE DISCRIMINATION IN THE WORKPLACE
COUNCILWOMAN MARGARET CHIN, CHAIR, AGING COMMITTEE
COUNCILMAN MATHIEU EUGENE, CHAIR, CIVIL AND HUMAN RIGHTS COMMITTEE
OCTOBER 8, 2019**

My name is Bobbie Sackman. Today, I am pleased to be representing both Radical Age Movement and the New York State Alliance for Retired Americans (NYSARA). Radical Age Movement is a member of NYSARA.

What is the Alliance for Retired Americans?

The Alliance is a unique national organization, with state, regional and local affiliates, working to create an America that protects the health and economic security of seniors, rewards work, strengthens families and builds thriving communities. It was launched in January 2001 by a national coalition of AFL-CIO affiliated unions and community-based organizations dedicated to economic and social justice and a better life for seniors.

More than 2.7 million people nationally and 490,000 in New York are members of the National Alliance for Retired Americans. Historically, many retired union members have maintained some type of affiliation with a retiree group of their former union. However, they have never had the opportunity to realize the power that can result from uniting with the millions of retirees from all areas of the labor movement — until now.

Now union retirees and other older Americans have a chance to work together to make their voices heard in the laws, policies, and institutions that shape their lives.

<https://nystate.retiredamericans.org/>

Who belongs to the NYS Alliance?

Individual union retirees, community organizations and others who pay an annual dues of \$10 to the New York State Alliance for Retired Americans, of which a portion is rebated to regional ARAs to cover their membership as well.

Radical Age Movement is a non-profit based in New York City that rejects long-standing misinterpretations of aging. Our goal is to end these misperceptions and skewed attitudes toward aging so that people of all ages, races, classes, genders, and sexualities can participate productively in areas of cultural, professional and community life. Simply put, Radical Age Movement (RAM) was founded to confront ageism in its myriad of forms – economic security, workplace discrimination, health care, protecting the safety net including Social Security, Medicare and Medicaid, cultural and societal discrimination and stereotypes, internalized ageism and other parts of life.

www.radicalagemovement.org

On behalf of thousands of workers over the age of 50 in NYC who live in quiet desperation for fear of losing their job, being targeted by ageist statements and actions on the job and not able to get hired due to ageism, we applaud Councilwoman Margaret Chin, Chair, Councilwoman Diane Ayala and members of the Committee on Aging for leading the charge to confront this rampant form of discrimination. We also thank Councilman Mathieu Eugene, Chair, and members of the Committee on Civil and Human Rights. This groundbreaking legislative package would create age justice in the workplace. Not only can this package of bills significantly change the culture of the workplace towards older workers, but it will also serve to have positive social and economic ramifications in the greater society as discriminatory views hopefully dissipate.

The time for age justice in the workplace has come as older New Yorkers are part of the future, too. We are the fastest growing sector of the city's population and workforce. Notably, according to information on the DCAS website, "Workforce Profile Report", the average age of a city worker in 2012 was 48. It is certainly possible over the past seven years the average age has increased closer to 50. The time is now to confront age discrimination in the workplace. NYC has an opportunity to be a national leader by legislating that this is not how we do business here.

In 2017, AARP conducted a national study which found that 61% of older workers experience some form of age discrimination. Age discrimination often forces many older New Yorkers into early retirement at a time when only half of America's aging population can afford to retire. In addition to financial strain, ageism can lead to significant declines in mental and physical health resulting in shorter life spans. Older women, in particular, can experience an increase in depressive symptoms as they often contend with both sexism and ageism in the workplace.

While we are greatly appreciative of this legislative package, we'd like to make some recommendations to strengthen the bills. Please see the comments below. We look forward to working with Councilmember Margaret Chin and other Councilmembers, City Council leadership, Mayor Bill de Blasio and his administration to ensure this legislative package is enacted and implemented successfully in a timely manner. Lives of older New Yorkers now in crisis depend upon this.

Bobbie Sackman

bobbiesackman6@gmail.com


INTRO 1693 – ESTABLISHING A TASK FORCE-

1. Section 1a – The language of the bill says recommendations will be made within 12 months from enactment of the bill. **We appreciate new language amended into the bill requiring an interim report after 6 months is a good step.**
 2. Section 1b – recommendations to change who sits on task force. **We recommended to eliminate “economic” background with individuals with backgrounds** in employment law and age discrimination in the workplace, workforce development, diverse workforce, research, and aging advocate.
 3. **Connecting the recommendations of the task force to the establishment of an Older Adult Workforce Development office** – In order to give the task force real teeth and direction, legislative language stating that the purpose of the recommendations of the task force is to be a blueprint to the establishment of the older adult workforce development office. After 12 months, the new office would be created and the steps to carry it out would be identified. We’d appreciate discussing further how this could be accomplished legislatively.
2. **New language – We appreciate the new language that strengthens the bill -**
- a. Section 5e – task force shall meet “at least **twice** quarterly”
 - b. Section 5f – **whole section is new** - “At least six months before issuing of the task force’s final report, the task force shall submit...an interim report...”
 - c. Section 5g – Data and reports of age discrimination...**”and within the city”**
 - d. Section 5h – **Whole section is new** – the bill has been amended based on prior comments to include minimum task force report requirements. It is important to specifically define the scope of the work of the task force in order to ensure that the Mayor’s office, City Council and commissioners know what outcomes and goals are required and will ensure a successful task force.

INTRO 1694 – ESTABLISHING AN OFFICE OF OLDER WORKER DEVELOPMENT-

1. Section 1, Line 10 - Powers and Duties – same language - It's good the bill includes language on the functions/responsibilities of this office. **We suggest adding language to include “wraparound employment supports” in lines 14-16.**
2. Section 1, b 3 – Line 1 – **We recommend the inclusion of “workplace I centers”.**
3. b 4 – Lines 4-5 – same language - The bill seems to strengthen the role of the city in addressing age discrimination complaints and widens the reach to other groups for advice and developing policies which is really good.
4. **Placement of office - Rather than establish a separate Older Adult Workforce Development office in the Mayor’s office, this office could be made part of the Mayor’s existing Workforce Development Office. The legislation should require the creation of a center focused on older adults in the workforce within the Mayor’s Office of Workforce Development and to model it after the successful Center for Youth Employment (CYE). This would allow for the development of public/private partnerships such as is currently being done with the CYE. Funding for CYE comes from City Council, \$12 million, Fund for the City of NY, foundation money and internships in private businesses.**

3. INTRO 1695 – ESTABLISHING AN AGE DISCRIMINATION IN EMPLOYMENT TESTING PROGRAM-

a. We had previously recommended utilizing a research model of collecting data and updating findings on progress towards addressing age discrimination in the workplace rather than employment testing model. Both methods could be utilized which would provide a stronger basis of testing employment discrimination and maintaining an ongoing data base which currently does not exist. Ongoing research could show the effectiveness of the city's laws and programs over time. This would both evaluate and inform the city on how to continue to move forward addressing this discrimination. Developing and maintaining this research and data base would have a financial impact.

b. Section 1 – line 8 – **We appreciate that language was changed to state that of the two testers “at least one shall present to be over the age of “50”.** It had formerly been 45. We continue to recommend someone over the age of 60 be included as workplace discrimination challenges often increase with age.

4. INTRO 1684 – REQUIRE THE COMMISSION ON HUMAN RIGHTS TO CREATE A POSTER ON AGE DISCRIMINATION AND REQUIRING CITY AGENCIES TO DISPLAY THE POSTER -

We had made several recommendations which were not included in this bill. A public awareness campaign could go a long way toward a cultural shift on views of older workers and their rights in the workplace. **We'd appreciate your reconsideration of these recommendations -**

1. Section 1 – The commission on human rights “shall launch an ongoing citywide public awareness advertising campaign regarding age discrimination in the workplace” as part of its regular outreach and education efforts...
2. Section 2 –
 - a. Line 7 - “Every city agency and those organizations that contract with the City of New York”
 - b. Add - “A public awareness campaign shall include posters in subways, bus shelters, other public spaces and social media.”

5. INTRO 1685 – PROVIDING AGE DISCRIMINATION TRAINING TO CITY AGENCIES - We greatly appreciate adding this bill to the legislative package as anti-ageism training is central to a cultural change and equity in the workplace.

We recommend adding the following language –

- a. Title and Section 8-133, line 9 – “...shall provide such training to each agency at least once per year **and all organizations contracting with the City of New York** “...in relation to providing age discrimination training to city agencies...” Language should include “and all organizations that contract with the City of New York”.
- b. Section 8-133, lines 7-9 – Since this will be the first time curriculum is being developed for use in New York City on age discrimination in the workplace, **language should be added to include “with input from experts and budget support to both develop and implement the training in an ongoing manner.”** Age discrimination training should be modeled after anti-racism, sexism and anti- LGBTQ discrimination training.
- c. **Building DFTA capacity for developing curriculum and providing training -** The Department for the Aging (DFTA), which is a small city agency, currently does not have the capacity, expertise or funding to carry out the development and training for city agencies and other organizations that contract with the city on age discrimination in the workplace. Establishing a division within DFTA with expertise

regarding the curriculum and providing the training requires additional baselined funding on an ongoing basis to ensure this training can be accomplished. The purpose of this training is to institutionalize anti-ageism in the workplace in the culture of the city workforce and organizations the city contracts with over years. It shows that the city will not tolerate this type of discrimination. This curriculum development and training can be done directly by DFTA or contracted out to an appropriate entity.

FOR THE RECORD



We refuse to be invisible

Testimony to New York City Council during hearing on Age Discrimination

**Delivered in person on October 8, 2019
by Suley Cruz, Site Manager of SAGE Harlem**

On behalf of SAGE and the lesbian, gay, bisexual, and transgender (LGBT) elders we serve, thank you for holding this hearing today on age discrimination and thank you Chairperson Chin, Councilmember Ayala and Chairperson Mathieu and the entire City Council for being champions of LGBT elders and for your support of SAGE. My name is Suley Cruz and I am the Site Manager of SAGE Harlem.

Founded in 1978, SAGE is the world's oldest and largest organization dedicated to improving the lives of LGBT older people. SAGE's mission is to lead in addressing issues related to LGBT aging.

LGBT elders struggle with more social isolation, more poverty and more disconnection than non-LGBT elders. LGBT elders lack familial and social support, resulting in thin care networks, social isolation, and challenges to their ability to age in place. Recent studies show that more than four in ten LGBT Americans over the age of 65 cite financial problems as a major concern. Our SAGE study in 2015 found 51% of LGBT elders are worried they do not have enough money as they age, compared to 36% of the general population. Additionally, over 40% of older LGBT people fear they will outlive retirement savings and are very concerned they will have to work beyond retirement age, with only 25% of non-LGBT people sharing the same level of concern.

Older people also face a challenging landscape in the workplace and struggle for fair and equal wages and protection within hiring and firing practices, among other intersectional differences. According to AARP, older workers say not getting hired is the most common type of age discrimination. According to the Pew Research Council, 18.8% of people over the age of 65 worked in 2016 and, according to the National Council of Aging, as of this year, 40% of people over 55 will be working, representing 25% of the workforce. By 2024, employees over 55 will reach 41 million compared to 27 million in 2008. Our workforce is aging and new protections are needed to support this new vocational reality.

SAGE supports Council member Chin's Age Discrimination package. In 2009, the Supreme Court ruled that older workers must meet a higher burden of proof for age discrimination than other types of discrimination, according to AARP. As New Yorkers yearn to stay in the workplace longer in an uncertain economic future, an Age Discrimination Task Force will be essential to allow New York elders to feel protected at work, and an Office of Older Adult Workforce Development will allow elders the opportunity to learn new skills and stay current within the City's vocational environment. And LGBT New Yorkers will be grateful for the support of the New York City Commission on Human Rights to protect against workplace discrimination.

SAGE stands with the New York City Council to protect and promote workplace protections for LGBT New Yorkers.

Hello, my name is Katie Naplatarski. Thank you for taking my testimony.

I worked as a teacher and teacher coach for the Department of Education's Office of Adult and Continuing Education for more than 25 years, ending my time there four years ago, in June 2015, when I transferred to another DOE division.

During the 2013-2018 superintendency of the former OACE Superintendent Rose-Marie Mills, scores of staff members were forced out through harassment, intimidation, a toxic work environment, and the targeting of staff, including teacher, support, and administration. The majority of those who left were older employees, 50 plus.

This forced exodus weakened the fabric of OACE immeasurably. Over the course of about three years, a vast store of accumulated institutional and educational knowledge was wiped out as senior staff was purged from the roles.

In light of this experience, I welcome this legislation and the safeguards it intends to impose. I thank the council members and council for putting forth these initiatives as I believe that workplaces across the city should be well informed of the law as applies to age discrimination.

I would also like to request the following: that in whatever means possible – during training or in print – that the worth of seniors is also conveyed in ways that cannot be legislated: that people ought to treasure and appreciate our elders, for their knowledge, experience and wisdom, all of which are invaluable components of a workplace, home, and world. Perhaps part of the trainings could explore the value of elders within various cultures in order to strengthen our culture's own appreciation of our seniors' wonderful gifts.

These qualities, for the years 2013– 2018, were NOT valued within the Office of Adult and Continuing Education- to the detriment of all.

I welcome this legislation and the beneficial effects it can have within our city workplaces and our culture at large.

Thank you.

Testimony for October 8, 2019 Court Hearing on Ageism

My name is Regina Matson.

I began my career in the financial industry in January of 1981. In late November 2008, like thousands of other people, I was laid off from my job due to the Financial Crisis. This was the first time I was ever laid off. Since then, my life has never been the same.

I was escorted to the lobby after my meeting with my Manager, HR, and a lawyer from the bank I was working for. I have a vivid memory of looking around the lobby and seeing a bunch of people on their phones, holding the same folder I was given that contained a severance package and information on an Outsourcing firm. I walked out the door of the building, and somehow everything looked different to me. It wasn't a good feeling.

I began looking for another job after the holidays. The following is a timeline of my journey from then until today:

- Late November 2008 – Laid off from Morgan Stanley
- In the Fall of 2009, I left my husband, rented a house and took my 11 year old daughter with me. In order to do this, I sold everything I had that was of value. Unemployment was extended due to the severity of the crisis. Friends and family helped me with my rent.
- Despite my best efforts, I was not able to get another job for two years, and was finally offered a one-year contract as a Consultant in October of 2010.
- During those two years, I had short stints of employment to supplement my unemployment payments. A friend who was an interior designer needed some help, so I worked for her for about 4 or 5 months; I partnered with another neighbor who had also lost her job, and we started a Farmer's Market in our town. During the holidays, I wrapped Christmas presents for anyone who needed help for a small fee. I spent the bulk of my time on the computer, furiously searching for a new opportunity. I sent out dozens of dozens of resumes to no avail. Panic started to set in after a year. The second year was surreal, as I was forced to face the reality that I had no idea what I was going to do. I cannot emphasize enough how debilitating it was to be unable to get a job...
- From 2008 to the present (11 years), I had 2 one-roles, one six-month Consulting role, and one full-time role that lasted 2 1/2 years – so basically, I was only employed for 5 out of 11 years (at jobs in my industry) since being laid off;
- The years between assignments I also worked at two different furniture stores as a Design Consultant, earning 1/4 of what I earned in the financial industry – it helped, but I was still unable to pay my bills;
- I did get some interviews, but was never chosen for the job.

Age discrimination is still pervasive and very much alive in today's job market. Besides not getting roles because of my age, I also faced harassment while working at the one full-time job I had. A younger colleague noticed that I sometimes used AOL for my personal email, and announced it to the group. Everyone had a good laugh at my expense. It didn't stop there. I was asked publicly by the Sales Manager (who was not my boss but was Senior to me), how well I knew Excel – did I know how to do pivot tables. Before I was finished stating the one syllable word "YES" a younger colleague who sat near me came back to his desk, and I was immediately told "Never mind, as he called out to the younger colleague "I have a complicated Excel job I want you to tackle".

I was routinely passed over for assignments, although I had more experience with the product than new, younger members of the team. I had great relationships with several top clients, and they were "moved" to other, younger colleagues. At the end of my second year at the firm, my new Manager, who was based in London, shocked me with a completely unfair and untrue Performance Appraisal. I was able to prove through emails I had saved that most of what she said was untrue, and she had to delete most of it, but she still managed to chop my bonus in half based on "opinions" she had formed.

I started to get excluded from group meetings, and was completely cut off from contributing to decisions that were made that affected my role. Finally, during what I thought was my usual weekly phone meeting with my Manager, an HR rep appeared at my desk and said she would be attending the meeting and we should move to the conference

room so we could use the speaker phone. My manager called in, and said that unfortunately, my role had been "eliminated". I was given a small severance package, and told multiple times by both my Manager and the HR rep that if I discussed anything about the agreement, or repeated anything negative about how I was treated, that the agreement would be considered to be null and void.

I think it is also worth mentioning that the current hiring process is horribly broken. Applying to jobs from LinkedIn or similar websites is a joke. ATS systems scan every resume for key words, and if all of them do not appear, your resume and carefully crafted cover letter is thrown in the garbage. Most of the time you don't even get a reply from the employer - even to simply acknowledge that they received your resume. After experiencing years of long-term unemployment, you are so broken mentally and financially that you finally face the reality that the deck is not stacked in your favor, and you try to look for opportunities that pay half of what your salary was, only to be told that you are "overqualified" for those roles. I was 49 when I was laid off, and I turned 60 last month. My outlook is bleak, my future still uncertain. I have a few weeks of unemployment payments left and no money in the bank. Full retirement age for me is 67. And I know I'm not alone, as there are hundreds of thousands of people in my age group in the same position. We need new laws and new ideas for insuring this broken and unfair process ends. I would love to be a part of the solution, so I have attached my resume. I am available immediately...

Testimony of Sapna V. Raj
Deputy Commissioner for Law Enforcement
New York City Commission on Human Rights
Before the Committee on Aging and the Committee on Civil and Human Rights
October 8, 2019

Good afternoon. My name is Sapna V. Raj, and I am the Deputy Commissioner for the Law Enforcement Bureau at the Commission on Human Rights. I oversee a team of 78 attorneys and support staff who on a daily basis field hundreds of calls, email inquiries, walk-ins, schedule appointments, undertake investigations, litigate cases and test for discrimination on behalf of New Yorkers who have experienced discrimination and harassment.

First, it is important to note that the NYC Human Rights Law offers far more protections than the federal Age Discrimination in Employment Act (“ADEA”). Under the ADEA, plaintiffs must prove that their age was the “but for” cause of their discrimination, meaning it is not enough for a plaintiff to show that age discrimination contributed to the adverse action; rather, they must show that age discrimination was such a motivating factor that the adverse action would not have occurred absent the discriminatory motive. This is a standard that is purposefully difficult to meet and, unlike the standard under the NYC Human Rights Law, is not aimed at completely eliminating discrimination from the workplace. The heightened federal standard only exists with respect to age discrimination claims, so that individuals alleging age discrimination have a higher bar to meet than members of other protected categories who allege discrimination under federal law.

The NYC Human Rights Law, by contrast, treats age discrimination the same as every other protected category – and, as mentioned earlier, there are 26 such protected categories. The NYC Human Rights Law protects against “mixed motive” discrimination, meaning that a plaintiff may prevail if age discrimination contributed to the adverse action. Notably, the NYC Human Rights Law protects both employees and job applicants from age discrimination, whereas under federal law there is a circuit split on whether the ADEA covers job applicants.¹ And for hostile work environment claims, under the ADEA the conduct must be “severe or pervasive,”² versus the NYC Human Rights Law standard of simply being “treated less well” because of someone’s age or other protected status.

In addition, the ADEA has several affirmative defenses written into the statute that employers can use, such as a bona fide occupational qualification of the job, or that the policy differentiates among workers based on some “reasonable factor” other than age, such as seniority. The NYC Human Rights Law does not have any such affirmative defense codified in

¹ Compare Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958, 974-75 (11th Cir. 2016) (holding that job applicants are not protected by ADEA), with Rabin v. Pricewaterhouse Coopers LLP, 236 F. Supp. 3d 1126, 1133 (N.D. Cal. 2017) (holding that job applicants may bring disparate impact claims under ADEA), and Kleber v. CareFusion Corp., 888 F.3d 868, 870 (7th Cir. 2018) vacated and reh'g granted No. 17-1206, 2018 U.S. App. LEXIS 17148 (7th Cir. 2018).

² See, e.g., Kassner v. 2nd Ave. Delicatessen, 496 F.3d 229 (2d Cir. 2007) (manager’s ageist comments to older waitresses that they should “retire early,” “wear a wig,” or “drop dead” did not support a claim for hostile work environment under the ADEA or Title VII because the conduct was not considered severe or pervasive).

the law. The NYC Human Rights Law also offers more comprehensive remedies to plaintiffs: those who have been unlawfully discriminated against based on their age under the law are entitled to many kinds of relief, including economic damages, emotional distress damages, and, depending on the forum, punitive damages. The ADEA provides limited remedies: backpay, promotion, and reinstatement of employment. Liquidated damages are only permitted for willful violations of the ADEA. Unlike under the NYC Human Rights Law, claimants under the ADEA are not entitled to receive emotional distress or punitive damages.

As you know, the Commission has the power to initiate its own investigations when entities are suspected of engaging in discriminatory policies or practices. In addition to filing complaints and deploying testing, the Commission sends cease-and-desist letters and also uses a range of investigative methods, such as requests for information on policies and practices, demands for documents, and interviews of key witnesses. In our experience, each of these investigative tools serves an important role in detecting and proving claims of discrimination. Under Commissioner Malalis, the Commission has significantly expanded its Commission-initiated actions. For example, in Fiscal Year 2019, the Commission initiated 56 actions, compared to 33 in 2015. All Commission-initiated actions are referenced and explained in each annual report issued every September. We welcome information about possible targets of these Commission-initiated actions from Council Members, community groups, and any other entities concerned that discriminatory practices may be taking place. Thank you for the opportunity to speak about our work. We look forward to your questions.



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**Testimony of Paul Nagle, Executive Director
Stonewall Community Development Corporation**

As a 61 year old gay man, whose work is focused on alleviating housing inequities for LGBTQ older adults, I feel like this job discrimination issue is coming at me from all sides. Today, the Supreme Court begins hearing arguments on whether or not it should be legal to fire employees simply for being LGBTQ. This past weekend, our annual end of summer party I share with beach friends turned into a dour affair as two different friends in the group – both in their 50’s, had been laid off the day before with no notice. John had been with his company for 23 years.

I got a taste of ageism in the workforce first-hand 10 years ago when I was job hunting at age 52 – and went two years without a single interview. But it does seem to be accelerating – this age discrimination – and becoming the standard way that corporations do business these days.

Age discrimination in the workplace is a complicated issue touching on ageism, benefits cost analysis, automation, general hiring practices, corporate structures and ethos and the dispensability of any given employee.

Stonewall Community Development Corporation applauds Councilmembers Chin and Ayala’s evidence-based approach to this issue.

In governance, an absence of data generally goes hand in hand with an absence of policy. That is what makes this package of bills so smart – by simultaneously building awareness, standardizing definitions and procedures and mandating investigation, Councilmembers Chin and Ayala’s package of legislation sets the stage for effective policymaking.

It’s a complicated issue that few seem to want to discuss. Kudos to Councilmembers Chin and Ayala for once leading the way and providing our local government with the tools to begin to address this issue. Thank you.

Hello, my name is Katie Naplatarski. I am representing myself. Thank you for taking my testimony.

I worked as a teacher and teacher coach for the Department of Education's Office of Adult and Continuing Education for more than 25 years, ending my time there four years ago, in June 2015, when I transferred to another DOE division.

In fact, fourteen teachers filed an age discrimination complaint. Unfortunately, the cases were dealt with individually rather than as a group, and they were all dismissed.

During the 2013-2018 superintendency of the former OACE Superintendent Rose-Marie Mills, scores of staff members were forced out through harassment, intimidation, a toxic work environment, and the targeting of staff, including teacher, support, and administration. The majority of those who left were older employees, 50 plus.

This forced exodus weakened the fabric of OACE immeasurably. Over the course of about three years, a vast store of accumulated institutional and educational knowledge was wiped out as senior staff was purged from the roles.

In light of this experience, I welcome this legislation and the safeguards it intends to impose. I thank the council members and council for putting forth these initiatives as I believe that workplaces across the city should be well informed of the law as applies to age discrimination.

I would also like to request the following: that in whatever means possible – during training or in print – that the worth of seniors is also conveyed in ways that cannot be legislated: that people ought to treasure and appreciate elders, for their knowledge, experience and wisdom, all of which are invaluable components of a workplace, home, and world. Perhaps part of the trainings could explore the value of elders within various cultures in order to strengthen our culture's own appreciation of our seniors' wonderful gifts.

These qualities, for the years 2013– 2018, were NOT valued within the Office of Adult and Continuing Education- to the detriment of all.

I welcome this legislation and the beneficial effects it can have within our city workplaces and our culture at large.

Thank you.

I would also like to add the new OACE administration is a vast improvement and thank the mayor's office, school chancellor and city council – Dromm and Treyger – for helping to bring about this change.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

1st Panel

Date: 10/8/19

(PLEASE PRINT)

Name: Roberto Sackman

Address: Radical Age Movement

I represent: NY State Association of Retired Americans

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: _____

(PLEASE PRINT)

Name: Greg Walters

Address: _____

I represent: G-one-Quantum

Address: (Solar Wall App)

**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: _____

(PLEASE PRINT)

Name: WARREN DEBECKAN

Address: 127 Parkershill Street, Brooklyn

I represent: myself, community garden, local

Address: _____

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**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: _____

(PLEASE PRINT)

Name: Marisol Seda

Address: 150 County Rd Tenafly, NJ 07670

I represent: myself

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: 10/8/19

(PLEASE PRINT)

Name: AMANDA Farnacci

Address: 136 DAVIS AVE SINY 10310

I represent: MYSELF

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: _____

(PLEASE PRINT)

Name: Julia Elmateh-Sachs

Address: 85 5th Ave NY, NY

I represent: V. Lee + A. Farnacci

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: 10/8/19

(PLEASE PRINT)

Name: David Gottlieb, Wigdor LLP

Address: 85 5th Ave NY NY

I represent: V. Lee + A. Farinacci

Address: _____

first panel

**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: 10/8/2019

(PLEASE PRINT)

Name: RUTH FINKELSTEIN

Address: _____

I represent: BROOKDALE CENTER FOR HEALTHY AGING

Address: 2180 3RD AV., NYC

Please put us on first panel

**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: 10/8/2019

(PLEASE PRINT)

Name: CHRISTIAN GONZÁLEZ-RIVERA

Address: 2180 3RD AV., NYC

I represent: BROOKDALE CTR. FOR HEALTHY AGING

Address: 7-13 WASH. SQ. N., NYC

we discussed w/ Rush Perry, Chris office

**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: _____

(PLEASE PRINT)

Name: REGINA MATSON

Address: 225 COMPO RD SOUTH WESTPORT CT

I represent: RADICAL AGE MOVEMENT

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Aging

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/8/19

(PLEASE PRINT)

Name: Chris Wide/o

Address: 750 3rd Ave, 31st Fl, Manhattan

I represent: AARP NY

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1684, 1685, 1694, Res. No. 1695

in favor in opposition

Date: 10/8/19

(PLEASE PRINT)

Name: Karen cacad

Address: 199 Water St

I represent: The Legal Aid Society

Address: 199 Water St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: SAPNA Dey

Address: 1st NY SAsseron, Deputy Commissioner

I represent: NYC Human Rights, Deputy Commissioner

Address: NYC Human Rights Law Enforcement

**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: _____

(PLEASE PRINT)

Name: DANA Sussman, Deputy Commissioner of Intercou and policy

Address: _____

I represent: NYC Human Rights

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: _____

(PLEASE PRINT)

Name: EDGAR YU

Address: _____

I represent: DFTA

Address: 2 WASHINGTON STREET

**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: _____

(PLEASE PRINT)

Name: MARIA SERRANO

Address: _____

I represent: DFTA

Address: 2 LAFAYETTE ST

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. _____ Res. No. _____

in favor in opposition

Date: 10/8/19

(PLEASE PRINT)

Name: Kayla Malamut

Address: 7 Hanover Square, 18th Fl, NY NY 10004

I represent: New York Legal Assistance Group

Address: _____

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. _____ Res. No. _____

in favor in opposition

Date: 10/8/19

(PLEASE PRINT)

Name: Jenna Gladfelter

Address: 49 West 45th St, NY, NY 10036

I represent: LiveOn NY

Address: _____

◆ 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. _____ Res. No. _____

in favor in opposition

Date: 10/8

(PLEASE PRINT)

Name: Katrina Naplatarski

Address: 952 Lorimer Street Brooklyn

I represent: Self

Address: _____

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