Legislation Details (With Text)

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Title:	A Local Law to amend the administrative code of the city of New York, in relation to the interpretation of the New York city human rights law, and the repeal of paragraph f of subdivision 13 of section 8-107 of such code relating to vicarious liability of employers				
Sponsors:	Shekar Krishnan, Crystal Hudson, Lincoln Restler				
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Attachments:	1. Summary of Int. No. 273-A, 2. Summary of Int. No. 273, 3. Int. No. 273, 4. February 28, 2024 - Stated Meeting Agenda, 5. Hearing Transcript - Stated Meeting 2-28-24, 6. Minutes of the Stated Meeting - February 28, 2024, 7. Proposed Int. No. 273-A - 7/19/24				

Date	Ver.	Action By	Action	Result
2/28/2024	*	City Council	Introduced by Council	
2/28/2024	*	City Council	Referred to Comm by Council	

Proposed Int. No. 273-A

By Council Members Krishnan, Hudson, and Restler

A Local Law to amend the administrative code of the city of New York, in relation to the interpretation of the New York city human rights law, and the repeal of paragraph f of subdivision 13 of section 8-107 of such code relating to vicarious liability of employers

Be it enacted by the Council as follows:

Section 1. This local law shall be known and may be cited as the "No exceptions law of 2024".

§ 2. Legislative findings and purpose. For more than 30 years, the council has enacted local laws directing courts to construe the provisions of the New York city human rights law liberally. Nevertheless, some courts, both at the trial and appellate levels, have resisted these directives. Opinions in Krohn v. New York City Police Department, 2 N.Y.3d 329 (2004), Hoffman v. Parade Publications, 15 N.Y.3d 285 (2010), Makinen v. City of New York, 30 N.Y.3d 81 (2017), Chauca v. Abraham, 30 N.Y.3d 325 (2017), and Russell v. New York University, __ N.Y.3d __, APL-2022-00175, Slip. Op. (April 25, 2024) are illustrations of narrow

interpretations of the New York city human rights law contrary to the language of the text, the legislative intent, or both, and the council now intends to correct these misinterpretations and reaffirm its intent that the New York city human rights law always be construed liberally for the accomplishment of its uniquely broad and remedial purposes. The purpose of this local law is to emphasize that there are no exceptions to the requirements set forth in section 8-130 of the administrative code of the city of New York and to provide further guidance to direct courts to liberally and independently construe the New York city human rights law in a manner that is maximally protective of civil rights in all circumstances.

§ 3. Section 8-130 of the administrative code of the city of New York is amended by adding new subdivisions (d), (e), (f), (g), (h), (i), and (j) to read as follows:

(d) There are no exceptions to the liberal construction requirements of this section, including but not limited to any jurisdictional, procedural, or substantive issue that is the subject of examination, and any purported exception, whether supposed to arise from common law, a statutory source, an interpretative doctrine, or otherwise contravenes the intention of this section.

(e) The failure of this section to repudiate an opinion of a court is not intended to ratify, and shall not be construed as constituting implicit ratification, of any such opinion.

(f) The council repudiates the interpretation of the New York city human rights law in Krohn v. New York City Police Department, 2 N.Y.3d 329 (2004). The city's sovereign immunity as to claims brought under the New York city human rights law was always intended to be waived. The restatement of this intention is found in subdivision a-2 of section 8-502.

(g) 1. The council repudiates the interpretation of the New York city human rights law in Hoffman v. Parade Publications, 15 N.Y.3d 285 (2010). There is no requirement that an unlawful discriminatory practice have an impact in the city of New York to be subject to the provisions of this title. Any unlawful discriminatory practice involving a decision, action or failure to act, or promulgation or maintenance of a policy that has a non-trivial nexus with the city of New York is actionable under the relevant provisions of this title.

2. For purposes of this subdivision, conduct includes any allegedly unlawful discriminatory practice involving a decision, action or failure to act, or promulgation or maintenance of a policy.

a. Conduct shall be deemed to have a non-trivial nexus with the city of New York where (1) the person aggrieved maintained a residence in the city of New York during some portion of the time during which the alleged unlawful discriminatory practice occurred, regardless of where the conduct occurred; (2) the conduct in question is related to employment, apprenticeship, a place or provider of public accommodation, land transaction, real estate, or housing that is, in whole or in part, located in the city of New York, regardless of where the person aggrieved maintained a residence and where the conduct in question occurred; or (3) the conduct occurred, in whole or in part, in the city of New York, regardless of where the person aggrieved experienced its impact; and

b. Conduct may be deemed to have a non-trivial nexus with the city of New York where a factfinder is persuaded by other facts and circumstances presented by the person aggrieved that such a nexus exists.

3. For the purposes of clause (2) of subparagraph a of paragraph 2 of this subdivision, employment located in whole or in part in the city of New York includes circumstances where the job or contract involves:

a. Physical presence averaging at least once per month in an office or other facility in the city of New York;

b. Services to be performed regularly in the city of New York; or

c. The existence of a reporting relationship between the person aggrieved and an employee or agent of the employer who is physically present averaging at least once per month in an office or other facility in the city of New York.

4. It is an affirmative defense against a finding of a non-trivial nexus with the city of New York based on clause (1) of subparagraph a of paragraph 2 of this subdivision where the respondent or defendant demonstrates that the respondent or defendant (i) was not authorized to do business in the state of New York, (ii) did not in fact do business in the state of New York, and (iii) was not a resident of the state of New York.

5. It is an affirmative defense against a finding of a non-trivial nexus with the city of New York based on clause (3) of subparagraph a of paragraph 2 of this subdivision where the respondent or defendant demonstrates that the participation of a decision or policy maker in the city of New York in respect to the decision or policy at issue was transient and incidental to the decision made or policy created or maintained.

(h) The council repudiates the interpretation of the New York city human rights law in Makinen v. City of New York, 30 N.Y.3d 81 (2017). Conduct based in whole or in part on mistakenly perceived alcoholism was always intended to be understood as conduct based on perceived disability, and the limitation set forth in paragraph 2 of the definition of disability in section 8-102 does not apply.

(i) The council repudiates the interpretation of the New York city human rights law by the majority opinion in Chauca v. Abraham, 30 N.Y.3d 325 (2017). Upon a finding of liability, a plaintiff was always entitled to charge a jury or other finder of fact with considering whether or not to impose punitive damages, in addition to all other forms of relief. The restatement of this intention is found in subdivision a-1 of section 8-502.

(j) The council repudiates the interpretation of the New York city human rights law in respect to individual liability in Russell v. New York University, __ N.Y.3d ___, APL-2022-00175, Slip. Op. (April 25, 2024). In this title, the terms “employee or agent thereof,” “agent or employee thereof,” “employee thereof,” or “agent thereof”, unless otherwise specifically and expressly provided, apply to all employees and agents without limitation and regardless of whether or not they exercised formal or informal supervisory authority over the person aggrieved.

§ 4. Paragraph (f) of subdivision 13 of section 8-107 of the administrative code of the city of New York is REPEALED.

§ 5. The opening paragraph of paragraph (b) of subdivision 25 of section 8-107 of the administrative code of the city of New York, as added by local law number 67 for the year 2017, is amended to read as follows:

(b) Except as otherwise provided in this subdivision, it is an unlawful discriminatory practice for an

employer, employment agency, or an employee or agent thereof who is acting in furtherance of an employment agency or employer business enterprise:

§ 6. Paragraph (a) of subdivision 32 of section 8-107 of the administrative code of the city of New York, as amended by local law number 59 for the year 2022, is amended to read as follows:

32. Employment; minimum and maximum salary in job listings. a. It shall be an unlawful discriminatory practice for an employment agency, employer, or an employee or agent thereof who is acting in furtherance of an employment agency or employer business enterprise to advertise a job, promotion, or transfer opportunity without stating the minimum and maximum annual salary or hourly wage for such position in such advertisement. In stating the minimum and maximum annual salary or hourly wage for a position, the range may extend from the lowest to the highest annual salary or hourly wage the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion, or transfer opportunity.

§ 7. Section 8-502 of the administrative code of the city of New York is amended by adding new subdivisions a-1 and a-2 following subdivision a, to read as follows:

a-1. A finding of liability for an unlawful discriminatory practice under chapter 1 of this title or an act of discriminatory harassment or violence under chapter 6 of this title, is sufficient by itself to warrant charging a jury or other finder of fact to consider whether to award punitive damages against a covered entity. The fact that a covered entity's act or failure to act was intentional, malicious, or recklessly indifferent to the rights of the plaintiff or plaintiffs is among the aggravating factors that may be considered by a jury or other finder of fact, but the absence of any such factors does not preclude the imposition of punitive damages. When a covered entity is found liable on the basis of its own conduct, punitive damages, if any, shall be assessed on the basis of the covered entity's conduct. When a covered entity is found vicariously liable for the conduct if its employee, agent, or independent contractor, punitive damages, if any, shall be assessed on the bases of (i) the conduct of the person for whose conduct the covered entity is vicariously liable and (ii) the covered entity's own actions and failures to act.

a-2. The city waives immunity and permits the award of punitive damages in respect to all claims brought under subdivision a of this section, including claims brought against the city or its agencies or other instrumentalities.

§ 8. This local law takes effect immediately and applies retroactively; provided, however, that subdivision (f) of section 8-130 of the administrative code of the city of New York, as added by section three of this local law, and subdivision a-2 of section 8-502 of such code, as added by section seven of this local law, only apply to claims commenced or continued not less than one year after the effective date of this local law.

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