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Good afternoon, Chairpersons Rosenthal and Cabrera and members of the Committees on Women and Governmental Operations. My name is Hollis Pfitsch, and I am the Deputy Commissioner for Law Enforcement at the New York City Commission on Human Rights ("Commission"). Although the Commission doesn't regularly testify before your Committees, we are happy to join you today to speak in favor of Intros 879 and 905.

The New York City Commission on Human Rights is the City agency charged with enforcing the City's anti-discrimination and anti-harassment protections in virtually all areas of city living, including in employment, housing, places of public accommodation, on the street, and other public areas within New York City. As the Deputy Commissioner for the Law Enforcement Bureau, I am in charge of all the law enforcement investigations and litigation at the Commission. All of the law enforcement at the agency is civil law enforcement, which means that the remedies sought by the City or intervening complainants are limited to money damages, affirmative and injunctive relief, and civil penalties.

Currently, the NYC Human Rights Law, which is the body of anti-discrimination and anti-harassment protections we enforce, requires that employers reasonably accommodate the "needs of an employee for her pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential requisites of the job, provided that such employee's pregnancy, childbirth, or related medical condition is known or should have been known by the employer." N.Y.C. Admin. Code § 8-107(22).

More than two years ago, on May 6, 2016, the Commission released legal enforcement guidance expressly making clear that lactation and expressing breast milk are covered accommodations under the law. Quoting from our guidance,

> Lactation is a medical condition related to childbirth and therefore must be accommodated absent an undue hardship. Employers must provide reasonable time for an employee to express breast milk and may not limit the amount of time that an individual can use to express milk unless the employer can demonstrate that the time needed presents an undue hardship to the employer. In addition, absent undue hardship, an employer must provide a clean, sanitary, and private space, other than a bathroom, that is shielded from view and free from public intrusion from coworkers, along with a refrigerator to store breast milk in the workplace. A lactation space must be conveniently located and reasonably near the employee's work station. An employee who wishes to express milk at their usual work station shall be permitted to do this so long as it does not create

> an undue hardship for the employer, regardless of whether a coworker, client, or customer expresses discomfort. Where an employer already provides compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

The Commission supports Intros 879 and 905 to the extent they are consistent with our legal enforcement guidance. However, both bills are drafted in ways that would actually provide less protection than is currently available under the law. If that is truly the intention of the bills, the Commission is interested in understanding the Council's reasoning behind those limitations, as we are generally not supportive of proposals that would limit current application of the law.

Specifically, current law requires employers with four or more employees to provide lactation spaces to employees, while Intro 879 only applies to employers of 15 or more employees. We are interested in understanding the reasoning behind this proposed change to the law.

Similarly, Intro 905 allows employers to wait five business days before responding to a request for lactation space. Waiting five days before expressing milk at work could result in severe pain, difficulties with continued lactation, and other issues. Under current law, waiting five days before responding to a request for lactation space for a currently lactating employee would likely constitute evidence of bad faith on behalf of the employer, and could result in employer liability. As such, we are interested in understanding the reasoning behind codifying a five-day wait period for employers to respond to these accommodation requests. We are concerned that legislating a specific response time could limit existing protections, which in many instances would require employers to respond more quickly. Currently, the reasonable accommodation process requires a case-by-case, individualized assessment for how quickly an employer should respond to an accommodation request.

Also, Intro 879 outlines an undue hardship standard that differs from Human Rights Law Section 8-102(18). The different standard may be interpreted to limit current coverage rather than expand it – and could create confusion, since other pregnancy-related accommodations would continue to be subject to the current undue hardship standard. The current undue hardship standard applied in situations where an employee requests a lactation space or accommodations related to pregnancy, childbirth, or related medical conditions has been helpful in enforcement of the law. As such, we are interested in understanding why Council believes there should be a different standard for this specific pregnancy/childbirth-related accommodation.

Overall, however, I wish to reinforce the Commission's support for providing accommodations for employees' pregnancy, childbirth, or other related medical conditions, and we will be happy to work with Council to make sure these bills do not contract current protections. As a champion of women's rights in the workplace, the Commission has consistently prioritized strong enforcement and outreach to combat discrimination based on pregnancy, childbirth, or related medical conditions. On May 27, 2018, in a letter to the editor of the New York Times, Commissioner Carmelyn P. Malalis reminded us that New York City is

home to some of the strongest workplace protections in the country for expecting and current mothers and caregivers, and encouraged people to come forward to file complaints when they experience such discrimination, also noting that the Commission has increased investigations in this area by more than 34 percent in the last two years. Pregnancy discrimination, however, remains rampant, and the Commission wants to seize this opportunity to consider how we can ensure accountability in the workplace and make certain that places of employment are welcoming and supportive places for expecting mothers and caretakers.

The Commission recently released a report, "Combatting Sexual Harassment in the Workplace: Trends and Recommendations Based on 2017 Public Hearing Testimony," which was the result of a public hearing we held on December 6, 2017 where over 27 members of the public, including representatives from advocacy groups, activists, and workers from a wide range of industries, shared their experiences of sexual harassment on the job. Centering the narratives of the unique experiences of workers and taking the opportunity to really listen to how people experience sexual harassment on the ground has enabled us to think through strategic and community centered approaches to our effort to end workplace harassment. We look forward to working together with the Administration and City Council to consider how we can continue to advance and protect the rights and needs of workers based on their pregnancy, childbirth or related medical conditions.