

Testimony of JoAnn Kamuf Ward
Deputy Commissioner, Policy and External Affairs
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights on Int. 1208-A
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Good morning Chair Eugene and members of the Committee on Civil and Human Rights. I am JoAnn Kamuf Ward, Deputy Commissioner of Policy and External Affairs at the New York City Commission on Human Rights. It is my pleasure to join you today to testify in support of the intent of Intro 1208-A, which would amend the City's administrative code to require employers to post the salary range on all job postings. I am joined today by my colleague, Katherine Greenberg, Special Counsel at the Commission.

The Commission is the local civil rights enforcement agency that enforces the New York City Human Rights Law, one of the broadest and most protective anti-discrimination and anti-harassment laws in the country, with 27 protected categories, and which covers housing, employment, and public accommodations. The Human Rights Law also prohibits discriminatory harassment and bias-based profiling by law enforcement. By statute, the Commission has two main functions. First, the Commission's Law Enforcement Bureau enforces the City Human Rights Law by investigating complaints of discrimination from the public, initiating its own investigations on behalf of the City, and utilizing testing to help identify violations of the Law. Second, through the Community Relations Bureau, which is comprised of Community Service Centers in each of the City's five boroughs, the Commission provides workshops and trainings on New Yorkers' rights and the obligations of businesses, employers, and housing providers under the City Human Rights Law, working with community partners and sister agencies. In the last six and a half years of this Administration, the Commission has implemented over 30 amendments to the City Human Rights Law. The Law has been expanded to institute one of the nation's first salary history inquiry bans, prohibit criminal history discrimination in employment, expand protections against sexual harassment and ensure rights of pregnant and nursing people, including lactation accommodations. Additionally, our law prohibits retaliation against individuals who seek to oppose discrimination, file a discrimination complaint, or participate in a related investigation.

Despite the COVID-19 pandemic, the Commission's work has continued, expanded, and pivoted to address new challenges, including: racial disparities in access to healthcare, housing, and essential needs; the needs of frontline workers who have disabilities or are pregnant and seek accommodations to continue to do their jobs safely; as well as the rise in anti-Asian bias, and acts of discrimination against all New Yorkers. In Fiscal Year 21, the Commission resolved 896 cases and assessed a record \$9.74 million in damages and penalties for violations of the City Human Rights Law. In addition to resolving cases for monetary relief, the Commission has shaped restorative justice remedies to repair the harm experienced by individuals and communities impacted by the discrimination. For example, in instances of employment discrimination, the Commission has negotiated resolutions that require respondents to invest in a

paid internship, apprenticeship, or employment pipeline opportunities for underrepresented groups, and to engage with community-based organizations to facilitate broader recruitment efforts. The Commission has established a cooperative approach to businesses and public accommodations to foster Human Rights Law compliance. In many instances involving first-time violators of the City Human Rights Law, where no complainant was harmed by a violation, the Commission has sought to educate businesses about their legal obligations and work with them in creating non-discriminatory policies and practices, rather than levying fines.

The Commission's staff remained steadfast in efforts to vindicate New Yorkers' human rights, and worked to uphold the Human Rights Law as we weathered a pandemic. However, discrimination remains a reality. The agency also continued to receive a high number of reports of discrimination, with 9,055 such reports in FY 2021, and 10,015 in FY 2020. Consistent with prior years, the most reported instances of discrimination were related to disability, gender, and race.

Some discrimination is intentional. Yet, discrimination can also be the result of practices that have a disproportionate impact on particular individuals and groups. The City Human Rights Law seeks to eliminate barriers to equity and to strengthen dignity and equality for all New Yorkers.

The Commission staunchly supports pay equity as well as the enactment of legislation that increase pay transparency, which is vital for equity.

The City Human Rights Law already contains several provisions that protect against unequal treatment in the terms and conditions of employment, including compensation.¹ These protections apply to most employers, and prohibit discrimination on the basis of many protected characteristics including, but not limited to, actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, and sexual orientation.² With respect to disparate pay, the City Human Rights Law provides that it is an unlawful discriminatory practice for an employer, employee, or agent thereof to discriminate against someone in compensation or in the terms, conditions or privileges of their employment because of their protected characteristic(s).

Discrimination in pay or terms of employment, however, can be difficult to detect, as employees are often hesitant to share salary information with colleagues, and often do not realize – and are unable to know – that they are being compensated at lower rates for comparable work. Recognizing this reality, local and state governments, including in New York, are taking steps to advance pay equity through policy initiatives. The New York City Human Rights Law was expanded in 2017 to ban inquiries into salary history for the purpose of encouraging pay equity across the City. That law prohibits an employer from inquiring about an applicant's salary

¹ N.Y.C. Admin. Code § 8-107(1).

² See *id.* § 8-107(1) (prohibiting unlawful discriminatory practices in employment and covers entities including employers, labor organizations, employment agencies, joint labor-management committee controlling apprentice training programs, or any employee or agent thereof); *id.* § 8-102 (“The term ‘employer’ does not include any employer with fewer than four persons in the employ of such employer,” except claims for gender-based harassment apply to employers of all sizes.).

history, including important and often overlooked fringe benefits. An employer may not rely on prior salary history to determine salary, unless the job applicant volunteers that information. This amendment to the Human Rights Law recognizes that “inquiring about salary history during the hiring process . . . often creates a cycle of inequity and discrimination in the workplace, which perpetuates lower salaries specifically for women and people of color.”³

Intro 1208-A represents a welcome step toward leveling the playing field for employees, and for women, people of color, and other New Yorkers who have historically been – and continue to be – harmed by wage disparities. Wages impact individual’s daily expenses and define what is affordable; wages also determine quality of life in the short term, and one’s ability to accrue equity over generations. Action to address pay inequity today will have long term benefits.

In 2019, the Commission convened a public hearing on pay equity, working with the sister agencies, the Commission on Gender Equity, the Department of Consumer and Worker Protection, as well as the Sex and Law Committee at the New York City Bar Association. Together, we gathered input from New Yorkers, and drafted a report.⁴ This hearing, and our work in this area, have together emphasized that federal, state, and local legislative and policy changes are needed to foster fairness and equity. The 2019 hearing testimony underscored that, although New York City has robust workplace protections, workers across and within industries continue to be inequitably compensated.⁵ Testimony emphasized that New Yorkers experience wage disparities as the result of persistent differential treatment in the workplace based on gender, class, race, immigration status, national origin, gender identity, sexual orientation, and other identity characteristics. More specifically, a lack of transparency in compensation enables pay inequity to persist.⁶ In jurisdictions where there is mandated wage transparency, the pay gap between men and women decreases, and more women are hired and promoted in leadership.⁷

Testimony during the public hearing revealed that wage disparities are elusive and offered a range of recommendations, which include the need for increased transparency surrounding pay, such as posting salary ranges for job classifications.⁸ Additionally, there was support for employer reporting of pay data and demographic information, as well as periodic audits.⁹

Testimony also suggested that there is a need for greater services and supports for individuals that have been most impacted by wage disparities and underpayment, including raising the minimum wage, and expansion of access to affordable childcare, as well as outreach and training programs that enhance career development and workplace readiness. The Commission looks

³ N.Y.C. Admin. Code § 8-107(25); *see also* N.Y.C. Comm’n on Human Rights, “Salary History Questions During Hiring Process are Illegal in NYC,” <https://www1.nyc.gov/site/cchr/media/salary-history.page>

⁴ *See generally* Challenges in Obtaining Pay Equity in the Workplace: A Report on New York City’s 2019 Public Hearing on Pay Equity (2020),

https://www1.nyc.gov/assets/genderequity/downloads/pdf/pay_equity_report_2020_final.pdf.

⁵ *See generally id.*, at 20-31.

⁶ *Id.* at 22.

⁷ *Id.* at 22-24; *see, e.g.*, n. 77 (quoting testimony and referencing a report on legislation in Denmark that requires “firms to provide gender disaggregated wage statistics . . . reduces the gender pay gap, primarily by slowing the wage growth for male employees”).

⁸ *Id.* at 35.

⁹ *Id.* at 33.

forward to working with the City Council, as well as sister agencies, to fulfill the intent of Intro 1208-A, and to working on complementary initiatives that promote gender and racial equity and advance pay equity in New York City.

Thank you again for the opportunity to speak today. My colleague, Katherine Greenberg and I look forward to discussing Intro 1208.