

**Testimony of JoAnn Kamuf Ward, Deputy Commissioner of Policy & External Affairs
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights on Int. 474
June 30, 2022**

Good morning, Chair Williams and members of the Committee on Civil and Human Rights. I am JoAnn Kamuf Ward, Deputy Commissioner of Policy and External Affairs of the New York City Commission on Human Rights. It is my pleasure to join you today to testify regarding the protections available under the City Human Rights Law related to reproductive health decisions, as well as Intro 474, which mandates that the Commission conduct an outreach campaign to inform the public about the protections in the Human Rights Law. Today's hearing also touches on access to reproductive health care facilities, which is set forth in the Public Safety provisions of the Administrative Code. I am joined by Kajori Chaudhuri, Deputy Commissioner of the Community Relations Bureau, and CCHR is pleased to testify alongside the NYPD.

We are here at a time when rights related to reproductive and sexual health are under clear threat. The highest court in the United States has rolled back rights that were hard won fifty years ago to protect basic bodily autonomy. The Commission stood on the steps of City Hall last Friday with sibling agencies, the Mayor, and members of this Council to demonstrate that New York is and will remain a city where sexual and reproductive health and rights are not only protected, but that they are prioritized.

In this context, I am proud to be here to underscore that the Commission is aligned with City Council's goals to ensure that all New Yorkers, especially those who are pregnant and seeking sexual and reproductive health care, know their rights, regardless of where they work or live. We support efforts to ensure that access to reproductive health and abortion is strengthened in New York City, and that this city is welcoming for all those in need of safe healthcare.

Agency Mandate & Structure

The Commission is the local civil rights enforcement agency that implements 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 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 New York City, and utilizing testing to help identify violations of the Law. Complementing the Commission's Law Enforcement functions, the Community Relations Bureau 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 sibling agencies. Seven years ago, the Commission established the Office of the Chair, which houses the agency's policy and legislative functions, as well as communications.

The goal of the City Human Rights Law is to ensure that all New Yorkers live in dignity, have their basic needs met, and fully enjoy their human rights. The Law applies to private entities and

government agencies. Covered employers cannot discriminate against job applicants and employees based on their age, immigration status, arrest or conviction record, caregiver status, color, credit history, salary history, disability, gender, gender identity or expression, marital or partnership status, national origin, pregnancy, race, religion/creed, sexual orientation, status as a current or former military service member, status as victim of domestic violence, sexual violence, or stalking, and unemployment status. Employment protections apply to employers with four or more employees, and those who employ domestic workers, as well as to employment agencies and labor organizations. Most employees and job applicants have rights, regardless of whether their position is full-time, part-time or an internship. Independent contractors are also protected by the City HRL.

Since 2015, the City Human Rights Law has been amended by the City Council 38 (thirty-eight) times. More than a dozen of these amendments relate to employment. In addition to prohibiting discrimination, the Human Rights Law prohibits employers from retaliating against an individual for reporting discrimination.

Protections Regarding Pregnancy, Childbirth, Related Medical Conditions, and Sexual and Reproductive Health Decisions

Pregnancy discrimination has long been a focus of the Commission. City Council codified the right to reasonable accommodations on the basis of pregnancy, childbirth, and related medical conditions in 2014. The agency first published guidance on pregnancy discrimination in 2016, guidance which has been updated to reflect additional legislation that requires employers to provide lactation accommodations. Employers are required to ensure that pregnancy protections are implemented, as well as to post notice of protections, and have lactation policies for when individuals return to the workplace. More recently, in 2019, City Council passed an amendment prohibiting employers from discriminating against employees on the basis of any decisions about sexual or reproductive health.

As a result of the 2019 amendment, it is a violation of the City Human Rights Law for an employer to treat a person less well because of their actual or perceived sexual or reproductive health decisions.

The term “sexual and reproductive health decisions” is defined as any decision an individual makes to receive services for their sexual and reproductive health, reproductive system, and its functions. This includes, but is not limited to, fertility-related medical procedures, STD prevention, testing and treatment, family planning services and counseling, for example birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion. This includes hormone therapy or other transition related care for transgender New Yorkers, or other decisions involving reproductive systems. This protection builds on Human Rights Law protections on the basis of gender, and gender-identity, among others.

It is a violation of the City Human Rights Law for an employer to (a) enforce policies or practices treating employees less well because of their actual or perceived sexual and reproductive health decisions; (b) use judgments and stereotypes to exclude employees from employment projects or as pretext for unlawful discriminatory decisions in employment; (c) make offensive jokes, singling out, and engaging in other harassment of individuals on the basis of sexual and reproductive health decisions; or (d) engage in other adverse employment actions.

I will mention two examples. Employers are not allowed to fire an employee after learning that the employee is considering or had an abortion, nor can an employer avoid meetings with one of the employees on their team after learning the employee sought preventative treatment for HIV. Further, an employer cannot repeatedly criticize an employee for pursuing in vitro fertilization treatment (IVF), which the employer believes is not “natural.”

While employees are not specifically entitled to reasonable accommodations for their sexual and reproductive health decisions, they are entitled to such accommodations on the basis of pregnancy, childbirth, or related medical conditions, which encompass lactation and some sexual and reproductive health decisions. For example, people who have experienced miscarriages, abortions and fertility treatment, must be provided reasonable accommodations unless they present an undue hardship. This might look like a period of unpaid or paid sick leave, or a flexible schedule for a period of time to account for additional appointments related to the procedure or experience.

Remedies for Violations of City Human Rights Law

Experiences of discrimination in employment and discriminatory harassment can be vindicated by reaching out to the Commission. Violations of the City Human Rights Law can result in an award of damages to the complainant, and civil penalties to the City of New York. Other affirmative relief is also available, such as restorative justice interventions, anti-discrimination training, among others. Where there is a finding that discrimination occurred, the Commission will work to craft a remedy that is meaningful to the complainant and other members of the impacted community.

In the arena of pregnancy and related medical conditions, the largest number of cases fall into the category of a failure to accommodate, followed by claims of discriminatory discharge, and then hostile work environment. Cases in this area are often resolved through damages, through provision of accommodations to schedules and duties, requirements of managerial trainings, and policy changes.

The Commission’s Outreach on Sexual and Reproductive Health Decisions

In order to educate New Yorkers on their rights, the Commission continuously seeks outreach opportunities. In addition to developing the guidance I mentioned previously, the Commission has a one-page fact sheet on the protections against employment discrimination on sexual and reproductive health decisions. Protections related to sexual and reproductive health and pregnancy are included in our most frequent training, Human Rights 101. Moreover, in 2019, the Commission, along with the Department of Health and Mental Hygiene, and the NYC Commission on Gender Equity, hosted a public hearing on pregnancy and caregiver discrimination, where the Commission compiled legislative and policy recommendations to improve on reproductive health. Over the past three years, the Commission has worked to operationalize many of these recommendations, including improving protections for domestic workers and conducting public education and outreach on pregnancy and caregiver discrimination, in addition to educating employers about their obligations under the City Human Rights Law. Since 2019, the Commission has conducted 582 Human Rights Law trainings that

educate on these protections. In addition, the agency joins and organizes panels and other events to highlight the protections. For example, in 2021, we held a discussion entitled Stories from the Delivery Room: Health Equity, Pregnancy, and the Maternal Health Care of People of Color. Dr. Uché Blackstock, Founder and CEO of Advancing Health Equity, which addresses bias and racism in healthcare, headlined this event. The Commission continues to partner with the Neighborhood Health Action Centers of DOHMH to conduct outreach to pregnant people.

Intro 474

Intro 474 falls in line with the continued efforts of the Commission to ensure reproductive and sexual health is available for all New Yorkers. We support initiatives to inform the public about their sexual and reproductive health rights. It is our goal to increase outreach and awareness of fundamental rights, particularly for those most impacted by sexual and reproductive health decisions.

We believe that a sexual and reproductive health rights campaign would be most impactful and effective if it is part of a joint agency strategy in collaboration with sibling agencies that can speak more closely to the laws regarding physical access as well as the services that sexual and reproductive health facilities provide. We also look forward to working with Council to incorporate the campaign we are discussing today with the other public education campaigns that have been recently introduced by the Council, including Intro 478, sponsored by Council Member Hudson, requiring a public education campaign about the services offered by doulas and midwives; and Intro 506, sponsored by Council Member Rivera, requiring DCWP, among other mandates, to implement a media campaign to raise awareness about the issues around “Pregnancy Service Centers,” and the Public Advocate’s Intro 86.

Conclusion

The Commission will close by emphasizing our commitment to ensuring all people are able to make the sexual and reproductive health decisions that are essential to dignity, autonomy, and the exercise of human rights, regardless of their identity.

Thank you again for the opportunity to speak today. My colleagues and I look forward to continuing to discuss Intro 474 and exploring the possibilities of a coordinated citywide effort.