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NYC Commission on Human Rights

Public Hearing

September 5, 2024

11:00 a.m. EST

>> YESHI MITIKU: We'll wait a couple of minutes as people trickle in, and then we'll get started.

[Captioner standing by]

>> YESHI MITIKU: Hello, folks. Thank you for joining. We're going to wait a few more minutes, about two more minutes, and then we'll get started.

[Captioner standing by]

>> YESHI MITIKU: Good morning, everyone. Hopefully everyone can hear me. My name is Yeshi Mitiku. I'm a policy analyst and adjudications coordinator. I am facilitating today's public hearing of the New York City Commission on Human Rights. With me today I have colleagues, Michael Griffin, policy counsel. And Hillary Scrivani, policy counsel. We have

a live captions service available called StreamText. If you would like to use the service, it's linked in the chat.

The Commission enforces New York City rights law which is one of the most comprehensive law in the nation. It prohibits discrimination in housing and public places including this hearing. Today's hearing is on proposed rule regarding discrimination under the history of the New York City Human Rights Law also known the Fair Chance Employment.

The proposed rules include amendments related to prepare and filing and places of public accommodation that request accommodations from prohibition against gender-based discrimination. This hearing is held by teleconference hall. It's 11:04 on September the 5th, and I'm convening the hearing on the proposed rule.

It was published on the record July 30th, 2024. They're available online at the Commission's website. They imposed rules vested by the authority by Section 905 and 1003 of the New York City Charter. This affords the public an opportunity to comment on aspects of the rules the Commission proposed. We'll review all comments at this hearing and give weight and consideration to proposals and considerations submitted for the record.

Be aware this public hearing does not include question and answer format. And it's solely a space for members of the public to provide oral feedback on the proposed rules.

There's also an opportunity for written comments. To ensure everyone is seeking to provide a comment, we'll have an opportunity to do so.

I ask we follow these ground rules. During the hearing, all participants should give due respect in consideration to people offering comments and mute their lines if not speaking. Be aware any discrimination or disruptive behavior will not be tolerated during this hearing. Each speaker has a maximum of three minutes to provide comments. If comments take longer, synthesize your oral comments and leave a written comment for the record.

Unlike the limit on time for oral comments, there's no limit on the number of pages you can submit as written comments. They'll be made part of the public record. If you're looking to submit comments and haven't already, please let me know in the chat.

Before we begin, I'll remind participants to mute their line until called to provide comments. We may mute you if necessary. You will have three minutes for comments. I will call the registrant and attendees and you may begin when you're ready.

The registrant listed is Amarachi Ngadi. And forgive my pronunciation. Okay. And if you end up attending, we'll call back on you later.

The next person I see is Maria Munoz. Awesome. You

may begin now. I see that you're muted, and I want to make sure you wanted to provide an oral testimony or comment?

>> MARIA MUNOZ: No, I'm just attending, sorry. Thank you.

>> YESHI MITIKU: Next we have Stephen Fuchs.

>> STEPHEN FUCHS: Present. Thank you very much. I want to thank the Commission for having this hearing. And shout out to some of my respected adversaries in other matters. I see them on the call.

I made comments on the new definition of conditional offer in Section 201. And the parts of the definition distinguish when a conditional offer can be withdrawn. And under what circumstances. There's new language indicating a conditional offer can be withdrawn regardless of the results of a criminal background check.

The point I wanted to make is, there should be clarification in these amendments as to the statute is not violated when a conditional offer is withdrawn for something that doesn't fall within this definition where there is no criminal history involved at all.

The person either has no criminal history, or no criminal history has been received. As a practitioner who represents employers and provides advice every day, except sometimes weekends and holidays, regarding the Fair Chance Act, what often happens is the question arises: Well, the person has

no criminal history. Will this violate the statute?

On its face, it seems it would be a technical violation of the statute, but the point is the statute is not invoke where had a conditional offer is withdrawn for other than reasons where the person has no criminal history, or no criminal history has been received. So that was one point.

A second point I wanted to raise was, there's a revised definition of a non-conviction discussing an adjournment in contemplation of dismissal. That seems clear enough. But what often happens is someone -- a candidate has some type of deferred sentence in another jurisdiction that doesn't have the same device.

So the question that often arising is, is a deferred sentence after a guilty plea in Texas or Georgia, for example, the same thing as an adjournment of contemplation and dismissal and is it required to be treated the same way? I think it's beyond the scope of this inclusion of an adjournment and contemplation of dismissal, and the regulation should clarify this is limited to the New York Penal Code, adjournment and contemplation of dismissal under New York law instead of open up to every deferred sentence under every jurisdiction that are range widely in application

>> We're almost at three minutes. About ten seconds.

>> STEPHEN FUCHS: Lastly, I want to give a disclosure and authorization by the fair reporting credit act may state

including histories among categories of information being offered. It's required in the law in other jurisdictions like California. Previously, the Commission's guidance said it shouldn't be included. It was removed previously. I would like confirmation that's lawful and I guess I'm out of time. Thank you very much.

>> YESHI MITIKU: Thank you for your comments. Next, we have KB White. You may begin when you're ready. Good morning.

>> KB WHITE: Good morning. I'm here with CORA that is comprised with organizations across the state. Two issues. First, clarification to the proposed extension 204G which could be read to make the SVA -- [speaking too fast to understand].

]With regard to the exception, it tends to apply to industries and sections within those centuries. As the Commission explained to declare actions when hiring for positions. We believe it was unintentional by part of the drafters but we're concerned on section by mandatory bars by law or legally mandated exclusions based on certain conviction histories it could be allowed to permit employers to inquire into [indiscernible] and form denials on part of those adjudications when not subject to the bar or legal exclusion. We're concerned proposed Section G7 would be read to move all protections for job seekers and workers what's termed by proposed rule positions for which is a criminal background check is legally required.

Again this is likely unintentional language but the

change itself see could have norms consequences as thousands of low wage workers in New York City who work in industries where a background check is required could lose all protections the Commission worked so hard to enforce. We provided a red line version of the section attached to our written submission that clarifies the exemptions and to instead employer actions rather than the sector or position. The language is largely taken from the 2022 legal guidance.

Secondly with respect to clarity on when and how to claim a direct relationship for unreasonable assumption, we would ask that the Commission include stronger language grounding the plane language of article 23A in case law for the definition of direct relationship. Instead it must be between the specific nature of the alleged conduct and specific duties necessarily related to the job. As written, it would only require some connection which is language of the proposed rule no matter how indirect.

And secondly, within this request, we also request that the Commissioned a clarifying instruction to the unreasonable risk exception that's consistent with the guidance. As many will tell you, employers often improperly claim this risk exception because they're focused on the seriousness of the information, for example. Including guidance language will clearly tell employers they must first assume there's no risk. And then show how the factors combine to demonstrate risk. If

we could also plainly state that seriousness alone does not demonstrate risk nor my employees assume any type of offense creates risk from the guidance, that could be fantastic. I included all in this my written submission I. See you waiving me. We look forward to future collaboration. Thank you so much.

>> YESHI MITIKU: Thank you for your comments. Next we have Amie Willis.

>> [Inaudible].

>> YESHI MITIKU: Got it. Thank you. Kathleen McKenna.

>> KATHLEEN MCKENNA: I'm not here to comment. Thank you.

>> YESHI MITIKU: Of course, thank you. Anna Arkin-Gallagher.

>> ANNA ARKIN-GALLAGHER: Hi, good morning. My name is Anna Arkin-Gallagher. I'm the Associate Director of the Civil Justice Practice of Brooklyn defender services. Our prospect provide legal representation and informal advocacy to people facing employment discrimination due to prior or current contact with the criminal legal system.

Like many others you are hearing from, we're a member of the coalition of re-entry advocates. Members of our Employment Act practice use the Fair Chance Act including the Commission's rules and legal enforcement guidance on a near daily basis to fight or our clients to get, or keep, their jobs.

We talk about many more issues in our written

testimony but I want to focus today on the portions of the proposed rules concerning those job applicants alleged to have intentionally misrepresented their criminal history.

Our office worked with many people who inadvertently misstated their criminal history. They might have misunderstood their conviction history, misremembered long ago convictions, or believed a conviction was sealed when it wasn't.

One of our clients had several old convictions including an old felony conviction and two misdemeanor convictions. He was forthcoming about the felony, and the circumstances surrounding this conviction. But didn't realize he also had to disclose these two less serious misdemeanor cases. In fact, he thought incorrectly that they were sealed.

Thus, we're suggesting the Commission's rules explicitly define the conduct that qualifies as an intentional misrepresentation of criminal history by adding a definition into the rules, and including more specific guidance for employers including examples of what may not constitute intentional misrepresentation drawn in the Commission's legal enforcement guidance. These additions will help ensure applicants who misremember or misstate their criminal history with no intention to deceive are not discriminated against.

In the case of the client I just discussed, I was able to use that guidance from the legal enforcement guidance language to help explain to the perspective employer why he had

failed to report the misdemeanor, so he was ultimately able to get the job.

We also suggest making explicit in the rules an employer who is considering taking ad verse action due to an applicant's misrepresentation of their criminal history must meaningfully consider the applicant or employee's response. And if they still wish to deny them the job on that basis, provide a copy of that analysis to the applicant or employee in writing.

Finally, the rules should remind employers it's the employer's burden to demonstrate a misrepresentation is intentional if that basis serves to denying the applicant. We simply want there to be additional clarity regarding an area of law that's confusing for applicants and employers and to bring in some of that very helpful language from the legal enforcement guidance. Thank you very much.

>> YESHI MITIKU: Thank you so much. Next we have Megumi Saito. Please correct me on pronunciation.

>> MEGUMI SAITO: You got it. Thank you. Good morning, everyone. My name is Megumi Saito and I'm a staff attorney in the Worker Justice Project. This project is an initiative in the Legal Aid Society's criminal defense practice. We fight employment discrimination faced by New Yorkers with arrest and conviction records.

We want to thank the Commission for the opportunity to provide testimony today. I also want to express the Society's

strong support for the Commission's proposed rules which will advance the enforcement of the -- 2021 amendments to the Fair Chance Act. We continue the proposed rule aligns with the Commission's legal enforcement guidance.

As a former trial attorney in our criminal defense practice and current Worker Justice Project attorney, I've seen devastating impact allegation has on low income New Yorkers. New Yorkers are of course workers and many of them are low wage, undervalued jobs this city runs on.

I rely heavily on the guidance to enforce the Fair Chance Act on behalf of these workers. Second, I want to echo the statements of my colleagues in the coalition of re-entry advocates and other rights to workers organizations here today.

I'm going to focus on two main points. To begin, I respectfully recommend that the Commission modify Proposed Rule 20485 to make it a per se violation when employers fail to meaningfully consider a response to a Fair Chance notice. The Legal Aid Society has several clients who were adversely impact bid employer's failure to meaningfully examine the responses and specifically, how the response impacts the employer's original Fair Chance analysis.

I had one recent client who was terminated after submitting a Fair Chance response that corrected an error on the employer's background check. Currently, employer's are free to comply with the Fair Chance Act while in reality they can stop

the process at the crucial step of re-conducting its original Fair Chance analysis based on the response. We request the Commission to add this step to Subsection 6 in the rule.

The next point is to recommend Commission modify rule 204 E 24B to mandate employers to make a final decision within a reasonable period of time. And that presumed amount of time is not to exceed five business days. This is essentially to workers are not indefinitely waiting for a final decision from an employer.

We have several clients who responded to a Fair Chance notice only to way weeks or months for a final decision. Both aspects of our proposed language are pulled from the guidance. These portions of the guidance are included in my written testimony. These recommendations are helpful and powerful to employers that they cannot you think intentionally or willful start the Fair Chance Act by merely going through the process only to stop short at the end specifically not considering the Fair Chance notice response or taking an indefinite amount of time to make a final decision.

I make other decisions in my written testimony I hope you will review and I thank you all for your consideration.

>> YESHI MITIKU: Thank you. Next, we have Mora Avington. Is Mora present? Okay.

All right. If anyone else would like to provide comments and hasn't alerted us of such, please make a note. And

if not, we can pause this hearing for a couple of minutes. I would like to circle back. I've noticed Amarachi Ngadi is present. Would you like to provide a comment, or are you just in attendance?

>> AMARACHI NGADI: Just in attendance. Thank you.

>> YESHI MITIKU: Okay. At the moment, there are no more submitted comments. So, I will wait a couple more minutes, maybe two more minutes to see. And if not, we may adjourn this meeting.

[Captioner standing by]

>> YESHI MITIKU: Seeing no one present to offer comments, I will go off camera and adjourn the hearing until an individual appears to offer comments, or until 12:00 p.m. Whichever comes first. Pardon, I see Karl.

>> KARL BEECHER: This is Karl Beecher from the Bronx. How is everyone doing? In my youth, I got into a lot of trouble. But thankfully, it didn't result going to prison or anything like that however, it appears my character has been given a life sentence behind society's bars.

It's really unfair and down right unconstitutional that a moment of youthful indiscretion will remain with me for a lifetime. I propose all criminal records should be automatically expunged from the entire system if the individual has not been involved in any crime for ten consecutive years.

If the individual has not been involved in a criminal act for five consecutive years, then the police department can

maintain that information for access, but it would not be public record and would not affect an individual seeking employment.

Particularly, his offensive or past offensive would not be required or man dated on any job application or document for that matter. It would assist individuals to reclaim their life, dignity and give them the hope, inspiration to move forward for their bad mistakes. Conversely, when indelible disdain is placed on an individual for life, it takes away home, produces low key, depression and creates recidivistic inclination and mortality born out of shame and despair.

The case people have done their time and satisfied their judgment, it's very unfair, unreasonable and unkind to perpetuate conditions in light of the fact judgment was satisfied. God himself makes it clear. Once the punishment for sin has been satisfied, he will remember our sen nos more. If God, Jesus, can forgive and forget, how much more should we do the same? I'm curious, how much time do I have left?

>> YESHI MITIKU: One minute.

>> KARL BEECHER: Okay. One minute. The thing is, I remember back in the days, I think I was in my 20s at the time. I applied for a job at FedEx. And unfortunately, what I did, I did not put down my past conviction because I was in fear I wouldn't get hired. Needless to say after three or four years, they found out. I thought it was all good, but the thing is, it come back like backlash and I got fired from that job for I

think they call it something like misrepresentation or whatever they use. The thing is, a job like sanitation doesn't discriminate and I learned to always put down everything. But that's what people go through in fear when they don't know. When they have something hanging over their head, they will resort to lying. Unfortunately, you shouldn't, but I did 20 years or so ago. But thank God sanitation, I put everything down, got hired. They don't discriminate which is great. I'm retired now, but these are the things that really affect people. So, I think -- yeah?

>> YESHI MITIKU: We're almost at tame.

>> KARL BEECHER: Let me land the plane. So, yeah, I think this rule should definitely pass and what I mentioned should be more of a rule. Everything should be totally erased and expunged after five or ten years if someone is living a good life.

>> YESHI MITIKU: Thank you for your comment.

As I said before, if no one is present for comments, I will go off camera and adjourn the hearing until an individual appears to offer comments, or until 12:00 p.m.; whichever comes first.

[Captioner standing by]

>> YESHI MITIKU: Do I see Karl Beecher, is your hand raised?

[Captioner standing by]

>> KARL BEECHER: Yes, hello? Can you hear me.

>> YESHI MITIKU: Yes.

>> KARL BEECHER: Yeah, so the question really is, is Mitch Griffin there?

>> YESHI MITIKU: Pardon. Mitch?

>> KARL BEECHER: Yeah. I guess perhaps you could fill this inquiry or statement because what I'm realizing is that this particular platform or rules hearing thing, not a lot of people are aware of it. I'm still not even sure how I became aware of this, but who is -- how is it that this is sent out to the public or the constituents, the public, the citizenry? Because I'm sure a lot of people aren't aware of this by the fact there's only 12 people here for such like an important situation.

And I realize that, notification doesn't necessarily mean -- or it's going to translate into attendance, but the thing is not a lot of people are aware of this. Who is in control of sending out this message to the public? So more people understand this platform is actually available.

>> YESHI MITIKU: Sure. Thank you for your question. At the beginning of this meeting in the opening statement, I made those aware there's a procedure and protocol by which we notify the public. So that involves publishing this on the city record. Publishing the notice and rules are available online, on the New York City Rules Website, as well as our own website, the Commission on Human Rights. So I can assure you we do follow a strict protocol to, hopefully, allow those interested to be

notified.

>> KARL BEECHER: Okay. I'll say this and I'll land. But the thing is I think, just as an insight, I think this particular information, yes, you have it on the proper sites. But I think more effective is to put -- this might sound silly, but put it on places like TikTok, like the social media. This is where most people are. Most people are not into getting on websites like City websites and trying to find these things.

If people knew of it, that would be more interested. But a lot of people -- they're not even aware this stuff is happening. So, if you guys really want to get this out, perhaps -- I don't even know if you guys have a TikTok or a social media thing, but if you don't, the City should have one on social media. And get that out on that as well. Or even put that on commercials or something.

Because like I said, it's really like unknown. Like I said, to this day, I'm still not sure how I stumbled -- I know I stumbled across it. I don't think it was something I was searching for, but any event, thanks for giving me the opportunity to voice that opinion. Appreciate it. Excellent work.

>> YESHI MITIKU: Thank you. And, again, if you would like to submit a written comment that doesn't have the time limit of three minutes in terms of the oral comment, please feel free to do so.

>> KARL BEECHER: Will do, will do. How do you say your name? I'm curious.

>> YESHI MITIKU: Yeshi.

>> KARL BEECHER: Yeah, I like that. Yeshi. It appears it's like that movie where the guy goes, what is it, comedian that says, Always say yes, never say no [laughing]. Again, appreciate it.

>> YESHI MITIKU: Thank you.

[Captioner standing by]

>> YESHI MITIKU: Okay, seeing it's now 12:00 p.m., I willed adjourn the hearing. Thank you, everyone, for participating. And have a good day.

[End of meeting]