

# Challenges in Obtaining Pay Equity in the Workplace:

**A Report on New York City's  
2019 Public Hearing  
on Pay Equity**





## Authors

The New York City Commission on Gender Equity, the New York City Commission on Human Rights, the New York City Department of Consumer and Worker Protection, and the Sex and Law Committee at the New York City Bar Association

## About the New York City Commission on Gender Equity

Established in 2015, the Mayor's Commission on Gender Equity (CGE) works to create deep and lasting institutional commitment to tearing down equity barriers across New York City. CGE addresses issues of inequity and discrimination facing girls, women, transgender, and gender non-binary and non-conforming New Yorkers regardless of ability, age, ethnicity and race, faith, gender expression, immigrant status, sexual orientation, and socioeconomic status. Focusing across the areas of Economic Mobility and Opportunity, Health and Reproductive Justice, and Safety,

CGE ensures that the City leads in the development and implementation of best practices in gender equitable policies and programs for its workforce and its residents.

## About the New York City Commission on Human Rights

The New York City Commission on Human Rights ("CCHR") is the City agency responsible for enforcing the New York City Human Rights Law (the "City Human Rights Law"), one of the most comprehensive anti-discrimination laws in the country. The Commission has three primary divisions: the Law Enforcement Bureau ("LEB"); the Community Relations Bureau ("CRB"); and the Office of the Chairperson. LEB is responsible for the intake, investigation, and prosecution of City Human Rights Law violations, including systemic violations of the law. CRB, through borough-based Community Service Centers, helps cultivate understanding and respect among the many diverse communities through events, workshops, training sessions, and pre-complaint interventions, among

other programs and initiatives. The Office of the Chairperson houses the legislative, regulatory, policy, and adjudicatory functions of CCHR and convenes meetings with the agency’s commissioners.

## About the New York City Department of Consumer and Worker Protection

The New York City Department of Consumer and Worker Protection (“DCWP”)—formerly the Department of Consumer Affairs—protects and enhances the daily economic lives of New Yorkers to create thriving communities. DCWP licenses more than 75,000 businesses in more than 50 industries and enforces key consumer

protection, licensing, and workplace laws that apply to countless more. By supporting businesses through equitable enforcement and access to resources and, by helping to resolve complaints, DCWP protects the marketplace from predatory practices and strives to create a culture of compliance. Through its community outreach and the work of its offices of Financial Empowerment and Labor Policy & Standards, DCWP empowers consumers and working families by providing the tools and resources they need to be educated consumers and to achieve financial health and work-life balance. DCWP also conducts research and advocates for public policy that furthers its work to support New York City’s communities.



*Audience members at the Public Hearing on Pay Equity, September 2019.*

## About the New York City Bar Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. [www.nycbar.org](http://www.nycbar.org)

The City Bar's Sex and Law Committee addresses issues pertaining to gender and the law in a variety of areas, such as violence against women, reproductive rights, gender discrimination, poverty, matrimonial and family law, employment law, and same-sex marriage. Recently, the Committee has addressed the issues of paid family leave, reproductive rights in New York State, and civil rights for LGBT individuals. The committee also collaborates with the City Bar's Student Legal Education and Opportunity Program to provide presentations to public high school students on teen dating violence and sexual harassment in the workplace. The Committee is honored to have been asked to help facilitate these hearings and play a role in producing this important report.



Audience members at the Public Hearing on Pay Equity, September 2019.

## My fellow New Yorkers,

This year has been unlike any other.

During the COVID-19 pandemic and ensuing economic crisis, we have seen yet again how important it is to create a fair, inclusive economy that gives opportunity to every New Yorker. For the past seven years, that has been our mission – from bringing quality Pre-K education to every New York City family, to implementing paid sick leave, to relieving the caregiving burdens that many women of color have traditionally shouldered.

But there is still work to do. We must eliminate every barrier to pay equity in our City – so that women of all ethnicities and gender nonconforming New Yorkers earn equal pay for an equal day’s work. And we must ensure every single workplace is free from discrimination, harassment, and intolerance of any kind. It doesn’t matter what one’s race, gender identity, social economic background or immigration status is. Everyone is welcome in New York.

This report shows our commitment to advancing those goals. It builds on our City’s leading work to advance human rights, workers’ rights, and gender equity. It demonstrates that we have not only heard the voices of New Yorkers who bravely testified about their workplaces experiences, but are determined to keep fighting on their behalf.

I thank the New York City Commission on Gender Equity, the New York City Commission on Human Rights, the Department of Consumer and Worker Protection, and the New York City Bar Association for their partnership. Above all, I thank the workers, experts, advocates, and organizers who delivered the powerful testimony that inspired this report. Their courage and resolve are changing our City and a nation for the better. Together, we can ensure that every workplace in our City is fair, safe, and inclusive for all.

**Chirlane McCray**

First Lady of New York City



*Audience members at the Public Hearing on Pay Equity, September 2019.*

**Since Mayor de Blasio took office in 2014, the fight against discrimination and oppression, including sexism and racism, has been central to the City’s mission.**

This mission has resulted in high-profile groundbreaking achievements for New Yorkers. Now, there is pre-K for all New York City families, which not only helps close racial education gaps, but relieves some caregiving burdens that women, especially women of color and immigrant women, disproportionately carry. In addition, New York City implemented paid safe and sick leave so that now all workers have paid days off to care for themselves or for family members due to sickness or to gender-based violence.

The City also strengthened many key laws and invested in the City agencies tasked with enforcing those protections. The first-ever Commission on Gender Equity (“CGE”) was created to use an intersectional lens and a human rights frame to address

issues of inequity and discrimination facing girls, women, transgender, and gender non-binary New Yorkers. The Department of Consumer and Worker Protection (“DCWP”) was expanded to protect and enhance New Yorkers’ daily economic lives to create thriving communities. It enforces numerous new workplace policies, and, through its Office of Labor Policy & Standards, provides a dedicated voice in City government for workers. The City has strengthened the City Commission on Human Rights (“CCHR”) and broadened and deepened the City Human Rights Law to further protect New Yorkers from many forms of discrimination. The City Human Rights Law has been amended twenty-eight times over the past five years, including amendments that: expand protections against caregiver discrimination; prohibit the use of salary history in hiring; broaden protections and mandated preventative measures regarding sexual harassment in the workplace; clearly articulate requirements around the provision of lactation accommodations and policies in the workplace, among many other

additional protections. Furthermore, CCHR issued legal enforcement guidance and promulgated rules on discrimination on the basis of gender identity and gender expression, issued legal enforcement guidance on discrimination on the basis of pregnancy, childbirth, and related medical conditions and accommodations in the workplace, and published an interactive sexual harassment prevention online training—the first of its kind—that was completed over 400,000 times in its first seven months. Over the past two years, CCHR held public hearings on pregnancy and caregiver discrimination and on sexual harassment in the workplace, issuing reports on findings thereafter.

With this report, we build on CCHR’s prior public hearings and reports, and continue the City’s leading work in advancing human rights, workers’ rights, and gender equity. On September 19, 2019, the City convened a citywide public hearing to address pay equity. We heard from activists, experts and workers from a broad range of occupations and industries, including government service, international organizations, organized labor, domestic work, the sectors of technology, finance, construction, and others, about their experiences with pay inequities and the challenges they face in eliminating barriers to pay equity.

Those who testified represented some of the City’s most vulnerable workers, including women in male-

dominated industries, people of color, and immigrants. People who testified described how occupational segregation, power disparities within workplaces, and a lack of pay transparency perpetuate and exacerbate pay inequities. Testimony addressed the heightened vulnerabilities of workers at the intersections of multiple forms of oppression, in particular low-wage, immigrant, and aging workers, as well as workers with caregiving responsibilities.

As government entities in New York City, we aim to help people understand their rights and to know that they have a venue to seek redress for injustices they face in the workplace by providing them with resources to improve their workplaces and communities. Our hope is that this report will serve to reflect their experiences, ideas, and recommendations to ensure that all New Yorkers receive fair compensation for their work.

**Jacqueline M. Ebanks**

Executive Director, New York City  
Commission on Gender Equity

**Carmelyn P. Malalis**

Chair and Commissioner, New York City  
Commission on Human Rights

**Lorelei Salas**

Commissioner, New York City  
Department of Consumer and Worker  
Protection

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Fatima Goss Graves, President and CEO of the National Women's Law Center giving the keynote address.

# I. Introduction

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Despite active legal protections to achieve equal pay, there still exists a significant pay gap across genders, races, and other protected classes. The most common way researchers measure these pay gaps is to compare snapshots of women's and men's<sup>1</sup> earnings who worked all year full time in a given year. These comparisons

show that women on average are paid roughly 82 cents for every dollar white, non-Hispanic men are paid, while Black women are paid 62 cents, Native women are paid 57 cents, and Latinx women are paid 54 cents.<sup>2</sup> Another way to measure these gaps is to compare total earnings across the most recent years for all individuals who worked during that time period. Measured this way, women workers were paid just 49 percent of what men were paid between 2001 and 2015.<sup>3</sup> However measured, these persistent pay gaps compound over women workers' careers, resulting in less income that could contribute towards retirement, and leaving more women in poverty.

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1 Throughout the Hearing and this report, the gender binary—women and men—is predominantly used due to the discussions on how pay equity has been framed for decades. Additional study needs to be done and data need to be collected to include pay equity as related to all genders and gender-non-binary individuals. There is also generally a lack of data around pay inequities based on other aspects of a person's identity, such as characteristics protected by the New York City Human Right Law, save for data by national origin. See, e.g., Jasmine Tucker, "Equal Pay for Asian American and Pacific Islander Women," NATIONAL WOMEN'S LAW CENTER (Jan. 2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/AAPI-EPD-1.30.2020.pdf>.

2 "Workplace Justice: The Wage Gap: The Who, How, Why, and What To Do," National Women's Law Center (Sep. 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf>.

3 See Stephen Rose & Heidi Hartmann, *Still a Man's Labor Market: The Slowly Narrowing Gender Wage Gap*, INSTITUTE FOR WOMEN'S POLICY RESEARCH (Nov. 26, 2018), <https://iwpr.org/iwpr-issues/employment-and-earnings/still-a-mans-labor-market-the-slowly-narrowing-gender-wage-gap/>.

**Gender and racial oppression, among other issues, have kept pay equity—equal pay for work of equal value—away from women, and disproportionately from women of color. Occupations are often segregated by gender and race, with male-dominated fields paying workers more,<sup>4</sup> and workers within those fields are being paid differently for work of comparable worth.<sup>5</sup>** Bias, societal expectations, and institutional barriers create both the expectation that women care for children and family members, and then financially penalize them for doing so.<sup>6</sup> Workers face repercussions for caregiving due to lacking sufficient paid leave, fair and flexible schedules, and access to affordable childcare. In addition, employers do not have transparent pay practices, and most workers are not part of collective bargaining agreements.<sup>7</sup>

The City believed it was important to hold a public hearing in order to learn from people about their experiences with pay equity in the workplace; specifically related to how forms of oppression affect New Yorkers' ability to access certain professions, what common barriers exist to obtaining equal pay for

work of equal value, and how work and pay are affected by other facets of life, including caregiver responsibilities. It was time to provide a forum for workers, advocates, and experts to share what they have experienced and learned—not only so they could be heard, but so the City could better its understanding to better address this issue.

A citywide public hearing (the “Hearing”) was held on pay equity on September 19, 2019. The Hearing, which took place at the New York City Bar Association in Manhattan, included testimony from workers, advocates, and stakeholders. Fatima Goss Graves, President of the National Women’s Law Center, provided opening remarks, and the Hearing’s panel was comprised of Commissioner Lorelei Salas of the Department of Consumer and Worker Protection, Commissioner and Chair of the Commission on Human Rights Carmelyn P. Malalis, Commission on Gender Equity Executive Director Jacqueline M. Ebanks, and Commissioners Sasha Ahuja, Beverly Tillery and Ellyn Toscano of the Commission on Gender Equity. The panel received oral testimony from twenty-four members of the

4 Ariane Hegewisch & Heidi Hartmann, *Occupational Segregation and the Gender Wage Gap: A Job Half Done*, INSTITUTE FOR WOMEN’S POLICY RESEARCH, 11 (2014), <https://iwpr.org/publications/occupational-segregation-and-the-gender-wage-gap-a-job-half-done/>.

5 Hearing Transcript at 87–88 (Laura Addati, International Labour Organization); Written Testimony of Mary Luke, Metro New York Chapter of UN Women; Written Testimony of Bev Neufeld, Founder, PowHer New York; Written Testimony of Seher Khawaja, Legal Momentum.

6 Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance; Written Testimony of Seher Khawaja, Legal Momentum.

7 Hearing Transcript at 87–88 (Laura Addati, International Labour Organization); Written Testimony of Mary Luke, Metro New York Chapter of UN Women; Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance.

public, including representatives from advocacy groups, activists, and workers representing a wide range of industries. After the Hearing, the City received six written testimonials.

This report identifies distinctive characteristics of local law and existing gaps in federal, state, and city laws. At the federal level, the Equal Pay Act and Title VII of the Civil Rights Act prohibit wage discrimination on the basis of sex and other characteristics, with exemptions. At the state level, the New York State Human Rights Law provides protections for a broader range of characteristics; the New York State Equal Pay Act covers classes beyond Title VII and protects employees' ability to discuss wages with one another. The New York City Human Rights Law generally prohibits discrimination, which means being treated less well because of membership in a protected category. It also bans employers from relying upon an applicant's salary history when determining pay during hiring.

This report also examines the major themes that emerged from the testimony, which include: systemic and structural barriers to pay equity; the lack of transparency in compensation; occupational segregation and issues with particular industries; distinct

barriers faced by paid care workers; how intersecting forms of oppression<sup>8</sup> increase vulnerability to pay inequity; how pregnancy and caregiver discrimination affect pay; and the impact of domestic violence on pay.

Finally, this report highlights testimony recommendations for legislation and other specific actions that the City and employers can undertake to achieve pay equity. Some of the legislative recommendations include strengthening the state and federal Equal Pay Acts, mandating increased compensation transparency, and raising the minimum wage and strengthening collective bargaining rights. Recommendations for City agencies include extending protections under the City Human Rights Law to all workers regardless of employer size, improving public education and outreach on rights and services, and requiring employers to conduct audits and to increase transparency.

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<sup>8</sup> Intersectionality is a term to describe how race, class, gender, and other individual characteristics “intersect” with one another and overlap, in this context, creating different experiences of discrimination and oppression. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. OF CHICAGO LEGAL FORUM: Vol. 1989: Iss. 1, Article 8, <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8> (where intersectionality was first coined by Crenshaw).



Audience members at the Public Hearing on Pay Equity, September 2019.

## II. Federal, State, and Local Protections for Pay Equity

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This section details existing protections for pay equity under federal, state, and local law for workers in New York City.

On the federal level, workers are mainly protected by the Equal Pay Act of 1963 (“EPA”)<sup>9</sup> and Title VII of the Civil Rights Act of 1964 (“Title VII”).<sup>10</sup> However, many claims brought under the EPA and/or Title VII often do not survive because of their high burdens of proof, and are rendered ineffective for the majority of employees.<sup>11</sup> New York has passed its own pay equity legislation, the New York Equal Pay Act, codified as New York Labor Law § 194 *et seq.* (the “NY EPA”), modeled after the EPA, as well as protections under the New York State Human Rights Law (“State Human Rights Law”).<sup>12</sup> At the local level, workers are protected by the New York

<sup>9</sup> Codified as 29 U.S.C.A. § 206(d).

<sup>10</sup> Codified as 42 U.S.C.A. § 2000e *et seq.*

<sup>11</sup> See generally, B. Tobias Isbell, *Gender Inequality and Wage Differentials Between the Sexes: Is It Inevitable Or Is There an Answer?*, 50 WASH. U. J. URB. & CONTEMP. L. 369. Though more than fifty years have passed since the EPA and Title VII were passed, pay inequity continues to be rampant; according to the Bureau of Labor Statistics, “the median salary for women is about 24 percent less than that of the median male salary—women earn 76 percent of what men earn. Although this wage disparity has decreased since the late 1970s—when it was 62 percent—it reflects the long road to realizing fully equal pay in the workplace. The disparity is even greater for Black and Hispanic women. Black women earn 64 cents and Hispanic women earn 56 cents to the \$1 earned by white, non-Hispanic men.” Katherine McAnallen, *The Current State of Equal Pay Laws*, NCSL (Oct. 2015), <https://www.ncsl.org/research/labor-and-employment/the-current-state-of-equal-pay-laws.aspx>. See also Rosa Cho & Abigail Kramer, *Everything You Need to Know about the Equal Pay Act*, INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, <https://www.icrw.org/wp-content/uploads/2016/11/Everything-You-Need-to-Know-about-the-Equal-Pay-Act.pdf>.

<sup>12</sup> See, e.g., *Petition on Writ of Certiorari in the Supreme Court of the United States, Altitude Express, Inc. v. Melissa Zarda*, (presenting the question of whether the prohibition in Title VII against employment discrimination based on sex encompasses discrimination based on an individual’s sexual orientation), [https://www.supremecourt.gov/Docket-PDF/17/17-1623/48453/20180529115805218\\_Altitude%20Express%20Petition.pdf](https://www.supremecourt.gov/Docket-PDF/17/17-1623/48453/20180529115805218_Altitude%20Express%20Petition.pdf).

City Human Rights Law (“City Human Rights Law”), though there is currently not a local EPA-equivalent.<sup>13</sup>

## **a) Federal and State Law Protections Against Pay Discrimination**

### **i. Wage Discrimination Under Federal Legislation**

Federal law protections against pay discrimination are guaranteed under, *inter alia*, the EPA and Title VII. The EPA, which is part of the Fair Labor Standards Act (“FLSA”), prohibits wage discrimination on the basis of sex.<sup>14</sup> For an employee to plead a case in court under the EPA, they would have to show a number of initial factors, one of which being that they received lower wages than an employee of the opposite sex for equal work. To plead a case under the EPA, a plaintiff must allege that: (1) they received lower wages than an employee of the opposite sex; (2) they perform equal work on jobs requiring equal

skill, effort, and responsibility; and (3) the jobs are performed under similar working conditions.<sup>15</sup> Once an employee has met its initial burden, it is then the employer’s burden to show that the wage disparity was justified by one of some enumerated affirmative defenses, such as the existence of a seniority or merit system.<sup>16</sup> Once the employer has established one of the enumerated affirmative defenses, the employee may counter the defense by showing the employer’s offered reasons are actually pretext for discrimination based on sex.<sup>17</sup> Individuals can be held liable under the EPA where individuals, such as directors, officers, or supervisors, were able to exercise control over the plaintiff.<sup>18</sup>

An aggrieved employee has two years from the date that the cause of action accrued to file a claim under the EPA, or three years if the violation is willful.<sup>19</sup> Employees may also choose to pursue

13 N.Y.C. Admin. Code § 8-107(1).

14 See 29 U.S.C.A. Section 206(d) (2012) (“No employer . . . shall discriminate . . . between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions . . .”).

15 *Eng v. City of New York*, 715 F. App’x 49, 51 (2d Cir. 2017) (citing *Belfi v. Prendergast*, 191 F.3d 129, 135 (2d Cir. 1999)).

16 “The burden of persuasion shifts to the [employer] to show that the wage disparity is justified by one of the affirmative defenses provided under the Act: ‘(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.’” *Belfi*, 191 F.3d at 136 (quoting 29 U.S.C.A. § 206(d)(1)). To successfully establish the last defense, a “factor other than sex,” the employer “must also demonstrate that it had a legitimate business reason for implementing the gender-neutral factor that brought about the wage differential.”

17 *Id.*; see *Volpe v. Nassau Cty.*, 915 F. Supp. 2d 284, 292 (E.D.N.Y. 2013).

18 See *Riordan v. Kempiners*, 831 F.2d 690, 694 (7th Cir. 1987) (“The word ‘employer’ is defined broadly enough in the [FLSA] . . . to permit naming another employee rather than the employer as defendant, provided the defendant had supervisory authority over the complaining employee and was responsible in whole or part for the alleged violation.”).

19 See 29 U.S.C.A. § 255(a) (1998); *Pollis v. New Sch. for Soc. Research*, 132 F.3d 115, 119 (2d Cir. 1997) (quoting *Reich v. Waldbaum, Inc.*, 52 F.3d 35, 39 (2d Cir. 1995)) (finding that violation of the EPA is willful “if the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute”).

their claims as a collective action.<sup>20</sup> Remedies available to an employee with a successful pay discrimination claim include a salary increase, and backpay in the amount of the difference between the lower and higher paid comparators.<sup>21</sup> In many cases, courts will award plaintiff double this amount, applying liquidated damages.<sup>22</sup>



In addition, Title VII also prohibits discrimination in compensation; thus, an employee with a sufficient EPA claim may also have a claim under Title VII.<sup>23</sup> Indeed, “[a] claim of unequal pay for equal work under Title VII is generally analyzed under the same standards used in an EPA claim.”<sup>24</sup> Title VII’s anti-discrimination provisions, however, cover more protected characteristics than the EPA, which is limited to gender-based differences.<sup>25</sup> Unlike the EPA, Title

VII does not require that an employee prove that a job is substantially equal to that of a higher-paid male employee. Nor does it require that an employee work in the same physical establishment as the male comparator.<sup>26</sup> Notably, Title VII was amended by the Lilly Ledbetter Fair Pay Act of 2009 (“LLFPA”)<sup>27</sup> which modified the statute of limitations for employees to file a pay discrimination claim so that each paycheck that perpetuates discriminatory pay re-

20 29 U.S.C.A. § 216(b).

21 See *id.*; see, e.g., *Lavin-McEleney v. Marist Coll.*, 1999 WL 33500070, at \*3 (S.D.N.Y. Sept. 28, 1999), *aff’d*, 239 F.3d 476 (2d Cir. 2001).

22 See *Lavin-McEleney v. Marist Coll.*, 1999 WL 33500070, at \*3 (S.D.N.Y. Sept. 28, 1999), *aff’d*, 239 F.3d 476 (2d Cir. 2001).

23 See Neonu Jewell, *Equal Pay Act*, 4 GEO. J. GENDER & L. 625, 626 (2002).

24 *Belfi v. Prendergast*, 191 F.3d 129, 139 (2d Cir. 1999) (citation omitted).

25 See 29 C.F.R. § 1606.2 (“Title VII . . . protects individuals against employment discrimination on the basis of race, color, religion, sex or national origin.”).

26 See, e.g., *County of Wash. v. Gunther*, 452 U.S. 161, 181 (1981).

27 Specifically, LLFPA edits, among others, 42 U.S.C.A. § 2000e-5(e), adding:

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or practice or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C.A. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time limit for filing a charge.

starts the statute of limitations for filing a charge of discrimination with the Equal Employment Opportunity Commission.<sup>28</sup>

## ii. New York State Protections

The State Human Rights Law also prohibits employment discrimination, including in compensation, although the statute provides protections to a different set of groups.<sup>29</sup> In order to maintain a discrimination claim for unequal pay under the State Human Rights Law, the individual alleging discrimination must establish that: (1) they fall under a protected class (e.g., gender); (2) they are qualified for the job in question; (3) they suffered a negative employment action (e.g., paid at a lower wage rate); and (4) there are circumstances supporting an inference of discrimination.<sup>30</sup> The employer accused of discrimination is then provided an opportunity to produce a legitimate, non-discriminatory reason for the pay disparity.<sup>31</sup> If the employer successfully establishes a

non-discriminatory reason, the employee must then demonstrate that the proffered reason was not the true reason for the negative employment action.<sup>32</sup> Furthermore, in order to state a discrimination claim for unequal pay under the State Human Rights Law, individuals have been required to provide “direct comparator” evidence—that is, evidence that they were paid less than a co-worker who is similarly situated to them in terms of their experience, job responsibilities, and earlier pay rate.<sup>33</sup>

New York has passed its own pay equity legislation, the NY EPA, modeled after the EPA. “Claims for violations of the Equal Pay Act and the New York State Equal Pay Law may be evaluated under the same standard.”<sup>34</sup> The NY EPA only covered gender and race until an October 2019 amendment; it now covers “age, race, creed, color, national origin, sexual orientation, gender identity or expression, military

28 The LLFPA was Congress’s response to the Supreme Court case *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 127 S. Ct. 2162, 167 L. Ed. 2d 982 (2007), where the Court denied Ms. Ledbetter’s claim because she did not file her claim 180 days from her first pay check (as the law stood), even though she had no knowledge of such disparate pay at that time.

29 N.Y. EXEC. LAW § 296 et seq. (McKinney).

30 *DeLuca v. Sirius XM Radio, Inc.*, 2017 WL 3671038, at \*12 (S.D.N.Y. Aug. 7, 2017) (citing *Bucalo v. Shelter Island Union Free Sch. Dist.*, 691 F.3d 119, 128-29 (2d Cir. 2012); *St. Mary’s v. Hicks*, 509 U.S. 502, 506–07 (1993)); *Rogers v. Bank of N.Y. Mellon*, 2017 WL 4157376, at \*4–8 (S.D.N.Y. Sept. 19, 2017). The framework between Title VII and State law is similar.

31 *DeLuca*, 2017 WL 3671038, at \*12; *Rogers*, 2017 WL 4157376, at \*4–8.

32 *Id.*

33 *Uwoghire v. City of New York*, 148 A.D.3d 457, 458 (1st Dep’t 2017) (affirming grant of summary judgment dismissing the plaintiff’s complaint for disparate pay on the basis of national origin, holding that “plaintiff failed to make a prima facie showing in support of his claim that he was paid less than a peer of another national origin. Although both he and the other employee had the same civil service title, they were not similarly situated in light of the differences in their experience . . . , the other employee’s earlier salary . . . , and their differing job responsibilities.”) (citing *Loucar v. Boston Mkt. Corp.*, 294 F. Supp. 2d 472, 479 (S.D.N.Y. 2003); *Kent v. Papert Cos.*, 309 A.D.2d 234, 244 (1st Dep’t 2003)).

34 *Rose v. Goldman, Sachs & Co.*, 163 F. Supp. 2d 238, 243 (S.D.N.Y. 2001).

status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status.”<sup>35</sup> Furthermore, the NY EPA restricts employers from “prohibit[ing] an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee.”<sup>36</sup> An employer may, however, “in a written policy provided to all employees, establish reasonable workplace and workday limitations on the time, place and manner for inquiries about, discussion of, or the disclosure of wages.”<sup>37</sup>

Remedies available to an employee with a successful pay discrimination claim under the NY EPA include counsel fees, liquidated damages of up to 300 percent of unpaid wages for willful violations of the law, and the New York State Labor Department would be authorized to assess penalties for differential pay rates tied to protected classes up to \$500 for each violation.<sup>38</sup> Under the new wage protection provision, a court may award compensatory damages, injunctive relief, and reasonable attorneys’ fees.<sup>39</sup>

## **b) Pay Disparity Protections Under the New York City Human Right Law**

### **i. Prohibition of Discrimination in Compensation**

The City Human Rights Law contains several provisions that protect against unequal treatment in the terms and conditions of employment, including compensation.<sup>40</sup> These protections apply to most employers,<sup>41</sup> 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, sexual orientation, uniformed service, and immigration or citizenship status.<sup>42</sup>

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 be-

35 N.Y. Lab. Law § 194(2).

36 *Id.* § 194(4)(a).

37 *Id.* § 194(4)(b).

38 *Id.* § 198.

39 *Id.*

40 N.Y.C. Admin. Code § 8-107(1).

41 *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.).

42 *See* N.Y.C. Admin. Code § 8-107.

cause of a person’s protected characteristics (e.g., race, national origin, gender, age, and others).<sup>43</sup> It is likewise unlawful to retaliate against an individual who has complained of unequal pay on the basis of a protected characteristic.<sup>44</sup>

While all three statutes—city, state, and federal—prohibit discrimination based on employment, the City Human Rights Law is generally construed more liberally than its federal or state counterparts, typically providing broader protections from discrimination.<sup>45</sup> For example, an employee seeking to assert a discrimination claim for unequal pay under the City Human Rights Law must show only by a preponderance of the evidence that they were treated “less well” than other employees because of their protected characteristic (e.g., because of their gender).<sup>46</sup> Notably, the law requires a showing of discriminatory animus.<sup>47</sup> An employee

may establish a pay discrimination claim under the City Human Rights Law without providing evidence of a “direct comparator”<sup>48</sup> as is required under the federal EPA. Furthermore, the employee may succeed on a discrimination claim for unequal pay under the City Human Rights Law by providing circumstantial or indirect evidence that discrimination was at least one of the motives for the disparate pay.<sup>49</sup>

## ii. Prohibition on Inquiries About Salary History

Since October 31, 2017, the City Human Rights Law has prohibited all public and private employers regardless of size from inquiring about, relying upon, or verifying a job applicant’s salary history during the hiring process, including in advertisements for positions, on applications, or during interviews, the first such salary history ban to go into effect in the country.<sup>50</sup> The ban on salary history was passed to further the

43 *Id.* § 8-107(1)(a).

44 *Id.* § 8-107(7); *id.* § 8-102 (defining gender as actual or perceived sex, gender identity, and gender expression, including a person’s actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristics, regardless of the sex assigned to that person at birth.)

45 *See Alburnio v. City of New York*, 16 N.Y.3d 472, 477-78 (2011) (emphasizing that all provisions of the City Human Rights Law should be construed “broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible.”); *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 66–83 (1st Dep’t 2009) (“the text and legislative history [of the Restoration Act] represent a desire that the City [Human Rights Law] meld the broadest vision of social justice with the strongest law enforcement deterrent.”); N.Y.C. Admin. Code § 8-130 (a).

46 *Williams*, 61 A.D.3d at 78; *Suri v. Grey Global Group, Inc.*, 164 A.D.3d 108, 114 (1st Dep’t 2018); *DeLuca*, 2017 WL 3671038, at \*12; *Rogers*, 2017 WL 4157376, at \*4–8.

47 *See Malena v. Victoria’s Secret Direct, LLC*, 886 F. Supp. 2d 349, 357 (S.D.N.Y. 2012) (internal citation omitted).

48 *See Coello v. Riese Org. Inc.*, 2019 N.Y. Misc. LEXIS 3576, at \*6–8 (Sup. Ct. Bronx Cnty. May 21, 2019).

49 *See Suri*, 164 A.D.3d at 127-132; *Bennett v. Health Mgt. Sys., Inc.*, 92 A.D.3d 29, 41 (1st Dep’t 2011); *Coello*, 2019 N.Y. Misc. LEXIS 3576, at \*6–8; *Rogers*, 2017 U.S. Dist. LEXIS 152130, at \*5–19.

50 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>.

tenet that “[e]veryone in New York City deserves to be paid based on their skills and qualifications, not their previous salary.”<sup>51</sup> The 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.”<sup>52</sup>

Under this provision, employers cannot communicate any question or statement inquiring about salary history to an applicant, an applicant’s current or prior employer, or search publicly available records for the purpose of obtaining an applicant’s salary history.<sup>53</sup> Barring some exceptions,<sup>54</sup> an employer also cannot rely on the salary history of an applicant in determining the salary, benefits, or any other compensation for an applicant during the hiring process, including the negotiation of a contract.<sup>55</sup> However, an employer can, without inquiring about salary history, engage in discussion with the applicant

about their expectations with respect to salary, and inform the applicant about the position’s proposed or anticipated salary or salary range.<sup>56</sup>

### **iii. Remedies for Violations**

Employers found liable for discrimination or for violating the ban on inquiring about salary history under the City Human Rights Law may be required to pay damages and penalties, and may be required to undertake other measures, including policy changes, trainings, postings, and monitoring, if the claims were filed at CCHR.<sup>57</sup> CCHR has the authority to impose civil penalties of up to \$125,000.00 for unintentional violations, and up to \$250,000.00 for “willful, wanton, or malicious” violations.<sup>58</sup> Alternatively, aggrieved employees may commence a civil lawsuit in court for violations of these laws.<sup>59</sup> The damages available include backpay, front pay, compensatory damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.<sup>60</sup>

51 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>.

52 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>; Kristin Wong, *Don’t Ask Me About My Salary History*, N.Y. TIMES, Oct. 22, 2019, <https://www.nytimes.com/2019/10/22/us/dont-ask-me-about-my-salary-history.html>.

53 N.Y.C. Admin. Code § 8-107(25)(a).

54 *Id.* § 8-107(25)(e).

55 *Id.* § 8-107(25)(b).

56 *Id.* §§ 8-107(25)(a), (c).

57 See *id.* § 8-502.

58 *Id.* § 8-126(a).

59 See *id.* § 8-502.

60 See *id.* § 8-502; see also *Chauca v. Abraham*, 30 N.Y.3d 325, 330 (2017) (“The NYCHRL provides for compensatory and punitive damages and other remedies against employers and employees found directly or vicariously liable for discrimination.”).

### c) Pay Equity Protections in Other Jurisdictions

Several states, and a number of localities, have pay equity laws in place. These protections take different forms and include: prohibitions on wage discrimination that provide that employers cannot discriminate in the payment of wages based on gender or employ women at a rate less than what a man is paid for comparable work in the same location (e.g., Arkansas,<sup>61</sup> Florida<sup>62</sup>); a requirement

that employers cannot discriminate in the payment of wages based on sex or gender identity for substantially similar work (e.g., Michigan<sup>63</sup>); and currently, at least nineteen states and twenty-one localities have enacted “salary history” bans which prohibit employers from inquiring about and/or relying upon a candidate’s prior history in hiring.<sup>64</sup> Michigan and Washington remain the only states that classify gender-based wage discrimination as both civil and criminal violations, the latter being misdemeanor offenses.<sup>65</sup>



61 A.R. Code Ann. §§ 11-4-601 et seq.

62 F.L. Stat. § 448.07.

63 M.I. Comp. Laws Ann. § 408.423.

64 See “Salary History Bans,” HR DIVE (Feb. 28, 2020), <https://www.hrdiver.com/news/salary-history-ban-states-list/516662/>. These include Alabama, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Washington, Albany, Chicago, and San Francisco.

65 See Mich. Comp. Laws Ann. § 750.556; Wash. Rev. Code Ann. § 49.58.020.



Connor Shaw, International Union of Journeymen and Allied Trades, testifying.

### III.

## Recurring Themes at the Public Hearing on Pay Equity

*“Women’s economic empowerment is central to realizing women’s human rights and gender equality across all gender identities and gender expressions.”*

MARY LUKE  
*UN Women Metro NY, pg 2 written testimony*

Recognizing that pay equity is a fundamental human right<sup>66</sup> and seeking to better understand how pay inequity manifests in New York City, the City invited testimony from individuals representing an array of organizations and interests including advocacy, government, and for-profit businesses to the Hearing. The resulting testimony underscored that, although New York City’s relevant worker protections, including those in the City Human Rights Law,<sup>67</sup> are among the most robust in the United States, workers across and within industries continue to be inequitably compensated. Those who testified emphasized that the existence of long-standing systems of oppression and power structures based on gender, class, race, immigration status, national origin, gender identity, sexual orientation, and other characteristics affect how New Yorkers face barriers

66 See UN’s International Covenant on Economic, Social and Cultural Rights, Articles 3 and 7, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; UN Convention on the Elimination of All Forms of Discrimination Against Women, Article 11, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article11>; and International Labour Organization’s Equal Remuneration Convention, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C100).

67 See N.Y.C. Admin. Code §§ 8-101 et. seq.

to pay equity. Hearing testimony identified such barriers as gaps in legal protections, a significant lack of understanding of existing law by employers and workers, and workers' fears of retaliation. This section summarizes the recurring themes from the testimony.<sup>68</sup>

*“We find ourselves in the moment where the fight for equal pay and really the fight for the pay gap, to close the pay gap, generally is really a conversation about the overall measure of our ability to work with equality and dignity.”*

FATIMA GOSS GRAVES  
National Women's Law Center

### a) Sexism is a Key Driver of Ongoing Pay Inequity

Testimony highlighted how several structural barriers perpetuate pay gaps.<sup>69</sup> Pay gaps often arise from underlying prejudices that employers

may hold against women, leading them often to undervalue work done by women, even when they are proven to be better qualified.<sup>70</sup> In addition to gender discrimination specifically, “a host of interrelated factors” including racial discrimination, occupational segregation, and pregnancy and care-giver discrimination contribute to ongoing wage gaps.<sup>71</sup>

Testimony also noted that pay inequity exists because women who advocate for themselves and seek to negotiate for better pay may face additional discrimination. As one advocate noted, “if you try to negotiate like a man, then you are actually seen as demanding and other stereotypes about women that don't serve them well.”<sup>72</sup> This systemic



68 While we recognize that pay inequity impacts people across the gender spectrum and via varying protected classes, the majority of testimony provided was focused on women in particular.

69 Hearing Transcript at 68 (Shari Coates, Deloitte).

70 Hearing Transcript at 86 (Laura Addati, International Labour Organization).

71 Hearing Transcript at 118 (Seher Khawaja, Legal Momentum). See also Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance: “Occupational segregation of the sexes—with male-dominated fields tending to pay more and women-dominated fields tending to pay less—is one of the most important measurable factors explaining the present wage gap between men and women in the United States” (citing Ariane Hegewisch & Heidi Hartmann, Institute for Women's Policy Research, *Occupational Segregation and the Gender Wage Gap: A Job Half Done* 11 (2014), <https://iwpr.org/iwpr-issues/employment-and-earnings/occupational-segregation-and-the-gender-wage-gap-a-job-half-done/>).

72 Hearing Transcript at 18 (Fatima Goss Graves, National Women's Law Center).

bias can also cause women to be fearful to negotiate in the first instance.<sup>73</sup>

Given these realities, testimony revealed the need for local, state, and federal laws that proactively work to prevent pay inequality.<sup>74</sup> As advocates explained, “closing the gender wage gap is a multi-faceted problem, and closing it requires multi-faceted solutions that fully address its many causes.”<sup>75</sup>

## **b) Lack of Transparency in Compensation Enables Pay Inequity to Persist**

Hearing testimony highlighted that requiring pay transparency is central to addressing pay inequity. One advocate noted that, in jurisdictions where there is mandated wage transparency, the pay gap decreases and more women are hired and promoted in leadership.<sup>76</sup> In many cases, women are underpaid because they are not aware that others are receiving more pay than they are for similar work and/or they

do not know what recourse to take when they realize that they are being underpaid.<sup>77</sup> Women also do not have key information needed to be successful in their asks for an initial or increased salary, which can often hold them back from entering negotiations to begin with.<sup>78</sup> Testimony stressed that when there is pay transparency, employees can raise concerns about pay without fear of retaliation.<sup>79</sup> Requiring pay transparency can hold employers accountable for differences in pay—if there is no pay secrecy and employees are aware of all earnings, wage differences are less likely to be stark.<sup>80</sup>

Testimony identified practices implemented by countries that address pay inequity through wage transparency.<sup>81</sup> For example, in Denmark, companies with more than thirty-five employees must report on pay data by gender. To date, the gender wage gap in Denmark has shrunk by 7 percent.<sup>82</sup> Additionally, Ireland and France also have policies requiring publishing and review of their

73 Written Testimony of Meggie Palmer, PepTalkHer.

74 Hearing Transcript at 11–21 (Fatima Goss Graves, National Women’s Law Center).

75 Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance.

76 Written Testimony of Meggie Palmer, PepTalkHer; see Morten Bennedsen, Elena Simintzi, Margarita Tsoutsoura & Daniel Wolfenzon, “Do Firms Respond to Gender Pay Gap Transparency? NBER Working Paper No. 25435,” NATIONAL BUREAU OF ECONOMIC RESEARCH (Jan. 2019), <https://www.nber.org/papers/w25435> (describing positive effects of pay transparency law in Denmark).

77 Hearing Transcript at 49–52 (Nekpen Osuan, Women Werk).

78 Written Testimony of Meggie Palmer, PepTalkHer.

79 Hearing Transcript at 68 (Shari Coates, Deloitte).

80 See Bilma Canales, *Closing the Federal Gender Pay Gap Through Wage Transparency*, 55 Hous. L. Rev. 969, 986 (2018).

81 Hearing Transcript at 39–44 (Faye Penn, Women.NYC)

82 Written Testimony of Meggie Palmer, PepTalkHer.

pay data.<sup>83</sup> In 2017, the United Kingdom began requiring large employers to publish mean and median pay for male and female workers, making information easily accessible and quickly resulting in 93 percent of businesses taking action to close pay gaps.<sup>84</sup> The most comprehensive such law is in Iceland,<sup>85</sup> which now requires most employers not only to report their compensation data, but also to undergo an audit of their pay and employment practices to certify they meet Iceland’s equal pay standard, which is a standard requiring employers to create a system that could confirm that “women and men, working for the same employer, were paid equal wages and enjoyed equal terms of employment for the same jobs or jobs of equal value, unless such differences can be justified by relevant considerations.”<sup>86</sup>

### **c) Certain Industries Are More Likely to Perpetuate Pay Inequity**

Hearing testimony noted that occupations and roles are often segregated by protected characteristics like gender or race<sup>87</sup> for reasons rooted in historical “barriers of racism, sexism, and ableism across society,”<sup>88</sup> and that work historically carried out by women is almost invariably undervalued.<sup>89</sup> Several individuals contrasted the comprehensive standard of “equal pay for work of equal value”<sup>90</sup> with the stark existing realities workers face in New York City.<sup>91</sup> The framework of “equal pay for equal work” fails to recognize that many women have never had access to “equal work.” A legal framework premised on such a goal is therefore ill-suited to address the root cause of pay inequity.<sup>92</sup> In both the private and public

83 Written Testimony of Mary Luke, Metro New York Chapter of UN Women (citing European Commission 2019 Report on Equality Between Men and Women in the EU. Publications Office of the European Union, Luxembourg, [https://ec.europa.eu/info/sites/info/files/aid\\_development\\_cooperation\\_fundamental\\_rights/annual\\_report\\_ge\\_2019\\_en.pdf](https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en.pdf)).

84 Compared to the 62 percent of British companies who said they were doing so in 2017, prior to the law. See Alexandra Topping, “Gender Pay Gap: Companies Under Pressure to Act in 2019,” THE GUARDIAN (Jan. 1, 2019), <https://www.theguardian.com/world/2019/jan/01/gender-pay-gap-2018-brought-transparency-will-2019-bring-change>.

85 See Iceland’s 2017 amendment (No. 56/2017) to “Act on Equal Status and Equal Rights of Women and Men, No. 10/2008,” Ministry of Social Affairs, Government of Iceland, <https://www.government.is/Publications/Legislation/Lex/?newsid=8900031c-fbd6-11e7-9423-005056bc4d74>.

86 Ines Wagner, *Certified Equality: The Icelandic Equal Pay Standard, Report 2018:11*, INSTITUTE FOR SOCIAL RESEARCH, Norway (2018), [https://ec.europa.eu/info/sites/info/files/aid\\_development\\_cooperation\\_fundamental\\_rights/mlp\\_background\\_info\\_is\\_may\\_2019\\_en.pdf](https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/mlp_background_info_is_may_2019_en.pdf) (citing IST 85).

87 Written Testimony of Mary Luke, Metro New York Chapter of UN Women; Written Testimony of Seher Khawaja, Legal Momentum.

88 Hearing Transcript at 68 (Hon. Helen Rosenthal, New York City Council Member).

89 Hearing Transcript at 87–88 (Laura Addati, International Labour Organization).

90 Written Testimony of Mary Luke, Metro New York Chapter of UN Women; Written Testimony of Bev Neufeld, PowHer New York; Hearing Transcript at 88 (Laura Addati, International Labour Organization (citing the International Labour Organization’s Equal Remuneration Convention, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C100))).

91 Written Testimony of Howard Katzman, NYC4CEDAW.

92 See Written Testimony of Bev Neufeld, Founder, PowHer New York.

sectors, women disproportionately fill roles that revolve around education, childcare, and the provision of social services.<sup>93</sup> Many advocates testified to the pervasive undervaluation of “women’s work” across sectors<sup>94</sup> and pay grades, and that it is compounded by segregation based on other factors—most predominantly, race.



Panelists Sasha Ahuja, CGE Commissioner and Carmelyn Malalis, Commissioner/Chair of CCHR.

*“The gender wage gap is a multi-faceted problem, and closing it requires multi-faceted solutions that fully address its many causes. Closing the gender wage gap, and closing the gaps among women’s earnings based on race, requires addressing multiple forms of discrimination, including pregnancy discrimination, caregiver discrimination, and unequal compensation for equal work. It also requires the development and enforcement of policies that support pregnant and parenting workers, caregivers, and domestic workers.”*

SARAH BRAFMAN &  
MEGHAN RACKLIN  
*A Better Balance*

93 Written Testimony of Seher Khawaja, Legal Momentum (noting the example of the City government workforce where the average salary is \$10,000.00 less (citing Letitia James, N.Y.C. Public Advocate’s Office, *Policy and Investigative Report: Tipping the Scales, Wage and Hiring Inequity in New York City Agencies*, 3 (March 2018))); see also Merble Reagon, Women’s Center for Education and Career Advancement, written submission: *Overlooked and Undercounted: 2018, The Self-Sufficiency Standard for New York City: Key Findings & Recommendations*, [http://www.selfsufficiencystandard.org/sites/default/files/selfsuff/docs/NYC18\\_KeyFindings.pdf](http://www.selfsufficiencystandard.org/sites/default/files/selfsuff/docs/NYC18_KeyFindings.pdf) (noting “women and people of color are more likely to work in... the child care and human services sector...where insufficient wage rates are often driven by government contracts.”).

94 Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance (citing Ariane Hegewisch & Heidi Hartmann, Institute for Women’s Policy Research, *Occupational Segregation and the Gender Wage Gap: A Job Half Done* 11 (2014), <https://iwpr.org/iwpr-issues/employment-and-earnings/occupational-segregation-and-the-gender-wage-gap-a-job-half-done/>) (Noting that occupational segregation of the sexes—with male-dominated fields tending to pay more and women-dominated fields tending to pay less—is one of the most important measurable factors explaining the present wage gap between men and women in the United States. Within the paid labor force, women are underrepresented in higher wage occupations and overrepresented in fields like nursing, teaching, social work, home health care, and others that involve the direct provision of physical and emotional care).

Further, the dismantling of unions and challenges to workers' rights to organize<sup>95</sup> means that workers are, more often than not, at-will employees<sup>96</sup> and are generally more vulnerable to exploitation. Testimony highlighted the mitigating effects of collective bargaining, including the transparency (and security) of contracts, which often provide for consistency regarding pay, more extensive leave policies, and other protections, such as a "just cause" requirement for termination.<sup>97</sup>

Low-wage and minimum-wage workers face distinct barriers to pay equity that also increase their likelihood of living in poverty. Low-wage workers, who are predominantly women, are often "relegated to the informal economy or work in industries that are exempted from complying with standard labor

and anti-discrimination protections."<sup>98</sup> Moreover, testimony highlighted how women of color make up most low-wage worker positions; specifically, "workers making tipped wages are almost 80 percent female and largely women of color."<sup>99</sup> Advocates also noted that low-wage workers often report to them employers' violations of applicable workplace standards, including anti-discrimination, paid safe and sick leave, and Fair Workweek laws.<sup>100</sup>

In male-dominated fields, women workers face additional and compounding barriers to equal pay, including pervasive sexual harassment.<sup>101</sup> One advocate noted that nationwide, 88 percent of women working in construction experienced sexual harassment in the workplace,<sup>102</sup> preventing many women from accessing

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95 Hearing Transcript at 68 (Hon. Helen Rosenthal, New York City Council).

96 Hearing Transcript at 94 (Kimberly Watkins).

97 Hearing Transcript at 104 (Jewel Tolliver, Representative Local 79 Laborers); *id.* at 96 (Connor Shaw, International Union of Journeymen and Allied Trades).

98 Written Testimony of Seher Khawaja, Legal Momentum.

99 *Id.* (citing ROC-United, "Recipe for Success: Abolish the Subminimum Wage to Strengthen the Restaurant Industry" (Mar. 1 2014), [http://rocunited.org/wp-content/uploads/2014/03/ROCUnited\\_Recipe-for-Success.pdf](http://rocunited.org/wp-content/uploads/2014/03/ROCUnited_Recipe-for-Success.pdf); Legal Momentum analysis of United States Census Bureau, EEO Tabulation Detailed Census Occupation by Sex, and Race/Ethnicity for Worksite Geography, Total Population 2006–2010 for bartenders, waiters and waitresses, hosts and hostesses, maids and housekeeping, hairdressers, hairstylists, and cosmetologists, and miscellaneous personal appearance workers; *Bare Minimum: Why We Need to Raise Wages for America's Lowest-Paid Families* (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>; see also Sylvia A. Allegretto and David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage*, 3 ECONOMIC POLICY INSTITUTE (July 10, 2014), <https://irle.berkeley.edu/files/2014/Twenty-Three-Years-and-Still-Waiting-for-Change.pdf>).

100 Hearing Transcript at 109–10 (Meghan Racklin, A Better Balance).

101 For more discussion of sexual harassment in the workplaces of New York City, see NEW YORK CITY COMM'N ON HUMAN RIGHTS, *Combatting Sexual Harassment in the Workplace: Trends and Recommendations Based on 2017 Public Hearing Testimony*, [https://www1.nyc.gov/assets/cchr/downloads/pdf/SexHarass\\_Report.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/SexHarass_Report.pdf).

102 Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance (citing Advisory Committee on Occupational Safety and Health, U.S. Dep't of Labor, *Women in the Construction Workplace: Providing Equitable Safety and Health Protection* (June 1999), <https://www.osha.gov/doc/accsh/haswicformal.html>).

an industry with a relatively small pay gap of 94 percent.<sup>103</sup> Barriers persist across many industries; one example being in academia where female engineering students are often told they are not suited for engineering or technology.<sup>104</sup> One individual expressed that although it is vital to dismantle barriers to predominantly male jobs, even greater actions need to be taken to address the depressed wages in those fields for women who enter those fields.<sup>105</sup>



#### **d) Paid Care Workers Face Distinct Barriers to Pay Equity**

*“Gender equality for care givers also includes improving the material conditions for the whole sector with fair and living wages and benefits that meet the needs of their families. All jobs should be dignified jobs no matter who you are or what you do.”*

MARISSA SENTENO AND  
ALLISON JULIEN  
*National Domestic Workers Alliance*

Testimony highlighted that paid care workers<sup>106</sup>—home care aides, house cleaners, and nannies—are predominantly comprised of women of color and immigrant women.<sup>107</sup> DCWP estimates that the City’s paid care workforce grew from 176,000 to 202,000, a 15 percent increase, over the past decade.<sup>108</sup> Paid care, or domestic, workers are uniquely impacted by the gender pay gap because they have historically been excluded from basic

103 Hearing Transcript at 102 (Jewel Tolliver, Local 79 Laborers).

104 Written Testimony of Melissa Maldonado-Salcedo, PhD, Medical Anthropologist, New York University.

105 Written Testimony of Seher Khawaja, Legal Momentum (citing Asaf Levanon, Paula England & Paul Allison, Occupational Feminization and Pay: Assessing Casual Dynamics Using 1950–2000 U.S. Census Data, SOCIAL FORCES 88(2) (Dec. 2009)).

106 “Paid care worker” and “care worker” refer to workers who provide services that meet daily needs for the health, welfare, maintenance, and protection of someone else. “Lifting up Paid Care Work: YEAR ONE of New York City’s Paid Care Division,” New York City Department of Consumer Affairs (2018), <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Lifting-up-Paid-Care-Work.pdf>.

107 Written Testimony of Marissa Senteno and Allison Julien, National Domestic Workers Alliance; Written Testimony of Melissa Maldonado-Salcedo, New York University.

108 “Lifting up Paid Care Work: YEAR ONE of New York City’s Paid Care Division,” New York City Department of Consumer Affairs (2018), <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Lifting-up-Paid-Care-Work.pdf>.

worker protections such as minimum wage or overtime protections, stemming from “institutionalized racism and the legacy of slavery.”<sup>109</sup> Additionally, domestic workers are among the lowest paid and least protected workers in our nation. In fact, “it is still legal to discriminate against domestic workers in the home [] in New York City.”<sup>110</sup> Often, employers prevent many paid care workers from setting the terms of their employment. Thirty-six percent of live-in domestic workers report experiencing threats, insults, or verbal abuse on the job, often in the form of sexual harassment.<sup>111</sup> Protecting the rights of paid care workers is challenging because many do not file complaints to recover lost or unpaid wages and many paid care workers are unaware of their rights under the law or how to assert them. They also work in small or isolated workplaces and many of their employers are not aware of their legal obligations.

## e) Intersecting Identities Make Workers Particularly Vulnerable to Pay Inequity

Hearing testimony revealed that, although social movements have produced and continue to achieve real changes in pay equity,<sup>112</sup> many barriers remain due to the persistence of institutional racism,<sup>113</sup> gender bias,<sup>114</sup> workplace abuse based on sexual orientation or gender identity,<sup>115</sup> and other forms of oppression. Black women in New York City earn 56 cents for every dollar earned by a white non-Hispanic man.<sup>116</sup> Similarly, another comprehensive measure shows 83 percent of Latina, 74 percent of Black, and 64 percent of Asian single mothers in New York City lack adequate income to meet their families’ basic needs.<sup>117</sup> One advocate described women of color expressing apprehension to negotiate for higher salaries because of a “not unfounded” fear that job offers would

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109 Written Testimony of MARRISA SENTENO and ALLISON JULIEN, National Domestic Workers Alliance.

110 Hearing Transcript at 34 (MARRISA SENTENO, Domestic Workers Alliance).

111 Written Testimony of MEGHAN RACKLIN, A Better Balance (citing LINDA BURNHAM & NIK THEODORE, National Domestic Workers Alliance et al., *Home Economics: The Invisible and Unregulated World of Domestic Work* 33 (2012), <https://community-wealth.org/sites/clone.communitywealth.org/files/downloads/report-burnham-theodore.pdf>).

112 Written Testimony of Hon. CARLINA RIVERA, New York City Council; Written Testimony of GLORIA MIDDLETON, New York Administrative Employees Local 1180, Communications Workers of America, AFL-CIO.

113 Written Testimony of Hon. CARLINA RIVERA, New York City Council; Written Testimony of GLORIA MIDDLETON, New York Administrative Employees Local 1180, Communications Workers of America, AFL-CIO.

114 Written Testimony of Hon. CARLINA RIVERA, New York City Council; Hearing Transcript at 118 (SEHER KHAWAJA, Legal Momentum).

115 Hearing Transcript at 67 (Hon. HELEN ROSENTHAL, New York City Council).

116 *Id.* at 118 (SEHER KHAWAJA, Legal Momentum).

117 Merble Reagon, Women’s Center for Education and Career Advancement, written submission: *Overlooked and Undercounted: 2018, The Self-Sufficiency Standard for New York City: Key Findings & Recommendations* [http://www.self-sufficiencystandard.org/sites/default/files/selfsuff/docs/NYC18\\_KeyFindings.pdf](http://www.self-sufficiencystandard.org/sites/default/files/selfsuff/docs/NYC18_KeyFindings.pdf).

be rescinded.<sup>118</sup> Multiple immigrant workers noted the struggles they and their communities face because of vulnerabilities related to immigration status, including wage theft and other violations of existing labor laws, making exploitation and abuse commonplace for immigrant workers.<sup>119</sup>

Women at both ends of the working-age spectrum experience particular forms and degrees of pay disparities. Among older workers, women were more likely than men to say they have seen or experienced age discrimination.<sup>120</sup> Relatedly, according to Hearing testimony, men reach peak earning potential at 55 and women reach it at 44—evidence that women’s earning potential is declining considerably earlier than their male counterparts.<sup>121</sup> A lifetime of salary inequity and reduced retirement income results in a disproportionate number of older women living in poverty.<sup>122</sup>

**“Women are aging into poverty. We are living the history of pay equity being unfair. There’s rampant age discrimination in the workplace. This is a group of women that have remained invisible for far too long. People are in quiet desperation.”**

**BOBBIE SACKMAN**  
*Radical Age Movement*

At the lower end of the age spectrum, young people also experience pay inequity. Although part-time jobs for teenagers may seem trivial to some, they are often workers’ first experience in the workforce, and help to socialize workers, while teaching them to internalize its problems, including occupational segregation and pay disparities.<sup>123</sup> Furthermore, these initial pay disparities can perpetuate future disparities, if subsequent salaries are based on previous earnings.

118 Hearing Transcript at 61 (Nekpen Osuan, CEO and Co-founder of WomenWerk).

119 *Id.* at 124 (Suzan Al-Shammari, Arab-American Family Support Center); *id.* at 125–27 (Dr. Aameena Ali, Zaid Ibn Harith Islamic Center). For a discussion of protections under the City Human Rights Law for workers based on actual or perceived immigration status or national origin, see generally NEW YORK CITY COMM’N ON HUMAN RIGHTS, *NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin*, (Sep. 2019), <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/immigration-guidance.pdf>.

120 Written Testimony of Bobbie Sackman, Radical Age Movement (citing Rebecca Perron, *The Value of Experience: AARP Multicultural Work and Jobs Study*, AARP RESEARCH (July 2018), <https://doi.org/10.26419/res.00177.000>).

121 Hearing Transcript at 40 (Faye Penn, Women.nyc). See also “Earnings Peak at Different Ages for Different Demographics,” PAYSACLE.COM, June 4, 2019, <https://www.payscale.com/data/peak-earnings>.

122 Hearing Transcript at 66–67 (Hon. Helen Rosenthal, New York City Council). See also “Poverty Among Americans Aged 65 and Older,” Congressional Research Service, July 1, 2019, <https://fas.org/sgp/crs/misc/R45791.pdf>.

123 Written Testimony of Bev Neufeld, Founder, PowHer (citing Yasemin Besen, *The Cost of Being a Girl: Working Teens and the Origins of the Gender Wage Gap*, 2017).

**“The wage gap starts with girls—and we need to include them in our movement to close it.”**

BEV NEUFELD  
PowHer

## **f) Pregnant and Caregiving Workers Face Certain Structural Barriers<sup>124</sup>**

Hearing testimony highlighted the fact that the majority of working women are also responsible for the majority of caregiving for their family, and this is especially true for women of color.<sup>125</sup> The “pregnancy penalty”—a form of bias and inflexibility towards women in the workplace—starts when workers become pregnant and compounds into lasting economic disadvantages.<sup>126</sup> One advocate described how, in

general, mothers are less likely to be recommended for hire, often recommended for significantly lower starting salaries, and are perceived as less competent.<sup>127</sup> While fatherhood increases a man’s earnings by over 6 percent, motherhood reduces a woman’s earnings by at least 4 percent, and the penalty increases up to 15 percent for low-wage women workers.<sup>128</sup>

The absence of affordable childcare is a considerable burden for New York City’s workers, and women are more likely to bear that burden than men. The higher penalty for motherhood that low-wage workers face may be partly attributed to having less access to affordable childcare<sup>129</sup> and limited control over their unpredictable work schedules.<sup>130</sup>

124 For more detailed discussion and examples on pregnancy and caregiver discrimination, please see NEW YORK CITY COMM’N ON HUMAN RIGHTS, *Your Rights While Pregnant, Breastfeeding, or Caregiving: A Report on the 2019 Commission Public Hearing on Pregnancy and Caregiver Discrimination* (June 2019), [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy\\_Report.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Report.pdf).

125 Hearing Transcript at 20 (Fatima Goss Graves, National Women’s Law Center).

126 Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance; see also Dina Bakst & Phoebe Taubman, “The Pregnancy Penalty: How Motherhood Drives Inequality & Poverty in New York City,” A BETTER BALANCE (Oct. 2014) <https://www.abetterbalance.org/resources/pregnancy-penalty-report-2014/> (offering “solutions to the pregnancy penalty: bias and inflexibility towards women in the workplace that starts when they become pregnant and snowballs into lasting economic disadvantages).

127 Written Testimony of Seher Khawaja, Legal Momentum (citing Shelley J. Correll, Stephan Bernard, & In Paik, *Getting a Job: Is there a Motherhood Penalty?*, AMERICAN J. OF SOCIOLOGY (Mar. 2007), [https://www.jstor.org/stable/10.1086/511799?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/10.1086/511799?seq=1#metadata_info_tab_contents)).

128 Written Testimony of Seher Khawaja, Legal Momentum (citing Michelle J. Budig, *The Fatherhood Bonus and The Motherhood Penalty: Parenthood and the Gender Gap in Pay*, THIRD WAY & NEXT, 9, 13 (2012); Michelle J. Budig & Melissa J. Hodges, *Differences in Disadvantage: Variation in the Motherhood Penalty across White Women’s Earnings Distribution*, AMERICAN SOCIOLOGICAL REV. (Oct. 8, 2010)).

129 Written Testimony of Seher Khawaja, Legal Momentum (citing Michelle J. Budig, *The Fatherhood Bonus and The Motherhood Penalty: Parenthood and the Gender Gap in Pay*, THIRD WAY & NEXT, 17, 20 (2012), <https://www.thirdway.org/report/the-fatherhood-bonus-and-the-motherhood-penalty-parenthood-and-the-gender-gap-in-pay>).

130 Written Testimony of Sarah Brafman and Meghan Racklin, A Better Balance.



*Jewel Tolliver, Representative Local 79 Laborers, testifying.*

### **g) Despite Significant Advances on Pay Equity, More Remains to Be Done**

Testimony noted that, “where federal law has fallen short, the State and City have stepped up working towards creating much needed support structure from pregnancy accommodations, protection against caregiver discrimination, paid parental leave . . . and weakened employer defenses.”<sup>131</sup> As one Council Member testified, New Yorkers fought hard for the Citywide salary history ban that was instituted in 2016, noting that “thanks to this legislation, prospective employers can no longer ask applicants about their former salaries, a practice which perpetuated the wage gap

by tying women to their previous, disproportionately low salaries.”<sup>132</sup>

In addition to legislative victories, the City has also championed a number of Citywide programs that help women advance in the workplace, including Women.NYC—a program that launched in 2018 to improve existing city programs that support women’s economic advancement and to implement new ones, such as the salary negotiation trainings it offers throughout the City.<sup>133</sup>

In spite of these advances, as one Council Member noted, “we are still confronted with barriers to economic equity, as this is an issue shaped by institutional racism and gender bias.”<sup>134</sup>

131 Hearing Transcript at 121 (Seher Khawaja, Legal Momentum).

132 Written Testimony at 1 (Hon. Carlina Rivera, New York City Council).

133 Hearing Transcript at 39–44 (Faye Penn, Women.NYC).

134 Written Testimony at 1 (Hon. Carlina Rivera, New York City Council).

Participants also stressed that real government commitment, most often via the enactment of relevant legislation such as the federal Paycheck Fairness Act,<sup>135</sup> is needed in order to change culture and norms around pay inequity.<sup>136</sup> Another person testified that government must also put in place mechanisms to ensure the success of legislation stating that, “for every bill that’s passed that has workers’ rights connected to it, it should be funded that we have education and outreach programming. If we pass these laws, we really need to enact them.”<sup>137</sup>

*“Pay equity is the difference between going to work feeling valued, with my head held high, accessing the best version of myself when interacting with others and not. Pay equity can mean the difference between being able to hold my chronically ill children when they are sick (illnesses cause by inequity issues no less) and not. Pay equity- is the difference between being able to afford a day off to schedule an appointment with an LCSW to address mental health issues and not. Pay equity trickles down into our interactions with others, our ability to care for our loved ones and ourselves. Pay equity effects how we view ourselves.”*

SARAH BLAS  
Staten Island Partnership for  
Community Wellness

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135 The Paycheck Fairness Act would strengthen labor laws in a number of ways. Specifically, it would amend the Fair Labor Standards Act of 1938 by restricting the use of the “bona fide factor” defense to wage discrimination, among other provisions. The Paycheck Fairness Act, last introduced by Sen. Murray as S. 270, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/270>, and by Rep. DeLauro as H.R. 7, 116th Cong. (2019) <https://www.congress.gov/bill/116th-congress/house-bill/7>. The PFA would eliminate loopholes in the Equal Pay Act, enhance nonretaliation prohibitions, remove salary history from the hiring process, prohibit some nondisclosure agreements, increase transparency and data gathering, and increase penalties for equal pay violations. See “The Paycheck Fairness Act: Fact Sheet,” National Partnership for Women & Families, January, 2019, <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/the-paycheck-fairness-act.pdf>.

136 Hearing Transcript at 44–49 (Mary Luke, Metro New York Chapter of UN Women); see also *id.* at 121 (Seher Khawaja, Legal Momentum), *id.* at 80 (Bev Neufeld, PowHer New York), *id.* at 106 (Meghan Racklin, A Better Balance).

137 Hearing Transcript at 80 (Bev Neufeld, PowHer New York).



Gloria Middleton, Communications Workers of America Local 1180, testifying.

## IV. Recommendations Raised in Testimony at the Hearing

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Written and oral testimony from the Hearing advocated for wide-ranging proposals to address pay inequity. This report identifies some key recommendations, though a full record of all recommendations raised is available by reviewing the transcript, written testimony submissions, or video recording of the Hearing on CGE’s

website.<sup>138</sup> Many recommendations emphasized the need for employer transparency surrounding salaries and wages. Hearing testimony also suggested that providing additional resources, training, and education to employers and employees would not only help prevent discrimination, but also would improve conditions in the workplace. The following recommendations were made by members of the public who offered testimony, and do not necessarily reflect the views of the City.

### **a) Recommended Legislative Changes at Local, State, and Federal Levels**

#### **i. Pass federal and local versions of the Paycheck Fairness Act**

Testimony pushed for the passage of the Paycheck Fairness Act (“PFA”)<sup>139</sup> at the federal level, stating it “would strengthen

<sup>138</sup> <https://www1.nyc.gov/site/genderequity/economic-equity/pay-equity-public-hearing.page>

<sup>139</sup> The PFA would strengthen labor laws in a number of ways. Specifically, it would amend the Fair Labor Standards Act of 1938 by restricting the use of the “bona fide factor” defense to wage discrimination, among other provisions. The PFA, last introduced by Sen. Murray as S. 270, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/270>, and by Rep. DeLauro as H.R. 7, 116th Cong. (2019) <https://www.congress.gov/bill/116th-congress/house-bill/7>. The PFA would eliminate loopholes in the Equal Pay Act, enhance nonretaliation prohibitions, remove salary history from the hiring process, prohibit some nondisclosure agreements, increase transparency and data gathering, and increase penalties for equal pay violations. See “The Paycheck Fairness Act: Fact Sheet,” Nat’l Partnership for Women & Families (Jan. 2019), <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/the-pay-check-fairness-act.pdf>.

the Equal Pay Act, prevent employers from retaliating against workers who try to discuss their pay, limit employers' use of salary history in hiring, and limit reasons employers can pay unfair wages."<sup>140</sup> The PFA would also explicitly require that the Equal Employment Opportunity Commission collect compensation data from employers helping to increase pay transparency and uncover discrimination.<sup>141</sup> Testimony also recommended that the City create and pass a local version of the PFA to explicitly "protect women better."<sup>142</sup>

## **ii. Include domestic workers in the City Human Rights Law and reduce employer minimum**

Hearing testimony strongly recommended making changes to the City Human Rights Law to include domestic workers under its protection; specifically recommending that City Council pass Intro. No. 339,<sup>143</sup> which would amend the City Human Rights Law's definition of "employer" to include any employer that has "one or more domestic workers, as defined in section 2 of the labor law, in the employ of such

employer."<sup>144</sup> Expanding protections for domestic workers would help ensure that discrimination in all of its forms "cannot force New York City's women out of jobs" or into lower paying work, and would ensure that workplaces in the City are "supportive of the women working there."<sup>145</sup> Another related recommendation was for the City Human Rights Law employer minimum to be reduced from four employees to one across the board to keep up with the New York State changes in the State Human Rights Law.<sup>146</sup>

## **iii. Enact laws to increase transparency**

Hearing testimony called for the City to pass legislation related to transparency for greater pay equity. Legislation should require employers to post salary ranges and disclose compensation when posting job openings.<sup>147</sup> Additional City laws should be passed to require employers to report on pay data and diversity in the workplace.<sup>148</sup> Testimony repeated that it is up to cities and states "to encourage or require companies to examine pay practices and fix

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140 Hearing Transcript at 19 (Fatima Goss Graves, National Women's Law Center).

141 *Id.*

142 *Id.* at 52 (Nekpen Osuan, WomenWerk).

143 *Id.* at 34 (Marrisa Senteno, National Domestic Workers Alliance).

144 Proposed Int. No. 339-A (Nov. 1, 2019).

145 Hearing Transcript at 111 (Meghan Racklin, A Better Balance).

146 *Id.* at 110–11 (Meghan Racklin, A Better Balance).

147 *Id.* at 82 (Bev Neufield, PowHer New York); *id.* at 121 (Seher Khawaja, Legal Momentum).

148 *Id.* at 121 (Seher Khawaja, Legal Momentum).

discrimination.”<sup>149</sup> Additional testimony recommendations on employer transparency was discussed outside of the legislative context, as mentioned in subsection b) below.

#### **iv. Measures to improve worker benefits: increase minimum wage and collective bargaining**

Testimony highlighted the importance of increasing the State minimum wage, including eliminating the “tipped minimum wage,” and the importance of collective bargaining in obtaining pay equity.<sup>150</sup> Some advocated to increase minimum wage to \$20 per hour.<sup>151</sup> Further, because of tipped minimum wage, many workers cannot depend on a steady income, and paychecks often come out to less than \$15 an hour in the restaurant job industry.<sup>152</sup> Hearing testimony also highlighted that labor organizing is crucial when fighting pay inequity, and thus there is a need for New York State, and the nation, to

strengthen collective bargaining and contract negotiations.<sup>153</sup>

### **b) Recommended Best Practices and Policy Changes for Employers**

#### **i. Conduct practices and improve policies to improve diversity**

Testimony suggested that employers should have robust pay review processes in place and conduct annual assessments of their pay to employees.<sup>154</sup> One such assessment tool is “median payback”—a figure calculated by listing all male and female employees’ wages from highest to lowest and comparing the number that sits in the middle for each gender.<sup>155</sup> Analyzing median payback in a company’s workforce is significant because it is a “key metric that reflects the totality of the pay problem by evaluating not only the difference between what men and women earn in the same job, but also what women and men earn in the

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149 Written Testimony of Bev Neufield, PowHer New York.

150 See Hearing Transcript at 83 (Bev Neufield, PowHer New York); *id.* at 88 (Laura Addati, International Labour Organization); *id.* at 104 (Jewel Tolliver, Local 79 Laborers); Written Testimony of Edwin Serrano, Sera Security LLC; Written Testimony of Bethan Saunders, I Geena Fruz, Jaslin Kaur, Meaghan Davis, Chantal Folins, Jan Baker, United State of Women.

151 Written Testimony of Edwin Serrano, Sera Security LLC.

152 Diana Ramirez, “It’s Past Time: Tipped Workers Need One Fair Wage,” NAT’L WOMEN’S LAW CENTER (June 18, 2019), <https://nwlc.org/blog/its-past-time-tipped-workers-need-one-fair-wage/>.

153 See Hearing Transcript at 95 (Connor Shaw, International Union of Journeymen and Allied Trades at 88 (Laura Addati, International Labour Organization); *id.* at 104 (Jewel Tolliver, Representative Local 79 Laborers); Written Testimony of Edwin Serrano, Sera Security LLC; Written Testimony of Bethan Saunders, I Geena Fruz, Jaslin Kaur, Meaghan Davis, Chantal Folins, Jan Baker, United State of Women.

154 Hearing Transcript at 25–26 (Jennifer Klein, Times Up Now); *id.* at 134 (Alex Grecu, Mercer).

155 Olivia Petter, *What is the gender pay back and how is it different from equal pay?* INDEPENDENT (Jan. 10, 2020) <https://www.independent.co.uk/life-style/women/gender-pay-gap-equal-pay-women-paid-less-motherhood-a8856121.html>.

aggregate across the institution.”<sup>156</sup> Testimony also stated that the City and CCHR are well placed to develop tools to help companies conduct these annual assessments.<sup>157</sup>

## **ii. Increase transparency in practices and policies surrounding pay**

Regardless of whether legislation is passed to require employers to post their salaries and take additional measures towards compensation transparency, testifiers recommended that employers should: 1) post salary ranges for job classifications; and 2) enhance accountability as a policy.<sup>158</sup> Companies should also have continuous focus and accountability of their practices so that employees can actually raise concerns “without fear of retaliation.”<sup>159</sup>

## **iii. Increased training and education for employers and employees**

Hearing testimony highlighted that education and training of employers and employees would contribute to reducing

the pay equity gap.<sup>160</sup> Becoming more educated can help end the “reign of pay inequity which disadvantages not only women and families today, but generations to come.”<sup>161</sup> Employees, especially at-will employees who make up most of the workforce, must understand their rights.<sup>162</sup> The majority of workers in service industries such as fast food and retail “have heard little or nothing about Fair Workweek laws a full eight months after they have gone into effect,”<sup>163</sup> highlighting that workers cannot complain about rights that have been violated if they are not even aware of what their rights are. Employers must be educated about their obligations and “given guidance on implementing best practices such as paid data collection and annual pay audits.”<sup>164</sup> An educational program directed at businesses, schools, and communities would have “profound effects in creating public awareness, individual knowledge, community dialogue, and the resolve needed to attain economic equity.”<sup>165</sup> Employers

156 Hearing Transcript at 25–26 (Jennifer Klein, Times Up Now).

157 *Id.* at 26 (Jennifer Klein, Times Up Now).

158 *Id.*

159 *Id.* at 71 (Shari Coats, Deloitte).

160 *See id.* at 72 (Shari Coats, Deloitte); *id.* at 94 (Kimberly Watkins); *id.* at 120 (Seher Khawaja, Legal Momentum); Written Testimony of Bev Neufeld, PowHer New York.

161 Written Testimony of Bev Neufeld, PowHer New York.

162 Hearing Transcript at 94 (Kimberly Watkins).

163 Written Testimony of Bev Neufeld, PowHer New York (citing Harold Stolper & Nancy Rankin, *Fair Workweeks Remain Elusive Despite New York’s Reform Laws*, The New School Center for New York City Affairs (Sep. 4, 2019), <http://www.centernyc.org/fair-workweeks-remain>).

164 Hearing Transcript at 120 (Seher Khawaja, Legal Momentum).

165 Written Testimony of Bev Neufeld, PowHer New York.

would also immensely benefit from unconscious bias training.<sup>166</sup> Testimony specifically called upon New York State and New York City governments to see to it, for employers and employees, that the “necessary education, training, oversight and enforcement resources be made available to ensure that the new regulations and legislations have the intended benefits for the intended beneficiaries.”<sup>167</sup>

### **c) Recommended Initiatives for the City**

#### **i. Conduct City audit of pay and collect data**

Hearing testimony recommended that a centralized repository of information is needed to track pay inequity. The City should take on research and data-tracking efforts related to combatting pay inequity, including a city audit of pay across all industries.<sup>168</sup> The City should also urge companies to take a pledge to achieve median pay parity and thus take efforts to achieve median pay parity.<sup>169</sup>

#### **ii. Invest in City and community measures to aid in addressing gender and age pay gap**

Hearing testimony highlighted how combatting pay inequity necessitates the City to create and expand equitable access to affordable childcare, as well as outreach and training programs for career development.<sup>170</sup> Expanding access to affordable quality childcare, especially for women who have nontraditional work schedules, low-wage workers, domestic workers, and service industry workers, can make a material change in the lives of women across New York City, and especially for women of color.<sup>171</sup> Access to resources such as childcare and paid sick leave to care for sick relatives would be “crucial for improving women’s economic ability and closing the pay gap.”<sup>172</sup> Additional resources that would be helpful include training—investments in outreach and training efforts to place women in high-demand occupations with higher salaries would contribute to more equitable workplaces and opportunities.<sup>173</sup> It was also recom-

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166 See Hearing Transcript at 72 (Shari Coats, Deloitte).

167 *Id.* at 79–80 (Merbele Reagan, Women’s Center for Education and Career Advancement).

168 *Id.* at 26 (Jennifer Klein, Times Up Now).

169 *Id.*

170 See *id.* at 34 (Marrisa Senteno, National Domestic Workers Alliance); *id.* at 120–21 (Seher Khawaja, Legal Momentum); Written Testimony of Bethan Saunders, I Geena Fruz, Jaslin Kaur, Meaghan Davis, Chantal Folins, Jan Baker, United State of Women.

171 Hearing Transcript at 34 (Marrisa Senteno, National Domestic Workers Alliance); *id.* at 120–21 (Seher Khawaja, Legal Momentum); see Written Testimony of Bethan Saunders, I Geena Fruz, Jaslin Kaur, Meaghan Davis, Chantal Folins, Jan Baker of United State of Women.

172 Written Testimony of Bethan Saunders, I Geena Fruz, Jaslin Kaur, Meaghan Davis, Chantal Folins, Jan Baker of United State of Women.

173 Hearing Transcript at 120 (Seher Khawaja, Legal Momentum).

mended that the City establish an office dedicated to the workforce development of older workers and a task force dedicated to the same to help address the age wage gap.<sup>174</sup>

### iii. Adopt the CEDAW Act

The CEDAW Act is the central and most comprehensive international human rights treaty addressing gender inequities and discrimination. The United States is one of six UN member states that have not ratified the treaty, and is unlikely to do so.<sup>175</sup> In place of federal ratification, to demonstrate commitment to international standards, some jurisdictions within the US, including San Francisco and Los Angeles, have passed ordinances or resolutions modeled on CEDAW.<sup>176</sup>

One testifier recommended that the City adopt a CEDAW Act<sup>177</sup> as a way of fighting pay inequity. A City CEDAW Act would provide a framework for advocating for pay equity.<sup>178</sup> Moreover,

the CEDAW Act would require that City agencies explicitly look at the gender ramifications of their decisions and actions (as outlined in CEDAW), make assessments available for public critique, and then the City would be obligated to correct problems publicly exposed.<sup>179</sup>

### iv. Additional City actions through CCHR and DCWP

Hearing testimony emphasized that CCHR should take particular actions to address the gender wage gap. Specifically, CCHR should fast-track pregnancy and caregiver discrimination complaints;<sup>180</sup> expand the gender-based harassment unit to include pregnancy accommodation complaints and prioritize caregiver discrimination complaints that involve low wage workers;<sup>181</sup> dedicate resources to mediating pregnancy accommodations and caregiver discrimination disputes;<sup>182</sup> prioritize enforcement of lactation discrimination laws to make sure the

174 *Id.* at 39 (Bobbie Sackman, Radical Age Movement).

175 See full text of CEDAW and additional information at United Nations Office of the High Commission for Human Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>. Before a treaty can be ratified, two-thirds of the Senate must approve. <https://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>.

176 See “Cities for CEDAW-Resources,” Women’s Intercultural Network, <http://citiesforcedaw.org/resources/>.

177 The Convention on the Elimination of Discrimination Against Women (“CEDAW”) is an international treaty adopted in 1979 by the United Nations General Assembly, generally described as an international bill of rights for women. The CEDAW Act in New York is an ordinance based on CEDAW “fostering laws and policies that advance equality for women and address all forms of gender discrimination.” NYC4CEDAW, “About,” NYC4CEDAW.ORG, <https://nyc4cedaw.org/about/> (last visited Jan. 17, 2020). NYC4CEDAW envisions a New York City ordinance that would adopt CEDAW for New York City, referred to by advocates as a CEDAW Act.

178 Hearing Transcript at 48–49 (Mary Luke, PowHer New York, Metro New York Chapter of UN Women).

179 Written Testimony of Howard Katzman, NYC4CEDAW.

180 Hearing Transcript at 108 (Meghan Racklin, A Better Balance).

181 *Id.*

182 *Id.*

right is “meaningful;”<sup>183</sup> and proactively investigate companies and industries that have particularly high rates of discrimination and harassment, such as the retail and food services industries, “because it would put employers throughout these industries on notice that harassment and discrimination will not be overlooked.”<sup>184</sup> Moreover, while

DCWP actively and aggressively enforces the City’s workplace laws, advocates highlighted that DCWP should continue to strengthen enforcement of the NYC Paid Safe and Sick Leave and the NYC Fair Workweek laws, as advocacy groups continue to regularly hear from workers whose rights under the Fair Workweek legislation are being violated.<sup>185</sup>



183 *Id.* at 108–09 (Meghan Racklin, A Better Balance).

184 *Id.* at 109 (Meghan Racklin, A Better Balance).

185 *Id.* at 110 (Meghan Racklin, A Better Balance).



## V. Next Steps

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As reflected in this report, the Hearing underscored how pay inequity remains entrenched, costing women financial security and impacting the ability of women, and specifically, women of color, to build generational wealth. The recommendations highlighted in this report illustrate the need for collaboration among stakeholders, lawmakers, and employers. The City will use this report as a platform to consider policy and legislative change including by reaching out to particular industries to develop creative, tailored policies. The City also welcomes and invites those stakeholders who testified at the Hearing as well as the many representatives who were unable

to attend or share their thoughts to reach out to CGE, CCHR, or DCWP to share their experiences, expertise, and recommendations, either broadly or as it relates to specific industries.

For New Yorkers who are experiencing pay discrimination because of their membership in a protected category or who wish to anonymously report, you can reach CCHR by calling 311 and asking for the Commission on Human Rights. Thank you to all of the individuals, organizations, and stakeholders who have come forward to share their stories and to effect change in New York City.

# Post Script

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As this report was being finalized, New York City emerged as an epicenter of the COVID-19 pandemic, which has highlighted centuries of health inequities, as well as economic ones. The pandemic has exacerbated disparities and challenges for New Yorkers who are Black, Latinx, Indigenous, Asian, and persons of Color, immigrants, LGBTQ, seniors, caregivers, low-wage workers, and who have disabilities. Women, especially women of color, have largely been left behind during the pandemic: being laid off at higher rates than men, carrying disproportionate caregiving responsibilities, and now additionally burdened at home with remote learning. The testimony reflected in this report—even before the pandemic and ensuing economic crisis—highlights the heightened vulnerabilities of workers at the intersections of multiple forms of oppression. This work is now ever more

urgent and must be a pillar of the City's recovery. From the beginning of the de Blasio Administration, the mission of breaking down barriers to equity has been central to the City's work and remains the lens through which this Administration has approached recovery efforts. In April 2020, the City launched an external Fair Recovery Task Force and an internal Taskforce on Racial Inclusion and Equity to ensure that we are engaging community and accounting for longstanding racial and gender inequities in neighborhoods across all five boroughs as we work to address community needs during this challenging time. It is more important than ever that we help people understand their rights, and work with employers to understand their obligations to create equitable and fair compensation systems. Our hope is that this report will serve to reflect their experiences, ideas, and recommendations to ensure that all New Yorkers receive fair compensation for their work during the City's post-pandemic recovery and beyond.

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