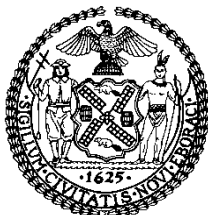


Committee on Civil Rights  
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## **THE COUNCIL**

### **REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

Matthew Gewolb, Legislative Director  
Rachel Cordero, Deputy Director

### **COMMITTEE ON CIVIL RIGHTS**

Council Member Darlene Mealy, Chair

**March 30, 2015**

- PROPOSED INT. NO. 421-A:** By Council Members Mealy, Rodriguez, Rosenthal, Garodnick, Constantinides, Chin, Rose, Williams, Levine, Van Bramer, Miller, Lancman, Barron, and Dromm
- TITLE:** A Local Law to amend the Administrative Code of the City of New York, in relation to the powers and duties of the commission on human rights.
- PROPOSED INT. NO. 690-A:** By Council Member Mealy, Arroyo, Chin, Crowley, Lancman, Rose, Williams, Cabrera, King, Lander, Miller, Garodnick, Constantinides, Van Bramer, Levine, Barron, and Dromm
- TITLE:** A Local Law to amend the Administrative Code of the City of New York, in relation to establishing an employment discrimination testing program.

**PROPOSED INT. NO. 689-A:** By Council Members Lander, Garodnick, Mealy, Chin, Crowley, Lancman, Rose, Constantinides, Rosenthal, and Dromm

**TITLE:** A Local Law to amend the Administrative Code of the City of New York, in relation to establishing a housing discrimination testing program.

## **I. Introduction**

On Monday, March 30, 2015, the Committee on Civil Rights (“the Committee”), chaired by Council Member Darlene Mealy, will hold a hearing to vote on Proposed Introductory Bill Number 421-A (“Int. No. 421-A”), a local law to amend the administrative code of the city of New York, in relation to the powers and duties of the commission on human rights; Proposed Introductory Bill Number 690-A (“Int. No. 690-A”), a local law to amend the administrative code of the city of New York, in relation to establishing an employment discrimination testing program; and Proposed Introductory Bill Number 689-A (“Int. No. 689-A”), a local law to amend the administrative code of the city of New York, in relation to establishing a housing discrimination testing program.

## **II. Background**

The New York City Human Rights Law (“HRL”), embodied in the New York City Charter and title eight of the New York City Administrative Code, is one of the most expansive and comprehensive human rights laws in the nation. The HRL protects a number of classes of persons from discrimination in the areas of employment, housing, public accommodations, and more.<sup>1</sup> Protected classes covered under the HRL include race, national origin, disability, sexual orientation, alienage or citizenship status, gender, partnership status, age, and others.<sup>2</sup>

Pursuant to the HRL, the New York City Human Rights Commission (“the Commission”) was created “with power to eliminate and prevent discrimination . . . and

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<sup>1</sup> N.Y.C. Admin Code §8-101.

<sup>2</sup> Id.

[was] given general jurisdiction and power for such purposes.<sup>3</sup> The Commission's powers and duties include, but are not limited to:

- Working with federal, state and city agencies to develop courses for instruction to public and private employers on techniques to promote anti-discrimination policies<sup>4</sup>;
- Studying the problems of prejudice<sup>5</sup>;
- Receiving, investigating and passing upon complaints, and initiating investigations of discriminatory practices<sup>6</sup>;
- Issuing subpoenas and holding hearings under oath regarding alleged discriminatory practices<sup>7</sup>;
- Issuing publications and reports of investigations and research designed to promote good will and minimize discrimination<sup>8</sup>; and
- Recommending to the mayor and the council legislation to aid in carrying out the purposes of the HRL.<sup>9</sup>

The Commission enforces the HRL through its Law Enforcement Bureau (“LEB”) and Community Relations Bureau (“CRB”).<sup>10</sup> As the enforcement arm of the Commission, the LEB is responsible for receiving and investigating complaints of unlawful discrimination and, when warranted, either mediating a resolution or prosecuting the complaint.<sup>11</sup> Any person who claims to be a victim of an unlawful discriminatory practice may file a complaint with the LEB.<sup>12</sup> Additionally, the LEB may

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<sup>3</sup> N.Y.C. Admin Code §8-101.

<sup>4</sup> N.Y.C. Admin Code §8-105(1).

<sup>5</sup> N.Y.C. Admin Code §8-105(3).

<sup>6</sup> N.Y.C. Admin Code §8-105(4).

<sup>7</sup> N.Y.C. Admin Code §8-105(5).

<sup>8</sup> N.Y.C. Admin Code §8-105(7).

<sup>9</sup> N.Y.C. Admin Code §8-105(9).

<sup>10</sup> New York City Charter § 902(b).

<sup>11</sup> New York City Commission on Human Rights, *Fighting for Justice: New York Voices of the Civil Rights Movement*, NYCCHR 2009 Annual Report, 8, available at <http://www.nyc.gov/html/cchr/pdf/annual09.pdf> (hereinafter *Fighting for Justice*).

<sup>12</sup> 47 RCNY §1-11(a)(1).

file a complaint on its own alleging an individual’s unlawful discriminatory practice.<sup>13</sup> The LEB is responsible for administering the complaint process, which starts with intake, where a complainant is interviewed by staff. At intake, staff attempts to intervene and resolve the issue before initiating a formal complaint.<sup>14</sup> If the issue cannot be resolved through pre-complaint intervention, an official complaint may be filed.<sup>15</sup> Once a complaint is filed, an investigator or attorney is responsible for interviewing witnesses and reviewing documents.<sup>16</sup> At the conclusion of the investigation, the investigator or attorney is required to make a probable cause determination.<sup>17</sup> If no probable cause is found, the case is dismissed and the complainant has the opportunity to appeal the dismissal to the Commissioner.<sup>18</sup>

If probable cause is found, however, the case is assigned to a staff attorney for prosecution and the complaint is referred to an administrative law judge (“ALJ”).<sup>19</sup> Before the administrative trial, the ALJ will hold a pre-trial conference to determine if the case can be settled.<sup>20</sup> If a case cannot be settled, the ALJ holds a hearing and issues a “Report and Recommendation<sup>21</sup>.” In response to the Report and Recommendation, the Commission issues a “Final Decision and Order<sup>22</sup>.” If no liability is found, the case is dismissed.<sup>23</sup> If liability is found, than the Commission orders relief.<sup>24</sup> Such relief may

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<sup>13</sup> 47 RCNY §1-11(a)(2).

<sup>14</sup> *Fighting for Justice*, *supra* note 8, at 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Fighting for Justice*, *supra* note 8, at 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; Admin. Code §8-116(c).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Fighting for Justice*, *supra* note 8, at 7; Admin. Code §8-120(a).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

include hiring, reinstatement or upgrading of employees; awarding back pay; extension of accommodations; or paying of compensatory damages, among other things.<sup>25</sup>

Although the HRL grants the Commission the power to enforce the HRL to protect the City's residents from discrimination, for years, there has been concern regarding the Commission's failure to properly execute its powers and duties to enforce the HRL. As such, on February 27, 2014, the Committee on Civil Rights held an oversight hearing regarding the Commission's implementation of Local Law 2 of 2011, which requires the Commission to include specific information in its annual reports to the Mayor and City Council<sup>26</sup>. During that hearing, advocates expressed concern about the Commission's lack of enforcement, unwillingness to find probable cause in cases filed with the Commission, and failure to initiate investigations and complaints.<sup>27</sup> It was specifically noted that in 2012, there were more than 5,000 inquiries of discrimination, but only 442 complaints were filed and only 5% of cases resulted in findings of probable cause.<sup>28</sup> Per the Commission's annual reports, the number of inquiries, complaints, resolutions, and findings of probable cause from 2011 to 2014 are as follows:

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<sup>25</sup> Admin. Code §8-120(a).

<sup>26</sup> Local Law 2 of 2011.

<sup>27</sup> Testimony of Nicole Salk on behalf of South Brooklyn Legal Services, *Oversight: The Commission on Human Rights Implementation of Local Law 2 of 2011*, February 27, 2014, Committee of Civil rights, at 58-65.

<sup>28</sup> *Id.* at 63-64.

| Year               | Total Number of Inquiries of Discrimination | Number of Inquiries Resolved with Pre-complaint intervention | Number of New Cases Filed by the Commission | Number of Filed Cases Resolved (includes cases filed in previous years) | Percent of Resolved Cases Resulting in a Finding of Probable Cause |
|--------------------|---|--|---|---|--|
| 2014 <sup>29</sup> | 4,975                                       | 191  | 633   | 568   | 10%  |
| 2013 <sup>30</sup> | 4,763                                       | 199  | 564   | 591   | 9%   |
| 2012 <sup>31</sup> | 5,035                                       | 182  | 442   | 403   | 5%   |
| 2011 <sup>32</sup> | 6,135                                       | 184  | 332   | 464   | 9%   |

The Commission’s lack of enforcement has an especially significant impact on low income New Yorkers because they often do not have the resources to bring a discrimination claim in court.<sup>33</sup> Additionally, it is important to note that the Commission has the ability to issue penalties of \$125,000 for each instance of discrimination and up to \$250,000 for willful or malicious acts. However, in 2014 the Commission assessed 62 fines totaling \$189,750 and 77 complainants received \$1,090,924 in settlements.<sup>34</sup>

Advocates have also expressed concern regarding the Commission’s poor funding and inadequate staffing.<sup>35</sup> The lack of sufficient funding is demonstrated by the change in budget allocated to the Commission since 1992, at which time the Commission had an

<sup>29</sup> NYC Commission on Human Rights 2014 Annual Report.

<sup>30</sup> NYC Commission on Human Rights 2013 Annual Report, available at <http://www.nyc.gov/html/cchr/downloads/pdf/annual13.pdf> (last visited February 24, 2015).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Testimony of Nicole Salk on behalf of South Brooklyn Legal Services, *Oversight: The Commission on Human Rights Implementation of Local Law 2 of 2011*, February 27, 2014, Committee of Civil rights, at 67.

<sup>34</sup> NYC Commission on Human Rights 2014 Annual Report, p. 5.

<sup>35</sup> *Id.* at 60-62, 65.

annual budget of approximately \$5.6 million<sup>36</sup>. According to the Office of Management and Budget, the 2015 adopted budget for the Commission is \$1.1 million, which represents an 80% decrease.<sup>37</sup> As it pertains to staff, the Commission's city-funded staffing numbers have decreased from 173 positions in 1992<sup>38</sup> to a mere 11 in 2015<sup>39</sup>, a 90% decrease. In considering these insufficiencies and the various issues with the Commission's lack of enforcement, Mayor Bill De Blasio appointed a new Chair and eight new Commissioners to demonstrate his commitment to promote the City's progressive HRL.<sup>40</sup>

With new leadership in place, on March 3, 2015 the Council's Committee on Civil Rights held a hearing and discussed how the Commission would address these issues moving forward. At that hearing the Committee also considered Int. No. 421, Int. No. 689, and Int. No. 690, which collectively seek to address the lack of proactive enforcement by the Commission in recent years by requiring the Commission to report to the Council on its investigations, and establish employment and housing discrimination testing programs.

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<sup>36</sup> Fiscal 1992 Executive Budget - Departmental Estimates, Office of Management and Budget, pg. 1653

<sup>37</sup> Fiscal 2015 Adopted Budget: Supporting Schedules, Office of Management and Budget, at p. 1643.

<sup>38</sup> Fiscal 1992 Executive Budget: Departmental Estimates, Office of Management and Budget, at p. 1653.

<sup>39</sup> Fiscal 2015 Adopted Budget: Supporting Schedules, Office of Management and Budget, at p. 1643.

<sup>40</sup> "Mayor de Blasio Appoints Carmelyn P. Malalis as Chair of the City's Commission on Human Rights, Names Eight new Commissioners," available at <http://www1.nyc.gov/office-of-the-mayor/news/526-14/mayor-de-blasio-appoints-carmelyn-p-malalis-chair-the-city-s-commission-human-rights->, (last visited February 27, 2015).



## **Summary of Proposed Legislation**

### *a. Int. No. 421-A*

Int. No. 421-A seeks to ensure that the HRL is enforced appropriately and sufficiently by establishing additional reporting requirements for the Commission.<sup>41</sup> Currently, the Commission is required to report on information regarding (i) the number of inquiries it receives from the public; (ii) complaints filed with the Commission; and (iii) the Commission's education and outreach efforts.<sup>42</sup> Int. No. 421-A would amend section 8-105(10) of the administrative code to require the Commission to report on investigations initiated by the Commission in its annual report.<sup>43</sup>

Specifically, Int. No. 421-A would require the Commission to report the following information regarding investigations:

- The total number of investigations initiated by the commission;
- The total number of commission-initiated complaints filed after an investigation finding a person or group of persons may be engaged in a pattern or practice of discrimination;
- The total number of investigations referred to Corporation Counsel to commence a civil action; and
- The total number of publications and reports of investigations designed to promote good will and eliminate discrimination.<sup>44</sup>

The reports from the Commission would not be limited to the information listed, but instead the required information would serve as a minimum of what should be reported.

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<sup>41</sup> Int. No. 421-A.

<sup>42</sup> N.Y. Admin. Code §8-105(10).

<sup>43</sup> Int. No. 421-A(b).

<sup>44</sup> Int. No. 421-A §10(b).

The bill would take effect on March 1, 2017.<sup>45</sup>

*b. Int. No. 690-A*

Int. No. 690-A would require the Commission, for a period of one year, to organize and conduct no fewer than five investigations of discrimination in employment. Such investigations would include, but not be limited to, a matched pair testing program.<sup>46</sup> The program would require the Commission to send out pairs of testers who would apply for the same job. The testers would be assigned similar credentials and present different actual or perceived, age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, or other protected characteristics.<sup>47</sup> Int. No. 690-A would require the testing to begin on or before October 1, 2015.<sup>48</sup>

Int. No. 690-A would require the Commission to submit a report to the Speaker including, but not limited to, the following information regarding the prior 12 month investigation period: (i) the number of matched pair tests completed; (ii) the identification of the industry of the employer where each completed matched pair test was conducted; (iii) the protected class variable used in each matched pair test; (iv) the number of incidents of actual or perceived discrimination by protected class for each such investigation; and (v) a description of any incidents of discrimination detected in the course of such investigations, provided that the commission shall not be required to report information that would compromise any ongoing or prospective investigation or

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<sup>45</sup> Int. No. 421-A §2.

<sup>46</sup> Int. No. 690-A §1.

<sup>47</sup> Id.

<sup>48</sup> Id.

prosecution.<sup>49</sup> The commission would be required to submit the report on or before March 1, 2017.<sup>50</sup> Int. No. 690-A would also require that any incidents of actual or perceived discrimination during the investigation be referred to the Commission's law enforcement bureau.<sup>51</sup>

The bill would take effect immediately after its enactment into law.<sup>52</sup>

*c. Int. No. 689-A*

Similar to Int. No. 690-A, Int. No. 689-A would require the Commission, for a period of one year, to organize and conduct no fewer than five investigations of housing discrimination that would include, but not be limited to a matched pair testing program.<sup>53</sup> The testing would require sending out pairs of testers who would apply for the same housing accommodations. The testers would be assigned similar credentials and different actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, alienage or citizenship status, lawful source of income, number of children who will be residing with such person(s), or other protected classes.<sup>54</sup> Int. No. 689-A would require the program to begin on or before October 1, 2015.<sup>55</sup>

Int. No. 689-A would require the Commission to submit a report to the Speaker including, but not limited to, the following information regarding the prior 12 month investigation period: (i) the number of matched pair tests completed; (ii) the protected class variable used in each matched pair test; and (iii) the number of incidents of actual or

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<sup>49</sup> Int. No. 690-A §1(b).

<sup>50</sup> Id.

<sup>51</sup> Int. No. 690-A §1(c).

<sup>52</sup> Int. No. 690-A §2.

<sup>53</sup> Int. No. 689-A §1.

<sup>54</sup> Id.

<sup>55</sup> Id.

perceived discrimination on each protected class, including a description of any incidents of discrimination detected in the course of such investigations, provided that the commission shall not be required to report information that would compromise any ongoing or prospective investigation or prosecution.<sup>56</sup> The commission would be required to submit the report on or before March 1, 2017.<sup>57</sup> Int. No. 689-A would also require that any incidents of actual or perceived discrimination during the investigation be referred to the Commission's law enforcement bureau.<sup>58</sup>

The bill would take effect immediately after its enactment into law.<sup>59</sup>

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<sup>56</sup> Int. No. 689-A §1(b).

<sup>57</sup> Id.

<sup>58</sup> Int. No. 689-A §1(c).

<sup>59</sup> Int. No. 689-A §2.