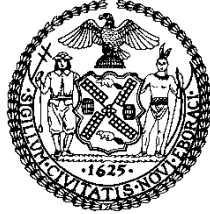


Committee on Civil Rights  
Alesha S. Brown, Counsel  
Muzna Ansari, Policy Analyst  
Eisha Wright, Finance Analyst



**THE COUNCIL**

**COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

Matthew Gewolb, Legislative Director  
Rachel Cordero, Deputy Director, Governmental Affairs Division

**COMMITTEE ON CIVIL RIGHTS**

Council Member Darlene Mealy, Chair

**December 14, 2015**

**PROPOSED INT. NO. 108-A:**

By Council Members Rose, Chin, Eugene, Johnson, Mendez, Rosenthal, Mealy, Koslowitz, Rodriguez, Kallos, Reynoso, Lander, Williams, Miller, Menchaca, Dromm, Richards, Torres, King and Cumbo (by request of the Manhattan Borough President)

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver.



## **I. INTRODUCTION**

On Monday, December 14, 2015, the Committee on Civil Rights, chaired by Council Member Darlene Mealy, will hold a hearing to vote on Proposed Introductory Bill Number 108-A (“Int. No. 108-A”), a local law to amend the administrative code of the city of New York, in relation to prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver. The Committee held a hearing on an earlier version of Int. No. 108-A on September 21, 2015. During the September hearing testimony was submitted and heard from the New York City Commission on Human Rights (“the Commission”), advocates, the business community and other interested parties.

## **II. BACKGROUND**

### **i. Caregivers**

Reports have indicated that as the baby boomer generation ages, more Americans are taking on elder and family care responsibilities.<sup>1</sup> Notably, these responsibilities are held by working families. In America, more than one in six workers provide unpaid elder care for a disabled family member, relative, or friend.<sup>2</sup> According to the Family Caregiver Alliance, women account for approximately 66% of family caregivers and the unpaid care they provide has a value of \$148 billion to \$188 billion annually.<sup>3</sup> According to the American Association of Retired Persons (“AARP”), there is a rising number of women workers age 55 and older who

---

<sup>1</sup> Cynkar, Peter and Mendes, Elizabeth “More Than One in Six American Workers Also Act as Caregivers”, July 2011. available at <http://www.gallup.com/poll/148640/one-six-american-workers-act-caregivers.aspx> (last visited December 11, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> Family Caregiver Alliance “Women and Caregiving: Facts and Figures” available at [http://www.caregiver.org/caregiver/jsp/content\\_node.jsp?nodeid=892](http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=892) (last visited December 11, 2015).

typically provide eldercare, which demonstrates the importance of their earnings for their care recipient's financial stability as well as their own retirement security.<sup>4</sup>

Significantly, the majority of two-parent households in New York City also have both parents in the workforce, and 61% of women with children under the age of six are in the labor force.<sup>5</sup> The likelihood of being a caregiver is higher for families living below the poverty line,<sup>6</sup> and is likely to increase in the City, where the number of disabled adults over 60 years old is expected to grow by 40% over the next 20 years.<sup>7</sup> As it pertains to caregiving responsibilities for children, 40% of households in New York City headed by single mothers with children under the age of 18 live in poverty.<sup>8</sup>

Despite the widespread prevalence of caregiving responsibilities among individuals and families across the country, caregivers have historically faced and continue to face discrimination—particularly in the workplace. Such discrimination includes failure to hire or terminating an employee due to their status as a caregiver, harassment, reduced compensation and failure to promote.<sup>9</sup> It has been widely reported, and the subject of numerous lawsuits, for example, that employers have denied promotions to parents and other caregivers based on the employer's presumption that caregivers could not handle increased work load or travel.<sup>10</sup> Deeply

---

<sup>4</sup> Williams, John C., Devaux, Robin, Petrac, Patricia and Feinberg, Lynn *Insight on the Issues: Protecting Family Caregivers from Employment Discrimination*, AARP Public Policy Institute, Aug. 2012, at [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf) (last visited Dec. 11, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> Jody Heymann, "Inequalities at Work and at Home: Social Class and Gender Divides in Unfinished Work: Building Equality and Democracy in an Era of Working Families," The New Press (2005)

<sup>7</sup> County Data Book: Selected Characteristics—New York City, New York State Office for the Aging (2011), available at <http://www.aging.ny.gov/ReportsAndData/CountyDataBooks/30NYCALL5.pdf> (last visited December 11, 2015).

<sup>8</sup> Bakst, Dina, Leiwant, Sherry and Gornick, Janet, "Promoting Work-Family Balance," Toward a 21st Century City for All, available at <http://www.21cforall.org/content/promoting-work-family-balance> (last visited December 11, 2015).

Williams, Joan et. Al, "Ending Discrimination Against Family Caregivers," p.5, available at (last visited December 12, 2015).

*Id.*

rooted discrimination depicting caregivers as less reliable and more likely to need time off has also caused some employers to develop hiring practices that exclude caregivers, particularly women with children.<sup>11</sup>

According to A Better Balance, an advocacy organization committed to promoting flexible workplace policies and ending discrimination against caregivers, the Legal Aid Society and others, New York City, like other jurisdictions around the country, faces significant caregiver discrimination. In addition to treating caregivers differently than other employees, employers have historically been reluctant to provide even nominal accommodations for caregivers to meet both their work and familial responsibilities. During a Council hearing on caregiving in 2013, the Legal Aid Society testified that they typically represent clients who were terminated from their employment due to their caregiving responsibilities—taking time to care for a sick child or other family member.<sup>12</sup> Further, Legal Aid testified that low-wage workers are often forced out of their jobs because employers deny them minor scheduling adjustments needed to accommodate their caregiving responsibilities.<sup>13</sup>

Dena Adams, a single mother, also testified about her experiences as a caregiver at the 2013 hearing.<sup>14</sup> Ms. Adams testified that she was terminated from her job where she worked for 15 years because her employer refused to negotiate alternative arrangements so she could care for her 11 year-old daughter.<sup>15</sup> Ms. Adams also testified that her employer abruptly changed her

---

<sup>11</sup> *Id.*

<sup>12</sup> See Committee on Civil Rights Hearing Testimony December 12, 2013, p. 11, available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1134073&GUID=31B1A4DC-115C-4645-89C2-2F3FBFF0D419&Options=&Search=> (last visited December 11, 2015).

<sup>13</sup> *Id.*

<sup>14</sup> See Committee on Civil Rights Hearing Testimony December 12, 2013, pp. 18-21, available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1134073&GUID=31B1A4DC-115C-4645-89C2-2F3FBFF0D419&Options=&Search=> (last visited December 11, 2015).

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

schedule, requiring her to work unpredictable evening and weekend hours.<sup>16</sup> According to Ms. Adams, despite allowing other employees to work predictable hours to accommodate their school schedule, Ms. Adams' employer would not agree to or discuss any of her suggestions.<sup>17</sup> It is because of stories like Ms. Adams that many jurisdictions throughout the country have passed laws protecting caregivers.

ii. Protections Against Caregiver Discrimination

a. *New York State*

On October 21, 2015, Governor Cuomo signed New York State bill S. 4/A. 7317 into law, which added "familial status" to the list of protected classes under the State Human Rights Law.<sup>18</sup> Notably, it only covers caregiving needs for parents. Under the new law, "Familial Status" is defined as: (a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or (b) one or more individuals (who have not attained the age of eighteen years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent.<sup>19</sup> The State law will go into effect on January 19, 2016.

b. *Other Jurisdictions*

A number of jurisdictions across the nation provide protections for caregivers. For example, Washington, D.C.'s Human Rights Act prohibits an employer from discriminating against an employee because of the employee's "family responsibilities."<sup>20</sup> Under this law, family responsibilities are defined as "the state of being, or the potential to become, a contributor

---

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.*

<sup>18</sup> NY Exec Law § 296(1).

<sup>19</sup> NY Exec Law §292(26).

<sup>20</sup> D.C. Human Rights Act § 2-1402.11(a).

to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.”<sup>21</sup> According to Washington, D.C.’s Office of Human Rights, family responsibilities to provide care for a person in a dependent relationship includes, but is not limited to, children, grandchildren and parents.<sup>22</sup>

Philadelphia’s Fair Practices Ordinance also prevents employment discrimination based on “familial status.”<sup>23</sup> For purposes of prohibited employment discrimination, the Ordinance defines “family status” as “the state of being or becoming a provider of care or support to a family member.”<sup>24</sup> The term “family member” includes “the individual’s spouse, Life Partner, parents, grandparents, siblings, or in-laws; and children, grandchildren, nieces, or nephews (including through adoption or other dependent or custodial relationship).”<sup>25</sup>

San Francisco’s Family Friendly Workplace Ordinance provides protections for caregivers in the workplace who provide care for a family member who is either in a medical facility or receiving continuing treatment by a health care provider.<sup>26</sup> The Ordinance requires workplace accommodations for caregivers in addition to prohibiting discrimination.<sup>27</sup> However, an employer is not required to make accommodations where there is a bona fide business purpose for denying the accommodation, and is only required to consider requests for accommodations if it has 20 or more employees and the employee making the request has been

---

<sup>21</sup> D.C. Human Rights Act § 2-1401.02(12).

<sup>22</sup> “Protected Traits in the DC Human Rights Act,” District of Columbia Office of Human Rights, available at [http://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/ProtectedTraitsDC\\_Dec2014.pdf](http://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/ProtectedTraitsDC_Dec2014.pdf) (last visited December 11, 2015).

<sup>23</sup> Philadelphia Code: Fair Practices Ordinance § 9-1103.

<sup>24</sup> Philadelphia Code: Fair Practices Ordinance § 9-1102.

<sup>25</sup> *Id.*

<sup>26</sup> San Fran Admin Code § 12Z.3.

<sup>27</sup> San Fran Admin Code § 12Z.4.

employed for six months or more and works at least eight hours per week on a regular basis.<sup>28</sup> The San Francisco Ordinance defines caregiver as a contributor to the ongoing care of: (a) a child or children over whom an employee has assumed parental responsibility; (b) a person with a serious health condition in a family relationship with the caregiver; or (c) a parent over the age of 65.<sup>29</sup>

In order to provide New Yorkers with similar caregiving protections in the workplace, the Committee has considered and will vote on Proposed Int. No. 108-A, which would add caregiver status to the list of protected classes under the City’s Human Rights Law.

### **III.INT. NO. 108-A**

#### **i. Adding Caregiver Status to the List of Protected Classes Under the City’s Human Rights Law**

Pursuant to the New York City Human Rights Law (“HRL”), it is an unlawful discriminatory practice for an employer to refuse to hire, terminate, or discriminate against an employee in compensation, or terms, conditions or privileges of employment, based on an employee’s actual or perceived status as a member of a protected class.<sup>30</sup> Currently, the protected classes under the HRL include: age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, and alienage or citizenship status.<sup>31</sup> An employee’s actual or perceived status as a victim of domestic violence, or as a victim of sex offenses or stalking is also a protected class for purposes of employment discrimination.<sup>32</sup>

---

<sup>28</sup> *Id.*; *see also* San Fran Admin Code § 12Z.3.

<sup>29</sup> San Fran Admin Code § 12Z.3.

<sup>30</sup> NYC Admin Code § 8-107(1)(a).

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

<sup>32</sup> NYC Admin Code § 8-107.1(2).



Int. No. 108-A would add caregiver status to this list of protected classes for purposes of prohibiting employment discrimination against caregivers. “Caregivers” would include those who provide direct and ongoing care for a child under the age of 18 or a care recipient. “Child” would include a biological, adopted or foster child, a legal ward, or a child of a caregiver standing in loco parentis. The intent of this definition is to capture all children, either biological or adopted, or children for whom the caregiver has assumed a primary parental role. “Care recipient” would include any individual who: (i) has a disability and relies on the caregiver for medical care or to meet the needs of daily living; and (ii) is in a relationship with the caregiver as follows:

- Caregiver’s child (including children over the age of 18);
- Caregiver’s spouse;
- Caregiver’s domestic partner;
- Caregiver’s parent (including a biological, foster, step- or adoptive parent, a legal guardian of a caregiver, or a person who acted as the caregiver’s parent when the caregiver was a child);
- Caregiver’s sibling (including a brother, sister, half-siblings, step-siblings, and siblings related through adoption);
- Caregiver’s grandchild or grandparent;
- The child or parent of the caregiver’s spouse or domestic partner;
- An individual who resides in the caregiver’s household; or
- Any individual in a familial relationship with the caregiver as designated by the Commission.

Adding caregiver status as a protected class would make it an unlawful discriminatory practice for an employer to treat an employee who is a caregiver differently than a non-caregiver employee by discriminating against the caregiver employee regarding hiring, termination, providing compensation, or terms, conditions or privileges of employment. The addition of caregiver status to the HRL would also provide caregivers with remedies and protections in asserting their rights under the HRL.

ii. Asserting One's Rights Under the HRL

If an employee believes he or she has been a victim of an unlawful discriminatory practice that is prohibited by the HRL, that employee can file a complaint with the Commission<sup>33</sup> or commence a private right of action in any court of competent jurisdiction for damages.<sup>34</sup> An employee who believes he or she is a victim of an unlawful discriminatory practice may also receive relief if the Commission initiates an investigation, either independently or in connection with a complaint, into such unlawful discriminatory practices.<sup>35</sup> Additionally, pursuant to Administrative Code section 8-602, if an employer interferes, or attempts to interfere, with an employee exercising or enjoying his or her rights under the United States Constitution, State law, or the HRL, and such interference is motivated in whole or in part by the employee's actual or perceived status as a protected class, the Corporation Counsel may bring a civil action against such employer on behalf of the City.<sup>36</sup> Int. No. 108-A would provide these aforementioned remedies for caregiver discrimination in the workplace.

---

<sup>33</sup> NYC Admin Code § 8-109.

<sup>34</sup> NYC Admin Code § 8-502.

<sup>35</sup> NYC Admin Code § 8-114.

<sup>36</sup> NYC Admin Code § 8-602(a)

Further, pursuant to Administrative Code section 8-107, it is an unlawful discriminatory practice for an employer to retaliate or discriminate against an employee in any manner because an employee (i) opposes an unlawful discriminatory practice that is prohibited by the HRL; (ii) files a complaint, testifies or assists with a proceeding that is allowed under the HRL; (iii) commences a civil action alleging that the employer engaged in an unlawful discriminatory practice that is prohibited by the HRL; (iv) assists the Commission or the Corporation Counsel in an investigation; or (v) provides information to the Commission pursuant to the terms of a conciliation agreement made pursuant to Administrative Code section 8-115.<sup>37</sup> Because Int. No. 108-A would add caregiver status to the list of protected classes under the HRL, caregivers would be protected from retaliation in asserting their rights under the HRL pursuant to the aforementioned Administrative Code provisions. Significantly, under the HRL unlawful retaliation “need not result in an ultimate action,” but the retaliatory acts complained of “must be reasonably likely to deter a person from engaging in protected activity.”<sup>38</sup> For example, pursuant to Int. No. 108-A, if a caregiver were to file a complaint against their employer for discrimination based on caregiver status, it would be unlawful for the employer to retaliate against the caregiver. Such retaliation could include terminating the caregiver or, for example, rejecting a caregiver's request for a change to the terms and conditions of their employment while permitting the same request for non-caregiver employees.

---

<sup>37</sup> NYC Admin Code § 8-107(7).

<sup>38</sup> *Id.*