CTQ-2023-00001

COURT OF APPEALS OF THE STATE OF NEW YORK

NAFEESA SYEED,

Plaintiff-Appellant,

v.

BLOOMBERG L.P.,

Defendant-Respondent.

ON APPEAL FROM THE CERTIFIED QUESTION BY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN CASE NO. 22-1251, DOCKET NO. 20-CV-7464

LEGISLATIVE MATERIALS APPENDIX OF *AMICI CURIAE* ANTI-DISCRIMINATION CENTER, INC. AND AND NATIONAL EMPLOYMENT LAWYERS ASSOCIATION/NEW YORK (NELA/NY)

Kevin J. Shehan
Shehan Legal, PLLC
845 Third Avenue, Sixth Floor
New York, New York 10022
917-740-7805
kevin@shehanlegal.com
Co-counsel for amicus curiae NELA/NY

Craig Gurian
Anti-Discrimination Center, Inc.
157 East 86th Street, 4th Floor
New York, New York 10028
212-537-5824
craiggurian@antibiaslaw.org
Counsel for amici curiae

December 18, 2023

TABLE OF CONTENTS

Excerpt of Local Law 39 of 1991
(the "comprehensive 1991 amendments").....LMA 1

2005 Local Civil Rights Restoration Act, Local Law 85 of 2005.....LMA 3

Restoration Act Committee Report.....LMA 12

Local Law 35 of 2016.....LMA 17

Local Law 35 of 2016 Committee Report.....LMA 20

Chapter 160 of NYS Session Laws, 2019.....LMA 28

Division of the Budget Bill Memorandum.....LMA 36

New York City

LEGISLATIVE ANNUAL

1991

Published by
NEW YORK LEGISLATIVE SERVICE, INC.
299 Broadway, New York, N.Y. 10007

LOCAL LAWS OF THE CITY OF NEW YORK

FOR THE YEAR 1991

No. 39

Introduced by Council Member Horwitz (by request of the Mayor); also Council Members Foster, Maloney, Fields, Povman, Ward, Friedlander, Dryfoos, Alter, Eldridge, Michels, Spigner and Rivera. (Passed under a Message of Necessity from the Mayor.)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the human rights law.

Be it enacted by the Council as follows:

Section one. Chapter 1 of title 8 of the administrative code of the city of New York, subdivision 17 of section 8-102 and section 8-108.2 as added by local law number 59 for the year 1986, subdivisions 1, 1-a, 2, 3, 3-a, 4 and 5 of section 8-107 as amended by, and subdivision 18 of section 8-102 and subdivision 11 of section 8-107 as added by, local law number 52 for the year 1989, is amended to read as follows:

CHAPTER 1
COMMISSION ON HUMAN RIGHTS

§ 8-101 **Policy.** In the city of New York, with its great cosmopolitan population [consisting of large numbers of people of every race, color, creed, age, national origin and ancestry, many of them with physical handicaps], there is no greater danger to the health, morals, safety and welfare of the city [,] and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of *their actual or perceived* differences [of], *including those based on* race, color, creed, age, national origin, [ancestry or physical handicap] *alienage or citizenship status, gender, sexual orientation, disability, marital status, whether children are, may be or would be residing with a person or conviction or arrest record.* The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination [,in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space because of race, creed, color, age, national origin or physical handicap] *from playing any role in actions relating to employment, public accommodations, and housing and other real estate*, and to take other actions against *prejudice, intolerance, bigotry and* discrimination [because of race, creed, color, age or national origin,] as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§ 8-102 Definitions. When used in this chapter:

1. The term **"person"** includes one or more [individuals], *natural persons, proprietorships,* partnerships, associations, *group associations, organizations, governmental bodies or agencies,* corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

New York City Legislative Annual

2005

Volume 2 of 3

Local Laws 80 – 137

Published by
New York Legislative Service, Inc.
15 Maiden Lane, New York, NY 10038-5117
(212) 962-2826
FAX (212) 962-1420
www.nyls.org

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2005

No. 85

Introduced by Council Member Brewer, The Speaker (Council Member Miller), and Council Members Comrie, Jackson, Jennings, Koppell, Lopez, Martinez, Monserrate, Perkins, Quinn, Sanders, Seabrook, Stewart, Vann, DeBlasio, Reyna, Moskowitz, Gonzalez, Rivera, James, Yassky, Gerson, Barron, Palma, Baez, Katz, Weprin, Clarke, Liu, Dilan, Reed, Sears, Boyland, Gentile, Recchia, Foster, Avella, Arroyo, Gioia, Gennaro and The Public Advocate (Gotbaum).

A LOCAL LAW

To amend the administrative code of the City of New York, in relation to the human rights law.

Be it enacted by the Council as follows:

Section 1. The purpose of this local law, which shall be known as the "Local Civil Rights Restoration Act of 2005," is to clarify the scope of New York City's Human Rights Law. It is the sense of the Council that New York City's Human Rights Law has been construed too narrowly to ensure protection of the civil rights of all persons covered by the law. In particular, through passage of this local law, the Council seeks to underscore that the provisions of New York City's Human Rights Law are to be construed independently from similar or identical provisions of New York state or federal statutes. Interpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.

§2. Section 8-102 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

24. The term "partnership status" means the status of being in a domestic partnership, as defined by § 3-240(a) of the administrative code of the city of New York.

§3. Subdivisions 1, 2, 4, 5, 7, 9 and 18 of section 8-107 of chapter one of title eight of the administrative code of the City of New York are amended to read as follows:

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants for its services to an employer or employers.

(c) For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(d) For any employer, labor organization or employment agency or an employee or agent thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

2. Apprentice training programs. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs or an employee or agent thereof:

(b) To deny to or withhold from any person because of his or her actual or perceived race, creed, color, national origin, gender, age, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status the right to be admitted to or participate in a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program.

(c) To discriminate against any person in his or her pursuit of such program or to discriminate against such a person in the terms, conditions or privileges of such program because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status.

(d) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for such program or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

4. Public accommodations. a. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, because of the actual or perceived race, creed, color, national origin, age, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status or that the patronage or custom of any person belonging to, purporting to be, or perceived to be, of any particular race, creed, color, national origin, age, gender, disability, marital status, *partnership status*, sexual orientation or alienage or citizenship status is unwelcome, objectionable or not acceptable, desired or solicited.

5. Housing accommodations, land, commercial space and lending practices.

(a) Housing accommodations. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having

the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To discriminate against any person because of such person's actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(b) Land and commercial space. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or to withhold from any person or group of persons land or commercial space or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To discriminate against any person because of actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or an interest therein or in the furnishing of facilities or services in connection therewith.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status, or whether children are, may be or would be residing with such person, or any intent to make any such limitation, specification or discrimination.

(c) Real estate brokers. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space or an interest therein to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space or an interest therein to any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons, or to represent that any housing accommodation, land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or an interest therein or any facilities of any housing accommodation, land or commercial space or an interest therein from any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, *partnership status*, or alienage or citizenship status, or to whether children are, may be or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(3) To induce or attempt to induce any person to sell or rent any housing accommodation, land or commercial space or an interest therein by representations, explicit or implicit, regarding the entry or prospective entry into the neighborhood or area of a person or persons of any race, creed, color, gender, age, disability, sexual orientation, marital status, *partnership status*, national origin, alienage or citizenship status or a person or persons with whom children are, may be or would be residing.

(d) Lending practices. It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city and if incorporated regardless of whether incorporated under the laws of the state of New York, the United States or any other jurisdiction, or any officer, agent or employee thereof to whom application is made for a loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space or an interest therein:

(1) To discriminate against such applicant or applicants because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, *partnership status*, or alienage or citizenship status of such applicant or applicants or of any member, stockholder, director, officer or employee of such applicant or applicants, or of the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space, or because children are, may be or would be residing with such applicant or other person, in the granting, withholding, extending or renewing, or in the fixing of rates, terms or conditions of any such financial

assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein.

(2) To use any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance, or in connection with the appraisal of any housing accommodation, land or commercial space or an interest therein, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, *partnership status*, or alienage or citizenship status, or whether children are, may be, or would be residing with a person.

(e) Real estate services. It shall be an unlawful discriminatory practice to deny a person access to, or membership in or participation in, a multiple listing service, real estate brokers' organization, or other service because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, *partnership status*, or alienage or citizenship status of such person or because children are, may be or would be residing with such person.

(f) Real estate related transactions. It shall be an unlawful discriminatory practice for any person whose business includes the appraisal of housing accommodations, land or commercial space or interest therein or an employee or agent thereof to discriminate in making available or in the terms or conditions of such appraisal on the basis of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, *partnership status*, or alienage or citizenship status of any person or because children are, may be or would be residing with such person.

7. Retaliation. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, or (v) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 of this chapter. *The retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment, housing or a public accommodation or in a materially adverse change in the terms and conditions of employment, housing, or a public accommodation, provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.*

9. Licenses and permits. It shall be an unlawful discriminatory practice:

(a) Except as otherwise provided in paragraph (c), for an agency authorized to issue a license or permit or an employee thereof to discriminate against an applicant for a license or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, *partnership status*, disability, sexual orientation or alienage or citizenship status of such applicant.

(b) Except as otherwise provided in paragraph (c), for an agency authorized to issue a license or permit or an employee thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for a license or permit or to make any inquiry in connection with any such application, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, age, gender, marital status, *partnership status*, disability, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

(c) Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license or permit from using age or disability as a criterion for determining eligibility for a license or permit when specifically required to do so by any other provision of law.

18. Unlawful boycott or blacklist. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, *partnership status*, sexual orientation or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes;

(b) Boycotts to protest unlawful discriminatory practices; or

(c) Any form of expression that is protected by the First Amendment.

§4. Section 8-109 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

(g) In relation to complaints filed on or after September first, nineteen hundred ninety one, the commission shall commence proceedings with respect to the complaint, complete [the] *a thorough* investigation of the allegations of the complaint and make a final disposition of the complaint promptly and within the time periods to be prescribed by rule of the commission. If the commission is unable to comply with the time periods specified for completing its investigation and for final disposition of the complaint, it shall notify the complainant, respondent, and any necessary party in writing of the reasons for not doing so.

§5. Section 8-120 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

§8-120 Decision and order.

a. If, upon all the evidence at the hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the commission shall find that a respondent has engaged in any unlawful discriminatory practice or any act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice or acts of discriminatory harassment or violence. Such order shall require the respondent to take such affirmative action as, in the judgment of the commission, will effectuate the purposes of this chapter including, but not limited to:

(1) hiring, reinstatement or upgrading of employees;

(2) the award of back pay and front pay;

(3) admission to membership in any respondent labor organization;

(4) admission to or participation in a program, apprentice training program, on the job training program or other occupational training or retraining program;

(5) the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges;

(6) evaluating applications for membership in a club that is not distinctly private without discrimination based on race, creed, color, age, national origin, disability, marital status, *partnership status*, gender, sexual orientation or alienage or citizenship status;

(7) selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;

(8) payment of compensatory damages to the person aggrieved by such practice or act; and

(9) submission of reports with respect to the manner of compliance.

§6. Section 8-126 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

a. Except as otherwise provided in subdivision thirteen of section 8-107 of this chapter, in addition to any of the remedies and penalties set forth in subdivision a of section 8-120 of this chapter, where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest, impose a civil penalty of not more than [fifty] *one hundred and twenty-five* thousand dollars. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act or where the commission finds that an act of discriminatory harassment or violence as set forth in chapter six of this title has occurred, the commission may, to vindicate the public interest, impose a civil penalty of not more than [one hundred thousand] *two hundred and fifty* thousand dollars.

§7. Section 8-130 of chapter one of title eight of the administrative code of the City of New York is amended as follows:

§8-130. Construction. The provisions of this [chapter] *title* shall be construed liberally for the accomplishment of the *uniquely broad and remedial* purposes thereof, *regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.*

§8. Section 8-502 of chapter five of title eight of the administrative code of the City of New York is amended as follows:

b. Notwithstanding any inconsistent provision of subdivision a of this section, where a complaint filed with the city commission on human rights or the state division on human rights is dismissed by the city commission on human rights pursuant to subdivisions a, b or c of section 8-113 of chapter one of this title, or by the state division of human rights pursuant to subdivision nine of section two hundred ninety-seven of the executive law *either* for administrative convenience *or on the grounds that such person's election of an administrative remedy is annulled,* an aggrieved person shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed.

c. *The city commission on human rights and the corporation counsel shall each designate a representative authorized to receive copies of complaints in actions commenced in whole or in part pursuant to subdivision a of this section. Within 10 days after having commenced* [Prior to commencing] a civil action pursuant to subdivision a of this section, the plaintiff shall serve a copy of the complaint upon *such authorized representatives* [the city commission on human rights and the corporation counsel].

f. In any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party costs and reasonable attorney's fees. *For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor.*

§9. Section 8-602 of chapter five of title eight of the administrative code of the City of New York is amended as follows:

§8-602 Civil action to enjoin discriminatory harassment or violence; equitable remedies.

a. Whenever a person interferes by threats, intimidation or coercion or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any per-

son of rights secured by the constitution or laws of the United States, the constitution or laws of this state, or local law of the city and such interference or attempted interference is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, whether children are, may or would be residing with such victim, marital status, *partnership status*, disability, or alienage or citizenship status as defined in chapter one of this title, the corporation counsel, at the request of the city commission on human rights or on his or her own initiative, may bring a civil action on behalf of the city for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

§10. Section 8-603 of chapter five of title eight of the administrative code of the City of New York is amended as follows:

§8-603 Discriminatory harassment; civil penalties.

a. No person shall by force or threat of force, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, *partnership status*, disability or alienage or citizenship status, as defined in chapter one of this title.

b. No person shall knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, *partnership status*, or whether children are, may be, or would be residing with such victim, disability or alienage or citizenship status, as defined in chapter one of this title.

c. Any person who violates subdivision a or b of this section shall be liable for a civil penalty of not more than one hundred thousand dollars for each violation, which may be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction.

§11. Section 8-701 of chapter five of title eight of the administrative code of the City of New York is amended as follows:

§8-701 Legislative declaration. Boycotts or blacklists that are based on a person's race, color, creed, age, national origin, alienage or citizenship status, marital status, *partnership status*, gender, sexual orientation, or disability pose a menace to the city's foundation and institutions. In contrast to protests that are in reaction to an unlawful discriminatory practice, connected with a labor dispute or associated with other speech or activities that are protected by the first amendment discriminatory boycotts cause havoc, divide the citizenry and do not serve a legitimate purpose. The council declares that discriminatory boycotts are a dangerously insidious form of prejudice and hereby establishes a procedure for expeditiously investigating allegations of this type of prejudice, assuring that the council and mayor are duly alerted to the existence of such activity and combating discriminatory boycotts or blacklists.

§12. This local law shall take effect upon enactment.

Received the following vote at the meeting of the New York City Council on September 15, 2005: 42 for, 3 against, 1 not voting.

Was signed by the Mayor on October 3, 2005.

Was returned to the City Clerk on October 4, 2005.

New York City Legislative Annual

2005

Volume 2 of 3

Local Laws 80 – 137

Published by
New York Legislative Service, Inc.
15 Maiden Lane, New York, NY 10038-5117
(212) 962-2826
FAX (212) 962-1420
www.nyls.org

Report of the Committee on General Welfare

Human Rights Law
"Local Civil Rights Restoration Act of 2005"

Local Law 85
August 17, 2005

Int. No. 22-A

The Committee on General Welfare, chaired by Council Member Bill de Blasio, will meet on Wednesday, August 17, 2005, at 10:45 a.m. to consider Prop. Int. 22-A, the "Local Civil Rights Restoration Act of 2005," a proposed local law that would amend New York City's human rights law.

Prop. Int. 22-A aims to ensure construction of the City's human rights law in line with the purposes of fundamental amendments to the law enacted in 1991. Speaking at the bill signing ceremony for Int. 465-A, the 1991 amendments to the City's human rights law, Mayor Dinkins stated: "[t]his bill gives us a human rights law that is the most progressive in the nation, and reaffirms New York's traditional leadership in civil rights."[1] Mayor Dinkins went on to explain: "there is no time in the modern civil rights era when vigorous local enforcement of anti-discrimination laws has been more important. Since 1980, the federal government has been steadily marching backward on civil rights issues"[2] and "it is the intention of the Council that judges interpreting the City's Human Rights Law are not bound by restrictive state and federal rulings and are to take seriously the requirement that this law be liberally and independently construed."[3]

Prop. Int. 22-A responds to concerns that construction of numerous provisions of the human rights law as amended in 1991 has narrowed the scope of the law's protections since its enactment by clarifying a number of its provisions and by again underscoring that protections afforded by New York City's human rights law are not to be limited by restrictive interpretations of similarly worded state and federal statutes.

Specifically, the bill would add "partnership status," defined as the status of being in a domestic partnership, as set forth in §3-240(a) of the administrative code of the city of New York, to the list of categories protected from discrimination under the administrative code. Pending judicial reconsideration of the proper scope of protection from discrimination based on marital status, this provision will ensure that life partners who have memorialized their relationship by becoming domestic partners (or are otherwise considered domestic partners under the Administrative Code) receive protection from all forms of discrimination addressed by the human rights law, just as married partners do.

Prop. Int. 22-A also would amend §8-107 of the administrative code of the city of New York to clarify the standard to be applied in cases alleging retaliation prohibited by the human rights law. The amendment would make clear that the standard to be applied to retaliation claims under the City's human rights law differs from the standard currently applied by the Second Circuit in retaliation claims made pursuant to Title VII of the Civil Rights Act of 1964; it is in line with the standard set out in guidelines of the Equal Employment Opportunity Commission and applied to retaliation claims by federal courts in several other circuits.[4]

Further, Prop. Int. 22-A would amend §8-109 of the administrative code of the city of New York to require the human rights commission to conduct a thorough investigation of every complaint filed under the human rights law. A 2003 report published by the Anti-Discrimination Center of Metro New York, Inc., based on an examination of approximately 100 case files from the human rights commission, provides a lengthy discus-

sion of concerns regarding current human rights commission practices with respect to investigations of complaints filed under the human rights law.[5] In brief, the report found that the human rights commission did not adequately investigate allegations of conduct in violation of the human rights law in a significant number of cases. The proposed clarification of the human rights law to require a thorough investigation of every complaint[6] is consistent with the goal of ensuring that New York City does everything within its power to identify and root out discrimination.

Section 7 of the bill would amend §8-130 of the administrative code concerning construction of the human rights law. Prop. Int. 22-A expressly instructs decision makers assessing claims asserted under the City's human rights law to construe the human rights law independent of similarly worded provisions of state and federal law. A number of recent judicial decisions underscore the need to clarify the breadth of protections afforded by New York City's human rights law. For instance, in McGrath v. Toys "R" Us, Inc., 3 N.Y.3d 421 (2004), the Court of Appeals reasoned that broad statements regarding the intended liberal construction of the City's human rights law are insufficient to justify interpretation of the law to afford broader rights than are protected under comparably worded state or federal laws.[7] For this reason, Prop. Int. 22-A explicitly states that the human rights law must be construed independently from both federal and New York State civil and human rights laws, including laws with comparably worded provisions. The bill further clarifies that interpretations of comparable federal and state laws may not be used to limit or restrict the provisions of this title from being construed more liberally than those laws to accomplish the purposes of the human rights law and provisions of the human rights law may not be construed less liberally than interpretations of comparably worded federal and state laws.[8]

Under the bill's provisions, a number of principles should guide decision makers when they analyze claims asserting violations of rights protected under the City's human rights law: discrimination should not play a role in decisions made by employers, landlords and providers of public accommodations; traditional methods and principles of law enforcement ought to be applied in the civil rights context; and victims of discrimination suffer serious injuries, for which they ought to receive full compensation.

In addition to the clarifications regarding overall construction of the human rights law, Prop. Int. 22-A aims to encourage rigorous enforcement of the City's human rights law by amending §8-502 to remove any doubt that attorney's fees may be awarded under the City's human rights law in circumstances that differ from those under which they are awarded under similarly worded federal law. Specifically, it would ensure that a person who successfully effects policy change by filing a complaint under the human rights law may be eligible to receive reimbursement for costs and attorney's fees, notwithstanding recent changes to longstanding federal policy on a similar issue.[9] The bill would allow complainants to recover costs and attorney's fees in cases where the filing of a complaint serves as a catalyst for the change advocated in the complaint, but when the respondent makes the change before there is a final ruling on the merits of the complaint.[10] Further, the bill aims to enhance the human rights law's power to deter unlawful discriminatory acts by increasing the amount of civil penalties that may be awarded for violations of the law. Imposition of civil penalties sends a strong signal to those who discriminate that such acts cause serious injury, to both the persons directly involved and the social fabric of the City as a whole, which will not be tolerated. The bill would amend §8-126 to increase the maximum civil penalties that can be awarded to $125,000 in all cases and to $250,000 in cases involving willful, wanton or malicious acts.

The bill would take effect immediately upon enactment.

[1] Remarks by Mayor David N. Dinkins at public hearing on Local Laws, June 18, 1991, 1 (on file with Committee on General Welfare).
[2] Id.
[3] Id. at 2.
[4] See EEOC Compliance Manual, Vol. 2, Section 8, Part D (issued July 31, 1998); See also, Ray v. Henderson, 217 F.3d 1234, 1241-1243 (9th Cir. 2000) (adopting EEOC interpretation of "adverse employment action" to mean "any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity" and further explaining that "[t]he EEOC test covers lateral transfers, unfavorable job references, and changes in work schedules. These changes are all reasonably likely to deter employees from engaging in protected activity. Nonetheless, it does not cover every offensive utterance by co-workers, because offensive statements by co-workers do not reasonably deter employees from engaging in protected activity." Id. at 1242-43) (internal quotations omitted); Hashimoto v. Dalton, 118 F.3d 671 (9th Cir. 1997) (dissemination of negative job reference can be actionable employment action); Hillig v. Rumsfeld, 381 F.3d 1028 (10th Cir. 2004); Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453 (11th Cir. 1998); Wyatt v. City of Boston, 35 F.3d 13, 15-16 (1st Cir. 1994). Cf. Galabya v. New York City Bd. of Educ., 202 F.3d 636 (2nd Cir. 2000); Gurry v. Merck & Co., 2003 U.S. Dist. Lexis 6161 (SDNY) ("An employee experiences an adverse employment action when she endures a 'materially adverse change' in the terms and conditions of employment... Such actions include discharge, refusal to hire, refusal to promote, demotion, reduction in pay, and reprimand." Id. at *15 (internal citations omitted).)
[5] See At the Crossroads: Is There Hope for Civil Rights Law Enforcement in New York, Anti-Discrimination Law Center of Metro New York, Inc., 6-10 (2003), at http://www.antibiaslaw.com/today/crossroads.pdf.
[6] While the steps required to complete a "thorough" investigation depend upon the facts presented by a particular complaint, in general investigations should include steps such as probing the reasons for a respondent's conduct and actively seeking out facts from witnesses.
[7] Specifically, the court explained that "[t]he attorney's fee provision [of the City's human rights law] is indistinguishable from provisions in comparable federal civil rights statutes... Where state and local provisions overlap with federal statutes, our approach to resolution of civil rights claims has been consistent with the federal courts in recognition of the fact that, whether enacted by Congress or the state legislature or a local body, these statutes serve the same remedial purpose – they are all designed to combat discrimination." McGrath, 3 N.Y.3d at 428-29.
[8] This bill does not require a decision maker to accept any particular argument being advanced by an advocate, but underscores the need for thoughtful, independent consideration of whether the proposed interpretation would fulfill the uniquely broad and remedial purposes of the City's human rights law.
[9] See Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Res., 532 U.S. 598 (2001) (despite the longstanding approach of federal appellate courts nationwide, holding that the "catalyst theory," which allows for recovery of attorney's fees and costs under federal civil rights statutes, does not provide a basis for such recovery for attorney's fees where the change sought was effected in the absence of a consent decree or final judgment).
[10] The analysis of whether a plaintiff is entitled to recover costs and fees on a catalyst theory can be based on a three part analysis, which requires: (1) that the respondent provide at least some of the benefit sought by the lawsuit; (2) that the suit stated a genuine

claim; and (3) that the suit was a substantial or significant cause of the act providing the relief. See. e.g., Buckhannon, 532 U.S. at 627-28 (Ginsburg, J. dissenting).

Editor's note: See, also:
At the Crossroads: Is There Hope for Civil Rights Law Enforcement in New York?, A Report from the Anti-Discrimination Center of Metro New York, Inc., Craig Gurian, Executive Director. 39 pages.

Testimony of Craig Gurian before the Committee on General Welfare regarding Intro 22-A, April 14, 2005. 8 pages.

Statement of the Brennan Center for Justice at New York University School of Law in support of the Local Civil Rights Restoration Act. (Intro 22). July 8, 2005. 10 pages.

Letter to Speaker Miller from Bettina B. Plevin, President, Association of the Bar of the City of New York, August 1, 2005. 4 pages.

Transcript of the minutes of the Committee on General Welfare, August 17, 2005, pages 8 – 15.

Transcript of the minutes of the Stated Council Meeting, September 15, 2005, pages 41 – 49.

A Return to Eyes on the Prize: Litigating Under the Restored New York City Human Rights Law, 33 Fordham Urban Law Journal 255 (2006), Craig Gurian, Executive Director, Anti-Discrimination Center of Metro New York, Inc. 79 pages.

All of the above available from New York Legislative Service, Inc.

New York City Legislative Annual

2016

Volume 1

Local Laws 1 - 97

Published by

New York Legislative Service, Inc.

14 Vesey Street, New York, NY 10007

www.nyls.org

(212) 962-2826

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016

No. 35

Introduced by Council Members Lander, Johnson, Rosenthal, Lancman, Rose and Kallos.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to construction of the New York city human rights law.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Following the passage of local law number 85 for the year 2005, known as the Local Civil Rights Restoration Act, some judicial decisions have correctly understood and analyzed the requirement of section 8-130 of the administrative code of the city of New York that all provisions of the New York city human rights law be liberally and independently construed. The purpose of this local law is to provide additional guidance for the development of an independent body of jurisprudence for the New York city human rights law that is maximally protective of civil rights in all circumstances.

§2. Section 8-130 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, is amended to read as follows:

§8-130 Construction. a. The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York [State] *state* civil and human rights laws, including those laws with provisions [comparably-worded] *worded comparably* to provisions of this title, have been so construed.

b. Exceptions to and exemptions from the provisions of this title shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

c. Cases that have correctly understood and analyzed the liberal construction requirement of subdivision a of this section and that have developed legal doctrines accordingly that reflect the broad and remedial purposes of this title include Albunio v. City of New York, 16 N.Y.3d 472 (2011), Bennett v. Health Management Systems, Inc., 92 A.D.3d 29 (1st Dep't 2011), and the majority opinion in Williams v. New York City Housing Authority, 61 A.D.3d 62 (1st Dep't 2009).

§3. This local law takes effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:
I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 9, 2016 and approved by the Mayor on March 28, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL
I hereby certify that the form of the enclosed local law (Local Law No. 35 of 2016, Council Int. No. 814-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.

LMA 18

passed by the Council on March 9, 2016 and approved by the Mayor on March 28, 2016.
MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL
I hereby certify that the form of the enclosed local law (Local Law No. 34 of 2016, Council Int. No. 805-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.
STEPHEN LOUIS, Acting Corporation Counsel.

Report of the Committee on Civil Rights

Local Laws 34 - 38
March 8, 2016

Int. No. 805-A
Public Accommodation Human Rights

Int. No. 814-A
Construction of the New York City Human Rights Law

Int. No. 818-A
Attorney Fees under the NYC Human Rights Law

Int. No. 819
Sexual Orientation Human Rights

Int. No. 832-A
Housing Discrimination based on Victims of Domestic Violence

I. INTRODUCTION

On Tuesday, March 8, 2016, the Committee on Civil Rights, chaired by Council Member Darlene Mealy, will hold a hearing to vote on Proposed Introductory Bill Number 805-A ("Int. No. 805-A"), a Local Law to amend the administrative code of the city of New York, in relation to expanding the protections of the city of New York human rights law with regard to public accommodations, and making certain technical corrections, Proposed Introductory Bill Number 814-A ("Int. No. 814-A"), a Local Law to amend the administrative code of the city of New York, in relation to construction of the New York City human rights law, Proposed Introductory Bill Number 818-A ("Int. No. 818-A"), a Local Law to amend the administrative code of the city of New York, in relation to the provision of attorney's fees under the city human rights law, Introductory Bill Number 819 ("Int. No. 819"), a Local Law to amend the administrative code of the city of New York, in relation to the repeal of subdivision 16 of section 8-107 of such code relating to the applicability of provisions of the human rights law regarding sexual orientation, and Proposed Introductory Bill Number 832-A ("Int. No. 832-A"), a Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination in housing accommodations on the basis of an individual's status as a victim of domestic violence. The Committee held hearings on earlier versions of the bills. During these hearings testimony was submitted and heard from the New York City Commission on Human Rights ("the Commission"), advocates, and other interested parties.

II. BACKGROUND

New York City Legislative Annual

2016

Volume 1

Local Laws 1 - 97

Published by

New York Legislative Service, Inc.

14 Vesey Street, New York, NY 10007

www.nyls.org

(212) 962-2826

LMA 20

passed by the Council on March 9, 2016 and approved by the Mayor on March 28, 2016.
MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL
I hereby certify that the form of the enclosed local law (Local Law No. 34 of 2016, Council Int. No. 805-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.
STEPHEN LOUIS, Acting Corporation Counsel.

Report of the Committee on Civil Rights

Local Laws 34 - 38
March 8, 2016

Int. No. 805-A
Public Accommodation Human Rights

Int. No. 814-A
Construction of the New York City Human Rights Law

Int. No. 818-A
Attorney Fees under the NYC Human Rights Law

Int. No. 819
Sexual Orientation Human Rights

Int. No. 832-A
Housing Discrimination based on Victims of Domestic Violence

I. INTRODUCTION

On Tuesday, March 8, 2016, the Committee on Civil Rights, chaired by Council Member Darlene Mealy, will hold a hearing to vote on Proposed Introductory Bill Number 805-A ("Int. No. 805-A"), a Local Law to amend the administrative code of the city of New York, in relation to expanding the protections of the city of New York human rights law with regard to public accommodations, and making certain technical corrections, Proposed Introductory Bill Number 814-A ("Int. No. 814-A"), a Local Law to amend the administrative code of the city of New York, in relation to construction of the New York City human rights law, Proposed Introductory Bill Number 818-A ("Int. No. 818-A"), a Local Law to amend the administrative code of the city of New York, in relation to the provision of attorney's fees under the city human rights law, Introductory Bill Number 819 ("Int. No. 819"), a Local Law to amend the administrative code of the city of New York, in relation to the repeal of subdivision 16 of section 8-107 of such code relating to the applicability of provisions of the human rights law regarding sexual orientation, and Proposed Introductory Bill Number 832-A ("Int. No. 832-A"), a Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination in housing accommodations on the basis of an individual's status as a victim of domestic violence. The Committee held hearings on earlier versions of the bills. During these hearings testimony was submitted and heard from the New York City Commission on Human Rights ("the Commission"), advocates, and other interested parties.

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.[263] Protected classes covered under the HRL include race, national origin, disability, sexual orientation, alienage or citizenship status, gender, partnership status, age, and others.[264]

While the HRL is comprehensive, there is potential to strengthen it by including additional protections. Int. No. 805-A would extend the HRL's public accommodations provisions to cover franchisors, franchisees, and lessors of public accommodations, and would update the language of the law to entitle any person to full and equal enjoyment of public accommodations, on equal terms and conditions. Int. No. 805-A would also ensure that both access to, and advertisements for, public accommodations would be protected for anyone who is actually, or perceived to be, a member of a protected class. Int. No. 814-A would provide guidance for interpreting the HRL by directing that exemptions from the general provisions of the law should be interpreted narrowly and by referring to three significant court decisions that have given the law an independent construction, as required by the 2005 Restoration Act. Int. No. 818-A would expand the already existing attorney's fees provision in the HRL to apply to complaints brought before the Commission. Int. No. 818-A would also require all attorney's fees awarded by courts or the Commission to be based on an hourly market rate charged by attorneys of similar skill and experience practicing in New York County, which are the highest rates in New York City. Int. No. 819 would repeal certain limitations on the HRL's protections against discrimination on the basis of sexual orientation. Int. No. 832-A would protect an individual from discrimination in housing accommodations, based on their status as a victim of domestic violence, a sex offense, or stalking.

III. ANALYSIS OF LEGISLATION

i. Int. No. 805-A

The HRL currently prohibits anyone who owns, leases, runs or manages a place of public accommodation (such as a store, restaurant, or government agency when it acts as a public accommodation), or his or her employees, from denying someone access, for discriminatory reasons, to the product or benefit being offered to the public. Int. No. 805-A would amend that law to add three types of people to that list of those who cannot engage in discriminatory conduct: anyone who buys a franchise, sells a franchise or leases space to a provider of public accommodations.

Int. No. 805-A also would update the language of the public accommodations provision to confirm that its ban on discrimination is broad. The revised language makes explicit that it is illegal to offer a person who is or is perceived to be a member of a protected class the same benefits, services, or privileges as others, but in such a way that they do not receive "the full and equal enjoyment" of those benefits on "equal terms and conditions." Int. No. 805-A also would amend the current law for consistency: Under the revised language, every person who is actually, or is perceived to be, in a protected class is protected. This is the phrase already used for most of the public accommodation protections under the current HRL, but for certain kinds of advertisements the current law instead protects any person "belonging to, purporting to be, or perceived to be" part of a protected class. Int. No. 805-A also would make a technical correction to the existing law, replacing an erroneous use of "subdivision" with the correct word "section."

Int. No. 805-A would take effect 120 days upon enactment.

ii. Int. No. 814-A

---

[263] N.Y.C. Admin. Code §8-101 *et seq*

[264] Id.

Over at least the last 25 years, the Council has sought to protect the HRL from being narrowly construed by courts, particularly through major legislation adopted in 1991 and 2005.[265] These actions have expressed a very specific vision: a Human Rights Law designed as a law enforcement tool with no tolerance for discrimination in public life. The 2005 Restoration Act[266] provided that the HRL is to be interpreted liberally and independently of similar federal and state provisions to fulfill the "uniquely broad and remedial" purposes of the law. The Act amended the HRL's liberal construction provision, Administrative Code §8-130, to accomplish this goal. Some courts have recognized and followed this vision, but others have not, and many areas of the law remain as they were before the 2005 Restoration Act because they have not been scrutinized to determine whether they are consistent with the uniquely broad requirements of the HRL.

First, Int. No. 814-A would complement the liberal construction requirement in §8-130 by directing that exemptions from the HRL's general provisions be construed narrowly in order to maximize deterrence of discriminatory conduct.

Second, Int. No. 814-A would cite three cases—Albunio v. City of New York, 16 N.Y.3d 472 (2011), Bennett v. Health Management Systems, Inc., 92 A.D.3d 29 (1st Dep't 2011), and the majority opinion in Williams v. New York City Housing Authority, 61 A.D.3d 62 (1st Dep't 2009)—that are important for their understanding and interpretation of the Restoration Act, including its strengthening of the liberal construction provision of the HRL. Highlighting these cases (1) would reaffirm that courts must apply the liberal construction provisions in every case and with respect to every issue; (2) would illustrate best practices when engaging in the required analysis; (3) would endorse the legal doctrines where they were developed pursuant to liberal construction analyses; and (4) would accelerate the process by which other doctrines inconsistent with the commands of Restoration Act are abandoned.

The examples from the cases cited below are illustrative, not comprehensive.

Broad and Independent Construction

As noted, Int. No. 814-A would recognize three cases as having given the HRL the independent construction required by the Restoration Act—Albunio, Bennett, and the majority opinion in Williams.

In Albunio, the New York Court of Appeals recognized that the 2005 Restoration Act required it to interpret an anti-retaliation provision of the HRL liberally. The court quoted the Council's finding from the Restoration Act that the HRL "'has been construed too narrowly to ensure protection of the civil rights of all persons covered by the law,'"[267] concluding that §8-130 required that the anti-retaliation provision contained in the HRL had to be construed, "like other provisions of the City's Human Rights Law," "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible."[268]

In Bennett, the Appellate Division, First Department, reexamined the application of a federal summary judgment burden-shifting procedure, known as the McDonnell Douglas analysis, to claims brought under the City's HRL. Although the court ultimately concluded that a version of the McDonnell Douglas analysis may be applied to HRL claims, the court first satisfied the requirement of the Restoration Act by evaluating the framework to ensure that it comported with the "uniquely broad and remedial purposes of the [HRL]."[269] Bennett

---

[265] *See* Local Law No. 39 (1991); Local Law No. 85 (2005); *see also* Craig Gurian, "A Return to Eyes on the Prize: Litigating Under the Restored New York City Human Rights Law," 33 Fordham Urb. L.J. 255 (2006).

[266] Local Law No. 85 (2005).

[267] *Albunio*, 16 N.Y.3d at 477, *quoting* Local Law No. 85 §1 (2005).

[268] *Id.* at 477-78.

[269] *Bennett*, 92 A.D.3d at 34-35.

provided, among other things, important reconfirmation that there are no provisions of the law or judge-made doctrines that stand outside the liberal construction requirements of §8-130. Bennett found that:

[T]he identification of the framework for evaluating the sufficiency of evidence in discrimination cases does not in any way constitute an exception to the section 8-130 rule that all aspects of the City HRL must be interpreted so as to accomplish the uniquely broad and remedial purposes of the law... and for [the court] to create an exemption from the sweep of the Restoration Act for the most basic provision of the City HRL—that it is unlawful "to discriminate"—would impermissibly invade the legislative province.[270]

Bennett altered the way that courts use McDonnell Douglas analysis for deciding summary judgment motions in discrimination cases under the HRL and provided a reminder that McDonnell Douglas is only one of the evidentiary routes available to plaintiffs.

Third, in the majority opinion in Williams, the Appellate Division, First Department, held that sexual harassment need not rise to the level of "severe and pervasive" to invoke the HRL's protections against gender discrimination, even though that would bave been the federal standard for sexual harassment. The court's analysis of the HRL standard as independent of the federal standard thus fulfilled the Restoration Act's requirement that the City's HRL be interpreted independently of similar federal and state laws.[271] As the majority opinion explained,

[T]he Restoration Act notified courts that (a) they had to be aware that some provisions of the City HRL were textually distinct from its state and federal counterparts, (b) all provisions of the City HRL required independent construction to accomplish the law's uniquely broad purposes, and (c) cases that had failed to respect these differences were being legislatively overruled.[272]

The court wrote that the liberal construction provision was envisioned as "obviating the need for wholesale textual revision of the myriad specific substantive provisions of the law."[273] As the court further explained,

While the specific topical provisions changed by the Restoration Act give unmistakable illustrations of the Council's focus on broadening coverage, section 8-130's specific construction provision required a "process of reflection and reconsideration" that was intended to allow independent development of the local law "in all its dimensions."[274]

Thus, "areas of law that have been settled by virtue of interpretations of federal or state law 'will now be reopened for argument and analysis.... As such, advocates will be able to argue afresh (or for the first time) a wide range of issues under the City's Human Rights Law....'"[275] The Williams court found that the HRL's text and legislative history represent a legislative desire that the HRL "'meld the broadest vision of social justice with the strongest law enforcement deterrent.'"[276]

Development of Legal Doctrine Reflecting Those Principles

Having correctly understood and interpreted the Restoration Act, the cases developed legal doctrine accordingly. Some of that doctrine reflects determination of specific issues.

---

[270] *Bennett*, 92 A.D.3d at 34-35.

[271] *Williams*, 61 A.D.3d at 73.

[272] *Id.* at 67-68 (internal footnote omitted).

[273] *Id.* at 74.

[274] *Id.*, *quoting* Craig Gurian, "A Return to Eyes on the Prize," 33 Fordham Urb. L.J. at 280.

[275] *Id.* at 77 n.24, *quoting* Craig Gurian, "A Return to Eyes on the Prize," 33 Fordham Urb. L.J. at 258 (first alteration in *Williams*).

[276] *Id.* at 68, *quoting* Craig Gurian, "A Return to Eyes on the Prize," 33 Fordham Urb. L.J. at 262.

For example, Albunio held that "opposition" to discrimination under the HRL can be established on limited evidence, with a jury given broad range to infer that the plaintiff was "in substance" conveying the idea that a third party had been discriminated against.[277]

And Williams concluded that the question of the "severity" or "pervasiveness" of harassment is relevant only to the question of damages, not to liability under the HRL.[278] Williams also stated that an affirmative defense is available to a covered entity to show that the conduct complained of consisted of nothing more than petty slights and trivial inconveniences, but provided that this defense is limited to "truly insubstantial" cases.[279] Williams further elaborated on the uniquely broad coverage of the HRL's retaliation provision, concluding that "no challenged conduct may be deemed nonretaliatory before a determination that a jury could not reasonably conclude... that such conduct was... 'reasonably likely to deter a person from engaging in protected activity.'"[280] Williams also rejected the U.S. Supreme Court's 2002 narrowing of the doctrine of continuing violations,[281] holding that the narrowing was inapplicable to the HRL.[282] Accordingly, all types of discriminatory conduct, including what the Supreme Court had characterized as "discrete" actions,[283] continue to be eligible to be treated as continuing violations.[284] In restoring the broad scope of the continuing violation doctrine, the Williams court wrote that:

[T]he Restoration Act's uniquely remedial provisions are consistent with a rule that neither penalizes workers who hesitate to bring an action at the first sign of what they suspect could be discriminatory trouble, nor rewards covered entities that discriminate by insulating them from challenges to their unlawful conduct that continues into the limitations period.[285]

These cases do not just establish specific ways in which the HRL differs from its federal and state counterparts; they also illustrate a correct approach to liberal construction analysis and then develop legal doctrine accordingly. It is therefore important for courts to examine the reasoning of the cases—including their extensive discussions of why the U.S. Supreme Court's analysis can be inadequate to serve the purposes of the HRL—and then for courts to employ that kind of reasoning when tackling other interpretative problems that arise under the HRL. Finally, Int. No. 814-A would remind courts that legal doctrine might need to be revised to comport with the requirements of § 8-130 of the Administrative Code.

Int. No. 814-A would take effect immediately upon enactment.

iii. Int. No. 818-A

Int. No. 818-A affects attorney's fee awards both in front of the Commission and in the courts. Regarding the Commission, currently, attorney's fees are not included in the enumerated list of awards the Commission may include in an order.[286] Int. No. 818-A would

---

[277] *Albunio*, 16 N.Y.3d at 478-79.

[278] *Williams*, 61 A.D.3d at 76.

[279] *Id.* at 80.

[280] *Id.* at 71, *quoting* New York City Admin Code §8-107(7).

[281] *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

[282] *Williams*, 61 A.D.3d at 72-73.

[283] Discrete actions include actions such as a failure to promote, or a change in assignment, or a reduction in pay. *Williams* explained that different types of discrimination could combine to constitute a continuing violation—for example, an instance of harassment outside of the limitations period and a different type of gender-based discrimination within the limitations period. *Id.* at 81 n.31.

[284] *See id.* at 72-73.

[285] *Id.* at 73.

[286] Pursuant to NYC Admin Code §8-120, the awards the Commission may include in an order include, but are not limited to hiring, reinstatement or upgrading of employees; back pay and front pay; and payment of compensatory damages to the person aggrieved by such practice or act.

allow the Commission to include reasonable attorney's fees, expert fees and other costs in that list. If the Commission decides to award the complainant reasonable attorney's fees, the Commission may consider factors in setting the amount such as the novelty or difficulty of the issues presented, the skill and experience of the complainant's attorney, and the hourly rate customarily charged by attorneys of similar skill and experience litigating similar cases in New York County.

As for the courts, the HRL allows courts to award reasonable attorney's fees and costs to a party that prevails in a discrimination claim brought under the HRL.[287] However, the law does not explicitly mention expert costs. Int. No. 818-A would make it explicit that expert fees may also be awarded to a prevailing party.

Moreover, currently, courts hearing cases in New York County—i.e., Manhattan—that award attorney's fees often will factor in hourly rates that are higher than those factored in by courts hearing similar cases outside of New York County. This difference both gives incentives to attorneys practicing outside of New York County to take on cases brought in New York County and discourages attorneys practicing within New York County from taking cases outside of New York County. To equalize the hourly rate discrepancy and to support cases being brought in the proper venue, Int. No. 818-A directs courts to base attorney's fee awards on the market rate charged by attorneys of similar skill and experience litigating similar cases in New York County. As noted, Int. No. 818-A similarly directs the Commission to consider the hourly rate charged by attorneys of similar skill and experience litigating similar cases in New York County when awarding attorney's fees.

Int. No. 818-A would take effect immediately upon enactment.

iv. Int. No. 819

Int. No. 819 would repeal Administrative Code §8-107(16). That provision addresses how the HRL's protections against discrimination on the basis of sexual orientation should be construed, providing that the HRL should not be read to (a) restrict an employer's right to insist that an employee meet bona-fide job qualifications; (b) authorize or require affirmative action on the basis of sexual orientation; (c) limit or override any exemptions from the provisions of the HRL; (d) make lawful any act that violates the New York Penal Law; or (e) "[e]ndorse any particular behavior or way of life."[288]

These limitations single out sexual orientation; they do not apply to any other class protected by the HRL. The limitations were added in 1986 in the same local law that added protections based on sexual orientation,[289] apparently to address concerns and help gather support for the new sexual orientation protections. However, in 2016 this provision singling out sexual orientation protections is outdated and unnecessary. For instance, the Penal Law's prohibition against consensual sodomy, which was in effect when the limitations were adopted in 1986, was repealed by the State Legislature in 2000.[290] Other portions of the text that Int. No. 819 would repeal are unnecessary because they merely duplicate more general provisions in the HRL that apply without singling out sexual orientation or any other protected class.

Int. No. 819 would take effect immediately upon enactment.

v. Int. No. 832-A

Int. No. 832-A would amend the HRL to make it an unlawful discriminatory practice for landlords and other agents of real estate to refuse to sell, rent or lease, or otherwise deny or withhold an interest in a housing accommodation, because of an individual's actual or perceived status as a victim of domestic violence or as a victim of sex offenses or stalking.

---

[287] *See* NYC Admin Code §8-502.

[288] Administrative Code §8-107(16).

[289] *See* Local Law No. 2 (1986).

[290] N.Y. Laws 2000, c. 1, §6 (repealing N.Y. Penal Law §130.38 prohibiting consensual sodomy).

This protection from discrimination for victims of domestic violence, sex offenses or stalking, would not apply to housing accommodations that are not publically-assisted accommodations and are within an owner-occupied building with only one or two units if such accommodations were not publically advertised, or to the rental of a room within a non-publically assisted accommodation that is occupied by the owner of such accommodation. This exemption would essentially cover smaller owner-occupied homes. Int. No. 832-A would not prohibit landlords or real estate agents from evicting a tenant for reasons other than such tenant's actual or perceived status as a victim of domestic violence, sex offense or stalking.

Int. No. 832-A would take effect 120 days upon enactment.

NYLS Editor's Note: See, Reports by the NYC Council Committee on Civil Rights, 10/19/15, 17 pages, 3/8/16, 29 pages. Transcripts from the Hearings, 10/19/15, 60 pages, and 3/8/16, 13 pages. Testimony, 10/19/15, 19 pages. Fiscal Impact Statement, 2 pages. Transcript from bill signing, 2 pages. Remarks upon bill signing, 4 pages. Notice by the NYC Commission on Human Rights, 2 pages. All are included in the legislative history of this Local Law, available from New York Legislative Service, Inc.

2019 Sess. Law News of N.Y. Ch. 160 (A. 8421) (McKINNEY'S)

McKINNEY'S 2019 SESSION LAW NEWS OF NEW YORK

242nd LEGISLATURE

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 160
A. 8421

Approved August 12, 2019, effective as provided in section 16

AN ACT to amend the executive law, in relation to increased protections for protected classes and special protections for employees who have been sexually harassed; to amend the general obligations law, in relation to nondisclosure agreements; to amend the civil practice law and rules and the executive law, in relation to discrimination; to amend the labor law, in relation to requiring employers to provide employees notice of their sexual harassment prevention training program in writing in English and in employees' primary languages; to amend the executive law, in relation to extending the statute of limitations for claim resulting from unlawful or discriminatory practices constituting sexual harassment to three years; to amend the labor law, in relation to the model sexual harassment prevention guidance document and sexual harassment prevention policy; and directing the commissioner of labor to conduct a study on strengthening sexual harassment prevention laws

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 292 of the executive law, as amended by chapter 363 of the laws of 2015, is amended to read as follows:

<< NY EXEC § 292 >>

5. The term "employer" ~~does not include any employer with fewer than four persons in his or her employ except as set forth in section two hundred ninety-six-b of this article, provided, however, that in the case of an action for discrimination based on sex pursuant to subdivision one of section two hundred ninety-six of this article, with respect to sexual harassment only, the term "employer"~~ shall include all employers within the state**, including the state and all political subdivisions thereof**.

§ 1–a. Section 292 of the executive law is amended by adding a new subdivision 37 to read as follows:

<< NY EXEC § 292 >>

37. The term "private employer" as used in section two hundred ninety-seven of this article shall include any person, company, corporation, labor organization or association. It shall not include the state or any local subdivision thereof, or any state or local department, agency, board or commission.

§ 2. Subdivision 1 of section 296 of the executive law is amended by adding a new paragraph (h) to read as follows:

<< NY EXEC § 296 >>

(h) For an employer, licensing agency, employment agency or labor organization to subject any individual to harassment because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, or because the individual has opposed any practices forbidden under this article or because the individual has filed a complaint, testified or assisted in any proceeding under this article, regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims. Such harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories. The fact that such individual did not make a complaint about the harassment to such employer, licensing agency, employment agency or labor organization shall not be determinative of whether such employer, licensing agency, employment agency or labor organization shall be liable. Nothing in this section shall imply that an employee must demonstrate the existence of an individual to whom the employee's treatment must be compared. It shall be an affirmative defense to liability under this subdivision that the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.

§ 3. Paragraph (b) of subdivision 2 of section 296–b of the executive law, as amended by chapter 8 of the laws of 2019, is amended to read as follows:

<< NY EXEC § 296–b >>

(b) Subject a domestic worker to ~~unwelcome~~ harassment ~~based on gender, race, religion, sexual orientation, gender identity or expression or national origin, where such harassment has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment~~ **as set out in paragraph (h) of subdivision 1 of section two hundred ninety-six of this article**.

§ 4. Section 296–d of the executive law, as added by section 1 of subpart F of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

<< NY EXEC § 296–d >>

§ 296–d. ~~Sexual harassment~~ Unlawful discriminatory practices relating to non-employees

It shall be an unlawful discriminatory practice for an employer to permit ~~sexual harassment of~~ **unlawful discrimination against** non-employees in its workplace. An employer may be held liable to a non-employee who is a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace, with respect to ~~sexual harassment~~ **an unlawful discriminatory practice**, when the employer, its agents or supervisors knew or should have known that such non-employee was subjected to ~~sexual harassment~~ **an unlawful discriminatory practice** in the employer's workplace, and the employer failed to take immediate and appropriate corrective action. In reviewing such cases involving non-employees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of the ~~harasser~~ **person who engaged in the unlawful discriminatory practice** shall be considered.

§ 5. Subdivision 1, paragraph c of subdivision 4 and subdivisions 9 and 10 of section 297 of the executive law, subdivision 1 and paragraph c of subdivision 4 as amended by chapter 166 of the laws of 2000, subparagraph (vi) of paragraph c of subdivision 4 as amended by section 1 of part AA of chapter 57 of the laws of 2009, subdivision 9 as amended by section 16 of part D of chapter 405 of the laws of 1999 and subdivision 10 as amended by chapter 364 of the laws of 2015, are amended to read as follows:

<< NY EXEC § 297 >>

1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or herself or his **or** her attorney-at-law, make, sign and file with the division a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the division. The commissioner of labor or the attorney general, or the chair of the commission on quality of care for the mentally disabled, or the division on its own motion may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article, may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

c. Within one hundred eighty days after the commencement of such hearing, a determination shall be made and an order served as hereinafter provided. If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, and including such of the following provisions as in the judgment of the division will effectuate the purposes of this article: (i) requiring such respondent to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, granting the credit which was the subject of any complaint, evaluating applicants for membership in a place of accommodation without discrimination based on race, creed, color, national origin, sex, disability or marital status, and without retaliation or discrimination based on opposition to practices forbidden by this article or filing a complaint, testifying or assisting in any proceeding under this article; (iii) awarding of compensatory damages to the person aggrieved by such practice; (iv) awarding of punitive damages, **in cases of employment discrimination related to private employers, and,** in cases of housing discrimination ~~only~~ , **with damages in housing discrimination cases** in an amount not to exceed ten thousand dollars, to the person aggrieved by such practice; (v) requiring payment to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three-b of section two hundred ninety-six of this article; and (vi) assessing civil fines and penalties, in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious; (vii) requiring a report of the manner of compliance. If, upon all the evidence, the commissioner shall find that a respondent has not engaged in any such unlawful discriminatory practice, he or she shall state findings of fact and shall issue and cause to be served on the complainant an order based on such findings and setting them forth dismissing the said complaint as to such respondent. A copy of each order issued by the commissioner shall be delivered in all cases to the attorney general, the secretary of state, if he or she has issued a license to the respondent, and such other public officers as the division deems proper, and if any such order issued by the commissioner concerns a regulated creditor, the commissioner shall forward a copy of any such order to the superintendent. A copy of any complaint filed against any respondent who has previously entered into a conciliation agreement pursuant to paragraph a of subdivision three of this section or as to whom an order of the division has previously been entered pursuant to this paragraph shall be delivered to the attorney general, to the secretary of state if he or she has issued a license to the respondent and to such other public officers as the division deems proper, and if any such respondent is a regulated creditor, the commissioner shall forward a copy of any such complaint to the superintendent.

9. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages, including, in cases of **employment discrimination related to private employers and** housing discrimination only, punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this chapter, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, on the

grounds of untimeliness, or on the grounds that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed with the division. At any time prior to a hearing before a hearing examiner, a person who has a complaint pending at the division may request that the division dismiss the complaint and annul his or her election of remedies so that the human rights law claim may be pursued in court, and the division may, upon such request, dismiss the complaint on the grounds that such person's election of an administrative remedy is annulled. Notwithstanding subdivision (a) of section two hundred four of the civil practice law and rules, if a complaint is so annulled by the division, upon the request of the party bringing such complaint before the division, such party's rights to bring such cause of action before a court of appropriate jurisdiction shall be limited by the statute of limitations in effect in such court at the time the complaint was initially filed with the division. Any party to a housing discrimination complaint shall have the right within twenty days following a determination of probable cause pursuant to subdivision two of this section to elect to have an action commenced in a civil court, and an attorney representing the division of human rights will be appointed to present the complaint in court, or, with the consent of the division, the case may be presented by complainant's attorney. A complaint filed by the equal employment opportunity commission to comply with the requirements of 42 USC 2000e–5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of a complaint within the meaning of this subdivision. No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of the state based upon an act which would be an unlawful discriminatory practice under this article, may file a complaint with respect to the same grievance under this section or under section two hundred ninety-six-a of this article.

10. With respect to all cases of housing discrimination and housing related credit discrimination in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; and with respect to a claim of ~~employment or~~ credit discrimination where sex is a basis of such discrimination, **and with respect to all claims of employment discrimination** in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court ~~may in its discretion~~ **shall** award reasonable attorney's fees attributable to such claim to any prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award attorney's fees as part of a final order after a public hearing held pursuant to subdivision four of this section. In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer. In cases of employment discrimination, a respondent shall only be liable for attorney's fees under this subdivision if the respondent has been found liable for having committed an unlawful discriminatory practice. In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

§ 6. Section 300 of the executive law, as amended by chapter 166 of the laws of 2000, is amended to read as follows:

<< NY EXEC § 300 >>

§ 300. Construction

The provisions of this article shall be construed liberally for the accomplishment of the **remedial** purposes thereof**, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this**

article, have been so construed. Exceptions to and exemptions from the provisions of this article shall be construed narrowly in order to maximize deterrence of discriminatory conduct. Nothing contained in this article shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state relating to discrimination ~~because of race, creed, color or national origin~~ ; but, as to acts declared unlawful by section two hundred ninety-six of this article, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other **state civil** action~~, civil or criminal,~~ based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein.

§ 7. Section 5–336 of the general obligations law, as added by section 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

<< NY GEN OBLIG § 5–336 >>

§ 5–336. Nondisclosure agreements

1. (a) Notwithstanding any other law to the contrary, no employer, its officers or employees shall have the authority to include or agree to include in any settlement, agreement or other resolution of any claim, the factual foundation for which involves ~~sexual harassment~~ **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**, any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant's preference.

(b) Any such term or condition must be provided **in writing** to all parties **in plain English, and, if applicable, the primary language of the complainant**, and the complainant shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the complainant's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the complainant may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

(c) Any such term or condition shall be void to the extent that it prohibits or otherwise restricts the complainant from: (i) initiating, testifying, assisting, complying with a subpoena from, or participating in any manner with an investigation conducted by the appropriate local, state, or federal agency; or (ii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which the complainant is entitled.

2. Notwithstanding any provision of law to the contrary, any provision in a contract or other agreement between an employer or an agent of an employer and any employee or potential employee of that employer entered into on or after January first, two thousand twenty, that prevents the disclosure of factual information related to any future claim of discrimination is void and unenforceable unless such provision notifies the employee or potential employee that it does not prohibit him or her from speaking with law enforcement, the equal employment opportunity commission, the state division of human rights, a local commission on human rights, or an attorney retained by the employee or potential employee.

§ 8. Paragraphs 2 and 3 of subdivision (a) of section 7515 of the civil practice law and rules, as added by section 1 of subpart B of part KK of chapter 57 of the laws of 2018, are amended to read as follows:

<< NY CPLR § 7515 >>

2. The term “prohibited clause” shall mean any clause or provision in any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of ~~an unlawful discriminatory practice of sexual harassment~~ **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**.

3. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging ~~an unlawful discriminatory practice based on sexual harassment~~ **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law** shall be final and not subject to independent court review.

§ 9. Section 5003–b of the civil practice law and rules, as added by section 2 of subpart D of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

<< NY CPLR § 5003–b >>

§ 5003–b. Nondisclosure agreements

Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under common law, equity, or any provision of law, the factual foundation for which involves ~~sexual harassment~~ **discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law**, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no employer, its officer or employee shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the plaintiff's preference. Any such term or condition must be provided to all parties, and the plaintiff shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the plaintiff's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the plaintiff may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

§ 10. Subdivisions 9 and 10 of section 63 of the executive law, subdivision 9 as amended by chapter 359 of the laws of 1969, are amended to read as follows:

<< NY EXEC § 63 >>

9. Bring and prosecute or defend upon request of the ~~industrial~~ commissioner **of labor** or the state division of human rights, any civil action or proceeding, the institution or defense of which in his judgment is necessary for effective enforcement of the laws of this state against discrimination by reason of age, race, **sex,** creed, color ~~or~~ **,** national origin, **sexual orientation, gender identity or expression, military status, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status,** or for enforcement of any order or determination of such commissioner or division made pursuant to such laws.

10. Prosecute every person charged with the commission of a criminal offense in violation of any of the laws of this state against discrimination because of **age,** race, **sex,** creed, color, ~~or~~ national origin, **sexual orientation, gender identity or expression, military status, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status,** in any case where in his judgment, because of the extent of the offense, such prosecution cannot be effectively carried on by the district attorney of the county wherein the offense or a portion thereof is alleged to have been committed, or where in his judgment the district attorney has erroneously failed or refused to prosecute. In all such proceedings, the attorney-general may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

§ 11. Paragraph b of subdivision 1 of section 201–g of the labor law, as added by section 1 of subpart E of part KK of chapter 57 of the laws of 2018, is amended and a new subdivision 2–a is added to read as follows:

<< NY LABOR § 201–g >>

b. Every employer shall adopt the model sexual harassment prevention policy promulgated pursuant to this subdivision or establish a sexual harassment prevention policy to prevent sexual harassment that equals or exceeds the minimum standards provided by such model sexual harassment prevention policy. Such sexual harassment prevention policy shall be provided to all employees in writing **as required by subdivision two-a of this section**. Such model sexual harassment prevention policy shall be publicly available and posted on the websites of both the department and the division of human rights.

2–a. a. Every employer shall provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring and at every annual sexual harassment prevention training provided pursuant to subdivision two of this section, a notice containing such employer's sexual harassment prevention policy and the information presented at such employer's sexual harassment prevention training program.

b. The commissioner shall prepare templates of the model sexual harassment prevention policy created and published pursuant to subdivision one of this section and the model sexual harassment prevention training program produced pursuant to subdivision two of this section. The commissioner shall determine, in his or her discretion, which languages to provide in addition to English, based on the size of the New York state population that speaks each language and any other factor that the commissioner shall deem relevant. All such templates shall be made available to employers in such manner as determined by the commissioner.

c. When an employee identifies as his or her primary language a language for which a template is not available from the commissioner, the employer shall comply with this subdivision by providing that employee an English-language notice.

d. An employer shall not be penalized for errors or omissions in the non-English portions of any notice provided by the commissioner.

§ 12. The commissioner of labor in collaboration with the commissioner of human rights shall conduct a study on how to build on the requirements of section two hundred one-g of the labor law, in order to further combat unlawful harassment and discrimination in the workplace. The study shall include but not be limited to: a review of the section two hundred one-g of the labor law requirements for employers to provide a sexual harassment training and policy to all employees and comparison with similar requirements across other jurisdictions; a review of the full scope of discriminatory practices in the workplace made unlawful by relevant state and federal laws; engagement with relevant stakeholders on the most effective tools to prevent and remediate such discriminatory practices; and the efficacy of requiring such training in the workplace in reducing discrimination. On or before December 1, 2019, the commissioner of labor shall submit his report and recommendations to the governor, the temporary president of the senate and the speaker of the assembly.

§ 13. Subdivision 5 of section 297 of the executive law, as amended by chapter 958 of the laws of 1968, is amended to read as follows:

<< NY EXEC § 297 >>

5. Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice. **In cases of sexual harassment in employment, any complaint filed pursuant to this section must be so filed within three years after the alleged unlawful discriminatory practices.**

§ 14. Section 201–g of the labor law is amended by adding a new subdivision 4 to read as follows:

<< NY LABOR § 201–g >>

4. Beginning in the year two thousand twenty-two, and every succeeding four years thereafter, the department in consultation with the division of human rights shall evaluate, using the criteria within this section, the impact of the current model sexual harassment prevention guidance document and sexual harassment prevention policy. Upon the completion of each evaluation the department shall update the model sexual harassment prevention guidance document and sexual harassment prevention policy as needed.

§ 15. Severability clause. If any clause, sentence, paragraph, subdivision, section or subpart of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or subject thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

<< Note: NY EXEC §§ 292, 296, 296–b, 296–d, 297, 300 >>

§ 16. This act shall take effect immediately, provided, however:

(a) Sections one of this act shall take effect on the one hundred eightieth day after it shall have become a law.

(b) Sections one-a, two, three, four, five, seven, eight and nine of this act shall take effect on the sixtieth day after it shall have become a law.

(c) Section thirteen of this act shall take effect one year after it shall have become a law.

(d) Sections one, one-a, two, three, four, five, six and thirteen shall only apply to claims filed under such sections on or after the effective date of such sections.

(e) Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2019

SENATE:	**ASSEMBLY:**
No. S6577	**No. A8421**
Sponsor: BIAGGI	**Primary Sponsor: Simotas**
Law:	**Sections:**
Executive	**63, 292, 296, 296-b, 296-d, 297, 300**
General Obligations	**5-336**
Civil Practice Law and Rules	**5003-b, 7515**
Labor	**201-g**

Division of the Budget recommendation on the above bill

APPROVE: __	**VETO:** __	**VETO or CHAPTER AMENDMENT:** __	**NO OBJECTION:** X

1. Subject and Purpose:

   This bill would provide increased anti-harassment protections to employees of a protected class and employees that have been sexually harassed in the workplace.

2. Summary of Provisions:

   This bill would amend the Executive Law to expand the definition of "employer" to include all employers in the State, including the State and all political subdivisions, and to include a specific definition for "private employers."

   The bill would make it an unlawful discriminatory practice for any employer, licensing agency, employment agency or labor organization to harass an individual based on their protected class status. Such harassment would not be held to a severe or pervasive standard. Employers, licensing agencies, employment agencies and labor organizations would also be liable for harassment in situations where an individual did not file an internal complaint.

   Under current law, employers are liable for sexual harassment against a non-employee in the workplace when the employer knowingly, or should have known, that such harassment was occurring and did not take immediate corrective action. This bill would extend this liability to include all forms of unlawful discriminatory practices.

Validation: Document ID: 1565644990852-37030-34841
Robert Mujica, Director of the Budget
By Olczak, Jesse
Date: 08/12/2019 05:23PM

The bill would require provisions in the Human Rights Law to be construed liberally in an effort to maximize the deterrence of discriminatory conduct. The timeframe in which victims of sexual harassment in the workplace must file administrative complaints with the Division of Human Rights (DHR) would be extended from one year to three years.

The bill would also amend requirements for non-disclosure agreements to prohibit mandatory arbitration clauses related to all cases of discrimination and to prohibit certain clauses that prevent employees from disclosing factual information unless the condition of confidentiality is the complainant's preference.

The bill would also amend Executive Law to authorize punitive damages for employment discrimination cases, with no limit on the amount awarded. Punitive damages and reasonable attorney fees could be awarded to prevailing plaintiffs in all employment discrimination cases, not just cases based on sex. This bill would also expand the powers of the Attorney General to prosecute cases of discrimination based on all protected class statuses.

Employers would be required to provide their employees with a notice containing their sexual harassment prevention policy upon hire and during annual training. Employers would be required to provide this information in English and in the employee's primary language, based on templates provided by the Department of Labor (DOL).

In addition, DOL would be required to conduct a study in consultation with DHR on the State's sexual harassment prevention policy and how to further combat unlawful harassment and discrimination in the workplace by December 1, 2019. Beginning in 2022 and every four years thereafter, DOL would be required to review and update the model sexual harassment prevention guidance document and templates, and update both as necessary.

3. Legislative History:

This is a new bill.

4. Arguments in Support:

As part of the Enacted Budget for State Fiscal Year 2019, Governor Cuomo signed into law multiple measures aimed at combatting sexual harassment in the workplace. These measures included the requirement that certain employers have a sexual harassment policy and training program in addition to an investigation process to address complaints of sexual harassment.

The proposed bill would build onto these earlier efforts by expanding protections to all protected classes and by adding new protections for those who have been sexually harassed in the workplace.

5. Arguments in Opposition:

This bill would have a modest administrative impact on the Division of Human Rights and the Department of Labor. However, the costs to both agencies can be accommodated within existing resources.

In addition, employers may face higher operating expenses related to liability costs and an increased number of discrimination and harassment claims.

6. Other State Agencies Interested:

The Division of Human Rights supports this bill.

The Department of Labor may have an interest in this bill, as they would have an increased administrative role related to the model sexual harassment prevention program.

The Office of the Attorney General supports this bill.

7. Other Interested Groups:

The Sexual Harassment Working Group supports this bill.

8. Budget Implications:

There would be a modest administrative impact to DHR related to the agency's role in investigating cases of discrimination, an impact to DOL related to the agency's role in administering the model sexual harassment prevention guidance documents and policies, and an impact to the Office of the Attorney General for any additional discrimination cases that they litigate. However, these impacts can be accommodated within existing resources.

9. Recommendation:

This bill would provide increased anti-harassment protections to employees of a protected class and employees that have been sexually harassed in the workplace. It builds on previously enacted legislation to add more robust protections, and the agency budget implications can be accommodated within existing resources. Accordingly, the Division of the Budget has no objection to the enactment of this bill.

Validation: Document ID: 1565644990852-37030-34841
Robert Mujica, Director of the Budget
By Olczak, Jesse
Date: 08/12/2019 05:23PM