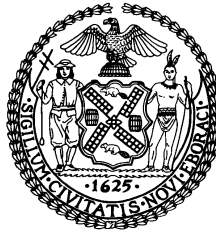


Julene E. Beckford
Counsel

Damien Butvick
Policy Analyst

Pakhi Sengupta
Principal Legislative Financial Analyst



THE COUNCIL

Committee Report of the Governmental Affairs Division

Robert Newman, Legislative Director
Alix Pustilnik, Deputy Director, Governmental Affairs

COMMITTEE ON CIVIL RIGHTS

Hon. Deborah Rose, Chair

Tuesday, December 7, 2010

Proposed Int. No.396-A: By Council Members Rose, Chin, Dromm, Foster, James, Palma, Van Bramer, Williams and Rodriguez

Title: A Local Law to amend the administrative code of the city of New York, in relation to the powers and duties of the commission on human rights.

I. Introduction

On Tuesday, December 7, 2010, the Committee on Civil Rights, chaired by Council Member Deborah Rose, will hold a hearing on Proposed Introductory Bill Number 396-A (“Prop. Int. No. 396-A”), a Local Law to amend the administrative code of the city of New York, in relation to the powers and duties of the commission on human rights (“Commission”). The Committee previously held a hearing on Int. No. 396 on November 22, 2010.

II. Background

New York City’s Human Rights Law (“Human Rights Law”) is considered to be one of the most expansive civil rights laws in the country. Under the Human Rights Law, discrimination in employment, housing, and public accommodations on the basis of age, race, creed, color, national origin, gender, disability, marital status, partnership status, and sexual orientation is prohibited.¹ The Human Rights Law also prohibits discrimination in employment on the basis of one’s arrest² or conviction record,³ or one’s status as a victim of domestic violence, stalking, or sex offenses;⁴ and in housing on the basis of lawful occupation, family status, or lawful source of income.⁵

III. Overview of the Commission on Human Rights

The Commission enforces the Human Rights Law through its Law Enforcement Bureau (“LEB”) and its Community Relations Bureau (“CRB”).⁶ As the enforcement arm of the Commission, the LEB is responsible for receiving and investigating complaints of

¹ See Administrative Code of the City of New York §8-107(1)-(5).

² Admin. Code §8-107(11).

³ Admin. Code §8-107(10).

⁴ Admin. Code §8-107.1

⁵ Admin. Code §8-107(5).

⁶ New York City Charter § 902(b).

unlawful discrimination and, when warranted, either mediating a resolution or prosecuting the complaint.⁷ Any person who claims to be a victim of an unlawful discriminatory practice may file a complaint with the LEB.⁸ Additionally, the LEB may file a complaint on its own alleging an individual's unlawful discriminatory practice.⁹ The LEB is responsible for administering the complaint process, which starts with intake, where a complainant is interviewed by staff. At intake, staff tries to intervene and resolve the issue at hand before completing a formal complaint.¹⁰ If the issue cannot be resolved through pre-complaint intervention, a complaint may be filed.¹¹ Once a complaint is filed, an investigator or attorney is responsible for interviewing witnesses and reviewing documents.¹² At the conclusion of the investigation, the investigator or attorney is required to make a probable cause determination.¹³ If probable cause is found, the case is assigned to a staff attorney for prosecution and is referred to an administrative law judge.¹⁴ If no probable cause is found, however, the case is dismissed and the complainant has the opportunity to appeal the dismissal to the Commissioner.¹⁵ A Commission staff attorney would then be required to bring the complaint through the hearing process.¹⁶ An administrative law judge will hold a pre-trial conference to determine if the case can be settled.¹⁷ If a case cannot be settled, an administrative law

⁷ New York City Commission on Human Rights, *Fighting for Justice: New York Voices of the Civil Rights Movement*, NYCCHR 2009 Annual Report, available at <http://www.nyc.gov/html/cchr/pdf/annual09.pdf>, at 8.

⁸ 47 RCNY §1-11(a)(1).

⁹ 47 RCNY §1-11(a)(2).

¹⁰ NYCCHR, *supra* note 7, at 7.

¹¹ *Id.*

¹² *Id.*

¹³ NYCCHR, *supra* note 7, at 7.

¹⁴ *Id.*; Admin. Code §8-116(c).

¹⁵ NYCCHR, *supra* note 7, at 7.

¹⁶ *Id.*

¹⁷ *Id.*

judge holds a hearing and issues a “Report and Recommendation.”¹⁸ In response to the Report and Recommendation, the Commission issues a “Final Decision and Order.”¹⁹ If no liability is found, the case is dismissed.²⁰ If liability is found, than the Commission orders relief as it deems to be appropriate.²¹ Such relief may include hiring, reinstatement or upgrading of employees; awarding back pay; extension of accommodations; and paying of compensatory damages, among other things.²²

As the outreach arm of the Commission, the CRB offers educational, training and advocacy services through the Community Service Centers it operates in each of the five boroughs.²³ Through its Neighborhood Human Rights Program, the CRB identifies areas in danger of tension or conflicts among different racial and ethnic groups, supports multi-ethnic coalitions, and develops programs on leadership, cultural diversity and ethnic sensitivity training.²⁴ With an office in each borough, it also works with religious groups, community groups, tenant organizations and other local organizations to educate residents about the city’s Human Rights Law and services available through the Commission.²⁵ The CRB offers intervention and educational services in a variety of subject areas, including immigrant employment rights, workplace discrimination, equal access, fair housing, and mortgage counseling and anti-predatory lending.²⁶ The CRB also works in schools throughout the city, where it educates students on conflict resolution, sexual harassment and the Human Rights Law.

¹⁸ *Id.*

¹⁹ NYCCHR, *supra* note 7, at 7; Admin. Code §8-120(a).

²⁰ NYCCHR, *supra* note 7, at 7.

²¹ NYCCHR, *supra* note 7, at 7; Admin. Code §8-120(a).

²² Admin. Code §8-120(a)

²³ *Id.* at 4.

²⁴ New York City Commission on Human Rights, *Neighborhood Human Rights Program*, at <http://www.nyc.gov/html/cchr/html/programs.html>.

²⁵ NYCCHR, *supra* note 7, at 8.

²⁶ *Id.*

IV. Reporting by the Commission

The Commission is required to submit annual reports to the Mayor and the City Council related to all of its efforts to enforce the Human Rights Law.²⁷ The Administrative Code does not currently mandate that any specific information be included in the annual report. Accordingly, the Commission has the discretion to determine what to include and omit each year. The most recent annual report provides information on the powers and duties of the Commission, examples of its work, its annual budget and newsworthy information. With regard to the Commission's caseload, the annual report contains pie charts comparing the determinations and resolutions of the LEB's cases from 2002 through 2009. The report includes a chart comparing the total amount of cash settlements obtained by the Commission from 2002 through 2009. Additionally, the annual report sets forth general information on the work done by the Commission's LEB, including information on its staff and a description of its educational programs. The annual report does not, however, include any information on inquiries received by the Commission, indications of patterns of discrimination, or any breakdown of the subject matter of the cases. Additional reporting on the Commission's performance is provided in the Mayor's Management Report. The section in the Mayor's Management Report on the Commission can change from year to year and its contents are determined at the discretion of the Mayor.

V. Concerns about the Commission's Efforts to Enforce the Human Rights Law

The Committee on Civil Rights held two hearings in 2010 regarding the Commission's enforcement of the Human Rights Law. During those hearings, witnesses expressed concern about the Commission's ability to eliminate discriminatory practices

²⁷ Admin. Code §8-105(10).

and policies in New York City when it appeared that the Commission was not considering or even tracking inquiries that did not lead to formal complaints. For example, during the April 2010 hearing on the Commission's enforcement of the Human Rights Law, Craig Gurian of the Anti-Discrimination Center stated, "it's not the complaints that are filed that we have to wonder about, it's the complaints that aren't filed; it's people who don't believe that they're going to get anywhere, that it's futile to proceed."²⁸ During the June 2010 hearing on source of income discrimination, Patrick Saunders testified that he contacted the Commission with information that he believed illustrated that he had been subjected to discrimination by a landlord and real estate broker based on his lawful source of income.²⁹ Mr. Saunders testified that the Commission reached out to the landlord about his complaint and based on the conversation with the landlord, decided not to go forward and file a complaint on his behalf.³⁰ Mr. Saunders testified that he "expected the Human Rights Commission to be [his] advocate but in the end they really showed me they were not..."³¹ Additional testimony by Robert Disier of the Legal Aid Society recommended that the Commission track complaints at the pre-complaint stage, at the moment they receive a complaint comes to their attention.³² He also asked that the Council direct the Commission to stop automatically mediating a discrimination problem prior to filing an official complaint. He added that filing a complaint helps to establish a written record that helps to identify

²⁸ *Oversight: The Commission on Human Rights and Its Enforcement of New York City's Human Rights Law before the Committee on Civil Rights*, 106 (April 28, 2010) (testimony of Craig Gurian, Executive Director, Anti-Discrimination Law Center).

²⁹ *Oversight – Source of Income Discrimination and the Enforcement of Local Law 10 of 2008 before the New York City Council's Committees on Civil Rights, General Welfare and Oversight & Investigation*, 102 (June 23, 2010) (testimony of Patrick Saunders, Client, Legal Services NYC).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 112 (testimony of Robert Disier, Staff Attorney, Legal Aid Society).

potential systemic discrimination. Testimony also indicated that the Commission needs to do a better job of identifying, tracking and combating discrimination in New York City.

The proposed local law the Committee is hearing today seeks to address these concerns and increase transparency in the operations of the Commission.

VI. Testimony on Int. No. 396

On November 22, 2010, the Committee on Civil Rights held a hearing on Int. No. 396. In its testimony, the Commission expressed its support of the bill and stated that it already reports on most of the information required, including the number and type of complaints filed, the type of determinations and resolutions reached, settlements and their dollar value, the amount of fines collected for the city, and programs sponsored by the CRB.³³ According to the Commission’s testimony, it will be able to meet the requirements of the bill “with minimal adjustments” in relation to reporting on “educational outreach and case tracking.”³⁴ With regard to providing information on inquiries that the Commission receives from the public, the Commission testified that the requirement would “pose electronic record management issues that the Commission is currently in the process of addressing.”³⁵ According to the Commission’s testimony, it has records of each interaction that it has with the public, but “these records were designed for administrative, rather than reporting functions” and the Commission would have to create the reports required by the proposed bill manually.³⁶ The Commission has already made efforts to develop upgraded software “that will include a traditional case

³³ Written testimony of Deputy Commissioner Clifford Mulqueen, New York City Commission on Human Rights, before the Committees on Civil Rights, 1 (Nov. 22, 2010) (on file with Committee on Civil Rights staff).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 2.

tracking model and other features that capture information about...the status of all inquiries.”³⁷ The Commission expects the new database to be fully operational by the summer of 2011 and will be able to report “on every interaction the LEB has with the public, enabling full compliance with the requirements of this proposed amendment.”³⁸ The amended version of the legislation takes these concerns into account gives the Commission until 2012 to go through old records manually in order to report on inquiries.

VII. Prop. Int. No. 396-A

Under Proposed Int. No. 396-A, the Commission would be required to submit its annual report by March 1 and each report must include, at a minimum, specific information on the inquiries it receives from the public, the complaints filed, and its education and outreach efforts. With regard to inquiries, the report would have to include the total number of inquiries it received from the public, the number of inquiries made by limited English proficient persons, the subject matter of inquiries, and the number of inquiries resolved by pre-complaint intervention. With regard to information on complaints filed with the Commission, the report would have to include the total number of filed complaints broken down by the category of unlawful discriminatory practice, the resolution of the complaint, the length of time taken to process the complaint, and information on whether a fine, penalty or cash award was imposed and the dollar amount of such fine, penalty or cash award. Lastly, the report would have to include information on the Commission’s education and outreach efforts, such as the types of outreach conducted, the number of people with whom the Commission made contact, the number

³⁷ *Id.* at 3.

³⁸ *Id.*

of limited English proficient persons served, and the languages in which outreach and education programs were conducted.

By March 1, 2011, the Commission would be required to submit its first annual report under the proposed legislation. The report would have to contain information for calendar year 2010 on complaints filed and the Commission's outreach and education efforts. By March 1, 2012, the Commission would be required to submit its second annual report detailing information on the complaints filed and the Commission's outreach and education efforts for calendar year 2011. By March 1, 2012, the Commission would also be required to include information on inquiries it has received for calendar years 2009, 2010 and 2011 in the annual report for calendar year 2011. Subsequent annual reports would be due by March 1 and would have to contain information on inquiries, complaints filed, and the Commission's outreach and education efforts.

VII. Effective Date

This local law would take effect immediately after enactment into law.

Prop. Int. No. 396-A

By Council Members Rose, Chin, Dromm, Foster, James, Palma, Van Bramer, Williams and Rodriguez

A Local Law to amend the administrative code of the city of New York, in relation to the powers and duties of the commission on human rights.

Be it enacted by the Council as follows:

Section 1. Subdivision 10 of section 8-105 of the administrative code of the city of New York, as amended by local law 39 of 1991, is amended to read as follows:

(10) To submit an annual report by March 1 to the mayor and the council which shall be published in the City Record. Such annual report shall include information for the calendar year that is the subject of the report regarding: (i) inquiries received by the commission from the public; provided that such information for calendar years 2009 and 2010 must only be included in the annual report submitted by March 1, 2012, (ii) complaints filed with the commission, and (iii) education and outreach efforts made by the commission.

(a) The information regarding inquiries received by the commission from the public shall include, but not be limited to: (i) the total number of inquiries; (ii) the number of inquiries made by limited English proficient persons disaggregated by language; (iii) the subject matter of inquiries disaggregated by the alleged category of unlawful discriminatory practice as set forth by sections 8-107 and 8-107.1(2) of this chapter and the protected class of person, and (iv) the number of inquiries resolved by pre-complaint intervention.

(b) The information regarding complaints filed with the commission shall include, but not be limited to, the number of complaints filed with the commission and shall be disaggregated by: (i) the category of unlawful discriminatory practice, as set forth by sections 8-107 and 8-107.1(2) of this chapter, alleged; (ii) the basis of the alleged

discriminatory practice based on protected class of the complainant; (iii) whether the complaint was resolved by mediation and conciliation, as set forth in section 8-115 of this chapter; a determination of no probable cause, as set forth in section 8-116 of this chapter; or a hearing, as set forth by section 8-119 of this chapter; (iv) the number of days the complaint was outstanding at the time such resolution occurred; and (v) whether a fine, penalty, or cash award was imposed and, if so, the dollar amount of such fine, penalty or cash award.

(c) The information regarding the commission's education and outreach efforts as required by sections 8-105(1) and 8-105(2) of this chapter shall include, but not be limited to: (i) the types of outreach initiated; (ii) the number of people with whom the commission made contact as a result of outreach; (iii) the number of limited English proficient persons served; and (iv) the languages in which such outreach was conducted.

§2. This local law shall take effect immediately.

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