



**TESTIMONY OF DANA SUSSMAN**  
**Special Counsel to the Office of the Chairperson**  
**New York City Commission on Human Rights**  
**Before the Committee on Civil Rights**  
**September 21, 2015**

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**Proposed Int. No. 108-A -**

**In relation to prohibiting employment discrimination based on an individual's actual or perceived status as a caregiver.**

**Proposed Int. No. 804-A -**

**In relation to reasonable accommodations for individuals with disabilities.**

**Proposed Int. No. 815-A -**

**In relation to expanding the right to truthful information under the city human rights law and legislating an express cause of action for employers and principals whose rights are violated by conduct to which their employees or agents are subjected.**

**Proposed Int. No. 825-A -**

**In relation to expanding the definition of employer under the human rights law to provide protections for domestic workers.**

Good afternoon, Chair Mealy, members of the Civil Rights Committee, and Council Member Lander, and thank you for convening today's hearing. I am Dana Sussman, Special Counsel to the Office of the Chairperson at the New York City Commission on Human Rights. Today I am joined by Melissa S. Woods, the Commission's First Deputy Commissioner and General Counsel. Commissioner and Chairperson Carmelyn P. Malalis had planned to testify today, but unfortunately is tending to a family medical situation. In my role as Special Counsel, I have been intimately involved in the Commission's legislative and intergovernmental affairs, and am proud to be representing the Commission at today's hearing. Before I address the four bills that are the subject of today's hearing, I will first give you an update on some of the changes Commissioner Malalis has implemented at the Commission since the last hearing in March.

As you know, Commissioner Malalis assumed her role a little more than six months ago. Since then, she and our team have been hard at work developing the agency's infrastructure, onboarding talented, experienced staff, providing enhanced training and development opportunities for staff agency-wide, and evaluating and developing the agency's internal and public-facing policies and procedures. Under Commissioner Malalis's leadership, and with the invaluable support of the Administration and the Council, the Commission is growing and developing to effectively and reliably fulfill its dual mandates of (1) enforcing the City Human Rights Law – one of the most expansive of its kind in the nation – and (2) providing education, outreach, training and other initiatives for the public to foster mutual understanding and respect among all New Yorkers.



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In June, Hollis Pfitsch joined us as our new Deputy Commissioner for the Law Enforcement Bureau, following a career devoted to representing low-income New Yorkers with employment rights issues under the City Human Rights Law and other laws. Deputy Commissioner Pfitsch brings not only her veteran experience with the City Human Rights Law and a high-volume docket, but also the relationships forged with several community-based organizations that have already been useful in the agency's outreach efforts, as is evident in the increased number of complaints filed by the public. Under her leadership, the Law Enforcement Bureau has created a level of supervising attorneys to specialize in specific issue areas and supervise agency attorneys in those areas. We have hired and on-boarded three new supervising attorneys, all with significant civil rights experience and community relationships in their specific areas, and they join the two other supervising attorneys who have been with the Law Enforcement over the past three to eight years in other capacities. The Bureau will also be on-boarding five new agency attorneys this week and next. All attorneys who have joined the team come with several years of relevant experience, including working with vulnerable populations, litigating under the City Human Rights Law, and handling high-volume caseloads. Consistent with our effort to increase internal language capabilities, many of our new hires speak second and third languages, in addition to English.

About two and a half months ago, Pascale Bernard joined the Commission as its new Deputy Commissioner for the Community Relations Bureau. I know that many of you and your staff know Deputy Commissioner Bernard, as she has spent over a decade working within the City Council Speaker's Office, most recently as Deputy Director of the Community Engagement team. Deputy Commissioner Bernard is in the process of restructuring the entire Bureau, adding new lines of supervision and development opportunities, with an eye towards creating a strategic plan for the Community Relations Bureau. She has begun the process of hiring more staff with experience in working with diverse populations and underserved communities that will continue over the next several months. As new staff is added, you can expect to see more and new initiatives coordinated through the Community Relations Bureau.

I know that Council Member Dromm had asked the Commissioner about the Commission's outreach to LGBT communities at the last hearing, so I will specifically mention that as an example. Since the last hearing, the Community Relations Bureau has added an LGBT Community Liaison to its ranks. The person filling that role brings years of experience serving as a liaison with LGBT communities through his work at different LGBT community organizations and for several local elected officials. In June, Commissioner Malalis, herself, led a roundtable discussion with transgender community advocates from different organizations throughout the City to discuss ways the Commission can work with their groups and others on transgender rights, including enforcement actions. We are training all Commission staff on cultural competency on these issues, and are in the process of developing a Trans 101 cultural competency train-the-trainer workshop to roll out through our borough offices to members of the public. These are just some of the new initiatives created to enhance the Commission's outreach and programming for LGBT communities.

The Commission's independent Office of the Chairperson has also been further developed to help it perform its three major functions: organizational, adjudicatory, and policy. In its organizational capacity, the Office of the Chairperson oversees the administrative development of the agency and works with the agency's other commissioners on outreach initiatives. In its adjudicatory capacity, the Office of the Chairperson receives and reviews requests to appeal the Law Enforcement Bureau's



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Determinations of No Probable Cause, remands appropriate matters back to the Law Enforcement Bureau for continued investigation or prosecution, receives and reviews de novo Reports and Recommendations issued by OATH administrative law judges, and issues final Decisions and Orders in administratively-filed actions. In its policy capacity, it develops and implements the Commission's interpretative guidance on the City Human Rights Law, promulgates rules and regulations regarding the Commission and the City Human Rights Law, and works with other City agencies, Mayoral offices, elected officials, and community stakeholders on legislation and intergovernmental affairs. As Special Counsel in that office, I have been working with the Commissioner in these areas. We are in the process of hiring an agency attorney to work within this office.

Commissioner Malalis also spoke about connecting the work of various parts of the agency during the last hearing. One of the Commission's new initiatives that is currently being run as a joint project of the Community Relations Bureau, the Law Enforcement Bureau, and the Office of the Chairperson are free, regularly scheduled trainings held at each one of our borough-based Community Service Centers. These Know Your Obligations trainings were developed specifically for smaller employers, housing providers, and small businesses. The Commission wants these groups to see us as a resource and partner in strengthening their businesses, and developed these training so that they can learn, free of charge, how to comply with the law.

We have also reinstated the Office of Mediation and Conflict Resolution to facilitate the quick resolution of cases where appropriate. The Commission sees this office as integral in providing alternative ways of resolving enforcement actions as well as helping the Law Enforcement Bureau run its docket efficiently.

We have also created a more robust General Counsel's Office to oversee a newly reconstructed Human Resources Department, a growing IT department, and other agency operations, in addition to managing all compliance and reporting requirements. First Deputy Commissioner Woods oversees that office, and with her seventeen years of experience in civil rights litigation and labor and employment law, will also be providing support on policy initiatives and Commission-initiated investigations where appropriate.

We have also created an Office of Communications and Marketing to amplify the work of the other parts of Commission, and increase public awareness of the Commission and the City Human Rights Law so more New Yorkers can avail themselves of the resources the agency provides. Heading this office is our new Executive Director of Communications and Marketing, Carmen Boon, who brings with her twenty years of experience in communications and media relations, including ten years working with New York City elected officials and City agencies, including Human Resources Administration, Housing Preservation and Development, and most recently as an Assistant Commissioner at the Department of Consumer Affairs. This office is integral in providing the transparency Commissioner Malalis promised when she testified in March. Now important agency developments and the agency's first-ever interpretive guidance, are accessible to the public on the Commission's website. Hopefully, you have also seen the fruits of this office's labor with the increased visibility of the Commission on its website and other digital media, new materials, and appearances by Commissioner Malalis and her staff on various media outlets. Our campaign on Local Law 37, the Stop Credit Discrimination in Employment Act, will be visible in subways and bus shelters, and on the radio, in print, and online in the next few weeks. Soon, we will also launch a similar campaign for Local Law 63, the Fair Chance Act, and are looking forward to partnering with you on these and future initiatives.



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Commissioner Malalis has already led many efforts to make the Commission a stronger, more effective venue of justice for New Yorkers, and is determined to continue the full agency review and implementation of necessary changes. She has not been shy in sharing her goal of making the Commission the premier civil rights/human rights agency. To that end, we are continuing to work on upgrading all of the Commission's systems; building a new investigations unit; revamping all Commission publications; publishing enforcement guidance and will be going through the rule-making process in many different areas of protection for the first time in the Commission's history; and making the Commission processes more transparent and user-friendly for the public. All of this is a brief snapshot of some of the many changes that have taken place over the last six months.

Now, turning to the subject of today's hearing – Intro. 108-A, Intro. 804-A, Intro. 815-A, and Intro. 825-A. Commissioner Malalis and her office have considered each of these bills very carefully in determining the Commission's position with respect to each. Considerations as this agency's role as enforcer of the City Human Rights Law, the experience of veteran City Human Rights Law litigators at the Commission, as well as Commissioner Malalis's previous experience as an employee advocate, utilizing the City Human Rights Law regularly in practice, inform our position on these bills.

### ■ **INTRO. 108-A: Caregiver Discrimination**

The proposed bill will add an additional protected category in employment to the City Human Rights Law of caregiver status, and will also require employers to make reasonable accommodations to caregivers so that they "can satisfy the essential requisites of the job where the caregiver is: caring for an individual with a disability; caring for a child or children in facilitating involvement in education; and providing care in the event to a childcare or eldercare emergency."

The Commission believes that people with caregiving responsibilities, including both working parents and people caring for parents and other loved ones, should have strong workplace protections. Consistent with other employment protections afforded under our law, employers' focus should be on qualifications and merit, and not other issues or characteristics personal to an employee. Commissioner Malalis spent many years representing workers who faced family responsibilities discrimination before joining the Commission, and believes that additional protections for workers in this area are critically important. Such protections have the potential to dramatically alter workplace relationships, as we have seen with Paid Sick Leave. We look forward to continuing working with the Council on this bill and hearing from other advocates on what they see as the pressing needs for caregivers.

### ■ **INTRO. 804-A: Interactive Process**

The proposed bill will define the term "good faith interactive process" and will delineate a specific process that must be followed in the context of determining a reasonable accommodation for a disability. The bill will also identify a separate violation of the City Human Rights Law where a covered entity fails to engage in a good faith interactive process.

The Commission opposes this bill. Despite language in the proposed bill stating that "nothing contained in this subdivision shall be construed to offer less protection for the rights of individuals with disabilities than any applicable provision of federal, state,



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or local law,” we are very concerned that adopting language from federal case law from the Americans with Disabilities Act, which is exactly what this bill proposes to do, will only serve to narrow the very expansive disability provisions of the City Human Rights Law.

This bill also has the potential for narrowing the City Human Rights Law because it fails to incorporate the interactive process language in the housing and public accommodations contexts, or in the other provisions of the law that mandate reasonable accommodations, including religious accommodations and accommodations for victims of domestic violence, sexual violence, and stalking. Courts can read that omission as intentional and find that failure to engage in the “interactive process” in these contexts is not a violation of the law or a factor to consider in determining if a covered entity met its obligations to provide a reasonable accommodation under the law.

The Commission, as part of its long-term strategic vision, plans to publish interpretative enforcement guidance on disability rights and accommodations in the coming months. Part of this guidance will include specific language around covered entities’ obligations to work with individuals with disabilities to develop reasonable accommodations. We encourage the Council to take a look at those materials when they are published. Our intent is to provide guidance to attorneys, courts, and members of the public on how the disability provisions of the City Human Rights Law should be interpreted in this area, among others. We welcome the Council’s partnership, and once the Commission has published its guidance we would welcome opportunities to continue conversations on this topic.

### ■ **INTRO. 815-A: Truthful Information and Indirect Discrimination**

The proposed bill will make it unlawful to represent that opportunities, be it in employment, housing, or public accommodations, are unavailable when they are, in fact, available. We support this proposal and see it as being useful in “failure to hire” employment cases which are particularly challenging to prove.

It is our understanding that the provisions of this bill amending Sections 8-102 to add new subsection 30 and 8-502 to add new subsection (h) seek to codify the ability of organizations to use testers to bring claims on behalf of violations of the law uncovered by the testers and to provide a remedy for persons who are aggrieved when their employees or agents are discriminated against.

We support this amendment and note that we currently interpret the law to cover such organizational standing in which an organization brings claims under the City Human Rights Law on behalf of its members or employees.

### ■ **Intro. 825-A: Domestic Workers**

The proposed bill will eliminate the four-employee minimum for employer coverage under the City Human Rights Law for employers of domestic workers, so that a domestic worker, often working alone or perhaps with one other worker, will have protection under the City Human Rights Law.

The Commission recognizes the unique vulnerabilities that domestic workers face, and several members of Commissioner Malalis’s staff have a long history of representing domestic workers who were exploited, trafficked, and victims of



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wage theft and other abuses. Understanding those vulnerabilities, the Commission supports the principle of expanding protections for domestic workers under the City Human Rights Law. We believe a good model for such legislation is the New York State Domestic Workers Bill of Rights, which was signed into law in 2010. Among its protections, it expanded coverage of the New York State Human Rights Law, which also has a four-employee minimum, to domestic workers regardless of the number of employees, in specifically articulated circumstances: sexual harassment, harassment on the basis of gender, race, religion, or national origin, including offensive or humiliating jokes or comments regarding gender, race, religion, or national origin. The Commission supports adding protections for domestic workers within a similar framework, and is open to considering other protections that may be requested by affected communities.

Creating a parallel city law would provide domestic workers and their advocates with another venue to bring their claims, broader interpretation under the City Human Rights Law than the State Human Rights Law, the possibility of higher damages under the City Human Rights Law, and would allow the Commission's Community Relations Bureau to do targeted outreach to these communities within the City.

The Commission believes the particular vulnerability of domestic workers to wage theft, abuse, and trafficking is of paramount concern in New York City, and as such, warrants a policy discussion between the Council, the Commission, and key community stakeholders on these and other issues facing this community and how we can work together to address them. We welcome further discussions on how to protect workers and support the possibility of a limited expansion of the City Human Rights Law similar to what is available at the state level.

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The Commission thanks Chair Mealey, the members of the Committee, and Council Member Lander, for calling this hearing. We look forward to continuing our dialogue on how to strengthen the Commission and the City Human Rights Law to ensure respect and dignity for all New Yorkers. I welcome your questions and comments. Thank you.