



# Commission on Human Rights

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## **NYC Commission on Human Rights Issues Three New Rulings Reaffirming Commitment to Fighting Discrimination While Helping Small Businesses Develop Equitable Employment Practices**

*Two egregious violators of the law have been ordered increased civil penalties, mandated training, and posting of the law in the workplace. One ruling involves the highest civil penalty in the Commission's history.*

*In the third case, a small business owner who unknowingly violated the law and was unrepresented by legal counsel has been ordered to attend a free training and to post the law in the workplace, with no monetary penalty imposed.*

**New York** –The New York City Commission on Human Rights issued the first three rulings under Commissioner and Chair, Carmelyn P. Malalis, who came on board in early 2015. Under her leadership, the Commission is now considering a range of factors before reaching a ruling and determining the appropriate outcome on discrimination cases, such as the size and resources of a business, its knowledge of the law, and its ability to obtain counsel. In one decision involving egregious sexual harassment in the workplace and an uncooperative employer, the Commission issued its highest penalty in the agency's history, while in another case involving an immigrant owner of a small business who unknowingly violated the law, the ruling is mandating that the owner attend a free training provided by the Commission's Community Relations Bureau instead of issuing a fine. This is aligned with the Commission's new roadmap to ensure that the business community understands its obligations under the law and has the tools it needs to succeed while developing equitable employment practices.

"We are committed to aggressively enforcing the New York City Human Rights Law so that all New Yorkers receive the same protections and opportunities under the law," said **Human Rights Commissioner and Chair Carmelyn P. Malalis**. "No one should be made to suffer from discrimination in the workplace or elsewhere. While we will hold all violators accountable, we realize that not every case is the same. For example, for certain kinds of *per se* violations of the law, the Commission considers specific circumstances of each case along with factors intended to vindicate the public's interest. We are confident that this new approach will have a lasting impact in deterring discrimination down the road while educating individuals, small businesses and employers to avail of the Commission's resources."

In *Cardenas v. Automatic Meter Reading Corp.*, a business owner sexually harassed a female employee over a three-year period, repeatedly engaging in unwanted touching, regularly using lewd and sexually inappropriate language to and about her, and posting a sexually explicit cartoon

in the workplace identified as the complainant. In this case, the Commission issued its highest civil penalty yet—\$250,000, the highest allowable under the law. The NYC Human Right Law empowers the Commission to impose civil penalties in order to vindicate the public interest and gives the Commission discretion to impose such civil penalties up to \$250,000 where unlawful conduct is willful, wanton, or malicious. Large damages and penalties awarded in this case are consistent with judicial decisions in sexual harassment cases, given the particular facts of the case. The penalties also reflect a new vision for the Commission on Human Rights to effectively punish and deter egregious violations of the law when respondents flout orders and fail to provide information ordered by the administrative law judge at the Office of Administrative Trials and Hearings (OATH).

“The Legal Aid Society is gratified that the Commissioner ordered substantial damages in this case as Ms. Cardenas suffered a great deal having lived through the constant harassment over a three year period at the hands of Jerry Fund,” said **The Legal Aid Society's Employment Law Unit Staff Attorney Amy Hong**. “We believe that the Commissioner's decision sends a strong message to Jerry Fund and all employers that sexual harassment is not only unlawful but also potentially costly. We hope that the Commissioner's award of damages acts as a deterrence to potential violators of the law.”

In addition to the civil penalty, which is payable to the general fund of the City of New York, the complainant was awarded total damages of \$422,670, which includes \$122,953 in back pay, \$73,934 in front pay, \$25,783 in interest, and \$200,000 in emotional distress damages. The Commission also ordered the employer to post a notice of rights under the City's Human Rights Law in the workplace for at least three years and to attend training on the law within 60 days of the date of the order.

In *Comm'n on Human Rights v. CU 29 Copper Restaurant & Bar*, an immigrant owner of a small business with five employees placed a Craigslist ad looking for “a female bartender” and “pizza man”—both of which constitute a gender-based limitation on employment in violation of the City's Human Rights Law. In this ruling, the Commission required that the owner attends a free training on the law and post a notice of rights under the City's Human Rights Law in the place of business. In deciding against levying civil penalties, the Commission considered the respondent's financial resources and sophistication and size of the enterprise, the willfulness of the violation, the ability to obtain counsel, whether levying civil penalties is necessary to deter future violations, and the impact on the public of issuing civil penalties on this small business.

In her answer, the small business owner in this case stated that she did not willfully violate the law, as she was unaware that the language in the advertisements was improper. The owner also expressed her limited resources by describing their business as “struggling” and “on the brink of collapse.” Taking into consideration each of these factors, the Commission found that the imposition of civil penalties in this case does not serve the public interest as such penalties may result in forcing the closure of a small business, leaving its employees without jobs, and discouraging potential small business owners from starting their own businesses. The ruling also determined that further civil penalties were not necessary to deter future violations of the law.

“We are excited to work with the Commission to fight discrimination while helping immigrant small business owners learn and adopt equal employment practices,” said **Make the Road New York Co-Executive Director Javier H. Valdés**. “Strong enforcement of discrimination, coupled with active engagement with immigrant small business owners, is the right way forward for the Commission. Commissioner Malalis's smart new approach will rightly punish the worst actors while providing the support and training that many immigrant small business owners need.”

In the case *Commission v. Crazy Asylum LLC*, the business placed a Craigslist ad seeking a “waitress,” which is also an unlawful gender-based limitation in employment. The Respondents, Crown Hospitality Group and The Windsor, are larger businesses that own seven upscale restaurants in New York City. In its ruling, the Commission ordered a civil penalty of \$10,000—twice the amount recommended by the administrative law judge at the OATH—due to the fact that the employer failed to take the complaint process seriously, failed to respond to the Commission’s Law Enforcement Bureau for well over two years, ignored an order from the administrative law judge, and even posted another unlawful advertisement including another illegal gender-based limitation while the case was still pending. The Commission determined that a civil penalty was necessary to deter future violations. In addition to a fine, the Commission also required the employer to post a notice of rights under the Human Rights Law as well as undergo training on the law.

Both the Craigslist ad cases were initiated under previous Commission leadership. The Commission’s current Law Enforcement Bureau is not filing complaints against first-time offenders unaware of the law for ads soliciting “waitresses” or “hostesses” without additional violations of the law. In similar pending cases that were initiated under the old administration’s law enforcement strategy, the current Law Enforcement Bureau is resolving such cases without penalties, requiring employers to cease and desist the discriminatory practices, attend a free training on the law, and post a notice of rights in the workplace. However, such employers who do not cease and desist from discriminatory practices will be aggressively prosecuted by the Bureau.

The NYC Law Department is the entity within City government in charge of enforcing decisions and orders by the Commission on Human Rights. Any person who fails to comply with an order issued by the Commission on Human Rights can be subjected to additional civil and criminal penalties for each day that the violation continues.

The Commission on Human Rights is committed to preventing discrimination before it happens by hosting free trainings and public education campaigns across the city so that every New Yorker understands the law and how to comply with it. For more information on the New York City Human Rights Law, the Commission’s complaint process, and to sign up for trainings, visit [www.nyc.gov/humanrights](http://www.nyc.gov/humanrights).

**For full text of the three rulings, please [click here](#).**

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