



My name is Miriam Clark. I am a partner in the law firm of Ritz Clark & Ben-Asher LLP, where I represent employees. I am also a former president of NELA/NY and current Chair of NELA/NY's Legislative Committee. The National Employment Lawyers Association (NELA) is a national organization of attorneys dedicated to the vindication of employees' rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA's New York State affiliate.

In this testimony, I will explain why Intro134 has the potential to gut LL32 and why it sets a dangerous precedent with regard to the New York City Human Rights Law. I will also rebut the claims made by the Partnership for New York City in support of Intro134 and provide evidence for the link between pay transparency and pay equity.

**1. Intro134 contains provisions which easily allow all employers to evade the law.**

Intro134 excludes from the salary range transparency requirement: "General notices that an employer is hiring without reference to any particular position."

This exclusion, while seemingly innocuous, would encourage employers of all sizes to avoid salary transparency altogether by replacing their usual postings with advertisements saying "We are hiring in the investment research space" or "We are hiring in the executive human resources area."

Intro134 also excludes: "Positions that are not required to be performed, at least in part, in the city of New York."

This exclusion would also allow all New York City employers of all sizes to evade the law by simply adding to their job postings: "Remote work may be an option" - thus demonstrating that the job is not required to be performed in the City but could possibly be performed at an employee's home in Westchester or Long Island. Thus, LL32 would be applicable only to those jobs for which remote work is never an option.

**2. By excluding business with 4-15 employees from coverage, Intro134 promotes compensation secrecy for millions of employees and sets a dangerous precedent with regard to the City Human Rights Law in general.**

LL32, like most of the other provisions of the Human Rights Law, applies to businesses with four or more employees. Over the past decade, all changes in the Human Rights Law have trended toward including more employers, not fewer, including, for example, protection for domestic workers, and protection for all employees, regardless of their employers' size, from gender-based harassment. Regrettably, Intro134, which exempts workers who are employed by businesses of 15 or fewer, is a giant step backward when it comes to the scope of the Human Rights Law, one of the country's most robust anti-discrimination laws. In fact, to our knowledge, Intro 134 is the first bill that would exclude private businesses with greater than 4 employees from any provision of that law since the law was enacted in 1965.

Ironically, LL32's burden on small businesses, whom this bill is ostensibly protecting, is much lighter than that posed by other provisions of the Human Rights Law. It simply requires posting of salary ranges when jobs are posted.

**3. Rebutting the claims made in the press release issued by The Partnership for the City of New York and the borough Chambers of Commerce.**

On April 4, 2022, The Partnership for New York City and the borough Chambers of Commerce issued a press statement opposing LL32 and in support of Intro 134, allegedly because of LL 32's deleterious effects on small and minority and women owned businesses.<sup>1</sup> Of course, these organizations have raised similar alarms, on similar grounds, concerning many anti-discrimination and pro-worker initiatives such as good cause termination for fast food workers, paid leave and the Paycheck Fairness Act.<sup>2</sup>

The Partnership argues:

“New York City is a highly competitive labor market, where most employers are committed to gender and racial pay parity.”

In fact, the wage gap in New York City is enormous, indicating that employer “commitment” to gender and racial pay parity, to the extent that it exists, has little effect on the gaping wage gap. A recent comprehensive study performed by the New York City Comptroller revealed stunning

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<sup>1</sup> *Employers Call on City Council to Amend Salary Posting Law*. Partnership for New York City. (2022, April 4). <https://pfnyc.org/news/employers-call-on-city-council-to-amend-salary-posting-law/>

<sup>2</sup> *U.S. Chamber Letter Opposing H.R. 7, the "Paycheck Fairness Act."* U.S. Chamber of Commerce. (2019, March 26). <https://www.uschamber.com/workforce/https-www-uschamber-com-letter-us-chamber-letter-opposing-hr-7-the-paycheck-fairness-act>; *Testimony*. Brooklyn Chamber of Commerce. (2020, May 5). <https://www.brooklynchamber.com/wp-content/uploads/2020/05/BCC-Testimony-for-NYCC-Hearing-May-5-2020.pdf>; Kauzlarich, Mark. *NYC Fast-Food Worker Law Shines Light on 'Just Cause' Policies*. Bloomberg Law. (2021, Feb. 1). <https://news.bloomberglaw.com/daily-labor-report/nyc-fast-food-worker-law-shines-light-on-just-cause-policies>

race and gender pay gaps in every pay classification in the city. For example, the study showed that

“Hispanic, AAPI, and Black women financial managers make 45 cents, 40 cents, and 39 cents, respectively, for every dollar paid to white male financial managers. The gender wage gap is smaller but still stark for white women, who make 60 cents to the dollar.”

The pattern holds true in all wage classifications, including but not limited to retail store supervisors, secretaries and registered nurses.<sup>3</sup>

The Partnership further argues:

“For example, to secure the skills needed in an industry like health care, employers may offer different compensation packages to attract licensed professionals from outside the city.”

This argument implies that New York City based employers are justified in paying prospective employees who live outside the City, and would have to move to the City, a higher salary than those who are already City residents. In other words, such a policy would disadvantage New York City residents. It is hard to understand why the City Council would want to promote such a policy as a justification for compensation secrecy.

The Partnership states:

“In the corporate sector, employers are seeking to diversify their executive teams and may offer higher compensation for BIPOC job candidates.”

As demonstrated by the Comptroller’s survey, for example, it is manifest that the compensation secrecy of the past has in fact benefited white male workers. There is no evidence that compensation secrecy has ever benefited BIPOC job candidates.<sup>4</sup>

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<sup>3</sup> *On Equal Pay Day, Comptroller Stringer Releases First-of-its-kind Analysis Spotlighting Massive Gender and Racial Wage Gaps by Occupation in New York City*. New York City Comptroller. (2018, Apr. 10).

<https://comptroller.nyc.gov/newsroom/on-equal-pay-day-comptroller-stringer-releases-first-of-its-kind-analysis-spotlighting-massive-gender-and-racial-wage-gaps-by-occupation-in-new-york-city/>; *Inside the Gender Wage Gap, Part I: Earnings of Black Women in New York City*. New York City Comptroller. (2018, Aug. 3).

<https://comptroller.nyc.gov/reports/gender-wage-gap/inside-the-gender-wage-gap/inside-the-gender-wage-gap-part-i-earnings-of-black-women-in-new-york-city/>

<sup>4</sup> To further rebut the Partnership’s hypothetical, it is generally unlawful under federal, state and city law to discriminate in the terms and conditions of employment based on race, including making terms and conditions of employment more favorable to non-white employees. See, e.g., McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976); Aulicino v. N.Y.C. Dep’t of Homeless Servs., 580 F.3d 73 (2d Cir. 2009); *Race/Color Discrimination – FAQs*. U.S. Equal Employment Opportunity Commission. <https://www.eeoc.gov/youth/racecolor-discrimination-faqs#Q6>

The Partnership argues:

“The city’s MWBE firms are generally at a disadvantage in competing for scarce talent and are likely to be outbid if a majority competitor has access to their salary offering.”

This cynical argument assumes that Minority and Women Owned Business Enterprises (MWBE) firms, unlike majority firms, are unwilling or unable to pay fairly for talent, and that these firms somehow benefit from hiding their true salary ranges from prospective employees. It ignores the resilience and attractiveness of MWBE firms and the sophistication of their prospective employees. Most important, this is an argument in favor of compensation secrecy altogether -- and the statistics prove that decades of compensation secrecy have hurt women and employees of color, not helped them. Finally, when taken to its logical extreme, this is a dangerous argument for exempting MWBE firms from the City’s Human Rights Law altogether.

Finally, the Partnership alleges:

“Although the employer has discretion with respect to minimum and maximum salaries that are posted, existing employees will be watching what range is offered to new employees and will inevitably question how that relates to their own compensation. During a labor shortage, or in the context of achieving diversity goals, the posted maximum may be significantly higher than the historical salary ranges, creating dissatisfaction in the workforce and demands to adjust existing pay scales that the employer may be unable to afford.”

It is true that when women and people of color learn that they are being paid less than their white male counterparts, dissatisfaction in the workforce often results. Of course, an employer always has the choice to raise the compensation of its current workers at the same time it sets higher salary ranges for prospective employees.

#### **4. The link between wage transparency and pay equity.**

Finally, I want to address the surprising skepticism that emerged at the hearing on Int 134 regarding the connection between salary transparency and pay equity. There is no question that study after study has shown that salary transparency is the first step toward pay equity, and that compensation secrecy never leads to pay equity.<sup>5</sup>

It might help to give individual scenarios that demonstrate the inextricable link between the two:

Scenario 1:

A Black female employee is hired and receives no raises. She is told by her boss that this is because she is “at the top of her salary range.” This is in fact, true. Had the salary range been

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<sup>5</sup> See e.g., Baker et al. (Dec. 2021). *Pay Transparency and the Gender Gap*. National Bureau of Economic Research. [https://www.nber.org/system/files/working\\_papers/w25834/w25834.pdf](https://www.nber.org/system/files/working_papers/w25834/w25834.pdf); Bennedsen et.al. (Oct. 2018) *Do firms respond to gender pay gap disclosure?\**. FAMBUSS. [https://www.econometrics.ku.dk/fambuss/publications/gender\\_pay\\_oct25pm.pdf](https://www.econometrics.ku.dk/fambuss/publications/gender_pay_oct25pm.pdf)

posted when she applied for the job, she might not have taken it, because it would have been clear to her that her opportunities for raises might be limited.

Scenario 2:

A Black female employee is hired and receives no raises. She is told this is because she is “at the top of her salary range.” This is in fact, not true. In fact, white men who were hired at the same time were offered significantly higher starting salaries. Had she known the salary range when she applied for the position, she would have been more likely to take the risk of negotiating for a higher salary.<sup>6</sup>

Scenario 3:

A position is posted internally and externally. A currently-employed Black female employee applies and is told the salary is less than that at her current job, so she doesn’t pursue the opportunity. A less qualified college fraternity brother of the hiring manager applies and is offered a higher salary than the Black female for the same position. Had the actual offering salary been posted, the Black female employee would have pursued the opportunity.

Salary transparency laws reduce the need for individuals to enter a bargaining scenario with a prospective employer -- scenarios that disadvantage women and people of color, who are on the one hand less likely to negotiate and on the other hand, viewed negatively when they do.<sup>7</sup>

Finally, and critically, salary transparency laws make it easier for employers to comply with laws that require equal pay for equal work. Employers can use the tools mandated by LL32 to discover whether there are pay inequities among their current workforces, and take action to alleviate those inequities before they confront administrative action or litigation.

In conclusion, NELA/NY strongly urges that the City Council leave LL32 in its current form and reject Intro134.

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<sup>6</sup> “... (W)omen have been found to be less willing than men to negotiate and compete and to be more risk averse.” Blau, Francine & Kahn, Lawrence. (Sept. 2017). *The Gender Wage Gap: Extent, Trends, and Explanations*. Journal of Economic Literature. 55(3), 836. <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jel.20160995>

<sup>7</sup>*Ibid.*; Hernandez et. al. (2019) *Bargaining While Black, The Role of Race in Salary Negotiations*. American Psychological Association. 104(4), 581-592. <https://www.apa.org/pubs/journals/releases/apl-apl0000363.pdf>