



Testimony by New York Legal Assistance Group (NYLAG)

before the NYC Council Committee on Courts & Legal Services regarding:

Examining Low-Wage Workers and Legal Services Needs

October 16, 2017

Chair Lancman, Council Members, and staff, good morning and thank you for the opportunity to speak to the Committee on Courts & Legal Services regarding the legal needs of low-wage New Yorkers. My name is Katherine Bromberg and I am a Senior Staff Attorney in the Employment Law Project at the New York Legal Assistance Group (NYLAG). NYLAG is a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

While NYLAG's Employment Law Project works with low-wage workers on wage and hour issues and unemployment, I would like to focus today's testimony on NYLAG's unique employment discrimination practice, which encompasses the majority of the Project's work. Our cases involve discrimination, including but not limited to: age, sex, gender identity, sexual orientation, race, national origin, pregnancy, disability, criminal background, military status, and status as a survivor of domestic violence.

The Employment Law Project has developed a particular expertise in representing transgender clients, who are often referred by NYLAG's LGBTQ Law Project, which provides a host

of other legal services to LGBTQ communities. While there is currently no Second Circuit precedent recognizing that transgender individuals are covered by Title VII, which prohibits sex discrimination, we are continuously pursuing cases on behalf of transgender individuals at the Equal Employment Opportunity Commission (EEOC) and in federal court. As a result of this advocacy, the EEOC has successfully mediated or issued reasonable cause determinations in all of NYLAG's cases advocating for transgender individuals. The EEOC even chose to litigate a case on behalf of Danielle, a NYLAG client who faced rampant discrimination while working at an IHOP franchise.¹ The staff at the restaurant where Danielle worked made crude and derogatory references regarding Danielle's gender identity, maliciously and repeatedly referring to her with a male name and male pronouns. They called her offensive names like "tranny" and even made harassing inquiries and comments about her genitalia. After Danielle complained to management about the sustained harassment on several occasions, she was told that she was being fired for chewing gum².

NYLAG represents low-wage workers in employment discrimination cases in City, State, and Federal agencies, as well as in federal litigation. We also provide limited representational services in mediation at the City Commission on Human Rights. Our comprehensive employment discrimination work is especially critical because, despite what many assume, the private bar is generally unwilling to take these cases for low-wage workers. Because a large part of any settlement reached for these clients is based on back pay, private bar attorneys are often unable to recover substantial fees; without a class, it is not financially worthwhile for private attorneys to represent these individuals. Even if a private bar attorney was willing to take one of these cases on a contingency basis, it would likely cost the client upwards of 40% of his or her settlement amount.

¹ U.S. Equal Employment Opportunity Commission. Press release. 9 June 2017.

<https://www.eeoc.gov/eeoc/newsroom/release/6-9-17.cfm>

² Bromberg, Katherine and Mariah Vitall. "EEOC Files Gender Identity Lawsuit in SDNY." *Huffington Post*. 22 June 2017.

https://www.huffingtonpost.com/entry/eeoc-files-gender-identity-lawsuit-in-sdny_us_594c0227e4b092ed90588c84

Nonprofit, public interest organizations are vital to ensuring that low-wage workers are able to access justice.

NYLAG's Employment Law Project works hard to fill the gap in services to ensure that income is not a barrier to low-income victims of discrimination seeking compensation for lost wages, emotional distress, and other relief. Unfortunately, while City funding for legal services in some areas has increased dramatically in recent years, funding for representation of low-wage workers remains a very small piece of the total funding. Given its reliance on private funding, NYLAG's Employment Law Project consists of only two attorneys, who were until recently joined by a Skadden Fellow who specialized in employment mediation. Because the unit is so lean, it is not able to provide representation for every meritorious case that is referred. NYLAG enthusiastically encourages the City Council, and the Administration, to look into opportunities to fund work combating employment discrimination and abuse of low-wage workers by employers. This would allow NYLAG and other legal services organizations to expand their practices, serving more clients in need.

I want to once again thank Chair Lancman and the Committee for inviting me to testify today. I am happy to answer any questions, and look forward to speaking to you more about the important work NYLAG is doing on behalf of low-wage workers.

Respectfully submitted,

New York Legal Assistance Group