Commission on Human Rights

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NYC COMMISSION ON HUMAN RIGHTS
Legal Enforcement Guidance on the
Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23)

The New York City Human Rights Law ("NYCHRL") prohibits discrimination in employment, public accommodations, and housing. It also prohibits discriminatory harassment and bias-based profiling by law enforcement. The NYCHRL, pursuant to the 2005 Civil Rights Restoration Act, must be construed "independently from similar or identical provisions of New York state or federal statutes," such that "similarly worded provisions of federal and state civil rights laws [are] a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise."[1]

The New York City Commission on Human Rights (the "Commission") is the City agency charged with enforcing the NYCHRL. Individuals interested in vindicating their rights under the NYCHRL can choose to file a complaint with the Commission's Law Enforcement Bureau within one (1) year of the discriminatory act or file a complaint in New York State Supreme Court within three (3) years of the discriminatory act.

The NYCHRL prohibits unlawful discrimination in public accommodations, housing and employment on the basis of gender. Gender is defined as one's "actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth."[2] This document serves as the Commission's legal enforcement guidance of the NYCHRL's protections as they apply to discrimination based on gender, and gender identity and gender expression, which constitute gender discrimination under the NYCHRL. This document is not intended to serve as an exhaustive list of all forms of gender-based discrimination claims under the NYCHRL.

I. LEGISLATIVE INTENT

In 2002, the New York City Council passed the Transgender Rights Bill to expand the scope of the gender-based protections guaranteed under the NYCHRL, and ensure protection for people whose "gender and self-image do not fully accord with the legal sex assigned to them at birth."[3] The City's intent in amending the law was to make explicit that the law prohibits discrimination against transgender people.[4] The legislative history reflects that transgender people face frequent and severe discrimination such that protection from discrimination is "very often a matter of life and death."[5] Recognizing the profoundly debilitating impact of gender-based discrimination on transgender and other gender non-conforming individuals, the amendment makes clear that "gender-based discrimination – including, but not limited to, discrimination based on an individual's actual or perceived sex, and discrimination

1 Local Law No. 85 (2005); *see also* N.Y.C. Admin. Code § 8-130 ("The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title have been so construed.")

2 Local Law No. 3 (2002); N.Y.C Admin. Code § 8-102(23).

3 *Id.*

4 Report of the Governmental Affairs Division, Committee on General Welfare, Intro. No. 24, to amend the administrative code of the city of New York in relation to gender-based discrimination (April 24, 2002) *accessible through* http://legistar.council.nyc.gov/Legislation.aspx.

5 *Id.*

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based on an individual's gender identity, self-image, appearance, behavior, or expression – constitutes a violation of the City's Human Rights Law."[6]

II. DEFINITIONS

These definitions are intended to help people understand the following guidance as well as their rights and responsibilities under the NYCHRL.

Cisgender:
an adjective denoting or relating to a person whose self-identity conforms with the gender that corresponds to their biological sex, *i.e,* someone who is not transgender.

Gender Identity:
one's internal deeply-held sense of one's gender which may be the same or different from one's sex assigned at birth. One's gender identity may be male, female, neither or both, *e.g.,* non-binary. Everyone has a gender identity. Gender identity is distinct from sexual orientation.

Gender Expression:
the representation of gender as expressed through, for example, one's name, choice of pronouns, clothing, haircut, behavior, voice, or body characteristics. Gender expression may not be distinctively male or female and may not conform to traditional gender-based stereotypes assigned to specific gender identities.

Gender:
an individual's actual or perceived sex, gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned at birth.

Gender Non-Conforming:
an adjective sometimes used to describe someone whose gender expression differs from traditional gender-based stereotypes. Not all gender non-conforming people are transgender. Conversely, not all transgender people are gender non-conforming.

Intersex:
a term used to refer to a person whose reproductive or sexual anatomy and/or chromosomal pattern does not fit typical definitions of male or female. There are many different medical diagnoses or conditions that an intersex person may have.

Sex:
a combination of bodily characteristics including chromosomes, hormones, internal and external reproductive organs, secondary sex characteristics, and gender identity. Most people are assigned male or female at birth based on the appearance of their external genitalia.

Transgender:
an adjective used to describe someone whose gender identity or expression is not typically associated with the sex assigned at birth. It can be used to describe people with a broad range of identity or expression. Someone who identifies their gender as androgynous, gender queer, non-binary, gender non-conforming, MTF (male to female), or FTM (female to male) may also consider themselves to be transgender.

6 *Id.*

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III. VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW'S PROHIBITIONS ON GENDER DISCRIMINATION

Gender discrimination under the NYCHRL includes discrimination on the basis of gender identity, gender expression, and transgender status.[7] The definition of gender also encompasses discrimination against someone for being intersex. Under the NYCHRL, gender discrimination can be based on one's perceived or actual gender identity, which may or may not conform to one's sex assigned at birth, or on the ways in which one expresses gender, such as through appearance or communication style. Gender discrimination is prohibited in employment, housing, public accommodations, discriminatory harassment, and bias-based profiling by police and exists whenever there is disparate treatment of an individual on account of gender. When an individual is treated "less well than others on account of their gender,"[8] that is gender discrimination under the NYCHRL.

Harassment motivated by gender is a form of discrimination. Gender-based harassment can be a single or isolated incident of disparate treatment or repeated acts or behavior. Disparate treatment can manifest in harassment when the incident or behavior creates an environment or reflects or fosters a culture or atmosphere of sex stereotyping, degradation, humiliation, bias, or objectification. Under the NYCHRL, gender-based harassment covers a broad range of conduct and occurs generally when an individual is treated less well on account of their gender. While the severity or pervasiveness of the harassment is relevant to damages, the existence of differential treatment based on gender is sufficient under the NYCHRL to constitute a claim of harassment. Gender-based harassment can include unwanted sexual advances or requests for sexual favors; however, the harassment does not have to be sexual in nature. For example, refusal to use a transgender employee's preferred name, pronoun, or title may constitute unlawful gender-based harassment. Comments, unwanted touching, gestures, jokes, or pictures that target an individual based on gender constitute gender-based harassment.

Unlawful gender-based discrimination is prohibited in the following areas:

Employment:

It is unlawful to refuse to hire, promote, or fire an individual because of a person's actual or perceived gender, including actual or perceived status as a transgender person. It is also unlawful to set different terms and conditions of employment because of an employee's gender. Examples of terms and conditions of employment include work assignments, employee benefits, and keeping the workplace free from harassment.

Public Accommodations:

It is unlawful for providers of public accommodations, their employees, or their agents to deny any person, or communicate intent to deny, the services, advantages, facilities or privileges of a public accommodation directly or indirectly because of their actual or perceived gender, including actual or perceived status as a transgender person. Simply put, it is unlawful to deny any person full and equal enjoyment of a public accommodation because of gender.

Housing:

It is unlawful to refuse to sell, rent, or lease housing to someone because of their actual or perceived gender, including actual or perceived status as a transgender

7 N.Y.C. Admin. Code § 8-102(23).

8 *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S.2d 27, 39 (App. Div. 2009)

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person. It is unlawful to withhold from any person full and equal enjoyment of a housing accommodation because of their gender.[9]

1. Failing To Use an Individual's Preferred Name or Pronoun

The NYCHRL requires employers and covered entities to use an individual's preferred name, pronoun and title (*e.g.*, Ms./Mrs.) regardless of the individual's sex assigned at birth, anatomy, gender, medical history, appearance, or the sex indicated on the individual's identification.

Most individuals and many transgender people use female or male pronouns and titles. Some transgender and gender non-conforming people prefer to use pronouns other than he/him/his or she/her/hers, such as they/them/theirs or ze/hir.[10] Many transgender and gender non-conforming people choose to use a different name than the one they were given at birth.

All people, including employees, tenants, customers, and participants in programs, have the right to use their preferred name regardless of whether they have identification in that name or have obtained a court-ordered name change, except in very limited circumstances where certain federal, state, or local laws require otherwise (*e.g.*, for purposes of employment eligibility verification with the federal government). Asking someone their preferred gender pronoun and preferred name is not a violation of the NYCHRL.

Examples of Violations

a. Intentional or repeated refusal to use an individual's preferred name, pronoun or title. For example, repeatedly calling a transgender woman "him" or "Mr." after she has made clear which pronouns and title she uses.

b. Refusal to use an individual's preferred name, pronoun, or title because they do not conform to gender stereotypes. For example, calling a woman "Mr." because her appearance is aligned with traditional gender-based stereotypes of masculinity.

c. Conditioning an individual's use of their preferred name on obtaining a court-ordered name change or providing identification in that name. For example, a covered entity may not refuse to call a transgender woman her preferred name, Jane, because her identification says that her first name is John.[11]

d. Requiring an individual to provide information about their medical history or proof of having undergone particular medical procedures in order to use their preferred name, pronoun, or title.

Covered entities may avoid violations of the NYCHRL by creating a policy of asking everyone what their preferred gender pronoun is so that no individual is singled out for such questions and by updating their systems to allow all individuals to self-identify their names and genders. They should not limit the options for identification to male and female only.

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9 Protections on the basis of gender under the NYCHRL are subject to the same limitations as all other protected categories. *See* N.Y.C. Admin. Code §§ 8-102(5); 8-107(5)(a)(4)(1),(2); 8-107(4)(b).

10 Ze and hir are popular gender-free pronouns preferred by some transgender and/or gender non-conforming individuals.

11 Where covered entities regularly request a form of identification from members of the public for a legitimate business reason, requesting a form of identification from transgender and/or gender non-conforming individuals is not unlawful. Just as is the case for many cisgender individuals, many transgender and/or gender non-conforming individuals' appearances may not appear the same as what is represented on their photo identification. Covered entities may use a form of identification to corroborate an individual's identification, but may not subject a transgender or gender non-conforming individual to a higher level of scrutiny than any other person presenting a form of identification.

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2. Refusing To Allow Individuals To Utilize Single-Sex Facilities and Programs Consistent with Their Gender

The NYCHRL requires that individuals be permitted to use single-sex facilities, such as bathrooms or locker rooms, and participate in single-sex programs, consistent with their gender, regardless of their sex assigned at birth, anatomy, medical history, appearance, or the sex indicated on their identification. The law does *not* require entities to make existing bathrooms all-gender or construct additional restrooms. Covered entities that have single-occupancy restrooms should make clear that they can be used by people of all genders.[12]

Some people, including, for example, customers, other program participants, tenants, or employees, may object to sharing a facility or participating in a program with a transgender or gender non-conforming person. Such objections are not a lawful reason to deny access to that transgender or gender non-conforming individual.

Examples of Violations

a. Prohibiting an individual from using a particular program or facility because they do not conform to sex stereotypes. For example, a women's shelter may not turn away a woman because she looks too masculine nor may a men's shelter deny service to a man because he does not look masculine enough.

b. Prohibiting a transgender or gender non-conforming person from using the single-sex program or facility consistent with their gender identity or expression. For example, it is an unlawful discriminatory practice to prohibit a transgender woman from using the women's bathroom.

c. Requiring a transgender or gender non-conforming individual to provide proof of their gender in order to access the appropriate single-sex program or facility.

d. Requiring an individual to provide identification with a particular sex or gender marker in order to access the single-sex program or facility corresponding to their gender.

e. Barring someone from a program or facility out of concern that a transgender or gender non-conforming person will make others uncomfortable.

f. Forcing a transgender or gender non-conforming person to use the single-occupancy restroom.

Covered entities may avoid violations of the NYCHRL, by, wherever possible, providing single-occupancy restrooms and providing private space within multi-user facilities for anyone who has privacy concerns. Covered entities may accommodate an individual's request to use a single-occupancy restroom because of their gender. For example, an individual who is non-binary or who is in the process of transitioning may wish to use a single-occupancy restroom. As noted above, however, it is unlawful to *require* an individual to use a single-occupancy restroom because they are transgender or gender non-conforming. Covered entities should create policies to ensure that all individuals are allowed to access the single-sex facility consistent with their gender identity or expression and train all employees, but particularly all managers and employees who have contact with members of the public, on compliance with the policy, and their obligation under the NYCHRL to provide non-discriminatory access to single-sex facilities including for transgender and gender non-conforming people. Covered entities should post a sign in all single-sex facilities that states, "Under New York City Law, all individuals have the right to use the single-sex facility consistent with their gender identity or expression." Covered entities may

12 A single-occupancy restroom is a room with a single toilet, walls, a sink, and a door.

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adopt policies or codes of conduct for single-sex facilities delineating acceptable behavior for the use of the facilities that are not themselves discriminatory and do not single out transgender or gender non-conforming people.

An individual's assessment of their own safety should be a primary consideration. Covered entities should offer opportunities for people to come to them if they have safety concerns and should establish a corresponding safety plan if needed. For example, if a transgender resident requests assignment to a facility corresponding to their sex assigned at birth instead of a placement corresponding to their gender identity, that request should be honored.

3. Sex Stereotyping

Discrimination based on an individual's failure to conform to sex stereotypes is a form of gender discrimination under the NYCHRL. Sex stereotypes are widely-held over-simplified expectations about how people of a particular sex or gender should be or how they should act. They include expectations of how an individual represents or communicates gender to others, such as behavior, clothing, hairstyle, activities, voice, mannerisms, or body characteristics. Sex stereotypes also relate to the roles or behaviors assigned to those who identify as male or female. Covered entities may not require individuals to conform to stereotypical norms of masculinity or femininity. The law also recognizes that unlawful sex stereotyping often manifests itself as anti-gay epithets, or attributing a particular sexual orientation to individuals who do not conform to sex stereotypes.

Examples of Violations

a. Using anti-gay epithets when speaking to or about an individual based on their non-conformity with gender norms.

b. Overlooking a female employee for a promotion because her behavior does not conform to the employer's notion of how a female should behave at work.

c. Enforcing a policy in which men may not wear jewelry or make-up at work.

Covered entities may avoid violations of the NYCHRL by training all staff on creating and maintaining an environment free from sex stereotyping.

4. Imposing Different Uniforms or Grooming Standards Based on Sex or Gender

Under the NYCHRL, employers and covered entities may not require dress codes or uniforms, or apply grooming or appearance standards, that impose different requirements for individuals based on sex or gender. Under federal law, differing standards based on sex or gender are permitted so long as they do not impose an undue burden, an evidentiary standard that the plaintiff must prove. Differences that have been perceived by courts to be slight or that do not impose significantly greater burdens based on gender have generally been permitted; for example, courts have upheld requirements that female bartenders wear makeup, or that male servers wear ties.[13] While some courts have found uniforms and grooming standards that perpetuate sex stereotypes impermissible in extreme cases – for example, where an

13 *See, e.g., Jespersen v. Harrah's Operating Co., Inc.*, 392 F.3d 1076 (9th Cir. 2004) *aff'd on reh'g*, 444 F.3d 1104 (9th Cir. 2006) (granting summary judgment for defendant because plaintiff failed to produce evidence that requiring female bartenders to wear makeup placed greater burden on women than on men); *Fountain v. Safeway Stores, Inc.*, 555 F.2d 753 (9th Cir. 1977) (finding that a requirement that male employees wear ties was not sex discrimination under Title VII because it was not overly burdensome to its employees); *Barker v. Taft Broadcasting Co.*, 549 F.2d 400, 401 (6th Cir. 1977) (holding that "employer grooming codes requiring different hair lengths for men and women bear such a negligible relation to the purposes of Title VII that we cannot conclude they were a target of the Act."); *Longo v. Carlisle DeCoppet & Co.*, 537 F.2d 685 (2d Cir. 1976) (holding that requiring short hair on men and not on women does not violate Title VII).

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employer required only female employers to wear an overtly sexualized uniform[14] – courts have generally upheld such standards when courts deem them innocuous or based in long-held, traditional gender norms.

In keeping with the requirements of the Restoration Act of 2005, the NYCHRL looks to these cases as a floor rather than a ceiling, and to that end, does not require a showing that different uniform or grooming standards create an unequal burden or disparate effect to qualify as gender discrimination. Under the NYCHRL, the fact that the grooming standard or dress code differentiates based on gender is sufficient for it to be considered discriminatory, even if perceived by some as harmless. Holding individuals to different grooming or uniform standards based on gender serves no legitimate non-discriminatory purpose and reinforces a culture of sex stereotypes and accepted cultural norms based on gender expression and identity.

The variability of expressions associated with gender and gender norms contrast vastly across culture, age, community, personality, style, and sense of self. Placing the burden on individuals to justify their gender identity or expression and demonstrate why a particular distinction makes them uncomfortable or does not conform to their gender expression would serve to reinforce the traditional notion of gender that our law has disavowed. Differing standards based on gender will always be rooted in gender norms and stereotypes, even when they may be perceived by some as innocuous. When an individual is treated differently because of their gender and required to conform to a specific standard assigned to their gender, that is gender discrimination regardless of intent, and that is not permissible under the NYCHRL.

Employers and covered entities are entitled to enforce a dress code, or require specific grooming or appearance standards; however it must be done without imposing restrictions or requirements specific to gender or sex. It will not be a defense that an employer or covered entity is catering to the preferences of their customers or clients.

Examples of Violations

a. Maintaining grooming and appearance standards that apply differently to individuals who identify as men or women or which have gender-based distinctions. For example, requiring different uniforms for men and women, or requiring that female bartenders wear makeup.

b. Requiring employees of one gender to wear a uniform specific to that gender.

c. Permitting only individuals who identify as women to wear jewelry or requiring only individuals who identify as male to have short hair. Requiring all servers, for example, to always have long hair tied back in a ponytail or away from their face is not a violation unless it is applied unequally based on gender.

d. Permitting female but not male residents at a drug treatment facility to wear wigs and high heels.

e. Requiring all men to wear ties in order to dine at a restaurant.

Covered entities may avoid violations of the NYCHRL by creating gender-neutral dress codes and grooming standards. For example, a covered entity may require individuals to either wear their hair short or pulled back from the face or require that workers must wear either a pantsuit or a skirt suit. Covered entities may provide different uniform options that are culturally typically male and typically female. For example, an employer that provides uniform shirts may provide a shirt that is more typical of a woman's blouse and another that is looser fitting in a style more typical of

14 *EEOC v. Sage Realty Corp.*, 507 F. Supp. 599, 608-09 (S.D.N.Y. 1981), *supplementing decision,* 521 F. Supp. 263 (S.D.N.Y. 1981).

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a man's button down shirt. It would be unlawful, however, to require an employee to wear one style over another.

5. Providing Employee Benefits that Discriminate Based on Gender

The NYCHRL prohibits covered entities from offering employee benefits that discriminate on the basis of gender. To comply with the law, entities must offer benefits equally to all employees regardless of gender. Employee benefit plans that are covered by, and in compliance with, the Employee Retirement Income Security Act and applicable federal anti-discrimination laws are also in compliance with the NYCHRL.[15]

It is unlawful for an employer to provide health benefit plans that deny or exclude services on the basis of gender. To be non-discriminatory with respect to gender, health benefit plans must cover transgender care, also known as transition-related care or gender-affirming care. In no case, however, will an employer that has selected a non-discriminatory plan be liable for the denial of coverage of a particular medical procedure by an insurance company, even when that denial may constitute discrimination on the basis of gender.

Transgender care is medically necessary, effective, and even life-saving for many transgender people. Transgender care includes a range of treatments, including, for example, hormone replacement therapy, voice training, or surgery. What a particular individual will seek differs according to their needs and overall health. Some insurance plans categorically exclude transgender care from coverage. Federal law requires self-insured plans governed by the Affordable Care Act to cover medically necessary transition-related care and New York State law requires fully-insured New York plans to do the same.[16]

Examples of Violations

a. Employers offering health benefits to the opposite-sex spouses of employees, but not same-sex spouses.

b. Employers offering health benefits that do not cover care when an individual's sex assigned at birth or gender otherwise recorded in a medical record or insurance plan is different from the one to which health services are ordinarily or exclusively available. For example, offering benefits that cover prostate cancer screening for cisgender men but not for transgender women.

c. Employers offering health benefits that categorically exclude from coverage, or limit coverage for, health services related to gender transition.

d. Employers offering any other employee benefits that discriminate on the basis of gender. For example, offering a stipend for child care to female but not male employees.

Covered entities may avoid violations under the NYCHRL by reviewing their existing health benefit plans, and if they do not already, provide an option that includes comprehensive coverage for transgender people. Employers should take care to select plans that follow recognized professional standards or medical care for transgender individuals, for example, the standards of care of the World Professional Association for Transgender Health. Because there are few health care providers currently performing certain transition-related and/or gender-affirming care, employers should consider selecting plans that do not prohibit, place limits on, or have significantly higher co-pays or low reimbursements rates for out-of-network care.

15 N.Y.C. Admin. Code § 8-107(e)(i).

16 Patient Protection & Affordable Care Act, 42 U.S.C. § 18116 (2010); N.Y. Dep't. of Fin. Serv., Insurance Circular Letter No. 7 on Health Insurance Coverage for the Treatment of Gender Dysphoria (Dec. 2014). The Commission does not have jurisdiction to enforce these laws.

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6. Considering Gender When Evaluating Requests for Accommodations

The NYCHRL prohibits covered entities from considering gender when evaluating requests for accommodations for disabilities, or other requests for changes to the terms and conditions of one's employment, participation in a program, or use of a public accommodation, which may include additional medical or personal leave or schedule changes.[17] When a covered entity grants leave or time off of work to employees for medical or health reasons, it shall treat leave requests to address medical or health care needs related to an individual's gender identity in the same manner as requests for all other medical conditions. Covered entities shall provide reasonable accommodations to individuals undergoing gender transition, including medical leave for medical and counseling appointments, surgery and recovery from gender affirming procedures, surgeries and treatments as they would for any other medical condition.

Examples of Violations

a. An employer who has a policy of routinely granting unpaid medical leave upon request to individuals who have been working for the employer for over a year, who refuses to honor that policy when the request is made by a transgender individual.

b. When an employer or covered entity permits a reasonable accommodation for a cisgender woman seeking reconstructive breast surgery deemed medically necessary but refuses that same accommodation when requested by a transgender woman undergoing the same medically necessary surgery.

c. Requesting medical documentation to verify leave time from transgender employees or participants, but not cisgender employees or participants.

d. Determining the retention and accrual of benefits, such as seniority, retirement, and pension rights, during personal or medical leave periods for employees based on gender.

Employers may avoid violations under the NYCHRL by creating internal procedures to evaluate all requests for accommodations in a fair and non-discriminatory manner.

7. Engaging in Discriminatory Harassment

The NYCHRL prohibits discriminatory harassment or violence motivated by a person's actual or perceived gender identity or expression that attempts to interfere with, or actually interferes with, the free exercise of a legal right. Discriminatory harassment includes violence, the threat of violence, a pattern of threatening verbal harassment, the use of force, intimidation or coercion, defacing or damaging real property and cyberbullying. For example, a tenant assaulting or threatening to assault a neighbor because of her gender expression, in addition to committing a crime, is also violating the NYCHRL.

8. Engaging in Retaliation

The NYCHRL prohibits retaliation against an individual for opposing discrimination or requesting a reasonable accommodation for a disability based on gender identity or expression. Opposing discrimination includes, but is not limited to, making an internal complaint about discrimination, making an external complaint of discrimination to the Commission or another government agency, or participating in an investigation of

17 While it is not the focus of this guidance, transgender individuals may have additional rights under Section 8-107(15) of the NYCHRL, including the right to reasonable accommodations. Some transgender people have a diagnosis of gender dysphoria, which is a disability within the meaning of the NYCHRL. As with any disability, covered entities must make reasonable accommodations for individuals with gender dysphoria.

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discrimination. An action taken against an individual that is reasonably likely to deter them from engaging in such activities is considered unlawful retaliation. The action need not rise to the level of a final action or a materially adverse change to the terms and conditions of employment, housing, or participation in a program to be retaliatory under the NYCHRL. When an individual opposes what they believe in good faith to be unlawful discrimination, it is unlawful to retaliate against the individual even if the conduct they opposed is not ultimately determined to violate the NYCHRL.

Examples of Violations

a. Repeatedly assigning an individual to work the least desirable shifts contrary to the normal practice of rotating those shifts equally among staff after the individual makes an internal complaint of discrimination.

b. Demoting or firing an individual who has filed a complaint with the Commission or has filed their own case in civil court.

c. Failing to grant accommodations for an individual otherwise not required under the law but that are routinely provided by the employer after the individual was interviewed as a witness in a coworker's case alleging discrimination.

d. Refusing to advance a program participant to the next stage of the program despite their successful completion of the previous stage because the participant raised concerns about unequal treatment.

Covered entities may avoid violations of the NYCHRL by implementing internal anti-discrimination policies to educate employees, tenants, and program participants of their rights and obligations under the NYCHRL with respect to gender identity and expression and regularly train staff on these issues. Covered entities should create procedures for employees, tenants, and program participants to internally report violations of the law without fear of adverse action and train those in supervisory capacities on how to handle those claims when they witness discrimination or instances are reported to them by subordinates. Covered entities that engage with the public should implement a policy for interacting with the public in a respectful, non-discriminatory manner consistent with the NYCHRL, respecting gender diversity, and ensuring that members of the public do not face discrimination, including with respect to single-sex programs and facilities.

IV. PENALTIES IN ADMINISTRATIVE ACTIONS

The Commission can impose civil penalties up to $125,000 for violations, and up to $250,000 for violations that are the result of willful, wanton, or malicious conduct. The amount of a civil penalty will be guided by the following factors, among others:

- The severity of the particular violation;
- The existence of previous or subsequent violations;
- The employer's size, considering both the total number of employees and its revenue; and
- The employer's actual or constructive knowledge of the NYCHRL.

These penalties are in addition to the other remedies available to people who successfully resolve or prevail on claims under the NYCHRL, including, but not limited to, back and front pay, along with other compensatory and punitive damages. The Commission may consider the lack of an adequate anti-discrimination policy as a factor in determining liability, assessing damages, and mandating certain affirmative remedies.