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Presented before

**The New York City Council
Committee on Civil and Human Rights**

Oversight Hearing – Fair Chance Act Challenges and Successes

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My name is Anna Arkin-Gallagher, and I am the Associate Director of the Civil Justice Practice at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For 30 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. After 29 years of serving Brooklyn, we expanded our criminal defense services in Queens. We are proud to bring the same dedication and excellence to Queens. We thank the Committee on Civil and Human Rights and Chair Nurse for the opportunity to address the Council about the challenges and successes of the Fair Chance Act and Fair Chance for Housing.

BDS's Civil Justice Practice aims to reduce the civil collateral consequences for the people we serve who are involved with the criminal, family, or immigration legal systems. Our practice combats housing instability in a variety of ways: we defend people from eviction in housing court, provide proactive relocation assistance and benefits advocacy, and help people navigate the shelter system. We also fight for the people we serve to keep their jobs and overcome employment discrimination. Through this work we see the profound challenges New Yorkers face in securing and keeping safe, affordable, and permanent housing and meaningful employment.



The Fair Chance Act is a critical bill that helps to ensure that New Yorkers have the opportunity to get and keep jobs without their criminal history standing in the way. But even over a decade after the Fair Chance Act was passed, there is still much to do to ensure that the potential of this groundbreaking law is fully realized. Fair Chance for Housing, which took effect in New York City on January 1, 2025, has significant potential but requires robust and timely enforcement to have a meaningful impact on New Yorkers with criminal histories who are seeking housing.

The New York City Fair Chance Act

New York City's Fair Chance Act (FCA), which became law in New York City in 2015, establishes vital protections for New Yorkers with criminal conviction and arrest histories against employment discrimination. However, many of the people we serve still face adverse employment consequences from an arrest or conviction.

In our practice, we represent hundreds of people every year who are suspended or terminated from their jobs as the result of an arrest. Many of the people we represent ultimately have their criminal cases dismissed or resolved with a non-criminal disposition like a disorderly conduct, but the loss of a job during the period when their criminal case is open is devastating, often having effects that extend long beyond the dismissal of the case. Because of long-standing racial inequities in our criminal legal system, Black and brown people are disproportionately impacted by employment discrimination on the basis of an arrest or conviction record. By shutting people out of the city's competitive job market, discriminatory background checks prevent people from stabilizing their lives and perpetuate cycles of homelessness.

1. The Fair Chance Act and Pending Criminal Charges

At times, our employment team works with people whose employers or prospective employers comply with the Fair Chance Act. An employer is notified about an arrest or conviction and engages in the prescribed dialogue with the employee to get more information about the charges, circumstances underlying the arrest, and evidence of rehabilitation and good conduct. In many of these cases, our office is able to provide helpful context regarding the criminal charges as well as mitigating factors that help employers understand that hiring or retaining an employee will not present a risk to public safety. For example, Mr. B., who was represented by BDS, had worked for years in the building services industry. While he had an open case, he applied for a maintenance position at an apartment complex and received a Fair Chance Act notice from a potential employer indicating that they had concerns about hiring him. An employment attorney from our office worked with Mr. B's criminal defense team. We were able to explain to the potential employer that the criminal charges were expected to be dismissed, as well as to gather letters of recommendation from Mr. B's prior



employers attesting to his good character and strong skills as a worker. Mr. B was hired for the position, where he remains today.

However, in our experience, stories like Mr. B’s are still the exception and not the rule. Many employers either remain unaware of their responsibilities under the Fair Chance Act or know that enforcement of the law is sporadic and slow and consequently discriminate against employees and prospective employees with criminal histories. For example, we find near-universal non-compliance among home health aide employers.

New York State’s home health aide and personal care aide (“HHA”) workforce is the largest of any state in the country and is the “largest job category in the state.”¹ These are hard but steady and meaningful jobs where many people we represent find employment opportunities. Just about every day, an attorney on our employment team receives a referral for a client who works as an HHA.

Almost all of our intakes follow the same pattern after someone is arrested: if the person is employed as a HHA, the Department of Health sends a notice called a “Notification of Charge After Hire” to the employer containing information about the arrest but does not revoke our client’s clearance to continue working. Sometimes, an employer just wants more information about the arrest, in which case we provide a letter, and the employer allows our client to return to work. More often, though, the people we represent are automatically suspended and are told they will not be allowed to return to work until their case is resolved, a process that typically takes months. When this happens, we contact the employer to notify them of their obligations under the Fair Chance Act. Sometimes we are able to negotiate a settlement with the employer where the home health aide can return to work and obtain backpay to compensate them for the weeks they were out of work. But if we cannot reach a settlement with the employer, the people we represent typically spend months out of work while we litigate the matter before the New York City Commission on Human Rights (NYCCHR).

2. Mandatory Disclosure Policies Undermine the Intent of the Fair Chance Act.

Another employer practice we frequently see is employer requirements that employees self-disclose arrests. For those who work for employers that maintain these policies,

¹ Bill Hammond, Empire Center, “New York’s Home Health Workforce Jumps by Another 10 Percent,” Apr. 3, 2025, available at <https://www.empirecenter.org/publications/health-workforce-jumps-by-another-10-percent/>.



failure to disclose an arrest almost always results in the person being fired in violation of the New York City Fair Chance Act.

The 2021 amendments to the Fair Chance Act added protections for employees and applicants who inaccurately disclose criminal record information in the hiring process. Before the 2021 amendments, employers tended to treat these inaccurate disclosures as intentional misrepresentations, which in turn allowed an employer to fire or revoke a job offer without having to follow the Fair Chance Process. The 2021 amendments created procedural protections that allow an employee or applicant an opportunity to clarify an employer’s concern about an inaccurate disclosure.²

We regularly see a practice similar to this “candor trap” that was outlawed in 2021. Many employers maintain a policy whereby an employee has a short amount of time, often as short as 24 or 48 hours after the employee’s release from a precinct or courthouse, to disclose their arrest. When we see these cases, there is little we can do because, the employer argues, the termination is not due to the arrest itself, but rather the failure to disclose.

These cases almost exclusively come up where the employer is automatically notified of the arrest by licensing agencies. It is most prominent among security guard companies, private or charter schools, and HHA agencies. An employee’s failure to disclose an arrest has no bearing on their trustworthiness or fitness to perform the job because these are, after all, people who are already successfully working for these same employers. This practice compounds the impact of an arrest in the immediate aftermath of a person’s contact with the criminal legal system. With a pending court case, a job seeker will have a difficult time securing employment.

3. The New York City Commission on Human Rights

Often our best chance at getting redress for New Yorkers facing employment discrimination is to get involved quickly and—if we cannot get a person we represent back to work—to negotiate a settlement outside of the New York City Commission on Human Rights (NYCCHR) complaint process. Even in a best-case scenario, where we are able to help someone return to work and secure backpay, our clients will be out of work for weeks. In cases where we are unable to secure a return to work and pursue a settlement, that process will typically take at least a few months. And if we are not able to reach a private settlement with an employer who has failed to follow the requirements of the Fair Chance Act, we are forced to rely upon the New York City Commission on Human Rights to enforce the law. As wait times at the Commission have grown over the past several years, we have seen employers less willing to negotiate settlements, as they

² N.Y.C. Admin. Code § 8-107(10)(g).



know that they are unlikely to face any repercussions as a result of our filing a complaint at the NYCCHR for years—if ever.

One person we represent, Ms. D, a home health aide, lost her job as a result of an arrest. Her employer did not comply with the Fair Chance Act and fired her when she was arrested for a charge that has since been dismissed, telling her that she was not able to work for their agency with an open case, even though the New York Department of Health never revoked her clearance as a home health aide. Our office attempted to get her back to work shortly after her arrest and later attempted to resolve the matter through a settlement but were unable to do so. An employment attorney from our office then filed a complaint at the NYCCHR on behalf of Ms. D over three years ago. It took the NYCCHR months to assign an attorney to begin investigating her claim. That attorney later left the NYCCHR, and now, over three years after filing the complaint, her case continues to await reassignment to a new attorney.

Ms. D's case is not unique; we have a number of FCA cases at the Commission that have been pending for years, and multiple cases awaiting reassignment to a new NYCCHR attorney. Counsel for employers know that cases will languish for years once they are filed at the Commission. In one case, we were told by the investigator for the Commission that they came across communications in discovery where—in response to settlement discussions where we indicated that we would file a case at the Commission—the attorney for the employer wrote that the case would take so long to resolve that it was not a threat. While we have had some success with cases at mediation at the Commission, getting there can be challenging.

The FCA is a tremendously impactful law, but for it to be most impactful the agency charged with enforcing the law must be able to enforce it.

4. Fair Chance for Housing

Fair Chance for Housing is a relatively new law that protects applicants for housing from discrimination on the basis of their criminal convictions. As of January 1, 2025, covered housing providers that choose to use criminal background checks can do so only after reviewing tenant or buyer general eligibility and making a conditional offer. Housing providers can only review limited convictions as part of this criminal background check, and if—after doing a background check—a covered housing provider wants to revoke a housing offer or decline to renew a lease, they must follow the notice and process requirements of the Fair Chance Housing Law and make their decision in writing based on a review of an individual's entire application, including any supporting information provided by an applicant.

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The Council’s passage of the Fair Chance for Housing Act in 2024 was an important milestone to combat housing discrimination against New Yorkers with criminal conviction and arrest histories. This is crucial because access to housing lowers recidivism, allows people to support themselves and their families, and makes our city safer. We know that access to housing is the foundation of thriving communities. However, as with all of our robust anti-discrimination laws, these laws are only as strong as our ability to enforce them and to educate the public on their rights and responsibilities.

Our office assists hundreds of New Yorkers every year who are searching for new housing. Many of our clients, by virtue of being represented by a public defense office, have had encounters with the criminal legal system and have conviction histories. Without robust enforcement from the NYCCHR, this protected status is meaningless for tenants. Engagement with discriminatory housing providers who are violating the Fair Chance for Housing Act requires quick action and intervention to have a meaningful impact on would-be tenants—without prompt and robust enforcement, prospective tenants will lose apartments to delays on top of the initial discrimination.

Recommendations

In light of these challenges faced by those seeking housing and employment while having had contact with the criminal legal system, we urge the city to make the following investments and policy changes:

Adequately fund the NYCCHR

The New York City Commission on Human Rights, which is tasked with enforcing and educating the public about the city’s anti-discrimination laws, has been systemically underfunded. It is both underfunded and understaffed compared to similar agencies in smaller cities.³ The current Fiscal Year 2026 budget of \$14.9 million has been drastically insufficient to enforce these laws and prosecute claims of discrimination, let alone engage in vital preventative and educational outreach.

The Commission’s staff has consistently decreased, leading to ballooning workloads and delays in investigating complaints.⁴ Our understanding is that a significant backlog of complaints began at the beginning of the COVID-19 pandemic, when many staff members left, and this backlog persists due to staff shortages. Although the Commission is supposed to conduct an investigation once a complaint is filed and

³ For example, the Seattle Office of Civil Rights had a budget of \$7,863,947 in 2025 and serves a city of about 755,000.

⁴ The City Council’s “Report on the Fiscal 2026 Executive Plan and the Fiscal 2026 Executive Capital Commitment Plan for the New York City Commission on Civil and Human Rights,” *available at* <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2025/05/Commission-on-Civil-and-Human-Rights.pdf>, indicates that the NYCCHR had a vacancy rate of 24.6% as of March 2025.



answered, the case backlog results in significant delays. We have felt the NYCCHR's diminished capacity in our practice. BDS has complaints that have been pending at the NYCCHR for years, with little to no progress made and no Commission staff assigned. The city should invest in the NYCCHR to ensure they are adequately funded to hire additional staff, and more quickly investigate and prosecute claims.

Appropriately staff the NYCCHR to allow for early resolution of claims

We believe that many of the cases we file would benefit from early resolution through an early intervention team or through mediation. Early resolution or mediation—where appropriate—would be an efficient use of funding because it would allow the NYCCHR to resolve complaints without the need for a full investigation or litigation, and could ensure that people get back to work more quickly or are housed in new apartments, eliminating the need to file a complaint and for the lengthy complaint resolution process to play out. Quick investigation and intervention is particularly crucial for enforcement of housing discrimination to allow would-be-tenants to have a meaningful opportunity to apply for and be considered for apartments in New York City's fast-moving rental market.

At a successful recent mediation, we learned that many of our employment cases that are pending at the Commission have never been considered for mediation. We believe that almost all of our cases would be successfully resolved with the assistance of the Commission's mediation program. We recommend a more robust internal referral system to the Commission's mediation staff.

Ensure that the NYCCHR engages in community outreach and education

It is critical that the NYCCHR receive full funding across the entire agency, which must also ensure that the Commission has resources to conduct comprehensive and ongoing community outreach and education about our anti-discrimination laws. The NYCCHR is charged with preventing discrimination by informing the public of their rights and responsibilities under our laws but is not equipped with the resources to do so. Until the Commission is adequately funded, certain housing providers and employers will continue to conduct discriminatory background checks and violate the law simply because they are unaware of it.

Extend Fair Chance Act protections to additional city employees, including employees of New York City Public Schools

While we experience some success in getting employers to comply with the Fair Chance Act, many city employees – including employees of New York City Public Schools (NYCPS) – do not benefit from the protections of the Fair Chance Act. We recommend

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that the protections of the Fair Chance Act be explicitly extended to cover City employees.

Multiple times a week, we receive referrals for teachers, paraprofessionals and other staff members who work for or are contracted to work for NYCPS. Though Chancellor's Regulation C-105 includes a procedure that is supposed to be followed when a NYCPS employee is arrested, in reality nearly all NYCPS staff are suspended and cannot return to work with an open criminal case; most non-teaching staff is suspended without pay. The Fair Chance Act should be explicitly extended to cover NYCPS and other city employers.

Conclusion

Both the Fair Chance Act and Fair Chance for Housing are essential laws that supports the city's goal of ensuring that contact with the criminal legal system does not doom someone to unemployment and homelessness. But enforcement of these laws is key to ensuring that they are effective.

BDS is grateful to New York City Council's Civil and Human Rights Committee for your time and consideration of our comments. We look forward to further discussing these and other issues that impact the people and communities we serve. If you have any additional questions, please contact Anna Arkin-Gallagher at aarkingallagher@bds.org.