

Carol A. Baldwin Moody, *President and CEO*

### BOARD OF DIRECTORS

**Chair:** Eileen Simon  
*Mastercard*

**First Vice Chair:** Meena Elliott  
*Kiverdi, Inc.*

**Vice Chair:** Robert M. Kaufman  
*Proskauer Rose LLP*

**Vice Chair:** Amy Dorn Kopelan  
*Bedlam Productions, Inc.*

**Vice Chair:** Jay W. Waks  
*Retired Partner, Arnold & Porter Kaye Scholer LLP*  
*Retired Senior Executive Vice President and*  
*General Counsel, American Kennel Club*

**Vice Chair:** Laura A. Wilkinson  
*PayPal Inc.*

**Secretary:** Amy S. Leder  
*Holland & Knight LLP*

**Treasurer:** Susan B. Lindenauer  
*Retired Counsel to the President and*  
*Attorney-in-Chief*  
*The Legal Aid Society*

**General Counsel:** G. Elaine Wood  
*Charles River Associates*

**Esha Bandyopadhyay**  
*Fish & Richardson PC*

**Dede Thompson Bartlett**  
*Retired Vice President & Corporate Secretary, Philip*  
*Morris Companies Inc.*  
*Former Corporate Secretary, Mobil Corporation*

**Glynnia Christian**  
*Holland & Knight LLP*

**Kim Gandy**  
*Past President and CEO*  
*National Network to End Domestic Violence*  
*Past President, National Organization for Women*

**Sheryl Koval Garko**  
*Orrick, Herrington & Sutcliffe LLP*

**Mary Gail Gears**  
*Retired Partner, Morgan, Lewis & Bockius LLP*

**Vilia B. Hayes**  
*Hughes Hubbard & Reed LLP*

**Lori B. Leskin**  
*Arnold & Porter Kaye Scholer LLP*

**Meredith Moore**  
*Weil, Gotshal & Manges LLP*

**Nancy B. Saltzman**  
*Logicalis, Inc.*

**Stephanie A. Sheridan**  
*Stephoe & Johnson LLP*

**Karen E. Silverman**  
*The Cantellus Group*  
*Retired Partner, Latham & Watkins LLP*

**Yvette D. Valdez**  
*Latham & Watkins LLP*

**Loria B. Yeadon**  
*YMCA of Greater Seattle*

**Catherine Zinn**  
*Baker Botts LLP*

### HONORARY DIRECTORS

**Chair:** Muriel Fox  
*Co-Founder Legal Momentum and the*  
*National Organization for Women*

**Betty Friedan**  
*Past Legal Momentum Board Director and Co-*  
*Founder the National Organization for Women*  
*Author, The Feminine Mystique*

**Etta Froio**  
*Retired Contributing Senior Executive Editor*  
*Women's Wear Daily*

**Stephanie George**  
*Vice Chairman*  
*Fairchild Fashion Media Inc.*

**Michele Coleman Mayes**  
*Vice President, General Counsel & Secretary*  
*New York Public Library*

*\*Organizational affiliations for*  
*purposes of identification only.*

December 2, 2021

## TESTIMONY ON INT. 1208 AND THE BENEFITS OF PAY TRANSPARENCY LAWS BEFORE THE NEW YORK CITY COUNCIL'S COMMITTEE ON CIVIL AND HUMAN RIGHTS

### Submitted by Seher Khawaja, Senior Attorney, Economic Empowerment on behalf of Legal Momentum, The Women's Legal Defense and Education Fund

Good morning and thank you for convening this hearing. My name is Seher Khawaja, I am a Senior Attorney at Legal Momentum, The Women's Legal Defense and Education Fund. For over five decades, Legal Momentum has been at the forefront of using the law to advance gender equality. Through our work challenging pay inequity for over 50 years now, we know the law is a necessary tool for tackling discriminatory pay practices including deeper structural discrimination that lays at the heart of persisting sizable gaps for women of color.

We applaud the Council's pioneering work to meaningfully tackle gender inequality in New York City and its commitment to advancing pay equity. The purpose of my testimony today is to affirm the critical importance of the Council's efforts to enact legislation to mandate wage disclosure and to shed some light on the essential role that wage transparency plays in getting us one step closer to pay equity for women and people of color.

Gender- and racial-based pay inequity remains prevalent in our workplaces, particularly for women of color and women doing low-wage work. Today, women of color continue to face the most sizable and stagnant pay disparities. And under our existing laws, these women bear the burden and risk of identifying, challenging, and correcting gender-based pay discrimination, alone and in the dark.

And what we know at this juncture is that we will not achieve meaningful and inclusive pay equity without greater pay transparency. Despite the passage of groundbreaking legislation, including the federal Equal Pay Act of 1963, as well as even stronger equal pay laws at the state and local levels here in New York, we have found that the prevalence of pay secrecy undermines the efficacy of these laws because employers, by retaining the option to set salary behind closed doors, continue to circumvent legal requirements, perpetuating disparities, often unknowingly.

To meaningfully achieve pay equity, it is time we open those doors. Since employers are reluctant to make the move on their own, we need the law to level the playing field by requiring all employers to disclose compensation ranges for positions up front, at the beginning of the hiring process and to existing employees. Pay disclosure laws serve as a necessary tool to push employers to move towards more transparent practices that benefit employees and employers alike.

Pay transparency laws that require employers to disclose compensation ranges for positions serve various critical functions.



- They standardize salary setting to eliminate opportunities for employers to inject overt and implicit bias
- They make processes more fair, particularly for women of color who too often are subject to the most exploitative wage practices that are perpetuated in the dark behind closed doors
- They breathe life into our existing equal pay laws by giving workers information to identify pay disparities where they exist;
- They help employers establish more streamlined, efficient and fair pay practices to avoid problematic pay disparities;
- And they help level the playing field for workers, giving women and people of color more leverage in the hiring process.

### **The Importance of Tackling Pay Secrecy with Pay Transparency Laws**

- Even these critical legislative successes are not enough. Achieving meaningful pay equity requires a multipronged approach that addresses a key barrier: the prevalence of wage secrecy.
- Today, with some exceptions, employers generally do not disclose pay rates in job postings or to applicants until they are selected; they do not internally share salary ranges to existing employees, and they often prohibit employees from discussing pay with coworkers.
- Research shows that pay secrecy creates substantial obstacles to achieving gender and racial pay equity, including for workers in low-wage industries, which has led many advocates like us to focus on advancing pay transparency laws.
- Examples of salary transparency laws that are being enacted by various states and local governments include:
  - Laws that make it illegal to prohibit workers from sharing information about their pay, like we already have in NYS
  - Laws that prohibit employers from asking about or inquiring about one's prior salary history, like we already have in NYS
  - Laws that require private employers and/or government contractors to report pay equity data by gender, race, and ethnicity.
  - Laws that require employers in some capacity to disclose wage or salary information to the public are large, applicants, and/or employers, which is a law we are working on enacting in NYS.
- The absence of transparency in pay practices is a leading contributing factor in both facilitating discreet forms of pay discrimination as well as creating an environment that fosters systemic racial and gender-based disparities, including for workers in low-wage industries. Those impacted the most are women of color.
- **Creates Leverage for Women and People of Color:** When employers get to set pay in the dark, women and people of color, who are typically coming to the table with lower salaries are in a weaker position to negotiate and are more likely to sell themselves short. Research shows that women and people of color are in a better position when they have information regarding compensation, so the goal in enacting pay transparency laws is to help level the playing field and give these workers more leverage.
- **Limits Overt and Implicit Bias:** The absence of pay transparency creates avenues for implicit and explicit bias to shape salary setting. Under our current environment, employers have free reign to inject their overt and implicit biases in making salary decisions and the research shows that they do. Employers often assume men as more competent and/or reliable. The goal in enacting pay transparency laws is to

shift the salary setting process and to force employers to make calculations at the front end of the process to preempt all of those opportunities for them to inject that bias into their decision-making.

- **Limits Exploitation of Low-Wage Workers:** The absence of pay transparency, coupled with the circumstances created by the current pandemic, provides opportunities to exploit our most vulnerable workers, including women, people of color, and low-wage workers, which needs to be curtailed. By keeping salaries secret, employees are more susceptible to wage exploitation, particularly the large number of women and people of color who have faced high rates of unemployment or have been forced to leave the workforce due to childcare responsibilities. By enhancing pay transparency, we can help curtail wage exploitation.
- **Creates More Comprehensive and Complementary Protections:** Research also suggests that comprehensive pay transparency provisions complement each other. While employer may try to work around our state salary history ban that by pushing candidates to provide salary expectations, employers will still be limited in how they can use that information if they are also required to disclose a salary range even before they can ask those questions.
- **Provides More Data to Identify Discrimination:** Greater pay transparency gives us more data points to help identify discriminatory pay practices.
- **Creates Efficiencies for Employers:** Lastly, pay transparency will benefit employers by enhancing hiring efficiencies and limiting employer liability. These types of laws push employers to standardize their hiring processes based on job requirements and competencies instead of individualized assessments that often incorporate discriminatory factors.
- 
- These laws have never been more important as we emerge from the COVID-19 pandemic and the disproportionate number of women and people of color attempt to return to the workforce. Pay transparency is the way forward. We hope you will stand with us in our efforts to advance meaningful and inclusive gender equity.
- Based on our work and experience drafting pay transparency laws, we recommend that as you move to enact legislation to require employers in New York City, you consider the following factors:
  - 
  - Legal Momentum is happy to serve as a resource to assist in the process of developing the most effective bill to advance pay equity through greater pay transparency.
  - A primary goal is to enhance pay transparency. The research is revealing that the absence of transparency in pay practices is a leading contributing factor in both facilitating discreet forms of pay discrimination as well as creating an environment that fosters systemic disparities. Those impacted the most are women of color. When employers get to set pay in the dark: women and people of color are in a weaker position to negotiate;
  - A second goal is to remove avenues for implicit and explicit bias. Under our current environment, employers have free reign to inject their overt and implicit biases in making salary decisions and the research shows that they do. Employers often assume men as more competent and/or reliable. The goal here is to shift the salary setting process and to force employers to make calculations at the front end of the process to preempt all of those opportunities for them to inject that bias into their decision-making.

- A third goal is to give more leverage to our most vulnerable workers and to level the playing field a bit. By keeping salaries secret, employees have very little leverage and are more susceptible to wage exploitation. A problem that has only been exacerbated by the pandemic and high rates of unemployment.
- And lastly, we're hoping a salary disclosure requirement will give us more data points to help identify discriminatory pay practices.

As we tackle pay inequity, we must recognize that our current culture of pay secrecy is unsustainable if we seek to advance a more for fair and equitable workplace for women and people of color. Laws that thoughtfully advance pay transparency are a critical step towards strengthening existing protections and overcoming existing barriers to equity. Thank you for your time and this opportunity to speak to this important issue.