

Memorandum in Support of A.10477(Joyner)/S.9427A (Ramos)

Re: An act to amend the labor law, in relation to requiring employers to disclose compensation or range of compensation in job advertisements.

As longstanding advocates for gender and racial equality, our organizations write to strongly urge Governor Hochul to promptly sign A.10477/S9427A without amendment. This legislation would help workers overcome longstanding barriers to pay equity by requiring all private employers with four or more employees within the state to disclose compensation or range of compensation in advertisements for new jobs, transfers, and promotion opportunities. This bill stands to have a transformative impact on closing the gender and racial wage gaps and will benefit workers and employers, alike. It is therefore imperative that we act quickly so that employers and workers have a clear path forward towards advancing more equitable pay practices across New York State.

In New York an intractable gender and racial wage gap persists in almost all industries and despite educational attainment. Full-time working women earn 86 cents compared to all men.¹ Notably, women of color in New York continue to face sizable and stagnant pay disparities with Black women and Latinas earning 64 cents and 56 cents, respectively, compared to full-time working white, non-Hispanic men.² At current trends, parity will not be reached until 2046.³

Over the past years, we have taken important steps to strengthen our pay equity legislation in New York, but progress remains slow as much of this legislation still places the onus on women to take legal action to challenge discriminatory pay practices that are often impossible to unearth and costly to litigate. Meanwhile, without basic pay transparency, employers are increasingly proclaiming themselves to be advocates for pay equity to their benefit while perpetuating (often unknowingly) the wage gap behind closed doors.

Our existing culture of pay secrecy in the workplace has long thwarted pay equity for women and people of color. Pay secrecy creates opportunities for employers to inject gender and racial bias into the salary setting process, which research shows they do, with employers often crediting white men for being more competent and reliable.⁴ It disproportionately disadvantages women

¹ *The Wage Gap, State by State*, National Women's Law Center (Mar. 16, 2021), <https://nwlc.org/resources/wage-gap-state-state/>.

² *The Wage Gap, State by State*, National Women's Law Center (Mar. 16, 2021), <https://nwlc.org/resources/wage-gap-state-state/>.

³ *Status of Women in the United States*, Institute for Women's Policy Research (Mar. 2018), <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-new-york.pdf>.

⁴ See Shengwei Sun, Jake Rosenfeld & Patrick Denice, Institute for Women's Policy Research, *On the Books, Off the Record: Examining the Effectiveness of Pay Secrecy Laws in the U.S.* (2021), available at <https://iwpr.org/wp-content/uploads/2021/01/Pay-Secrecy-Policy-Brief-v4.pdf>; Jingcong Zhao, *PayScale Study Reveals Biases in How Organizations Give Pay Raises*, PayScale (June 5, 2018), <https://www.payscale.com/compensation-trends/biases-in-pay-decisions/>; *Raise Anatomy: How to Ask for a Raise and Get it*, PayScale, <https://www.payscale.com/data/how->

and people of color, who historically have earned less due to discriminatory practices, have less leverage, and are thus in a weaker position to negotiate higher salaries particularly with no information about compensation rates.⁵ Moreover, pay secrecy gives employers the freedom to set unacceptably low wages, exploiting our most vulnerable workers and pushing a disproportionate number of women into poverty.⁶ Notably, pay secrecy has long undermined the efficacy of our existing equal pay laws, preventing women, people of color, enforcement agencies, and other vulnerable groups from unearthing unlawful pay disparities.

For these reasons, we must take concrete steps to ensure that employers play their part and women are not waiting until 2046 to receive the pay we know they are entitled to. Enacting A.10477/S9427A would help alleviate many of these shortfalls.

Pay Transparency Works and is a Driver of Equity

The type of pay transparency advanced by A.10477/S9427A is critical because we know it works. Research conducted in jurisdictions that have enacted pay transparency provisions and among employers who have adopted transparent pay practices shows that pay transparency laws do in fact help reduce the gender pay gap.⁷ This is because this type of legislation serves several important functions.

If enacted, this legislation would reduce unconscious bias in salary-setting. By requiring employers to disclose compensation ranges up front, employers are encouraged to set salary based on objective qualifications, experience, competencies, and job expectations instead of individualized and subjective assessments alone, which we know to rely on implicit gender- and

[to-ask-for-a-raise](#) (last visited June 5, 2022); Claire Cain Miller, *The Motherhood Penalty vs. the Fatherhood Bonus*, N.Y. TIMES (Sept. 6, 2014), <https://www.nytimes.com/2014/09/07/upshot/a-child-helps-your-career-if-youre-a-man.html>; Ellevest Network, *Why is it that Women Are Seen As Less Competent?*, FORBES (Apr. 14, 2011), <https://www.forbes.com/sites/85broads/2011/04/14/why-is-it-that-women-are-seen-as-less-competent/?sh=3d972351394d>.

⁵ See *Salary Range Transparency Reduces the Wage Gap*, National Women’s Law Center (Jan. 2020), <https://nwlc.org/wp-content/uploads/2018/06/Salary-Range-and-Transparency-FS-2020-1.17.2020-v2.pdf>.

⁶ See Robin Bleiweis, Diana Boesch & Alexandra Cawthorne Gaines, *The Basic Facts About Women in Poverty*, Center for American Progress (Aug. 3, 2020), <https://www.americanprogress.org/issues/women/reports/2020/08/03/488536/basic-facts-women-poverty/>; *The Real Face of Low-Wage Work in America is Female*, Oxfam (Nov. 29, 2016), <https://www.oxfamamerica.org/explore/stories/the-real-face-of-low-wage-work-in-america-is-female/>.

⁷ Michael Baker et al., *Pay Transparency and the Gender Gap* (Nat’l Bureau of Econ. Research Working Paper No. 25834), https://www.nber.org/system/files/working_papers/w25834/w25834.pdf; Michael Baker et al., *Can Transparency Laws Fix the Gender Wage Gap?*, HARV. BUS. REV. (Feb. 26, 2020), <https://hbr.org/2020/02/can-transparency-laws-fix-the-gender-wage-gap>; Maria Recalde & Lise Verterlund, *Gender Differences in Negotiation and Policy for Improvement* (Nat’l Bureau of Econ. Research Working Paper No. 28183), https://www.nber.org/system/files/working_papers/w28183/w28183.pdf; *Does Pay Transparency Close the Gender Wage Gap?*, PayScale, <https://www.payscale.com/content/whitepaper/Pay-Transparency-Closing-Gender-Wage-Gap.pdf> (last visited June 5, 2022) (“The high-level results of this research show that when respondents agree that pay is transparent in their organization, the gender wage gap vanishes for women doing similar jobs to men when all compensable factors are adjusted.”).

racial-based biases and salary expectations. This bill will give jobseekers (women and people of color in particular) more leverage in the hiring process by arming them with basic information so they do not continue to undersell themselves in negotiations. It also promises to combat occupational segregation by giving jobseekers (women and people of color, in particular) basic information they need about what jobs are worth in order to pursue and move into higher paying industries. Pay disclosure also drives fairer employment practices, making it harder for employers to set exploitative wages behind closed doors and giving employers an incentive to set salary in a way that is more fair, efficient, and accountable.

Pay Transparency Benefits Business Interests

While pay transparency legislation has been met with pushback from some business lobbyists, many businesses are voluntarily moving towards increased pay transparency as a best practice,⁸ and research shows that transparent pay practices have numerous positive outcomes for employers and business. Salary is one of the most important factors candidates consider when looking for employment and existing employees are investing more time into finding out compensation.⁹ Pay disclosure therefore is likely to make many employers more attractive to workers, which is beneficial during a tight labor market. By requiring employers to disclose salary up front, this bill eliminates inefficient hiring practices, allowing candidates to apply for jobs that actually meet their salary requirements instead of going through a full recruitment process in order to assess whether they can accept a position.

Unfair pay schemes are also known to breed resentment and result in high turnover. By fostering fairness and trust, pay transparency improves job satisfaction, employee engagement, worker productivity, retention, profitability, and other business outcomes.¹⁰ By setting pay that is more

⁸ Jena McGregor, *Microsoft Announces it Will Include Pay Ranges in All U.S. Job Postings. Experts Predict it Will be the First of Many.*, FORBES (June 9, 2022), <https://www.forbes.com/sites/jenamcgregor/2022/06/09/microsoft-announces-it-will-include-pay-ranges-in-all-us-job-postings-experts-predict-it-will-be-the-first-of-many/?sh=6205c4cf5c72>.

⁹ Greg Lewis, *This Job Description Heatmap Shows You What Candidates Really Care About (and What They Ignore)*, LinkedIn Talent Blog (June 19, 2018), <https://www.linkedin.com/business/talent/blog/talent-acquisition/job-description-heatmap>; Brett Christie, *Pay Transparency Remains Key Amid a Tight Labor Market*, WorldatWork (June 16, 2022), https://worldatwork.org/workspan/articles/pay-transparency-remains-key-amid-a-tight-labor-market?utm_source=marketo&utm_medium=email&utm_term=workspanweekly_06212022&utm_content=mixed&utm_campaign=pub-workspanweekly&mkt_tok=OTM1LVVaVS03MTgAAAGFJVUyz9S-ip5XTofXxdP00XrXGTKvQ1Jfe0h7icf2um41EUFKeewm8mEv3kEWGL9c5sP4WHcqYpbxq00vn7GD7FzoKaFfJlHDEz7ZSdo11Q.

¹⁰ *Does Pay Transparency Close the Gender Wage Gap?*, PayScale, <https://www.payscale.com/research-and-insights/pay-transparency/#:~:text=Fortunately%2C%20when%20analyzed%20against%20pay,every%20%241%20a%20man%20earns> (last visited June 5, 2022); Samantha Cooney, *Should You Share Your Salary With Co-Workers? Here's What Experts Say*, TIME (Aug. 14, 2018), <https://time.com/5353848/salary-pay-transparency-work/>; See Marcel Schwantes, *New Report: Pay Transparency May Be the Key to Keeping Your Employees in 2021*, INC. (Feb. 11, 2021), <https://www.inc.com/marcel-schwantes/new-report-pay-transparency-may-be-key-to-keeping-your-employees-in-2021.html>; Samantha McLaren, *4 Reasons It Pays to Share Salary Ranges, According to Companies*

fair and competitive, this bill would help employers attract qualified talent and retain this talent against organizations that lure employees away for more pay. Studies have also found employees are more productive and engaged when pay structures are transparent and predictable.¹¹ Pay transparency also helps organizations better manage their salary budgets and increase profitability by eliminating the “one off” deals they have to make with employees in an environment with no salary structure. These deals are expensive and time consuming and lead to a culture of “inequity” that ultimately antagonizes employees and creates low morale.

A.10477/S9427A Should Not be Amended to Exempt More Small Businesses

Efforts to narrow the bill through chapter amendment should not be entertained. Employers and the business community were consulted and the scope of the bill was already significantly narrowed to address concerns of the business community prior to its passage in the Assembly and Senate. Specifically, the bill should not be revised to exclude more employers, including employers with fewer than 20 employees.

This type of exemption would exclude a significant number of employers and too many vulnerable workers across New York States who deserve protection. In our state, there are 151,835 establishments (including government, non-profits and other types) with 5 to 19 employees.¹² These establishments employ 1.4 million workers, represent 28% of all establishments within the state, and employ 16% of all employees.¹³ The exemption proposed by the business lobby would therefore exclude approximately 480,000 establishments or almost 88 percent of all businesses in the state.¹⁴ This would result in the exclusion of almost two million workers statewide, or a quarter of all workers, including almost a million women.¹⁵

The exemption of employers with fewer than 20 employees would exclude many small businesses with high revenue, including law firms, hedge funds, and real estate firms, which have more than enough capacity to comply, and which suffer from the same pay inequity issues that this law seeks to address. This type of exemption would also disproportionately hurt women by excluding businesses like hair salons, nail salons, daycare providers, restaurants, and retail stores, where women of color are overrepresented, typically make lower wages, are

That Do, LinkedIn Talent Blog (Apr. 2, 2019), <https://www.linkedin.com/business/talent/blog/talent-strategy/reasons-it-pays-to-share-salary-ranges>; Kristin Wong, *Want to Close the Pay Gap? Pay Transparency Will Help*, N.Y. TIMES (Jan. 20, 2019), <https://www.nytimes.com/2019/01/20/smarter-living/pay-wage-gap-salary-secrecy-transparency.html>; Tanza Loudenback, *Why Disclosing Salary Information Is Good for Business*, INC. (May 3, 2017), <https://www.inc.com/business-insider/why-disclosing-salary-information-pay-transparency-good-business.html>.

¹¹ Andrew Chamberlain, Glassdoor, *Is Salary Transparency More Than a Trend?* (2015), available at https://www.glassdoor.com/research/app/uploads/sites/2/2015/04/GD_Report_2-2.pdf.

¹² Data compiled by the Community Service Society.

¹³ Data compiled by the Community Service Society.

¹⁴ Data compiled by the Community Service Society.

¹⁵ Data compiled by the Community Service Society.

economically more vulnerable, and would benefit significantly from knowing rates of pay when applying for jobs.¹⁶ An amendment to exclude businesses with 5-19 employees would, for example, exclude an estimated 106,000 women in retail, 152,000 women in healthcare and social assistance, 93,000 women in accommodation and food services, and 81,000 women in other services.¹⁷ Excluding these small businesses from coverage encourages the type of informality that is known to result in exploitation of women of color in these industries.¹⁸ Expanding the exemption for small businesses would thus serve to perpetuate that exploitation and harm more women in low-wage work.

A broader exemption would also take our labor law farther backwards and out of parity with New York City. In limiting the law's applicability to employers with four or more employees, the legislature has already departed from its other provisions in this chapter that apply to all employers. Expanding it even further would set a dangerous precedent that puts other labor protections at risk.

Contrary to rhetoric from the business lobby, this legislation will not impose an undue burden on small businesses, especially when compared to other requirements that apply to small businesses under the labor law and when balanced against its transformative potential for women, people of color, and others whose work has been devalued for too long. Compliance with this bill is simple as it does not require businesses to do anything more than what they must already do: identify a compensation amount or compensation range for all positions. By requiring businesses to do this earlier in the process, the bill helps small businesses increase worker productivity, increase retention, eliminate avenues for discriminatory decision-making, and incorporate more efficient hiring practices that will likely reduce liability risks and litigation costs. Pay disclosure will help small businesses with limited financial capacity reduce the high cost of recruitment by eliminating candidates whose salary expectations exceed budgetary allocations for the position. Moreover, the requirements of this bill will generally be less onerous for smaller employers to comply with as they have smaller budgets and less flexibility, fewer positions to track, and fewer employees to compare. Any initial lift involved in changing business practices will be short-lived and will pay off in the long-term.

Excluding small businesses from compliance actually risks hurting these businesses, which will be placed at a competitive disadvantage as their competitors move towards adopting transparent

¹⁶ Andrew Chamberlain, Glassdoor, *Is Salary Transparency More Than a Trend?* (2015), available at https://www.glassdoor.com/research/app/uploads/sites/2/2015/04/GD_Report_2-2.pdf.

¹⁷ Data compiled by the Community Service Society.

¹⁸ See Michael Sainato, *Long Hours, Dangerous Chemicals: Nail Salon Workers Fight for Industry Change*, THE GUARDIAN (March 15, 2022), <https://www.theguardian.com/us-news/2022/mar/15/new-york-nail-salon-industry-council-workers>; Sarah Maslin Nir, *The Price of Nice Nails*, N.Y. TIMES (May 7, 2015), <https://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html>; Erica Schwiegershausen, *Hair Salons' Labor Practices Are Pretty Bad, Too*, NEW YORK MAGAZINE (June 4, 2015), <https://www.thecut.com/2015/06/hair-salons-labor-practices-are-pretty-bad-too.html>.

pay practices.¹⁹ The move towards greater pay transparency is both essential and inevitable as more states are enacting pay disclosure legislation,²⁰ more businesses are moving towards disclosing salary ranges voluntarily,²¹ and more employees are exercising their right to share compensation information that companies have long sought to keep secret.²² According to Payscale, “Pay transparency will be a part of any modern compensation plan, as the future is trending in this direction.” Companies that attempt to keep pay a secret will be at a competitive disadvantage compared to other employers as job-seekers eliminate these businesses from their job search and their efforts to retain pay secrecy result in reputational costs.²³ Human Resources firms are therefore increasingly advising employers to stop resisting and get on board.²⁴ Ensuring that small businesses are covered under this law will help small businesses keep pace with best practices and empower the Department of Labor to provide targeted support to assist small businesses with compliance.

Notably, our goals to support MWBEs and advance pay transparency are not mutually exclusive as members of the business lobby have asserted and efforts to narrow this law in the name of

¹⁹ Reuven Gorsht, *Transparency: The New Competitive Advantage*, FORBES (Jan. 30, 2014), <https://www.forbes.com/sites/sap/2014/01/30/transparency-the-new-competitive-advantage/?sh=32f9d3e30469>; Solange Charas, *Human Capital Transparency: The New Competitive Advantage*, FINANCIER WORLDWIDE (May 2022), <https://www.financierworldwide.com/human-capital-transparency-the-new-competitive-advantage#.YsSfqBPMLuV>.

²⁰ Christine Hendrickson, *Pay Transparency, Pay Equity, Salary History—What’s New for 2022*, BLOOMBERG LAW (Jan. 24, 2022), <https://news.bloomberglaw.com/daily-labor-report/pay-transparency-pay-equity-salary-history-whats-new-for-2022>; F. Christopher Chrisbens & Christopher T. Patrick, *The Emerging Trend in State Pay Transparency Laws*, THE NATIONAL LAW REVIEW (Aug. 11, 2021), <https://www.natlawreview.com/article/emerging-trend-state-pay-transparency-laws>.

²¹ Jena McGregor, *Microsoft Announces it Will Include Pay Ranges in All U.S. Job Postings. Experts Predict it Will be the First of Many.*, FORBES (June 9, 2022), <https://www.forbes.com/sites/jenamcgregor/2022/06/09/microsoft-announces-it-will-include-pay-ranges-in-all-us-job-postings-experts-predict-it-will-be-the-first-of-many/?sh=6205c4cf5c72>; Roy Maurer, *More Employers Post Salary Ranges to Attract Workers*, SHRM (Aug. 16, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/salary-ranges-.aspx>; *Does Pay Transparency Close the Gender Wage Gap?*, PayScale, <https://www.payscale.com/research-and-insights/pay-transparency/#:~:text=Fortunately%2C%20when%20analyzed%20against%20pay,ever%20%241%20a%20man%20earns> (last visited June 5, 2022) (“With the advent of the internet, advances in technology, and the sharing of all kinds of personal information via social media, compensation is no longer the mystery that it once was. People today are sharing salary information openly and anonymously, both online and off, with the result that employees are finding out what they are being paid compared to others in similar positions — and quitting their jobs because of it.”).

²² *Does Pay Transparency Close the Gender Wage Gap?*, PayScale, <https://www.payscale.com/research-and-insights/pay-transparency/#:~:text=Fortunately,whenanalyzedagainstpay,ever%241amanearns> (last visited June 5, 2022) (“With the advent of the internet, advances in technology, and the sharing of all kinds of personal information via social media, compensation is no longer the mystery that it once was. People today are sharing salary information openly and anonymously, both online and off, with the result that employees are finding out what they are being paid compared to others in similar positions — and quitting their jobs because of it.”).

²³ *Does Pay Transparency Close the Gender Wage Gap?*, PayScale, <https://www.payscale.com/research-and-insights/pay-transparency/#:~:text=Fortunately%2C%20when%20analyzed%20against%20pay,ever%20%241%20a%20man%20earns> (last visited June 5, 2022).

²⁴ Roy Maurer, *More Employers Post Salary Ranges to Attract Workers*, SHRM (Aug. 16, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/salary-ranges-.aspx>.

MWBEs should be resisted. In fact, during the pandemic women of color left their jobs at high rates to form businesses in large part because they had been underpaid by their employers for too long.²⁵ Using MWBE's as a rationale to subvert pay transparency for small businesses prevents us from addressing the underlying problem of pay inequity and perpetuates a vicious cycle of devaluing women's work.

To achieve pay equity for women and people of color and to stay up to date with current trends, all employers, including smaller businesses, will ultimately need to move towards adopting more transparent practices. In light of these considerations, we urge you to sign A.10477/S9427A into law as soon as possible and without amendment. This bill will bring us a critical step closer towards achieving meaningful pay equity in New York State, leading the way for the rest of the nation. By passing this legislation, New York has an opportunity to once again act as a standard-bearer for achieving pay equity for all.

Sincerely,

PowHer New York Network (list attached)

Legal Momentum, The Women's Legal Defense and Education Fund

CWA Local 1180

National Employment Lawyers Association/New York

²⁵ Jarie A. Bradley & Kristina C. Dove, *Why Black Women Are Leaving the Workforce*, BARRON'S (June 18, 2021), <https://www.barrons.com/articles/why-black-women-are-leaving-the-workforce-51623962131>; Patrice Worthy, *Black Women Say Goodbye to the Job and Hello to Their Own Businesses*, THE GUARDIAN (Sept. 12, 2022), <https://www.theguardian.com/business/2022/feb/12/black-women-say-goodbye-to-the-job-and-hello-to-their-own-businesses>.