

NYC Commission on Human Rights Reports 60% Increase in Discrimination Complaints in 2016; Highlights 'Revitalized' Tester Program and Focus on Fair Chance Act

The New York City Commission on Human Rights (the "Commission") released its 2016 [Annual Report](#) and [enforcement statistics](#), announcing that it received 8,330 complaints of alleged discrimination in 2016, a 60% increase over the previous year. The Commission, which has seen its budget increase over 110% since 2015, also highlighted in its Annual Report and [budget testimony](#) before the City Council its various investigation and enforcement efforts in 2016. These included "revitalized" use of so-called undercover "testers," employed by the Commission to uncover discriminatory practices through job and housing applications, and efforts to enforce the City's [Fair Chance Act](#), which prohibits pre-offer inquiries regarding a job applicant's criminal record.

The 8,330 Commission complaints cumulatively encompass alleged discrimination in employment and housing cases as well as other areas covered by the New York City Human Rights Law ("NYCHRL"). Disability discrimination complaints made up the largest portion, roughly 15%. Complaints of discrimination based on national origin, race, religion, and citizenship/alienage saw a 30% increase in 2016, with nearly 1,500 reports in these protected areas.

The Commission also highlighted various settlements reached in 2016. In one case, an employer agreed to pay \$50,000 in damages payable to the Complainant and \$15,000 in civil penalties payable to the City of New York for an employee who was denied employment because of his conviction record in violation of the Fair Chance Act. The employer also agreed to provide training for nearly 10,000 employees. In another case, an employer agreed to pay \$85,000 in damages and \$15,000 in civil penalties, and to provide mandatory training in response to a complaint of pregnancy discrimination.

The Commission also touted its revitalized testing program, announcing that it conducted over 550 tests in 2016, 289 of which focused on uncovering employment discrimination. The Commission conducted 16 "matched pair" tests, by which pairs of testers with similar qualifications but differing protected characteristics applied for the same job. The Commission conducted far more "unmatched" tests, 235 of which focused on uncovering violations of the Fair Chance Act by, for example, searching job applications online and identifying if the application required a criminal background check in violation of the law. From these 235 tests, the Commission identified 148 instances of discrimination.

The Commission's increased use of testers was facilitated in part by [legislation that took effect on August 4, 2016](#) to amend the NYCHRL by (i) allowing the Commission and/or advocacy groups employing testers to bring claims against employers based on the discriminatory practices uncovered by those testers, and (ii) establishing as an unlawful discriminatory practice an employer's false representation that employment is not available to an applicant because of an applicant's actual or perceived protected status.

The Commission also reported 426 Commission-initiated investigations in 2016 into potential violations of the NYCHRL, many of which were identified through testing. 236 of these investigations were in the context of employment, of which the majority (190 investigations) focused on potential violations of the Fair Chance Act. The Commission's

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focus on the Fair Chance Act is also evidenced by the fact that 30 out of the total 54 Commission-initiated complaints in 2016 were related to violations of the Fair Chance Act. Similarly, the Commission referred 18 investigations of employers who repeatedly published ads or applications that contain facial violations of the Fair Chance Act and/or Stop Credit Discrimination in Employment Act to the City's Corporation Counsel for the purpose of bringing civil actions for pattern and practice violations.

Finally, the Commission highlighted the following two areas that have been subject to increased investigation: (i) NYCHRL's requirement that employers provide accommodations to pregnant employees, and (ii) discrimination based on gender identity or expression in all jurisdictional areas.

Since 2015, the Commission's annual budget has been increased by over 110% from \$5.8 million to \$12.3 million for Fiscal Year 2017. This budget increase has led to a doubling of the Commission's workforce within a short timeframe, to approximately 107 full-time employees today.

This post was authored by Matt Lampe, Martin Schmelkin, Michael Casertano, and Remo Decurtins of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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