Committee on Aging

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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE**

**HUMAN SERVICES DIVISION**

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**COMMITTEE ON AGING**

*Hon. Margaret Chin, Chair*

**May 28, 2019**

**INT. NO. 1180-A:** By Council Members Ayala, Chin, Brannan, Ampry-Samuel, Kallos, Koo, Vallone, Rosenthal, Lander, Eugene, Deutsch, Rose, Diaz and Holden

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to mental health training for senior center case workers

**ADMINISTRATIVE CODE:** Amends Chapter 2 of Chapter 21 of title 21 by adding new section 21-209

**RES. NO. 714-A:** By Council Members Chin, Rosenthal, Vallone, Lander,

Eugene, Rose and Diaz

**TITLE:** A Resolution calling upon the United States Congress to

and the President to sign S. 485 and H.R. 1230, the Protecting Older Workers Against Discrimination Act.

**INTRODUCTION**

On May 28, 2019, the Committee on Aging, chaired by Council Member Margaret Chin, held a hearing on two pieces of legislation: Int. No. 1180-A and Res. No. 714-A. Int. No. 1180-A, sponsored by Council Member Diana Ayala, would require each caseworker at a senior center under the purview of the Department of the Aging (DFTA) to complete a mental health training for older adults offered by the Department of Health and Mental Hygiene (DOHMH). This bill was previously heard on November 19, 2018, at an oversight hearing on mental wellness in older adults.

Additionally, the Committee considered Res. No. 714-A, sponsored by Council Member Chin, which would call on Congress to pass and the President to sign the Protecting Older Workers Against Discrimination Act. This resolution was previously heard on January 23, 2019, at an oversight hearing on poverty and older women.

At both previous hearings for Proposed Int. No. 1180-A and Res. No. 714-A, the Committee heard from representatives from DFTA, DOHMH, service providers, and aging advocates.

On May 28, 2019, the Committee passed Int. 1180-A and Res. No. 714-A by a vote of eight in the affirmative, zero in the negative, with zero abstentions.

**BACKGROUND**

*Seniors in New York City*

 Nationwide, according to the United States Census Bureau, the country’s older adult population is increasing.[[1]](#footnote-1) In fact, from 2000 to 2016, the population of individuals age 65 and older increased from 35 million to 49.2 million.[[2]](#footnote-2) Similar to national trends, New York City (NYC) is experiencing an increase in its aging population.[[3]](#footnote-3) In fact, NYC’s population of individuals age 65 and older increased from 947,000 in 2005 to 1.13 million in 2015.[[4]](#footnote-4) Today, older adults represent about 13 percent of the City’s total population,[[5]](#footnote-5) and researchers predict that by 2040 more than 1.4 million of the City’s population will be age 65 or older.[[6]](#footnote-6)

As the City’s aging population continues to increase, supportive programs and services will experience an increase in demand.[[7]](#footnote-7) According to a 2017 report released by Comptroller Scott Stringer, “existing programs and services should be adapted to prepare for the inevitable growth in demand that will occur as the population continues to age.”[[8]](#footnote-8) These programs and services should target not only the physical, but the mental well-being of this population.

*Mental Health and Older Adults*

Mental health advocacy groups have charted not only this rise in the older adult population, but a rise in mental illness among this group as well. The Geriatric Mental Health Alliance of New York, for example, have predicted that over the next 25 years, the number of older adults with mental illnesses in the U.S. will double from 7 million to 14 million, including an increase of more than 50% in New York State alone, from 500,00 to 780,000.[[9]](#footnote-9) The Alliance writes that “[o]lder adults with mental disorders are a heterogenous population, most of whom live and want to remain in the community” and include those older adults with: serious and persistent mental illnesses who are aging, dementia, severe anxiety, depressive, and paranoid disorders resulting in social isolation, dysfunction, behavioral obstacles to living in the community, and high rates of suicide, less severe anxiety and depressive disorders, alcohol and prescription drug abuse and some lifelong addiction, and emotional problems adjusting to old age.[[10]](#footnote-10)

The Alliance also acknowledges that “virtually all older adults with mental illnesses also have chronic physical illnesses, and many older adults with physical illnesses have related mental illnesses.”[[11]](#footnote-11) Despite this wide array of potential mental illness in the aging population, “[o]nly 20-25% of older adults with mental disorders receive services from mental health professionals.”[[12]](#footnote-12) With the older adult population rapidly increasing, then, it is vital that NYC provides holistic and comprehensive mental health services and makes such services widely available and easily accessible to this population, in order to help them properly age in place.

*City Offered Mental Health Services for Older Adults*

New York City provides a host of mental health services and supportive resources to older adults. Senior centers, social adult day cares (SADC), and events in naturally occurring retirement communities (NORCs) help combat older adult social isolation by providing them with opportunities to connect with others. The City also provide supports to older adults who lost a loved one by connecting them to local bereavement support groups.[[13]](#footnote-13) Additionally, there are online resources on the Official Website of NYC that connects older adults to mental health services,[[14]](#footnote-14) and older adults can contact 311 to inquire about mental health services.[[15]](#footnote-15)

While there are many city programs that support the mental wellbeing of older adults, DOHMH and DFTA are the two city agencies that provide the most comprehensive mental health supports for older adults.

Department for the Aging (DFTA) Mental Health Services

 DFTA oversees and operates many programs that increase older adults’ mental wellbeing. The agency oversees more than 300 SADCs,[[16]](#footnote-16) which are programs that provide functionally impaired individuals, with socialization, supervision, personal care and nutrition in a protective setting during part of the day.[[17]](#footnote-17) As previously mentioned, these SADCs provide seniors with social stimulation and help decrease their social isolation, a factor in the rise of many mental illnesses among this population. DFTA also works with case management agencies to offer in-home care for older adults, including counseling on long-term care issues.[[18]](#footnote-18) At NORCs, DFTA funds supportive service programs for seniors so that older adults have access to health and social services in their communities.[[19]](#footnote-19)

 Notably, in December 2016, as part of ThriveNYC, first lady Chirlane McCray, Deputy Mayor Richard Buery, and DFTA’s Commissioner Donna Corrado launched the Geriatric Mental Health Initiative to make mental health services more accessible for older adults[[20]](#footnote-20) at 25 NYC senior centers. [[21]](#footnote-21) Under this initiative, mental health clinicians’ evaluate older adults for depression, provide them with mental health related referrals and offer older adults on-site counseling.[[22]](#footnote-22) The Geriatric Mental Health Initiative’s on-site counseling services include individual, family, couples and group counseling.[[23]](#footnote-23) Additionally, mental health clinicians lead educational workshops and discussions with older adults about depression and anxiety at senior centers. Participating senior centers offer medication management, engagement programs, and clinical services in different languages including in English, Cantonese, Polish, Mandarin, Spanish and Russian.[[24]](#footnote-24) Senior participants are not required to be members of the senior center, but must be age 60 or older.[[25]](#footnote-25)

 Under ThriveNYC, the administration also expanded DFTA’s older adult visiting programs with the launch of the Friendly Visiting Program. The Friendly Visiting program provides visiting services to older adults who live alone and are prone to social isolation.[[26]](#footnote-26) As part of the Friendly Visiting program, trained volunteers who work with coordinators at case management agencies, are paired with older adults who they visit. These volunteers are trained for regular in-home visits and will take walks, run errands or talk about shared interests and experiences with their assigned older client.[[27]](#footnote-27) Volunteers will also accompany older adults in activities like shopping, senior center visits and library visits.[[28]](#footnote-28) The program seeks to connect clients who are identified by their visitors to need mental health services to the appropriate services.[[29]](#footnote-29) Volunteers and friendly visiting coordinators are trained on mental health first-aid since social isolation puts older adults at risk for mental health complications.[[30]](#footnote-30)

Finally, through providers like Weill-Cornell, Jewish Association for Services (JASA), Service Program for Older People (SPOP), and Community Advisory Program for the Elderly (CAPE), older adults may also request referrals for a wide variety of services in their own boroughs.[[31]](#footnote-31) While individuals requesting services do not need to be a member of a senior center, they must be age 60 or older to receive mental health services in any of the participating senior centers.[[32]](#footnote-32)

Department of Health and Mental Hygiene (DOHMH) Mental Health Services

DOHMH also provides health information and services for older adults, including free and low-cost medical care and screening options for various types of cancer and other medical conditions.[[33]](#footnote-33) For depression and behavioral health concerns, NYC Well counselors are available to answer questions and guide participants to the appropriate services for services 24 hours a day, 7 days a week.[[34]](#footnote-34) NYC Well staff offer assistance in multiple languages and health insurance is not required to receive referral information.[[35]](#footnote-35) Peer support specialists are available to those who request it and services include short term counseling, suicide prevention and crisis intervention, peer support, information and referral and follow up services.[[36]](#footnote-36)

Another effective New York City DOHMH resource is the ThriveNYC’s free training for Mental Health First Aid. This program provides training to help caregivers, caseworkers and any member of the public obtain the necessary tools to identify and recognize early signs and symptoms of mental illness and substance misuse.[[37]](#footnote-37) Focusing on learning how to listen without judging, participants are taught how to help stabilize someone in distress until professional help arrives. Participants who complete the eight hour training receive a three-year certification in Mental Health First Aid.[[38]](#footnote-38) Importantly, one of the courses offered by the Mental Health First Aid program is specifically targeted toward recognizing mental health flags and helping mental health needs in older adults.

*Older Adults and Age Discrimination*

Nationwide, older adults are increasingly the victims of age discrimination in the workplace. Age discrimination, according to the United States Equal Employment Opportunity Commission (EEOC), “involves treating an applicant or employee less favorably because of his or her age.”[[39]](#footnote-39) During fiscal year (FY) 2017, age discrimination represented 21.8 percent of complaints made to the EEOC, with 18,376 total complaints filed,[[40]](#footnote-40) and most of which were filed by women.[[41]](#footnote-41) In a recent national survey conducted by the American Association of Retired Persons (AARP) of adults older than 45, 61 percent of respondents indicated that they have seen or experienced age discrimination in the workplace, and 38 percent of these respondents indicated that such discrimination is “very common.”[[42]](#footnote-42) 19 percent of these respondents indicated that they were not hired due to their age and 12 percent indicated that they were not promoted because of their age.[[43]](#footnote-43)

*Current Legal Protections*

Although it persists in the workplace, age discrimination in employment is prohibited by federal, state, and local laws. Generally, it is unlawful for employers, employment agencies, apprenticeship programs, and labor organizations to discriminate against an employee or a job applicant because of their age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. However, there are slight differences in the ways in which age as a protected class is defined under each of these laws and the employers it covers.

For example, the Age Discrimination in Employment Act of 1967 (ADEA)[[44]](#footnote-44), the federal law that prohibits employers from discriminating against individuals on the basis of age, applies to employers with 20 or more employees and protects individuals who are 40 years of age or older. The state law that prohibits age discrimination in employment, the New York State Human Rights Law,[[45]](#footnote-45) is considerably broader, covering employers with four or more employees, and protecting persons who are 18 years of age and over from age discrimination in employment. Finally, the law which most expansively prohibits age discrimination in employment is the local one; the New York City Human Rights Law (NYCHRL)[[46]](#footnote-46) applies to employers with four or more employees and protects persons of all ages from discrimination based on age or perceived age.

*Issues and Challenges in Proving Age Discrimination*

While the ADEA provides a potential remedy for those older adults facing age discrimination, it is actually difficult to prove age discrimination even when plaintiffs can prove that age was a factor in being fired. Prior to 2009, workers were able to prove age discrimination so long as age was one of the factors considered in firing an employee. However, this changed with the Supreme Court’s decision in *Gross v. FBL Financial Services*.[[47]](#footnote-47) In *Gross*, the Supreme Court raised the standard required to prove age discrimination; after *Gross*, employees must prove that age was the *only* reason for their termination, and not one of many reasons.[[48]](#footnote-48) This means that in mixed motive cases, such as those where an employer considers age and race or age and gender, employees must have what amounts to an explicit statement that they were fired due to age in order to successfully prove age discrimination.

The current mechanisms to address age discrimination in the workplace, then, leave older adults vulnerable and unable to properly pursue their rights. Even where legislation, such as the ADEA and the NYCHRL, and rights enforcement bodies, such as the EEOC and NYCCHR, exist to protect older adults from employment discrimination, the actual mechanics of enforcement often obstruct older adults from receiving any relief at all. That is, older adults can pursue action against employment discrimination almost exclusively through litigation—however, age discrimination is often difficult, and costly, to prove.

To this end, Senator Casey Robert Jr. introduced S.443 in February 2017; the Protecting Older Workers Against Discrimination Act (POWADA) would address and rescind the stringent standard the Supreme Court set for age discrimination suits in *Gross.* That is, POWADA would amend the ADEA to allow complainants “to rely on any type or form of admissible evidence” to prove age discrimination and would allow age discrimination to be proved, even in mixed motive claims with multiple factors, as long as they can show that age was *a* motivating factor in the discriminatory employment practice.[[49]](#footnote-49) In other words, if passed, complainants would no longer be required to demonstrate that age was the *sole* reason they were fired in order to be successful in an age discrimination suit. POWADA was re-introduced for the 2019-2020 legislative session by Senator Robert C. Scott.

*Addressing Mental Wellness in Older Adults and Age Discrimination in the Workplace*

The Committee, then, seeks to promote mental wellness in older adults and fight age discrimination in the workplace by voting on two pieces of legislation on these topics. The Committee thus voted and passed Int. 1180-A, which would require caseworkers working at DFTA senior centers to be trained in mental health for older adults, and Res. 714-A, which supports the passage of POWADA.

**INT. NO. 1180-A**

 Int. No. 1180-A would require all caseworkers working at city-funded senior centers to complete mental health training for older adults, as offered by DOHMH. Caseworkers continuing to work at DFTA senior centers would also be required to receive supplemental refresher courses and training in the same area at least once every three years.

 Since introduction, the language of Int. No. 1180-A was amended to clarify what caseworker means for the purpose of this bill, and amended to clarify that caseworkers shall complete this training, and refresher courses, only so long as DOHMH, or any successor agency, offers the training.

 This bill would take effect 120 days after it becomes law.

**RES. NO. 714-A**

Res. No. 714-A calls upon the United States Congress to pass and the President to sign S. 485 and H.R. 1230, the Protecting Older Workers Against Discrimination Act (POWADA), which would strengthen protections for older Americans by reversing the United States Supreme Court’s 2009 decision in *Gross v. FBL Financial Services Inc.* and reinstating the “mixed-motive” claim, which would permit employees to only prove that age was one of the factors of an employer’s actions, rather than requiring that plaintiffs seeking to prove age discrimination in the workforce prove that age was the only motivating factor for the employer’s action.

Since introduction, the language of the resolution was amended to reflect that POWADA has been re-introduced for the 2019-2020 legislative session, including updated the congressional bill numbers. The resolution was also amended to support passage of POWADA, as opposed to calling for its reintroduction.

**UPDATE**

 On May 28, 2019, the Committee passed Int. No. 1180-A and Res. No. 714-A by a vote of eight in the affirmative, zero in the negative, with zero abstentions.

Int. No. 1180-A

By Council Members Ayala, Chin, Brannan, Ampry-Samuel, Kallos, Koo, Vallone, Rosenthal, Lander, Eugene, Deutsch, Rose, Diaz and Holden

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to mental health training for senior center caseworkers

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-209 to read as follows:

§ 21-209 Mental health training for senior center case workers. a. Definitions. For the

purposes of this section, the term “caseworker” means an individual employed by a senior center that receives funding from the department to provide services on-site pursuant to a contract procured under chapter 13 of the charter and through a source selection method established by procurement policy board rule, who provides case assistance, information and referrals for benefits and social services at such a senior center.

b. Each caseworker shall complete a training to recognize the signs and symptoms of mental illness for older adults offered by the department of health and mental hygiene or a successor agency, provided that such department offers such training.

c. At least once every three years after completing the training described in subdivision b of this section, each caseworker shall receive supplemental refresher training, provided that the department of health and mental hygiene or a successor agency offers such training.

§ 2. This local law takes effect 120 days after it becomes law.

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Res. No. 714-A

Resolution calling upon the United States Congress to pass and the President to sign S. 485 and H.R. 1230, the Protecting Older Workers Against Discrimination Act.

 By Council Members Chin, Rosenthal, Vallone, Lander, Eugene, Rose and Diaz

 Whereas, The Age Discrimination in Employment Act of 1967 (ADEA), enforced by the United States (U.S.) Equal Employment Opportunity Commission (EEOC), protects individuals aged 40 and older from age discrimination in the workforce, including discrimination involving promotion, hiring, compensation, discharge, and privileges of employment; and

 Whereas, Advocates argue that protections put forth by ADEA were weakened by the 2009 U.S. Supreme Court’s decision in *Gross v. FBL Financial Services, Inc.,* which requires that plaintiffs seeking to prove age discrimination in the workforce prove that age was the only motivating factor for the employer’s action; and

Whereas, In 2019, U.S. Senator Robert P. Casey Jr. and Congressman Robert C. Scott introduced S.485 and H.R. 1230, respectively, also known as the Protecting Older Workers Against Discrimination Act (POWADA); and

Whereas, POWADA would reverse the Supreme Court’s decision in *Gross v. FBL Financial Services Inc.,* by reinstating the “mixed-motive” claim, which permitted employees to only prove that age was one of the factors of an employer’s actions; and

Whereas, The American Association of Retired Persons reported that 78 percent of older voters support legislation that protect older adults from age discrimination; and

 Whereas, In Fiscal Year 2017, age discrimination accounted for 21.8 percent of complaints made to the U.S. EEOC, with more than 18,000 complaints filed; and

 Whereas, While recent research on age discrimination in New York City (NYC) is limited, advocates argue that age discrimination is largely prevalent in NYC; and

Whereas, As reported by the NYC Commission on Human Rights (CCHR), of the 193 queries CCHR received about age discrimination in 2017, 119 of them were related to age discrimination in employment; and

Whereas, According to the U.S Senate’s Special Committee on Aging, remaining in the workforce is beneficial for many aging adults, and studies show that working improves emotional, physical and cognitive health, financial stability and security, and quality of life; and

Whereas, Advocates argue that the government should make discrimination laws stronger, not weaker; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to pass and the President to sign S. 485 and H.R. 1230, the Protecting Older Workers Against Discrimination Act.

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KJ

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