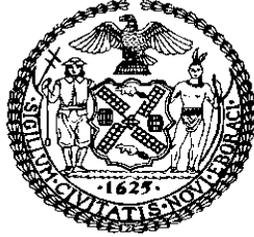


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**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON CIVIL AND HUMAN RIGHTS**

**Hon. Mathieu Eugene, Chair**

**October 23, 2020**

**Oversight: New York City Commission on Human Right's Response to COVID-19**

## **I. INTRODUCTION**

On October 23, 2020, the Committee on Civil and Human Rights, chaired by Council Member Mathieu Eugene, will hold an oversight hearing on the New York City Commission on Human Rights' response to COVID-19. Those invited to testify include representatives from the New York City Commission on Human Rights (CCHR), advocacy organizations, union representatives, community organizations and members of the public.

## **II. BACKGROUND**

In December of 2020, a new virus, initially known as the coronavirus, was discovered in Wuhan, China. On March 1, 2020, New York State Governor Andrew Cuomo confirmed the first known case of the novel coronavirus, SARS-CoV-2, also known as COVID-19 in New York City<sup>1</sup>. The spread of the virus has had, and continues to have, numerous ramifications and affect the lives of New Yorkers from all walks of life.

As news of the virus' existence spread, its origin became a point of contention. The pandemic gave rise to a spate of discriminatory attacks on Asians and other minority groups based on stereotypes and false narratives regarding the spread of COVID. Similarly, discrimination against essential workers spiked, such as refusals to provide housing accommodations or other services.

This hearing will focus on examining the types of pandemic related complaints received by CCHR and how they have been handled; the guidance provided by CCHR on COVID-related discrimination; whether CCHR was adequately able to address COVID-related discrimination

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<sup>1</sup> Dyal, Natasha Priya. "First Case of COVID-19 in NYC, First Death Reported in Washington State." *Infectious Disease Advisor*, 3 Mar. 2020, available at [www.infectiousdiseaseadvisor.com/home/topics/respiratory/first-case-of-covid-19-in-nyc-first-death-reported-in-washington-state/](http://www.infectiousdiseaseadvisor.com/home/topics/respiratory/first-case-of-covid-19-in-nyc-first-death-reported-in-washington-state/).

during the pandemic; and whether the City’s Human Rights Law was sufficiently flexible to respond to the unique discrimination issues that have surfaced during this pandemic.

### **III. ISSUES AND CONCERNS**

#### **a. Rise in Discrimination**

The spread of COVID-19 has brought with it more than just disease. Stigmas surrounding the virus—including who is more likely to contract it and who is responsible for its spread—formed quickly and early on. As early as February, weeks before New York City reached its official lockdown phase, CCHR had already received 248 complaints of COVID-related discrimination.<sup>2</sup> In April, the New York Police Department (NYPD) reported a rise in hate crimes in relation to COVID-19 even though the major crime index fell nearly 30% for every borough the previous month in comparison to last year.<sup>3</sup> So far this year, the NYPD reported a 360% increase in hate crimes.<sup>4</sup> In almost half of these cases, the attacks were motivated by race and COVID-related stigmas.<sup>5</sup>

##### *i. Anti-Asian Sentiment*

As news of the virus’ spread in China became a topic of international concern, fear of Asian establishments and people perceived to be Asian increased, leading to a steep rise in anti-Asian discrimination. Starting in January of this year, Asian-owned businesses in Chinatown, especially

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<sup>2</sup> Dana, Anne R., and Robert J. Nobile. “Human Rights Agencies Issue Discrimination / Harassment Guidance Amidst COVID-19 Concerns.” *Seyfarth Shaw - Human Rights Agencies Issue Discrimination / Harassment Guidance Amidst COVID-19 Concerns*, 21 Apr. 2020, [www.seyfarth.com/news-insights/human-rights-agencies-issue-discrimination-harassment-guidance-amidst-covid-19-concerns.html](http://www.seyfarth.com/news-insights/human-rights-agencies-issue-discrimination-harassment-guidance-amidst-covid-19-concerns.html).

<sup>3</sup> Yang, Lucy. “Coronavirus News: NYPD Report Shows Bias Crimes against Asian Americans on the Rise.” *ABC7 New York, WABC-TV*, 5 May 2020, [abc7ny.com/bias-crimes-coronavirus-chinatown-covid-19/6151239/](http://abc7ny.com/bias-crimes-coronavirus-chinatown-covid-19/6151239/).

<sup>4</sup> Poggio, Marco, et al. “‘When I Go out, I’m Afraid of People Attacking Me,’ Says Victim in Bronx Anti-Chinese Coronavirus Assault.” *Nydailynews.com, New York Daily News*, 6 Apr. 2020, [www.nydailynews.com/coronavirus/ny-coronavirus-umbrella-hate-victim-speaks-out-20200406-jmovhm4tcvem5dtxjxfesx76a-story.html](http://www.nydailynews.com/coronavirus/ny-coronavirus-umbrella-hate-victim-speaks-out-20200406-jmovhm4tcvem5dtxjxfesx76a-story.html).

<sup>5</sup> *Id.*

restaurants, saw a drastic decline in patrons.<sup>6</sup> Some business-owners had to compensate for their losses by laying off employees.<sup>7</sup> During the earlier months of the pandemic and up until as recently as May, only 15% of more than 270 eateries were still operating in Chinatown.<sup>8</sup>

There was also a sharp increase in verbal and physical attacks on Asian individuals. CCHR received 133 complaints in relation to anti-Asian discrimination through the period of February 1<sup>st</sup> to May 15<sup>th</sup>. In contrast, during that same period in 2019, CCHR only received 11 complaints of the same nature.<sup>9</sup> Similarly, the NYPD investigated 11 cases of anti-Asian hate crimes between January 1<sup>st</sup> and March 29<sup>th</sup>, in comparison to the same time last year when they investigated only three such crimes.<sup>10</sup>

One of the earliest examples of such attacks took place on March 28, 2020, when a group of teenage girls attacked a 51 year old Asian-American woman on a bus in the Bronx.<sup>11</sup> After making hateful comments in relation to COVID-19, one of the teenagers struck the woman over the head with her umbrella. The woman was later taken to the hospital where she had to receive stitches for the injuries sustained during the attack. In another incident on a Brooklyn subway platform, an Asian-American man was told by another man that Chinese people were spreading

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<sup>6</sup> Aratani, Lauren. "People Are Scared': New York City's Chinatown Takes Hit over Coronavirus Fears." *The Guardian*, Guardian News and Media, 21 Feb. 2020, [www.theguardian.com/us-news/2020/feb/21/nyc-chinatown-coronavirus-fears-business](http://www.theguardian.com/us-news/2020/feb/21/nyc-chinatown-coronavirus-fears-business).

<sup>7</sup> Id.

<sup>8</sup> Yang, Stephanie. "New York's Chinatown Businesses Struggle to Survive Coronavirus Shutdown." *The Wall Street Journal*, Dow Jones & Company, 7 May 2020, [www.wsj.com/articles/new-yorks-chinatown-businesses-struggle-to-survive-coronavirus-shutdown-11588856400](http://www.wsj.com/articles/new-yorks-chinatown-businesses-struggle-to-survive-coronavirus-shutdown-11588856400).

<sup>9</sup> Thorbecke, Catherine. "NYC Launches \$100,000 to Combat Anti-Asian Discrimination in COVID-19 Era." *ABC News*, ABC News Network, 26 May 2020, [abcnews.go.com/US/nyc-launches-100000-effort-combat-anti-asian-discrimination/story?id=70830974](http://abcnews.go.com/US/nyc-launches-100000-effort-combat-anti-asian-discrimination/story?id=70830974).

<sup>10</sup> Pereira, Sydney. "NYC Human Rights Commission Forms COVID-19 Team After Anti-Asian Discrimination Skyrockets." *Gothamist*, Gothamist, 19 Apr. 2020, [gothamist.com/news/nyc-human-rights-commission-forms-covid-19-team-after-anti-asian-discrimination-skyrockets](http://gothamist.com/news/nyc-human-rights-commission-forms-covid-19-team-after-anti-asian-discrimination-skyrockets).

<sup>11</sup> Crane-Newman, Molly. "Teen Girls Attack Woman on NYC Bus with Umbrella in Latest Anti-Asian Hate Crime." *Nydailynews.com*, New York Daily News, 5 Apr. 2020, [www.nydailynews.com/new-york/bronx/ny-anti-asian-attack-umbrella-20200405-6ihszgw2fdv7oyyx6tuvhkvzu-story.html](http://www.nydailynews.com/new-york/bronx/ny-anti-asian-attack-umbrella-20200405-6ihszgw2fdv7oyyx6tuvhkvzu-story.html).

the virus before being spat on.<sup>12</sup> The Asian man's attacker also mimicked a gesture of a gun, aiming it towards the victim's head. In Queens, an Asian-American woman had her cellphone broken after trying to avoid a man who was yelling racial slurs and saying that Asian people were to blame for the spread of the virus.<sup>13</sup> Additionally, Asian owned properties were targeted and sustained damage. For example, racist graffiti was painted onto the side of a Korean restaurant in the West Village.<sup>14</sup>

The phased reopening of the city did not quell discrimination targeting Asian-Americans. In July, an 89 year old woman was slapped and her back was set on fire by two men.<sup>15</sup> Fortunately, the woman was able to quickly put out the fire and avoid serious injury.<sup>16</sup> Her assailants were eventually arrested and charged.<sup>17</sup>

## *ii. Anti-Semitism*

The Jewish community also faced a number of hateful attacks in connection to the pandemic. In particular, the Orthodox, Ultra-Orthodox, and Haredi Jewish communities have faced a strong backlash due to claims that they were not adhering to social distancing guidelines.<sup>18</sup> Social media posts calling for the denial of medical attention for Jewish people began to spread.<sup>19</sup> In May, police received a 911 call with a complaint of a large crowd of Jewish people gathered without any social distancing. The call came from a couple who, upon seeing the crowd, got out of their

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<sup>12</sup> Parascandola, Rocco. "Asian Man Waiting for NYC Subway Spit on, Threatened in Coronavirus Hate Crime." *Nydailynews.com*, New York Daily News, 25 Mar. 2020, [www.nydailynews.com/coronavirus/ny-coronavirus-hate-crime-brooklyn-subway-spit-20200325-h4w4nzb74fbadpx6li4f7xdoc4-story.html](http://www.nydailynews.com/coronavirus/ny-coronavirus-hate-crime-brooklyn-subway-spit-20200325-h4w4nzb74fbadpx6li4f7xdoc4-story.html).

<sup>13</sup> Gilman, Azure. "Anxiety about Prejudice during Coronavirus Remains for Asian-American Leaders in New York City." *MarketWatch*, MarketWatch, 1 May 2020, [www.marketwatch.com/story/anxiety-about-prejudice-during-coronavirus-remains-for-asian-american-leaders-in-new-york-city-2020-05-01](http://www.marketwatch.com/story/anxiety-about-prejudice-during-coronavirus-remains-for-asian-american-leaders-in-new-york-city-2020-05-01).

<sup>14</sup> *Id.*

<sup>15</sup> "Elderly Woman Attacked, Set on Fire in Brooklyn: NYPD." *ABC7 New York*, WABC-TV, 24 July 2020, [abc7ny.com/woman-set-on-fire-elderly-attack-89-year-old-attacked-bensonhurst-crime/6332002/](http://abc7ny.com/woman-set-on-fire-elderly-attack-89-year-old-attacked-bensonhurst-crime/6332002/).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Greenblatt, Jonathan A. "Blaming Jews for the Spread of the Coronavirus Is Anti-Semitism Pure and Simple." *Nydailynews.com*, New York Daily News, 8 Apr. 2020, [www.nydailynews.com/opinion/ny-oped-jews-coronavirus-antisemitism-20200408-4arvpei6wwd4td7eyqxpjfhaka-story.html](http://www.nydailynews.com/opinion/ny-oped-jews-coronavirus-antisemitism-20200408-4arvpei6wwd4td7eyqxpjfhaka-story.html).

<sup>19</sup> *Id.*

car to shout anti-Semitic slurs at the group and then proceeded to try to rip the masks off the faces of three Jewish individuals.<sup>20</sup> While there have been many reported incidents of failing to social distance amongst these more devout sects of the Jewish community, similar failures have been pervasive among other groups, as well. Nevertheless, Jewish people received greater condemnation and continue to be singled out; 911 calls placed against Jewish people walking in the park, summonses for Jewish people gathered at a funeral, and increased media scrutiny singling out these groups for the spread of the virus are just some examples.<sup>21</sup> Unproven conspiracy theories that Jewish people caused the pandemic because they stand to benefit from it have also made the rounds online, blaming figures like George Soros and other prominent Jewish individuals for starting the pandemic with the German government in order to gain power and influence.<sup>22</sup>

As numbers of positive COVID-19 cases rise again in certain areas of New York City, full and partial shutdowns have been imposed on certain neighborhoods, namely those with substantial Orthodox Jewish populations, to quell further spread that could lead to a second wave of the virus in the city.<sup>23</sup> Renewed scrutiny of the Orthodox community has followed. The owner of the Painted Pot in Brooklyn, a do-it-yourself ceramic painting studio, barred anyone living in the affected areas, primarily the heavily Jewish ones, from using the studio and required customers to show ID for proof of residence.<sup>24</sup> After receiving backlash and accusations of anti-Semitism, the Painted Pot reversed its decision and issued an apology.<sup>25</sup> Some members of the community have argued

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<sup>20</sup> "Couple Charged with Hate Crime After Trying to Rip Masks Off in Brooklyn," Spectrum News, (May 11, 2020), available at: [www.ny1.com/nyc/all-boroughs/news/2020/05/11/nypd--couple-charged-with-hate-crime-after-ripping-masks-off-in-brooklyn-](http://www.ny1.com/nyc/all-boroughs/news/2020/05/11/nypd--couple-charged-with-hate-crime-after-ripping-masks-off-in-brooklyn-).

<sup>21</sup> Ballabon, Jeff, and Mark Goldfeder. "Opinion | De Blasio's 'Message' to Jews." *The Wall Street Journal*, Dow Jones & Company, 30 Apr. 2020, [www.wsj.com/articles/de-blasios-message-to-jews-11588266378](http://www.wsj.com/articles/de-blasios-message-to-jews-11588266378).

<sup>22</sup> Connolly, Kate. "German Jewish Leaders Fear Rise of Antisemitic Conspiracy Theories Linked to Covid-19." *The Guardian*, Guardian News and Media, 21 July 2020, [www.theguardian.com/world/2020/jul/21/german-jewish-leaders-fear-rise-of-antisemitic-conspiracy-theories-linked-to-covid-19](http://www.theguardian.com/world/2020/jul/21/german-jewish-leaders-fear-rise-of-antisemitic-conspiracy-theories-linked-to-covid-19).

<sup>23</sup> Rubinstein, Dana, et al. "Fearing 2nd Wave, N.Y.C. Will Adopt Restrictions in Hard-Hit Areas." *The New York Times*, The New York Times, 4 Oct. 2020, [www.nytimes.com/2020/10/04/nyregion/nyc-covid-shutdown-zip-codes.html](http://www.nytimes.com/2020/10/04/nyregion/nyc-covid-shutdown-zip-codes.html).

<sup>24</sup> Sheehy, Kate. "Brooklyn Shop Accused of Anti-Semitism after Banning Residents from COVID-19 Hot Spots." *New York Post*, New York Post, 6 Oct. 2020, [nypost.com/2020/10/06/the-painted-pot-accused-of-anti-semitism-over-covid-19-hot-spots-ban/](http://nypost.com/2020/10/06/the-painted-pot-accused-of-anti-semitism-over-covid-19-hot-spots-ban/).

<sup>25</sup> Id.

that COVID related restrictions single out the Orthodox Jewish community despite the fact that compliance with mask-wearing and social distancing has varied within many demographic categories. Cultural norms and customs may wrongly place the focus on many orthodox communities, while, for example those within the community may wear masks, the nature of their rituals involve closely knit gatherings that occur more frequently than in other settings, potentially spreading the virus amongst themselves and to others in our so densely populated city. Rather than target the community as a whole, which unfairly punishes those that do adhere to the requirements, community representatives have argued for a more nuanced approach and improved dissemination of information about the virus in those areas.<sup>26</sup>

*iii. Essential workers*

Despite risking their health and safety to battle the pandemic and keep important services running, essential workers faced increased discrimination. Some healthcare workers, particularly nurses, have reported difficulties with applying for housing, noting that landlords feared they would bring the virus home with them.<sup>27</sup> Dr. Richard Levitan, an emergency room doctor from New Hampshire, faced a similar situation when he traveled to New York City in response to the call for much-needed healthcare workers. He had planned on staying at his brother's Upper West Side Apartment, but was told that the building's co-op board would not allow him to stay there, fearing that he was at a higher risk of infection.<sup>28</sup> Asian American healthcare workers have also reported increased incidents of racially-motivated attacks and verbal abuse. Asian American health-care workers represent six percent of the U.S. population but 18 percent of the country's

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<sup>26</sup> Adams, Rose. "It Leads to Anti-Semitism': Orthodox Jews Respond to COVID-19 Scrutiny." *AmNewYork*, 11 Oct. 2020, [www.amny.com/brooklyn/it-leads-to-anti-semitism-orthodox-jews-respond-to-covid-19-scrutiny/](http://www.amny.com/brooklyn/it-leads-to-anti-semitism-orthodox-jews-respond-to-covid-19-scrutiny/).

<sup>27</sup> Shugerman, Emily. "Coronavirus Heroes Are Getting Tossed From Their Homes by Scared Landlords." *The Daily Beast*, The Daily Beast Company, 26 Mar. 2020, [www.thedailybeast.com/coronavirus-nurses-face-eviction-housing-discrimination-from-scared-landlords](http://www.thedailybeast.com/coronavirus-nurses-face-eviction-housing-discrimination-from-scared-landlords).

<sup>28</sup> Dwyer, Jim. "The Doctor Came to Save Lives. The Co-Op Board Told Him to Get Lost." *The New York Times*, The New York Times, 3 Apr. 2020, [www.nytimes.com/2020/04/03/nyregion/co-op-board-coronavirus-nyc.html](http://www.nytimes.com/2020/04/03/nyregion/co-op-board-coronavirus-nyc.html).

physicians and ten percent of its nurse practitioners. These healthcare workers reported verbal abuse and the refusal of treatment by some covid-19 patients.<sup>29</sup>

A recent report from the Office of the New York City Comptroller found that 75 percent of the city's frontline workers are people of color.<sup>30</sup> Many of these workers are employed in low paying jobs and cannot work from home, facing significantly higher risks of virus exposure. These workers bore the brunt of the pandemic, not only in New York City, but throughout the country. Black and Latinos are twice as likely to die from the virus.<sup>31</sup> Although no single factor contributed to these rates, overcrowded homes in low-income communities of color led to increased exposure to infection. Fifteen percent of Black, 24 percent of Asian, and 25 percent of Hispanic New Yorkers live in overcrowded homes<sup>32</sup> in comparison to 10 percent of white New Yorkers.<sup>33</sup> These dynamics contributed to the harrowing infection rates in Queens, namely in the neighborhoods of Corona, Elmhurst, East Elmhurst and Jackson Heights.<sup>33</sup> Without access to health insurance, many of these residents overwhelmed the city-run public hospital, Elmhurst Hospital Center, which quickly became the epicenter of the outbreak.<sup>34</sup> At the height of the pandemic, access to testing has also been more difficult for New Yorkers of color. Despite being one of the areas hardest hit by the virus, South Bronx residents have complained about lack of access to testing.<sup>35</sup> Hard hit

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<sup>29</sup> Tracy Jan, "Asian American doctors and nurses are fighting racism and the coronavirus," (May 19, 2020), available at: <https://www.washingtonpost.com/business/2020/05/19/asian-american-discrimination/>

<sup>30</sup> Office of the Comptroller, New York City's Frontline Workers (March 26, 2020) available at <https://comptroller.nyc.gov/reports/new-york-citys-frontline-workers/>

<sup>31</sup> Richard A. Oppel Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright and Mitch Smith, "The Fullest Look Yet at the Racial Inequality of the Coronavirus," NYT, (July 5, 2020), available at: <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>

<sup>32</sup> "Overcrowded" is defined as more than 1 person per room in a home. See: Chadha, Janaki. "New York City's Most Crowded Neighborhoods Are Often Hardest Hit by Coronavirus." Politico PRO, (April 11, 2020) available at: [www.politico.com/states/new-york/albany/story/2020/04/11/new-york-citys-most-crowded-neighborhoods-are-often-hardest-hit-by-coronavirus-1274875](http://www.politico.com/states/new-york/albany/story/2020/04/11/new-york-citys-most-crowded-neighborhoods-are-often-hardest-hit-by-coronavirus-1274875).

<sup>33</sup> Office of the Comptroller, *supra note 30*

<sup>34</sup> Annie Correal and Andrew Jacobs, "'A Tragedy is Unfolding': Inside New York's Virus Epicenter," NYT, (April 9, 2020), available at: <https://www.nytimes.com/2020/04/09/nyregion/coronavirus-queens-corona-jackson-heights-elmhurst.html>

<sup>35</sup> Deutsch, Kevin. "'The Government Is Not Helping Us': Coronavirus Hotline Thwarting Bronx Residents in Need of Testing." Bronx Justice News, (April 11, 2020) available at: [bronxjusticenews.com/the-government-is-not-helping-us-coronavirus-hotline-thwarting-bronx-residents-in-need-of-testing/](https://bronxjusticenews.com/the-government-is-not-helping-us-coronavirus-hotline-thwarting-bronx-residents-in-need-of-testing/).

neighborhoods in the Bronx, such as Soundview, Throgs Neck, and Eastchester<sup>36</sup>, are all predominantly black neighborhoods.<sup>37</sup> In Queens, the hardest hit neighborhoods of East Elmhurst, Corona, and Jackson Heights<sup>38</sup> are all predominantly Hispanic.<sup>39</sup> Difficulties with testing, especially at the height of the virus' spread, amongst low-income communities of color that make up the majority of the city's essential workforce could have led to more undetected infection. These communities have been found to have a disproportionately higher rate of infection than other, predominantly white neighborhoods.<sup>40</sup> At the peak of the pandemic, the death rate of those infected was about 22 per every 100,000 Hispanic people and 20 per every 100,000 black people in comparison to 10 per every 100,000 white people.<sup>41</sup>

*iv. COVID-19 related discrimination in the workplace*

As the COVID-19 pandemic unfolded, there was an increase in complaints regarding COVID-related discrimination in the workplace. Most of these complaints revolved around employers refusing to provide reasonable accommodations or undertaking negative employment actions with a disproportionate impact on individuals in protected categories under the pretext of COVID-19 induced economic hardships. The New York State Division of Human Rights reported that it received 75 complaints of discrimination or denial of accommodations in relation to COVID-19.<sup>42</sup> Lawsuits relating to wrongful dismissal claims based on requests for reasonable

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<sup>36</sup> "New York City Covid Map and Case Count", NYT, (October 19, 2020), available at: <https://statisticalatlas.com/place/New-York/New-York/Race-and-Ethnicity>

<sup>37</sup> Neighborhood demographics from Statistical Atlas, available at: <https://statisticalatlas.com/place/New-York/New-York/Race-and-Ethnicity>

<sup>38</sup> New York Times, supra note 36

<sup>39</sup> Statistical Atlas, supra note 37

<sup>40</sup> Monsoor, Sonya. "Data Suggests Many New York City Neighborhoods Hardest Hit By COVID-19 Are Low-Income Areas," Time, (April 5, 2020), available at: <https://time.com/5815820/data-new-york-low-income-neighborhoods-coronavirus/>

<sup>41</sup> Mays, Jeffrey. Newman, Andy. "Virus Is Twice As Deadly For Black And Latino People Than Whites In N.Y.C.," NYT, (April 8, 2020), available at: <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-race-deaths.html>

<sup>42</sup> Alex Ellerbeck, American University, et al. "Looming Fight: Millions of Disabled Workers Could Ask for COVID-19 Protections under ADA," Center for Public Integrity, (August 28, 2020), available at: [publicintegrity.org/health/coronavirus-and-inequality/disabled-workers-covid-protections-ada/](https://publicintegrity.org/health/coronavirus-and-inequality/disabled-workers-covid-protections-ada/).

accommodations are beginning to proliferate across the country.<sup>43</sup> Many of these claims involve requests for accommodations from individuals with health conditions or who live with family members who are vulnerable to the virus. In some of these cases, employers have not only denied the requests, but have terminated such employees, disintitling them from health benefits or other unemployment benefits.<sup>44</sup>

Company layoffs have also disproportionately targeted individuals in protected categories. As of September 2020, unemployment rates for people over the age of 55 have increased from 3.3% prior to the pandemic to 26.4%.<sup>45</sup> An employee in New York filed suit challenging his termination, alleging he was among the first laid off as his employer made cuts during the pandemic and was selected because of his age.<sup>46</sup> The layoffs have also disproportionately targeted women. In another class action case filed in the U.S. District Court - Southern District of New York, an employee returning from maternity leave was not given back her role and was laid off six months later during the COVID-19 pandemic.<sup>47</sup>

Employees are also filing claims for retaliation for raising concerns about employer health and safety protocols during the pandemic. On Staten Island, a concerned Amazon worker who spoke out against the company's health and safety policies during the pandemic was fired, seemingly in retaliation for speaking up.<sup>48</sup> CCHR is currently investigating the allegations against

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<sup>43</sup> See for e.g. *Burbach v. Arconic Corp.*, No. 2:20-cv-00723-CRE (W.D. Pa. filed May 19, 2020); *Lin v. CGIT Systems, Inc.*, No. 1:20-cv-11051 (D. Mass. filed June 3, 2020).

<sup>44</sup> See for e.g. Jack Healy, "Workers Fearful of the Coronavirus Are Getting Fired and Losing Their Benefits," NYT, (June 4, 2020), available at: <https://www.nytimes.com/2020/06/04/us/virus-unemployment-fired.html>

<sup>45</sup> Jennifer Schramm, "September 2020 Employment Data Digest," AARP Public Policy Institute, available at: <https://www.aarp.org/ppi/info-2020/employment-data-digest.html>

<sup>46</sup> By Gregory P. Abrams, Esq., Taylor L. Haran, Esq., Samantha M. Rollins, Esq., and Katrina W. Forsyth, Esq., "Coronavirus lawsuits on the horizon: Termination and discrimination," Westlaw, 2020 WL 4463392, available at: [https://1.next.westlaw.com/Document/I151671f1d6c311eabea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/I151671f1d6c311eabea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=(sc.Default))

<sup>47</sup> Daniel Wiessner, "Deloitte accused of forcing out women who take lengthy maternity leave," Reuters Legal, (September 1, 2020), available at: <https://www.reuters.com/article/employment-deloitte/deloitte-accused-of-forcing-out-women-who-take-lengthy-maternity-leave-idUSL1N2FY2EK>

<sup>48</sup> Pereira, Sydney. "NYC Investigating Amazon's Firing Of Worker Who Helped Organize Staten Island Strike." *Gothamist*, Gothamist, 31 Mar. 2020, [gothamist.com/news/nyc-investigating-amazons-firing-worker](https://gothamist.com/news/nyc-investigating-amazons-firing-worker).

Amazon. The employee, Chris Smalls, was fired after organizing a walkout in protest of crowded working conditions at the Staten Island facility. An Amazon spokesperson said that Mr. Smalls violated a 14 day quarantine he was under, in order to attend the walkout. However, the cause for the quarantine, another employee who tested positive for the virus, was last at the facility on March 11<sup>th</sup>, which was over 14 days before the March 30<sup>th</sup> walkout.<sup>49</sup>

In response to the unique challenges posed by COVID-19 in the workplace, the Equal Employment Opportunity Commission (EEOC) updated its guidance on workplace discrimination. The EEOC emphasized legal requirements surrounding the provision of reasonable accommodations in the context of COVID-19 and cautioned employers against implementing layoffs that disproportionately targeted protected groups.<sup>50</sup> It also clarified that employers may implement precautions relating to COVID-19, such as employee temperature checks and other forms of virus screenings, but that they could not do so selectively, particularly on the basis of a protected status.<sup>51</sup> The EEOC also clarified that questions about an employee's family members' COVID status were off-limits.

#### **b. CCHR's COVID Response**

In response to the uptick of complaints during the pandemic, CCHR clarified that actual or perceived infection with COVID-19 is considered a protected disability under the New York City Human Rights Law (NYCHRL), thereby invoking all the law's protections as they apply to the workplace, places of public accommodation and housing.<sup>52</sup> CCHR also updated their age

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<sup>49</sup> Id.

<sup>50</sup> U.S. Equal Employment Opportunity Commission, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws," available at [www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws](http://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws). Id.

<sup>51</sup> Id.

<sup>52</sup> "COVID-19 and Human Rights." *Coronavirus (COVID-19) and Human Rights*, New York City Commission on Human Rights, [www1.nyc.gov/site/cchr/media/covid19.page](http://www1.nyc.gov/site/cchr/media/covid19.page).

discrimination guidelines and published a supplemental legal guidance, emphasizing the need for employers not to implement policies that target and disadvantage older workers because of their perceived increased susceptibility to the virus.<sup>53</sup> Furthermore, CCHR emphasized in its guidance that those perceived to be of a race, religion, ethnicity or creed deemed to be at higher risk of infection cannot be singled out by employers.<sup>54</sup> Employers were also advised to offer reasonable accommodations whenever possible, such as making telework optional for all staff, creating staggered work schedules, updating the workplace physical environment with barriers and providing personal protective equipment.<sup>55</sup>

CCHR also launched a COVID-19 Response Team on April 19, 2020. This team is comprised of Commission staff from the Law Enforcement Bureau and the Community Relations Bureau working in coordination to quickly and efficiently track and respond to the sharp increase in reports of harassment and discrimination connected to the pandemic.<sup>56</sup> At the time of its announcement, CCHR reported that its response team took action on 148 cases, which included “conducting early or emergency intervention, providing information on how to request a reasonable accommodation, referring the individual to another service or agency, or commencing an investigation.”<sup>57</sup> It further stated that 18 matters were under investigation and spanned complaints relating to discrimination in housing, public accommodations, and employment on the basis of race, national origin, disability and lawful source of income.<sup>58</sup> Additionally, CCHR stated that the Response Team resolved nine matters of COVID-19-related harassment and discrimination.<sup>59</sup> According to the

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<sup>53</sup> “Age Discrimination Guide 2020.” *Commission on Human Rights*, New York City Commission on Human Rights, <https://www1.nyc.gov/assets/cchr/downloads/pdf/AgeDiscriminationGuide-2020.pdf>

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> Press Release, New York City (NYC) Commission on Human Rights, “NYC Commission on Human Rights Announces Formation of COVID-19 Response Team to Address Increased Harassment and Discrimination Related to the Virus,” (April 19, 2020), available at: [https://www1.nyc.gov/assets/cchr/downloads/pdf/CCHR\\_COVID19\\_Response\\_Team\\_Release\\_final.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/CCHR_COVID19_Response_Team_Release_final.pdf)

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

Mayor's Management Report (MMR), from March 2020 until the end of fiscal 2020, the Response Team responded to 376 inquiries.<sup>60</sup> According to the most recent numbers made available in CCHR's Annual Report released in October 2020, the total number of COVID-19 related inquiries were as follows:

Total COVID-19 related queries and incidents tracked between February 1, 2020 to June 30, 2020: **478**.

- Of these, **167**, or **35%**, of the incidents included an element of anti-Asian discrimination or harassment.
- In the same time period in 2019, the Commission received **22** incidents of anti-Asian discrimination.

The COVID-19 Response Team took nearly **200** actions on incidents of discrimination and harassment including:

- Providing rapid response support in **83** matters
- Providing **58** referrals to other enforcement agencies and community partners
- Conducting **18** successful emergency interventions
- Filing **6** cases.<sup>61</sup>

*i. Outreach Efforts*

CCHR also collaborated with community organizations to monitor and address incidents of discrimination, including holding bystander intervention trainings alongside the Center for Anti-Violence Education. The Commission participated in several community forums, including one in Manhattan's Chinatown to educate Asian communities of their rights and protections under the law. Similarly, CCHR participated in a virtual town hall, in partnership with the NYC Health Department, the Department of Worker and Consumer Protection and the Mayor's Office of Immigrant Affairs to address workplace protections during COVID-19.<sup>62</sup>

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<sup>60</sup> The City of New York, Mayor Bill de Blasio, "Mayor's Management Report," (September 2020) at 100, available at: [https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020\\_mmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf)

<sup>61</sup> NYC Commission on Human Rights, "Annual Report Fiscal Year 2020," (October 2020) at 11, available at: [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR\\_Annual\\_Report\\_FY20.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf)

<sup>62</sup> Id.

On May 26, 2020, CCHR announced a \$100,000 public education effort targeting COVID-19 related discrimination, including ads targeting discrimination in healthcare settings as a result of renewed attention to disparities in access to treatment and outcomes in medical settings.<sup>63</sup> The campaign resulted in the following outreach statistics:

#### COVID-19 CAMPAIGN STATISTICS

- **1.306M** social media impressions
- **11.7K** clicks driven to the Commission’s COVID-19 resources page
- **20.1K** social media engagements
- **594K** estimated impressions for community/ethnic media advertising
- **57.6M** estimated impressions for outdoor advertising<sup>64</sup>

In fiscal 2020, CCHR stated that it expanded its outreach efforts to serve 99,858 New Yorkers through conferences, workshops and trainings, representing a 2.5% increase. However, conferences, workshops and trainings were actually down by 48.3% during the same period. In fiscal year 2019, CCHR held 3,060 conferences, workshops and training sessions. This number dropped to 1,481 in fiscal year 2020.<sup>65</sup> While understandably, the pandemic likely contributed to this drop, no explanation is provided in the MMR. It is also unclear how CCHR was able to increase its outreach despite such a significant reduction in the number of events held.

#### *ii. The Impact of COVID-19 on CCHR’s Operations*

The Commission reported that its workforce providing services remotely as a result of the pandemic has not impacted the availability of CCHR services.<sup>66</sup> The Commission extended

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<sup>63</sup> Press Release, New York City Commission on Human Rights, “NYC Commission on Human Rights Launches \$100,000 Public Education Effort to Combat COVID-19 Related Stigma Amid Soaring Reports of Discrimination,” (May 26, 2020), available at: <https://www1.nyc.gov/assets/cchr/downloads/pdf/press-releases/antistigma-campaign-release-final.pdf>

<sup>64</sup> Campaign statistics reflect campaign run time through the end of Fiscal Year 2020 and into Fiscal Year 2021, City Commission on Human Rights, “Annual Report Fiscal Year 2020,” (October 2020) at 12, available at: [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR\\_Annual\\_Report\\_FY20.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf)

<sup>65</sup> Id. at 101-102.

<sup>66</sup> Testimony of Dana Sussman, Deputy Commissioner for Policy and Intergovernmental Affairs, New York City Commission on Human Rights, Before the Committee on General Welfare and Committee on Civil and Human Rights (September 15, 2020), available at: <https://nyc.legistar.com/View.ashx?M=F&ID=8804159&GUID=15C51C76-A6E2-4C13-B790-2F5042411967>

deadlines for claims set to expire between March 20, 2020 and October 3, 2020, cancelled all in-person events, and postponed the issuance of any decisions on appeals of complaints dismissed for administrative cause or lack of probable cause.<sup>67</sup> Despite the pandemic's setbacks, CCHR successfully obtained record high awards in fiscal year 2020, achieving \$6.5 million dollars in damages for complainants and \$969,750 in civil penalties.<sup>68</sup>

### *iii. CCHR Complaint Processing*

While CCHR has not published COVID-19 specific complaint processing data and metrics, the MMR for fiscal year 2020 and CCHR's Annual Report provide some indicative preliminary numbers. In fiscal year 2020,<sup>69</sup> the Commission received 10,015 inquiries, up 211 from the previous year. Despite the increase, there was a significant drop in the number of complaints filed; there were 525 complaints filed, down 267 from the previous year.<sup>70</sup> This drop is not explained by pre-complaint resolutions, which were also down by 131.<sup>71</sup> Similarly, while there were a reported 478 COVID-19 related complaints, only six complaints were actually filed.<sup>72</sup> There was also an unexplained and comparatively significant increase in the number of cases that were closed despite findings of probable cause: 23 percent of cases with a probable cause determination were closed in fiscal year 2020, whereas only five and seven percent of cases were closed in fiscal 2018 and 2019, respectively.<sup>73</sup> Similarly, 51 percent of cases were closed for administrative cause.<sup>74</sup> While

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<sup>67</sup> NYC Commission on Human Rights, "Case Deadlines," available at: <https://www1.nyc.gov/site/cchr/media/covid19.page>

<sup>68</sup> Id.

<sup>69</sup> Represents the period beginning on July 1, 2019 to June 30, 2020.

<sup>70</sup> The City of New York, Mayor Bill de Blasio, "Mayor's Management Report," (September 2020) at 101, available at: [https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020\\_mmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf)

<sup>71</sup> Id.

<sup>72</sup> NYC Commission on Human Rights, "Annual Report Fiscal Year 2020," (October 2020) at 11, available at: [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR\\_Annual\\_Report\\_FY20.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf)

<sup>73</sup> The City of New York, Mayor Bill de Blasio, "Mayor's Management Report," (September 2020) at 101, available at: [https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020\\_mmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf)

<sup>74</sup> Id. Administrative cause has the same meaning as "administrative convenience" in § 8-113 of the Administrative Code: "Administrative convenience shall include, but not be limited to, the following circumstances:

1. Commission personnel have been unable to locate the complainant after diligent efforts to do so;

CCHR lauded its ability to close more cases in fiscal 2020, it is unclear whether such closures are truly a positive indicator, particularly considering that the average age of a complaint is over 500 days.<sup>75</sup> These numbers raise questions about whether New Yorkers are indeed able to obtain appropriate redress for legitimate human rights violations.

**c. Response to Anti-Black Racism and the Black Lives Matter Movement**

While not directly related to the COVID-19 pandemic, the resurgence of the Black Lives Matter movement in recent months necessitated an immediate and urgent response across city agencies. Despite virus fears and lockdown measures, large-scale protests erupted across the country in response to the death of George Floyd in late May at the hands of Minneapolis Police.<sup>76</sup> The incident, caught on video, showed Mr. Floyd on the ground with a police officer's knee on his neck. For several minutes, Mr. Floyd is seen begging for his life, while the officer continues to restrict his breathing, and other officers simply observe. Mr. Floyd eventually stops breathing.<sup>77</sup> The protests precipitated a cultural reckoning on racial injustice in the United States and have led to numerous legislative proposals on federal, state and municipal levels intended to combat police misconduct and systemic racism. Among these proposals included calls for “defunding the police.” In New York City, \$1 billion was cut from the NYPD's budget—money advocates and elected officials have argued should be shifted to social services.<sup>78</sup>

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2. The complainant has repeatedly failed to appear at mutually agreed upon appointments with commission personnel or is unwilling to meet with commission personnel, provide requested documentation, or to attend a hearing;

3. The complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the commission;

4. The complainant is unwilling to accept a reasonable proposed conciliation agreement;

5. Prosecution of the complaint will not serve the public interest; and

6. The complainant requests such dismissal, 180 days have elapsed since the filing of the complaint with the commission and the commission finds (a) that the complaint has not been actively investigated, and (b) that the respondent will not be unduly prejudiced thereby.

<sup>75</sup> The City of New York, Mayor Bill de Blasio, “Mayor's Management Report,” (September 2020) at 101, available at: [https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020\\_mmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf)

<sup>76</sup> Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis and Robin Stein, “How George Floyd Was Killed in Police Custody,” NYT, (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>

<sup>77</sup> Id.

<sup>78</sup> Press Release, Mayor Bill de Blasio, “In the Face of an Economic Crisis, Mayor de Blasio Announces Budget that Prioritizes Safety, Police Reform, Youth Services, and Communities of Color,” (June 30, 2020), available at: <https://www1.nyc.gov/office->

For its part, CCHR released a comprehensive report on anti-Black racism in June of this year, titled “Black New Yorkers on Their Experiences with Anti-Black Racism.”<sup>79</sup> While largely a qualitative assessment that utilized focus groups, the report offers a glimpse into the experiences of Black New Yorkers within employment, education, housing, places of public accommodation, government and healthcare settings, to name a few. The report included a number of recommendations on steps the Commission and other city agencies could take to address anti-Black racism in the City. Among these recommendations are policy proposals to utilize restorative justice methods in the Commission’s enforcement and provide specific training on anti-Black racism tailored for city agency staff.<sup>80</sup>

The Commission also announced an investigation into the Central Park incident where Amy Cooper called police and falsely alleged that Christian Cooper (no relation to Ms. Cooper), a Black man birdwatching in the park, was threatening her life. The available footage of the incident, however, showed no evidence of Mr. Cooper threatening or approaching Ms. Cooper.<sup>81</sup>

#### **IV. CONCLUSION**

The COVID-19 pandemic has challenged city agencies, including CCHR, in unprecedented ways. The increase in the number of COVID related discrimination complaints, coupled with the challenges of providing services while employees worked from home, necessitated creative and urgent responses by the Commission. This hearing provides an

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<sup>79</sup> NYC Commission on Human Rights, (June 2020), available at:

[https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/AntiBlackRacism\\_Report.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/AntiBlackRacism_Report.pdf)

<sup>80</sup> Id.

<sup>81</sup> Press Release, NYC Commission on Human Rights, “NYC Commission on Human Rights Announces Investigation into Central Park Incident,” (May 27, 2020), available at: <https://www1.nyc.gov/assets/cchr/downloads/pdf/press-releases/Central-Park-release-final.pdf>

opportunity to delve into CCHR's handling of the COVID-19 emergency, while gleaning important lessons-learned to shape and improve future preparedness.