



**L E G A L**

**S E R V I C E S**

**INCORPORATED**

**TESTIMONY**

**ON**

**PROPOSED INTRO. NO. 815-A**

**IN RELATION TO EXPANDING THE RIGHT TO TRUTHFUL  
INFORMATION UNDER THE CITY HUMAN RIGHTS LAW AND  
LEGISLATING AN EXPRESS CAUSE OF ACTION FOR  
EMPLOYERS AND PRINCIPALS WHOSE RIGHTS ARE VIOLATED  
BY CONDUCT TO WHICH THEIR EMPLOYEES OR AGENTS ARE  
SUBJECTED**

**PRESENTED BEFORE:**

**THE NEW YORK CITY COUNCIL  
COMMITTEE ON CIVIL RIGHTS**

**PRESENTED BY:**

**MAIA GOODELL  
MFY LEGAL SERVICES, INC.**

**September 21, 2015**

MFY Legal Services, Inc. (MFY) submits this testimony to New York City Council Committee on Civil Rights concerning Intro. 815-A.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 10,000 New Yorkers each year. We submit this testimony based on our experience with clients from MFY's Workplace Justice Project, which advocates on behalf of low-income workers most vulnerable to exploitation and handles a range of employment problems, including workplace discrimination and other barriers to employment, which includes MFY's Re-entry Project, helping individuals with criminal convictions overcome barriers to employment.

MFY commends the Committee on Civil Rights for holding this hearing about this important legislation. Intro 815-A, if enacted, would substantially strengthen the New York City Human Rights Law in several ways, across many substantive areas. This testimony highlights three major ways it could help New Yorkers in the employment context. First, the bill would provide a firm statutory basis to confer standing to sue on advocacy organizations that use testing to uncover systemic discrimination. Second, it would provide a statutory right of action on behalf of those indirectly discriminated against. Finally, it would make explicit that a violation of a statutorily-created right, in and of itself, is sufficient to confer standing to sue.

### **The Importance of "Testing" to Expose Illegal Discrimination in Hiring**

MFY conducts hundreds of intakes each year. Our employment attorneys regularly speak to New Yorkers who have been denied a job, despite being qualified for the position. Often those clients strongly suspect that the reason for the denial was illegal bias by the employer, such as racial bias or automatic disqualification for criminal convictions without the analysis required by Correction Law Article 23A. Unfortunately, most of these clients have virtually no way to prove that illegal discrimination was a factor. Potential employers are unlikely to tell a job applicant that it will not consider the applicant because of his or her protected status. As the law stands now, when a worker comes to MFY seeking legal assistance in these situations, we have no choice but to counsel the client that, without direct proof, he or she will likely have limited success in establishing a discrimination claim in court or in an agency.

The lack of a remedy in such circumstances is particularly frustrating when we suspect that a large employer is engaging in systemic discrimination, but where we have no way to test that theory. Based on our clients' individual examples, we believe that systemic hiring discrimination is rampant in certain industries, such as in retail. Through our partnership with retail workers' advocacy groups, we see examples of retailers who, we strongly suspect, do not hire applicants of color for more desirable sales positions, or who limit their applicants of color to "back of the house" positions stocking merchandise. However, we lack access to the type of proof that could establish a claim of discrimination in court.

Simply put, it would be a game-changer if MFY had the option to send those clients to an advocacy organization that employed testers, and which could further investigate employers' hiring practices. "Testing," which has been a crucial tool for advocacy organizations in establishing housing discrimination, is virtually nonexistent in the employment context.

Though the New York City Human Rights Law is strong in many respects, one of its fundamental weaknesses is it is virtually impossible to hold employers accountable for even the most egregious and systemic hiring discrimination.

Through these amendments, advocacy organizations that use testing will be able to effectively help individuals prove that they have been discriminated against, and will also be able to independently seek redress for systemic discrimination on behalf of themselves, as the indirect victims of a discriminatory practice. An organization's right to go to court could make a huge difference by allowing organizational plaintiffs to bring discrimination claims that otherwise may never be brought, for example, because of vulnerable individuals' fear of coming forward.

By passing Intro. 815-A, the City Council can help maximize the practical means by which illegal discriminators can be held to account. MFY applauds the Committee on Civil Rights of the New York City Council for holding this hearing, and urges the Council to pass Intro. 815-A.

***For any questions about this testimony, please feel free to contact Maia Goodell at (212) 417-3749, [mgoodell@mfy.org](mailto:mgoodell@mfy.org).***