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PROPOSED BIENNIAL EMPLOYMENT PLAN**

These comments are submitted on behalf of the New York City Bar Association's Social Welfare Law Committee. The New York City Bar Association (City Bar) is a voluntary association of lawyers and law students with over 24,000 members. The City Bar harnesses the expertise of the legal profession to identify and address legal and public policy issues in ways that promote ethics, law reform and the fair and effective administration of justice. The City Bar is dedicated to addressing unmet legal needs, especially the needs of traditionally disadvantaged groups and individuals, and mobilizing the legal profession to engage in activities that promote social justice. The Social Welfare Law Committee's work focuses on legal and policy issues impacting low income New Yorkers and concerning income disparities, governmental benefits and other aspects of the social safety net.

In the City Bar's 2013 "Policy Recommendations for New York City's Next Mayor" (the "City Bar's Report to Next Mayor"), we urged the next Mayor and the Commissioner of the Human Resources Administration (HRA) to remove administrative barriers to obtaining Cash Assistance and to end punitive welfare policies.¹ The Committee applauds HRA for already initiating many of our suggested reforms and those suggested by a broad audience of stake holders, including clients, HRA staff and various New York City advocacy organizations. We also commend HRA for the manner in which it developed its proposed and truly groundbreaking Employment Plan by analyzing data, reviewing research, and examining successful practices in other locations. We are particularly pleased by the proposed Employment Plan's emphasis on education and training; the rejection of the previous one-size-fits-all approach that will be replaced by individual attention to the needs of each client; and the crucial elimination of the Work Experience Program.

SUPPORT FOR THE EMPLOYMENT PLAN

We applaud the agency's plan to eliminate the "Work Experience Program" ("WEP"). The WEP program has failed to move people from public assistance to self support because it provided neither training nor skills development for participants. Moreover, WEP has harmed other New York City workers by displacing paid workers, undercutting union wages and leading to lower labor standards. The WEP program has been demoralizing, and counter-productive, and

¹ See generally pp. 46-50 at <http://www.nycbar.org/images/stories/pdfs/mayoralreport04302013.pdf>.

did not assist clients in attaining the agency's goals for their self-support and permanent employment.

We support efforts by HRA and New York City to increase paid work placements, such as the Parks Opportunity Program. HRA's focus on linking job placements to high-growth industries makes sense. Another positive development in the Employment Plan is HRA's intention to make greater use of Individualized Training Vouchers, previously under-used subsidies which can lead to truly self-supporting employment. All of these changes will more effectively fight poverty and promise to lead to full-time work at decent wages.

We are also impressed with the proposed changes in how teenagers and young adults will be assessed and supported in completing their education and receiving realistic job-training. We fully endorse HRA's goal for extended opportunities for youth under 24 years of age to complete a high school degree or its equivalent. We also support HRA's intention to increase coordination of its work with other City agencies that serve young people, such as the Administration for Children's Services (ACS), the Department of Education (DOE), and Department of Youth and Community Development (DYCD). In particular, HRA's new emphasis on High School Equivalency and post-secondary education in coordination with the City University of New York are examples of savvy and pragmatic approaches to meet the needs of teenagers and young adults who receive cash assistance and other services from HRA. Additionally, the Employment Plan's proposal to appoint a Youth Coordinator will be key to implementing HRA's education, training and employment policies for youth, including those who are aging out of the foster care system or are leaving the juvenile or criminal justice systems.

As with other elements of the Employment Plan, development of long-term training for HRA staff on the new policies for youth must be emphasized in order to ensure the success of these welcome and substantial changes. Similarly, HRA's plan to develop increased coordination with ACS to serve youth aging out of foster care is a positive change. Indeed, we recommend that, in developing these long-range policies and plans, HRA consult with all relevant stakeholders who are involved with youth in foster care. This coordination will provide essential transparency and ensure that new policies are most effectively tailored toward meeting the needs of these youth.

Finally, we commend HRA's attention to tailoring employment requirements and training opportunities for the applicants and recipients who are undergoing crisis, such as homeless shelter residents and people who are survivors of domestic violence. HRA's plans to tailor employment-related service for homeless clients should lead to better employment outcomes, and at the same time should lessen obstacles to the clients' efforts to secure permanent housing. The Employment Plan also includes specific provisions for victims of domestic violence. By eliminating the over-use of "partial" waivers and moving to a system of voluntary placements, HRA will ensure safe participation for clients who are ready to participate in training and employment programs. These provisions will help to stabilize volatile situations and provide realistic services in order to engage those who are not otherwise exempt from work requirements.

The Plan's provisions to revamp the assessment and accommodations for people with disabilities are essential. HRA intends to strengthen the assessments provided by WeCARE vendors; remove barriers for those who are participating in the Wellness Program; and better identify and assist the many applicants and recipients for cash assistance who are eligible for federal disability benefits. These changes are vitally needed.

For all of these reasons, we believe that the Plan will lead to positive job outcomes for needy New Yorkers receiving cash assistance.

RECOMMENDATIONS

While we support the vast majority of the Employment Plan's initiatives, and applaud its forward-thinking approach, we offer the following four recommendations which we believe would further improve the Employment Plan.

I. Implement Further Changes to Engagement Requirements for Employment-Related Activities In Order To Maximize Flexibility Permitted under Federal and State Law

HRA has proposed maintaining the mandatory employment requirement of 35 hours per week for single-parent families with children over the age of three, but under certain limited circumstances, the Plan would reduce the requirement to 30 hours for these families to help them avoid employment sanctions. HRA would require single-parent families with children age three or younger to participate in work activities 25 hours per week; under HRA's plan, single-parent caregivers of infants age one or younger would continue to be required to participate in work activities.

Instead, we believe the proposed requirements should be amended to take advantage of the flexibility permitted under federal law: 30 hours per week of work activity for all single parents and 20 hours per week for those single parents with children age 6 or younger. HRA should provide the option of voluntary participation in 35 hours per week of work activity for those who so choose.

Single parents of young children in poverty juggle a host of challenges. As HRA recognizes in its proposal, reducing their hours of work activity would help to alleviate stress and allow for quality parenting time with their children. Beyond these benefits, a reduction in mandated hours would allow parents to address those crises that often lead to the need for public assistance in the first place, including the loss of a job, a family-member's health problems and housing instability.

We note that in addition to the humane and constructive effects of reducing required work hours, HRA could significantly reduce resulting child care costs. Free and subsidized child care slots are at a premium in New York City. These child care savings could be re-directed to low-wage working parents who currently do not have available child care, or to cash assistance recipients who wish to voluntarily pursue employment and training.

Similarly, New York State law allows an exemption from work requirements for single parents or caregivers of infants under one year of age for a maximum of one year.² Although the statute provides for three months exemption per child, which is the practice in New York City, the social services district is provided discretion to grant an extension of time in exempt status.³ We encourage the agency to counsel new mothers and other caregivers eligible for this exemption and to liberally grant extensions in accordance with the family's needs and goals. In addition, we encourage the agency to champion reform that would give a single parent or caregiver of a child under the age of one the option of being exempt from work requirements for a period of twelve months per child. Twenty-five states already exempt single parent caregivers from work requirements up until an infant's first birthday.⁴

Again, resulting savings in child care dollars could be used to help fund successful initiatives like the Nurse-Family Partnership, sending nurses to visit single parents on Family Assistance to offer support and counseling, expected to result in positive health and other beneficial outcomes. In addition, reducing the stress experienced by parents as they try to comply with work requirements while tending to an infant's child care needs will have a positive impact on the infant's brain development.⁵

II. End Job Search and Job Readiness Training During the Application Period

Currently, HRA refers all employable Cash Assistance applicants not in school to full-time job search and job readiness training during the cash benefits application processing period (30 days for Family Assistance and 45 days for Safety Net benefits). This is not required by state or federal law. We urge the agency to eliminate mandatory job search/job readiness training during the application processing period and instead use this time to help stabilize families and individuals who often are in crisis when they come to the agency for assistance. Many applicants face eviction, utility cut-off, domestic violence, a disabling condition, illness of a household member, homelessness, or some other emergency.

We commend the agency for requiring that future employment provider contracts include comprehensive assessment structures to identify clients who can benefit from case management services. Consistent with this approach, HRA should use the application period to comprehensively evaluate and address each household's needs and refer it to appropriate resources and services. Once individuals and families are stabilized and receiving cash assistance, they will be better able to engage in job search/job readiness training.

² NY Soc. Serv. L. § 332(d)(1).

³ *Id.*

⁴ Urban Institute Welfare Work Rules Databook, State TANF Policies as of July 2013, Table L6.

⁵ See generally, e.g., J. Shonkoff & A. Garner, "The Lifelong Effects of Early Childhood Adversity and Toxic Stress," *Pediatrics* (Dec. 26, 2011) (examining the evidence that toxic stress in childhood leads to later impairments in learning, behavior and physical and mental well-being), available at: <http://pediatrics.aappublications.org/content/early/2011/12/21/peds.2011-2663>.

III. Eliminate Auto-posting

Auto-posting is an administrative tool used by HRA to trigger its computer systems to take case actions automatically and without HRA worker input. Auto-posting is used to accomplish many actions, including both the automatic infraction of clients whose compliance with employment activities is not otherwise noted by workers, and the automatic issuance of a Notice of Intent to effectuate a sanction or case closing for clients who do not take advantage of conciliation. This technique has caused tremendous harm in the form of erroneous sanctions of benefits, lack of meaningful review of good cause reasons for alleged noncompliance with attendance or other requirements, and illegal failure to make findings of willfulness before imposition of punitive reductions or terminations of benefits.

To try to ameliorate some of these harsh results, HRA proposes a pilot project for a pre-conciliation outreach procedure, as well as the use of robo-call telephone reminders to help cash assistance recipients avoid harmful employment sanctions. HRA also proposes a 72-hour grace period prior to the imposition of an automatic infraction, instead of the current 24-hour period. However, as fully set forth in the City Bar's Report to Next Mayor, HRA should completely eliminate the automatic posting of an infraction for non-compliance because of the resulting widespread error and severe harm to clients.⁶

We believe it fundamentally violates due process to systematically program as a computer "default" the initiation of an "infraction" that inexorably starts the sanction process unless a worker physically records the client's attendance or other required action. Increasing the time to post an infraction does not resolve the problem with auto-posting, since all errors will continue to run against the client. Elimination of auto-posting is a basic matter of due process and compliance with long-standing New York State case law, which requires the agency to make a determination of willfulness before initiating a sanction.⁷

If the agency is nevertheless unwilling to eliminate auto-posting, we recommend that the default be switched to assume the client's compliance unless a worker affirmatively indicates the lack of compliance. Likewise, instead of automatically issuing Notices of Intent to clients who fail to take advantage of conciliation -- a failure which is often caused by a disability impeding the client's ability to respond; a feeling of futility based on past experiences with conciliation; or non-receipt of the conciliation notice due to a continued problem with mailing delivery -- we recommend that HRA deploy staff to review the cases of conciliation no-shows and/or conduct additional outreach before the next step in imposing a sanction: issuance of the Notice of Intent.⁸

⁶ *Supra* n 1, pp. 48 – 49.

⁷ *Allen v. Blum*, 58 N.Y.2d 954, 460 N.Y.S.2d 520 (1983).

⁸ N.Y. Soc. Serv. L. 341.

IV. Use Trained Social Workers to Conduct Upfront Voluntary Screenings for Reasonable Accommodation Needs and Mental Health Issues

We applaud HRA's plan to adopt and use available screening tools to identify those in need of reasonable accommodations, including those with mental health issues. We urge the agency to offer these voluntary screenings to cash assistance applicants when they first enter an HRA Job Center to ensure the agency's compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act from the very start of the application process.

Screenings should be administered with assisted technology by trained social workers who can explain and conduct the assessments and review the screening results with the individual and her or his authorized representative. Since reasonable accommodations must be individualized, and since these findings are critical to the rest of the assessment of employability of applicants as well as the ongoing interactions with HRA, it is important that the client understand the nature and basis of accommodations granted or denied. For this reason, we also believe that trained social workers are necessary.

The changes included in HRA's Employment Plan to ensure better service to disabled applicants and recipients, as well as for those for whom English is not their first language, will require substantial and ongoing training of staff at all levels. Monitoring of the effectiveness of training and the implementation of these changes will be essential, and should include such methods as use of "testers" like those used in other civil rights contexts such as fair housing. This monitoring will ensure that the improved policies and intended changes are reflected in actual interactions with clients.

CONCLUSION

The Committee enthusiastically commends the Commissioner of the New York City Human Resources Administration and agency leaders for proposing an Employment Plan that is focused on creating meaningful and long-lasting work opportunities for New York's neediest individuals and families. If properly implemented by well-trained staff, particularly the important frontline workers, the changes introduced in this proposed Plan will reduce unfair determinations, such as improper sanctions and erroneous discontinuance of benefits, while at the same time reducing unnecessary work of caseworkers so that they can better provide essential services to New York City residents facing crisis and hardship. Accordingly, the Employment Plan holds the promise of combating poverty by equipping clients with meaningful training and work supports for those who can work, as well as services and access to other benefits for those who are unable to work. Our recommendations are offered with these same goals in mind, and we hope they will be considered and adopted by HRA as the agency works to finalize the Plan in the coming weeks.

Peter Kempner
Chair, Social Welfare Committee

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