



Home Care Workers' Rights in New York City

Submitted by Helen Schaub, 1199SEIU United Healthcare Workers East, to the Department of Consumer Affairs, Mayor's Office of Immigrant Affairs, and the New York City Commission on Human Rights, April 25th, 2017

Background

New York State's senior population is growing due to the aging of the baby boomer generation and a lengthening life expectancy. According to the latest estimates, the number of New York City residents over 85 is expected to grow by 42% between 2015 and 2040.¹ The overwhelming majority of seniors say they want to remain living independently in their own homes. Home care aides make this possible by providing assistance with household maintenance, personal tasks like mobility, eating, and toileting, and under certain circumstances, also nursing and health-related tasks such as medication administration or wound care. As a result, the home care workforce is large and growing. According to the New York State Department of Labor, there were 189,000 home care aides in New York City at the start of 2016, with employment increasing at 5% per year.²

Some home care aides are employed directly by individuals or families, in the so-called "grey market." Conditions for workers in this segment of the market are similar to those of other domestic workers, like those who care for children. It is common for workers to be paid "off the books" without access to workers' compensation, disability or unemployment insurance and without income tax withholdings or payment of payroll taxes. Families may also seek care through private agencies, which in New York must be licensed as Licensed Home Care Services Agencies (LHCSAs) in order to provide assistance with personal, nursing, or health-related tasks.³ These private agencies are responsible for complying with wage and hour and other standard worker protections, as well as some that are specific to the home care industry. Of course, agencies may sometimes violate these laws. A hybrid arrangement also exists, where an organization or individual acts as a "Fiscal Intermediary" (FI) to set wages and assume most other employer responsibilities, but where the recipient of care or their representative retains

¹ Department of City Planning. New York City Population Projections by Age/Sex & Borough, 2010-2040. The City of New York. 2013 Dec [Cited 2017 Apr 21]. Available at: https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/projections_report_2010_2040.pdf

² New York State Department of Labor. Long-Term Occupational Employment Projections, 2012-2022: New York City. [Cited 2017 Apr 21]. Available at: <https://www.labor.ny.gov/stats/lproj.shtm>; New York State Department of Labor. Occupational Wages for the New York City Region. [Cited 2017 Apr 21]. Available at: <https://www.labor.ny.gov/stats/lswage2.asp>.

³ New York State Legislature. New York State Public Health law § 3605(1). [Cited 2017 Apr 21]. Available at: <http://public.leginfo.state.ny.us/navigate.cgi?NVMUO>.

responsibility for supervision, hiring, and dismissal. This arrangement is known as “consumer-direction.”⁴ Lastly, a small number of home care aides are employed by Certified Home Health Agencies (CHHAs), which are similar to LHCSAs, but tend to specialize in short-term post-hospital care.⁵

In New York City, home care aides work under a few different job titles. If employed by a LHCSA or CHHA, aides must either be personal care aides, who are certified to assist with household maintenance and personal tasks, or home health aides, who are additionally certified to perform health-related tasks, such as application of topical medications.⁶ If employed in a consumer-directed arrangement, aides are not required to hold any license or certification. Typically, these aides perform the same set of tasks as personal care and home health aides, but under the direction of the consumer or their representative, can also be authorized to perform any nursing task. Administration of injectable medications or tracheostomy suctioning to clear airways are examples of some of the more advanced tasks they might perform.

Personal care aides must undergo an initial training of 40 hours to gain certification and six hours of annual in-serving training for maintenance of certification. For home health aides, the initial training is 75 hours, with 12 hours of annual in-service. Since 2008, the initial training and subsequent employment records of aides employed by LHCSAs have been collected in New York State’s Home Care Registry. To be employed through a LHCSA, aides must also pass a Criminal History Record Check showing that they have not been convicted of disqualifying felonies.⁷ Aides working in consumer-directed arrangements are exempt from these training, registration, and criminal history requirements.⁸

The vast majority of the labor provided by home care aides in New York City is paid for by Medicaid. Under Medicaid, the most common arrangement is for the state to pay a monthly per-member, per-

⁴ New York State Department of Health. Consumer Directed Personal Assistance Program (CDPAP) Scope and Procedures. 2011 Sep 12 [Cited 2017 Apr 4]. Available at: https://www.health.ny.gov/health_care/medicaid/publications/adm/11adm6.htm; New York State Legislature. Social Services Law § 3605. [Cited 2017 Apr 21]. Available at: <http://public.leginfo.state.ny.us/navigate.cgi?NVMUO>

⁵ New York State Legislature. New York State Public Health law § 3606. [Cited 2017 Apr 21]. Available at: <http://public.leginfo.state.ny.us/navigate.cgi?NVMUO>.

⁶ New York Codes, Rules and Regulations Title 10 § 700.2 [Cited 2017 Apr 21], available at [https://govt.westlaw.com/nycrr/Document/I4ff4d497cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I4ff4d497cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)); New York Codes, Rules and Regulations Title 18 § 505.14 [Cited 2017 Apr 21]. Available at [https://govt.westlaw.com/nycrr/Document/I4ff4d497cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I4ff4d497cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)); New York State Department of Health. Home Health Aide Scope of Tasks. 2006 Apr [Cited 2017 Apr 21]. Available at: <http://www.wnyc.com/health/afile/7/148/>; New York State Department of Health. Level I and II Personal Care Aide Scope of Functions and Tasks. 1994 December 1 [Cited 2017 Apr 21]. Available at: <http://www.leadingageny.org/linkservid/087BB28D-9B6D-1DE3-4C862290EE035274/showMeta/0/>.

⁷ New York Codes, Rules and Regulation, Title 10 Part 766. [Cited 2017 Apr 21]. Available at: [https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I2fd19550b65611ddb903a4af59fec65a&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I2fd19550b65611ddb903a4af59fec65a&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)).

⁸ New York State Department of Health. MLTC Policy 15.05(a): Clarification on Requirements for Consumer Directed Personal Assistance Service (CDPAS) Fiscal Intermediaries. 2015 Nov [Cited 2017 Apr 21]. Available at: https://www.health.ny.gov/health_care/medicaid/redesign/mltc_policy_15-05a.htm

month payment to managed care plans, which then contract with the LHCSAs or FIs who employ the aides. The other common sources of financing are out-of-pocket payments by households, Medicare (which covers short-term home care following hospitalizations), and more rarely, private insurance.

Most home care aides are hired and paid by LHCSAs under a traditional agency arrangement, though the number of aides working under consumer-direction in Medicaid is significant and growing.⁹ The “grey market” workforce may also be substantial, though for obvious reasons, is difficult to measure.

There are over 800 LHCSAs serving New York City.¹⁰ Many of these also act as FIs for clients who choose consumer-direction. Additionally, there are an unknown number of FIs that are not affiliated with LHCSAs. The 2017-2018 New York State budget introduced a new requirement for FIs to apply and receive authorization from the New York State Department of Health. Once this requirement is implemented, it should provide greater insight on who provides these services.¹¹

Labor Law Violations

Home care aides have always been protected by New York State’s wage and hour laws. Up until very recently, however, they were considered “companions for the elderly” and exempt from the Federal Fair Labor Standards Act (FLSA)’s minimum wage and overtime protections. A United States Department of Labor rules reform extended FLSA rights to almost all home care workers this year: all workers employed by third party employers like LHCSAs or FIs are now covered, and all workers who spend twenty percent or more of their weekly work hours providing assistance with personal care and other essential household tasks are also covered, no matter who their employer(s) are.¹² Given that most LHCSAs and FIs employ more than 50 full-time workers, they are also subject to the Affordable Care Act’s requirement to offer affordable health coverage or else face penalties.¹³ Although it is possible that policymakers in Washington may weaken or eliminate these protections, they remain in effect presently.

In addition to federal protections, aides working in New York City, Nassau, Suffolk and Westchester and funded by Medicaid are covered by the 2011 New York State Home Care Worker Wage Parity law,¹⁴ which requires that they be compensated at a minimum rate of total compensation. In New York City, this rate is the statutory minimum wage (currently \$11) plus an additional \$4.09 in benefit or cash

⁹ There are also a small number of aides hired directly by Certified Home Health Agencies (CHHAs), but most CHHAs subcontract the aide work to LHCSAs.

¹⁰ New York State Department of Health. NYS Health Profiles. [Cited 2017 Apr 21]. Available at: https://profiles.health.ny.gov/home_care/counties_served/region:new+york+metro+-+new+york+city/type:LHCSA

¹¹ New York State Legislature. New York State Fiscal Year 2017-2018 Health and Mental Hygiene Article VII Enacted Budget Bill, S2007-B/A3007-B, Part E. [Cited 2017 Apr 21]. Available at: <http://public.leginfo.state.ny.us/navigate.cgi?NVMUO>

¹² United State Department of Labor. Minimum Wage and Overtime Pay for Direct Care Workers. [Cited 2017 Apr 21]. Available at: <http://www.dol.gov/whd/homecare/>.

¹³ Kaiser Family Foundation. Employer Responsibility Under the Affordable Care Act. 2016 Sep 30 [Cited 2017 Apr 21]. Available at: <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>.

¹⁴ New York State Legislature. Public Health Law § 3614-C. [Cited 2017 Apr 21]. Available at: <http://public.leginfo.state.ny.us/navigate.cgi?NVMUO>.

compensation.¹⁵ The 2017-2018 New York State budget expanded the law's coverage by clarifying that Wage Parity applies to consumer-direction¹⁶ and eliminating a provision that had exempted aides who are family members of the consumer.¹⁷

Workplace violations are pervasive in New York's home care industry. A 2008 survey of employment and labor law violations in New York City's core low-wage occupations and industries, *Working Without Laws*,¹⁸ found that that home care workers experienced wage theft at alarming rates:

- 8.4% of surveyed home health care workers experienced a minimum wage violation;
- 82.9% experienced an overtime violation;
- 86% experienced an off-the clock violation, that is, they worked before and/or after their scheduled shift but were not paid for that part of their working time; and
- 83.7% experienced a meal break violation.
- Low wage workers, including home care workers, risk a high chance of retaliation for complaining about their working conditions. Nearly one-quarter (23%) of the workers surveyed for the 2008 study reported they had made a complaint to their employer or government agency, or attempted to form a union, in the year before the survey. Of those, 42% experienced one or more forms of illegal retaliation from their employer, including cuts to hours and/or pay, firings or suspension, or threats to call immigration authorities. Another 23% of workers reported they did not make a complaint to their employer during the past 12 months, even though they experienced a serious problem such as dangerous working conditions or not being paid the minimum wage. Of these workers, 41% were afraid of losing their job and 40% thought it would not make a difference. Fear of retaliation and expectations of employer indifference figure strongly in workers' decisions about whether to make a complaint.
- Home care workers who are immigrants are especially vulnerable to violations. They experience wage theft at higher rates and are particularly susceptible to retaliation by their employers.¹⁹

Common abuses for the LHCSA and Consumer-Directed home care workforce

¹⁵ In the three suburban counties, the minimum rate of total compensation is the statutory minimum wage, plus an additional \$3.22 in benefit or cash compensation. New York State Department of Health. Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation. 2016 Nov 15 [Cited 2017 Apr 21]. Available at: https://www.health.ny.gov/health_care/medicaid/redesign/2016-11-17_annual_notice_nas-suff-west.htm

¹⁶ Previously, the New York State Department of Health had interpreted the statute as not applying to consumer-directed arrangements, but only to traditional agency care. New York State Department of Health. Home Care Worker Wage Parity Frequently Asked Questions (FAQs) January 2012. 2012 Jan. [Cited 2017 Apr 21]. Available at: https://www.health.ny.gov/facilities/long_term_care/2012-01-20_worker_parity_faqs.htm

¹⁷ New York State Legislature. New York State Fiscal Year 2017-2018 Health and Mental Hygiene Article VII Enacted Budget Bill, S2007-B/A3007-B, Part S. [Cited 2017 Apr 21]. Available at: <http://public.leginfo.state.ny.us/navigate.cgi?NVMUO>

¹⁸ Annette Bernhardt, Diana Polson and James DeFilippis. Working Without Laws: A Survey of Employment and Labor Law Violations in New York City. National Employment Law Project. 2008 [Cited 2017 Apr 21]. Available at <http://www.nelp.org/content/uploads/2015/03/WorkingWithoutLawsNYC.pdf>.

¹⁹ National Employment Law Project. Workplace Violations, Immigration Status, and Gender: Summary of Findings from the 2008 Unregulated Work Survey. 2011 Aug [Cited 2017 Apr 24]. Available at: http://www.nelp.org/content/uploads/2015/03/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf.

Home care aides employed by LHCSAs or in consumer-directed arrangements are especially susceptible to the following types of violations, in addition to the wage theft described above:

1. The Wage Parity law

Aides employed by LHCSAs may not know whether the care they are providing is paid for by Medicaid, and therefore subject to the Wage Parity law. Some LHCSAs take advantage of this confusion to pay less than the required total compensation. Typically, these employers will set cash wages at the statutory minimum, but fail to pay the legally required additional benefit or cash compensation in full. It is in the agencies' financial interest to put as much of the additional compensation into non-cash wages as possible in order to avoid the employer portion of the payroll tax. Because the value of health care coverage and other non-cash benefits such as Metrocards are not generally indicated on an employee's paystub, it is difficult for individual employees to ascertain whether they are receiving their full compensation. In a survey of LHCSAs conducted by aides who posed as job applicants, 1199SEIU found at least twenty large agencies, employing over 7,500 workers, who did not appear to be in compliance based on the likely cost of the benefits (or lack thereof) that they offered. In this and other industries, unscrupulous employers have also structured so-called benefit funds in a way which ensures that few employees can qualify or use the benefits, and then redistributed the unused dollars in the fund to the agency's owners. Although the legislation clarifying that consumer-directed arrangements are covered by Wage Parity is still new, we are concerned that the same pattern of non-compliance with Wage Parity we have already observed in LHCSAs will become evident in consumer-directed arrangements, as well.

2. Overtime

Until the US DOL rules reform went into effect, home care aides were only covered by the state overtime rule, which provided federally exempt home care workers with the right to overtime pay at time and one-half of the New York State minimum wage when they worked over 40 hours a week.²⁰ Workers are now entitled to be paid time and one-half of their regular hourly wage when they work over 40 hours per week. Workers may not receive the correct overtime rate or be paid with two separate paychecks each showing 40 hours or less.

In 2010, the National Employment Law Project (NELP), along with co-counsel, filed a class action complaint against McMillan's Home Care Agency for failure to pay overtime and spread-of-hour differentials, among other violations.²¹ The agency's president, Yvonne McMillan, told a reporter covering the lawsuit, "We just haven't paid overtime. The business did not afford us [the ability] to.

²⁰ New York Codes, Rules, and Regulation, Title 12 Subpart 142-2. [Cited 2017 Apr 21]. Available at: [https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I06446a70ad0d11dda763b337bd8cd8ca&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I06446a70ad0d11dda763b337bd8cd8ca&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

²¹ Supreme Court of the State of New York. *Montero v. McMillan*. Index No. 10104779. 2010 Apr 13 [Cited 2017 Apr 21]. Available at: <http://www.nelp.org/content/uploads/2015/03/HomeCareWorkersClassAction.pdf>.

It's no mystery in this industry.” The case settled for \$1.1 million.²² In 2013, NELP, along with co-counsel, filed a class action complaint against the LHCSA Future Care Health Services and Certified Home Health Agency Americare Certified Special Services, as joint employers.²³ The complaint alleged, among other violations, that the defendant agencies failed to comply with minimum wage and overtime requirements and the Wage Parity Law.

3. Live-in workers

Home care clients who cannot be left alone because of dementia or other conditions often receive care from “live-in” workers who stay in the client’s house for 24 hours a day. It has been common industry practice for those aides to be paid a flat daily rate no matter what the total weekly work hours are. The Americare complaint, referenced above, alleged that the defendants paid the named plaintiffs a flat “live in” rate of \$115-120 per day, regardless of their total weekly hours. Plaintiff Ms. Moreno sometimes worked over 60 hours in a week without receiving overtime pay.

The New York State Department of Labor has set forth a rule allowing employers to discount up to eight hours of sleeping time (provided that aides can sleep for at least 5 hours uninterrupted) and three hours of meal time, requiring that live-in aides be compensated for at least 13 hours out of the 24-hour shift. NELP has received reports of agencies shifting workers and clients from round-the-clock care provided by two aides working alternating 12-hour shifts, for which workers are paid for all hours, to “live in” care, staffed by one worker. Quite often, the affected client still requires constant or near constant services, which would prevent a worker from sleeping during the night, but agencies do not pay workers for nighttime hours. Advocates have challenged such reductions in services: In 2011, the New York Legal Assistance Group brought a lawsuit against Americare and other CHHAs on behalf of patients who experienced termination or reduction of services without being given proper notice or right to a fair hearing.²⁴ As a result of these concerns, the New York State Department of Health adopted regulations clarifying when clients are entitled to two 12-hour shifts as opposed to live-in care.²⁵

Employers have routinely required aides to sign contracts stating that they must get prior approval to work overtime hours in order to be paid for them. This requirement is often unrealistic: workers are not always able to get prior approval when a client wakes up and requires service in the middle of the night, leading them to believe they are not entitled to pay for that work time. The new federal

²² Massey, Daniel. Home Care Agency Settles Suit for \$1.1M. Crain’s New York Business. 2012 Jul 9 [Cited 2017 Apr 21]. Available at: http://www.crainsnewyork.com/article/20120709/LABOR_UNIONS/120709924/home-care-agency-settles-suit-for-1-1m.

²³ Supreme Court of the State of New York. Moreno et al. v. Future Care Health Services et al. Index No. 500569/2013. 2013 Feb 6 [Cited 2017 Apr 21]. Available at: <http://www.nelp.org/content/uploads/2015/03/Future-Care-Summons-Complaint.pdf>.

²⁴ New York Legal Assistance Group. Advocates File Suit to Stop Arbitrary Terminations of Home Health Services. 2011 Apr 29 [Cited 2017 Apr 21]. Available at: <http://nylag.org/wp-content/uploads/2012/03/JOHNSON-v-SHAH-PRESS-RELEASE-4.29.11.pdf>

²⁵ New York State Register. Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP) Notice of Adoption. HLT-36-14-00012. 2015 Dec 23 [Cited 2017 Apr 21]. Available at: <https://docs.dos.ny.gov/info/register/2015/december23/pdf/rulemaking.pdf>.

rule for aides address this scenario by explicitly prohibiting such blanket requirements and requiring that agencies track the actual hours worked by aides, and workers are able to protect their right to be paid for work on 24-hour shifts under both New York and federal law.

Another area of concern for live-in workers is time off. New York State labor law requires that workers receive at least one (unpaid) day off per week if they request it. Particularly in suburban and rural areas where there are shortages of live-in workers, it is not uncommon for aides to request a day off and be told that they must stay in the client's home until a replacement can be found, resulting in delays of days or even weeks.

Further, employers may be impermissibly claiming the 8-hour sleep time exclusion from workers' pay without meeting the legal prerequisites. For example, federal rules condition the 8-hour sleep time exclusion on the provision of adequate sleeping facilities, but some workers have reported being assigned to home without a private sleeping area or even a bed for the aide to sleep on.

4. Paid Sick Leave

Although 1199SEIU's collective bargaining agreements meet the requirements of the NYC Paid Sick Leave law, based on frequent conversations with home care aides at other agencies, we believe non-compliance is widespread throughout the industry. Many workers are not aware that they get are entitled to paid sick leave, suggesting that employers are violating the law's notice requirements. Additionally, many aides have difficulty accessing payment for the time off, even if they are aware of the entitlement. For example, aides may submit a doctor's note providing proof of their sickness, but their employer refuses to accept it as valid.

The Current State of Enforcement

The New York State Department of Labor, along with the Attorney General, is responsible for enforcing New York State labor law. Workers also have a private right of action if their employers are not complying with labor law. The mechanism for enforcement of the Wage Parity law, which does not explicitly create a private right of action,²⁶ is through the Medicaid program, as it prohibits Medicaid reimbursement for hours of service provided by aides who are not receiving the required total rate of compensation under Wage Parity. The Office of the Medicaid Inspector General (OMIG) can investigate Medicaid fraud and seek repayment of misused funds, and the New York State Department of Health can impose sanctions on managed care plans if they contract with LHCSAs that fail to meet regulatory requirements, including Wage Parity.

However, enforcement of Wage Parity is complicated by the fact that Medicaid dollars are generally paid to managed care plans that contract for home care services, not to the agencies which directly employ the aides. Although the New York Public Health law requires managed care plans to certify they

²⁶ But note that workers may seek to enforce rights under the Wage Parity law because the Wage Parity wage requirements establishes the agreed upon rate of pay, or because they are third party beneficiaries to the law.

are in compliance with the wage parity law²⁷ and “verify [the] compliance” of their subcontractors on a quarterly basis,²⁸ this is a cumbersome arrangement, which requires LHCSAs to send quarterly attestations of compliance to each of their contracting managed care plans.

Recent experience with a Medicaid incentive payment program -- the Quality Incentive Vital Access Provider Program -- illustrates the limits of reliance on these attestations. Under the program, Medicaid paid a bonus if LHCSAs attested to meeting specific criteria, including providing additional training to aides and offering health insurance to employees. However, upon vetting, some LHCSAs that were originally recognized as meeting the criteria were disqualified after it was discovered that they did not meet the criteria, despite submitting attestations to the contrary.

Recently, the New York State Department of Health, in cooperation with the OMIG, the New York State Department of Labor, and the New York State Division of the Budget, launched an inter-agency task force to improve Wage Parity compliance. The task force is also charged with ensuring that supplemental Medicaid funds that are being disbursed to managed care plans to help cover the cost of minimum wage increases are, in fact, being used for their intended purpose. To facilitate compliance with both issues, the task force is in the process of developing a provider new cost report. The first submission will likely be in April, 2018. The OMIG will then be able to audit providers to check the supporting documentation for the amounts reported on the cost reports. Audits of Wage Parity and minimum wage funding requirements are also included on the OMIG’s 2017-2018 Work Plan.²⁹ We are encouraged by these initiatives. However, we wish to underscore that unless reporting requirements are backed-up by rigorous audits and meaningful sanctions for non-compliance, workers will continue to be denied the wages and benefits they are owed.

²⁷“No payments by government agencies shall be made to certified home health agencies, long term home health care, or managed care plans for any episode of care without the certified home health agency, long term home health care program, or managed care plan having delivered prior written certification to the commissioner, on forms prepared by the department in consultation with the department of labor, that all services provided under each episode of care are in full compliance with the terms of this section and any regulations promulgated pursuant to this section.” New York Public Health Law § 3614-C (6).

²⁸ “[T]he certified home health agency, long term home health care program, or managed care plan must obtain a written certification from the licensed home care services agency or other third party, on forms prepared by the department in consultation with the department of labor, which attests to the licensed home care services agency’s or other third party’s compliance with the terms of this section...” New York Public Health Law § 3614-C (7).

²⁹ Office of the Medicaid Inspector General. 2017-2018 Work Plan. New York State. [Cited 2017 Apr 24]. Available at: https://www.omig.ny.gov/images/stories/work_plan/SFY_2018_OMIG_Work_Plan_FINAL.pdf

My name is Barbara Rodriguez. I'm a home health aide, and have worked in the field for 15 years. Before working in homecare I was a housewife and mother, taking care of family. Then my husband fell ill. I had no choice. I had to go to work. I chose homecare because I enjoy working with people. When I first started it was tough. My first client had diabetes. One of my first experiences was going through a scare with her. Her blood sugar was very low. Fortunately, she had corrective measures taped to her refrigerator. I gave her juice and a banana, and then my heart was back in its place because her sugar returned to normal. I stayed with that client for three years, until she passed away.

I started out at a non-union agency. Working in that situation meant no raises, no differential pay for holidays, they pretty much paid me what they wanted. I would work 50-60 hours a week and I'd get the same \$7.25 an hour. I worked long hours, but I'd only get a week's vacation. My worst time in a non-union shop was when I'd total up all my hours, and I knew I was supposed to get two weeks vacation, but I'd only get one week. When I complained, they said it was one week. I had no recourse.

I then went on to work in a non-union agency that became affiliated with 1199SEIU. The transformation has been amazing. Now, management has to go by the union contract. We're able to get proper vacation and overtime. We also get much more respect from management. For example, last year, they didn't pay me my holiday differential. I called them and they tried to explain why it wasn't included. I told them "no", we're unionized, and you're violating our contract. That differential was in my check that same week.

It wasn't just about disputes with management, though. After I joined the union, my organizer started inviting me to various events, including rallies. She encouraged me to become active in the union. I told myself, I have to do this. I observed how hard everyone in 1199 works, and I figured if they're fighting for us, the least I could do is be in the front lines. I had to rebalance my family responsibilities, and start to represent myself and my co-workers.

Since I've become active I've spoken to lots of non-union home health aides. I let them know about my experience. I tell them that in some cases, management

may try to intimidate them, tell them, “why bother with the union? We’ll do better.” They promise you a raise you won’t always get. By contrast, I tell them about the benefits, the healthcare, continuing education, and most important, that when you join this union you become part of a family.

It was on behalf of that 1199 family that I got involved in the Fight for \$15. I know a lot of people thought it would never happen. I heard people call it a pipe dream. I always thought it would be successful. We homecare workers take our job seriously, and we work hard. I knew it would work because I knew firsthand that \$9.00 an hour wasn’t enough to live off. That’s why I got up at 3:00AM more than once to go to Albany to make it happen.

I’m afraid many of the hard won benefits and wage increases we’ve achieved could be wiped away by this new administration in Washington. That’s why, going forward, when 1199 calls, I answer.



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Testimony
Public Hearing on the Rights of Workers in New York City
April 25, 2017

My name is Molly Weston Williamson. I am a staff attorney with A Better Balance, a legal non-profit that helps working men and women care for themselves and their families without compromising their economic security through policy advocacy, outreach, and direct legal services. As advocates for workers, we are proud to testify today on the status of New York City’s workers.

Our organization was at the forefront of drafting and advocating for the New York City Earned Sick Time Act. This landmark piece of legislation, which went into effect just over three years ago, gave most New York City workers the right to time off, usually paid, when they or their families are sick, injured, or seeking medical treatment. While the passage of this law was a crucial step forward for the city’s workers, much remains to be done.

Through our legal hotline, we still hear regularly from workers whose rights under the law are being violated—who are not being paid for time they have earned or are being retaliated against, including being fired, for exercising their rights under the law. These problems are especially acute for low-income workers, for whom the loss of income hits the hardest. Abuses are especially endemic in certain industries, such as home care agencies, an area of particular need highlighted by the creation of the Paid Care Division, as well as retail, restaurants, and construction.

Without robust, consistent enforcement, even the strongest labor laws are only paper promises. To that end, we look forward to continuing to work with the Office of Labor Policy and Standards at the Department of Consumer Affairs to build a process that works for workers. Such a process must fulfill the law’s clear requirement to attempt to resolve complaints through mediation, which must include complainants as full parties with equal status to their law-breaking employers.

Under the leadership of Commissioner Lorelei Salas and Deputy Commissioner Liz Vladeck, the newly established Office of Labor Policy and Standards (OLPS) has brought a new energy and a committed team of experienced worker advocates to the Department of Consumer Affairs. This team has made major strides forward in creating a worker-responsive agency, including important steps like prioritizing recovery for complainants who take the risky step of coming forward and the dedication of significant resources to witness

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preparation prior to hearings. Building on this momentum, we welcome the opportunity to work with OLPS to formalize and codify fair and consistent procedures throughout the investigation, mediation, and hearing process, such as ensuring the role of complainants' counsel for represented complainants. We also urge renewed attention to worker education and outreach, to ensure that all workers know about and can use their rights under the law.

Many workers, especially those who may be undocumented or are otherwise vulnerable, are too fearful to file a complaint with their name attached, regardless of the confidentiality protections. For these workers, we strongly urge OLPS to create an effective process for receiving and acting upon tips and anonymous complaints that would allow workers to call the agency's attention to problems without identifying themselves.

Such a process would naturally support another important and necessary move from OLPS: a greater emphasis on proactive investigations and enforcement. While the agency should of course continue to investigate and respond to each and every worker complaint, it is time for OLPS to begin more robustly using its power to conduct investigations under its own initiative, as explicitly granted in the Earned Sick Time Act. Doing so would enhance and complement complaint-based enforcement and provide a wider window into especially troublesome or opaque industries.

We also call upon Mayor DeBlasio and City Council to pass legislation providing a private right of action under the Earned Sick Time Act. In addition to the administrative process, workers whose rights are violated need and deserve the right to bring actions in court. The need is especially acute for workers whose employers have not only violated the Earned Sick Time Act, but also other laws such as anti-discrimination protections or wage and hour laws—in the status quo, there is no single forum where all such claims can be brought, forcing workers who wish to vindicate all their rights to bring multiple complaints in multiple places.

Moreover, New York City is now out of step with the vast majority of sick time statutes, most of which were passed in the wake of the city law's groundbreaking 2013 enactment. Of the thirty-seven jurisdictions that now have paid sick days laws on the books, only seven, including New York, do not provide any right to go to court. It is time to catch up.

We also call upon City Council to pass the currently pending bill to allow workers to use their accumulated sick time to address certain non-medical needs related to domestic violence, stalking, or sexual assault, a protection known as "safe time." A majority of sick time laws, including each of the seven state sick time laws, already provide safe time; New York City should join them in providing this crucial support to victims.



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Finally, workers need protection against abusive scheduling practices. Unpredictable work schedules take a toll on all employees, especially those in low-wage sectors such as fast food and retail. Without a definite work schedule, workers have difficulty making childcare and elder care arrangements, encounter obstacles in pursuing their education, and in general experience adverse financial and health effects, as well as overall stress and strain on family life. According to a report by the Community Service Society, nearly 30% of all low-income working New Yorkers get less than three days notice of their work schedules; over half of those earning between the minimum wage and \$15 per hour receive less than a week's notice of their schedules. In addition to uncertain schedules, workers fear even asking for schedules that will accommodate their needs to care for their families or pursue education. A survey done by the Comptroller's office found that 71% of New Yorkers who lack a workplace-wide policy would be more likely to request a flexible schedule if everyone in their workplace had the option of doing so without fear of retaliation.

The package of bills currently pending before the New York City Council would address the problem of abusive scheduling for fast food workers by requiring two weeks of advance notice of schedules, requiring a certain amount of time between the end and beginning of shifts, ensuring additional hours of work in a workplace will be offered to current employees, and providing a way to support worker advocacy through payroll deductions. In addition, the package ends on-call scheduling for retail workers and provides a right to request changes in schedule for all workers. We urge passage of this entire package of bills.

In addition to OLPS, other city agencies play key roles in protecting workers. We were instrumental in drafting and passing the Pregnant Workers Fairness Act and the prohibition on discrimination based on caregiver status, crucial parts of the city's distinctively robust Human Rights Law, and are proud to be working with the Commission on Human Rights to enforce these innovative provisions. The PWFA also gives nursing mothers the right to accommodations in the workplace. We look forward to working with the Commission to improve education and enforcement around this critical protection, promoting women's economic equality and opportunity in New York City.

In light of reports of rising discrimination and harassment, there has never been a more important time for the city, through the Commission, to stand up against discrimination of all kinds. Under the leadership of Commissioner Carmelyn Malalis and with support from the council and administration, the Commission has become a powerful force for workers. To continue its many good works and expand to meet the growing need, the Commission must have the necessary resources. We call upon the city to significantly increase funding, particularly to hire much-needed additional staff.



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In these troubling times, we are especially concerned about immigrant workers, particularly those who are undocumented. Through our legal hotline, we hear over and over again from workers scared to speak up for their rights for fear of being reported to immigration authorities. This fear compounds the vulnerability of working people in precarious situations and can create profound barriers to effective labor enforcement. We are especially glad to see the inclusion of the Mayor's Office of Immigrant Affairs in today's hearing, reflecting the understanding that immigrant issues are worker issues. Like our elected officials, New York City's labor enforcement agencies are committed to protecting our immigrant neighbors. We must all work together to embed this commitment in the policies and practices of our agencies and ensure that all workers can safely trust in the city to stand up for them.

Now more than ever, the nation needs New York's leadership in the fight for workers' rights. We applaud the agencies that convened this hearing for their pursuit of justice for workers through vigorous enforcement of existing laws and keen attention to the need for new protections. We look forward to continued collaboration in both efforts.

State of Worker's Rights Testimony on 4/25/2017 -- Tsering Lama, Organizer, Adhikaar

My name is Tsering Lama. I am the Domestic worker organizer at Adhikaar. Adhikaar is the only women-led worker and community center that serves and organizes the Nepali-speaking immigrant and refugee community. We are one of the newest immigrant communities in New York City, and the majority of our members are low-wage workers.

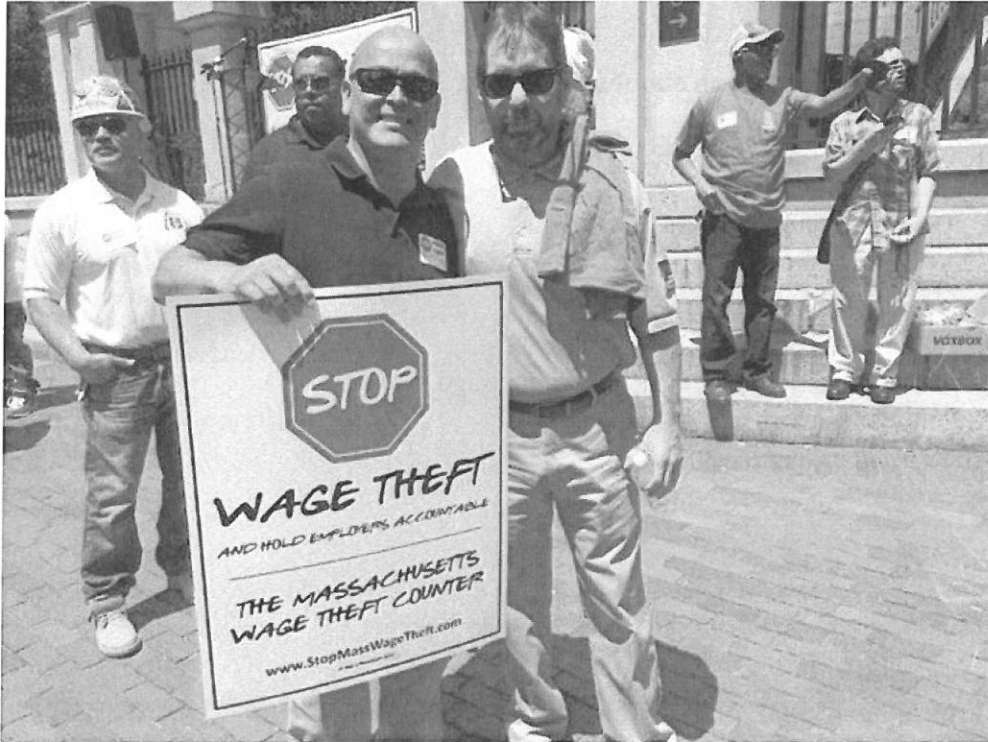
Beginning of 2017, Adhikaar has been working non stop to make sure our communities feel safe. Community members have been scared to go to work, to go to hospitals, to take the train, and go to court for any kind of hearing. With growing stories and rumors about deportation, and increased policing, community members are in constant fear. We have organized 5 Know your rights workshop at Adhikaar to address these issues.

When an undocumented domestic worker demanded her unpaid wage her employer threatened to call ICE on her. She did not leave her home for a whole week in fear. Threats like this have been commonly used by employers post election. There are laws that protect workers, for domestic workers we have the Domestic Worker Bill of Rights, and for nail salon workers there is the Nail Salon Bill of Rights, yet, our workers were finally speaking up and demanding for their rights whether it was their wage or paid sick leave, however, with the new administration we are going backwards.

With the current administration negligent and abusive employers and owners are getting empowered. Workers are scared to speak up due to their immigration status. A lot of our members are live in workers, and come back to the city once a week for their day offs, now workers are scared to travel too much. Most choose to stay at their employers, for longer periods

of time, but this is bad because workers are exploited further. Government officials need to do more in terms of employers and owner accountability, and a way to support workers is by increasing messages about labour protection messages. If there were signs and picture messages about labor rights around trains, banks, hospitals, it would help people feel safer day to day.

Massachusetts Senate passes wage theft bill



Workers rally at the Statehouse in support of a bill that would address wage theft on June 23, 2016.



By **Shira Schoenberg** | sschoenberg@repub.com

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on July 13, 2016 at 7:12 PM, updated July 13, 2016 at 7:19 PM

BOSTON -- The Massachusetts Senate on Wednesday passed **a controversial bill** aimed at cracking down on wage theft.

"This is a matter of general fairness for the employees," said State Sen. Sal DiDomenico, D-Everett, the bill's sponsor.

The bill, **S.2416**, passed by a 38-2 vote. The two dissenters were State Sen. Kenneth Donnelly, D-Arlington, and State Sen. Ryan Fattman, R-Webster.

The bill would make companies that contract with a subcontractor who withholds wages liable for those wages. The contractor could also be liable for fees and fines, if it knows or should have known about the wage theft.

Businesses, in particular the construction industry, have said the bill would unfairly punish contractors who had no knowledge of any wrongdoing by their subcontractors.

BEACON HILL

"We are opposed to a bill that unintentionally hurts people who are doing the right things," Tamara Small, senior vice president at NAIOP Massachusetts, a commercial real estate development association, told The Republican / MassLive.com earlier this week.

The bill allows state officials to order a company to stop work within 96 hours if a wage theft violation is identified and not corrected or if a company does not pay its unemployment insurance obligations. The company would have 10 days to appeal a stop work order, and employees would be paid during that time.

Senate to vote on controversial wage theft bill

The bill in the Massachusetts Legislature raises thorny questions about who should be held responsible for wage theft.

"This bill holds violators accountable while also giving recourse to workers, including immigrant workers who might be reluctant to speak out, who have been victims of wage theft," Senate President Stan Rosenberg, D-Amherst, said in a statement.

Wage theft includes withholding pay, not paying overtime or paying below the minimum wage. It also includes misclassifying workers as independent contractors to avoid paying for workers' compensation, or paying workers in cash to avoid paying taxes.

The bill now goes to the House.

Forum on state funding for public schools planned in Easthampton

'Sanctuary city' is a 'political term,' and 'values' statement for communities, Massachusetts Attorney General Maura Healey says

President Trump's top prosecutor, Jeff Sessions, is 'obsessed' with marijuana, Massachusetts Attorney General Maura Healey says

Baystate Health seeks \$3.4M from state for medical school

Massachusetts Attorney General Maura Healey weighs in on need for 'thorough' look at Aaron Hernandez death and suicides in prisons

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SENATE No. 2416

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Friday, July 8, 2016

The committee on Ways and Means, to whom was referred the Senate Bill to prevent wage theft and promote employer accountability (Senate, No. 2207),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2416).

For the committee,
Karen E. Spilka

SENATE No. 2416

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to prevent wage theft and promote employer accountability.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after
2 section 148D the following 2 sections:-

3 Section 148E. (a) As used in this section and section 148F, the following words shall
4 have the following meanings unless the context clearly requires otherwise:-

5 “Contracted entity”, a person or entity that directly enters into an agreement with a direct
6 company to perform labor or services for the direct company.

7 “Direct company”, a business entity that directly enters into an agreement with a
8 contracted entity for labor or services.

9 “Wage theft violation”, a violation of section 27, 27F, 27G, 27H, 148, 148A, 148B,
10 148C, 150, 150C, 152A, subsection (c) or (d) of section 159C or section 1, 1A, 1B, 2A, 7, 19 or
11 20 of chapter 151.

Proposed Testimony and Recommendations For NYC DCA Workers Rights Hearing

Goals: Increase awareness about lack of knowledge on workers rights

- Solution is public education campaign on key workers rights in most common languages (min wage, OT, workers comp, job safety, no-discrimination, whistleblower)

Increase awareness of need for more aggressive enforcement with real penalties

- Solution is stiffer penalties, repeated findings of violation result in loss in business license, frequent violator program, holding GC/Prop manager responsible for conduct of its subs
- DOB campaign on working without a permit

Increase awareness about benefits of high road employment

- Solution is to attach labor standards (prevailing wages, training standards) to any subsidies, pilots, tax incentives and projects receiving investment by public pension funds
- Increase transparency in public review by requiring disclosure of joint venture partners, investors and general contractor

Testimony #1 –

What happens frequently when workplace accidents take place and company does not provide info to workers about workers comp as example of need for more public education on workers rights told thru worker voice

Testimony #2

Story of a developer or project with many violations and no effective enforcement by the various agencies told thru a workers voice

Testimony #3

Benefits to the community of high road employment told thru a workers voice

12 (b) A direct company shall be subject to joint and several civil liability and shall share
13 civil legal responsibility for wages owed by a contracted entity as the result of a wage theft
14 violation.

15 (c) A direct company shall be subject to joint and several civil liability and shall share
16 civil legal responsibility for any penalties or fines owed by a contracted entity as a result of a
17 wage theft violation if the direct company knew or should have known that a contracted entity
18 has committed a wage theft violation.

19 (d) Nothing in this section shall preclude the exercise or enforcement of any lawful rights
20 or remedies available for a wage theft violation.

21 (e) Notice of this section shall be prepared by the attorney general in the languages
22 required in clause (iii) of subsection (d) of section 62A of chapter 151A. Direct companies and
23 contracted entities shall post this notice in a conspicuous location accessible to employees or
24 contracted workers in establishments where employees or contracted workers with rights under
25 this section perform their duties. Direct companies and contracted entities shall provide a copy of
26 the notice to their employees or contracted workers. This notice shall include the following
27 information: (i) information describing wage theft violations; (ii) information about the notices,
28 documentation and other requirements placed on employees or contracted workers in order to
29 exercise their right to collect wages; (iii) information that describes the protections that an
30 employee or contracted workers has in exercising rights under this section; and (iv) the name,
31 address, phone number and website of the attorney general's office where questions about the
32 rights and responsibilities under this section can be answered.

33 Section 148F. (a) Upon determination by the director of unemployment assistance or a
34 designee that a person or entity has violated section 14 of chapter 151A, the director may issue a
35 stop work order against the violator requiring the cessation of all business operations of the
36 violator related to the violation cited in the stop work order; provided, however, that a stop work
37 order shall only be issued against the person or entity found to be in violation and only related to
38 the worksite or place of business or employment for which the violation exists. If a stop work
39 order is issued, it shall be served at the worksite or place of business or employment of the
40 violator by posting a copy of the stop work order in a conspicuous location at the place of
41 business or employment. The stop work order shall be effective 96 hours after the order is
42 served upon the violator or at the worksite or place of business or employment of the violator.
43 The stop work order shall contain a description of the violation, including the amount of wages
44 owed to each individual due to the wage theft violation. If a person or entity submits
45 documentation to the satisfaction of the director that all wages owed related to the stop work
46 order are properly paid to all workers prior to the stop work order taking effect, the director shall
47 rescind the stop work order.

48 If the stop work order goes into effect, it shall remain in effect until the director or
49 designee rescinds the stop work order upon a finding that the wage theft violation has been
50 corrected.

51 A person or entity against which a stop work order is issued may request a hearing by
52 providing a written appeal, in a manner determined by the director, within 10 days from the date
53 the stop work order is served.

54 (b) Upon determination by the attorney general that a person or entity has committed a
55 wage theft violation, the attorney general may issue a stop work order against the violator
56 requiring the cessation of all business operations of the violator; provided, however, that a stop
57 work order shall only be issued against the person or entity found to be in violation and only
58 related to the worksite or place of business or employment for which the violation exists. If a
59 stop work order is issued, it shall be served at the worksite or place of business or employment of
60 the violator by posting a copy of the stop work order in a conspicuous location at the place of
61 business or employment. The stop work order shall be effective 96 hours after the order is
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64 owed to each individual due to the wage theft violation. If a person or entity submits
65 documentation to the satisfaction of the attorney general that all wages owed related to the stop
66 work order are properly paid to all workers prior to the stop work order taking effect, the director
67 shall rescind the stop work order.

68 If the stop work order goes into effect, it shall remain in effect until the attorney general
69 rescinds the stop work order upon a finding that the violation has been corrected.

70 A person or entity against which a stop work order is issued may request a hearing by
71 providing a written appeal, in a manner determined by the attorney general, within 10 days from
72 the date the stop work order is served.

73 (c) A stop work order and any penalty imposed against a person or entity shall be
74 effective against any successor person or entity that: (i) has at least 1 of the same principals or
75 officers as the person or entity against whom the stop work order or penalty was issued; and (ii)

76 is engaged in the same or an equivalent trade or activity as the person or entity the stop work
77 order was imposed against.

78 (d) An employee affected by a stop work order under this section shall be paid for the
79 period the stop work order is in place or the first 10 days the employee was scheduled to work if
80 the stop work order had not been issued, whichever is less. Any time lost pursuant to this section,
81 not to exceed 10 days, shall be considered time worked under chapter 149.

82 SECTION 2. Section 27C of said chapter 149, as appearing in the 2014 Official Edition,
83 is hereby amended by striking out, in line 159, the words "Civil and criminal" and inserting in
84 place thereof the following word:- Criminal.

85 SECTION 3. The department of unemployment assistance and the office of the attorney
86 general may promulgate regulations to implement sections 148E and 148F of chapter 149 of the
87 General Laws.

88 SECTION 4. A direct company shall not be liable under section 148E or 148F of chapter
89 149 of the General Laws unless a wage theft violation occurs on or after January 1, 2017.

90 SECTION 5. This act shall take effect on January 1, 2017.

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JERSEY CITY'S WAGE THEFT ORDINANCE FAQs

- Home
- For Business

NEW LAW EFFECTIVE OCTOBER 1, 2015

- Doing Business In Jersey City
- Doing Business With Jersey City(2)
- Jersey City's Earned Sick Time Ordinance FAQs
- Business Connect: Your Guide To Starting A Business Or Project In Jersey City
- Live Work Jersey City
- For Businesses
- Jersey City Wage Theft Ordinance FAQs

The Jersey City Municipal Council recently passed the Jersey City Wage Theft Ordinance, requiring every applicant for a business license or renewal of a license to sign a certification under the penalty of perjury that it has no outstanding judgments against it for unpaid wages to its workers. Any Jersey City business that is found liable for wage theft (either by a court of law or by the New Jersey Department of Labor) must demonstrate that it has paid its workers what it owes within 90 days of any judgment or appeal, or risk suspension of its business license. View or Download Original Ordinance here.

Below are some of the most frequently asked questions about the Jersey City Wage Theft Ordinance and their answers. Versions of these frequently asked questions can be downloaded here

- FAQs in Spanish
- FAQs in Tagalog

Below are answers in English to frequently asked questions asked by businesses and their workers:

What does Jersey City's Wage Theft Ordinance do?

Jersey City's Wage Theft Ordinance deters employers from engaging in wage theft by linking established wage theft violations to the City's licensing authority. Any Jersey City business that is found liable for wage theft (either in court, or by the NJ Dep't of Labor) must demonstrate that it has paid its workers what it owes within 90 days of any judgment or appeal, or risk suspension of its business license.

Who enforces Jersey City's Wage Theft Ordinance?

The Wage Theft Ordinance will be enforced by the City Department or Division responsible for a given business's license to operate in Jersey City, which may include the Department of Health & Human Services or Division of Commerce. For example, a restaurant seeking a food establishment license from the Department of Health & Human Services must certify to that Department that it has no outstanding judgments for wage theft against it.

What information must businesses provide in their certifications to the City?

Businesses must certify whether there have been any judgments or decisions against them for unpaid wages within the 24 months prior to their license applications. If a business has a judgment or decision against it, the business must either certify the dates, location, and nature of the wage theft and its payment of restitution to the employees, or certify that it is appealing the judgment or decision.

Which businesses will be impacted by Jersey City's Wage Theft Ordinance?

Every applicant for a business license or renewal of a license must certify under the penalty of perjury that there are no outstanding judgments for unpaid wages against it. The City expects that the majority of businesses are following the law and paying their employees their rightful wages.

Only those businesses who try to evade their responsibilities or who lie on their certification to the City will face suspension under the Ordinance.

What happens if a business provides false information in its certification to the City?

Any business that falsely certifies its compliance with the Ordinance may have its license revoked and could be subject to prosecution. Businesses will be certifying their compliance with the Ordinance under the penalty of perjury, and false statements to the government will be dealt with appropriately.

Will the City be investigating or prosecuting claims of wage theft?

No. Employees who believe they are not being paid their rightful wages must protect their rights either by filing a claim with the New Jersey Department of Labor and Workforce Development, Wage and Hour Division, which investigates employers' payment practices, or filing a lawsuit. The City will not be investigating local businesses.

JERSEY CITY WAGE THEFT ORDINANCE

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If my business has been found liable for a violation of wage theft which is outstanding can I transfer the business license?
No. No license shall be transferred to or from an applicant, licensee or business entity that has been found liable of a violation and not cured by the appropriate judicial or administrative agency.

How will the City find out whether an applicant has had a prior violation of wage theft?
Each year the City will file an OPRA Request with the New Jersey Department of Labor and Workforce Development, Wage and Hour Division requesting any wage claim forms filed against a licensee during the previous twenty-four (24) months.

What must a business do if the City contacts it about an outstanding wage theft violation?
Businesses contacted by the City about a wage theft violation will have 30 days to demonstrate either payment to the aggrieved employees or appeal of the judgment or decision. Failure to comply within 30 days will result in suspension of the business's license until it shows that it has paid its employees what it owes.

When will this Ordinance go into effect?
The City ordinance went into effect on October 1, 2015.

What is "Wage Theft"?
Wage theft occurs when workers are not paid their legally or contractually promised wages, such as minimum wage or overtime. It can also occur when an employer does not provide workers their last paycheck when they leave a job, steals tips, engages in payroll fraud, misclassifies an employee as an independent contractor, or does not pay the worker at all. Wage theft is illegal under Federal, State, and local law.

How big a problem is wage theft?

For more information, please visit the city website at: <http://www.ci.jerseycity.nj.us/government/wage-theft> | 10551

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How big a problem is wage theft?

Wage theft is a serious problem nationwide that can occur in any field or industry, including retail, restaurants, home health care, and salons. Day laborers, non-English speaking workers, and undocumented immigrants tend to be most at risk of wage theft as they are often paid “off the books” and are uninformed about their rights. The following statistics provide a sense of the problem:

In FY 2014, the U.S. Dep’t of Labor recovered \$280 million in wage/hour violations

Between 2008 and 2013, the number of claims filed under the Fair Labor Standards Act (FLSA) increased 146% (from 5,302 to 7,764)

Don’t existing laws cover wage and hour abuses?

Wage and hour laws exist at the federal, state, and local levels—including Jersey City and Hudson County living wage laws—but wage theft violations are often hard to enforce because most employees do not even realize they are being underpaid or misclassified. Low-wage workers often do not speak English or fear retaliation from employers for complaining. In addition, the time and cost of going to court for a wage claim often deters workers from asserting their rights.

What should workers do if they suspect they are victims of wage theft?

Workers who suspect their employers are not paying them their rightful wages should contact the NJ Department of Labor, Wage & Hour Division at the phone numbers and addresses below. Information and claims forms are available on the Department of Labor’s website on how to file a claim:

Division of Wage and Hour Compliance

P.O. Box 389

Trenton, NJ 08625-0389

Tel. (609) 292-2305

Tel. (609) 292-2337

FAX (609) 695-1174

For Overnight Mail:

New Jersey Department of Labor & Workforce Development

Division of Wage and Hour Compliance

1 John Fitch Plaza, #rd Floor Trenton, NJ 08611

Jersey City council adopts anti-wage theft law



By **Terrence T. McDonald** | [The Jersey Journal](#)

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JERSEY CITY -- Companies found to have **violated the state ban on wage theft** would find their city licenses revoked if they do not reimburse their workers for any lost wages, under a measure adopted by a unanimous City Council this morning.

Once signed into the law by Mayor Steve Fulop, the city's anti-wage theft ordinance would be the fifth in the state, according to immigration and workers' rights activists who have advocated for the law. They say Jersey City is sending a message to workers that city officials are "behind them."

"As Jersey City grows, we do not intend to leave anyone behind," Council President Rolando Lavarro, who spearheaded the measure, said at a Newark Avenue rally before this morning's meeting. "Workers should not have to work for free."

ADVERTISING

All nine council members voted in favor of the measure. It is modeled after **one adopted by New Brunswick in December**.

The city's law would affect only companies that state labor officials find have violated the state's ban on wage theft. If an employee for one of those companies hasn't been reimbursed for lost wages within 90 days, she can file a complaint with the city Resident Response Center. City officials will then give the company 30 days to repay or find its license suspended.

Jason Rowe, of New Brunswick community organizing group Unity Square, said local laws will help workers trying to win back wages they are owed. A New Brunswick worker won a judgment against a company that had stolen her wages, but she wasn't reimbursed until the company's city license was in jeopardy, Rowe told the council today.

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Build Up NYC

Build Up NYC is an alliance of working men and women, committed to good jobs and responsible development. Working together, we are advocating for a stronger and more vibrant middle-class through safe and responsible development.

TOWARDS A VIBRANT MIDDLE CLASS

Build Up NYC is committed to a growing and sustainable middle class. We can only grow a stronger middle class if workers have jobs with good wages, affordable health insurance and retirement benefits. Access to training and apprenticeship programs creates opportunities for advancement and real careers.

The race to the bottom in the construction industry hurts workers and communities. When contractors compete by cutting wages and benefits, workers lose the ability to support their families and businesses in their communities and responsible contractors are at an economic disadvantage.

Build Up NYC is fighting for good jobs for workers and a level playing field for responsible employers.

A SAFE WORKPLACE IS A SAFER CITY

Construction is one of the most dangerous industries in New York City. Cutting corners and lack of proper safety practices can lead to more accidents, injuries and deaths in and around construction sites.

Build Up NYC is working to make sure every construction worker has access to comprehensive training in order to prevent accidents and injuries at the worksite and in our city. Build Up NYC is fighting for a safer New York.

RESPONSIBLE DEVELOPMENT, STRONGER COMMUNITIES

Developers who construct and maintain buildings in New York have a responsibility to the communities and workers who make their success possible.

Developers and employers have a responsibility not only to make sure the construction, operations, maintenance and security jobs are good jobs, but to support a 21st century infrastructure.

Build Up NYC is working to make sure employers and developers do their fair share to maintain and upgrade the infrastructure that we all count on.

It's time to stand up and fight back
Build Up NYC is fighting for the High Road on Economic Development

TESTIMONY OF ANDY HORTON BEFORE THE NYC DEPARTMENT OF CONSUMER AFFAIRS
PUBLIC HEARING ON WORKERS RIGHTS, APRIL 25, 2017

Good evening. My name is Andy Horton. I have been a window cleaner for 35 years. I am also the window cleaning apprentice training coordinator. I am here tonight with Build Up NYC.

I want you to understand the difference that state approved training and apprentice programs make for the safety of workers and the public. A few years ago two window cleaners got stuck high up on World Trade Center 1 when their equipment malfunctioned. Some of you may remember because the incident got a lot of press. They got stuck at least 600 feet in the air. If they wouldn't have had safety equipment and training, they would have fallen to their deaths and they could have hurt or killed people walking on the street below. Fortunately the window cleaners were trained. This incident is very personal to me because I trained them. As soon as I found out about the incident, I rushed to the scene. I knew the guys and their families and was scared and worried about them. As I watched and waited for their rescue, I was hoping they would remember what they were taught. We stress over and over in our training the need to inspect the equipment, the proper use of safety equipment, and what to do if equipment malfunctions. And we teach our apprentices that they have a responsibility to speak up if they see something that is unsafe or if they don't have the proper safety equipment. Fortunately they were wearing their harnesses, hard hats, lanyards and personal fall protection, and did their best to stay calm until they were rescued by the fire department. I stayed until they were rescued. I had tears in my eyes when I saw them. I still get emotional thinking about that day.

Last year a window cleaner fell three stories to his death. He slipped and didn't have the proper safety harness or personal fall protection. His employer didn't participate in our industry wide training program. Every life is precious.

The most common violations that I see are unsafe work conditions, which is usually lack of proper personal fall protection and work without a permit.

My final point for you tonight is that many of the workers who do construction, window cleaning, work as security officers or building maintenance workers are immigrants. Some come from countries where speaking out for their rights can have serious consequences. We have a responsibility to provide workers with information about their labor rights and all laws that protect them in as many of the languages as possible. Voter ballots come in many different languages, workers deserve to know their rights as well.

Thank you



NYC Construction Safety Fact Sheet

The federal Occupational Safety and Health Administration (OSHA) recently released statistics on construction. According to OSHA’s report:

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48%

of all NYC workplace fatalities in 2014 were construction related

75%

of construction fatalities in NYC in 2014 occurred on job sites where workers did not participate in state approved training and apprenticeship programs.

50%

of construction fatalities involved immigrant workers or workers who spoke a language other than English.

In 2014, OSHA’s federal safety and health experts conducted 540 construction inspections, issued 742 serious, willful or repeat violations and assessed \$2.3 million in penalties to employers in New York City.

DRAFT: RICKY PIMENTEL'S TESTIMONY AT THE NYC DCA WORKERS RIGHTS FORUM

My name is Ricky Pimentel. I will be turning 32 years old on Saturday and I'm a Laborer.

I am talking to you tonight on behalf of Build Up New York. At my current job, I am working safe and getting paid a good wage with benefits.

On one job, I had OSHA 30 certification, which meant I could be a supervisor. I rose quickly at the job and I got to become a laborer foreman. My employer was not a good contractor. Knowing my situation and my fear of going back to prison if I lost my job, they tried to take advantage of me. They started with the pay.

They started me at much lower pay than they said I deserved and said I would get an increase when they squared up the paperwork at the end of the week. End of the week came, then another week, still no more money. Then they started reducing what they said my pay was going to be. The promised pay increase never came.

What you find out when you are working for a bad employer is that when one thing is bad, a lot of other things are bad as well. With this employer, it was very hard to get enough personal protective equipment for all the workers.

There were plenty of times when guys had to go do some chopping and there were no gloves. What am I supposed to do? You end up sometimes having to dip into your own pocket to buy equipment you need to work safe from a street side vendor. A developer came on the job once and wanted to know why we were not wearing high visibility vests and matching hard hats.

■ Continue to the next page

We asked the employer, he put us off for a while and, when they did eventually bring vests and helmets, there wasn't enough to go around. What are you supposed to do? Because you don't want to go back to prison, you put up with this and everything else, even when you know you are being exploited. Even though the conditions were dangerous.

The more you read and the more you educate yourself, the more you realize what's right and how you should actually be working.

I want you to understand that, for us workers, there are huge gaps between good employers and the ones that don't seem to care. With a good employer, advanced safety training is part of the culture. You get gloves, glasses, vests, everything you need to do the job safely.

State of Worker's Rights Hearing
Hosted by the Department of Consumer Affairs
La Guardia Community College
April 25, 2017

Paid Care Panel: Silvia Reyes Testimony

Mi nombre es Silvia y yo soy una niñera. Voy a comentarles acerca de mi trabajo.

Me encanta mi trabajo, me encanta compartir mi tiempo con niños. Hace tiempo, hace como 6 meses atrás, yo me encontré trabajando con una familia que era muy conservadora. Esas personas abusaban demasiado de mi tiempo, haciéndome pensar que no tenía vida. Trabajaba con ellos largas horas, trabajaba los fines de semana, y usaban el chantaje emocional acerca del niño para que accedí a trabajar un poco más. Un día, en la mañana, caminando para el trabajo, recibí un mensaje de texto, y me dicen que "Muchas gracias por tu servicio, pero hoy día no te necesitamos y creo que no vamos a necesitarte más." En ese momento, mi desesperación creció porque como todos de ustedes saben, hay que pagar renta, hay que pagar todo. ¿Qué haces tú? ¿Quedarte sin trabajo de la noche a la mañana? ¿Que opciones te quedan a ti? Yo creo que muchas veces en estos momentos, los empleadores se enganchan de la necesidad que tenemos por trabajar, y por eso manipulan tanto nuestro tiempo y nuestro salario.

Ahora, yo formo parte de una cooperativa que se llama Hopewell Care, y es de niñeras. Gracias a esta cooperativa, nosotras tenemos un contrato, nos ayudan a buscar empleadores que realmente valoran nuestro trabajo y nuestro tiempo. Creo que valorar nuestro trabajo es muy importante porque cuidamos a sus hijos para que ellos puedan ir a trabajar. ¿Si una persona no llega, como vas a trabajar, que es lo que tú vas a hacer? No puedes dejar tus seres queridos solos. Ahora, tengo una familia conmigo, no es solamente una asociación. Es una familia que me escucha, me comprende, y me ayuda. Me da talleres, me da capacitación, para que yo pueda desempeñar mejor en mi trabajo, para poder hacer mejor las cosas y que mis empleadores estén confiando a sus seres queridos conmigo sabiendo que van a estar bien.

Lo que a mi me pedir es educar a los empleadores de que nosotras tenemos vida, de que no pueden agotarte de la mañana a la noche sin ninguna consideración, y yo creo que la única consideración en este momento sería monetariamente hablando por que si te dejan sin trabajo de una noche a la mañana, te quedas con las manos atadas prácticamente. Pues, muchísimas gracias por su tiempo, gracias por escucharme, y que tengan una muy buena noche.



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**Testimony before New York City's Office of Labor Policy and Standards Public Hearing
on the State of Workers' Rights in New York City**

April 25, 2017

Comments of Alice Davis, Senior Staff Attorney

Thank you for accepting this written testimony on behalf of Catholic Migration Services' Workers' Rights Program. Catholic Migration Services has been providing legal representation to low-income immigrants since 1971. The Workers' Rights Program offers legal advice and representation to low wage immigrant workers who come to us with questions about their rights in the workplace. In addition, we work with community-based organizations and workers' centers to offer consultations and representation to their members. We assist workers in all five boroughs, with the majority of our clients residing in Queens. The vast majority of our clients are Spanish-speaking immigrants from Latin America, who work in such industries as construction, food service, domestic work, and laundries.

Prevalence of Wage Theft

Wage theft is by far the most common issue faced by the workers that we encounter. The current labor laws are, in many ways, extremely favorable to workers. However, despite these statutory protections, wage theft continues to be a very serious issue in both its pervasiveness in low wage industries, and the barriers that claimants face in collecting these wages.

As an initial matter, Catholic Migration Services and other nonprofit legal services providers have limited resources and can only offer to litigate a very small percentage of the cases that are brought to our attention. While cases with extremely high damages and where the employer has tangible assets may be attractive to private attorneys, the majority of our cases are ultimately referred to the New York State Department of Labor for investigation. Again, despite the many statutory protections available to workers, New York State Department of Labor investigations are typically extremely lengthy.

As a result, many of our clients will find that their case takes two to three years to investigate. If the employer is cooperative, the Department of Labor is frequently able to resolve the case through a voluntary settlement agreement. However, if the employer is nonresponsive to the investigation and is found to be in default, or the employer is unwilling to enter into a voluntary settlement, the final judgment typically languishes in a backlog of cases awaiting enforcement measures.

Thus, many workers will wait three years or more for their case to proceed through every stage of the investigation and appeals process, only to receive a judgment that will sit for more than five years awaiting enforcement. I have met with many workers who had filed their own claims with the New York State Department of Labor prior to seeking assistance from Catholic Migration Services. Some of these cases are over ten years old by the time the workers come to us. Once at this stage, we have to inform these workers that their cases may never be successfully enforced. This is borne out by statistics. Between 2003 and 2013, the New York

State Department of Labor was unable to collect over \$101 million determined to be owed by employers.¹

Issues in the Construction Industry

The construction industry is among the most affected by both wage theft and the New York State Department of Labor's lengthy enforcement process. The construction industry represents the majority of the unpaid judgments encountered by the workers' rights attorneys at Catholic Migration Services. This observation is fairly typical of legal services providers. According to a 2015 report by Urban Justice Center, Legal Aid Society, and National Employment Law Project, the construction industry alone accounts for one third of the unpaid wage theft judgements won by low-wage workers represented by not-for-profit legal service providers.²

Construction workers and day laborers attempting to enforce their rights face many other obstacles as well. First, because the employees typically work offsite, away from their employer's main address or office, employees frequently find that they are unable to locate their employer should they discover a discrepancy in the wages after leaving their employment. Moreover, the use of subcontractors can often obfuscate for workers which entity or supervisor is legally responsible for the wages that they are owed, resulting in lengthier investigations with the Department of Labor. Finally, many workers are not provided with paystubs or other written records of their employment or compensation. The result is that, even if a worker is able to

¹ This data was collected by the Urban Justice Center, Legal Aid Society, and the National Employment Law Project in their report *Judgements: The Wage Collection Crisis in New York*, Available at <https://cdp.urbanjustice.org/cdp-reports/emptyjudgements>.

² In the 2015 report *Empty Judgements: The Wage Collection Crisis in New York*, the 62 recent New York federal and state court wage theft judgements from 17 legal service organization who represent low-wage workers analyzed amassed over \$25 million in unpaid judgements to 284 workers. Of these 62 cases, 34% were from the construction industry. Available at <https://cdp.urbanjustice.org/cdp-reports/emptyjudgements>.

locate their employer, due to the difficulty in collecting on final judgments, many workers are frustrated to discover that their former employer continues to work in the construction industry, and continues to use illegal pay practices.

Unlicensed Contractors & Shell Corporations

As a legal services provider, it is frustrating to know that wage theft is so prevalent in construction work, despite being such a highly regulated industry in New York City. The majority of employers in the construction industry are required to be licensed by at least one city agency and their names and license numbers are easily searchable on an online database.

However, many employers in the construction industry have managed to sidestep these regulations. First, many contractors are unlicensed, which can make it extremely difficult for advocates or the New York State Department of Labor to locate them in order to commence a civil suit or investigation. The prevalence of unlicensed contractors is a major contributor to the wage theft crisis.

In addition, many of the contractors who are licensed are able to evade judgments by manipulating corporate structures. This includes dissolving corporate entities and forming new ones, or creating corporate entities under the ownership of another person. This creates a serious obstacle to enforcing civil judgments in the current system.

Incentivizing Payment of Judgments

Licensed contractors frequently commit wage theft as well. This creates the potential for agencies responsible for licensing contractors, including the Department of Consumer Affairs, to use their licensing powers to incentivize employers to comply with judgments. The Department

of Consumer Affairs actively approves and renews licenses for home improvement contractors and those that are responsible for wage theft can continue to renew their licenses, act as employers, and continue to engage in illegal pay practices.

There are many strong labor laws in New York, yet there are comparatively few mechanisms for holding employers accountable when they violate those laws. Community-based organizations, unions, and legal services providers, including Catholic Migration Services, are searching for ways to reform enforcement procedures in order to ensure that employers comply with wage theft judgments. Providing proper judgment enforcement mechanisms benefits workers who might otherwise never receive compensation for work performed. It also creates incentives for employers to comply with wage and hour laws, as well as final judgments issued by courts and government agencies.

Thank you for considering this testimony.



**Testimony of the Center for Law and Social Policy (CLASP)
Public Hearing on the State of Workers' Rights in New York City
April 25, 2017**

The Center for Law and Social Policy (CLASP) is a national organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. We advocate for and conduct research and analysis on job quality policies, including paid sick days, paid family and medical leave, and fair scheduling. Further, we work with community and government partners to promote effective implementation and enforcement of labor standards policies.

New York City Office of Labor Standards Policy

CLASP commends the City of New York for its recent creation of the Office of Labor Standards Policy (OLPS). New York joins a growing number of cities—including San Francisco and Seattle—that have established offices focused specifically on the enforcement of local labor laws. As more cities establish their own labor standards, such dedicated offices are crucial to effective outreach and enforcement.

CLASP has worked closely with the NYC Paid Sick Leave Division (PSLD) in supporting its efforts to implement NYC's paid sick days law, facilitating connections between PSLD staff and other agencies around the country that are implementing paid sick days laws. In 2015, CLASP and the City of New York co-hosted a successful convening for paid sick days enforcement agencies and advocates that brought together more than 80 participants from 17 jurisdictions and 14 advocacy organizations around the country to share best practices and strategies for effective paid sick days enforcement.

New York's PSLD—and now the OLPS—has been a leader in the paid sick days enforcement arena and the labor standards enforcement arena more broadly. In addition to offering expertise at the 2015 convening and a 2016 convening CLASP co-hosted in San Francisco, PSLD staff have frequently spoken on our webinars and conference calls, providing insights and sharing best practices to assist other cities in shaping their enforcement programs.

Local Labor Standards Enforcement

Concerted efforts to support and provide resources for local labor standards enforcement are crucial to the wellbeing of low-wage workers around the country. Low-wage workers, many of whom experience wage theft and other labor standards violations, are concentrated in major

cities like NYC, making the need for enforcement in these jurisdictions particularly urgent. Moreover, just as NYC and other localities have been on the cutting edge of passing progressive labor standards, they now serve as models for the nation. Stakeholders nationwide are watching closely to see how effective these laws are and the extent to which vulnerable workers benefit from them; the outcomes of these laws will affect whether other cities, states, and the federal government move forward with similar legislation.

This enforcement gap has been documented in a groundbreaking 2008 study, which found that more than half of surveyed low-wage workers in NYC had been victims of wage theft in the previous workweek.¹ Yet the vast majority of workers who experience violations do not file complaints with government agencies. Many fear retaliation, including job loss, as a result of reporting their employers. National data demonstrate the significant mismatch between the industries where workers file federal Department of Labor complaints concerning violations and the industries in which violations actually occur.²

Strategic Enforcement and Partnerships with Community Based Organizations

While complaint-based enforcement (enforcement driven primarily by worker-initiated complaints) is an important part of labor law enforcement—indeed NYC’s PSLD has collected \$3.3 million in restitution for nearly 16,000 employees over the past three years based on complaints—it is insufficient.³

Strategic enforcement makes use of data and intelligence from a variety of sources to direct resources and investigative efforts in ways that are likely to have the most impact—helping the most workers or those who are particularly vulnerable—and creating the deterrent effect necessary to foster a culture of employer compliance.⁴

Such an approach would be complemented by continued support for OLPS’s relationships with community-based organizations (CBOs), which often enjoy a level of trust from vulnerable workers that government agencies can almost never replicate. As such, they perform the vital functions of both supporting vulnerable workers to move forward and file claims, despite sometimes high levels of fear and distrust, and passing on important information from low-wage industries to OLPS to help inform enforcement efforts. Yet, many CBOs struggle to continue to perform these functions due to limited funding and capacity. Cities like San

Francisco, Seattle, Los Angeles, Oakland, and Pasadena have established funding mechanisms to support enforcement partnerships with CBOs (“co-enforcement”).⁵

Private Right of Action

Another crucial mechanism for bolstering workers’ rights in NYC is a private right of action. Such a right expands the scope of workers’ abilities to demand what they are owed and pursue employers that violate the law. Moreover, a private right of action supports strategic enforcement by providing workers whose cases are not ultimately pursued with an alternate option for justice. (As a part of strategic enforcement, agencies must make difficult decisions in prioritizing their use of resources; this may mean that some cases are not investigated). A private right of action is included in 24 of the 31 local paid sick days laws that have been enacted around the country.⁶

Fair Scheduling: The New Frontier for Workers’ Rights

Int. 1384, Int. 1396, Int. 1395, Int. 1388, Int. 1387, and Int. 1399. Research demonstrates that many service workers in NYC, particularly low-income workers, are struggling with the effects of volatile work schedules and inadequate hours.⁷ Unstable scheduling creates stress for working families; makes it difficult to pay the bills; and limits workers’ ability to pursue higher education, hold a second job, or perform caregiving obligations.⁸ Just as NYC has led the nation with its paid sick days law, it is poised to be a leader on fair schedules. With the passage of fair scheduling legislation, NYC will join a handful of leading jurisdictions in the country who are improving job quality by stabilizing workers’ schedules. Many more jurisdictions are currently considering fair scheduling legislation.⁹

Fair scheduling laws can have far-reaching positive effects on workers’ lives, but they are also new to both employers and employees and somewhat more complex than some other labor standards. For this reason, CLASP urges NYC to devote resources to allow OLPS and its community partners to effectively engage with both employees and employers should NYC’s proposed fair scheduling laws pass. To ensure that these laws meet their supporters’ goals, it is essential that workers know their rights and employers can get the technical assistance they need to comply.

Local and National Leadership

OLPS plays a crucial role not just for low-income workers in NYC, but also for workers nationwide. By acting as a model for other enforcement agencies around the country – particularly other local agencies – OLPS’s work has impact beyond NYC’s borders. CLASP congratulates OLPS for its important work and urges NYC to devote sufficient resources to ensure its continued success and leadership. If well-resourced, OLPS’s dedicated staff will be

equipped to maximize the impact of NYC’s labor laws on its most vulnerable citizens, and to build on its existing national leadership role.

Submitted by: Elizabeth Ben-Ishai, Ph.D.
Senior Policy Analyst

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¹ Annette Bernhardt, Diana Polson, and James DeFilippis, *Working Without Laws: A Survey of Employment and Labor Law Violations in New York City*, National Employment Law Project, 2010, <http://www.nelp.org/publication/working-without-laws-a-survey-of-employment-and-labor-law-violations-in-new-york-city/>.

² David Weil and Amanda Pyles, "Why Complain-Complaints, Compliance, and the Problem of Enforcement in the US Workplace." *Comp. Lab. L. & Pol'y. J.* 27 (2005): 59. <http://projects.iq.harvard.edu/files/hctar/files/hr08.pdf>.

³ "Paid Sick Leave Facts: April 1, 2014 to April 10, 2017," NYC Consumer Affairs, 2017, http://www1.nyc.gov/assets/dca/downloads/pdf/about/PSLFacts_2014to041017.pdf.

⁴ See for example, <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

⁵ For information on Seattle’s co-enforcement program, see David Weil, *Improving Workplace Conditions Through Strategic Enforcement*, U.S. Department of Labor, Wage and Hour Division, 2010, <http://www.seattle.gov/laborstandards/outreach/community-fund/2017-2019-community-outreach-and-education-fund>.

For information on San Francisco’s program, see the City and County’s RFP: http://mission.sfgov.org/OCA_BID_ATTACHMENTS/FA48677.pdf.

⁶ "Paid Sick Time Legislative Successes," A Better Balance, January 2017, <http://www.abetterbalance.org/resources/paid-sick-time-legislative-successes/>.

⁷ Harold Stolper, *Unpredictable: How unpredictable schedules keep low-income New Yorkers from getting ahead*. Community Service Society. 2016 http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads/pubs/Scheduling_12_19_16_Final_Web.pdf. See also, CLASP Testimony, http://www.clasp.org/resources-and-publications/publication-1/NYCSchedulingBills_CLASPTestimony.pdf.

⁸ Liz Ben-Ishai, *Federal Legislation to Address Volatile Job Schedules*, Center for Law and Social Policy, 2015, http://www.clasp.org/resources-and-publications/publication-1/2015.07.23_SchedulesThatWorkActBrief_FINAL.pdf.

For more information on fair scheduling, visit CLASP’s National Repository of Resources on Job Scheduling Policy, http://www.clasp.org/resources-and-publications/publication-1/2015.07.23_SchedulesThatWorkActBrief_FINAL.pdf.

⁹ See "Proposed Federal, State, and Local Legislation," CLASP National Repository of Resources on Job Scheduling Policy, <http://www.clasp.org/issues/work-life-and-job-quality/scheduling-resources>.

To: Public Hearing on the State of Workers' Right in New York City

From: Pamela Hazel/ advocate for CleanupJamaicaqueens, Social Media Journalist for Justice

Date: April 25th. 2017

The issue regarding providing for illegal immigrants is unfair to hard working, taxpayers. It is generous to help all people in need, but in reality, hardworking New Yorkers are suffering, in many walks of life. There are retired workers who are only covered under medicare; at 80%. They are told that they have to buy insurance to supplement their coverage. There retirees and elderly are living on fixed income and have to struggle.

Meanwhile, there are young people and others in general who come to New York and other parts of America; just in the nick of time to give birth. Thereafter, their children are fully covered under Medicaid. This is very unfair and discriminatory. This system needs to be fixed. Yes hardworking people are pissed off. Too many Americans have to stay in the work force because retiring means more hardship.

Employees need Union Reform; at present many caseworkers are working under the fear of asbestos, and multiple issues. The union ignores our complaints and the reason is very clear. Union members are mandated to pay dues. In another case, bus drivers have to urinate in a cup or pan because they have no other way of completing their job. The union is fully aware, but thus far union member complaints have fallen on deaf ears.

Testimony at the Public Hearing on the State of Workers' Rights in New York City
April 25, 2017

Testimony by: Nancy Rankin, Vice President for Policy Research
Harold Stolper, Senior Labor Economist
Irene Lew, Policy Analyst
Community Service Society of New York

Thank you for the opportunity to submit written testimony today on the issues facing low-wage workers throughout New York City. This testimony expands on previous testimony we provided to the Committee on Civil Service and Labor of the Council of the City of New York on March 3, 2017, regarding a series of proposed local laws focused on expanding workers' rights.

While workers across the city continue to face low wages and stagnating hours that often fail to provide a *living wage*, this testimony will focus on two specific issues that limit the ability of low-wage workers to help their families get ahead economically: unpredictable scheduling, and the continuing lack of access to paid sick leave for many employees, despite the passage of the expanded paid sick time law because of lack of awareness among workers and employers or the failure of employers to comply.

The Community Service Society is a non-profit organization that works to promote upward mobility for low-income New Yorkers. The findings presented here are distilled from a recent publication, *Unpredictable: How Unpredictable Schedules Keep Low-Income New Yorkers from Getting Ahead*, along with other recent findings from the *Unheard Third*, our annual scientific survey on the experiences and views of New Yorkers both inside and outside the workplace.

UNPREDICTABLE SCHEDULING

This year's survey findings on scheduling focus on two scheduling practices in particular: limited advance notice of schedules (i.e. when employees are informed of their hours), and fluctuations in work hours (how many hours employees will work). Our data allows us to document how widespread these scheduling practices are, and how they relate to specific economic hardships that workers and their families face. Here is what we found.

Low-wage workers, and workers in the retail and restaurant sectors—including fast food establishments—are most likely to experience short notice.

We found that 37 percent of all employed respondents have less than 2 weeks' notice, but this share rises as you move down the income ladder, with 57 percent of poor workers—those with annual incomes at or below the federal poverty level—facing less than 2 weeks' notice (See **Figure 1**). Poor workers are also more likely to have very short notice of less than 24 hours; more than a quarter of poor workers are effectively on call. When we breakdown advance notice by sector, we find that nearly half of retail workers have less than 2 weeks' notice, and more than 80 percent of restaurant workers, compared to less than one third of other workers (See **Figure 2**).

Retail and restaurant workers experience the greatest week to week fluctuations in hours.

We also asked respondents whether the number of hours their employer needs them to work changes a great deal from week to week, somewhat from week to week, or stays about the same. We found that 23 percent of all workers said their hours changed from week to week, but this number jumped to 33 percent among retail workers, and 40 percent among restaurant workers.

Low-income workers with more unstable schedules experiences greater economic hardships than low-income workers with more stable schedules.

One important feature of our survey is that it allows us to compare the experiences of low-wage workers with stable schedules to other low-wage workers with unstable schedules. Almost across the board, we found that low-income workers with less advance notice and greater fluctuations in hours had higher hardship rates. For example, low-income workers with less than 2 weeks' notice were more than twice as likely to say they were often unable to afford subway and bus fares as low-income workers with at least 2 weeks' notice. They were also more likely to have fallen behind on their rent, skipped meals, and forgone needed prescriptions.

Again, these results aren't just a story about low wages: when you compare two low-wage workers, one with more advance notice and one with less, the worker with less notice tends to have a harder time paying bills and putting food on the table. To pay steady bills, you need steady hours. This is supported by the data: 68 percent of low-income workers with very unstable schedules have had trouble paying rent or regular bills, compared to only 23 percent of low-income workers with steady hours (**See Figure 3**). Low-income workers with very unstable schedules were also more than 3 times as likely to have lost their job as low-income workers with steady hours.

Low-income parents are more susceptible to economic hardships from unstable scheduling than low-income workers without children.

Some of the most distressing findings highlight the challenges low-income parents face because of scheduling practices. The data shows that all parents—especially mothers—are more likely to experience fluctuating hours than adults without children. The question is whether or not these fluctuations represent desirable schedule flexibility granted to the worker, or instability imposed on the worker.

Unfortunately, we find that parents with unstable schedules have higher hardship rates than parents with more stable schedules (**See Figure 4**). Parents with unstable schedules also have higher hardship rates than non-parents with unstable schedules, presumably because the stakes are higher for parents who are caring for more than just themselves; parents with unstable schedules are significantly more likely to cut back on school supplies, to forgo needed prescriptions, and to go hungry. This is particularly troubling because these hardships are likely to spill over to children.

We recommend that the City prioritizes the implementation and enforcement of regulations to protect hourly, low-wage workers from short scheduling notice, insufficient and fluctuating hours, and other abusive scheduling practices, unless they are accompanied by additional compensation or employees choose to opt in to these schedules.

In summary, our data illustrates just how difficult unpredictable scheduling is for many workers who are struggling to earn a living and care for their family, especially low-wage workers in the restaurant and retail sectors. In order for the growing movement to mandate living wages to effectively provide workers with more economic stability, these workers also need to secure a right to fair work schedules. The scheduling bills that have recently been introduced in the City Council are an important first step towards guaranteeing fair work schedules for some of the workers who are most affected. In addition to these bills, we recommend that many of the proposed protections be extended to all lower wage hourly workers, not just those working at fast food establishments.

PAID SICK LEAVE

Passage of the Earned Sick Time Act in 2013 and its expansion by Mayor Bill de Blasio in 2014 provided roughly 3.4 million workers with the legal right to paid sick leave. The Earned Sick Time Act, which took effect in April 2014, provides private sector workers in businesses with 5 or more employees up to 40 hours of paid sick time a year, and up to 40 hours of unpaid sick leave to those employed by smaller firms, ensuring that no worker can be fired for being sick.

For more than a decade, the Community Service Society has tracked whether or not workers have paid sick leave as part of our annual Unheard Third survey. We found that many low-income workers lacked this vital workplace benefit, and our research played a critical role in the passage of the law. Starting in 2014, the Community Service Society also began asking New Yorkers about their awareness of the paid sick leave law in the Unheard Third survey. Data from our recent 2016 survey illustrates some of the progress that has been made three years after the law took effect but also underscores the need for additional resources to enable the City's Department of Consumer Affairs (DCA) to improve enforcement of and outreach on the paid sick time law.

Low-income workers' access to paid sick leave has improved since the sick time law went into effect in 2014.

The share of low-income workers in New York City without paid time off has declined since the paid sick leave law took effect in April 2014. In 2013, 53 percent of eligible low-income workers we surveyed said that they did have any paid time off for vacation or sickness; by 2016, this share had fallen to 38 percent of low-income covered workers.

Absence of paid sick leave remains persistent among low-income Latinos and immigrant low-wage workers eligible for this benefit.

Lack of paid sick leave remains widespread among low-income Latinos and immigrant workers covered under the paid sick time law (**See Figure 5**). In our 2013 report, *Latino New Yorkers Can't Afford to Get Sick*, we found that Latinos were disproportionately affected by the absence of paid sick time because they tend to work in low-wage jobs with few workplace benefits. Four years later, we found that 43 percent of low-income covered Latinos still don't have access to paid time off when illness strikes. Furthermore, 48 percent of low-income immigrant workers still don't have paid sick time.

Lack of paid sick days remains widespread among low-income workers with part-time jobs and those in low-wage service industries like restaurant and retail.

We found that access to paid sick leave varies widely by worker characteristics such as industry and full vs. part-time employment. In 2016, 65 percent of low-income eligible workers with part-time jobs still don't have any paid time off, more than double the share among those working full time. Furthermore, 61 percent of eligible low-income workers in the retail and restaurant sectors still don't have any paid time off, nearly twice the share of those working in social services and other industries (**See Figure 6**).

Awareness of the paid sick leave law has declined steadily since the law took effect in 2014 and was accompanied by a robust public outreach campaign by the city aided by advocates.

In 2016, when asked how much they have heard about the paid sick days law, 39 percent of low-income covered workers said that they had heard some or a lot about the law, down from nearly half (46 percent) in 2014 (**See Figure 7**). Three years after the law took effect, it is troubling that six out of every 10 low-income working New Yorkers covered under this law—the group least likely to be able to afford to take an unpaid sick day—still had heard little to nothing about it. Meanwhile, workers with moderate to higher incomes were more likely to have heard of the paid sick time law, but more than half (54 percent) said that they had heard little to nothing about it (**See Figure 8**).

We recommend that the City expand proactive employer outreach and enforcement of the paid sick leave law in low-wage industries and expand outreach efforts to low-wage workers.

On the third anniversary of the paid sick leave law, our most recent survey shows that some gains have been made in improving access to paid sick leave for low-income workers. However, it is concerning that more than 6 out of every 10 low-income covered workers in the restaurant and retail industries and two-thirds of those with part-time jobs still report not having any paid time off. Our findings underscore the need for the City's Department of Consumer Affairs (DCA) to expand enforcement and education efforts around the paid sick time law.

FIGURE 1

ADVANCE NOTICE OF WORK SCHEDULES

Short notice is a common problem for all workers, but more so for the working poor. More than 1 out of 3 employed New Yorkers are given their work schedules less than 2 weeks in advance, including more than half of poor New Yorkers.

Q: How far in advance do you usually know what days and hours you will need to work? [All Employed Respondents]

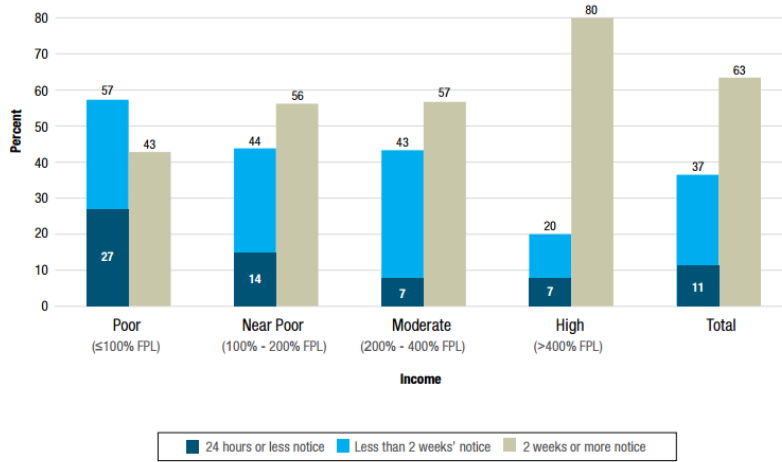
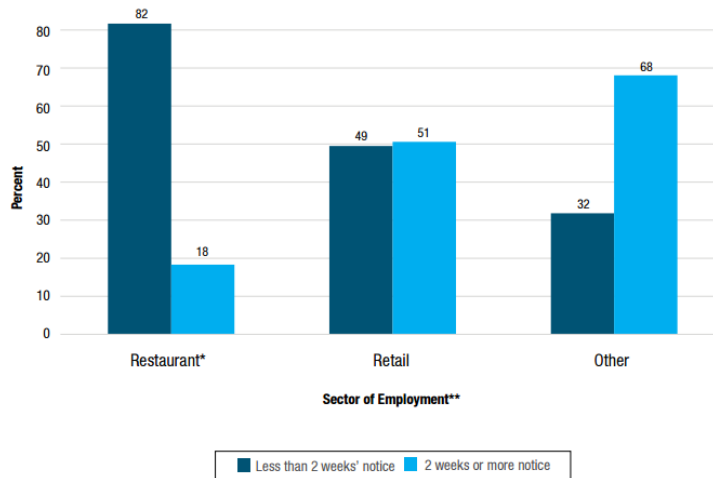


FIGURE 2

ADVANCE NOTICE OF WORK SCHEDULES

More than 4 out of 5 restaurant workers and half of retail workers get less than 2 weeks' notice.

Q: How far in advance do you usually know what days and hours you will need to work? [All Employed Respondents]



* Denotes a sample size of under 75 observations that should be interpreted cautiously.

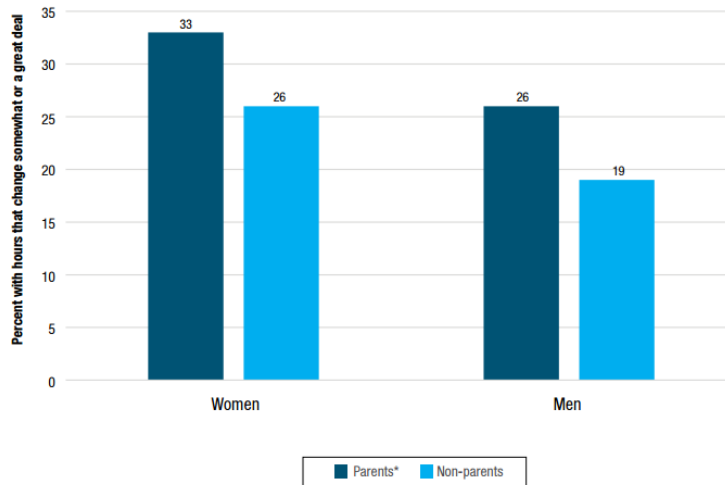
** Sector is based on self-identification by survey respondents. It is likely that fast food workers associate themselves with the restaurant sector.

FIGURE 3

WORK SCHEDULE VOLATILITY

Among low-income families, parents are more likely to experience fluctuating hours than non-parents. Among both low-income parents and non-parents, weekly hours fluctuate more for women than men.

Q: Do the number of hours your employer needs you to work change a great deal from week to week, somewhat from week to week, or stay about the same? [All Employed Low-income Respondents]



* Denotes a sample size of under 75 observations that should be interpreted cautiously.

FIGURE 4

WORK SCHEDULE VOLATILITY

While low-income workers are hit harder by unpredictable scheduling than moderate-higher income families, unpredictable scheduling also presents greater problems for parents and their children than non-parents. Often times this means cutting back on school supplies, prescriptions, and even food.

Q: In the last year have you or any member of your household ... [All Respondents with <2 weeks' notice and fluctuating hours]

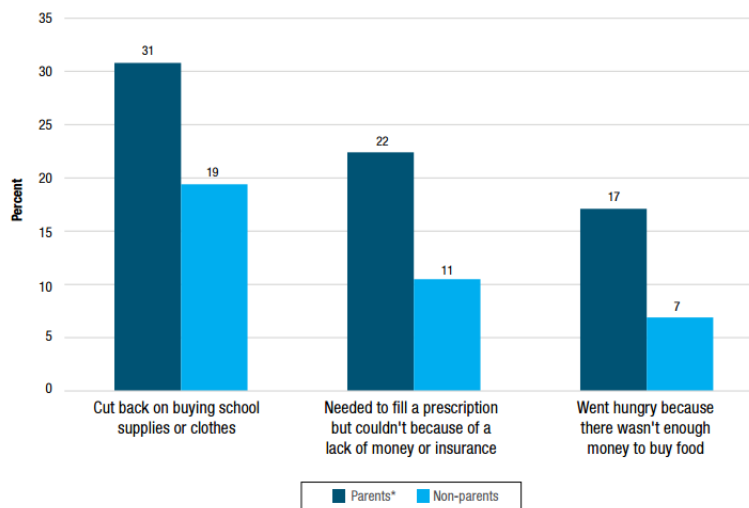
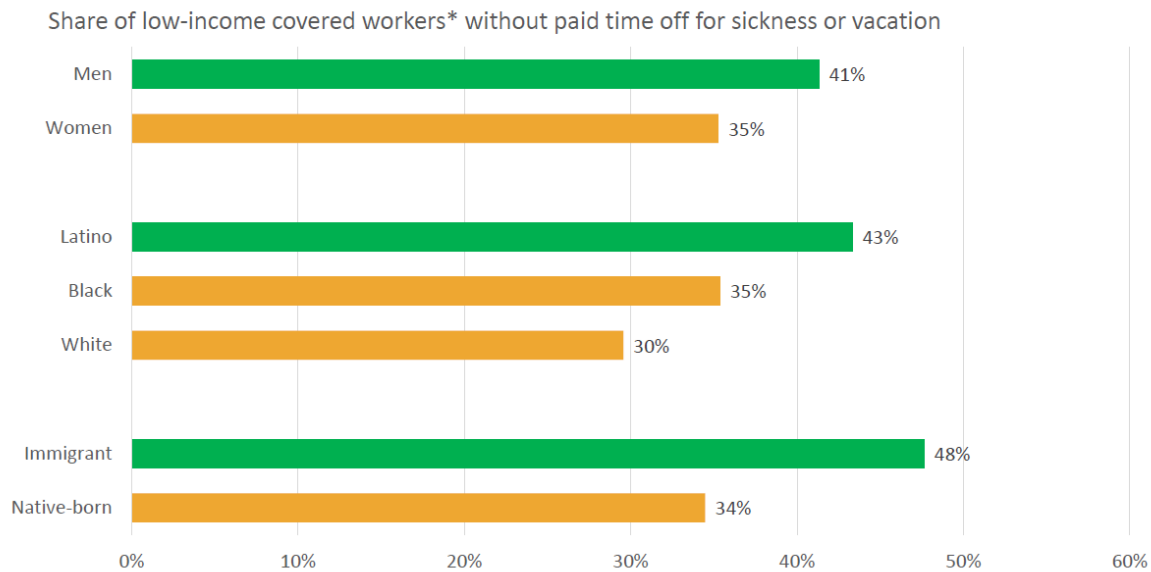
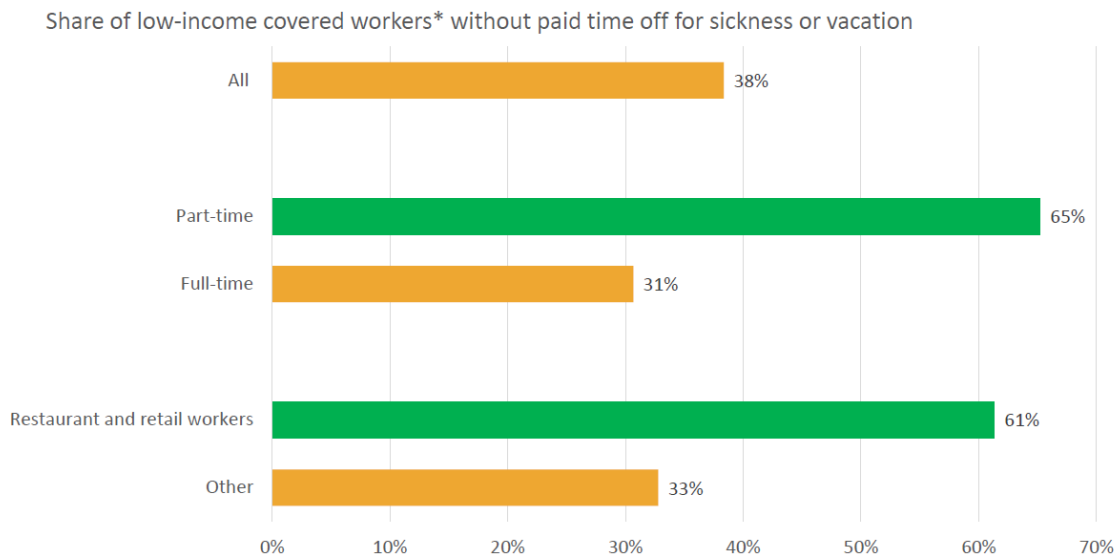


Figure 5. Three years after the paid sick time law took effect, 43 percent of low-income Latinos and nearly half of immigrant workers still lack paid sick leave.



Note: *covered workers excludes those in the public sector, self-employed, and in firms with less than 5 employees. The law requires employers with under 5 employees to provide up to 5 days of unpaid sick time.

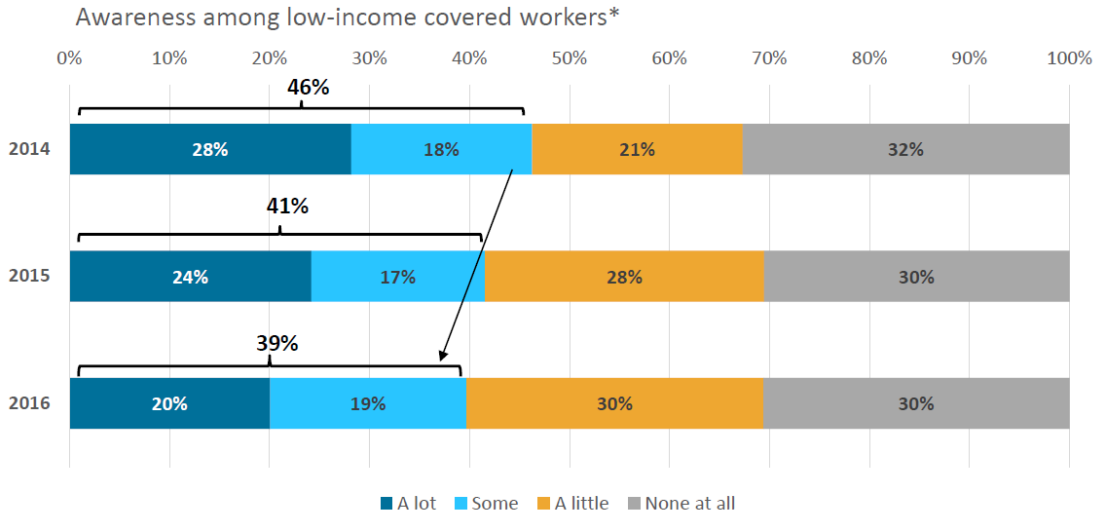
Figure 6. Nearly two-thirds of low-income eligible workers with part-time jobs and 61 percent of those in low-wage industries still lack paid sick leave.



Note: *covered workers excludes those in the public sector, self-employed, and in firms with less than 5 employees. The law requires employers with under 5 employees to provide up to 5 days of unpaid sick time.

Figure 7. Only 39 percent of eligible low-income workers in New York City have at least some awareness of the paid sick leave law, down from 46 percent in 2014, when the law took effect.

Q: How much have you heard about a law in New York City that gives employees 5 paid sick days: a lot, some, a little, or none at all?



Note: *covered workers excludes those in the public sector, self-employed, and in firms with less than 5 employees. The law requires employers with under 5 employees to provide up to 5 days of unpaid sick time.

*This is an excerpt from the paper **New Frontiers of Worker Power: Challenges and Opportunities in the Modern Economy** by Michelle Miller and Eric Harris Bernstein.*

Full, annotated text can be found at: <http://rooseveltinstitute.org/new-frontiers-worker-power/>

While expanding the protections and coverage of existing labor and employment law to all workers is an important first step to balancing bargaining power between workers and firms,, changes in the structure of work require additional considerations to ensure workers are able to make use of these protections to effectively counter firm power. Our current systems for building worker organization were created with the assumption that workers would have reasonable access to a majority of their coworkers via shared physical workspace or geography. The waves of worker organizing that built the modern labor movement in the mid-20th century relied on a combination of worksite-based organizing and clandestine meetings in union halls, bars, restaurants, and homes, as well as the federal government's active protection against anti-union activism by employers. It is difficult to imagine key moments in the prior century's labor history without the images of the Flint sit-down strike or farmworkers gathering together in the fields they worked on. Workers were able to find one another at their worksites and, as organizing and representation grew, were able to convene in person at local and regional halls to engage one another on key issues as a group.

In the digitally mediated and supply chain economy, there is no such centralizing mechanism, other than the employers themselves. This hub-spoke structure enables employers to thwart worker activism by both legal and illegal means. Franchise and supply chain workers at multinational corporations only ever see an infinitesimal fraction of their coworkers — certainly never enough to achieve the kind of density necessary to contest the power of their employer. And digital platform workers have no in-person access to their coworkers at all, except in rare cases. This amounts to a de facto divide-and-conquer strategy for decentralized firms, whereby workers lack even the most basic ability to share information or discuss grievances, let alone organize themselves. For workers to achieve the density that would enable them to effectively negotiate their working conditions with firms, new avenues for collaboration must be provided and attempts by firms to prevent this convening must be considered a violation of those workers' rights to freedom of association.

Internet platforms offer the infrastructure for these kinds of workers to converge in digital space on a scale that matches the reach of multinational firms. Facebook groups and Reddit threads provided early convening spaces for workers, while more recent platforms such as Coworker.org and Dynamo have provided longer-term solutions by experimenting with ways to sustain networks of people contesting power in their workplaces, and by supplementing those efforts with expert support, data analysis, and media outreach. These efforts have demonstrated the potential for decentralized, digital collective-building to effect real change. Meanwhile, the National Labor Relations Board has repeatedly ruled in favor of non-union workers who faced retaliation for organizing in digital spaces, citing concerted activity protections outlined in Section 7 of the NLRA and asserting the right of workers to use firm-provided email accounts to communicate about union issues.

There are additional policy considerations that will be necessary to ensure that these digital pathways continue to be open and can effectively be put to use. Firms that employ workforces through digital means should be expressly prohibited from preventing workers from contacting one another off-platform. This would require a review of Terms of Service agreements such as

TaskRabbit's, which states that "You may only use [...] community areas to send and receive messages and material that are relevant and proper to the applicable forum. For the safety and integrity of the TaskRabbit Platform, you may not share your personal contact information with other Users." Preventing users from establishing alternative means to contact one another forestalls any ability for independent discussion of working conditions, a fundamental pillar of workers' ability to organize. One could even go a step further, requiring that, because the structure of these work arrangements upends the presumption of shared physical space to facilitate peer organizing, firms should be expected to provide alternatives for reasonable access to a majority of a worker's peers. This access could be provided on secure and independent platforms that mimic the same kind of space once offered by break rooms or offsite meeting locations. Such platforms could be run by worker organizations, trade unions, or other trusted third parties who provide research, legal, organizational, and representational support. As the internet and independent worker-led digital platforms will provide the most natural gathering place for distributed workforces, corporate control of internet access must continue to be held at bay. To that end, policymakers concerned with ensuring freedom of association for workers must consider the protection of a free and open internet — net neutrality — to be a priority. A lack of equal access to independently run, worker-led online platforms would essentially undo any advancements made to provide a means for disaggregated workforces to build effective collectives.

This also means that workers should be assured their digital organizing activities will not be exposed by one employer to another, or to government entities with an interest in the suppression of more general protest activity. Tech platforms sharing and selling data to one another is already a contentious issue in the privacy space, but government regulators should also protect workers' privacy when it comes to preserving labor rights. This may include levying penalties on companies that infiltrate protected online spaces through the use of agitators or employee espionage.

As algorithm-based software, machine learning, and automatic systems are increasingly being used to surmount the physical barriers presented by disaggregated and distributed workforces, a new set of complications and obstacles for worker agency arises. These systems are built on vast amounts of workforce data collection that feed opaque algorithms which partially or wholly manage wage-setting, allocation of hours, and evaluation metrics related to hiring, promotions, and firing. Meanwhile, workers have essentially no influence over the way that these systems are designed, minimal information on how the systems use data inputs related to their performance to make decisions, no access to or control over the data they generate in the systems, and no control over the way firms use this data. This asymmetry in information and control makes it impossible to imagine bargaining over conditions in automated or semi-automated work environments: If workers do not have access to the work rules as established by these algorithms, they cannot adequately negotiate for changes to those rules or consider their impact when selecting an employer.

While the fraction of workers today accessing work through fully automated platforms is minimal, it is widely projected that these platforms will be introduced into other sectors like law, service, and logistics. Just last year, the Institute for the Future tested iCEO, a "virtual management system" that "points to a not-too-distant future in which these [software programs] will not only manage simple processes, but also help conceptualize and oversee an endless variety of projects — functions traditionally performed by management". And many more workers are already partially managed by software-based systems: Scheduling, labor allocation,

performance ratings, and time management are some areas where software is being introduced into more traditional work environments.

At the most basic level, workers should have a right to know how decisions related to their pay, mobility, and performance tracking are made. In traditional corporate hierarchies, access to this information has been mediated through direct relationships with supervisors and/or direct contact with coworkers. The basic expectations for employees were communicated at hire and decisions related to an employee's ability to meet these expectations were transparent. As these decisions are buried under software, firms should be expected to go a step further in terms of communicating basic functionality of the software as it relates to managing work and changes to the software that impact workers' earning power or performance. After all, software does not function autonomously; firms program their software intentionally, and hence it cannot become a means to circumvent labor law.

The current lack of information in this area undermines the promise of a more flexible and agile work environment in which workers can make informed choices about how and when they work, which has been the basis of support for these new modes of work in the first place. These systems also make it nearly impossible to effectively negotiate for improvements to these systems. Firms argue that data related to the algorithmic management of their workforces must remain private for the sake of market competitiveness. But this argument must be balanced against workers' basic rights to understand the terms of agreements they are entering. Currently, workers mitigate this information asymmetry by forming online groups and sharing anecdotal data to form a patchwork theory about how algorithms make decisions that prefer certain workers or increase rates at certain times. While this approach is clever and certainly admirable among workers who are already overburdened, it does not provide a reliable aggregate picture of working conditions as affected by mediating software. Furthermore, it does not provide a sufficient check on potential firm abuses. Workers cannot effectively negotiate the conditions of their relationships to platforms on a set of hunches and individual anecdotes. The lack of transparency effectively renders workers helpless to the whims of markets in a way that is destabilizing in aggregate. Some states have passed laws requiring temporary staffing agencies to provide basic information on pay rates and start/end times, among other critical pieces of information about the work day. Former NLRB Chair Wilma Liebman proposes that these same disclosure requirements could be extended to work platforms to ensure that the platforms are in compliance with basic labor standards and "mitigate the asymmetry of information that exists on platforms that lack transparency about remuneration and client reputation."

Though platforms manage and rate workers based on performance, the data related to that performance rating is not accessible to them. As digital platforms increase, workers' abilities to move from one platform to another will be reduced if they cannot prove or certify the prior work performed on another platform. For task-based and service-based workers, this seems particularly fraught. On current task platforms, workers have an overall rating that helps consumers choose them to perform tasks. Without the ability to easily transfer that rating and related performance metrics over to a new platform, the likelihood that a worker can weather the financial risk of switching is diminished. In these cases, the workers' ability to exit the workplace is stunted, undermining this longstanding cornerstone of labor power. The right to exit rests upon the reasonable ability for an individual worker to protest a decline in conditions by leaving one firm for another, holding employers to a minimum set of conditions. If workers cannot seamlessly move from one platform to another, they cannot exercise this right.

Further, workers should have the ability to contest consumer-based performance ratings. Simplistic star ratings systems effectively transfer management responsibility to consumers on peer-to-peer platforms. Yet consumers are not held to standards that protect workers from racial or gender-based discrimination, and it is unknown if the algorithms that collect that data take such biases into account in assessing performance. As Alex Rosenblat points out, “Through the rating system, consumers can directly assert their preferences and their biases in ways that companies are prohibited from doing. In effect, companies may be able to perpetuate bias without being liable for it.” In fact, Uber points to systemic racial bias in favor of white workers as their reason for not allowing in-app tipping. Attorney Shannon Liss-Riordan has filed a complaint with the Equal Employment Opportunity Commission asserting that Uber’s statements indicate that consumer ratings hold the same potential for racial bias. While there have been some effective strategies for contesting deactivations on these platforms, workers will only be able to address root causes by understanding (and potentially contesting) the ways in which their performance ratings are weighted. Workers should have access to individualized data packages that can be carried across platforms and some insight into what information is contained in the packages.

Beyond ownership of performance-based data, workers should also have the right to know exactly what data is being collected by their employers or firms and how that data is being put to use. For workers in fully digital environments, the pay they receive is generally based to the good or service they are providing to a paying customer. But if, in the process of providing that service, they are generating additional data that is of economic value to the platform, they should be aware of and potentially compensated for the value of that data. For example, Uber has never hidden its ambitions to move far beyond providing rides. All the way back in 2013, investor Shervin Pishevar described the company’s ambitions to build a “digital mesh — a grid that goes over cities,” establishing Uber as a global logistics empire. The grid for this potential empire, currently valued at \$66 billion, is built on data provided by the hundreds of thousands of rides by drivers earning less than \$13 an hour after expenses.

For service sector and white-collar workers, data collection systems related to productivity and performance are also frequently used. The post-Snowden era has unleashed a torrent of “insider threat” tracking software that collects interpersonal communications content, time management data, and physical location data to track employees.. This data is collected by employers to determine the threat potential of specific individuals, resulting in massive personal data files owned by private companies with economic power over their employees. Further, systems optimized to track “threatening” employees can also be used to profile potential internal agitators or organizers within a firm and target them for dismissal. Nathan Newman argues that this presents a “collective harm to the workforce” as the “benefits gained by internal agitators are extended to the general workforce” when these employers speak up for wage increases or improved safety protocols. Meanwhile, such software can simultaneously be used to identify workers who are unlikely to protest wage stagnation or a decline in conditions, due to a combination of personal circumstances, economic liabilities or emotional disposition that may surface in a firm’s analysis of behavioral data. In place of collective workplace improvements that raise standards for workers as a class, we find a sophisticated, data-driven targeting operation that winds up benefiting only the individual employees with pre-existing structural advantages and further entrenching vulnerable employees in lower-paying roles.

More generally, in a Panopticon-like work environment in which one’s every move is monitored, the peer solidarity that traditionally precedes and enables organizing is inhibited because workers lack space to casually air grievances or question authority. While there has been

extensive research and policy advocacy around data collection as it relates to government surveillance, there are minimal limits on what firms can collect and keep as it relates to employees. As many people use personal technology in their work (from checking emails to performing work on platforms), lines between on-the-clock behavior and off-the-clock behavior can become blurred. In a 2013 article on PRISM, privacy activists David Segal and Sam Adler-Bell note that the cozy private–public partnerships between corporations and government could result in collusion to target and track perceived threats to security as they move through private and public spheres. All of this limits workers’ ability to discuss and research issues related to their own working conditions and form the bonds necessary to advocate on their own collective behalf.

Workers should have a clear right to know what kinds of personal data are being collected by their employers and the ways in which it is being used to assess their performance. These policies and practices should not be embedded in arcane Terms of Service policies or individual contracts workers sign with specific firms. Policymakers and journalists also have a right to know this collective information, as it relates to a general sense of working conditions for citizenry.

Workers’ ability to effectively negotiate on their own behalf — either through third party organizations and agencies or via individual right to contract — requires equal access to information upon which these workers are judged. A requirement for this basic level of communication and transparency on the part of firms does not need to impact competitiveness.

Michelle Miller
Co-Founder, Coworker.org
Submitted April 25, 2017

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April 25, 2017

Testimony for Public Hearing on the State of Workers' Rights in New York City
Date: Tuesday, April 25 at 6:30 PM at LaGuardia Community College

My name is Mika Nagasaki, board member and volunteer coordinator for Chinese Staff and Workers' Association (CSWA), a workers' center based in New York City's Chinatowns. Today CSWA has a membership of over 1,300 workers from various trades and ethnicities, injured and non-injured, documented and undocumented and a leadership composed primarily of immigrant women. CSWA is the first contemporary workers' center bringing together workers across multiple trades to fight for change in the workplace as well as in the community-at-large.

In New York City, thousands of immigrant women care for sick and elderly Medicaid patients as home attendants. Many of these women are Chinese immigrants. As home attendants, they are often forced to perform backbreaking and tedious tasks for 24 hours, 3-7 days a week. If they refuse, many employers retaliate. To add insult to injury, agencies pay them for only 12-13 hours of the shift. They receive \$10-11 per hour, resulting in a per-hour rate far below the minimum wage. When workers complain about the sub-minimum wages, their employers and even their union representatives erroneously tell them they are not entitled to pay for all shift hours. The system of mandatory 24-hour shifts is depriving these women the fundamental right to family and civic participation by isolating them in private homes, with no time off.

Our members have come forward to fight this injustice, by calling out their employers for years of wage theft and by demanding the right to refuse overtime. Recently, the Supreme Court, Appellate Division, First Department, ruled that "if [the worker] can demonstrate that she is a nonresidential employee, she may recover unpaid wages for the hours worked in excess of 13 hours a day." I have enclosed that decision. The city must do more to educate the public about this ruling, and support workers' demand for the right to refuse overtime. I have enclosed the stories of a few home attendants speaking to this in their own words.



OFFICE OF THE VICE PRESIDENT

Before The Department of Consumer Affairs, in partnership with
Mayor's Office of Immigrant Affairs and the New York City Commission
on Human Rights

TESTIMONY

Of Bianca Cunningham, [REDACTED]
Communications Workers of America, District 1
Public Hearing on the State of Workers' Rights in New York City

Good evening,

My name is Bianca Cunningham. I am an organizer with the Communications Workers of America. Prior to being an organizer, I worked at Verizon Wireless as a retail sales worker in Brooklyn, NY for seven years. In my current job, I have spoken with hundreds of retail workers at both Verizon Wireless and T-Mobile, as well as retail workers in authorized dealers.

Fair scheduling in the retail environment is a big source of stress for many employees. Retail workers at Verizon Wireless and T-Mobile are often young, and many are new parents. Predictable and stable schedules are critically important for both parents and young men and women who oftentimes have more than one job to help survive and pay the rent in New York City.

Unfortunately, both Verizon Wireless and T-Mobile change our schedules monthly, and sometimes if the store is busy, we can't leave at our scheduled time. This creates constant baby-sitting issues, and oftentimes makes it hard for people holding down two jobs.

Verizon Wireless and T-Mobile work on a commission based wage structure -- and so the more devices people sell, the higher their income. But as we see the company operate in an increasingly competitive market, our wages are flat or going down. I am sure it won't be a surprise to anyone in this room that New York is a very expensive place to live!

Wage theft issues are another big problem in this industry. We find that especially in authorized dealers, wage theft is rampant. Employers use all the tricks to cheat. People are often asked to clock out and work through lunch, and clock out to avoid overtime. We have spoken with many retail workers who are employed by Verizon or T-Mobile's authorized dealers who have complained about issues around wage theft. This is especially outrageous since the both Verizon Wireless and T-Mobile actually dictate the working conditions at these authorized dealers, yet they claim to have no responsibility.

To survive in this city, workers need a living wage, predictable schedules, and we need to get paid when we work. I appreciate the Office of Labor Policy and Standards looking into these issues, and we hope that the City become a leader in regulating these companies so that our schedules are more sane, and that retail workers get a living wage, and get paid for the hours we work.

Thank you.

Hello, Good Evening my name is Juana Dwyer. I am nanny and have also been a board member of Damayan Migrant Workers Association for 7 years and now currently the President of Damayan cleaning coop. Damayan is a nonprofit organization and our mission is to educate, organize and mobilize low wage Filipino workers to fight for their labor, health, gender and im/migration rights; to contribute to the building of the domestic workers movement for fair labor standards, dignity and justice; and to build workers' power and solidarity towards justice and liberation.

I came to this country because in my country, the Philippines, everyone is very poor with no jobs with a corrupt government, there is no real way to survive so thousands of people leave the Philippines looking for jobs in other countries.

As a domestic worker sometimes I have been a nanny, housecleaner, dog walker, and cook for different families. In 2009, I was working for a family as a nanny, housecleaner, and dog walker; basically anything they needed for over 18 months and never took a vacation day. I asked for paid vacation of 2 weeks to visit my family in Philippines and I gave three months advance notice. When returning from my vacation I realized my employer was not going to pay for the vacation days and when I asked for the money they refused, giving all different excuses, like I did not ask properly or that I do not have the right to paid time off. After that, my employer fired me and told me this by sending a text message. I was out of job and during that time every one was facing financial problems because of the economic crisis in the United States at the time. I was a member of Damayan and they helped me flight a wage theft

complaint against my employer with the Department of Labor and I was able to get back my wages and even overtime.

Damayan gave me and other members - trainings on our rights, interviewing, negotiation, and CPR. I was able to learn my worker rights because of Damayan and now we are building our own worker cleaning cooperative. Even though I have learnt my rights, domestic workers are still not protected enough. The domestic worker bill of rights does protect us but not enough. We need more paid time off, we currently only have 5 days of Paid Sick Leave and we need the city government to enforce these laws on employers and help to protect domestic workers who is a very vulnerable population.

Thank you – to the city agencies for giving me and other groups the opportunity to speak about domestic worker current work

conditions. Thank you to the Commissioners and audience for listening to my story. Good Night



**Testimony of Amy Traub
Associate Director, Policy and Research
Demos**

Re: The State of Workers' Rights in New York City

**Submitted electronically to the
Office of Labor Policy and Standards,
New York City Department of Consumer Affairs
nycworkerhearing@dca.nyc.gov**

April 25, 2017

Dear Commissioners Salas, Agarwal, and Malalis:

Demos appreciates the opportunity to offer testimony on the state of workers' rights in New York City. We are a non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. We are a national organization proud to be based here in New York City. And we recognize that workers' rights are critical to our mission of reducing economic inequality.

Our testimony will focus on four key areas of concern for working New Yorkers:

- Widespread violations of basic wage and hour laws;
- The need for greater public awareness of the right to paid leave, under both New York City's Paid Sick Leave law and New York State's pending Paid Family Leave law;
- The pressing necessity for greater public investment in child care, in the interest of working parents and paid child care workers;
- Combating employment discrimination, particularly New York City's statutes banning discrimination based on credit history and on arrest or conviction record.

Addressing concerns on each of these fronts will require **resources for legal enforcement, public education and outreach, and research** to improve understanding of conditions for working New Yorkers and the efficacy of the city's efforts at redress. Demos welcomes the establishment of New York City's Office of Labor Policy and Standards to serve as the city's focal point on workplace issues and we appreciate the continuing efforts of the Mayor's Office

of Immigrant Affairs and the New York City Commission on Human Rights in combatting discrimination.

Widespread violations of basic wage and hour laws

Research into violations of basic employment laws reveals the critical importance of enforcing wage statutes, both for low-paid New Yorkers and for our city and its overall economy. The National Employment Law Project's landmark 2008 survey of thousands of people employed in low-paying industries in New York City exposed pervasive violations of workplace protections: more than half of workers surveyed reported being subjected to pay violations such as failure to pay minimum wage, not being paid for overtime, being required to work off the clock or being compelled to work through meal breaks.¹ Illegal employer retaliation against workers who complained was also widespread. Meanwhile, a 2011 U.S. Department of Labor study assessing minimum wage violations alone estimated that workers throughout New York State were losing \$10-\$20 million dollars every week exclusively to violations of the federal minimum wage.² When workers are cheated out of wages, the city bears a greater burden as fewer taxes are collected, impoverished workers turn to public programs to support their families, and workers have less money to spend supporting neighborhood businesses and the local economy. A growing body of research also details how strained family budgets negatively impact the next generation of New Yorkers.³

These findings highlight the need for greater city-level enforcement efforts for wage and hour and other basic workplace protections, especially as the budget of the federal Department of Labor faces severe cuts and potentially a shift in priorities away from enforcing core workplace rights.⁴ Indeed, the much-needed increases in New York State's minimum wage that are now being phased in will only be effective to the extent that the minimum is meaningfully enforced. The pervasiveness of violations also demonstrates the importance of the Office of Labor Policy and Standards mandate to work in close partnership with workers and their organizations

¹ Annette Bernhardt, Diana Polson, and James Defilippis, "Working Without Laws: A Survey of Employment and Labor Law Violations in New York City," *The National Employment Law Project*, March 2015, available at <http://www.nelp.org/publication/working-without-laws-a-survey-of-employment-and-labor-law-violations-in-new-york-city/>.

² U.S. Department of Labor, "The Social and Economic Effects of Wage Violations: Estimates for California and New York," *The U.S. Department of Labor*, Eastern Research Group, December 2014, available at: <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>.

³ "Child Poverty," NCCP | Child Poverty, *National Center for Children in Poverty*, n.d., available at: <http://www.nccp.org/topics/childpoverty.html>.

⁴ . Office of Management and Budget, "America First: A Budget Blueprint to Make America Great Again," *Executive Office of the President of the United States*, The White House, March 2017, available at: https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf.

to raise awareness of pay regulations and gain an understanding of the industries, occupations, and circumstances where violations persist and how to combat them more effectively. Working with employers to understand and comply with the changing law is also essential. The greater rate of wage violations among immigrant workers makes translation and interpretation of public information about workers' rights into the languages understood by New Yorkers especially important, as is the emphasis that workers' fundamental rights apply regardless of immigration status.

Finally, the need to rely on research data collected in 2008 (National Employment Law Project) and 2011 (U.S. Department of Labor) to assess the pervasiveness of violations highlights the imperative for additional, up-to-date research to better understand compliance with wage and hour and other vital workplace laws and to assess the extent to which regulatory and enforcement efforts are effective and how they could be improved. Alongside enforcement, public outreach, and coordination efforts, rigorous, critical research into the conditions faced by workers will require significant resources but is vital to protecting New Yorkers' right to fair compensation for their labor.

Public Awareness of Paid Leave

Throughout the nation, 6 in 10 low-paid workers have no access to paid sick time.⁵ Working New Yorkers *do* have this right – and multilingual public outreach efforts like the “Feel 100%, Work 100%” campaign on subways and buses have undoubtedly helped to increase awareness. These efforts must be ongoing, with resources devoted to continuous outreach to workers and their employers. As with violations of wage and hour laws, public outreach and education must be coupled with enforcement, partnership with worker organizations, research and a continued emphasis that the law applies regardless of immigration status. As OLPS's mission appropriately includes conducting public education and outreach about not only city workplace laws but also state and federal protections that apply to New Yorkers, it will also be vital to work with New York State to educate expectant parents, family caregivers, and their employers in the city about rights and responsibilities under the state's new paid family leave law, going into effect on January 1, 2018.

Investment in Child Care

Access to child care must be considered a core element of workers' rights in New York City: first, because quality, affordable child care is essential for parents of young children to

⁵ U.S. Bureau of Labor Statistics, “Table 6: Selected paid leave benefits: Access,” March 2016 National Compensation Survey, *U.S. Department of Labor*, Bureau of Labor Statistics, revised July 2016, available at: <https://www.bls.gov/news.release/ebs2.t06.htm>.

participate in the workforce and second because the Census estimates that more than 27,000 people are employed as child care workers in the New York City metropolitan area (a number which may dramatically undercount child care employment given the extent to which child care employment is often informal).⁶ The reality that child care is both unaffordable for parents and offers unlivable wages to child care workers indicates that private markets are not adequately meeting the need for care: child care is – and must be treated as – a public good to serve all New Yorkers.

The guarantee of universal preschool to all four-year-olds in New York City is a giant step toward addressing the crisis of care facing working parents. Yet parents of younger children still face daunting obstacles to participation in the labor force, particularly among low-income households whose expenses for child care often exceed the cost of rent. In 2015, the Public Advocate’s Office concluded that the average annual cost of infant care in New York City was \$16,250 and was increasing by almost \$1,612 each year.⁷ While child care subsidies currently serve just 17 percent of eligible families statewide, the most recent New York State budget cuts an additional \$7 million in child care subsidies to low-income families. Despite promises to help families with child care costs, Trump’s budget and tax plans may make matters worse for working New Yorkers.⁸ To participate in the labor force, New Yorkers need greater access to affordable, quality child care.

A focus on the city’s child care workforce is vital as caregivers, predominantly women of color and immigrants, are among New York’s most vulnerable employees, facing low wages and economic insecurity whether they are employed in home- or center-based care. Since 1997, child care workers nationwide have experienced no real increase in earnings despite a near doubling in the cost of child care services to parents.⁹ Domestic Workers United’s 2006 survey of child care and other workers employed in New York City’s private homes found even more troubling

⁶U.S. Bureau of Labor Statistics, “39-9011 Childcare Workers,” *U.S. Department of Labor*, Bureau of Labor Statistics, May 2016, available at: <https://www.bls.gov/oes/current/oes399011.htm#st>.

⁷ Letitia James, “Policy Report: Child Care in New York City- Part II: Investing in Child Care,” The Public Advocate for the City of New York, November 2015, http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/child_care_report_nov_2015.pdf.

⁸ Lily L. Batchelder, Elaine Maag, Chye-Ching Huang, and Emily Horton, “Who Benefits from President Trump’s Child Care Proposals?” *Tax Policy Center*, Urban Institute & Brookings Institution, February 28, 2017, available at: <http://www.taxpolicycenter.org/sites/default/files/publication/138781/2001170-who-benefits-from-president-trumps-child-care-proposals.pdf>.

⁹ Marcy Whitebook, Deborah Phillips, and Carollee Howes, “Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study,” Center for the Study of Child Care Employment at Institute for Research on Labor and Employment, *University of California, Berkeley*, 2014, available at: <http://cscce.berkeley.edu/files/2014/ReportFINAL.pdf>.

patterns of low pay, legal violations, lack of health coverage and abusive treatment by employers.¹⁰ OLPS' focus on the child care workforce is important for educating workers and employers about their rights, enforcing the Domestic Workers' Bill of Rights and other relevant laws, and undertaking research to better understand the scope of serious challenges that continue to face the workforce.¹¹ This effort must be well-resourced to accomplish its aims.

Combating Discrimination

Eliminating discriminatory barriers to employment for qualified workers is essential so that all New Yorkers have an equal chance in our economy. In 2015, New York City enacted the Stop Credit Discrimination in Employment Act banning the use of consumer credit history for employment decisions and the Fair Chance Act barring employers from inquiring about or considering the criminal history of job applicants until after extending a conditional offer of employment. These laws further strengthen New York City's robust anti-discrimination laws by ensuring that jobseekers with an arrest or conviction record and those with blemished personal credit histories have a fair opportunity to be judged and their qualifications and attain employment. **The effectiveness of these and other laws prohibiting employment discrimination will rely on continued public education and outreach** so that job seekers, employees, and employers are aware of their rights and responsibilities. The New York City Commission on Human Rights must also be proactive in detecting patterns of discrimination and taking action to prevent employment bias.

The protection offered by the Fair Chance Act and Stop Credit Discrimination in Employment Act is particularly important because both personal credit history and criminal record can become proxies for racial discrimination. People of color face disproportionate challenges in attaining and maintaining good credit due to the enduring impact of racial discrimination in employment, lending, education, and housing.¹² Despite the prevalence of employment credit checks throughout the United States, there is a lack of evidence connecting personal credit history with job performance.¹³ Thus New York's law banning credit checks at *any* stage of the employment process is critical. At the same time, a racially biased criminal justice system means

¹⁰ Dr. Robin D.G. Kelley and New York University Immigrant Rights Clinic, "Home is Where the Work is: Inside New York's Domestic Work Industry," Domestic Workers United, *Data Center*, 2014, available at: <http://www.datacenter.org/reports/homeiswheretheworkis.pdf>.

¹¹ New York State Department of Labor, "Domestic Workers' Bill of Rights," Labor Standards, *New York State Department of Labor*, December 2016, available at: <https://labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>.

¹² Dēmos, "Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job," February 2013, available at <http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job>.

¹³ Amy Traub, "Credit Reports and Employment: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households," *Suffolk Law Review*, December 19 2013, available at: <http://suffolklawreview.org/author/amy-traub/>.

people of color are disproportionately likely to have a record of arrest or conviction. Long after a sentence has been served, the stigma of a criminal record persists on employment background checks, decreasing a job-seekers' chances of a job callback or offer of employment by almost 50 percent.¹⁴ Yet rates of criminal recidivism are significantly lower among former offenders who are able to obtain steady employment.¹⁵ Removing questions about conviction and arrest records from job applications and not inquiring about conviction history until the conditional offer stage of the hiring process ensure that job applicants have a fair chance to be judged on their qualifications.

In Conclusion

Thank you again for the opportunity to provide testimony. Improving conditions for working New Yorkers by upholding wage and hour laws, paid sick time and paid family leave, and protection from employment discrimination, while increasing public investment in child care and the well-being of the child care workforce is a formidable challenge and will demand significant resources for legal enforcement, public education and outreach, and research. Given appropriate resources, we are confident that New York City's Office of Labor Policy and Standards, the Mayor's Office of Immigrant Affairs and the New York City Commission on Human Rights are up to the task.

Dēmos is eager to answer any questions and offer assistance in any way possible. Please feel free to contact us.

Sincerely,

Amy Traub
Associate Director, Policy and Research
Dēmos

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212-485-6008

¹⁴ Michelle Natividad Rodriguez and Maurice Emsellem, "Need Not Apply: The Case for Reforming Criminal Background Checks for Employment," *The National Employment Law Project*, March 2011, available at: http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf.

¹⁵ The National Employment Law Project, "Fact Sheet: Research Supports Fair-Chance Policies," *The National Employment Law Project*, August 2016, available at: <http://www.nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>.

On The Working Conditions Of Contingent Faculty In Higher Education
Testimony Submitted by Niloofar Mina

The information provided here reflects my experiences as a faculty member with over two decades of teaching experience at a number of colleges and universities in the New York and New Jersey metropolitan areas including New Jersey City University (NJCU) and Citi University of New York (CUNY). I have also experienced the student's perspective while I studied at three of New York City's leading universities: New York University, Columbia University and CUNY's Murphy School of Labor Studies. As a labor advocate I have served as a Vice President for adjunct faculty and the lead negotiator at NJCU's AFT local 1839. These experiences have informed my views on contingent faculty labor which I endeavor to share at this hearing.

According to the statistics published in 2013 by the American Association of University Professors¹ (AAUP), 73% of faculty members teaching at American institutions of higher learning are contract employees whose appointments are contingent upon budget and enrollment. Contingent faculty include non tenured full and part time faculty, graduate student teachers, and adjunct faculty with semester contracts. My experience suggests that in some programs colleges use contingent faculty to staff up to 80% of their undergraduate or graduate level course offerings with little oversight or limitation on the practice. Colleges and universities use contingent faculty to minimize their labor costs, increase managerial power over their faculty members, and maximize flexibility in course and program offerings. The increased reliance on contingent faculty mirrors similar trends in non-academic employment in public and private sectors.

Among the material and cultural characteristics of contingency in higher education are pay inequity, the unsettling horrors of living with perpetual job insecurity, the absence of institutional

¹ American Association of University Professors (AAUP). (2016). Background Facts on Contingent Faculty. <https://www.aaup.org/issues/contingency/background-facts#top>

commitment toward this group of educators and scholars, the prejudicial treatment of contingent faculty within their work environment, and the absence of promotional opportunities, prospects of regular employment opportunities, and academic growth.

Most contingent faculty members do not hold full time jobs outside academia. Instead, they work under temporary contracts throughout their academic careers. Many hold multiple part-time teaching appointments to meet their expenses. This is because (1) universities usually limit the contingent faculty² course load to less than 15 credits per year, and (2) contingent positions do not offer an equitable and living wage.

According to the website of the New Faculty Majority³, an advocacy group dedicated to improving the quality of higher education by advancing professional equity and securing academic freedom for all adjunct and contingent faculty, the average pay for adjunct faculty has been reported as \$2,987 for a three-credit course over a 16-week semester. As a result, the annual income of an average contingent faculty member who patches together a full load of courses at several institutions is well below \$21,000. This amount is close to a quarter of what an average full time faculty member with a regular contract earns and within the same pay range as that of minimum-wage fast food and retail workers, with many of the same labor problems⁴. My own experience as a contingent faculty advocate suggests that last minute course cancellations and sudden partial unemployment are both regular occurrences experienced by all. The precarious working conditions and low wages force a sizeable number of contingent faculty to rely on public assistance for survival.

These inadequate salaries and working conditions are especially striking when one considers that (1) most contingent faculty are highly accomplished scholars and educators and hold graduate and terminal degrees in their respective fields, and (2) the shift toward the use of contingent

² Here the term contingent is not in reference to all non tenured faculty as these may include full time instructors with multi year contracts. Instead it refers to a category of contingent faculty also known as adjunct faculty.

³ Look at <http://www.newfacultymajority.info/faqs-frequently-asked-questions/>

⁴ https://www.change.org/p/david-weil-dir-wage-and-hour-div-u-s-dept-of-labor-open-an-investigation-into-the-labor-practices-of-our-colleges-and-universities-in-the-employment-of-contingent-faculty?recruiter=394703&utm_campaign=twitter_link&utm_medium=twitter&utm_source=share_petition

faculty in American institutions of higher education is not based on budgetary limitations⁵. Instead, it reflects the shifting of the university administration's priorities as they use their available financial resources away from instruction and student advisement and toward construction and administrative salaries, and (3) the discounted tuition that 4 of the 70 undergraduate students at a CUNY campus like Hunter College pay for a 3 credit course, covers the salary and benefits of their contingent instructor.

Contingent contracts⁶ usually view faculty workload to be limited to teaching and course preparation. That is, contingent faculty are not paid to hold office hours and consult and mentor students outside the classroom. In recent years some universities have agreed to offer limited paid office hours. For example the CUNY offers one paid office hour to contingent faculty members who teach 6 credits at a given department⁷. Those who teach less than 6 credits at a given CUNY campus or hold appointments in multiple departments are not entitled to this privilege.

The issue of paid office hours is further complicated by the fact that most schools do not provide contingent faculty with an office space and secure storage. As a result contingent faculty must carry their books, lectures, equipment, and paper work back and forth as they commute to school, and store student papers and official documents at home.

Contingent faculty's working conditions have a direct impact on the quality of education the students receive. Last minute course assignments with little lead time for course preparation, lack of office space and office hours, and lack of inclusion in departmental meetings where program policies and standards are discussed and student progress is supervised have significant impact on student outcome and retention. These exclusionary practices that stem from and feed into a prejudicial view of contingent faculty deprive students of a consistent and reliable

⁵ <https://www.aaup.org/issues/contingency/background-facts#top>

⁶ For example look at the adjunct faculty agreement negotiated between the State Of New Jersey and the Council Of New Jersey State College Locals, AFT, AFL-CIO State Colleges/Universities Unit. <http://www.cnjscl.org/Adjunct%20Faculty%20Agreement%2011-15.pdf>

⁷ PSC CUNY. (2016). Campaign for a New CUNY Contract. <http://www.psc-cuny.org/issues/campaign-new-cuny-contract>

education, advisement and guidance outside the classroom, and continued mentoring and association with their instructors beyond the given course and semester.

The negative working conditions of contingent faculty are stressors that often lead to occupational mental health illnesses⁸. Occupational mental and material stress is manifest in the constant turn over of faculty and in the disillusionment and anger that is overtly expressed by long-term contingent faculty. These practices are connected to the absence of a regular hiring and reappointment procedures that recognize contingent faculty's academic achievements and contributions to the university. They also reflect the universities' lack of institutional commitment and loyalty toward contingent faculty. The exclusionary and prejudicial treatment of contingent faculty dominates the culture of American institutions of higher education and impacts the trajectory adjunct faculty's professional career and mental health state. It impacts the students and learning as teacher working conditions are student learning conditions.

Addressing the crisis in contingent faculty employment must include the following:

- Equitable wages and paid office hours
- Transparent hiring and reappointment procedures based on the best practices guidelines of professional organizations and labor advocacy groups
- Seniority based course assignments
- Conversion of contingent faculty positions to full time positions with tenure possibilities
- Replacing semester based contracts with annual or multiyear contracts
- Late cancellation protections
- Inclusion in university wide committees and governance.
- Paid office hours
- Professional development opportunities
- A Fair peer review system similar to the ones used for regular faculty

⁸ Reevy, G. & Deason, G. (2014). Predictors Of Depression, Stress, And Anxiety Among Non-Tenure Track Faculty. *Factors in Psychology*. <http://journal.frontiersin.org/article/10.3389/fpsyg.2014.00701/full>

Mi nombre es Santiago torres, vengo de parte de EL Centro Del Inmigrante. como jornalero me he enfrentado con varios obstaculos que estoy seguro que muchos trabajadores en mi lugar tambien se han enfrentado. Los patrones piensan que por que uno es indocumentado e inmigrante nos pueden tratar como basura. Trabaje con un patron russo, que al finalizar el trabajo me quedo a deber 1,500 dolares, cuando le pedi que me pagara lo que me quedo a deber; se nego a hacerlo y me amenazo con llamar a las autoridades de inmigracion(ICE). Y dijo que como el tenia unos amigos que trabajaban en el departamento de ICE iba hacer mucho mas facil que me deportaran y me iba a acusar que le habia robado unas herramientas del trabajo. Yo para no tener problemas legales y como estaba el asunto de las elecciones muy caliente el ambiente preferi no cobrarle mas y dejarlo asi por represalias hacia a mi de parte de esta persona.

Yo soy una persona que año con año declaro mis impuestos, sin recibir ningun reembolso a pesar de que tengo hijos ciudadanos niuyorquinos. Pero me siento tranquilo que a pesar de no ser un ciudadano estoy tratando con cumplir las normas y leyes de este pais. En pocas palabras no dar una mala imagen como inmigrante. Apesar de el estatus y mal estigma que como Inmigrantes nos ponen.

April 25, 2017

Testimony for Public Hearing on the State of Workers' Rights in New York City
Date: Tuesday, April 25 at 6:30 PM at LaGuardia Community College

Thank you for holding the hearing and giving us the opportunity to submit testimony.

My name is Sarah Ahn, director of the Flushing Workers Center, a workers center based in Flushing, Queens. We are a member-based organization, with most of our members working in various service industries like restaurant, nail salon, supermarket, car service, and health care. All of our members are immigrant workers, with different immigration statuses.

Our members face a multitude of problems, from chronic wage theft to long hours or not enough hours, and poor health and safety conditions at the workplace. Recently, this is exacerbated by the astronomically rising cost of living in this city. As rent, cost of transportation, childcare and food goes up, our members are being forced to take on additional jobs, work more hours and live in poorer conditions. On this front, the city must do more to stop the overdevelopment of our communities that is causing costs to outpace the increase in wages.

The root of many of the workplace problems our members face is the lack of enforcement of labor laws. Without enforcement, these laws exist on the books but are not realities for many workers. More often than not, workers continue to work in substandard conditions, not because of a lack of knowledge of their rights, but because workers see that it is very difficult to actually collect back wages or win other remedies. In addition, government agencies are often slow to investigate and close cases that its impact is limited.

For example, in Flushing, a restaurant that was once called Mei Shi Lin has become an important example in the Chinese community. The workers won a decision from the Department of Labor in 2016 for unpaid wages, stemming from an investigation that was conducted in 2013. During the course of the investigation, the business shut down after threatening to do so if the workers did not agree to settle the case for a fraction of what they were owed. Six months later, the restaurant reopened under a new name, supposedly bought by a good friend of the boss. Because the workers continued to pursue the owed wages, a few months later, the restaurant changed its name again.

We believe enforcement of labor laws is critically important in our communities and NYC needs to have a comprehensive approach to enforcement that is built on the understanding that workers themselves are the central component to ending wage theft and improving wages and conditions. When workers come forward to blow the whistle on a law-breaking employer, investigations and necessary actions must be

swift. City, state and federal agencies, when possible, should work together to maximize the impact it can have. Flushing Workers Center has been a lead organization in a statewide coalition against wage theft, *Secure Wages Earned Against Theft*, working together to pass the SWEAT bill (A628/S579) on the state level. This will give both government agencies and private attorneys the ability to freeze employers' assets on the onset of a wage theft investigation to ensure there is something to collect if the employer is found to have underpaid his or her workers. We hope the DCA and other city agencies and its officials can support this important bill. We also look forward to continued discussions on how to improve the city's role in enforcement of our labor laws.

Thank you.

Sarah Ahn,
On behalf of Flushing Workers Center



Fulfilling the promise of opportunity

**TESTIMONY
of
FPWA**

**Presented to:
Public Hearing on the State of Workers' Rights in New York
City
Tuesday, April 25th, 2017**

**Prepared By:
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My name is Osman Ahmed and I am a Policy Analyst at FPWA. I would like to thank Department of Consumer Affairs, the Mayor's Office of Immigrant Affairs, and the New York City Commission on Human Rights for the opportunity to testify before you today concerning an issue that deeply impacts some of the most vulnerable New Yorkers.

FPWA is an anti-poverty, policy and advocacy nonprofit with a membership network of nearly 200 human service and faith-based organizations. FPWA has been a prominent force in New York City's social services system for more than 95 years, advocating for fair public policies, collaborating with partner agencies, and growing its community-based membership network to meet the needs of New Yorkers. Each year, through its network of member agencies, FPWA reaches close to 1.5 million New Yorkers of all ages, ethnicities, and denominations.

As New York declares itself a sanctuary in response to a climate of xenophobic rhetoric and action from the federal government, we must ensure that this city of immigrants remains a safe haven for all of our residents. Sanctuary should mean safety not just at home but also at the workplace. It is not enough to safeguard the most vulnerable immigrants in this city against deportation and inhumane targeting by federal immigration authorities, we must also insure that these communities continue to thrive and build prosperity. This means that while the city increases its investment in legal services for immigrant communities, it should also make proportional investments in programs that connect all immigrants to services that allow them to achieve economic advancement. New York should lead the nation as a city that does not just tolerate diversity but embraces it, a place where immigrants of all creeds, colors, and ages are provided an opportunity to build lives free of fear and persecution.

I am here to speak on a topic that is often ignored when talking about workers' or immigrant rights – workforce development. Specifically, I want to address the state of workforce development for immigrant communities in NYC as an issue deeply connected to foreign-born workers exercising their rights and achieving success in the workplace. I am here to make the case that an informed and empowered workforce is the best solution to combatting employer abuse, wage-theft, and discrimination. Workforce development programs that are created to specifically address the needs and barriers that immigrant New Yorkers face in the workplace are sorely needed. I commend the work that the current city administration, especially OLPS, DCA, MOIA, and NYC Commission on Human Rights, have already done to engage with the immigrant workforce and your continuing efforts to build policies and programs that create pathways for immigrant worker to achieve economic and social equity. However, **I urge this committee today to think beyond laws and enforcement as means to securing the rights of immigrant workers. To truly ensure safety and prosperity for the immigrant workers in NYC the city must make the necessary investment to create a skilled, organized and upwardly mobile immigrant workforce.**

Workforce Development and Immigrant Workers

Immigrants comprise nearly half (47%) of New York City's workforce and the city's economy is dependent upon its immigrant workers. However, NYC's foreign born workers, on average, earn less money than their US-born counterparts, are disproportionately represented in low-wage industries, and severely lack culturally competent services and resources. Foreign born workers comprise a large majority of the workforce in industries such as home cleaning, construction, and food service. The workers in these sectors are often employed in low-wage jobs, are more likely to work informally, and are disproportionately susceptible to the types of employer abuse that this committee seeks to address - wage theft, discrimination, scheduling problems, health and safety issues, access to paid sick leave, and freelancer payment issues. Furthermore, the

estimated 600,000 undocumented immigrants have even fewer protections and face even further dangers. Undocumented workers, in NYC and nation-wide, have limited rights in the workplace and have been especially vulnerable to workplace exploitation. These problems have been exacerbated due to a number of anti-immigrant policies being adopted by the federal government and the indiscriminate targeting of undocumented immigrants by immigration enforcement authorities. This climate of fear and discrimination further prevents undocumented immigrants from seeking support to remedy workplace injustices and emboldens abusive employers to use the immigration status of workers to deny them a fair wage and basic labor protections.

It is imperative that the city continues to enforce and strengthen labor protection laws and penalize abusive employment practices to protect immigrant workers. However, a significant number of workplace abuses towards immigrant workers go unreported – either due to lack of knowledge of worker rights or fear and distrust, especially in the case of undocumented workers, towards government agencies and law enforcement authorities. Furthermore, traditional workforce programs, by design or legal mandate, do not meet the needs of a large swath of immigrant workers in NYC - especially the low-income, undocumented, low-skilled, or those with low education levels.

Therefore a deliberate investment must be made in workforce development programs that ensure that immigrant workers are not only skilled but also organized and educated about their rights on the job. FPWA's work with the Day Labor Workforce Initiative (DLWI) and the Worker Cooperative Business Development Initiative (WCBDI), both NY City Council funded programs, provide a blueprint for such investments. Both these initiatives serve immigrant workers by providing traditional workforce development services – skills trainings, ESL classes, and business development supports among others. What sets these programs apart is that these services are delivered taking into account the barriers that immigrant workers face via non-profit and community based organizations that have a long history of working with immigrant communities. Services are provided in the language that the participants are fluent in and there is a focus on workers' rights trainings. In addition, DLWI also provides supports to day laborers in filing wage theft claims.

These initiatives have also created opportunities for unique partnerships between non-profits and city agencies. Through partnering with organizations that have a built trusted relationships with immigrant communities that do not access city services, city agencies can conduct outreach and provide services to marginalized immigrant communities. In essence, these programs provide a conduit, through direct service and referrals, for the delivery of essential services to underserved immigrant workers in New York City. I have provided, below, a more detailed description of the Day Labor Workforce Initiative to highlight some of the achievements and opportunities presented by this unique program.

Day Laborer Workforce Development Initiative – a Model for Immigrant-Centered Workforce Development

Day laborers in New York operate in all five boroughs; on street corners across the city providing essential services to the local construction industry, landscaping businesses, homeowners, and renters. In addition, Day laborers played an important role as secondary responders in the post-Sandy local, state, and federal reconstruction and relief efforts. Day laborers formed reconstruction brigades and they were some of the first volunteers on the ground after the devastation of hurricane Sandy. Even though day laborers are an integral part

of the New York City workforce, their contributions often remain invisible and unrecognized. The problems faced by this community are often ignored and their needs often left unmet.

The Day Laborer Workforce Development Initiative came together to address the needs of this underserved population, services that are even more essential now. The initiative partners include Worker's Justice Project (WJP), Northern Manhattan Coalition for Immigrant Rights (NMCIR), New Immigrant Community Empowerment (NICE), Staten Island community Job Center, Federation of Protestant Welfare Agencies (FPWA), and Catholic Charities of the Archdiocese of New York, each of whom have a long history of engaging immigrant communities and working with Day Laborers in all five boroughs.

As members of the city's informal workforce, day laborers experience rampant wage theft, pervasive construction accidents, workforce hazards, lack of access to workforce development training, and lack of infrastructure. The Initiative's goal is to address these issues by linking day laborers to vital services, providing trainings on workforce safety and legal rights, addressing wage theft, providing access to jobs, and, most importantly, creating safe and dignified spaces for day laborers to congregate as they search for gainful work. New York City has the potential to lead the nation in the fight for day laborer rights.

In the first year of the Initiative, in FY16, over 1,200 day laborers were engaged via outreach and trainings, close to 1,000 jobs were dispatched from the centers, and a new day labor center was opened its doors in Staten Island. All this work was accomplished through the investment of \$500,000 from the City Council.

In FY17, the initiative has already dispatched close to 700 jobs and reached more than 2,300 day laborers through outreach, trainings, and referrals. The initiative is also laying groundwork for two new day labor centers in Williamsburg and South Bronx.

And yet, there is still much more work to do to create the infrastructure to support day laborers. We ask that New York City commit to support the expansion and development of Day Laborer Centers across the five boroughs. Consequently, these centers will provide job placement and workforce development services to these neediest of workers. The Day Laborer Workforce Initiative, through the existing day laborer centers in Brooklyn, Queens and Staten Island and the development of new centers, supports five services:

- 1) Job Referral,
- 2) Wage Theft Legal Clinics
- 3) Know Your Rights Trainings
- 4) Referral Services to Critical Services
- 5) Workplace Development and Safety Trainings

The initiative will also train and equip day laborers to safely and strategically respond when natural disaster strike the city, by aiding the city and its residents in the clean-up and reconstruction.

Conclusion

I thank this committee for the opportunity to testify today and for the work that New York City's current administration has done to ensure the rights of immigrants and workers. I hope my comments will encourage the city to further explore innovate solutions to the problems faced by immigrant workers and to make investments that create safe, prosperous, and thriving immigrant communities in our city.

My name is Amy Plattsmier, and I'm here tonight as an employer of a housecleaner whose labor I have deeply valued for more almost a decade and whose well-being and security are very important to me. I appear before you on her behalf, but I also want to speak out and help you, my city government, to encourage and educate domestic employers throughout NYC to respect the work of the nannies, home attendants, and housecleaners in their homes. Not all employers want to be fair employers, but for those of us who do, we often don't know what it means to be fair. That's why I joined with Hand in Hand: The Domestic Employers Network which is a national network of employers of nannies, housecleaners and home attendants, our families and allies, who are grounded in the conviction that dignified and respectful working conditions benefit worker and employer alike.

Domestic employers like me need more information and guidance about our obligations and best practices. I hired my first domestic employee when my children were born. She was both nanny and housekeeper, worked part-time, and I had no idea what an appropriate wage was for her or how she managed to cobble together her life with several part-time jobs. Like me, many first-time domestic employers are new parents who want to do the right thing but don't know where to turn for advice other than the playground, where there is no real standard. I had the same problem when I hired my current housecleaner — without a fair practice and wage standard, both employees and employers are at risk for exploitation and also misunderstanding, magnified by the fact that there is often a language barrier between employers and domestic workers. The kind of clarity that Hand In Hand is aiming to provide is good for employers as well as domestic workers but many employers don't know about the Domestic Workers Bill of Rights or paid sick leave protections for their employees.

Hand in Hand was created to support domestic employers to be fair employers. We do this through a program called, "My Home is Someone's Workplace," which promotes our Fair Care Pledge to encourage employers to provide fair pay, paid time off, and clear job expectations. Our newest campaign is Sanctuary Homes, which provides tools and resources for employers to support and protect their workers in this political climate.

The Department of Consumer Affairs can and should support more robust and innovative community education and help to shift the culture in the domestic work sector. The city should encourage and enable employers like me to become familiar with the Domestic Workers Bill of Rights and, connect them with Hand in Hand and for example new programs like MyAlia, a benefits fund that allows domestic workers, in particular, housecleaners, to take sick days and have access to insurance. The city must reach out to the thousands of individuals and families who employ workers in their homes and who are hard to find and reach. That's why partnerships with networks of parents, seniors, and people with disabilities, schools, and community-based groups are essential for improving labor standards enforcement in the domestic workplace.

Finally, it is also important to acknowledge that affordability is an issue for many employers. Hand in Hand will release a NYS research report on affordability in the care industry with important data for figuring out how most effectively to reach employers.

I know I am not the only employer who feels very strongly about the rights and safety of domestic workers everywhere. Domestic workers are hard-working, are disproportionately women of color, who have often overcome great adversity, sacrifice and hardship to make a living in this city. For many of us, these workers are part of our family, and we care deeply for their well-being. I thank the Department of Consumer Affairs, the Mayor's Office of Immigrant Affairs and the City Commission on Human Rights for listening to my testimony and for taking the necessary steps to educate employers and strengthen labor standards enforcement for domestic workers.

Department of Consumer Affairs
NYC Commission on Human Rights
Mayor's Office on Immigrant Affairs

April 26,2017

Thank you for the hearing last night at LaGuardia Community College.

I shared my 3 minutes with another speaker to shorten time for us all, but regret that I did not adequately present a suggestion:

A NYC registry of certified home health aides, with listings of qualified aides by location.

It would help people looking for consistent, long-term care aides they could directly hire

It would help qualified aides, who choose to be listed, find employment directly with client

There is currently no way for employers and aides to find each other except through word of mouth, which is extremely inefficient, and slow.

Many employers prefer direct hire: agencies charge more; they don't adequately cover the needed schedule; they send different aides rather than the same consistent aide, which results in stress for the client and much poorer quality of care.

Many aides prefer employment by the client. They can get higher pay, a more consistent schedule, and a more satisfying relationship with the client.

Paying the aide directly can result in the aide receiving higher pay, while the client is paying less than cost of agency.

Many families do not qualify for Medicare but cannot afford long-term home care through agencies.

Structuring the pay, paid leave, vacation and overtime, social security benefits and workman's comp is important. For many employers this may be their only experience in employing and it can be daunting. "My Home is Somebody's Workplace", sponsored by Hand in Hand and the Domestic Workers Alliance, has pay and paid leave suggestions. Easy directions for filing a 1099 form should be available to employers. Also how to arrange Workman's Comp.

Enabling employers and certified home care aides to find each other would also put pressure on agencies, to pay aides more and to honor the basics of overtime pay and decent scheduling.

Lorena Gill



Visiting Nurses can provide services that help keep the client's care on track, including arranging an occasional visit by an agency aide through Medicare to check on the skills of directly hired aides.

There is a NY State registry of home health care aides. It provides an aide's qualifications and employment history if you enter the name of the aide. It does not provide any listing of aides, but is a help in hiring a particular aide once an employer has found one. It would be good as back-up for an NYC listing of aides by locality.

Thank you very much for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorena Gill'.

Member, JFREJ (Jews for Racial and Economic Justice) and the Caring Majority

ps. My husband was able to live and die in peace at home, despite years of Parkinson's and sometimes intense dementia. This was only possible with the help of home care aides, and we could not have afforded those years of care except by directly hiring (at \$15/hour plus social security and overtime pay).

From Sophie DeBenedetto, representative, Justice Will Be Served Campaign:

At restaurant after restaurant, shop after shop, workers--especially immigrant workers--have been organizing to win back stolen wages and put a stop to sweatshop conditions. But time and again, criminal bosses simply move their money and assets around, or declare bankruptcy to avoid paying workers what they are owed.

At Indus Valley Restaurant, for example, workers worked more than 60 hours per week, got paid as little as \$3/hour and were never paid overtime. They won a court decision for \$700,000. Instead of paying the workers, the Singhs changed the name of the business from Indus Valley to Manhattan Valley and claim to have sold the business. The Nations Cafe workers face a similar situation. They won a federal judgment of \$1.8 million, but their employer refused to pay it. Last week the State Attorney General's Office (AG) took Konstantinnos Aronis to court where he was sentenced to 60 days in prison and ordered to pay \$300,000 now, plus another \$200,000 if forensic investigations turn up additional monies the Singhs have hidden away. While encouraging that the State AG is taking action against criminals who steal from their workers at a time of increased attacks on immigrants nationally by opportunistic employers emboldened to further abuse immigrant workers, the strengthening of the law to help workers collect and to prevent wage theft in the first place is urgently needed. Otherwise unscrupulous employers like the Singhs, Aronis and many others will continue stealing wages from restaurant, nail salon, day laborers, contract workers, home attendants, and office workers alike.

This problem has grown to become an epidemic. Each year, over \$1 billion is stolen in wages in New York City alone. When workers win court judgements and can't collect, it hurts everyone by empowering bad bosses to continue to break the law, driving conditions down for all workers and law-abiding businesses who can't compete out of business, and stealing tax revenue from NYS that could go to necessary public services.

Workers are leading the fight to hold criminal bosses accountable for their actions by demanding that Governor Cuomo and the NYS Legislature pass the SWEAT Bill. The SWEAT bill will allow workers, the DOL and the Attorney General to put a hold on an employer's assets until owed wages are paid, strengthening workers' ability to collect stolen wages. The creation of the SWEAT Bill was spurred by the experiences of many workers who organized for stolen wages, saw their bosses get away with it by transferring assets and property, closing businesses and opening under a new name, or fraudulently declaring bankruptcy, and came together to expose this problem and demand that labor laws be strengthened to put a stop to it.

Workers in New York City and around the state need the SWEAT Bill to pass now. That is why we are urging NYS legislators to support the bill and calling on Gov. Cuomo to pass SWEAT A628/S579.

**TESTIMONY
of
La Colmena**

Presented to:

**New York City Department of Consumer Affairs
Mayor's Office of Immigrant Affairs and the New York City
Commission on Human Rights**

March 20, 2017

**Prepared By:
Ivari Escamilla
Worker Center Coordinator**

La Colmena
[REDACTED]
[REDACTED]

My name is Ivri Escamilla, worker center coordinator of La Colmena Community Job Center would like to thank the NYC Department of Consumer affairs for the opportunity to testify before you today concerning an issue that deeply impacts some of the most vulnerable New Yorkers.

La Colmena is a community based, non for profit organization working to empower day laborers and other low wage immigrant workers through education, organizing and economic opportunities. Our founding members are day laborers, domestic workers and community allies and our three program areas are Workers Rights, Youth Empowerment and Transnational Organizing and Immigrant LGBTQIA

I am here to speak about the state of workers rights in Staten Island.

Immigrant Workers in Staten Island

Staten Island has a long history of attracting immigrant workers. Many are day laborers who stand in corners such as the one at Forest Ave and 440 South. This is a shape up site that started towards the end of the 1990's attracted by a boom in residential construction. There are other industries such as landscaping, restaurant, nail salons and house cleaning

Wage theft and workplace accidents are the two most common issues and we are working to not only respond when a worker is injured or have not been paid but also to provide education and training so workers can prevent being a victim of such practices.

Day laborers on Staten Island were quick to respond in the aftermath of hurricane Sandy and provided countless hours of community service as well as performing some of the most dangerous and difficult jobs of cleanup and demolition and reconstruction. This follows a national pattern of day laborers responding in times of crisis and natural disasters such as hurricane Katrina or wildfires in California

Finally, immigrant workers are an integral part of the Staten Island economy and it's mostly an underground one. There is a lack of workforce development opportunities and because of the geography, lack of public transportation and political reality Staten Island is a breeding ground for worker rights abuses and discrimination. We look forward to work with your agencies to specifically address these issues on Staten Island

**Testimony at Public Hearing on the State of Workers' Rights in New York City
April 25, 2017
LaGuardia Community College**

Good afternoon, my name is Natasha Lycia Ora Bannan and I am Associate Counsel at LatinoJustice PRLDEF, a national civil rights organization engaged in advocacy and impact litigation on behalf of underserved Latino communities along the east coast. Thank you for the invitation to address you today on the important issue of workers' rights, particularly low-wage workers, immigrant workers, workers of color and women workers who face wage theft, exploited labor, unsafe working conditions and employment discrimination throughout this city.

Several years ago LatinoJustice PRLDEF initiated our Latin@s at Work project, or LAW, which works with low-wage Latina immigrant workers in New York City. Through LAW project we partner with community-based organizations throughout the city to educate and empower workers about their rights under state and federal laws, and where needed and appropriate, provide legal representation and advocacy for workers to assert their rights through civil litigation. We have worked with our community partners to try and surface the type of gender, ethnicity and national origin discrimination, as well as sexual harassment, Latina/o workers have experienced working in various sectors in the city, including domestic workers, restaurant and factory workers.

Immigrant workers predominate in low-wage jobs and industries throughout the city and country. For example, Latinos make up 27% of New York City's working population, but comprise 44% of restaurant and food workers and 35% of retail workers.¹ Latina women are overrepresented in the lowest paying job sectors with jobs that fail to offer structured paths to improve their social mobility.² These types of low-wage jobs typically provide little to no employment protections, flexibility for time off or predictable schedules.³ Because of both the precariousness nature of some types of low-wage work and the isolation and desperation many low-wage workers feel, a climate ripe for harassment and discrimination is often created.

¹ Community Service Society, *Latino New Yorkers Can't Afford To Get Sick 2* (2013), available at <http://www.cssny.org/publications/entry/latino-new-yorkers-cant-afford-to-get-sick>.

² Labor Council for Latin American Advancement, *Trabajadoras: Challenges and Conditions of Latina Workers in the United States* (2012), available at http://www.lclaa.org/images/pdf/Trabajadoras_Report.pdf.

³ Center for Work Life Law, UC Hastings School of Law, *Poor, Pregnant, and Fired: Caregiver Discrimination Against Low-Wage Workers 2-4* (June 2011), available at http://www.worklifelaw.org/pubs/IssueBrief_PoorPregnantAndFired.pdf.

Through our efforts and the L@W Project, we have met many low-wage Latino/a workers who are often victims of unscrupulous employers who take advantage of their labor or immigration status by paying them less than minimum wage and withholding overtime pay. At times when workers have decided to assert their rights to fair compensation, their employers have responded by firing them or threatening exposure to immigration authorities. We are concerned that this practice will become all too frequent in this current climate of anti-immigrant rhetoric, where employers use a workers' immigration status as both a sword and shield: on the one hand they feel emboldened to discriminate openly against workers by harassing them, making inappropriate comments, withholding wages or subjecting them to unsafe or unsanitary workplaces all while reminding them how grateful they should be; while on the other retaliating by threatening to call immigration officials where they could face deportation proceedings should they speak up or exert their rights. Because of the climate of deep fear that many immigrants, including many of our clients, currently feel, they are hesitant to assert their rights and challenge abusive workplace practices and employers, making them more vulnerable to exploitation.

In addition to abusive wage and compensation practices, discrimination and harassment is often rampant in the low-wage workplace, where there are both too few opportunities to check or report illegal behavior and where many Latina immigrant workers end up, often because they feel that working in abusive or discriminatory conditions is their only option. As a result, they see and experience discrimination based on gender, gender identity or pregnancy, as well as experience sexual harassment, as a byproduct of their work and immigration status.⁴

This is even more evident in some sectors where workers are subject to harassment because of the nature of their work, which can take place in geographically more isolated areas or in private settings. This, combined with their immigration status, leads to unchecked harassment and workers who are unconnected with groups or others who could inform them of their rights. For example, in New York, one in every three domestic workers has reported feeling harassed and abused at work by their employer, and they attribute such abuse to either race or immigration status. Despite the passage of the Domestic Workers Bill of Rights in 2010, we have repeatedly seen domestic workers complain to us of theft of wages, no overtime pay, no days off a week for rest (despite being entitled to at least one weekly under the amended law), minimal to no sick or vacation leave and of course being exposed to sexual harassment. We are concerned that the hard fought amendments to the Human Rights Law, as well as the Labor Law, as a result of the Bill of Rights are not being used as often as they could be to protect domestic workers from abuse.

⁴ Domestic Workers United & DataCenter, *Home is Where the Work Is: Inside New York's Domestic Work Industry* 5 (2006), available at <http://www.datacenter.org/reports/homeiswheretheworkis.pdf>.

With regards to the Fair Chance Act and enforcement against employers who inquire into a job applicant's criminal history or record, we commend the Commission on Human Rights for increasing attention to this critical area, particularly when we know that the majority of formerly incarcerated individuals in New York City are people of color.⁵ When the New York City Hiring Discrimination Study conducted testing for discriminatory employment hiring practices several years ago, the results confirmed what many already knew: Latinos and Blacks are often discriminated against at the earliest stages of the hiring process, seemingly on the basis of race, nationality or ethnicity alone.⁶ We would support additional outreach to and training of employers to let them know if their obligations and responsibilities under the law, to prevent discrimination in the first place rather than try to remedy it afterwards. We applaud the Commission for assigning additional enforcement resources towards this issue and looking for ways to better reach and educate employers.

In conclusion, New York has made great strides to protect our workers, particularly low-wage and immigrant workers, from workplace abuse, however as immigrant workers feel increasingly attacked and targeted, it is incumbent upon all of the city's agencies, including the Department of Consumer Affairs, to be more visible in our communities and to partner more with community-based organizations in guaranteeing access to resources and protection. Throughout the many community forums, Know Your Rights trainings and neighborhood meetings taking place as a result of the federal government's criminalizing of immigrants and divisive and fear-based policies, we suggest the DCA and CCHR look to participate in them and even host legal clinics where needed to ensure that immigrant workers are getting access to the information and resources needed to fight back workplace exploitation.

Thank you,

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⁵ N.Y. State Department of Corrections, UNDER CUSTODY REPORT: PROFILE OF INMATE POPULATION UNDER CUSTODY ON JANUARY 1, 2013, p. 5 (2013), http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2013.pdf; see DeVeaux, Mika'il, *Fitting-in: How Formerly Incarcerated New York City Black Men Define Success Post-Prison* 49 (2017), CUNY Academic Works, http://academicworks.cuny.edu/gc_etds/1822.

⁶ Devah Pager et al., *Race at Work: A Field Experiment of Discrimination in Low-Wage Labor Markets* 19-20 (2008), available at <http://www.law.virginia.edu/pdf/workshops/0708/pager.pdf>.

April 25, 2017

Testimony of The Legal Aid Society, Employment Law Unit

**Presented Before the Office of Labor Protection Standards of the New York City
Department of Consumer Affairs**

Presented by Richard Blum, Staff Attorney, Employment Law Unit

Thank you for the opportunity to present this testimony.

The Legal Aid Society is the oldest and largest legal services provider for low-income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low-income New Yorkers with civil, criminal and juvenile rights problems, including some 45,000 individual civil matters in the past year benefiting nearly 117,000 New Yorkers as well as law reform cases which benefit all two million low-income families and individuals in New York City.

Through a network of 16 neighborhood and courthouse-based offices in all five boroughs and 22 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

Through our Employment Law Unit, we provide legal services to over 2,000 low-wage workers each year to ensure these workers receive fair wages, fair treatment, decent working conditions, and the benefits to which they are entitled if they lose their jobs. Most of these cases involve wage and hour violations, family and medical leave issues, workplace discrimination, labor trafficking, and unemployment insurance. The Employment Law Unit advises and represents many low-income workers who face chronic wage theft and other violations of their labor rights. The vast majority of those clients are immigrant workers.

The Society appreciates this opportunity to share our perspective on the challenges facing low-wage workers in New York City. We particularly appreciate the City's creation of the Office of Labor Policy & Standards and look forward to working with it, as with the Commission on Human Rights (CHR) and the Mayor's Office of Immigrant Affairs (MOIA), to advance the rights and interests of low-income workers in the City.

In addition to OLPS's enforcement work, we hope to see it use its bully pulpit to promote best practices and to denounce worst practices and, in general, to educate workers, employers, and the public about good and bad labor practices. Toward that end, we recommend that OLPS consider assigning report-card grades, much like those given to restaurants by the Department of Health, to businesses it inspects. Such grading would invite the public to participate as consumers in ensuring that the products and services they enjoy are provided by workers who are laboring under lawful and respectful conditions.

For this testimony, I would like to highlight several areas of concern where we see a role for the City to play: 1) protecting immigrant workers; 2) protecting paid care workers; and 3) protecting contingent workers. In doing so, we will also comment specifically on the impact of the City's policing and criminal law enforcement practices on the most vulnerable workers, in particular, immigrant workers and sex workers.

I. Immigrant Workers and Wage Theft

Rampant illegal exploitation of immigrant workers is not new in New York City. We have always seen high rates of wage theft in certain job sites marked by the use of immigrant labor, including restaurants (especially among delivery workers), construction sites, nail salons, domestic employment, car washes, gas station stores and other small convenience and retail stores, and small-scale factories.

Although this exploitation is not new, the change in federal administration this year has brought with it new challenges to the well-being of immigrant workers and their ability to vindicate their labor rights in the face of systemic exploitation. Low-wage immigrant workers have always faced the real possibility of unlawful retaliation from their employers when they complain about illegal working conditions, including wage theft. However, since the new federal executive orders on immigration enforcement were issued, immigrant workers in New York City can no longer feel as high a level of confidence as before that they can challenge their employers' illegal labor practices without fear of reprisal from the United States government.

We in the legal community can no longer advise our immigrant clients not to worry about the possibility of government action under those circumstances. The new executive orders and enforcement tactics have created genuine concerns about the safety of coming forward to report exploitation. If an employer engages in retaliatory reporting of workers to the federal immigration authorities, how will Immigration Customs & Enforcement (ICE)

respond even if they know there is an ongoing labor dispute? Will employer calls now trigger a crackdown on the workers who have complained about the employer? Does the answer depend on whether the worker has an order of deportation or any other contact with ICE or any other so-called law enforcement agency. We are monitoring the situation to learn what to expect, but it is deeply worrisome that we need to consider these risks and that clients are now asking us if they need to stay home.

We already face great challenges enforcing federal and state labor laws at these work sites, among them the ability of employers to transfer assets during the pendency of an action or investigation against them, so that they will appear to have no assets by the time the workers obtain judgments against them. Many of the challenges we face must be addressed at the federal and state levels, for example, by pressing for enactment of the SWEAT (Securing Wages Earned Against Theft) bill by New York State.

¹ For a similar proposal from the Urban Institute, *see* <http://www.urban.org/sites/default/files/publication/81101/2000803-What-if-Cities-Challenged-Local-Businesses-to-Reinvent-Social-Responsibility.pdf>.

In this context, there are steps that OLPS can take to protect immigrant workers. First, it can urge the City administration to end “broken windows” policing. As the Attorney-in-Charge of the Society’s Criminal Defense Practice, Tina Luongo, explained in a March 4, 2017 letter to the New York Daily News:

When a person is arrested, even for a misdemeanor, he or she is fingerprinted, with fingerprints then loaded into a database that is shared with the Federal Bureau of Investigation and U.S. Immigration and Customs Enforcement. As a result, federal immigration authorities have access to an alleged offender’s last known address and other information that can be used to locate him or her. . . . Fingerprinting is more than enough to put someone on the federal immigration enforcers’ radar, and now, with President Trumps’ crusade to systematize rampant deportation, more and more are at risk.

See <http://www.nydailynews.com/opinion/broken-windows-immigrants-rights-article-1.2988292>. The knowledge, not even speculation, that any encounter with the police for no matter how minor an infraction can lead to deportation has made immigrant workers extremely apprehensive about doing more than going to work, taking care of necessities, and staying at home. The poisoned relationship with authorities is eroding trust in all government agencies. This approach to policing is therefore fundamentally incompatible with any claim of New York as a sanctuary city and with any meaningful attempt at promoting enforcement of labor and employment laws. Convincing the City to end this destructive policing practice should be the priority for all City agencies committed to protecting immigrants generally, and immigrant workers, in particular.

Second, in this context of well-founded fear and distrust, it is critical for city agencies to coordinate policies and practices among themselves to ensure 1) that they all implement practices that are as protective of immigrants as the law permits; and 2) that they coordinate with each other so that immigrant workers know where they can turn to for assistance in a safe environment. For example, OLPS, together with CHR and MOIA, can assist other city agencies in revising their intake procedures, on the one hand, to eliminate unnecessary

questions that might relate, even accidentally, to immigration status, and, on the other hand, to refer people for assistance to other city agencies, such as OLPS and CHR.

Third, coordination and cooperation with state agencies will also be critical. OLPS, should refer workers to state agencies, such as the Department of Labor (DOL), for enforcement of certain labor rights over which the City does not currently have jurisdiction.

Institutionalized coordination and cooperation between OLPS and DOL, particularly DOL’s anti-retaliation unit, could go a long way toward providing concrete meaningful protections to low-wage workers, in particular, immigrant workers. The anti-retaliation unit has the ability to bring swift action against employers that indulge in retaliation, including contacting the immigration authorities. OLPS, CHR, and MOIA should be able to refer workers to that unit and to other parts of DOL when appropriate.

Fourth, the City can support OLPS and CHR in developing collaborative relationships with community organizations, including legal services providers, that have the trust of immigrant workers. Through such organizations, OLPS and CHR will be able to reach the most vulnerable and most fearful workers and to build trust in certain communities. OLPS and CHR could use these networks to disseminate information about immigration enforcement to workers and, in certain circumstances, to employers to prevent panic and discriminatory responses at the first sign of ICE activity.

II. Contingent Workers

Some of the most vulnerable workers we see have work that is highly contingent, in other words, not regular or reliable. Some do not know from day to day whether they will be given hours of work or what hours of work they will be given. They are involuntarily working part time, constantly on call, chronically making too little to get by and with no ability to plan their lives. The weight of that uncertainty falls particularly on workers with family caregiving responsibilities, usually women, and on people with special medical needs. So this is an issue not only of economic insecurity but of disparate impact discrimination as well. We see these problems particularly in retail work. It is common for non-union retail establishment to use “just-in-time” scheduling. At car washes, given how business fluctuates with the weather, we have seen workers who do not know if they will have how many, or any, hours of work when they arrive at the job.

Other contingent workers are misclassified as independent contractors to place the burden of economic uncertainty on them and not their employers. When workers are misclassified, they lose all labor law protections, including access to unemployment insurance benefits when the work dries up. Sub-contracting and franchising arrangements can be abused to facilitate misclassification. For example, people who have worked as employees can suddenly be instructed to create an S corporation and to continue doing the same work as a company being hired by the erstwhile employer. Or they might even be required to purchase or rent a franchise to continue doing their work. Of course, there has been much debate recently about gig economy workers, that is, workers who get their job assignments through marketplace platforms. There is extensive litigation, particularly against Uber, aimed at establishing that such workers are really employees and not independent contractors.

OLPS and CHR can serve as eyes and ears for the City, for the State, for legal services providers, and for worker centers and other community-based groups dedicated to enhancing and enforcing labor rights. OLPS and CHR can not only challenge misclassification in their own enforcement work, but they can also develop collaborations to increase the ability of workers to vindicate their labor rights, such as on-call pay, even if those rights are not within the jurisdiction of the City. The City can also use its bully pulpit and public information and shaming techniques, for example, the report card system discussed above, to promote best labor practices regardless of whether a business is legally entitled to classify workers as independent contractors.

OLPS and CHR can serve as eyes and ears for the City, for the State, for legal services providers, and for worker centers and other community-based groups dedicated to enhancing and enforcing labor rights. OLPS and CHR can not only challenge misclassification in their own enforcement work, but they can also develop collaborations to increase the ability of workers to vindicate their labor rights, such as on-call pay, even if those rights are not within the jurisdiction of the City. The City can also use its bully pulpit and public information and shaming techniques, for example, the report card system discussed above, to promote best labor practices regardless of whether a business is legally entitled to classify workers as independent contractors.

III. Paid Care Workers

Increasing attention is being paid to workers who care for others in their homes. Paid care workers include domestic workers who clean homes and care for children as well as home health aides and similar professionals who provide care for people living with disabilities and for elderly people. These workers are asked to perform some of the most valuable services in our society. It is difficult taxing work, physically, mentally, and emotionally. Often workers develop bonds with their clients only to have an agency employer or a family suddenly cut those ties for reasons that may be arbitrary or sometimes retaliatory and malicious. We have seen domestic workers who have been made to sleep on floors in their charges' bedrooms or in laundry rooms where their sleep was interrupted whenever a family member wanted some piece of clothing; who have been summarily fired after helping to raise a family's children over years of hard work; who have become injured lifting clients' bodies; who have been chronically underpaid. The list of abuses and risks goes on.

I once represented a home health aide in an unemployment insurance hearing. Her client had HIV/AIDS and suffered from multiple disabilities. The two of them had established a strong relationship. When the home health aide contracted the flu, she dutifully called both the agency and her client to let them know she would be out until further notice. Obviously, going to work would have placed her immune-suppressed client in grave danger. The agency then fired her for not calling in separately each day and then falsely claimed that she had never notified them or her client of her illness. In one fell swoop, the agency arbitrarily deprived her of a job and her client of a home health aide the client trusted and depended on. At the hearing, we arranged for the client to come by car service and testify that the home health aide was the first one he had been able to get along with and that, of course, the aide had called timely to report her illness. The client contradicted the false testimony of the agency's HR representative about how angry he had been over the supposed irresponsibility of the home health aide. My client and her client left the building together, each clearly glad to catch up with the other. We won the hearing, so my client received her benefits, but she did not get her job back and did not go back to working for that client. This story illustrates some of the unfairness and the heartache that home health aides face on the job and the human consequences to others of that arbitrary unfair treatment.

We are pleased that DCA has created a Paid Care Division of OLPS. It is a great first step in concentrating resources to protect this vulnerable and critical part of the workforce. We

hope that the Paid Care Division can help bridge the divide between the City as a funder and regulator of paid care services and the City as a protector of that workforce.

We have seen government reluctance to enforce wage protections for paid care service providers, because of the expense to the government, particularly through the Medicaid program. For example, there has been great resistance to fully compensating aides who work 24-hour shifts. Agencies, presumably because of Medicaid reimbursement policies, refuse to acknowledge that all 24 hours of such a shift in someone's home should be treated as compensable work hours, even if the worker is lucky enough to catch a few hours of sleep on some occasions.

We have also seen hours cut because of expense where there has been no reduction in need. As an organization that represents both consumers and providers of home care services, the Society sees it as critical that OLPS and HRA convene to review funding in this industry and to develop policies that protect both consumers and service providers. We need to have greater government monitoring of publicly-funded agencies to make sure that they are complying with labor laws. We need to ensure that paid care workers enjoy sufficient time off to make such work sustainable and to increase continuity of care by preventing burn out and arbitrary dismissals due to illness or other personal needs. The Paid Care Division of OLPS can play a vital role in making this type of work sustainable, for the benefit of consumer and provider.

IV. Sex Workers

Finally, the Society would be remiss if it did not raise the needs of some of the most vulnerable workers in the City: sex workers. "Consequences of Policing Prostitution: An Analysis of Individuals Arrested and Prosecuted for Commercial Sex in New York City," a recent report by the John Jay College of Criminal Justice and the Urban Institute, with the assistance of the Society's Exploitation Intervention Project (EIP), demonstrates the destructive impact of current policing policies and practices in New York City. *See* <http://www.urban.org/research/publication/consequences-policing-prostitution>. The EIP represents most people prosecuted for violating state prostitution laws and survivors of trafficking into prostitution who face other criminal charges. Having represented thousands of people, the EIP sees day to day the impact of the criminalizing of sex work.

The key findings of the report include the following:

- 1) Ninety-one percent of people arrested for unlicensed massage were foreign nationals and fifty-nine percent of that group were ages 40 or older;
- 2) Thirty-five percent of EIP clients reported having been trafficked into sex work at least once;
- 3) EIP clients who were most likely to report a history of sex trafficking victimization included non-Asian US citizens, those with less than a high school education, those with prior family court involvement, and those who reported they had been homeless in the past five years;

- 4) The highest shares of clients needing services were those with a history of trafficking victimization, prior sexual or physical assault victimization, and involvement with family court;
- 5) Most EIP client interviewed reported being treated as criminals, not victims, by police and the courts.

It is also the experience of the EIP that transgender New Yorkers are often singled out by the police because of their gender identity or expression and treated as presumptively engaging in sex work.² These findings and that experience show that there is a clear need for a coordinated City effort to decriminalize prostitution and to address sex work as a labor issue, including but not limited to trafficking. The Society's Employment Law Unit has begun to collaborate with the EIP to ensure that workers in unlicensed massage parlors are paid for the work they do, despite the intervention of the criminal system.

OLPS can play a role in coordinating among an array of City agencies, including NYPD, HRA, DHS, ACS, CHR, and others, to work toward decriminalization of sex work, notwithstanding societal stigma, and to ensure that people receive the supports they require in the manner they require it in order to avoid the need for survival sex work or exposure to trafficking.

Conclusion

In conclusion, The Legal Aid Society thanks and commends the City for creating OLPS and for the work of OLPS in trying to address the needs and rights of low-income New Yorkers. We look forward to collaborating with OLPS, as we do with CHR and MOIA, to vindicate workers' rights and see that labor and employment laws are honored particularly for the most vulnerable workers in the City.

Respectfully Submitted:

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² The Society has sued the City and the NYPD over their practice of arresting people for "loitering for the purposes of engaging in prostitution" based solely on their gender identities, for example, as transgender women of color, more colloquially, for "walking while trans." *D.H., et al. v. City of New York*, 16-Civ.-7698 (PKC) (KNF) (SDNY). This profiling criminalizes people for their gender identity, despite the City's commitment to combat discrimination, including discrimination against transgender people and people of color, in other contexts.



TESTIMONIO DE DANIEL CORTÉS
MIEMBRO DE MAKE THE ROAD NEW YORK

**Audiencia pública sobre la situación actual de los derechos de los trabajadores en la
Ciudad de Nueva York**

25 de abril de 2017

Soy Daniel Corté, tengo 52 años y vivo en Astoria, Queens. Estoy casado y tengo tres hijos. He vivido en Nueva York por 30 años. He trabajado en la industria alimenticia casi por la misma cantidad de tiempo que he vivido en Nueva York.

Como pueden ver, estoy herido. Esto me ocurrió en mi último trabajo, en una panadería de Little Italy, Manhattan. Pero antes de contarles qué ocurrió ahí, me gustaría contarles un poco sobre mi experiencia en el trabajo.

Antes de trabajar en la Panadería, dónde trabajé por un periodo corto antes de accidentarme, trabajé en un restorán de Manhattan, en el lado Este de la Ciudad. Trabajé allí por siete años como asistente de cocinero y mesero. Cuando trabajé como mesero, el dueño no nos dejaba quedarnos con las propinas, él las tomaba todas y nos daba \$15 por noche. Además, nos pagaban \$8.15 por hora sin importar si era sobretiempos o no. Yo trabajaba de 10 de la mañana hasta las 10 ó 12 de la noche. Trabajaba de Martes a Sábado y nunca nos pagaron sobretiempos. Yo le dije que nos debía pagar sobretiempos pero me decía que nos daba propina y, ello, nos debía alcanzar.

Mi ex-empleador era una persona que demandaba todo pero no nos trataba con el respeto que exigía: yo tenía un compañero de trabajo que se cortó el codo trabajando y el empleador le ponía pegamento y lo cubría en plástico para prevenir que sangrara. Yo le advertí que aquello no estaba bien, que mi compañero requería de ayuda médica. Me dijo que me callara y me puso a trabajar en una esquina solo. Mis compañeros, inmigrantes de Japón y México, le tenían miedo de lo que pudiera hacer.

Después de seis años sufriendo este tipo de trato, traté de organizar a mis compañeros de trabajo para que lo demandásemos. Pero mi empleador manipuló y asustó a la mayoría de mis compañeros. Eventualmente, tres trabajadores lo demandamos por no pago de sobretiempos y robarnos las propinas, en Septiembre de 2015. Afortunadamente, teníamos registro como pay stubs para probar que nuestro empleador nos había robado parte de nuestro salario. Poco después de poner la demanda, en Diciembre de 2015, mi ex-empleador me despidió en represalia por interponer la demanda.

En Julio de 2016, llegamos a un acuerdo en la demanda por un monto muy inferior a lo que nos debía, pero decidimos que era suficiente para dejar la demanda.

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En Marzo de 2016 empecé a trabajar en la panadería, donde estaba a cargo de la sala donde se mantenía el inventario y, en ocasiones, como un lavador de platos. Era un trabajo duro porque tenía que cargar los sacos de azúcar y jarros de jugo. Había como 12 personas trabajando en el subterráneo y la cocina. A mi ex-empleador no le gustaba que lo mirásemos directo a la cara. Siempre debíamos responder “Sí, señor” o “No, señor”, y si queríamos ir al baño debíamos pedir permiso.

Actualmente estoy en discapacidad temporal porque mientras cargaba un camión, la rampa me aplastó el pie.

Mi empleador me hizo firmar un acuerdo de arbitraje forzoso. Por este acuerdo, no podía demandar directamente a mi empleador, debiendo pasar por un árbitro elegido por mi empleador. De más está decir que mi ex-empleador me obligó a firmar este acuerdo.

No todo en mis trabajos han sido malas experiencias: antes a estos trabajos, trabajé en un restorán de sushi, dónde aprendí a hablar japonés y, gracias a esto, conocí a mi esposa. Mi ex-empleador era bueno y me pagaba lo que debía. Desafortunadamente, el restorán cerró por las deudas que el dueño tenía.

La situación debiese ser clara, a los empleadores que no cumplen la ley laboral debiesen ser castigados rápidamente. Desgraciadamente, yo no veo que ello ocurra en todos los casos. Por el contrario, los empleadores buenos debiesen ser compensados y resaltados como ejemplo dignos a imitar por el resto. Después de todo, todos hemos llegado a este país como inmigrantes en búsqueda de una mejor vida.



TESTIMONIO DE NEREYDA SANTOS
MIEMBRO DE MAKE THE ROAD NEW YORK

**Audiencia pública sobre la situación actual de los derechos de los trabajadores en la
Ciudad de Nueva York**

25 de abril de 2017

Buenas tardes. Mi nombre es Nereyda Santos. Soy una mujer trans inmigrante y latina. Soy miembro del Comité de “Trans Immigrant Project” ó TRIP, de Make the Road New York en Queens.

A nombre mío y de Make the Road NY queremos agradecer al Departamento de Asuntos del Consumidor de la ciudad, a la Oficina del Inmigrante del Alcalde de la ciudad y a la Comisión de Derechos Humanos de la ciudad por brindarnos la oportunidad a los trabajadores inmigrantes de hacer esta presentación.

En 2015, poco después de comenzar mi transición y mientras trabajaba como lavadora de vajilla y preparadora de ensaladas, en el subterráneo de un restorán en el Lower East Side, sufrí acoso sexual en el trabajo por parte de mi supervisor quien me tocó impropriadamente y me realizaba todo tipo de propuestas de índole sexual, entre otros vejámenes. Me sentí muy mal conmigo misma. Tiempo después, fui despedida por lo que creo, se debió a que mi identidad de género no se relaciona con el sexo que me asignaron al nacer.

A raíz de esta situación, llegué a Make the Road. Interpusimos una queja ante la Comisión de Derechos Humanos de la Ciudad de Nueva York. Después de casi seis meses de negociaciones, llegamos a un acuerdo por \$25,000 para los danos que sufrí debido a la discriminación, que se iba a pagar en seis cuotas mensuales por parte de mi ex-empleador.

Una vez que dos cuotas habían sido pagadas, mi ex-empleador nos comunicó que teníamos que llegar a un nuevo acuerdo ya que iba a declarar su bancarrota y la de todas sus sociedades porque estaba siendo demandado por no pago de sobre tiempo por un grupo de trabajadores. Para evitar llegar al proceso de bancarrota, yo decidí aceptar un recorte del pago a cambio de la posibilidad de que pudiese compartir mi historia con ustedes.

Durante este tiempo, Make the Road me ayudó a cambiar mi nombre, legalmente, por el que tengo hoy que corresponde a mi identidad.

A raíz de la queja que interpusimos contra mi ex-empleador y mi ex-supervisor, el grupo de inmigración de Make the Road pudo solicitar a la Comisión de Derechos Humanos de la Ciudad que el crimen que sufrí calificase para obtener una visa U. Esta calificación fue obtenida y mi aplicación para la visa U ya fue enviada a las autoridades de inmigración. Tengo entendido que fui unas de las primeras

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beneficiadas con esta certificación por parte de la Comisión de Derechos Humanos de la Ciudad, que comenzó a certificar a partir del 9 de febrero de 2016.

Creo que mi historia es la de muchos trabajadoras y trabajadores inmigrantes, que nos vemos marginados en trabajos precarios donde el robo de salarios y la discriminación es pan de cada día. Ello aumenta en el caso de que la expresión de género no corresponda con la imagen que la población en general tiene. Muchas veces la posibilidad de encontrar oportunidades laborales es escasa.

Para una persona que vive con una inconformidad del género asignado socialmente, es muy difícil encontrar trabajo. Hace un mes fui a una agencia de trabajo y me calendarizaron cuatro entrevistas de trabajos en diversos restaurantes de la ciudad. Al llegar a todos estos lugares de trabajo, la respuesta fue uniforme: ya hemos encontrado a alguien para el trabajo y que dejase mi número de teléfono. Hasta el día de hoy espero respuesta.

En conclusión, la ciudad de Nueva York ha realizado muchísimo por las personas cuya expresión de género no corresponde a la socialmente asignada, más aún para los inmigrantes como yo. Sin embargo, aún queda un camino largo por recorrer para que todas las personas que habitamos esta maravillosa ciudad vivamos en igualdad de condiciones.



**LEGAL
SERVICES
INCORPORATED**

TESTIMONY

STATE OF WORKERS' RIGHTS IN NEW YORK CITY

PRESENTED BEFORE:

DEPARTMENT OF CONSUMER AFFAIRS

MAYOR'S OFFICE OF IMMIGRANT AFFAIRS

NEW YORK CITY COMMISSION ON HUMAN RIGHTS

PRESENTED BY:

MAIA GOODELL, SUPERVISING ATTORNEY

MFY LEGAL SERVICES, INC.

(soon to be MOBILIZATION FOR JUSTICE)

April 25, 2017

**MFY LEGAL SERVICES, INC., 299 Broadway, New York, NY 10007
212-417-3700 www.mfy.org**

MFY Legal Services, Inc. (MFY) submits this testimony to the Department of Consumer Affairs (DCA), Mayor's Office of Immigrant Affairs, and the New York City Commission on Human Rights (Commission) regarding the state of Workers' Rights in New York City.

MFY envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy, and bringing impact litigation. We assist more than 20,000 New Yorkers each year. MFY will soon be changing our name to Mobilization for Justice.

MFY's Workplace Justice Project (WJP) promotes equality among all workers, focusing on workplace health and safety, reentry to the workforce following criminal convictions, and leveling the playing field for immigrant workers.

Workplace Safety and Health Concerns for Low Wage and Immigrant Workers

Last year, MFY launched a Workplace Safety and Health initiative to respond to the needs of New York workers for help asserting their rights to a safe workplace, medical leave, appropriate accommodations, and, particularly, to workers' compensation when they are injured or get sick on the job. To our knowledge, we are the only direct services nonprofit providing help in workers' compensation cases. See <http://www.mfy.org/projects/workplace-safety-and-health/>.

For years, MFY has heard that low-wage and immigrant workers often face a terrible trade-off: they can protect their health and lose their job, or they can work through injuries and illness, forego needed medical care, and ignore unsafe conditions at work. Immigrant workers are often in a worse position because of additional crippling fears about immigration status.

Need to Advise Workers about Workers' Compensation Rights

Few low-wage and immigrant workers are aware of their right to workers' compensation. According to a national study (<https://www.dol.gov/osha/report/20150304-inequality.pdf>), only 20% of the cost of workplace injuries is borne by the workers' compensation system. Injured workers and their families bear fully half of the burden. As OSHA found: "[T]he workers' compensation system performs even more poorly for low-wage workers. Many face additional barriers to filing, including even greater job insecurity, lack of knowledge about their rights, or a limited command of English."

MFY applauds DCA for working to establish a centralized hotline for workers to learn about their rights. We urge DCA, the Commission, and all city agencies to include workers' compensation in their screenings and referrals.

In Today's Climate, Workers Fear Immigration Consequences for Asserting Their Rights

In today's climate, these problems are much worse, particularly for immigrant workers: Even the limited reassurances about protection against retaliation that we as lawyers had been able to give

immigrant workers are now in serious doubt. We can no longer assure clients that immigration authorities will not be waiting for them at the courthouse or the emergency room, that a 911 call will not result in personal information sent to the FBI, that information filed with agencies will not end up in the hands of immigration authorities, that Immigrations and Customs Enforcement is unlikely to respond if an employer calls in retaliation for a worker asserting employment rights.

MFY supports workers who choose to fight back. We train workers about their rights—many of which still apply to all workers, regardless of immigration status. We explain rights for immigration raids at work. It is a particularly critical time for lawyers and other advocates to stand with workers who choose to assert their rights. We can help in large and small ways – filing big cases, but also empowering workers to speak up, get together, and even work with their employers.

For example, at neighborhood clinics, we advise workers regularly, including an immigrant construction worker. The worker's supervisor made frequent comments about sex, told her she needed a man, told her she should have sex with one of her co-workers, and assigned her to clean up duty, saying she was the maid. We advised her that this was unlawful sexual harassment, and explained her rights, which exist regardless of immigration status, and that retaliation for speaking up is illegal. With that advice and encouragement, the worker spoke to the supervisor's boss, who commended her speaking up, and said that he would stop the harassment. The boss was true to his word: the harassment has stopped; the supervisor is keeping his distance; the worker kept her job.

Need for Clear and Consistent Agency Policies Protecting Immigration Status and Personal Information

Many agencies, including the Commission, have led the way in establishing clear, protective policies about handling immigration status and personal information. Our clients urgently need citywide standards for *all* agencies – including law enforcement – ensuring that immigration status is not collected unless essential, safeguarding all personal information to the maximum extent possible, and ceasing all voluntary provision of such information to federal authorities. The City can also set the standard for state agencies such as the Department of Labor and the Workers' Compensation Board.

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



NYS & NYC Sexual Harassment and Wage Theft Law: Seeking Protection for Models

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June 1, 2015

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Introduction

In popular culture, models are widely associated with glamour: the fashion, celebrity, and lavish lifestyle generally depicted in the media provide an image of an industry populated by supermodels whose greatest workplace hazards include flashing cameras and five-inch heels. In truth, these images of the glitz surrounding modeling “misrepresent the reality for most working models,”¹ who often face systemic workplace abuses and exploitation in an industry that is largely unregulated by labor and employment laws.² As one former model put it, “fashion is a glamorous industry, but rub off the sheen, and quite another scene emerges.”³

Models are disproportionately “young, female, and uniquely vulnerable.”⁴ They routinely face workplace abuses such as sexual harassment and wage theft. Many models report inappropriate touching on the job and pressure to have sex with someone in the workplace; many also report being instructed to pose nude without advance notice or prior consent.⁵ Models also frequently encounter problems getting paid for the work they perform. This is in part due to a lack of financial transparency between modeling agencies and clients (the designers, photographers, or other entities that hire models) and to a frequent industry practice of not providing monetary compensation to models who work at prestigious fashion events—such as New York Fashion Week—instead making them work for “trade,” meaning clothes.⁶ But, as

¹ Sara Ziff, *Introductory Note*, MODEL ALLIANCE (Feb. 6, 2012), <http://modelalliance.org/introductory-note>.

² See Alexandra R. Simmerson, Note, *Not So Glamorous: Unveiling the Misrepresentation of Fashion Models' Rights As Workers in New York City*, 22 CARDOZO J. INT'L & COMP. L. 153, 163 (2013).

³ Ashley Mears, *Poor Models. Seriously*, N.Y. TIMES (Sept. 14, 2011), http://www.nytimes.com/2011/09/15/opinion/its-fashion-week-poor-models.html?_r=0.

⁴ Ziff, *supra* note 1.

⁵ *Industry Analysis*, MODEL ALLIANCE, <http://modelalliance.org/industry-analysis> (last visited Feb. 9, 2015).

⁶ Sara Ziff, *Viewpoint: Do Models Need More Rights?*, BBC NEWS MAGAZINE (Nov. 28, 2012), <http://www.bbc.com/news/magazine-20515337>.

fashion model and Model Alliance founder Sara Ziff points out, “you can’t pay your rent with a tank top.”⁷

New York State prohibits employers from sexually harassing⁸ or stealing wages from their employees.⁹ However, because models are almost always treated by those for whom they work as independent contractors, rather than employees, they do not benefit from these laws.¹⁰ New York City law prohibits sexual harassment as well,¹¹ but because of the multi-level structure of hiring in the modeling industry, the City law generally does not apply to models either.¹² This means that when a model is sexually harassed or has her wages stolen in New York, she has limited legal recourse, in part because courts may not be willing to hold either a modeling agency or a client liable for the abuses she has suffered.

Too often, models are treated as objects, and not as legitimate members of the workforce who deserve to be able to work for a living with the same dignity, respect, and basic legal protections other workers enjoy under New York’s sexual harassment and employment laws. The Legislative and Policy Advocacy Clinic at Fordham Law School has partnered with the Model Alliance,¹³ a non-profit organization that works to promote fair labor practices in the

⁷ *Id.*

⁸ Employees are protected against sexual harassment by New York State Human Rights Law. N.Y. EXEC. LAW § 296 (McKinney 2010). Recent amendments extend these protections to interns, § 296-c, and domestic workers. § 296-b.

⁹ See N.Y. LAB. LAW § 191 (McKinney 2010).

¹⁰ See Simmerson, *supra* note 2, at 170-71. As Simmerson describes, “[f]ashion models working in the United States . . . are commonly perceived to be, and essentially are universally accepted as, independent contractors. . . . Classifying a worker as an independent contractor, as opposed to as an employee, allows businesses to compensate those workers without withholding federal, state, and social security taxes. American companies have sought out various methods to cut costs without significantly affecting their profit making and production capabilities. One method companies have utilized to accomplish this goal is to change the composition of their workforce” by hiring workers as independent contractors, rather than employees.

¹¹ N.Y.C. ADMIN. CODE § 8-107(1).

¹² See Part II.C, *infra*.

¹³ MODEL ALLIANCE, <http://www.modelalliance.org> (last visited Feb. 17, 2015).

modeling industry, to identify legislative and policy initiatives to protect models from systemic abuse and exploitation.

This report explores how New York sexual harassment and wage payment laws fail to protect models and proposes reforms to remedy these shortcomings. Part I outlines the legal implications of the independent contractor designation and describes how the structure of a model's contractual relationship with a modeling agency—and the agency's separate contractual relationship with a client—often prevents models from holding agencies and clients accountable. Part II analyzes current State and City workplace sexual harassment laws and proposes statutory and policy changes that would give models legal recourse when they suffer abuses. Part III discusses State laws regarding wage payment and identifies possible reforms. Part IV summarizes specific legislative and policy proposals and the reasons to make these changes.

I. Industry and Legal Structures Affecting Models' Rights as Workers

The modeling industry's multi-level employment structure exacerbates many of the legal obstacles models face. The vast majority of models find work by contracting with modeling agencies.¹⁴ Agencies represent models by booking jobs for them and sending them to auditions for photo shoots, fashion shows, and other potential assignments.¹⁵ The entity that directs the model's performance in any particular job—for example, a designer, retail store, photographer, or online seller—is commonly referred to as the client.¹⁶ Models report to these clients and work

¹⁴ See Simmerson, *supra* note 2, at 157.

¹⁵ See *id.*

¹⁶ See Kit Johnson, *Importing the Flawless Girl*, 12 NEV. L.J. 831, 836-37 (2012).

photo shoots, fashion shows, and other assignments under the client’s direction and supervision, but they have no contract-based relationship with them.¹⁷

The amount a model is paid for her work is negotiated between the agency and the client.¹⁸ Agencies earn a commission—typically, twenty percent of a model’s earnings—for every job they book for their models, as laid out in the agency’s separate contract with the model.¹⁹ Models rarely, if ever, see the contract between the agency and the client—and they are not a party to it. After a model works a job, the client delivers the model’s earnings to the modeling agency, which then cuts a check to the model (minus the agency’s commission).²⁰

Further, because models are treated as independent contractors, they often must pay their own way to photo shoots and incur other work-related expenses.²¹ Agencies may pay for these expenses up front, but then deduct them from a model’s paycheck, without necessarily providing a list of itemized costs to the model.²² Agencies sometimes also charge interest on the amount

¹⁷ See generally *Raske v. Next Mgmt., LLC*, 40 Misc. 3d 1240(A) (N.Y. Sup. Ct. N.Y. Co. 2013). The *Raske* court provided that models “are independent contractors of modeling agencies.” More specifically:

The models commonly enter into agreements with modeling agencies ... which not only grants [sic] the modeling agency power of attorney during the term of the agreement ..., but which further provides that ‘payment of funds received for the [m]odel (less commissions) will be made to the [m]odel[] upon receipt by the [m]odeling [a]gency’ and that ‘the [m]odeling [a]gency [is] entitled to commissions for Usages beyond the management period for bookings during the management period.’ These contracts also enable the modeling agencies to ‘grant the right to use their images, portraits and pictures to advertising agencies and clients, who use those images to endorse/sell the clients’ products and services.’ In return, ‘[m]odels are compensated both for having their images photographed and for the use (“Usages”) of the images.’ The scope of such Usages is negotiated between, on the one hand, the modeling agency then representing the model and, on the other hand, the advertising agencies and/or clients which desire to use the model’s images. The agreement is then memorialized in a contract between those parties which provides for payment of the booking fees charged by the modeling agency. The model receives compensation from the modeling agency she hired to represent her, pursuant to a contract between herself and the modeling agency.

Id., quoting plaintiff’s complaint.

¹⁸ Johnson, *supra* note 16, at 836.

¹⁹ See Johnson, *supra* note 16, at 836-38. Some agencies have been accused of withholding more than their contracted commission. See Sara Ziff, *The Ugly Truth of Fashion’s Model Behaviour*, GUARDIAN (Feb. 13, 2012), <http://www.theguardian.com/commentisfree/cifamerica/2012/feb/13/ugly-truth-fashion-model-behavior>.

²⁰ Johnson, *supra* note 16, at 838.

²¹ See Johnson, *supra* note 16, at 838.

²² See Lisa Davies, *The Case For Greater Financial Transparency*, MODEL ALLIANCE, <http://modelalliance.org/2012/financial-transparency-by-lisa-davies/financial-transparency-by-lisa-davies>; Ashley

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advanced to pay for the model's expenses.²³ Finally, agencies frequently require the models they represent to enter into exclusive agreements, binding the model solely to that agency for the duration of the contract.²⁴

Under New York General Business Law, employment agencies are subject to certain licensing requirements and other restrictions; however, modeling agencies typically act as if they are not subject to these regulations.²⁵ Under this law, the definition of employment agencies includes “theatrical agencies,” which are defined as any individual, company, corporation, or manager who finds employment or engagements for artists²⁶—including models.²⁷ Employment agencies must be licensed,²⁸ must comply with statutory limits on how high their fees may be,²⁹ and may not charge for incidental services such as the cost of advertising.³⁰ Operating an employment agency without a license is a misdemeanor, punishable by up to a \$1,000 fine and up to a year in jail.³¹

Modeling agencies typically claim that they are primarily management agencies (meaning that their primary role is to manage models' careers, rather than to find them jobs), and that therefore they fall under the statute's “incidental booking exception,” which applies “when

Mears, *Why Modeling Is, Technically Speaking, A 'Bad Job,'* MODEL ALLIANCE, <http://modelalliance.org/2012/1621/1621> (last visited Sept. 8, 2013); *see also* Johnson, *supra* note 16, at 838.

²³ *See infra* note 90 and accompanying text.

²⁴ *See id.*

²⁵ *See* Simmerson, *supra* note 2, at 178.

²⁶ *See* N.Y. GEN. BUS. LAW § 171(8) (McKinney 2012).

²⁷ N.Y. GEN. BUS. LAW § 171(8-a) (McKinney 2012).

²⁸ N.Y. GEN. BUS. LAW § 172 (McKinney 2012).

²⁹ N.Y. GEN. BUS. LAW § 185 (McKinney 2012). In other words, agencies must not charge more for their services than the fee ceilings set out in the statute. The fee ceiling set by the statute ranges from 25% to 60% of the monthly wages earned. *Id.* For “theatrical engagements” (which would include modeling jobs), the fee ceiling is 10%. *Id.*

³⁰ N.Y. GEN. BUS. LAW § 187(10) (McKinney 2012). In the context of modeling agencies, this might mean that modeling agencies would be restricted from charging for costs such as producing the model's portfolio or for the cost of sending the portfolio to potential clients. Employment agencies must also must file a \$5,000 bond, § 177, upon which a damaged person may sue. § 178. Their contracts must clearly lay out the payment schedule and legal requirements for return of excessive fees. § 181(1).

³¹ N.Y. GEN. BUS. LAW § 190.

finding employment for models is only incidental to [the agencies'] agreements with the models."³² Although the plain text of the statute and an analysis of how modeling agencies actually work suggest that this exception should not apply, courts have not yet determined whether modeling agencies are in fact employment agencies under the law. Accordingly, modeling agencies continue to operate as if they are not subject to this state law.³³

A. Independent Contractor Status

The multi-level employment structure prevalent in the industry presents two additional and interrelated obstacles to models' enjoyment of legal protections. First, as noted above, agencies and clients almost universally treat models as independent contractors, rather than employees.³⁴ Consequently, models do not benefit from laws intended to curb sexual harassment³⁵ and wage theft,³⁶ which protect employees, but not independent contractors.

In some cases, it may be that models are improperly classified as independent contractors, and that they should in fact be considered employees.³⁷ However, regardless of how

³² See *Shelton v. Elite Model Mgmt., Inc.*, 812 N.Y.S. 2d 745, 756 (Sup. Ct. N.Y. Co. 2005) (discussing defendant modeling agencies' argument). The court held that this is a fact-specific determination. See *id.*

³³ See *Simmerson*, *supra* note 2, at 178. The prospect for bringing modeling agencies firmly under the employment agency regulations is unclear. Moreover, doing so may not result in substantially more protection for models. In 2011, the First Department of the New York Appellate Division court held that individuals who suffer when an employment agency violates this law may not sue to recover their losses. See *Rhodes v. Herz*, 920 N.Y.S.2d 11, 16 (App. Div. 2011). Thus, violations under this law may be addressed only by the state industrial commissioner, who is the responsible for overseeing employment agencies—and the commissioner is not obligated to act when there is a violation. *Id.*

³⁴ See *Ziff*, *supra* note 6.

³⁵ See *Simmerson*, *supra* note 2, at 170.

³⁶ See, e.g., *Hart v. Rick's Cabaret Intern., Inc.*, 967 F. Supp. 2d 901, 911 (S.D.N.Y. 2013).

³⁷ To determine whether a worker qualifies as an employee (rather than an independent contractor), courts use various multi-factor tests to examine the extent to which the employer exercises control over the worker. See *Hart*, 967 F. Supp. 2d at 923 (citing *Bynog v. Cipriani Grp., Inc.*, 802 N.E.2d 1090, 1093 (N.Y. 2003)). For example, when evaluating whether a worker is an employee under New York Labor Law, courts ask whether a worker "worked at his/her own convenience; (2) was free to engage in other employment; (3) received fringe benefits; (4) was on the employer's payroll; and (5) was on a fixed schedule." *Id.* While each situation requires an individualized inquiry, prevailing conditions in the modeling industry suggest that many models are improperly classified as independent contractors under New York's "degree of control" test. Models work assigned hours, receive close and continuous supervision by clients, and generally work exclusively with one agency. To be sure, many models likely are not on their agencies' regular payrolls, and do not receive fringe benefits. Regardless, courts emphasize that such

a court might ultimately classify an individual model, the legal doubt can impose a heavy burden. Without clear statutory language extending workplace protections to models, those models who choose to seek legal remedy when their rights are violated can face unnecessarily lengthy, expensive, and uncertain legal battles. Further, as “non-employees,” models are not covered by the anti-retaliation provisions present in workplace protection statutes, which means they can be fired (or not hired) for bringing a legal claim against an agency or client.³⁸ Perhaps as a result of these obstacles, and a pronounced power imbalance between models, on the one hand, and agencies or clients, on the other, very few models actually challenge their status as independent contractors.³⁹

B. Liability Under the Current Structure

A second consequence of the industry employment structure is that models often encounter difficulty identifying who to seek to hold liable for injuries they suffer. To illustrate, even if a model were to sue—for example, for breach of contract against an agency for failure to distribute her earnings to her, or for assault or battery (a tort) against a client for sexual harassment—she would face an uphill battle in proving which party—the agency or the client—was at fault. The agency would seek to blame the client, and the client would seek to blame the agency, potentially resulting in little justice for the model, even though she undoubtedly suffered harm.

concerns are secondary to the degree of control under which they work when determining whether an employment relationship exists. Recent suits by models have challenged the continuing practice of classifying models as independent contractors. *See* *Abdullah v. Direct Model Management*, No. 15 CV 03100 (S.D.N.Y. filed Apr. 21, 2015).

³⁸ *See* N.Y. EXEC. LAW § 296(7) (New York State’s protection against retaliation in the sexual harassment context); N.Y.C. ADMIN. CODE § 8-107(7) (New York City’s protection against retaliation for making a sexual harassment complaint); N.Y. LAB. LAW § 215(1)(a) (providing protection against retaliation for claims brought under New York State Labor Law).

³⁹ *See* Simmerman, *supra* note 2, at 176-77.

A doctrine of joint liability exists in New York that arises under both tort and employment law. The following discussion examines how the doctrine works in each area of law and then analyzes how it could best function to protect models.

Under New York tort law, two or more parties who act either individually or together produce a single injury may be held jointly and severally liable.⁴⁰ This means that when two parties' acts lead to a third person's injury, each party is "liable to the victim for the total damages."⁴¹ One party cannot escape liability for the entire harm to the victim just because another party's act was also a factor in causing the injury.⁴² Thus, if two parties are found to be jointly and severally responsible for a victim's injury, they may each have to pay only their share of the damages; however, if one party is unable to pay (for instance, due to bankruptcy), the other party would be responsible for paying the *entire* damages.⁴³

Joint liability is slightly different under New York employment law, which states that more than one person or entity can be considered to employ the same person through the "joint employer doctrine."⁴⁴ Under this doctrine, courts determine whether an entity should be considered a worker's employer by applying an "economic reality" test, examining the worker's degree of dependence on the alleged employers and the degree of control the employers exercise

⁴⁰ *Palermo v. Taccone*, 79 A.D.3d 1616, 1618-19 (N.Y. App. Div. 4th Dep't 2010). This means that the two or more parties that contributed to the injury may have been engaged in some joint enterprise that ended in injury to a third party, or they may each have been acting entirely separately, and their separate acts resulted in an injury.

⁴¹ *Amusement Indus., Inc. v. Midland Ave. Assocs., LLC*, 820 F. Supp. 2d 510, 526 (S.D.N.Y. 2011).

⁴² *Id.* Moreover, a party who aids or abets in an activity that amounts to a tort is also jointly and severally liable for the injury caused. *Id.*

⁴³ *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 221 (1994) ("When the limitations on the plaintiff's recovery arise from outside forces, joint and several liability makes the other defendants, rather than an innocent plaintiff, responsible for the shortfall.").

⁴⁴ Courts apply the same joint liability analysis to New York Labor Law that they do to the federal Fair Labor Standards Act. *See Chen v. Street Beat Sportswear, Inc.*, 364 F.Supp. 2d 269, 278 (E.D.N.Y. 2005). In *Chen*, the court relied on federal regulations, 29 C.F.R. § 791.2 (2014), relating to the Fair Labor Standards Act, to conclude that more than one person can employ a worker under New York Labor Law. *See id.* Because independent contractors are not covered by employment law, courts that are determining whether two entities may be jointly liable for an independent contractor's injuries first must analyze whether the independent contractor might actually be classified as an employee for purposes of joint liability. *See supra* note 36.

modeling industry, to identify legislative and policy initiatives to protect models from systemic abuse and exploitation.

This report explores how New York sexual harassment and wage payment laws fail to protect models and proposes reforms to remedy these shortcomings. Part I outlines the legal implications of the independent contractor designation and describes how the structure of a model's contractual relationship with a modeling agency—and the agency's separate contractual relationship with a client—often prevents models from holding agencies and clients accountable. Part II analyzes current State and City workplace sexual harassment laws and proposes statutory and policy changes that would give models legal recourse when they suffer abuses. Part III discusses State laws regarding wage payment and identifies possible reforms. Part IV summarizes specific legislative and policy proposals and the reasons to make these changes.

I. Industry and Legal Structures Affecting Models' Rights as Workers

The modeling industry's multi-level employment structure exacerbates many of the legal obstacles models face. The vast majority of models find work by contracting with modeling agencies.¹⁴ Agencies represent models by booking jobs for them and sending them to auditions for photo shoots, fashion shows, and other potential assignments.¹⁵ The entity that directs the model's performance in any particular job—for example, a designer, retail store, photographer, or online seller—is commonly referred to as the client.¹⁶ Models report to these clients and work

¹⁴ See Simmerson, *supra* note 2, at 157.

¹⁵ See *id.*

¹⁶ See Kit Johnson, *Importing the Flawless Girl*, 12 NEV. L.J. 831, 836-37 (2012).

wrongdoers liable when she is not paid, without unduly burdening an entity whose bad acts only slightly contributed to the model's losses.

In Parts II and III, this report further discusses the value of creating a statutory joint liability structure that would more readily allow models to hold both modeling agencies and clients liable when they experience sexual harassment and wage theft on the job.

II. Sexual Harassment

The power imbalance between models and the agencies and clients for whom they work contributes to a culture that tolerates sexual harassment in the modeling industry.⁴⁸ In a 2012 Model Alliance study of working female models, 29.7% of respondents reported experiencing inappropriate touching on the job, and 28% said they had been pressured to have sex at work.⁴⁹ Additionally, 86.8% of respondents had been asked to pose nude at a job or casting without prior notice.⁵⁰ Of those who had experienced sexual harassment, only 29.1% reported it to their agencies; of those who did report harassment to their agencies, the vast majority—two-thirds—indicated that their agencies did not see a problem with what they had experienced.⁵¹

Under current New York law, those responsible for sexual harassment in the modeling industry are rarely held accountable.⁵² This section explains the shortcomings of current law and proposes changes that can better protect models.

A. Sexual Harassment under New York State Law

While sexual harassment is not explicitly prohibited by New York State's Human Rights Law, case law firmly establishes that the statute's prohibition on gender-based discrimination

⁴⁸ Although data are limited, abundant anecdotal evidence exists that demonstrates that sexual harassment is a widespread problem in the fashion industry. *See, e.g.*, Johnson, *supra* note 16, at 866.

⁴⁹ MODEL ALLIANCE, *supra* note 5.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See* Simmerson, *supra* note 2, at 170 (noting that sexual harassment protections do not apply to models).

bars sexual harassment.⁵³ This law protects employees from discrimination by employers, licensing agencies, employment agencies, and labor organizations.⁵⁴ Independent contractors, including models, however, are not legally protected from sexual harassment in the workplace.⁵⁵

Recent amendments to the New York State Human Rights Law extended these anti-discrimination protections to unpaid interns⁵⁶ and domestic workers,⁵⁷ two categories of workers that—like models—are not traditionally covered by employment laws.⁵⁸ Employers of unpaid interns and domestic workers are now explicitly prohibited from “engag[ing] in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when the conduct is a condition of employment, affects employment-based decisions, or creates a hostile or intimidating work environment.”⁵⁹ Amending the law to explicitly cover domestic workers and unpaid interns gave these workers a clear right to sue under New York State employment law.

Although models are not covered by the state’s non-discrimination laws, they are specifically incorporated into the protections provided by the state’s Workers’ Compensation and Unemployment Compensation statutes.⁶⁰ These expansions, together with the recent

⁵³ See, e.g., *Suriel v. Dominican Republic Educ. & Mentoring Project, Inc.*, 85 A.D.3d 1464, 1465-66 (N.Y. App. Div. 3d Dep’t 2011). The U.S. Equal Employment Opportunity Commission defines sexual harassment as: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

29 C.F.R. § 1604.11(a) (2014).

⁵⁴ N.Y. EXEC. LAW § 296 (McKinney 2010).

⁵⁵ See Simmeron, *supra* note 2, at 170.

⁵⁶ 2014 N.Y. Laws § 97.

⁵⁷ 2009 N.Y. Laws § 481.

⁵⁸ The provisions protecting domestic workers and interns were added to Article 15 of New York Executive Law as N.Y. EXEC. LAW § 296-b (McKinney 2010), and N.Y. EXEC. LAW § 296-c (McKinney 2010), respectively.

⁵⁹ N.Y. EXEC. LAW § 296-b (McKinney 2010); N.Y. EXEC. LAW § 296-c (McKinney 2014).

⁶⁰ See N.Y. WORKERS’ COMP. LAW § 2 (McKinney); N.Y. LAB. LAW § 511 (McKinney)

finding employment for models is only incidental to [the agencies'] agreements with the models."³² Although the plain text of the statute and an analysis of how modeling agencies actually work suggest that this exception should not apply, courts have not yet determined whether modeling agencies are in fact employment agencies under the law. Accordingly, modeling agencies continue to operate as if they are not subject to this state law.³³

A. Independent Contractor Status

The multi-level employment structure prevalent in the industry presents two additional and interrelated obstacles to models' enjoyment of legal protections. First, as noted above, agencies and clients almost universally treat models as independent contractors, rather than employees.³⁴ Consequently, models do not benefit from laws intended to curb sexual harassment³⁵ and wage theft,³⁶ which protect employees, but not independent contractors.

In some cases, it may be that models are improperly classified as independent contractors, and that they should in fact be considered employees.³⁷ However, regardless of how

³² See *Shelton v. Elite Model Mgmt., Inc.*, 812 N.Y.S. 2d 745, 756 (Sup. Ct. N.Y. Co. 2005) (discussing defendant modeling agencies' argument). The court held that this is a fact-specific determination. See *id.*

³³ See *Simmerson*, *supra* note 2, at 178. The prospect for bringing modeling agencies firmly under the employment agency regulations is unclear. Moreover, doing so may not result in substantially more protection for models. In 2011, the First Department of the New York Appellate Division court held that individuals who suffer when an employment agency violates this law may not sue to recover their losses. See *Rhodes v. Herz*, 920 N.Y.S.2d 11, 16 (App. Div. 2011). Thus, violations under this law may be addressed only by the state industrial commissioner, who is the responsible for overseeing employment agencies—and the commissioner is not obligated to act when there is a violation. *Id.*

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³⁷ To determine whether a worker qualifies as an employee (rather than an independent contractor), courts use various multi-factor tests to examine the extent to which the employer exercises control over the worker. See *Hart*, 967 F. Supp. 2d at 923 (citing *Bynog v. Cipriani Grp., Inc.*, 802 N.E.2d 1090, 1093 (N.Y. 2003)). For example, when evaluating whether a worker is an employee under New York Labor Law, courts ask whether a worker "worked at his/her own convenience; (2) was free to engage in other employment; (3) received fringe benefits; (4) was on the employer's payroll; and (5) was on a fixed schedule." *Id.* While each situation requires an individualized inquiry, prevailing conditions in the modeling industry suggest that many models are improperly classified as independent contractors under New York's "degree of control" test. Models work assigned hours, receive close and continuous supervision by clients, and generally work exclusively with one agency. To be sure, many models likely are not on their agencies' regular payrolls, and do not receive fringe benefits. Regardless, courts emphasize that such

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advanced to pay for the model's expenses.²³ Finally, agencies frequently require the models they represent to enter into exclusive agreements, binding the model solely to that agency for the duration of the contract.²⁴

Under New York General Business Law, employment agencies are subject to certain licensing requirements and other restrictions; however, modeling agencies typically act as if they are not subject to these regulations.²⁵ Under this law, the definition of employment agencies includes “theatrical agencies,” which are defined as any individual, company, corporation, or manager who finds employment or engagements for artists²⁶—including models.²⁷ Employment agencies must be licensed,²⁸ must comply with statutory limits on how high their fees may be,²⁹ and may not charge for incidental services such as the cost of advertising.³⁰ Operating an employment agency without a license is a misdemeanor, punishable by up to a \$1,000 fine and up to a year in jail.³¹

Modeling agencies typically claim that they are primarily management agencies (meaning that their primary role is to manage models' careers, rather than to find them jobs), and that therefore they fall under the statute's “incidental booking exception,” which applies “when

Mears, *Why Modeling Is, Technically Speaking, A 'Bad Job,'* MODEL ALLIANCE, <http://modelalliance.org/2012/1621/1621> (last visited Sept. 8, 2013); *see also* Johnson, *supra* note 16, at 838.

²³ *See infra* note 90 and accompanying text.

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³¹ N.Y. GEN. BUS. LAW § 190.

successful lawsuit against her superiors or against the corporate entity.⁶⁷ Two initial questions to address when trying to protect models from harassment, therefore, are: who should be considered the responsible party, and, in turn, to whom should a model be required to give notice of the harassment she experiences?

As described in Part I, there should be two legally responsible institutional parties: the modeling agency, which sends models to jobs working for clients; and the client, which hires the model and controls the immediate environment in which she works.⁶⁸ In practice, in order to determine whether two parties may be held jointly liable for abuse a worker suffers under New York Human Rights Law, courts analyze the degree of the worker's economic dependence on each party.⁶⁹ To conduct this analysis, courts use a multi-part test, which examines:

- 1) whether the proposed employer had the power of the selection and engagement of the employee;
- 2) whether the proposed employer made the payment of salary or wages to the employee;
- 3) whether the proposed employer had the power of dismissal over the employee; and
- 4) whether the proposed employer had the power to control the employee's conduct.⁷⁰

Courts emphasize that the degree of control that the alleged employer exercises over the worker's conduct is "the most essential factor in this analysis."⁷¹

Although this test is used primarily in the context of a formal employer-employee relationship, an analogous test should be applied in the context of modeling. It is likely that

⁶⁷ See, e.g., *New York State Div. of Human Rights v. ABS Electronics, Inc.*, 102 A.D.3d 967, 968-69 (N.Y. App. Div. 2d Dep't 2013).

⁶⁸ The key idea behind this approach is that a model who is sexually harassed on the job ought to be able to bring suit against each "bad actor" that played a role in the abuse she suffered. Thus, although a client may be the one who actually commits the abuse, an agency that knew or should have known that it is sending a model to a job where there is likelihood of harassment should also face liability for its actions.

⁶⁹ *Ansoumana v. Gristede's Operating Corp.*, 255 F. Supp. 2d 184, 190 (S.D.N.Y. 2003) (defendants "may be liable to plaintiffs . . . jointly and severally . . . under the FLSA [and New York Labor Law]. The issue is determined by an "economic reality" test . . . which takes into account the real economic relationship between the employer who uses and benefits from the services of workers and the party that hires or assigns the workers to that employer).

⁷⁰ *Voltaire v. Home Servs. Sys., Inc.*, 823 F. Supp. 2d 77, 97 (E.D.N.Y. 2011) (*quoting* *Goyette v. DCA Advertising Inc.*, 830 F. Supp. 737, 746 (S.D.N.Y. 1993)).

⁷¹ *Id.* (*quoting* *Goyette v. DCA Advertising Inc.*, 830 F. Supp. 737, 746 (S.D.N.Y. 1993)).

photo shoots, fashion shows, and other assignments under the client’s direction and supervision, but they have no contract-based relationship with them.¹⁷

The amount a model is paid for her work is negotiated between the agency and the client.¹⁸ Agencies earn a commission—typically, twenty percent of a model’s earnings—for every job they book for their models, as laid out in the agency’s separate contract with the model.¹⁹ Models rarely, if ever, see the contract between the agency and the client—and they are not a party to it. After a model works a job, the client delivers the model’s earnings to the modeling agency, which then cuts a check to the model (minus the agency’s commission).²⁰

Further, because models are treated as independent contractors, they often must pay their own way to photo shoots and incur other work-related expenses.²¹ Agencies may pay for these expenses up front, but then deduct them from a model’s paycheck, without necessarily providing a list of itemized costs to the model.²² Agencies sometimes also charge interest on the amount

¹⁷ See generally *Raske v. Next Mgmt., LLC*, 40 Misc. 3d 1240(A) (N.Y. Sup. Ct. N.Y. Co. 2013). The *Raske* court provided that models “are independent contractors of modeling agencies.” More specifically:

The models commonly enter into agreements with modeling agencies ... which not only grants [sic] the modeling agency power of attorney during the term of the agreement ..., but which further provides that ‘payment of funds received for the [m]odel (less commissions) will be made to the [m]odel[] upon receipt by the [m]odeling [a]gency’ and that ‘the [m]odeling [a]gency [is] entitled to commissions for Usages beyond the management period for bookings during the management period.’ These contracts also enable the modeling agencies to ‘grant the right to use their images, portraits and pictures to advertising agencies and clients, who use those images to endorse/sell the clients’ products and services.’ In return, ‘[m]odels are compensated both for having their images photographed and for the use (“Usages”) of the images.’ The scope of such Usages is negotiated between, on the one hand, the modeling agency then representing the model and, on the other hand, the advertising agencies and/or clients which desire to use the model’s images. The agreement is then memorialized in a contract between those parties which provides for payment of the booking fees charged by the modeling agency. The model receives compensation from the modeling agency she hired to represent her, pursuant to a contract between herself and the modeling agency.

Id., quoting plaintiff’s complaint.

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¹⁹ See Johnson, *supra* note 16, at 836-38. Some agencies have been accused of withholding more than their contracted commission. See Sara Ziff, *The Ugly Truth of Fashion’s Model Behaviour*, GUARDIAN (Feb. 13, 2012), <http://www.theguardian.com/commentisfree/cifamerica/2012/feb/13/ugly-truth-fashion-model-behavior>.

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²² See Lisa Davies, *The Case For Greater Financial Transparency*, MODEL ALLIANCE, <http://modelalliance.org/2012/financial-transparency-by-lisa-davies/financial-transparency-by-lisa-davies>; Ashley

models to clients where they know or have reason to believe that the model will likely be subjected to harassment. In the face of this potential liability, agencies may also be more active in pressuring clients to ensure that a model's workplace is safe and respectful.

To help ensure that models know their rights and what to do when those rights are violated, and to ensure that both entities receive proper notice of any harassment that occurs, the law also should mandate that agencies and/or clients provide models at each assignment with a form that identifies these rights and also identifies the person or office to which a model may file a sexual harassment complaint, much as an employer would provide to an employee.⁷⁸ Such a requirement, together with a strong anti-retaliation protection, could make it easier for models to file complaints when they suffer sexual harassment on a job, and make it more likely that models will report abuse when it occurs, all of which could contribute to a safer workplace for models.

C. Sexual Harassment Under New York City Law

In addition to changes in New York State Law, models would also benefit from amendments to New York City's sexual harassment laws. The New York City Human Rights Law (NYCHRL) bars employers who employ four or more people from engaging in sexual discrimination and harassment.⁷⁹ Notably, the statute provides that, for purposes of the anti-discrimination provisions, "natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer."⁸⁰

⁷⁸ N.Y. Comp. Codes R. & Regs. tit. 9, § 466.1.

⁷⁹ N.Y.C. ADMIN. CODE § 8-102(5).

⁸⁰ *Id.*

fashion model and Model Alliance founder Sara Ziff points out, “you can’t pay your rent with a tank top.”⁷

New York State prohibits employers from sexually harassing⁸ or stealing wages from their employees.⁹ However, because models are almost always treated by those for whom they work as independent contractors, rather than employees, they do not benefit from these laws.¹⁰ New York City law prohibits sexual harassment as well,¹¹ but because of the multi-level structure of hiring in the modeling industry, the City law generally does not apply to models either.¹² This means that when a model is sexually harassed or has her wages stolen in New York, she has limited legal recourse, in part because courts may not be willing to hold either a modeling agency or a client liable for the abuses she has suffered.

Too often, models are treated as objects, and not as legitimate members of the workforce who deserve to be able to work for a living with the same dignity, respect, and basic legal protections other workers enjoy under New York’s sexual harassment and employment laws. The Legislative and Policy Advocacy Clinic at Fordham Law School has partnered with the Model Alliance,¹³ a non-profit organization that works to promote fair labor practices in the

⁷ *Id.*

⁸ Employees are protected against sexual harassment by New York State Human Rights Law. N.Y. EXEC. LAW § 296 (McKinney 2010). Recent amendments extend these protections to interns, § 296-c, and domestic workers. § 296-b.

⁹ *See* N.Y. LAB. LAW § 191 (McKinney 2010).

¹⁰ *See* Simmerson, *supra* note 2, at 170-71. As Simmerson describes, “[f]ashion models working in the United States . . . are commonly perceived to be, and essentially are universally accepted as, independent contractors. . . . Classifying a worker as an independent contractor, as opposed to as an employee, allows businesses to compensate those workers without withholding federal, state, and social security taxes. American companies have sought out various methods to cut costs without significantly affecting their profit making and production capabilities. One method companies have utilized to accomplish this goal is to change the composition of their workforce” by hiring workers as independent contractors, rather than employees.

¹¹ N.Y.C. ADMIN. CODE § 8-107(1).

¹² *See* Part II.C, *infra*.

¹³ MODEL ALLIANCE, <http://www.modelalliance.org> (last visited Feb. 17, 2015).

III. Securing a Fair Payday

Models encounter myriad obstacles to collecting fair pay for their work.⁸⁴ The pervasive industry practice of paying models in “trade,” rather than cash wages, is just one example of the systemic wage and hour abuses models routinely face.⁸⁵ Models may also be denied their earnings due to an agency’s lack of financial transparency; or when a client delays payment to the agency; or when either the agency or the client goes bankrupt.⁸⁶ This section describes the current legal framework and identifies specific reforms aimed at ensuring that models receive fair pay for their work.

A. Expanding Workplace Protections to Models

As independent contractors, models do not benefit from many of the wage and hour statutes that protect employees. These measures include substantive protections, such as minimum wage⁸⁷ and overtime rights,⁸⁸ as well as prophylactic measures to prevent Labor Law violations.⁸⁹ Extending these basic payday and wage theft protections to cover models would go a long way toward ensuring models receive proper pay.

If an agency chooses to distribute the model’s earnings to her before the client pays the agency, the agency may later charge the model interest for their advance payment.⁹⁰ In other instances, agencies may knowingly book models with clients who are “in dire financial straits or are outright insolvent” for fear that these clients may not work with the agency in the future.⁹¹

⁸⁴ Simmerson, *supra* note 2, at 162.

⁸⁵ *See id.*

⁸⁶ *See* Sara Ziff, *Model Alliance Announces Participation In The Unpaid Wages Campaign*, MODEL ALLIANCE, <http://modelalliance.org/2012/model-alliance-announces-participation-in-the-unpaid-wages-campaign/model-alliance-announces-participation-in-the-unpaid-wages-campaign>.

⁸⁷ N.Y. LAB. LAW § 652.

⁸⁸ N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.2.

⁸⁹ *See, e.g.,* N.Y. LAB. LAW § 191 (anti-wage theft); § 195 (notice requirements).

⁹⁰ *See* Johnson, *supra* note 16, at 839.

⁹¹ *See id.*

When agencies pursue payment from such clients through legal action or debt collection, they may charge the model for the resulting costs of those actions.⁹² Moreover, when agencies deduct costs from a model's paycheck, they often do so without providing the model with an itemized list of expenses, creating further confusion over which party is responsible for the model not receiving her earnings.⁹³

New York Labor Law contains comprehensive wage theft provisions that provide protections to employees whose earnings are withheld.⁹⁴ Among other measures, these wage theft provisions mandate that employers provide employees with written notice of their rate of pay and their regular pay days.⁹⁵ This notice is known as an "I-195 form." Employers are required to deliver the I-195 form to employees in writing and to obtain the employee's written acknowledgement of receipt.⁹⁶ Employees who suffer wage theft can recover twice the amount of the wages that are unlawfully withheld from them, in addition to reasonable attorney's fees and the interest earned on the amount due during the period between when the earnings were due and when the judgment is awarded.⁹⁷

When these protections were enacted, legislators stressed that the then-existing law was insufficient to prevent employers from unlawfully underpaying their workers—or not paying them at all.⁹⁸ However, these provisions do not apply to independent contractors. As a result, models continue to fall victim to wage theft with little legal recourse.

⁹² *See id.* (modeling agency directs a model to work for a client knowing that payment is not only uncertain but potentially impossible due to the client's insolvency, both must be held jointly liable under the wage theft claim in order for a model to recover damages).

⁹³ *See supra* note 21 and accompanying text.

⁹⁴ *See* N.Y. LAB. LAW § 191, 195.

⁹⁵ N.Y. LAB. LAW § 195.

⁹⁶ *See id.*

⁹⁷ *See* N.Y. LAB. LAW § 198 (McKinney 2014). The employer has a chance to demonstrate a good faith basis for why it believed underpayment or non-payment was lawful. *See id.*

⁹⁸ *See New York Sponsors Memorandum, 2010 S.B. 8380.*

Amending New York Labor Law's anti-wage theft and payment provisions to include specific protections for models in the areas of frequency of pay, deductions from wages, notice of terms of employment, and minimum wage can create transparency and accountability to better ensure that models receive their agreed-upon pay. This approach is similar to that put forth in the Freelancers Payment Protection Plan (FPPP), which seeks to ensure that independent contractors are compensated for their work within a reasonable amount of time, in accordance with a written agreement.⁹⁹ The FPPP bill died in the New York State Senate Labor Committee after passing the New York State Assembly in January 2014.¹⁰⁰

Similarly, in 2013, the Assembly passed a bill intended to grant the New York State Department of Labor greater oversight over employment contracts involving independent contractors, in order to afford them the same compensation guarantees as traditional employees.¹⁰¹ The bill provided for liquidated damages, as well as both civil and criminal penalties.¹⁰² It, too, however, died in the Senate's Labor Committee.¹⁰³

Based on this history, although the proposed amendment to state law is essential to protect models, passing the amendment will not be easily achieved. We anticipate that amending New York Labor Law to better cover models will require intensive, targeted advocacy to the New York State Senate, and in particular, to the Senate Labor Committee.

⁹⁹ See *All About the Freelancer Payment Protection Act*, <http://fu-res.org/pdfs/advocacy/Unpaid-Wages-1-pager.pdf> (last visited March 11, 2015).

¹⁰⁰ See New York State Assembly A06698C 2011, <http://assembly.state.ny.us/leg/?bn=A06698&term=2011> (last visited October 16, 2014).

¹⁰¹ New York State Assembly, A06698C 2011-12 (NY) (an act to amend the labor law, in relation to independent contractors).

¹⁰² A key difference between these two bills is that the proposed amendment to the Wage Theft Law is designed to empower employees, giving them recourse, while the 2013 bill grants the power to the Department of Labor to investigate any claims.

¹⁰³ See Open Legislation, Bill A5472-2013, available at <http://open.nysenate.gov/legislation/bill/A5472-2013>.

B. Joint Liability for Wage Theft

Models often find themselves without effective legal redress, even when they indisputably have not received proper pay for their work. As discussed in Parts I and II of this report, clients and modeling agencies should face joint liability when they violate state human rights law. The New York State Legislature can better protect models against wage theft by amending the Labor Law to explicitly provide that agents and clients are jointly responsible for ensuring models are paid in full.

In most circumstances, when employees have a relationship with a single employer, current law is sufficient to protect workers from wage theft, or, at a minimum, to identify the entity responsible for the wage theft. The complex nature of models' work structure often renders this system of liability inadequate to protect models who do not receive their proper pay. Under the current system, both agencies and clients are responsible only for fulfilling their contractual obligations—the client to the agency and the agency to the model—rather than for ensuring that models actually receive the pay to which are entitled.¹⁰⁴

Under this contract-based scheme, if a client can prove it made a full and timely payment to the agency for the model's services, the client would not be liable to the model if the agency subsequently failed to pay the model; contractually, they typically are bound only to submit payment to the agency.¹⁰⁵ Conversely, if a client fails to pay an agency for a model's services, the agency may delay paying the model until they receive such pay.¹⁰⁶

Given the range of ways an agency and/or a client might act to prevent a model from

¹⁰⁴ See *supra* notes 14-22 and accompanying text (discussing the contractual relationship between models, agencies, and clients).

¹⁰⁵ *Cooney v. Osgood Mach., Inc.*, 612 N.E.2d 277, 283 (1993). Under traditional joint and several liability rules, when more than one tortfeasor was responsible for plaintiff's injury, each was potentially liable for the entire judgment, irrespective of relative culpability. Indeed, plaintiff was not even required to sue all the wrongdoers, but could recover the entire judgment from the 'deep pocket,' who then had no recourse." *Id.*

¹⁰⁶ See *id.*

receiving her earnings, redress is likely to be most fully and adequately available under a joint and several liability structure, as discussed in Parts I and II.¹⁰⁷ Both agencies and clients are well-situated to guarantee that models are paid appropriately for the work they perform.

To accomplish this outcome, the New York State Legislature can mandate that models, agencies, and clients jointly execute a form establishing the model's rate of pay and scheduled pay day. This form can be based on the form employers already must provide to employees pursuant to section 195 of New York Labor Law.¹⁰⁸ The New York State Legislature also can mandate that before an agency can deduct any costs from a model's paycheck, the model must give explicit authorization, and that agencies provide models with a complete itemization when they make deductions.¹⁰⁹ By providing models with documentation establishing an obligation of both agencies and clients to ensure they receive proper pay, the Legislature can make it much easier for models to collect unpaid wages.

IV. Conclusion: Recommendations for Change

A model who is sexually harassed by a client, photographer, agent, or anyone else in relation to a job assignment, or who has not been paid properly for her work, should have civil recourse against the entities that control her work environment. Due to the unique nature of models' working relationships and status, it is critical to ensure accountability for agencies and clients, who work jointly to control models' workplace environments and job assignments.

Amending existing law to incorporate these policies and principles would help ensure accountability of any modeling agency or client that violates a model's rights, making sure that

¹⁰⁷ See Johnson, *supra* note 16, at 838-39 (citing *What Models Really Get Paid*, Messy Nessy Chic (Dec. 7, 2010, 6:56 am), <http://messynessychic.com/2010/12/07/what-models-really-get-paid/>).

¹⁰⁸ N.Y. Lab. Law § 195. A proposed "195 form" appropriate to this context is included in the attached Appendix.

¹⁰⁹ This would be similar to the general deductions provision in New York Labor Law. See N.Y. Lab. Law § 193(1)(b).

they adhere to the proposed labor standards and protections. The recommended framework would extend the current state human rights law and wage theft protections to models, enabling them to hold responsible any individuals and entities that have the power to control their working conditions. Individuals at modeling agencies or client companies who are in a position to know of and control the operations around a model's work would be accountable for abuses against this frequently marginalized workforce.

The multi-leveled contracting structures inherent in the modeling profession create no clear "employer" under current rules and laws. The proposed legislative changes described in this memo identify the key elements necessary to apply workplace liability to the entities and individuals that perform the various "employer" functions.

Enabling a model to hold all responsible parties liable can curtail impunity for sexual harassment and wage theft. This would create a more predictable and standardized method of accountability and expectations for models' work-based relationships. It is critical to ensure employment safety and security to all workers. Models deserve this protection no less than any other group.

APPENDIX

Proposed Bill: Models Sexual Harassment Protection Act

Overview: Under current New York State law, independent contractors, including models, do not have protection from sexual harassment in the workplace. Employees are protected under New York State Human Rights Law § 296 from discrimination by an employer, licensing agency, employment agency, or labor organization. This form of discrimination protection encompasses sexual harassment as it is considered a type of sex-based discrimination involving unwelcome sexual conduct targeted at employees in a work environment with respect to hiring, firing, promotions, or job assignments. The modeling industry generally insists that models are independent contractors, thus making them vulnerable to harassment with little recourse. This injustice will continue to be problematic in an industry where young models, including minors, are put into adult situations, where nudity is common, but where it is still imperative to maintain a safe working environment. This must be addressed. Brands, magazines, and agencies that turn a blind eye should be held accountable. No one who works for a living should have to endure sexual harassment and abuse.

1. Definitions

(a) As used in this section, “professional model” or “model” means someone who performs modeling services for a client; or consents in writing to the transfer of his or her legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to a client.

(b) As used in this section, “client” means a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates in whole or in part such professional model’s assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of his or her privacy rights enumerated above.

(c) As used in this section, “modeling agency” means an entity or person that interviews, hires, and refers models to various clients for temporary assignment.

2. It shall be an unlawful discriminatory practice for a client or modeling agency to:

(a) Engage in sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature to a model when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of a model’s employment; (ii) submission to or rejection of such conduct by a model is used either explicitly or implicitly as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with a model’s work performance by creating an intimidating, hostile, or offensive working environment.

Attorney Work Product

(b) Subject a model to harassment based on gender, race, religion or national origin, where such harassment has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.

3. Notice

(a) In general

Each client and agency shall post in a conspicuous place of the job assignment notices to the professional model(s) hired, to be prepared or approved by the Division of Human Rights, setting forth excerpts from, or summaries of, the pertinent provisions of this subchapter and information pertaining to the filing of a charge.

(b) Complaints to the Client

Each client shall provide to each hired professional model, either directly or through the modeling agency, in writing or electronically, the names and/or offices, and a reliable means of contacting such individuals or offices, to whom a complaint of sexual harassment may be made.

(c) Modeling Agencies

It is the responsibility at the initial execution of the modeling contract between the modeling agency or modeling management company and the professional model to discuss the pertinent provisions of this subchapter and information pertaining to the filing of a charge such that the model understands these provisions and so signifies by executing this understanding in her contract. Modeling agencies must also provide notice to the client of any sexual harassment complaint.

(d) Penalty

Any employer, client, or modeling agency that willfully violates this section may be assessed a civil money penalty not to exceed \$500 for each separate offense.

4. The judicial forum for such a claim shall be a trial by jury, which may not be waived under any circumstance including by signature to any conflicting contractual clause.

Proposed Bill: Model Wage Protection Act of 2015

1. Definitions

(a) As used in this section, “professional model” or “model” means someone who performs modeling services for a client; or consents in writing to the transfer of his or her legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to a client.

(b) As used in this section, “client” means a retail store, a manufacturer, an advertising agency, a photographer, a publishing company, or any other such person or entity, which dictates such professional model’s assignments, hours of work, or performance locations, and which compensates such professional model in return for a waiver of his or her privacy rights enumerated above.

(c) As used in this section, “modeling agency” means an entity or person that interviews, hires, and refers models to various clients for temporary assignment.

2. Frequency of Pay

(a) Every modeling agency and client shall be jointly liable for ensuring that models are compensated in accordance with the terms of their contractual agreements, but not less frequently than semi-monthly, on regular pay days designated in advance by either the modeling agency or the client.

(b) No model shall be required as a condition of their work to accept wages at periods other than as provided in this sub-section.

(c) If a model’s work is terminated, the modeling agency the client shall be jointly obliged to pay the model’s earned compensation not later than the regular pay day for the pay period during which the termination occurred, as established in accordance with the provisions of this section. If requested by the model, such compensation shall be paid by mail.

3. Deductions from Wages

(a) No modeling agency or client shall make any deduction from a model’s compensation, except deductions which:

- (1) are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency including regulations promulgated under paragraph c and paragraph d of this subdivision; or

(2) are expressly authorized in writing by the model and are for the benefit of the model, provided that such authorization is voluntary and only given following receipt by the model of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made. Whenever there is a substantial change in the terms or conditions of the payment, including but not limited to, any change in the amount of the deduction, or a substantial change in the benefits of the deduction or the details in the manner in which deductions shall be made, the party making such a change shall, as soon as practicable, but in each case before any increased deduction is made on the model's behalf, notify the model prior to the implementation of the change. Such authorization shall be kept on file on of the party making the change's premises for the period during which the model works for such party, and for six years after such work ends.

(b) No modeling agency or client shall make any charge against a model's compensation, or require a model to make any payment by separate transaction, unless such charge or payment is permitted as a deduction from wages under the provisions of subparagraph 2(a) of this section.

(c) A model may revoke his or her authorization for any and all compensation deductions at any time, by providing a written request to do so to the party implementing such deductions. Upon receiving written notice to cease such deductions from a model, the party making such deductions must cease the deductions for which the model has revoked authorization as soon as practicable, and, in no event more than four pay periods or eight weeks after the authorization has been withdrawn, whichever is sooner.

4. Every modeling agency which assigns models to work for clients, and every client who a model performs work for shall be jointly responsible to:

(a) (1) provide such models in writing in English and in the language identified by each model as his or her primary language, at the time of hiring, a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including travel, meal or lodging allowances; the regular pay day designated by the modeling agency or client; the name of both the modeling agency and the client; any "doing business as" names used by the modeling agency and the client; the physical address of the main office or principal place of business, and a mailing address if different of the modeling agency and the client; and the telephone number of the modeling agency and the client. Each time the modeling agency and the client provide such notice to a model, the modeling agency and the client shall obtain

from the model a signed and dated written acknowledgement, in English and in the primary language of the model, of receipt of this notice, which the modeling agency and the client shall preserve and maintain for six years. Such acknowledgement shall include an affirmation by the model that the model accurately identified his or her primary language to the modeling agency and the client, and that the notice provided by the modeling agency and the client was made available in such model's primary language.

(2) When a model identifies as his or her primary language a language for which a template is not available from the commissioner, the modeling agency and the client shall comply with this subparagraph by providing that model an English-language notice or acknowledgment;

(b) Every modeling agency and client shall be jointly responsible to:

(1) notify models who perform work for them in writing of any changes to the information set forth in subparagraph (a) of this paragraph, at least seven calendar days prior to the time of such changes, unless such changes are reflected on the wage statement furnished in accordance with subdivision three of this section;

(2) furnish each model with a statement with every payment of compensation, listing the following: the dates of work covered by that payment of compensation; name of the modeling agency and client; name of employer; address and phone number of the modeling agency and client; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross compensation; deductions; allowances, if any, claimed as part of the minimum wage; and net compensation.

(3) establish, maintain, and preserve for not less than six years contemporaneous, true and accurate payroll records showing for each week worked the hours worked; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross compensation; deductions; allowances, if any, claimed as part of the minimum wage; and net compensation for each model.

(4) notify any model whose work is terminated, in writing, of the exact date of such termination. In no case shall notice of such termination be provided more than five working days after the date of such termination.

5. "Kick back" of Wages

(a) As used in this section, the term "person" shall include any firm, partnership, association, corporation or group of persons.

(b) Whenever any model who is engaged to perform work shall be promised an agreed rate of compensation for his or her services, be such promise in writing or oral, it shall be unlawful for any person, either for that person or any third party, to request, demand, or receive, either before or after such model is engaged, a return or contribution of any part or all of said model's compensation, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such model from procuring or retaining work. Further, any person who directly or indirectly aids, requests, or authorizes any other person to violate any of the provisions of this section shall be guilty of a violation of the provisions of this section.

(c) A violation of the provisions of this section shall constitute a misdemeanor.

6. Every modeling agency with whom a model contracts and client for whom such model performs work shall be jointly responsible to ensure that such model is paid for each hour worked a wage of not less than that established by statute as the prevailing minimum wage.

Proposed Labor Law Section 195(e) Form



Labor Law Section 195(e)
 Notice and Acknowledgement of Wage Rate and Designated Payday
 Client, Modeling Agency, Model Agreement

Client	Modeling Agency	Model
Company Name _____	Company Name _____	Name _____
FEIN _____	FEIN _____	Street address _____
Street address _____	Street address _____	_____
City _____	City _____	Apt. _____
State _____	State _____	City _____
Zip _____	Zip _____	State _____
Phone (_____) _____	Phone (_____) _____	Zip: _____
Preparer's Name _____	Agent's Name _____	Phone (_____) _____
Pay Roll Contact _____	Pay Roll Contact _____	
Models Rate of pay for shoot: (Per Diem or Hourly Wage) _____ Modeling Agency percentage: _____ Designated Pay day(Client to Modeling Agency) _____ Designated Pay day(Modeling Agency to Model) _____		

I hereby certify that I have read the above and the information contained in this form is true and accurate to the best of my knowledge and belief. Any false statements knowingly made are punishable as a class A misdemeanor (Section 210.45 of the New York State Penal Law)

Date _____
 Preparer's Signature (Client) _____
 Modeling Agent's Signature _____
 Model's Signature _____

This document has been read to me in full in a language in which I am fluent.
 Date _____
 Model's Signature _____

Duplicate signed copies of this form are to be provided to the model and the modeling agency. Original must be kept on record by the client.

S. Bryn Austin, Sc.D.
Professor
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SCHOOL OF PUBLIC HEALTH
Department of Social and
Behavioral Sciences

April 25, 2017

Commissioner Lorelei Salas, Department of Consumer Affairs
Commissioner Carmelyn Malalis, Commission on Human Rights
Commissioner Nisha Agarwal, Mayor's Office of Immigrant Affairs
Office of Labor Policy and Standards
ATTN: NYC Worker Hearing, New York City Department of Consumer Affairs
42 Broadway – 9th Floor
New York, NY 10004

Dear Commissioners:

Thank you for the opportunity to provide written testimony for the New York City Office of Labor Policy and Standards' public hearing on April 25, 2017, on the state of workers' rights in New York City. We provide this written testimony with the aim of offering our insights on the unfair and inhumane working conditions that professional models are compelled to tolerate in order to secure employment. We are researchers based at the Harvard T.H. Chan School of Public Health (Austin) and Northeastern University (Rodgers), and we recently completed a study of the health and working conditions of professional models that revealed a number of concerns about dangerous practices in the industry that put their health at risk.

In our study, which we published earlier this year in the *International Journal of Eating Disorders*, the leading peer-reviewed scientific journal in the eating disorders research field, we surveyed 85 models working in the American fashion industry. Our findings confirmed what has long been suspected: Models are being pressured to jeopardize their health and safety as a prerequisite for employment. The majority of the models in our study were medically underweight and almost all of the remainder was at a borderline weight just above the threshold for medical concern. Despite the extremely low weights of the 85 models surveyed in our study, nearly two thirds reported having been told in the past year to lose weight or change their body shape or size by their agency, a casting director, a designer, or other person involved in the modeling industry. Among models who had been told to change their shape in the last year, over half had been told that if they did not lose more weight, they would not be able to find any more jobs, one fifth had been told by their agency that they would stop representing them unless they lost weight, and one tenth had been told to undergo cosmetic surgery.

Among the 85 models we surveyed, more than half sometimes/often/or always skipped meals; more than half sometimes/often/or always went on fasts, cleanses or detoxes, one quarter sometimes/often/or always used diet pills, and nearly one in 10 said they sometimes/often/or always made themselves throw up to lose weight. In addition, models who reported being told to change their weight or shape were much more likely than other models to skip meals, diet, use fasts/cleanses/detoxes, and take diet pills to lose weight. It is worth underscoring again that the majority of the models in the study were medically underweight, yet these pressures from agents and others in the fashion industry and the models' dangerous health behaviors in reaction to this pressure were very common. In addition, the vast majority of professional models are girls and very young women: Most begin working as models in their early or mid-teens and few continue working in the industry once they reach young adulthood.

Research has well-documented that pressure to maintain an extremely low body weight and engaging in disordered weight control behaviors in attempts to diet are dangerous in their own right and can lead vulnerable young people to develop an eating disorder. Eating disorders, among the deadliest of any psychiatric disorder, are devastating illnesses that can lead to infertility, permanent damage to the heart, and organ failure. A 16- or 17-year-old girl with anorexia has ten times the risk of dying compared to other girls her age. Whether or not a model develops a full-blown eating disorder, these young models are working under conditions that essentially amount to coerced starvation. In what other industry in our nation would we tolerate coerced starvation of child labor?

Industry representatives often argue that models are independent contractors and so they are not obliged to ensure the same worker protections that would be required by law in a formal employer-employee arrangement. Models, though, do not have control over their own work relationships or working conditions as would be expected for independent contractors. They often do not have say in contracts signed between agents and fashion industry clients and often never even see the contracts. Models have voiced concerns about nonpayment, "pay in trade," and debt to agencies. Foreign models remain tethered to their agencies because of their visa terms, which further reduces their power to negotiate contracts and heightens their vulnerability to pressure to pursue extremely low body weights to continue working and to financial and other types of exploitation.

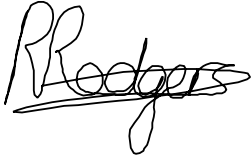
Our study also surveyed professional models about their views on proposed policy solutions for what they felt were the most pressing issues they face in their work. Importantly, models did not favor imposing restrictions on minimum body mass index as a condition of employment. Instead, the policy approaches rated by models as likely to have the most positive impact were to improve regulation of model employment status to increase job security and protections and regulation of model compensation to ensure payment in wages. These types of improvements in regulation would reduce the vast power imbalance between models and their employers, providing them with more leverage to negotiate equitable contracts, fair pay, and humane working conditions.

The New York fashion industry has the opportunity now to join France, Israel, Milan, Madrid, and more, where governments have taken important steps to protect the health and rights of models. Our study findings help to shine a light on the working conditions these young models are facing and offer insights for how we can do better. Every model deserves a guarantee of safe and healthy working conditions, and these better conditions will be reflected in the images that all young people see in the media. The improvements we propose will make a healthier environment for everyone.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Bryn Austin". The signature is fluid and cursive, with the first name "S. Bryn" and the last name "Austin" clearly visible.

S. Bryn Austin, ScD

A handwritten signature in black ink, appearing to read "R. Rodgers". The signature is cursive and stylized, with a prominent "R" and "Rodgers" written below it.

Rachel F. Rodgers, PhD

Worker's Rights in NYC - The Fashion Industry. Worker's Rights in NYC - The Fashion Industry.

Ashley Chew [REDACTED]

Sent: Tuesday, April 25, 2017 6:58 PM

To: NYCWorkerHearing (DCA)

Dear Commissioners,

My name is Ashley Chew and I've worked as a Runway and Commercial model in NYC for 4 years. In my time in the industry, I witnessed and or experienced issues within my local agency, and castings. My agency in particular had very unfair practices that ranged from difficulty in payments, delayed payments beyond the "90 day" window, pressures to be sexy/put on weight/lose weight for other markets, putting young girls in the face of danger with known predators posing as "photographers", and even charging \$2000 at signing a contract in "promise" of a modeling career, and lastly trade shoots, and runway shows when models have to sustain a living. There has been times I have been on set or backstage of a runway show for several hours and all they had was water or maybe a cheese tray if we were lucky. No pay for a full days work. Models do not need a another free pair of shoes from multi-million dollar companies. So many models help these companies bring in money with their image and are living in unfit conditions and I know plenty in the negative bank accounts. I myself resorted to a day job now between gigs. Each story I have witnessed or experienced is so specific and detailed that this letter would last for tens of dozens of pages. Fashion is supposed to be accepting, exciting, diverse, flourishing, which, it is all of

those things. The general public is in the dark about the dangers and labor of the industry. I myself even have had parents of young teens asking me about certain photographers, agency scams and businesses I know with unfair practices, which in turn I detour them from harm, emotional or financial stress, to companies with great policies. New York City has much power, revenue, potential, diversity and resources to change the industry around the world in making it a safe haven where young men and women can thrive.

Thank you for your attention. I hope the Office of Labor Policy and Standards will help to address these concerns.

Sincerely,

Ashley Chew

Hello,

I have a 14-year old-daughter who is trying to break into the modeling business. I am reaching out to make you aware of the problem of modeling scams in New York.

My daughter is currently hosted on a local, legitimate modeling web site, based out of Saratoga Springs, NY. The owner of this agency is great and has gotten a few job leads for auditions for our daughter. Nothing has "jelled" yet, but the leads were real.

In an attempt to find additional opportunities for our daughter; during October of 2016, I decided to send out several submissions for representation to other modeling agency web sites, based out of NYC.

Six weeks later, I received a reply from a woman claiming to be the owner of one of the agencies I had contacted earlier, and she then requested additional photos.

Excited to think that we had someone "looking" at our daughter, we found a local, professional photographer to take the additional shots and I submitted those to her. *She* responded a week later that she now needed more shots; with shorts, jeans, a dress and a bikini.

I located another professional photographer who then took additional photos and I submitted them. (We didn't have any bikini shots taken at that time. I submitted everything else that *she* asked for)

She then responded saying that she next wanted a video, and again, mentioned the bikini shots. My wife and I were leery of sending out bikini shots of our daughter unless we were sure we knew where they were going; therefore, we avoided this, up to this point. (I put "she" in italics as I am doubting the gender that was being portrayed.)

I began getting leery of how the e-mail interactions were taking place and the fact that all of *her* responses were short sentences and very few of them....

Additionally, the correspondence that I received from this *woman* sometimes seemed to have a "foreign" ring to the wording and phraseology. I began to wonder if this was a reputable web site. The woman's name, which I choose not to divulge at this time, can be found "all over the internet" as an expert in the modeling field; with videos, news stories, etc.,...so a person with her name, in this field, does exist.

However, there was no phone number listed on the web site nor any street address.

After contacting the **Model Alliance** about my concern, I also managed to track down, via e-mail, the real woman whose name was being used in the e-mails that I was initially sending photos to. I explained the situation to her and she confirmed that she was not the person with whom I had been communicating.

She stated that the web site I was responding to was an old site of hers from a former agency that she once owned. She thought that the site had been taken off of the internet a while back.

She was totally unaware of the scam that was perpetrated using her name and former agency web site.

She was very gracious about the entire thing and upset that someone was using her name fraudulently. I was dismayed, to say the least, about being taken-in by this ruse.

I wondered how many other parents and/or girls also responded to that web site and also sent photos to whomever it is who's receiving them....and then being asked for bikini photos,...as they did with my daughter, when I clearly stated at that time that our daughter was 14 years old!

How many parents and girls didn't have the sense to think that something was "up" and went ahead and continued to send whatever photos and videos were asked for...

All in hopes of getting representation by this agency!

In addition to this instance, there are other agencies in existence who also prey upon the hopes and dreams of young girls and their parents...asking for exorbitant monetary fees up front for over-priced photographs, portfolios, "contract fees", "bonding fees", etc.... all with no real hope of their child ever becoming real model!

I consider myself lucky as I had the gut feeling that something wasn't right so i began to investigate the situation. Additionally, The two photographers who shot all of the requested photos, did so gratis, therefore we suffered no financial loss.

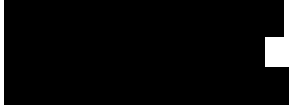
How many other families spent hundreds of dollars on photography, none of which will ever get representation by an agency for their daughters?

I hope the Department of Consumer Affairs will investigate the problem of modeling scams to protect my family and others in the future.

Sincerely,
Frank Torncello

April 25, 2017

James Scully



Dear Commissioners Lorelei Salas, Carmelyn Malalis, and Nisha Agarwal,

My name is James Scully and I'm currently a casting director and fashion show producer In New York City. I am writing in support of Sara Ziff and the Model Alliance with regards to the workers rights hearing this evening.

I would like to address a few of the points that may come up this evening regarding the health and safety issues that models face at work. The recent trend of models under 18 puts them in a particularly delicate situation as they are entering a workforce that is dominated by adults usually more than twice their age and being asked to perform tasks that are usually not suited for a young adult who is not emotionally or physically prepared to make choices regarding their careers.

Due to the disconnect between their age and how old they may appear, young models are asked to do the job of an adult and treated as though they are adults. This creates tremendous pressure to physically maintain a pre-pubescent body and to act as though they understand situations that they are too young to comprehend in order to maintain a steady career.

This opens up many models to mistreatment and discrimination by clients who feel since they are doing the hiring, the models should be expected to do whatever is asked regardless of whether or not it is within the parameters of the job. Models are made to feel constantly vulnerable, that there is always someone else who will do the job if they won't. This ultimately forces them to make uninformed, and even dangerous choices in their working lives.

Although the industry sees models as "independent contractors," models do not always have the control of the choices that are made for them by clients and their agents. If they were considered employees, legally there would be more protection regarding how much they work and which jobs they could choose. As an employer, there would be a different code of conduct that would be far more protective of the models than the current independent mode that is in place now.

By championing the Child Model Law in 2013, the Model Alliance has basically helped to stop 95% of the traffic of foreign models under 18-years-old coming to New York. The amount of paperwork and protective measures that must be followed to employ these models is far too daunting for many employers and foreign model agents to comply with and has created a better work situation for the models and the agents who represent them. This was an important first step. Still, more still needs to be done to protect this vulnerable workforce.

If I can expand on this information, I would be pleased for you to contact me.

Sincerely,

James Scully

April 25th, 2017

Commissioner Lorelei Salas, Department of Consumer Affairs

Commissioner Carmelyn Malalis, Commission on Human Rights

Commissioner Nisha Agarwal, Mayor's Office of Immigrant Affairs

Office of Labor Policy and Standards

Re: New York City Worker Hearing, New York City Department of Consumer Affairs

"

Dear Commissioners:

I am submitting this written testimony as a working fashion model that has experienced mistreatment in the workplace firsthand. From the moment I was signed to a modeling agency, I was given a strict exercise and diet regime to follow. Though this always weighed on me, I was lucky because I was not introduced into this industry until I was eighteen. I was considered an adult, and although I still struggle with unhealthy eating fears, I have developed a stronger sense of self which has helped me face the struggles of my career.

I would not have been able to handle the struggles if I had entered this industry at a younger age. During my career, I developed a very large tumor inside my ovary and was put on bed rest for several months. I was complimented on my thinner figure and pale complexion. That was the sole time I had ever experienced any body positivity from anyone in the industry. The body they told me was finally perfect was the product of a severe illness. No one should ever have to experience the pain and internal struggles around food like I did as a model. It is time for a change. That's why I fully support creating legislation that aims to create healthier and safer working conditions for models.

I was on the brink of developing an eating disorder. Working as a model, I realized that it would have been very hard for me to seek help. Young girls in the industry are faced with pressures to lose weight and develop extremely unhealthy habits. Rarely can they turn to their agencies—or anyone else in the industry—for help. This is why creating basic protections for models is so important. Developing regulations that protect models and hold agencies accountable, could possibly decrease the prevalence of eating disorders in the industry.

Models are not only exposed to horrible food attitudes, but are also oftentimes the victims of inadequate pay. For example, I developed an excellent working relationship with a client, where I was steadily booked. However, payments began coming later and later. I missed several other opportunities to book paying jobs, because I did not hurt my professional relationship with the client. Eventually, the checks stopped coming altogether. I had a \$20,000 paycheck that would never come.

I've sadly heard many similar stories from other models. A lack of financial transparency or accountability is the harsh reality that models face. This must change. It is bad enough dealing health concerns as a model, but it's even more crippling to deal with those challenges when you can't pay your medical bills.

Modeling is a career as significant as any other. We often work very long hours and experience harsh working conditions. Models deserve basic worker protections. It's time to hold those in

charge accountable so models can have a much healthier and safer experience working in the fashion industry.

Sincerely,

Kelsey Christian
Model

April 25, 2017

Commissioner Lorelei Salas, Department of Consumer Affairs
Commissioner Carmelyn Malalis, Commission on Human Rights
Commissioner Nisha Agarwal, Mayor's Office of Immigrant Affairs
Office of Labor Policy and Standards
Re: New York City Worker Hearing, New York City Department of Consumer Affairs

Dear Commissioners:

I am sharing this written testimony as the co-director of the Model Alliance, a labor group for models working in the American fashion industry. As a former model, I have been mistreated in the workplace on more than one occasion and hope to improve the industry for the next generation.

When I was 14, I had my first “job” interview—as a model. I met with different agencies, I was given a contract, and I sat down with my mother to read it over. I was assured that my agency had my best interests at heart.

However, I quickly learned that this wasn't always the case. For years, I booked jobs where I worked long hours without breaks. In many instances there wasn't food on set for models and sometimes there wasn't even a proper restroom to use. I was told to “grin and bear it,” because my job was to “look pretty.” My agency told me that complaining meant that I could be blacklisted from the industry for being too difficult to work with.

Although my modeling agency was supposed to work for me, representing me and my interests, it generally felt like the power dynamic was the other way around. For example, I was always expected to be available for castings and jobs with little advance notice; it was the agency, not me, that negotiated my rate of pay, sometimes for unpaid and low paid work; and I rarely knew the terms of the booking in advance of the agency confirming a job.

Models often describe the modeling industry as the Wild West, and agencies, in particular, do not abide by a set of laws or regulations afforded to other performers to protect models. In addition, models are rarely given a transparent breakdown of the fees their agencies are charging them. For example, there were many instances where I didn't see a check from a job I did months prior. In many cases, hundreds dollars would be deducted from checks paid to me by the agency for charges like the “website fee” and “messenger service.” When pressed, my agency would never give me a detailed breakdown of these hidden fees.

Most models are underage and vulnerable. Many are foreign, do not speak English as a first language, and don't have an advocate to stand up for them. They are afraid to speak out when they have a grievance. They do not have adequate laws in place to protect them in this aspirational industry with very adult pressures. The fashion industry is a multi-billion dollar industry that has taken advantage on this lack of regulation for too long.

Models need basic worker protections like anyone else. Creating a set of suggested guidelines won't cut it. Stakeholders in the modeling industry should be held accountable for their behavior. The faces of the fashion industry have a voice—and it's time to have their voices heard.

Sincerely,

Madeline Hill

Madeline Hill

Co-director, the Model Alliance

WRITTEN TESTIMONY // Public Hearing on the State of Workers' Rights in New York City WRITTEN

TESTIMONY // Public Hearing on the State of Workers' Rights in New York City

Meredith Hattam [REDACTED]

Sent: Monday, April 24, 2017 6:23 PM

To: NYCWorkerHearing (DCA)

Dear Office of Labor Policy and Standards,

When I was an 18-year-old college student in San Diego, a woman told me I had the chance to be someone special, but I had to lose weight.

I was 5-foot-9, and 135 pounds, an awkward teenager bullied in high school. My mother was in a hospital with a terminal illness, and my father was there with her. Losing weight was probably the only thing I could control. If I had the potential to be a model, why shouldn't I at least try?

And so I only ate protein and vegetables and ran 3, 6, 10 miles a day. In eight weeks, I had lost 20 pounds, and I returned to the agent's office. I modeled in New York in 2009 and 2010, when I quit to graduate from college. Most of that time, I was starving, though I denied that fact to my father, my friends, my co-workers. My period stopped. I was cold all the time. I stayed up late nights obsessively chronicling how many calories I'd eaten.

I never made a lot of money. But most models do not. How could they, with unpaid jobs, even for the world's biggest designers, unregulated agencies managing their finances and no legal rights as employees?

As those in a position of power, you can change the lives of thousands of young girls who suffer like I once did by giving models the workplace protections they deserve.

Many will argue that models know what they're getting themselves into, but most also assume that modeling is glamorous and well-paid.

In truth, the fact that this multi-billion-dollar industry is unregulated only serves to make these problems worse, because keeping silent is encouraged. Models work under exclusive contracts with agencies, limiting how they can manage their finances. Many models are in debt to their agencies, and since they are misclassified as independent contractors, they have no legal protection.

Worse, a recent study published in the International Journal of Eating Disorders reveals that over 62 percent of models polled reported being asked to have to lose weight or change their shape or size by their agency or someone else in the industry. On the whole, anorexia kills more people than any other mental illness - including depression.

At 29, I still think about my weight occasionally, even after years of therapy and recovery from an eating disorder. I am still friends with models, and it

turns out I wasn't the only one who felt abused. Many models may have been misclassified as independent contractors, leaving them devoid of adequate legal protections. Some were told to lose extreme amounts of weight or were sexually harassed by clients. And many never got paid what they were owed.

My experience led me to volunteer with the Model Alliance, an advocacy group for labor rights within the industry. I get to work with young women and men and help them define themselves as visible workers in an industry that runs on invisible labor.

But I'm just one person. You are many, and have the power to could change how the industry works. Modeling is a job, like any other. And models deserve to be happy, healthy and safe.

Thank you,

Meredith Hattam

--

Meredith Hattam

Digital Strategist & Graphic Designer, the Model Alliance

302A West 12th Street, Suite 316

New York, NY 10014

Ph. 619.207.7066 | ModelAlliance.org | [@meredithhattam](https://www.instagram.com/meredithhattam)

Follow us: [@modelallianceny](https://www.instagram.com/modelallianceny) | [fb.com/modelalliance](https://www.facebook.com/modelalliance)

Giving the faces of the fashion industry a voice.

Rosalie NelsonRosalie Nelson

Rosalie Nelson [REDACTED]

Sent: Monday, April 24, 2017 11:14 PM

To: NYCWorkerHearing (DCA)

Dear Commissioners,

My name is Rosalie and I've worked as a model for the past six years. In my time in the industry I have experienced an incredible amount of pressure to lose weight. So much so that I was promoted to start a petition in the U.K. -

<http://change.org/ModelsLaw>

I've been sent on six week model trips to foreign countries, coming back home with less money than I went with. Being taxed for things which don't generate tax, like already paid for train tickets and flights, apartment fees which don't include any privacy or reliable water or heat sources.

I've worked 12 hour days with no breaks, not even for even water. No food supplied.

I have jobs from over 12 months ago which I still haven't been paid for. The rate of my pay is never of discussion, it's just whatever my agency tells me - I have to accept at the risk of losing work.

Please help change these standards in NYC, and hopefully the world.

Thank you for your attention. I hope the Office of Labor Policy and Standards will help to address these concerns.

Sincerely,

Rosalie Nelson

Sent from my iPhone



THE MODEL ALLIANCE

April 25, 2017

Sara Ziff
Founding Director, Model Alliance
302 A West 12th Street, Suite 136
New York, NY 10014

Commissioner Lorelei Salas, Department of Consumer Affairs
Commissioner Carmelyn Malalis, Commission on Human Rights
Commissioner Nisha Agarwal, Mayor's Office of Immigrant Affairs
Office of Labor Policy and Standards

Dear Commissioners:

Thank you for the opportunity to testify before you today. My name is Sara Ziff and I am the founder of the Model Alliance, a labor organization for models working in the American fashion industry. I started working as a model in New York City when I was 14-years-old and I have been lucky in my career. But my peers and I have also experienced the pitfalls of working in an unregulated industry and endured systemic abuses that have gone unchecked for too long: issues like long working hours without meals or breaks; pressures to pose nude, diet excessively, and drop out of school; and opaque bookkeeping and resulting wage theft. These problems are common as they are difficult for models to report without risking their jobs. And, unfortunately, since models are a mostly young, female workforce whose work appears to be glamorous, our concerns tend to be trivialized and dismissed.

Although essentially all working models operate under fixed-term exclusive contracts to their agencies—who have power of attorney, control their access to clients and work schedules, negotiate their fees, book their jobs, collect their earnings, cut their checks, and sponsor their work visas—modeling agencies argue that models are independent contractors, not employees. Models are explicitly defined as employees under the New York unemployment benefit statute, and many working models may be misclassified as independent contractors. Further, modeling agencies in New York appear to meet the

definition of employment agencies and have faced multiple class action lawsuits brought by models who allege shady accounting practices and systemic theft. The Dept. of Consumer Affairs has done nothing to address this issue.¹

Lack of financial transparency and accountability in New York's modeling industry are a widespread problem. The amount a model is paid for her work is negotiated between the agency and the client. However, often, models are not notified by their agencies of the anticipated rate of pay in advance of the booking, nor are they always given the opportunity to turn down work. Most models have low bargaining power and frequently are not paid all of their earned wages, are paid wages late, are paid in "trade" (meaning clothes instead of money), or are not paid at all. Many models, including minors, work in debt to their agencies, which charge a 20% commission from the model, a 20% service fee to the client, and numerous unexplained deductions from the model's account.

One common charge deducted from the model's earnings is the cost of living at an agency-owned "model apartment." Young foreign models have reported being charged as much as five times the market rate to sleep in bunk beds. While agencies often front the cost initially, the high rent ultimately comes out of the model's earnings, leaving many models trapped in a vicious cycle of debt. Because of their visa terms and debt, models recruited overseas often remain tethered to their agencies.

Further, because even reputable agencies in New York are not licensed, scam operations are able to thrive. Claiming to be modeling agencies, unscrupulous companies tell young people they are destined for success — they just have to pay upfront for photos and other fees. However, the jobs never materialize, leaving the aspiring models out of thousands of dollars. In other cases, models have reported being sexually assaulted and have even gone missing through modeling scams.

Modeling agencies call themselves "management companies," rather than employment agencies, claiming that their primary role is to manage models' careers, not to book jobs for models. In reality, models sign exclusive contracts to their agencies, whose primary purpose

¹ See New York General Business Law §§ 172, 185.

and activity is to obtain engagements for their models. Explicitly defining modeling agencies as “employment agencies” could help ensure they are properly regulated by law. In turn, this could improve a model's ability to collect payment, increase the level of financial transparency, and protect aspiring models from scams.

Under current federal and New York State law, independent contractors are not afforded the same protection from sexual harassment in the workplace as employees. And, although New York City law protects independent contractors against sexual harassment, because of the multi-level structure of hiring, in some instances the City law may not apply to the sexual harassment of models either. This means that when a model is sexually harassed or has her wages stolen, she has limited legal recourse because courts may not be willing to hold either the agency or the client liable for the abuses she suffered. In some cases, models have been misclassified. And, yet, regardless of how a model is classified, it is still imperative to maintain a safe and fair working environment.

Models would benefit from amendments to New York City Human Rights Law to explicitly permit independent contractors to sue not only the party with which they directly contract, but also the entity with which that party contracts to arrange work for the independent contractor. Doing so would allow models to bring claims against both agencies and clients, seeking to hold them jointly liable under New York City law.

Modeling is a winner-takes-all market; thousands enter with dreams of signing an agency contract and becoming the next Kate Moss, but very few make it. I sincerely hope you will give this industry a closer look and help us make it a safe and fair work environment worthy of young people’s hopes and dreams. Thank you for your time and consideration.

Sincerely,
Sara Ziff

Enclosures (3)

**Public Hearing on the State of Workers' Rights in New York City
Tuesday, April 25 at LaGuardia Community College**

Frank Gattie Testimony

My name is Frank Gattie. I currently work at the National Employment Law Project, but spent nearly ten years working as a server in New York City's restaurant industry. Today I will be testifying on what I experienced during my time as a server at Uno's Chicago Grill in Astoria, NY; Dos Caminos in New York, NY; and Atlantic Grill in New York, NY.

I imagine you often hear complaints about restaurants having it tough. Owners may speak about drowning in regulations from New York's Labor and Health departments, and feeling their businesses can barely stay above water. It may seem that these regulations are becoming an impediment on business, but having worked as a server in NYC's restaurant industry for ten years, I have yet to find this dream restaurant where regulations are tightly followed when the inspectors are not around. Instead, I found wage theft, erratic scheduling, and a disdain for the health and safety of workers and customers alike.

One of the biggest problems in the industry is wage theft, and management often manipulates staff to go along. Management is quick to remind front-of-house employees that their real wage comes from tips, and not the measly tipped minimum wage they are required to pay. Restaurants have figured out that they can save labor by convincing workers to work off the clock while still earning tips. There was a time when I worked under this scheme. From 2007 to 2011, I worked at Uno Chicago Grill in Astoria, Queens. During a period the restaurant was understaffed, I worked 60-hour weeks, but the manager would "back out" my hours every Sunday to make it look as if I had only worked 40. Additionally, in the four years I worked there, I never once received a break. After moving on from Unos, I refused to have my wages stolen in this way, but my co-workers, especially those who had families and needed extra cash, were easy prey for management. In 2011, I went back to school and began working as a server for BRGuest Restaurants, spending time at both Dos Caminos in East Midtown and Atlantic Grill on the Upper East Side. BRGuest Restaurants are notoriously understaffed, and I was often scheduled more shifts than I could handle while attending school. Some managers would allow my shifts to be covered only by those who could be "trusted" to not receive overtime. These were workers who knew when to clock in a little late or clock out a little early without complaint. One manager, who was a long-time server at another BRGuest Restaurant, prided himself in working eight shifts a week and never going "over" when he waited tables. I hated asking people to cover my shifts who I knew were cheating themselves out of wages, but getting a week's work schedule one day in advance left little choice.

At Atlantic Grill, our work week began on Wednesday, and our schedules generally came out around 2am on Monday. I always opened the schedule in horror, waiting to see all the surprises it contained including on-call shifts and back-to-back doubles. There were times at BRGuest when I was scheduled up to nine shifts a week, including several on-call shifts. The on-call shifts required employees to call the restaurant at a specific time, for example 4pm, and the manager would tell you whether you were working or not. If you had to work, you were given



To: Office of Labor Policy and Standards (OLPS), Department of Consumer Affairs (DCA), New York City Commission on Human Rights (NYCCHR), Mayor's Office of Immigrant Affairs (MOIA)

From: Irene Jor, Marrisa Senteno, Allison Julien – NDWA's New York Organizing team (newyork@domesticworkers.org), Rocio Avila – State Policy Director (rocio@domesticworkers.org), and Tina Vu Pham – Gig Economy Organizer (tina@domesticworkers.org)

Re: Testimony Submitted for New York City's State of Workers Hearing
Date: April 25, 2017

I. Background: About the National Domestic Workers Alliance (NDWA)

The National Domestic Workers Alliance (NDWA) is the nation's leading voice for dignity and fairness for the millions of domestic workers in the United States. Founded in 2007, NDWA works for the respect, recognition and inclusion in labor protections for domestic workers, most of whom are women. The alliance is powered by 60 affiliate organizations, plus our local chapters in Atlanta, Durham, Seattle and New York City, of over 20,000 nannies, housekeepers and direct care workers in 36 cities and 17 states.

NDWA leads several campaigns and coalitions to advance the rights of domestic workers by advocating for increased labor protections, racial justice, gender equity and humane immigration policies.

II. New York Domestic Workers win a Bill of Rights

The NYS Domestic Worker Bill of Rights was signed into law on August 31, 2010, marking the culmination of a six-year grassroots organizing campaign led by Domestic Workers United and the New York Domestic Workers Justice Coalition. The first legislation of its kind, the Bill of Rights closed gaps in labor laws that had left domestic workers with fewer rights than other workers in the state, and added new protections. It has inspired a national movement and Hawaii, California, Massachusetts, Oregon, Connecticut, and Illinois have also passed new protections for domestic workers in the past 5 years.

III. Implementing & Enforcing Domestic Worker Labor Protections

Various NY-based domestic worker organizations and legal advocates have supported domestic workers to come forward to assert their rights. In many instances with this support, workers have sent demand letters to their violating employers, or filed complaints with government enforcement agencies such as the NYS Department of Labor Wage & Hour Division. Anecdotally we have found that demand letters are perceived to produce better outcomes for workers (e.g. faster resolution, or higher amounts of wage recovery), although it was also true that the length of time it took to complete investigation, reach a resolution, and collect from the employers was unpredictable in both of these enforcement options. In some instances, though less common, workers have also

sued employers in small claims court, or pursued full litigation with full legal representation. Sometimes litigated cases have become the basis for campaigns to highlight a specific set of abuses and issues in the industry.

Key challenges to implementing the bill and enforcing these rights have included:

- Only a fraction of domestic workers know about their rights, and the appropriate steps of action that can be taken. This is compounded with the small number of domestic employers who seem to know about their legal responsibilities and/or feel compelled to fulfill them. Often practices deemed the neighborhood, cultural norm is chosen over that which complies with the legal standards. We see this in particular with the refusal to pay domestic workers proper overtime.
- Some workers have a sense they *have* rights, but many do not know to whom or where to turn when their rights are violated.
- Even when workers know their rights they often may not feel empowered to assert their rights, due to the power differentials between them and the employer that make them vulnerable to forms of retaliation that impact their ability to keep or find future work, put their well being and safety at risk, and/or expose their immigration status[1]. Many domestic workers work in very small workplaces, most often them being the only employee, thus there is no way to anonymously file a complaint without being identified.

Even when workers are interested in taking action to enforce their rights there can still be significant barriers in the process that prevent them from doing so.

- Due to the fear of retaliation workers may start the process but not complete it through resolution.
- Workers may also find the process disempowering because of the length of time it may take to be resolved, or if it remains unresolved or it results in an empty judgment, thus abandoning the process all together when they do not believe they will see results.
- Domestic workers in New York truly come from all corners of the world, and language access is a key component of successfully working with many immigrant domestic workers to pursue their case.
- Often domestic workers have also experienced trauma- especially in cases of incredible exploitation and trafficking, and they may also be in economically precarious situations with regards to housing, immigration, etc. It is important for domestic workers to have access to social services that help them establish the stability needed to pursue their case.

IV. Strategies to Strengthen Enforcement in the Sector

Winning domestic workers full inclusion in basic labor protections is just a first step in securing the floor and raising standards in this sector. In the past 2 years, NDWA has work with our local affiliates to explore the following strategies in pursuit of a more worker-led, community supported enforcement process.

1. Prioritize leadership development among domestic workers that prepares and utilizes them as key actors in supporting peers through the enforcement process. In 2015 we began to develop the Groundbreakers leadership program, in which cohorts of 4-6 worker leaders from different organizations and communities are trained in systematic worker outreach and as worker rights enforcement navigators. The latter training equips them with the knowledge and skills to facilitate community education workshops, issue spot & identify when workers have potential cases, complete full a pre-intake interview, and peer coach workers partaking in a legal clinic for the duration of their case. We have trained 16 Groundbreakers thus far.

For those workers who do not feel comfortable coming forward, Groundbreakers follow-up with these workers occasionally to check-in on them and work towards building trust to learn more details about their working conditions, barriers to enforcement (perceived or real), and inner motivations. Groundbreakers work with staff organizers to strategize on how to remove the barriers and provide this person with the support they need to come forward. Groundbreakers do not only add capacity to our staff efforts, but provide a deep expertise in their firsthand insight on the sector.

2. Work collaboratively with government agencies who share values and vision alignment, to explore how to leverage our collective resources and mechanisms to increase our capacity to bolster enforcement as a system, and not just an instance. On the part of government agencies this could look like offering up agency-supported outreach efforts, research, public hearings and events, and ability to lend additional staff capacity or services provision.

In turn we strive to establish community-based organizations that work with domestic workers and employers are central to government enforcement processes. Our organizations provide invaluable expertise and skills and there is a formal role for us beyond outreach and joining government-led efforts. In an industry that does not have mechanisms for collective bargaining, our organizations are key actors in enforcing workplace rights and raising standards.

We applaud New York City being a national leader in passing and implementing the law to establish a Division of Paid Care in 2016. Thus far NDWA is proud to say we have worked with the Division to hold a Brooklyn Domestic Worker Convening, and create a domestic worker research survey instrument.

Strengthening sector-specific knowledge, and protocol around deterring ICE from entering into workplaces to conduct arrests among government enforcement agency investigators is very important. Key to this is helping investigators understand and practice how to work with very vulnerable populations, and to gather and assess evidence in a fair way. This is of course in confluence with supporting workers to understand the enforcement process, having a realistic perception around timeline and expectations for follow-up, and ensuring the power differential between their employers and them are mitigated, or eliminated if possible during the investigation.

3. Work towards developing metrics for measuring the progress in domestic worker rights enforcement efforts, and surfacing patterns in systemic violations and barriers to successful enforcement.

Our former Law Fellow, wrote a memo drawing on the DOL's data on domestic worker complaints filed in 2010 through 2014, for which we had submitted a FOIL request for the spring of 2015. In over 40 percent of the DOL's 2010-2014 domestic worker cases where wages were found due in the first four years the law was in effect, the amount of wages due was under \$1,000. The small claim amounts suggest many of these complaints were likely for unpaid wages for a short period of time at the end of a job—a fairly clear-cut matter to investigate. NDWA has learned that there are significant differences in cases between short-term, temporary domestic workers such as housecleaners and longer-term, semi-permanent workers including nannies, direct care workers, and live-in domestic workers who clean and provide care. The nature of these cases and how they should be investigated and enforced is vastly different due to the duration and intensity of the household employment, including such factors as the bonds between nannies and children/families, the probability that workers in these situations would like to continue working with the same families despite violations, and the nature of the violations which tend to be of a more long-term and systemic (such as not recording or paying overtime properly), rather than episodic (such as wage theft).

Between May 2016 and March 2017, NDWA alone (not including affiliates) engaged about 80 domestic workers who had potential or confirmed workplace violations. More than half entered and utilized our legal clinic that was staffed by the Urban Justice Center – Community Development Project. We developed an expanded case tracker that helped us quickly identify the most prevalent violations experienced by domestic workers receiving support from us:

OT violation	Minimum wage violation	Unpaid wages	WTPA violation	Breach of contract	Wrongful termination	Retaliation	Trafficking
79%	12.50%	18.75%	35%	12.50%	4%	12.50%	10%

Overtime violations were by far the most commonly experienced violation across the clinic. Often workers’ stories reflected that related to overtime violations where irregular schedules, and lack of a shared work agreement or contract that defined the terms of the job.

Our expanded tracker also tracked 1. stage an open case was at (e.g. if the worker had attended a clinic, case investigation was taking place, demand letter was sent, a settlement was being negotiated, etc.), 2. the specific type of barriers workers shared they were facing (see below), and 3. demographic information. We were able to cross tab these categories to explore relationships and patterns that were less obvious upon first look.

	Still in job or job search	Fears retaliation	Conditions & treatment cultivates fear	Economic instability/crisis	Mistrustful of service providers and/or government	Hard to follow-up with
% of total	26.25 %	22.5%	13.75%	10%	12.5%	17.5%

V. Special Issues in the Sector

a. Labor trafficking [2]

Domestic work in private residences is one of the most common venues of trafficking and exploitation, along with agriculture, hospitality, construction, and restaurants. In Urban Institute’s 2014 study of labor trafficking in the United States, domestic workers made up the largest proportion (37%) of the 122 cases they reviewed. In a 2013 report spotlighting 150 cases of human trafficking, New York City legal services organization City Bar Justice Center showed that of their labor trafficking clients, 79.3% were domestic workers. And, “as of August 2014, the National Human Trafficking Resource Center (NHTRC) [operators of the national hotline] received reports of 851 potential cases of labor trafficking involving domestic work, making it the most frequently reported type of labor trafficking and representing more than a quarter of all labor trafficking cases reported to the NHTRC.” The confluence of a growing market for inexpensive and exploitable household workers, a lack of legal protection afforded to domestic

workers in the United States, and the inherently isolated setting of domestic work (Free the Slaves and Human Rights Center 2004) make domestic work particularly susceptible to trafficking and egregious forms of exploitation.

According to NDWA's affiliate, Adhikaar in Queens, NY, who have been working directly with trafficking survivors, each survivor's story is unique but there are some common denominators that have defined the trafficking experience.

- Wealthy employers ordered workers to lie on their visa interview and retained their passports once arriving New York.
- There was often a lack of work contracts or agreements that establish an agreed upon wage or hours worked.
- Workers were often in 24/7 live-in work situations
- Workers were paid inconsistently and after long stretches of time, for example every 6 months or 2 years, or when the worker pleaded to the employer that their family back home was in dire need of money. Sometimes the money was directly sent to the family in the home country, and other times employers lied they did when they didn't. For many there was never direct payment or any payment at all. "You live with us, you eat our food, you are like family, why do you need money?" was a common thing employers would say to crush any sense of self, wishes, or wants that workers had left.
- Workers ability to communicate with their own families was also often curtailed. Most employers did not allow trafficked workers to use phones. For years many survivors were unaware of what was happening back home or in the lives of the people they loved.
- Many employers did not allow workers to learn English.
- Employers often did not allow workers to venture outside and instilled in them fears of the outside world, often using police and deportation as threat.
- In some cases, workers were denied food and physically abused. There is often long-term psychological abuse that affects survivors long after they have left the abusive situations. Survivors suffer from anxiety, depression, hopelessness and suicidal thoughts.
- Even after leaving a trafficking situation, survivors tended to remain trapped in low-wage work in the same industries in which they had been trafficked. Commonly, survivors remained in situations where they were at risk for further exploitation owing to a lack of work history, references, and job-training programs.

The majority of trafficked domestic workers enter the United States on lawful visas (G5, A3, C3, B1/B2, and NATO7), which are visas reserved for use by foreign diplomats, government officials, and businesspersons to bring "servants" to the United States. The Department of State coordinates and approves of these visas, but challenges of jurisdictional issues and the overall lack of regulation of domestic work means there is no oversight of these workers once they are in the United States. Often by the time workers pursue (or consider) escaping the situation, and seeking services their visas have expired. Their fear of the police, deportation, and possible retribution from their exploiters (recruiters, and/or employers) can prevent them from coming forward and seeking help, and may also inhibit labor trafficking investigations.

b. Agencies & live-in domestic work [3]

Domestic workers who have secured job placement through household employment agencies have often shared they are charged ridiculously high recruitment fees, having the first week's pay deducted for the placement, and other illegal deductions. Employment agencies often also collect fees without finding jobs for consumers.

Many of such household employment agencies are known to arrange a high volume of live-in domestic work arrangements for recently arrived immigrants in which the hours are incredibly long (well beyond 40-44 hour work week), and the pay is very low (often paid as a weekly rate). Although employment agencies are prohibited from sending customers to jobs that pay below the minimum wage, this practice is still widespread in which workers are being misled about their working conditions and compensation.

Live-in domestic workers often face abuses that include food & rest deprivation, barred access to proper health care, solitary confinement, and regular verbal abuse. 36% of live-in domestic workers report abuse, 25% indicate getting less than 5 hours of sleep a night, and 31% lacked any means of communicating privately with family or friends (Burnham and Theodore 2012). Often the agencies who made the placement may refuse to address the issue, force the worker to stay in the placement, or fire them and continue to refer new workers to the same abusive employer.

Specific to agency-employed, home care workers those who are working 14 or more hours a day, are not getting paid overtime. On the other hand our national home care organizer has also found the flip side to be true, where some workers do not work anywhere near full-time but not by choice. Following the U.S. Department of Labor regulatory rule change, it has become commonplace for employers to drop the number of hours they hire for. Many home care workers are found to be severely underpaid for the long hours they work, or perpetually underemployed.

c. Problems for Gig Workers:

Domestic workers (DW's) have been referred to as the original "gig workers" (refers to workers who are part-time, self-employed, or hold multiple jobs many through on-demand digital platforms) because they have worked in the margins for hundreds of years, excluded from labor protections, often working with multiple employers, and with no safety-net benefits or avenues to collectively bargain for better working conditions. With the disruption of the "on-demand economy" (refers to all digitally based marketplaces (primarily mobile) that offer access to and/or fulfillment of good and services) and the armies of workers relying on app-based technology platforms to find work in our industry (home care, child care, and house cleaning), the problems affecting DW's have only been further exasperated.

DW's have been building a powerful movement to raise standards and eliminate the racist and sexist laws that exclude our industry from basic labor protections under federal and in many states laws, such as, minimum wage, overtime, discrimination/harassment, workers' compensation, health and safety, right to collectively bargain. Since 2010 with the passage of the New York Bill of Rights, we've successfully passed 7 state bills commonly referred to as "Domestic Worker Bill of Rights" (DWBOR's). Here, our fight has been to get our industry to be recognized as a formal industry and to be extended the rights afforded to other "employees" under the law.

Yet we must not overlook that during this process of movement building and legislative gains, the "future of work" has become a national conversation that is often not led by the labor movement. We've seen a dramatic increase in the number of on-demand companies, both "market" based platforms such as Care.com, and on-demand

companies, such as Taskrabbit, Handy, and Instacart. Many of the on-demand companies treat workers as “independent contractors,” which means that they do not have labor protections under the law. Neither do they have safety-net protections, such as health care, sick time, unemployment insurance, disability insurance, workers’ compensation or retirement, among others.

While we’ve had several victories that have raised standards for domestic workers, the enforcement of these policy gains continue to be a challenge. The future of work and on-demand companies as business models complicates these efforts. It is not only due to the “independent contractor” status of gig workers, but also due to the disaggregation of workers inhabiting on-demand platforms. Thus, we have an uphill battle to organize, educate and build power in a gig-economy industry. An industry that leaves workers in the shadows and lacking of basic safety-net protections.

This situation is further exasperated for DW’s working in the gig economy. Many of them are undocumented, low-wage workers, immigrants, and women of color. While no data has been compiled yet about the percentage of domestic workers employed in the gig economy, we know through anecdotal information that there is a growing base of workers. We’ve also heard of many workers who have faced barriers accessing on-demand work. This is because many of the on-demand companies require background checks, where often a Social Security number is required. For those that are able to find work in on-demand platforms, they will likely pay higher taxes and expenses. It will also be a challenge for many immigrant DW’s to claim tax deductions like other self-employed independent contractors because of limiting factors due to their immigration status.

Recommendations:

While there is much talk about the benefits of on-demand work, namely the flexibility and freedom offered to workers, gig-workers shoulder far more risk and significantly higher costs than workers in traditional employment arrangements since they are not covered under most workplace protections.

In short, our base of workers, which now includes gig-workers in the domestic industry, requires us to find alternative solutions to raise standards and provide a safety net of benefits that are not easily extended to them either in the formal or informal industries, including the on-demand economy. The following are a set of policy recommendations that are tailored to the unique and complex set of circumstances faced by domestic workers in the gig economy and for contingent workers alike:

1. Portable Benefits Worker Fund Plan:

- ❑ **ALIA¹:** NDWA launched ALIA in the summer of 2016. It is an app where domestic worker employers of house cleaners make voluntary \$5 contribution to worker benefits. It was created in response to the barriers identified earlier impacting DW’s. It is available to all workers, including to those treated as “employees,” but who work as “contingent workers,” namely those who work for multiple employers never quite making the threshold to be covered under sick time, workers’ compensation protections or are able to afford health insurance or other benefits due to their low wages.
- ❑ **Rationale:** we recommend that the city of New York consider passing legislation that provides a system, whereby domestic workers and contingent workers alike can access portable benefits. ALIA is an example and one that is currently being tested in New York with our base of workers.

¹ See-<https://www.myalia.org/>

We need to create alternative tools to that can allow employers to make worker contributions in a worker fund administered by the city, but that is a partnership with a non-profit or worker center, such as NDWA, who can provide the worker input and shaping of the portable benefits fund.

General Principles for a Plan:

- ❖ **Portable Benefits worker fund contribution should take into account the burdens imposed on self-employed workers or independent contractors.** Unlike “employees” whose employers make payroll tax contributions to Social Security and Medicare, independent contractors are required to pay for personal income taxes, self-employment taxes of approximately 15.3%,² and business expenses (gas, insurance, tools, cleaning products, etc). This means that the employer contributions to the plan should be high enough not only to pay for the benefits provided, but also to ensure that workers have enough to cover all other expenses.
- ❖ **To ensure that gig workers receive the pay and benefits that they need, health and safety protections must be required as part of any portable benefits worker fund proposal.** We recommend an expansion, for example, New York State established The Black Car Fund in order to provide benefits to contractors that injured on the job. The fund provides worker’s compensation for independent-contractor drivers funded through a 2.5 percent rider surcharge.³
- ❖ **The city or entity administering the portable benefits worker fund, should include a benefit provider’s board of directors and for it to be comprised of workers or their representatives.** This would require that providers solicit input from workers on what benefits are provided, and allow workers to choose how to allocate their funds among available benefits. By allowing worker input, benefits funds will be more responsive to the actual needs of workers.
- ❖ **Workers participating in the plan should receive meaningful benefits without sacrificing workers’ legal rights.** The plan should be narrowly drafted to allow companies to contribute to a portable benefits worker fund plan without it factoring into employment tests that would be used to judge whether a company has properly classified their workers as contractors. While at the same time, written so that workers are not prevented from pursuing misclassification claims based on other factors. This will allow ongoing judicial processes to decide whether a specific company is misclassifying its workforce based on the particular facts of a case. We believe that workers should have the right to assert their rights if they believe they have been victims of misclassification and/or wage theft.

2. **Wage Board:**

²see-<https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes>

³ “Central Dispatch Facility,” New York Black Car Operators’ Injury Compensation Fund, Inc, available at <https://www.dos.ny.gov/licensing/lawbooks/C-DISPTC.pdf> (last accessed March 2017); “F.A.Q.’s,” The Black Car Fund, available at <http://www.nybcf.org/faqs/> (last accessed March 2017).

- ❑ We recommend that the city of New York assesses the creation of an infrastructure or a mechanism that institutionalizes workers’ right to raise industry standards. We propose a tripartite system that would allow workers, employers and government to negotiate for better pay and working conditions.
- ❑ **Rationale:** To date, policies to support gig workers or independent contractors have primarily focused on benefits provision, rather than actions to raise workers’ wages. However, independent contractors are not covered by federal or state minimum wage or collective bargaining laws, and, at the bottom rungs of the wage distribution are paid far less than even the federal minimum wage, according to forthcoming analysis from Center for American Progress Action Fund (CAP Action). CAP will present data showing that the wages of independent contractors are significantly lower than comparable wage and salary employees, and at the lowest income levels these workers are earning wages far below the minimum wage.
- ❑ **General Principle for the Recommendation:**
- ❖ **A Wage Board should seek to pass a wage threshold that should be included in a portable benefits plan, as referenced above. This is an essential part of portable benefits plan in order to ensure economic stability for gig workers.** This would mean that covered companies would be required to certify that they pay their workers at least the existing state minimum wage plus a premium for the cost of legally required benefits for employees—which on average is about 11 percent of pay.⁴ Currently, this would be equal to \$12.21 per hour. On a practical level, this means that workers forego on health care, retirement, and disability insurance benefits because they are forced to choose between paying for rent, food, transportation and other basic benefits.

3. Pension Funds:

- ❑ Because DW’s face numerous barriers to access retirement safety-net benefits, we feel it is important that we also consider policy solutions that will extend some mechanism that allows them to save for long-term retirement. This should be a fund separate and apart from a portable benefits plan extending a safety-net of basic benefits, such as sick pay, unemployment insurance, etc.
- ❑ NDWA is currently engaged in a research project that is studying the feasibility of such a fund in collaboration with a city or municipality. As soon as our findings are concluded, we can share the information.

4. Education and training:

- ❑ As part of our recommendation of creating a Wage Board, we believe that another important aspect of the Board’s function is to provide professional development and credentialing opportunities to DW’s. We believe doing so will raise prevailing wages and serve as an avenue for workers to join NDWA and build our base of workers.

⁴ U.S. Department of Labor, “Employer Costs for Employee Compensation: Table 5. Private industry, by major occupational group and bargaining unit status,” available at <http://www.bls.gov/news.release/eccec.t05.htm>; The average cost of employer-provided payroll taxes includes the employer provision of Social Security, Medicare, state and federal unemployment insurance and workers’ compensation insurance. Employer costs for employee wages and salary for private sector workers averaged \$ 22.83 per hour worked in December 2016. Legally required benefits for the same set of workers were, on average, \$ 2.56 (or 11.2 percent of wage and salaries).

Finally, policy makers, gig economy companies, and worker advocates are increasingly in conversation about how to provide workers the security and opportunity they need to succeed in the American economy. We believe our proposals provide a step forward on delivering on the promise of raising standards in the DW industry.

Our proposals seek to serve the needs of gig economy workers by recommending a portable benefits worker fund plan that are large enough to achieve a stable standard of living and grant workers significant input on plan investments and benefits. In addition, we urge policymakers in NY to include a wage requirement as part of any proposal in order to ensure that on-demand companies do not respond to employer contribution requirements with commensurate decreases in pay.

VI. Closing

In short, our base of workers, which now includes gig-workers in the domestic industry, requires us to find alternative solutions to enforce their rights, raise standards and provide a safety net of benefits that are not easily extended to them either in the formal or informal industries, including in the on-demand economy. The following are areas of work we hope to pioneer in this coming year, and in which we invite you to join us as we develop strategy for:

1. Streamline existing intake systems and legal assistance offered to domestic by legal services organizations, worker organizations, and government.
2. Lead an honest, public and visible dialogue about the consequences of law without enforcement, and the lack of proper investment in enforcement vehicles that serve immigrants and women workers sufficiently.
3. Research and understand the extent of risk faced by domestic workers whose employers launch immigration related threats against, and how to best safeguard these workers as a community. While also equipping employer allies with the information needed to protect their workers from ICE entering their homes, and policing the neighborhoods.
4. Support worker organizations and worker cooperatives to aggregate workers, and establish fair, shared standards that are publicly broadcasted as market standard.
5. Pilot nanny workforce development training in partnership with Cornell University ILR Worker Institute to test if professional development and credentialing of some sort could raise prevailing wages and serve as an avenue for workers to join worker organizations and build our base
6. Identify concrete strategies to dually implement domestic worker rights while advancing a new social contract that delivers affordable childcare and long-term care for seniors, and making paid care work into high quality jobs.
7. Research and design a portable benefits worker fund with the following principles:
 - take into account the burdens imposed on self-employed workers or independent contractors.
 - Require health and safety protections as part of any portable benefits worker fund proposal.
 - Regardless of who administers the fund, include a benefit provider's board of directors and for it to be comprised of workers or their representatives.
 - Workers participating in the plan receive meaningful benefits without sacrificing workers' legal rights.
 - Include a wage threshold in the plan in order to ensure economic stability for gig workers.

[1] According to Home Economics, our national survey of domestic workers of the workers that indicated that there were problems with their working conditions in the past 12 months, 91% reported that they did not complain because they were afraid they would lose their job & 42% reported fear of employer violence. 85% of

unauthorized immigrant respondents who reported an issue with their working conditions indicated that they did not seek recourse because of their immigration status (Burnham & Theodore 2012).

[2] See *"Beyond Survival"* (Williams 2015) and *Urban Institute's labor trafficking study chapter 1, pgs. 7-9* (2014)

[3] See *New Immigrant Community Empowerment's (NICE) report "Dreams & Schemes"* (2012)



To: Office of Labor Policy and Standards (OLPS), Department of Consumer Affairs (DCA), New York City Commission on Human Rights (NYCCHR), Mayor's Office of Immigrant Affairs (MOIA)

From: Beatriz Cardenas

Re: Testimony Submitted for New York City's State of Workers Hearing

Date: April 25, 2017

Buenos noches a todos, mi nombre es Beatriz Cardenas. Soy cuidadora de niños con 14 años de experiencia. Me gusta mucho cuidar niños, me gusta ser útil en la familia. Lo más difícil de este trabajo, es que la sociedad nos ven como esclavos, pero no soy esclava, soy una persona importante que ayuda criar los niños de las personas.

En mi último trabajo fue una mala experiencia. Fui una mujer discriminada por no tener papeles, me sentí impotente y fui víctima de bullying acerca de no tener papeles. Me deben muchas horas de sobretiempo y mis dos últimas semanas de pago. Hasta mis pertenencias no me regresaron. Yo estaba en una situación tan estresante que me afectó mucho mi salud. Era tan mal que alguien me dijo que vaya yo a los derechos humanos.

Pues acudi a la organization de la Alianza Nacional de Trabajadoras de Hogar. Tenía miedo, no pude ir. Sentí tan humillada. Fui una vez a la clínica legal, y la verdad no me ayudo y sentí muy decepcionada. No tuvo el apoyo que buscaba. Seguí trabajando con los mismos empleadores hasta que me despidieron en una forma violenta. Regrese otra vez a la Alianza (ANTH). La segunda vez que fui a la organization de la alianza, era diferente. Había encontrado unas personas diferentes para ayudarme, personas y me daban apoyo moral e incondicional, en todo sentido.

Cuando regrese a la alianza tenían el programa de los "Groundbreakers." Es un grupo de trabajadoras de hogar que entrenan a enseñar otras trabajadoras sus derechos y para apoyar trabajadoras que buscan justicia. Esta vez, cogí confianza con la organización, me dieron fuerza, sentía más tranquilidad, pude seguir avanzando poco a poco para seguir buscando justicia en mi caso. Tengo una abogado peleando mi caso, y también empecé a involucrarme en aprender

más de liderazgo, empeze en ser voluntaria en los bancos telefónicas, participar en reuniones y acciones.

Para mi buscar y tener ayuda fue muy difícil. Es muy difícil estar sola con estos problemas del trabajo. Como una sociedad justa tenemos que valorar el trabajo de cuidado de los niños. Tenemos que asegurar que todas que trabajan cuidando niños, ancianos, personas con discapacidad, y que limpian casas están valoradas por el importante trabajo que hacemos.

Tenemos que expandir la comunidad de apoyo en donde sea que llega una trabajadora buscando justicia, la ciudad necesita apoyar las organizaciones pero también buscar casos, y mejorar el apoyo que dan a los derechos de las trabajadoras.

Beatriz Cardenas

Good evening everyone, my name is Beatriz Cardenas. I am a nanny with 14 years of experience. I like to take care of children very much, I like to be useful in the family. The most difficult thing about this work is that society sees us as slaves, but I am not a slave, I am a very important person that helps to raise other people's children.

My last job was a very bad experience. I was a woman discriminated against for not having "papers", and I felt powerless and I was a victim of bullying around not having papers. They owe me lot of hours in overtime and my two last weeks' worth of wages. They didn't even give me back my belongings. I was in such a stressful situation that it affected my health. It was so bad that someone told me to go to the human rights.

So I went to the organization called the National Domestic Workers Alliance. I was afraid, I could not go. I felt so humiliated. I went first to the legal clinic, and to be honest it did not help, I felt disappointed. I did not get the help that I was looking for. I continued to work for the same employers until they violently fired me. I returned again to NDWA. The second time I went to the organization it was different. I had found different people to help me, people that gave me moral and unconditional support, in every sense of the way.

When I returned to NDWA they had a program called the "Groundbreakers". It is a group of domestic workers who are trained to teach other workers about their rights and to support workers looking for justice. This time, I came to trust the organization, they gave me strength, I felt more at peace, I was able to keep going little by little to seek justice for my case. I have a lawyer fighting my case, and I started to get involved in learning more about leadership, I started to volunteer at the phone banking, participate in the meetings and actions.

It was difficult for me to look for and find help. It is very difficult to be alone with these problems at work. As a just society we have to value care work of taking care of children. We have to make sure that everyone that take care of children, elderly, the disabled and clean houses are valued for the important work that they do.

We have to expand our community of support where ever workers come looking for justice, and the city needs to support organizations but also look for cases and improve the support for worker rights.

Beatriz Cardenas

Testimonio de Rosa Guzmán

Líder-organizadora de la Alianza Nacional De Trabajadoras del Hogar

Lugar: La Guardia Community College

Fecha: 25 de abril de 2017

Introducción:

Buenas noches, mi nombre es Rosa Guzmán, pertenezco a la Alianza Nacional de Trabajadoras del Hogar, NDWA y soy trabajadora del cuidado. Quiero darles las gracias por permitirme hablarle a ustedes hoy sobre mi condición como trabajadora del cuidado.

Problemas

Nosotros como trabajadoras del cuidado enfrentamos robos de salarios, muchos abusos en la parte laboral. Un ejemplo de esto es que no nos pagan las horas extras que están supuestos a pagarle a cada uno de nosotras. Otra forma de robo de salario es que muchas de las máquinas de fichar o punchar en muchos de los casos están desprogramada o mejor dicho programadas a favor de las agencias ya que uno ficha a las 8 am y te ponen que fichaste a las 2pm. En pocas palabras te dejan de pagar cinco horas de trabajo. Otros de los abusos que me ha tocado enfrentar varias veces es cuando he trabajado 24 horas corridas desde la mañana hasta el día siguiente y solo me han pagado 12 horas más 17 dólares. Eso quiere decir que estoy trabajando 12 horas de gratis. Debido a este robo de salario y a los bajos salarios muchas personas se salen de esta industria. Yo no lo quiero hacer, porque amo lo que hago. Por eso organizo para que mejoremos esta situación. No organizo nada más en la ciudad de Nueva York, pero también a nivel nacional con otras trabajadoras.

Cierre.

Debemos de seguir la lucha para que esto cambien no solo para las trabajadoras del hogar sino también para nuestras familias y las personas que cuidamos. Les quiero dar las gracias por permitirme expresarme.

Testimony of Rosa Guzmán

Leader-organizer of the National Alliance of Household Workers

Location: La Guardia Community College

Date: April 25, 2017

Introduction:

Good evening, my name is Rosa Guzman, I belong to the National Domestic Workers Alliance, NDWA and I am a care worker. I want to thank you for allowing me to speak to you today about my condition as a care worker.

Problems

We as care workers face theft of wages, many cases of abuse in the workplace. An example of this is that we are not paid the overtime they are supposed to pay to us. Another form of wage theft is that many of the machines to sign or punch in many of the cases are deprogrammed or better said in favor of the agencies since you punch at 8 and punching machine write that you punch at 2 pm even though the supervisor saw you working from 8 am. In short, they stop paying you five hours of work. Other abuses that I have faced several times is when I worked consecutive hours, from the morning to the next day and got paid just 12 hours plus 17 dollars. That means I had been employed 12 hours for free. Due to wage theft and low wages, home care workers leave the industry. I do not want to leave because I love what I do. That is why I organize to improve this situation. I do not organize just in New York City, but also at the national level with other workers.

Closing.

We must continue fighting to bring real changes to the industry not only for domestic workers but also for our families and the people we care for. I want to thank you for allowing me to express myself.



To: Office of Labor Policy and Standards (OLPS), Department of Consumer Affairs (DCA), New York City Commission on Human Rights (NYCCHR), Mayor's Office of Immigrant Affairs (MOIA)

From: Summer V.

Re: Testimony Submitted for New York City's State of Workers Hearing

Date: April 25, 2017

My name is Summer and I am 8 years old. My mother and I are part of the National Domestic Workers Alliance. I have a passion for reading. I have read 325 books, including a 900 page book. I live with my mom. I love talking to my mom about food and more. I went to Washington D.C to stand up for equal and human rights for my mom and other families including citizens in Syria and undocumented immigrants in the U.S.

This [rights] impacts me because this make me feel like I am poor or homeless and different and sometimes sad and jealous because some people get to live a wonderful life and my mom does not. Some of the problems when my mom is not paid fairly is she is not able to pay for food to feed us or pay for metrocards to take me to school and she will not have enough money to wash our clothes. We need to make a law to make sure that families are together and that people have enough money to provide for their families and a law to help with their basic needs like love, care, clothing, education, health care, water and food.

These rights look like fair pay for workers, peace in our communities and families staying together. Some advantages to my mom being paid fairly is my mom having money to take care of us and because it shows if she gets paid more, more people [will] care about immigrants.

Summer V.
Brooklyn, NY

Labor Standards Enforcement in New York City: Challenges and Recommendations

Public Hearing on the State of Workers' Rights in New York City

Department of Consumer Affairs, Mayor's Office of Immigrant Affairs,
New York City Commission on Human Rights

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The National Employment Law Project (NELP) is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We are based in New York with offices across the country, and we partner with federal, state, and local lawmakers on a wide range of workforce issues. Across the country, our staff are recognized as policy experts in labor standards enforcement.

NELP testifies today to offer its expertise in four areas that pose unique challenges to labor standards enforcement in the current climate. NELP offers testimony on challenges and strategies regarding: 1) immigrant workers and labor enforcement; 2) contingent work, including independent contractor misclassification and subcontracting arrangements; 3) paid care workers; and 4) wage and hour violations, often referred to as wage theft.

Thank you for the opportunity to provide testimony today, and please do not hesitate to contact us for any further information.

1. Immigrant Workers and Labor Enforcement

Immigration Policy Today and the Challenge for Labor Enforcement

Retaliation against workers, including threats of retaliation, has long presented an enormous challenge for effective enforcement of basic labor protections like the minimum wage. Most labor enforcement agencies rely exclusively, or almost exclusively, on worker complaints to trigger investigations and enforcement actions. Therefore, workers must be protected from retaliation when exercising or attempting to exercise their rights. As detailed in the *Broken Laws, Unprotected Workers* report authored by NELP and partner organizations, a national survey found that 1 in 5 workers “reported that they had made a complaint to their employer or attempted to form a union in the last year.” Of those, “43 percent experienced one or more forms of illegal retaliation from their employer or supervisor.”¹

Retaliation and threats on the basis of workers’ actual or perceived immigration status pose particular challenges, however. In its *Workers’ Rights on ICE* report, NELP highlighted that employer threats to report a worker to law enforcement or immigration officials is “as frequent as other forms of retaliation.”² An analysis of more than 1,000 NLRB certification elections between 1999 and 2003 revealed that “[i]n 7% of all campaigns—but 50% of campaigns with a majority of undocumented workers and 41% with a majority of recent immigrants—employers make threats of referral to [ICE].”³ In the New York Region, data covering a 30-month period between 1997 and 1999 showed that “more than half of raided workplaces had been subject to at least one formal complaint to, or investigation by, a labor agency.”⁴

The Trump Administration has taken steps to drastically increase the number of deportations. For example, the Administration has established new enforcement “priorities” that apply to virtually all undocumented immigrants in the country and make all undocumented immigrants vulnerable to deportation.⁵ The Administration has also expanded the use of 287(g) agreements that empower local law enforcement officers to enforce immigration laws,⁶ and it seeks to increase the number of immigration enforcement agents dramatically.⁷ This makes immigrant workers more vulnerable to immigration enforcement, has drastically increased fear in immigrant communities, and poses a challenge to labor enforcement.

Immigrant workers must be protected by policies that address their particular vulnerability as immigrants, and agencies must do everything possible to protect immigrant workers and uphold labor laws in this new immigration enforcement landscape.

Policy Proposal: Deter Employers from Reporting or Threatening to Report Workers to ICE as a Means of Retaliation

Agencies could adopt a policy whereby agencies conduct a full worksite audit of businesses where ICE has conducted a workplace raid and apprehended immigrant workers. The worksite audit would search for any labor law violations on the part of the employer. By targeting worksites for a full investigation where ICE has conducted an immigration raid, agencies can powerfully raise the stakes for all employers considering retaliating against workers by contacting immigration authorities. Employers will understand that a workplace immigration raid will put their business under investigation and potentially lead to significant fines and penalties. Such a policy could help deter employer retaliation that can lead to such raids and hold employers who have profited from the unlawful exploitation of immigrant workers accountable. It would also help level the playing field for employers who do comply with the law but struggle to compete with businesses that keep their costs low by violating the law.

2. The Contingent Workforce

A. Holding Outsourcing Employers Accountable

The number of industries in which companies contract out responsibility for overseeing workers is growing rapidly.⁸ Lead companies that outsource distance themselves from the labor-intensive parts of their businesses and their responsibilities for workers. While some of these outsourcing practices reflect more efficient ways of producing goods and services, others are the result of explicit employer strategies to evade labor laws and worker benefits. Often these are convoluted arrangements in which companies insert several layers of contractor relationships between themselves and their workers, and point to contract terms that delegate all responsibility for workplace compliance to those contractors – who are often able to bid successfully for the contract only by cutting projected labor costs to below the legal bone.

Evidence suggests that the ambiguous legal status of many workers in contracted jobs is one of the central factors driving lower wages and poor working conditions in our economy today.

- Median hourly wages for workers in janitorial, fast food, home care, and food service, all sectors characterized by extensive contracting and franchising, are \$10 or less;
- Once outsourced, workers' wages suffer as compared to their non-contracted peers, ranging from a 7 percent dip in janitorial wages, to 30 percent in port trucking, to 40 percent in agriculture; food service workers' wages fell by \$6 an hour;
- These same sectors see routine incidences of wage theft, with 25 percent of workers reporting minimum wage violations, and more than 70 percent of workers not paid overtime; and
- Construction, agriculture, warehouse, fast food, and home care workers suffer increased job accidents compared with workers in other sectors.⁹

Conscientious employers are harmed, too, as they are unable to compete with lower-bidding companies reaping the benefits of rock-bottom labor costs. Local economies and the public lose out when paychecks shrink, taxpayer-funded benefits subsidize low wages, and employers skirt payroll and other workplace insurance payments.

Negative consequences of outsourcing can be mitigated somewhat through rigorous enforcement of existing laws to hold more entities accountable for degraded conditions under labor and employment laws' broadly-defined "employer," where more than one individual or entity can be found to be a joint employer. NELP has prepared tools and checklists regarding the joint employer standard that we would be happy to share with interested agencies. In addition, there are promising legislative models at the state level. More than 30 states create a presumption in their laws that work creates an employment relationship with attendant rights and responsibilities. And, Illinois, Massachusetts, California, and other states hold lead companies jointly accountable along with contractors, including staffing firms, in certain outsourced industries.¹⁰

B. Independent Contractor Misclassification

Employers are increasingly misclassifying employees as independent contractors.¹¹ This practice hurts workers through lost wages and benefits, and all of us through lost public revenues. High-profile worker lawsuits against Uber and other on-demand giants have recently put misclassification into the spotlight¹² but for decades, many companies – in sectors ranging from logistics and janitorial, to home care and construction – have imposed take-it-or-leave-it contracts on their workers that have denied them the workplace protections that apply to employees.

Misclassification depresses workers' income and deprives them of essential workplace protections and social-safety-net benefits

As a result of their outsized tax burden, the prevalence of wage and other violations, and unreimbursed businesses expenses, misclassified workers' net income is often significantly less than for similar workers paid as employees. When classified as an independent contractor, a worker pays the 15.3 percent self-employment tax rate out of pocket and is responsible for their own filings, and any insurance and operating costs, such as gas and tools. The differences are striking. One government expert calculated that a construction worker earning \$31,200 a year before taxes would be left with an annual net compensation of \$10,660.80 if paid as an independent contractor, compared to \$21,885.20 if paid properly as an employee.¹³ A lead plaintiff in a case against Uber estimated that his unreimbursed costs for gas, carwashes, oil changes, and insurance, for which he might seek reimbursement under California law, topped \$10,000 per year, and a former driver for Uber and Lyft calculated that he netted only \$2.64 per hour, after expenses.¹⁴

Furthermore, misclassifying workers as independent contractors deprives them of worker protection laws including minimum wage and overtime, workers' compensation, unemployment insurance, anti-harassment and discrimination laws, the right to form a union and collectively bargain, and employer-provided retirement benefits.¹⁵

Independent contractor abuses strain federal, state, and local budgets

Several government studies show that misclassification—also called payroll fraud—drains billions from federal and state revenues annually. A Government Accountability Office report estimated that independent contractor misclassification cost federal revenues \$2.72 billion in 2006.¹⁶ States' unemployment trust funds and workers' compensation funds lose tens of millions of

dollars annually, per state, due to misclassification. States also lose hundreds of millions of dollars in unpaid payroll taxes per year.¹⁷ In New York state, it is estimated that 704,785 workers are misclassified and the state loses annually at least \$198 million annually in unemployment insurance contributions, \$1.1 million in workers compensation contributions, and \$170 million in unpaid state taxes.¹⁸ These studies likely underestimate the true effect of misclassification, as studies are usually based on unemployment insurance tax audits and exclude workers paid completely off-the-books.¹⁹

Independent contractor misclassification unfairly burdens responsible businesses

Employers that correctly classify workers as W-2 employees are often unable to compete with lower-bidding companies that reap the benefits of artificially low labor costs. This is especially a problem in construction, janitorial, home care, delivery services, and other labor-intensive low-wage sectors, such as construction, janitorial, homecare, and delivery services. Misclassification, especially when pervasive in an industry, skews markets and can drive responsible employers out of business.

Potential Reforms to Address these Abuses

- **Interagency Taskforces and Studies** – Many states have called attention to independent contractor abuses by creating inter-agency task forces and commissions to study the problem and coordinate and strengthen enforcement. State-level studies have helped advocates make the case for needed reforms by showing the prevalence of the problem and the attendant losses of millions of dollars in state workers’ compensation, unemployment insurance, and income tax revenues. At least 19 states, including New York, have established an inter-agency task force or study commission, creating a variety of data and enforcement initiatives.²⁰ A similar task force at the city level may be valuable for laws enforced by the city agencies.
- **Clear and objective tests for determining employee status** – Laws that create a presumption of “employee” or “employer” status for those performing or receiving labor or services for a fee are an effective way to combat misclassification because they are harder for employers to manipulate.²¹
- **Sector-specific approaches** – Some state legislatures have passed “presumption” laws or other enforcement and coverage mechanisms for particular sectors with rampant independent contractor abuses. The strongest sector approaches designate any worker in a particular job as a covered employee, regardless of what the company calls that worker. Examples include laws covering construction and taxi workers for workers compensation. Similarly, laws can designate companies operating in particular sectors as “statutory employers.”²²

3. Paid Caregivers

The New York City metropolitan area has the highest number of home care workers in the country.²³ New Yorkers depend on these paid caregivers to assist with everything from bathing, dressing, and eating to going grocery shopping, preparing meals, and doing light housekeeping. For people with disabilities or illness and older adults, these workers provide the services and supports that enable them to live independently at home. The intimate and often isolating nature of the work means that home care workers are particularly vulnerable to poor or dangerous working

conditions and labor law violations. We applaud the creation of the Paid Care Division within the Department of Consumer Affairs (DCA) Office of Labor Policy & Standards and its critical role in performing public outreach, enforcing labor protections, conducting research, and developing policies.

Home Care Demands and Investments

Nearly 1.4 million adults age 60 and over live in New York City and the city is doing an incredible job of meeting their needs as 96 percent are aging in place.²⁴ In addition to being the consumer preference, remaining at home is most often less costly than alternatives such as institutional care. But with the older adult population projected to reach 2 million by 2040, investments must be made to attract and retain the home care workforce needed to meet this demand.

Enforcement/Nature of the work

With public dollars funding 83 percent of home care services, state Medicaid offices have a leading role to play in setting industry standards and preventing publicly-funded agencies from profiting from labor violations.²⁵ State and federal labor enforcement agencies should prioritize enforcement efforts in the home care industry and should investigate claims with an eye towards identifying and holding liable all potential employers, not just the employer that hires or that pays the worker.²⁶ The city should advocate that the state dedicated enforcement staff for home care, focusing public resources on a high-violation workforce.

Wage Theft

The unique nature and isolation of this work, coupled with a lack of oversight, can lead to gross labor violations. A 2009 [report](#), co-authored by NELP, found that nearly 83 percent of home care workers reported overtime violations, 90 percent reported off-the-clock violations (working before or after shifts without getting paid), and nearly 18 percent reported minimum wage violations.²⁷ Ensuring workers have and use a private right of action gives workers more options to combat wage theft, and yields good results for classes of workers experiencing the same problem. Robust enforcement is especially crucial to ensure employers abide by state and federal minimum wage and overtime rights.

Misclassification

Correct classification of workers as employees is key to securing their legal protections and ensuring fair competition by law-abiding businesses. Rarely are home care workers really running an independent business, despite many job structures that purport them to be. Being classified as an independent contractor, also known as having 1099 status, has many consequences. Ensuring workers are properly classified should be an important part of the city's enforcement.²⁸

Scheduling

Inconsistent scheduling, and the resulting variation in pay, can make home care work a difficult field to stay in. In an effort to address the industry's crippling annual turnover rates of at least 50 percent, Bronx-based Cooperative Home Care Associates (CHCA) guarantees 30 hours of work per week. Such structures can help to stabilize this profession.²⁹

Health and Safety

Personal care aides are now the third-highest-ranking occupation for lost-time injuries resulting from workplace violence and are at high risk for musculoskeletal disorders (MSDs). Since 2005, the rate of violence in home health services has increased by 130 percent.³⁰ All working people have the right to a safe workplace—whether that workplace is a facility or someone’s home. To help combat unsafe workplaces for personal care workers, the Center for Disease Control and Prevention’s National Institute for Occupational Safety and Health released a health and safety training guide, [Caring for Yourself While Caring for Others](#), and [online modules](#) that help home care workers, their employers and clients identify safety risks and develop effective strategies for assuring safe and healthy environments.³¹

4. Wage Theft and Enforcement Strategies

Approximately 42 percent of workers in America earn under \$15 per hour, including 2.3 million workers in New York State and almost a million workers in New York City.³² As the real value of wages continues to decline³³ and income inequality worsens, ensuring that low-wage workers are paid the minimum wage and overtime required by law must be a priority. Wage theft is widespread across the country and across industries, costing workers and local economies billions of dollars each year.³⁴

A seminal 2009 study by NELP and other academic partners surveyed over 4,000 workers and found that 26 percent were paid less than the required minimum wage in the previous work week, and nearly two thirds experienced at least one pay-related violation in the previous week, such as failure to pay overtime, not being paid for all hours worked, and stolen tips.³⁵ In New York City, 21 percent were paid less than the required minimum wage and over half had experienced at least one pay-related violation in the previous workweek.³⁶ The report estimates that New York City workers surveyed lost an average of 15 percent, or \$3,016, of their annual wages due to workplace violations.³⁷

An effective enforcement scheme must include strong public and private enforcement tools to better guarantee compliance and help ensure collection of owed wages. To achieve these goals, NELP recommends a private right of action, dedicated resources for investigation and enforcement, and community partnerships or "co-enforcement."³⁸

Private Right of Action

A private right of action gives workers the right to bring a lawsuit in court to address violations and recover their unpaid wages. Wage theft is rampant and government agencies with limited public resources simply cannot tackle enforcement alone. Additionally, public agencies’ funding and priorities for enforcement can change over time and giving workers access to courts ensures they always have a way to protect their rights.

To be effective, a private right of action must also allow workers to recover attorneys’ fees and costs. The prohibitive cost of legal representation is a significant barrier to low-wage workers who want to protect their rights.³⁹ A civil legal needs assessment in Washington State found that “only half of low-income people with employment problems were able to get advice or representation from an attorney.”⁴⁰ While policymakers may argue that both plaintiffs and defendants in wage and hour disputes should be entitled to attorneys’ fees if they are the prevailing party, allowing defendants to recover attorneys’ fees is “likely to dissuade many low-wage workers from bringing suits in the first place.”⁴¹ As of 2011, forty states allow prevailing plaintiffs to recover

attorneys' fees under state wage and hour laws and half of these states, including Minnesota, Montana, and Nebraska, make attorneys' fees mandatory for the prevailing plaintiff.⁴²

Dedicated Resources for Investigation and Enforcement

For an agency to effectively address wage law violations, it must dedicate sufficient resources and staff to enforce the law. An enforcement team must, at a minimum, be able to issue rules and regulations; conduct thorough investigations; perform outreach and education geared to both workers and employers; resolve complaints in a timely manner from start to finish; and recover the wages owed to workers. A well-resourced investigation and enforcement team should develop programs seeking to ensure that employers comply with the law; it should also collect and analyze data to identify gaps and strategically target enforcement.

Due to insufficient resources, public enforcement of wage and hour laws has significant difficulty keeping up with violations. The New York State Department of Labor has approximately 95 investigators.⁴³ At the federal level, the U.S. Department of Labor (USDOL), which is responsible for enforcing federal wage, child labor, and other laws, has just over 1,000 investigators nationwide who are tasked with enforcing these laws in more than 7 million workplaces.⁴⁴ Because of these scarce resources, the average employer has just a .001% chance of being investigated by USDOL's Wage and Hour Division or Occupational Safety and Health Administration in any given year.⁴⁵

Community Partnerships

Workers' fear of retaliation, as well as their limited knowledge about workplace rights and how to report violations, contribute to the high rates of wage theft. Community-based organizations are crucial partners for enforcement agencies. Their ties to workers in specific industries and sectors, as well as their roots in certain racial or ethnic communities, can assist enforcement through outreach and education; detection and reporting of violations; filing complaints; and identifying high-violation industries and employers for proactive investigations.⁴⁶ Some specific ways to engage community groups include:

- Conferring regularly with community advocates, state enforcement agencies, and other stakeholders to discover community needs and to work out partnerships;
- Convening task forces on specific problem areas or industries, inviting workers' advocates and stakeholders to share information and participate in other appropriate ways;
- Designating staff to act as liaisons to immigrant worker groups, attend events, and act as a resource; and
- Implementing community-safeguarding models that designate certain stakeholders to educate the community about the agencies' priorities and policies, especially in underserved areas.

Cities enacting minimum wage laws have begun to issue grants to local community groups to enlist their assistance with tasks such as education, outreach, and preparing complaints. San Francisco alone issues \$482,000 to immigrant and low-income community organizations for these activities.⁴⁷ Los Angeles plans to allocate \$700,000 annually to community groups for outreach and education, and Seattle recently awarded contracts to community groups amounting to \$1 million.⁴⁸

¹ National Employment Law Project et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009) at 3, https://nelp.3cdn.net/1797b93dd1ccdf9e7d_sdm6bc50n.pdf.

² Rebecca Smith and Eunice Hyunhye Cho, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights*, National Employment Law Project (Feb. 2013) at 5, https://nelp.3cdn.net/0e04248130076eb182_6am6boifj.pdf.

³ *Id.* (citing Michael J. Wishnie, Introduction: The Border Crossed Us: Current Issues in Immigrant Labor, 28 N.Y.U. REV. L. & SOC. CHANGE 389, 391 (2004)) (internal quotations omitted).

⁴ *Id.* (citing Michael J. Wishnie, Introduction: The Border Crossed Us: Current Issues in Immigrant Labor, 28 N.Y.U. REV. L. & SOC. CHANGE 389, 392 (2004)).

⁵ National Immigration Law Center, *Understanding Trump's Executive Order Affecting Deportations and "Sanctuary Cities"* (Feb. 2017), <https://www.nilc.org/issues/immigration-enforcement/exec-order-deportations-sanctuary-cities/>.

⁶ *Id.*

⁷ *Id.*

⁸ Catherine Ruckelshaus et al., *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work*, National Employment Law Project (May 2014), <http://www.nelp.org/publication/whos-the-boss-restoring-accountability-for-labor-standards-in-outsourced-work/>.

⁹ *Id.*

¹⁰ *Id.* citing 820 ILCS 175/1.148; White & Case, LLC, *Global HR Hot Topic: International Outsourcing and Offshoring: An Employment Law Checklist* (Feb. 2014), <http://www.whitecase.com/newsletter/022014/hrhottopic-international-outsourcing-and-offshoring-an-employment-law-checklist/#.Uz3LpPldWkE>.

¹¹ Sarah Leberstein and Catherine Ruckelshaus, *Independent Contractor vs. Employee: Why independent contractor classification matters and what we can do to stop it*, National Employment Law Project (May 2016), <http://www.nelp.org/publication/independent-contractor-vs-employee/>.

¹² Rebecca Smith and Sarah Leberstein, *Rights on Demand: Ensuring Workplace Standards in the On-Demand Economy*, National Employment Law Project (Sept. 2015), <http://www.nelp.org/publication/rights-on-demand/>.

¹³ Sarah Leberstein and Catherine Ruckelshaus, *Independent Contractor vs. Employee: Why independent contractor classification matters and what we can do to stop it*, National Employment Law Project (May 2016), <http://www.nelp.org/publication/independent-contractor-vs-employee/> citing Tim Crowley, UI Tax Chief, U.S. Department of Labor, "Worker Misclassification – An Update from Constitution Ave." (Oct. 24, 2012), http://www.naswa.org/assets/utilities/serve.cfm?gid=86824dbe-575c-4edb-9e93-444cef85c837&dsp_meta=0.

¹⁴ *Id.* citing Seth Sandronsky, "Uber Drivers are Running on Empty," (Capital and Main, Sept. 23, 2015), http://www.huffingtonpost.com/entry/uber-drivers-are-running-on-empty_us_56031619e4b00310edf9e8a7.

¹⁵ *Id.*

¹⁶ *Id.* citing James M. Bickley, "Tax Gap: Misclassification of Employees as Independent Contractors," (Congressional Research Service, Mar. 10, 2011), [http://op.bna.com/dlrcases.nsf/id/vros-8euvqa/\\$File/taxgap.pdf](http://op.bna.com/dlrcases.nsf/id/vros-8euvqa/$File/taxgap.pdf).

¹⁷ *Id.* citing Sarah Leberstein, "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries," (National Employment Law Project, July 2015) <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>.

¹⁸ Sarah Leberstein, "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries," (National Employment Law Project, July 2015) <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf> citing Linda H. Donahue, James Ryan Lamare, Fred B. Kotler, *The Cost of Worker Misclassification in New York State*, Cornell University School of Industrial Labor Relations (February 2007), available at <http://digitalcommons.ilr.cornell.edu/reports/9/>.

¹⁹ *Id.*

²⁰ Sarah Leberstein and Catherine Ruckelshaus, *Independent Contractor vs. Employee: Why independent contractor classification matters and what we can do to stop it*, National Employment Law Project (May

2016), <http://www.nelp.org/publication/independent-contractor-vs-employee/>; New York State Department of Labor, Employer Misclassification of Workers, <https://labor.ny.gov/ui/employerinfo/employer-misclassification-of-workers.shtm>.

²¹ Examples in *Id.*

²² *Id.*

²³ As compared to other metropolitan areas. Bureau of Labor Statistics, May 2016 data on Personal Care Aides (88,660) and Home Health Aides (159,830) in the metropolitan area of New York-Jersey City-White Plains, NY-NJ Metropolitan Division.

²⁴ New York City Department for the Aging, Aging in Place Guide for Building Owners (2016) <http://www.nyc.gov/html/dfta/downloads/pdf/publications/AIPGuide2016.pdf>

²⁵ National Employment Law Project, Upholding Labor Standards in Home Care: How to Build Employer Accountability Into America's Fastest-Growing Jobs (Dec. 2015) (page 20) <http://www.nelp.org/content/uploads/Report-Upholding-Labor-Standards-Home-Care-Employer-Accountability.pdf>

²⁶ *Id.* at 21.

²⁷ Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and *Employment, Broken Laws, Unprotected Workers* (2009), <http://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-americas-cities/>. The 2008 survey of 4,387 workers in low-wage industries was conducted in the three largest US cities: Chicago, Los Angeles, and New York.

²⁸ NELP, Independent Contractor Classification in Home Care (May 2016), <http://www.nelp.org/publication/independent-contractor-classification-in-home-care/>.

²⁹ PHI, The guaranteed hours program: Ensuring stable, full-time, direct-care employment (July 2007), <https://phinational.org/fact-sheets/guaranteed-hours-program-ensuring-stable-full-time-direct-care-employment>.

³⁰ AFL-CIO, Death on the Job: The Toll of Neglect, 2016 (April 28, 2016), <https://aflcio.org/reports/death-job-2016>.

³¹ The CDC's National Institute for Occupational Safety and Health (NIOSH), Caring for Yourself While Caring for Others (Nov. 2014) (also in Spanish), <https://www.cdc.gov/niosh/docs/2015-102/default.html>.

³² Irene Tung et al., The Growing Movement for \$15 (Nov. 2015) at 1, <http://nelp.org/content/uploads/Growing-Movement-for-15-Dollars.pdf>; New York State Department of Labor, Analysis: Raising New York's Minimum Wage to \$15 (Feb. 2016), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Minimum_Wage_Report.pdf.

³³ National Employment Law Project, Occupational Wage Declines since the Great Recession (Sept. 2015), <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf>.

³⁴ Brady Meixell & Ross Eisenbrey, Economic Policy Institute, An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year (Sept. 2014), <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>.

³⁵ Annette Bernhardt et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities (2009) at 2, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1>.

³⁶ Annette Bernhardt et al., Working Without Laws: A Survey of Employment and Labor Law Violations in New York City (2010), https://nelp.3cdn.net/990687e422dcf919d3_h6m6bf6ki.pdf.

³⁷ *Id.*

³⁸ National Employment Law Project, Top 5 Enforcement Tools for Local Minimum Wage Laws (Dec. 2015), <http://www.nelp.org/content/uploads/Policy-Brief-Top-Five-Enforcement-Tools-Local-Minimum-Wage.pdf>.

³⁹ National Employment Law Project, Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft (Jan. 2011) at 31, <http://www.nelp.org/content/uploads/2015/03/WinningWageJustice2011.pdf>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 32.

⁴³ Policy Matters Ohio, Investigating Wage Theft: A Survey of the States, 2010, <http://www.policymattersohio.org/wp-content/uploads/2011/10/InvestigatingWageTheft20101.pdf>.

⁴⁴ Wage and Hour Division, U.S. Department of Labor, FY 2011 Congressional Budget Justification at WHD – 21, <http://www.dol.gov/dol/budget/2011/PDF/CBJ-2011-V2-03.pdf> (stating that for 2011, WHD expect to have 1,006 full time investigators); Wage and Hour Division, U.S. Department of Labor, Fair Labor Standards Act, www.dol.gov/whd/flsa/comprehensive.ppt (stating that more than 130 million workers in more than 7 million workplaces are covered by the Fair Labor Standards Act).

⁴⁵ National Employment Law Project, *Winning Wage Justice: Talking Points on the Need for Stronger Anti-Wage Theft Laws* (Jan. 2012) at 3, <http://www.nelp.org/content/uploads/2015/03/WinningWageJusticeTalkingPoints.pdf>.

⁴⁶ For a more detailed discussion of the importance of community-based partners, see Diego Rondón Ichikawa and Rebecca Smith, *Delivering \$15: Community-Centered Wage and Hour Enforcement in Seattle* (Oct. 2014) at 12–15, <http://www.nelp.org/content/uploads/2015/03/Delivering-15-Community-Centered-Wage-and-Hour-Enforcement-Seattle.pdf>.

⁴⁷ Tia Koonse et al., UCLA Center for Labor Research and Education, *Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships* (Oct. 2015) at 13, <http://laborcenter.berkeley.edu/pdf/2015/minimum-wage-enforcement.pdf>.

⁴⁸ *Id.*

Testimony for Hearing on the State of Workers' Rights in New York City

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Tuesday, April 25, 2017

My name is Brittany Scott and I am a Senior Research Strategist with the National Economic and Social Rights Initiative (NESRI). NESRI partners with communities across the country who have been denied their human rights, and works with them to identify and support innovative campaigns that bring about transformation in the policies and practices that can guarantee these rights.

For the past three years, I have worked in partnership with worker centers around the country to research and document what happens when workers try to address abusive treatment on the job. I've heard personal testimony from hundreds of workers employed on the frontlines of a diverse set of low-wage industries. Together with analysis of law, public data and previous research, and a series of interviews with over half a dozen attorneys with an average of 12 years practicing labor and employment law, I have gained a deep sense of the challenges that workers face when they're injured on the job, perceive problems with their pay or conditions of work, or wish to improve their conditions by organizing with coworkers.

From workers on farms and in factories, warehouses, private homes and restaurants, a shared story has emerged of more and more dangerous and abusive sweatshops in which workplace standards are shaped, not by law, but by fear and the deployment of intimidation, retaliation and discrimination as a standard way of doing business. This is not a few bad apples or even a matter of inadequate legal standards – though those need strengthening. Rather, this is a crisis of enforcement.

Bigger budgets, more investigators and getting tougher penalties on the books are essential first steps, but will not be enough to address the new normal of wage theft, sub-minimum wages, preventable injuries and discrimination in low-wage work. Given the state of our brutal economy, more of the same solutions will get us only a little less of the same problem.

We need both more enforcement capacity and a new framework for enforcement that places workers at the center of the process and goes beyond the law to impact workers' lived experiences. To be effective, this new worker-centered enforcement framework must address at least three systemic challenges in our existing systems:

1. Holding corporate powerholders accountable for overseeing compliance with workers' rights, as they do for product quality;
2. Ensuring all workers can freely defend and claim their rights; and
3. Tailoring corrective measures to affect prevention.

Holding corporate powerholders accountable

The first issue that must be addressed is a legal loophole so widely exploited that it is fundamentally redefining employment relations throughout the country. Enforcement of all

labor and employment laws depends on the existence of an employer-employee relationship, but rarely is this relationship defined broadly enough to consistently hold accountable a company that contracts with labor suppliers to bring workers to labor in their workplaces. Given that layers of contracting effectively enables companies to enjoy the fruits of workers' labor while avoiding the legal obligations owed workers, it's ubiquity today is little wonder.

Through low-bid contracting, companies demand more for less from labor suppliers, which is delivered at workers' expense. Suppliers win contracts by delivering lower cost labor affected through lower pay, fewer benefits and, in this highly competitive market, too often degraded, sweatshop conditions that violate basic labor and employment law.

Temporary work arrangements and misclassified independent contractors are increasingly frequent features of these subcontracting systems. For instance, temp agencies, today, are playing a permanent role in bringing workers to labor in the warehouses and factories that produce, package and move the goods of Fortune 500 companies, like Amazon, Walmart and Home Depot, among others. In fact, today, 47 percent of all temp work is in the blue-collar sector, and, if temp jobs were accounted for in official measures, employment in U.S. manufacturing would have increased 1.3 percent between 1989 and 2000, rather than decline by over four percent. Other workers, from construction workers to Uber drivers, have been intentionally misclassified as independent contractors. Both prominent subcontracting arrangements strip workers of even the illusion of job security, and the clear and constant message of workers' expendability hangs over workers as a persistent threat that insists on their amenability to employers' demands.

The first element of a new, effective worker-centered enforcement framework, therefore, must be an expanded understanding of corporate legal responsibility in the context of today's increasingly complex supply chain work-arounds. Accountability must extend to the powerholders at the top best positioned to provide oversight of their labor intermediaries to prevent workplace abuses, just as they do for product quality.

A vigorous, clear and knowable employer standard is needed to match the aggressive practices of U.S. corporations that have been deployed to legally distance the companies from the exploitative parts of their businesses. Rather than the complex tests that are used by courts and enforcement agencies today, which require assessments anew in each case as to which business or businesses most subjectively controls the workplace, a new legal framework should attach responsibility to any business that outsources any part of its operations for workers' rights compliance anywhere along its supply chain. A broad but straightforward approach is the simplest solution.

In some cases, outsourcing to temp agencies should be prohibited. It should unquestionably be prohibited when ensuring accountability and imposing liability becomes impossible. Additionally, in parts of Europe, Asia, Africa and Latin America, temp work is also limited to extraordinary business needs, prohibited for hazardous work and work central to a business'

operations and limited to short time frames. This would constrain businesses from using these arrangements to distance themselves from their legal responsibilities in the first place.

Ensuring all workers can freely claim their rights

The second issue that must be addressed for any enforcement framework to function effectively is existing paths to justice that workers have every reason to view as threatening and unreliable. All systems of enforcement depend on worker participation. Wage theft, safety hazards and other abuses that don't get reported, don't get fixed. And when workers can't report on the job injuries, they don't get workers' comp. Even when public agencies are equipped to conduct agency-driven investigations, the worst offenders always seem to find a way to fly under the radar, paying workers in cash, skipping licensing requirements or using other methods to evade regulatory detection. This means, agency-driven investigations alone are not enough and that workers are essential frontline monitors of rights at work.

Retaliation

From talking and surveying workers, I've learned that retaliation is at the heart of failed enforcement. Job loss, abusive changes in work conditions and other tailored threats, like deportation of undocumented workers, are used with little restraint by employers across a diverse array of low-wage workplaces to gain workers' silent acceptance of abusive pay and conditions. Contingent work arrangements exacerbate this vulnerability shared by workers throughout today's precarious low-wage sector. Among the nation's frontline low-wage workers, regardless of the underlying issue being raised, roughly one in two who bring attention to abuse or try to improve work conditions face employer retaliation.

These unbridled displays of intimidation not only harm individual workers who speak up but send a chilling message to others that they, too, are taking a risk if they refuse to silently accept abuse. Many of the workers I've spoken with felt like the 47-year-old mother who was working as a temp in a candy factory who told me: "You just know they'll fire you if you stir the pot. I can't afford to be kicking up dust and complaining." So she said nothing when she noticed her wages getting stolen, but got fired anyway when she was injured on the job. And they feel defeated like the 39-year-old mother who, after being fired from her retail job of ten years for trying to improve the conditions said, "Everywhere [she] looks now, it's the same. They don't respect you or your rights." Retaliation attacks the will of workers to claim their rights by making these efforts seem risky and doomed, feeding a culture of hopelessness and helplessness.

Skyrocketing inequality and economic and social vulnerabilities leave low-wage workers more vulnerable than ever to these abuses, while fatal flaws in the prevailing legal approach to protecting workers from retaliation has allowed abusive employer tactic to become a systemic business practice. A scattered patchwork of legal protections provides uneven and unreliable protection, which fails some workers completely and, for others, is confusing and uncertain. And an unreasonable burden placed on workers to prove their employers' retaliatory intentions

make it very difficult for workers to secure justice in the face of retaliation even when it's clearly illegal.

Ensuring all workers can, with little fear, bring attention to abuse and claim their own rights, especially those most vulnerable who are living paycheck to paycheck, the definition of who and what is protected from retaliation must be broad and supported by fair assumptions and burdens of proof. Today's patchwork of protection varies based on the underlying issue, whether it's wages, discrimination or something else. The gaps and grey areas created by this approach should be filled so protection is consistent and knowable. Ultimately, the definition of protection must be inclusive of all workers and all employer tactics, including unfair immigration action, blacklisting temps, and threats of retaliation.

Yet exploiting gaps is only a slice of the problem. The number one way employers still retaliate against workers is to fire them, which is clearly illegal. The problem is it is extremely difficult to prove an employer's intention in firing or ceasing to hire a worker was retaliation in our current framework. It's not impossible with a good lawyer and lots of time. But too many low-wage workers simply don't have these luxuries, so they're discouraged and their legitimate claims are denied, withdrawn or dismissed. Employers simply know better than to hand workers proof of their illegal intentions and will always claim a plausible justification for firing a worker, which can be most anything. Of course, employers can fire or discipline workers for any or no reason at all, except retaliation or discrimination, making plausible deniability all too available to abusive employers.

Our laws put all the weight on workers to prove what I have started to call the "exception of protection" applies. They have to surface evidence of their employer's underlying motivations. This is rarely easy and requires technical understanding and the ability to undertake discovery. This hidden but significant hurdle creates a sense among workers that it's not worth it, that the process is too complex and that these cases are not winnable.

The simple solution is to place the burden of proving employer's intentions on the party that knows best: the employer. This has been accomplished in both public and private policy. The most effective solution to address the unrealistic burden, and at the same time address uneven legal protections, is the just cause standard. Just cause is found in union contracts and public policy around the world. The standard provides a broad assumption of protection against being fired arbitrarily, requiring a lawful reason for employers' adverse actions against workers. A more recent innovation is to provide an assumption that adverse action is retaliation for three to six months after a worker exercises a right. Whether through just cause, a presumption of retaliation or other legal innovation, an assumption of protection against retaliation is a practical and moral necessity.

Complaint resolution

Studying retaliation with workers over the last few years has illuminated several broader challenges they face when bringing legal workplace complaints, including but not limited to

retaliation. Fragmented, complex and recklessly slow resolution processes that require little more from guilty employers than what they already owed workers, and, in some cases, not even that, creates a perfect storm of impunity for abuse against workers who are deterred from reporting it.

Workers largely agree that the legal process doesn't meet their needs. Webs of often over a half dozen public enforcement agencies and courts create obstacle courses for workers to navigate. It also creates barriers for workers facing violations of multiple rights, which we found to be a common experience among frontline low-wage workers. Full accountability in such cases could require a worker to file multiple complaints, using different rules in multiple venues. Once workers decide on the venue, it takes months, even years, for their complaints to be resolved, which is too long for workers living paycheck to paycheck. Justice delayed is justice denied for these workers. And for undocumented workers facing retaliation, even a guilty verdict can bring no relief. A 2002 U.S. Supreme Court decision eliminated undocumented workers' access to existing remedies for retaliation. They can't get their jobs back or wages lost for the time they would have worked if they hadn't been fired. Given that penalties are rarely imposed, that also means employers can retaliate against these workers at very little if any risk of consequence.

Workers need a straightforward path to justice. The legal process should be streamlined, ideally through a unified system, but at least through interagency coordination that offers workers a streamlined experience for simultaneously reporting and resolving as many kinds of violations as they are experiencing. A streamlined experience for workers could be achieved through a single point of access for making complaints, the use of a team of investigators and a bench of judges. Making a private right of action available for the full range of workplace violations, along with attorney fees, would also help.

Timely resolutions that make relief available to all workers who are harmed by employer abuses is particularly critical. To begin with, relief must be available to all workers, including undocumented workers. Liquidated damages is a form of relief that can be made universally available. Rapid relief can be achieved in at least two ways: temporary relief or a penalty structure that incentivizes employers to self-monitor and take prompt corrective action in case of noncompliance. The standard applied to grant temporary relief needs to be favorable to workers with economic hardships. Temporary relief also needs to be available to all workers, including undocumented workers. This can be made available through requiring a bond or deposit of funds. Justice might also be sped up through tailoring the penalty structure. For instance, corrective action could be required within a short, specific period of time, such as seven days, at which point daily penalties, at least equivalent to the average wage of a worker, begin to accumulate.

No doubt, workers play a vital frontline role in workplace enforcement, yet little formal support is available. Workers should get training on how to enforce their rights, ideally on site and on the clock paid, and would also benefit from witnessing the resolution of complaints in their workplaces. Knowing how issues get resolved instills confidence in workers that the process

works and sends a message that workers are protected, which is counter to the message of employer impunity and worker expendability.

Tailoring corrective measures to affect prevention

The third issue that must be addressed is lack of focus on prevention of workplace abuses. The existing enforcement framework mostly treats a case of abuse as an isolated incident, rather than a systemic business practice. Complaints rarely trigger company-wide investigations. Compliance monitoring and agency-directed investigations remain rare. And the focus of the bulk of enforcement actions is to make individual harmed workers, who bring complaints, whole on a case by case basis. That means, the principal outcome is getting workers' jobs back or getting them compensation for what they are owed. Penalties are rarely imposed, as is corrective action, such as training, monitoring and evaluation intended to prevent future abuse.

A system intended to protect basic rights can only be successful if it prevents violations far more often than it has to intervene to remedy them. Among the many tools needed to implement a strategy of prevention are complete and widespread training, penalties effectively tailored to encourage compliance, agency-driven audits that compliment workers' complaints, such as allowing workers to make anonymous complaints that can trigger company-wide investigations, and government-community enforcement partnerships, sometimes referred to as "co-enforcement".

Formal, funded collaboration, or co-enforcement, between public enforcement agencies and workers' organizations is an exciting innovation being led by cities like San Francisco, Los Angeles and Seattle as a strategy for improving enforcement at the local level. Workers' organizations already contribute to enforcement and have the trust of the most vulnerable workers' communities, which public agencies lack. But, workers' organizations lack the resources to support all the workers that need help, as well as agencies' investigatory and prosecutorial tools. Collaboration can be a powerful way of putting these complementary strengths together toward the shared goal of enforcement. In addition to workers' organizations helping workers make complaints and navigate the process, they should be part of a larger preventative enforcement strategy, even integrated into corrective action plans, such as having workers' organizations bring training to workers on site and on the clock paid, working with a workforce to implement compliance monitoring in their workplace and evaluating the effectiveness of corrective measures.

Solution summary

The time is now to move to a new framework for effective worker-centered enforcement. The nature of work has changed dramatically since the existing systems of enforcement were put in place and the existing systems are now clearly out of sync and failing. The simple solution is a holistic rethinking of the way rights are protected and laws are enforced in the workplace. The essential elements of this new framework should include:

1. **A vigorous employer standard** that holds corporate powerholders at the top of supply chains responsible for providing oversight of labor intermediaries to prevent abuse as they do for product quality
2. **Prohibitions of outsourcing** to temp agencies at least whenever ensuring compliance of workers' rights is impossible
3. **A broad definition of retaliation protection supported by fair assumptions and burdens of proof**, such as the just cause standard or a presumption of retaliation
4. **A streamlined path to justice**, whether through a unified system or interagency coordination that streamlines workers' experience
5. **Relief from retaliation available to all workers**, such as liquidated damages
6. **Rapid relief**, such as temporary relief or a penalty structure that incentivizes employers to self-monitor and take prompt corrective action
7. **Support for workers' frontline role in enforcement**, such as on site and on the clock paid training and the ability to witness how complaints in their workplace are resolved.
8. **A prevention strategy with a robust set of tools**, such as tailored penalties and agency-driven audits that compliment workers' complaints, including company-wide investigations on confidential complaints
9. **Formal and funded role for workers' organizations in enforcement** as part of a prevention strategy, even integrated into corrective action measures, such as implementation of on site and on the clock paid training, compliance monitoring and evaluations of the effectiveness of corrective measures

Public Hearing on the State of Workers' Rights in New York City On Tuesday, April 25 at 6:30 PM at LaGuardia Community College

Presenter: Oswaldo Mendoza

Representing: New Immigrant Community Empowerment

Hola, muy buenas tardes mi nombre es Oswaldo Mendoza soy miembro líder de la organización NICE desde hace 3 años. Actualmente vivo en el Bronx y esta noche me han invitado para dar mi testimonio acerca de los abusos que sufrimos como jornaleros, jornaleras y trabajadores inmigrantes de la construcción, industria a la cual pertenezco.

En el año 2013 yo sufrí un accidente de construcción y actualmente sigo en tratamiento y hay un 90% de probabilidad de que me tengan que operar de la columna. No soy el primero y seguro que no sere el ultimo que sufre este tipo de accidente por negligencia de un empleador. Sin embargo estoy seguro de que podemos, como organizaciones e instituciones, seguir haciendo lo posible para que estos disminuyan.

Antes que nada debemos ser conscientes que siempre ha existido una explotación por parte de muchos empleadores hacia los trabajadores inmigrantes que lo único que buscan es un trabajo digno. Más aún en los tiempos en que estamos viviendo, ya que estos mismos empleadores hoy se sienten más empoderados que nunca, y muchas veces hacen lo que les place sin miedo a las consecuencias. Ya que no les importa pagar una multa mínima o cambiar de nombre a sus compañías sin ningún problema.

Como parte de NICE hemos sido testigos de infinidad de casos de abusos laborales, tales como el robo de salario y violaciones de salud y seguridad. Como organización hemos combatido el Robo de Salario, ofreciendo asesoría legal a víctimas y haciendo seguimiento a estos casos. El año pasado, 2016, NICE tomó más de 130 casos relacionados a Robo de Salarios y en este mismo año lanzamos el Jornaler@ App, cuyo propósito es servir como una herramienta más de protección para nuestra comunidad trabajadora.

NICE también imparte cursos de OSHA y entrenamientos de aprendizaje para trabajadores en la industria de construcción. El año pasado NICE entrenó a más trabajadores que en todos los años anteriores y ha luchado para mayor acceso a estos entrenamientos para nuestra comunidad. Sin embargo no es suficiente. El año pasado se reportó que hubo 55 muertes en la industria de la construcción, en su mayoría trabajadores inmigrantes.

Ahora NICE y sus miembros estamos encabezando una campaña para traer reformas a la manera en que se otorgan las licencias de contratistas. Tenemos que reconocer que existe una correlación entre violaciones de salud y seguridad y robo de salario-- teniendo como común denominador a los empleadores irresponsables. Señores comisionados, hoy estoy aquí para decirles que necesitamos mayor protección en contra de estos empleadores que solo buscan enriquecerse a costa de nosotros los trabajadores. Sigamos trabajando juntos para el beneficio de nuestros trabajadores. Podemos lograr mucho apoyándonos mutuamente. Gracias.

*Testimony of Mauricio Niebla, Freelancer
In Support of "Freelance Isn't Free Act"
Before the New York City Council Committee on Consumer Affairs
Hearing on Int 1017-2015
In Relation to Establishing Protections for Freelance Workers
February 29, 2016*

Thank you for the opportunity to speak today about my experience as a freelancer.

My name is Mauricio Niebla, I'm a writer, and as most writers, I am a freelancer currently living in Jersey City, but working primarily with New York City clients. I have been a freelancer my entire professional life, for almost 30 years. I have been unpaid for jobs many times, but the most painful, dramatic and unfair treatment happened seven years ago, in 2009.

At that time, I worked for a publisher called Inkwell Publishing Solutions in New York City. I had been working with that company for two years, creating many education programs. In every project that I worked with them I always had a contract, except for the last project.

In 2009, we were working in the Texas elementary school reading program for the Houghton Harcourt Mifflin edition. In addition to me, there were more than 40 freelancers on the project with different specialties: writers, translators, editors, graphic designers, programmers, etc., the largest number of workers I had ever seen in this company. Every two weeks, we presented our invoices to the general editor, and our payment took about a month to arrive.

After the first month of working on this project, some payment arrived--but only half. This was not so strange; it had happened before in this company, but in the end they always paid us.

Two weeks later, the checks did not arrive at all; instead, the editor called a meeting to discuss the problem and explained that Houghton Harcourt Mifflin was behind on payments. He asked us to keep working and told us that as soon as they received the funds, they would be current with our payments.

Another two weeks passed and, once again, the payments did not arrive. Some people began to despair and stopped coming to work. Two weeks later, we stopped receiving messages from the owners. People began to try to talk to them, but they did not answer any of the emails or phone calls.

I tried to contact the owners myself: I wrote saying that I was confident that my payment would come, because in the time I had worked with them I was always paid (eventually). I asked them to have consideration for me, because I had just received the news that my wife was pregnant, and the lack of payment was especially critical at the time.

I never heard back from them. More people started to leave, and some decided to go to Small Claims court. Along with a few others, I decided to stay and work. We thought that if we left the job, we would not be paid at all. But as time passed, more people left and, after a month, there were only 2 of us left to finish the work and deliver the final product.

Only days after that, the company closed, the owners took the furniture and equipment out of the office and disappeared. There was no bankruptcy, no one was notified—they simply closed!

We know that Houghton Harcourt Mifflin paid for the work we had done, but once the money entered the account of Inkwell, it vanished. Freelancers got nothing. The total loss of 40 workers exceeds \$300,000. I was owed more than \$20,000.

After this experience I joined the National Writers Union and sadly realized that these cases happen more often than I had thought. We are working in to prevent this cases, but without a legislation to protect independent contractors, this is very difficult. The Freelance Isn't Free Act will help keep bad business practices – like those of Inkwell Publishing Solutions – in check. It sends a clear message that freelancers aren't going to take the fall for poorly run businesses.

My name is Inder Parmar, I've been driving for Uber since 2013 and I'm a member of the New York Taxi Workers Alliance.

When I started driving for Uber I was paid \$3 per mile. Their commission was only 10 percent. Now we are paid \$1.75 per mile and Uber has raised its commission to 25 percent.

My expenses haven't gone down but I have lost fifty percent of my income.

I used to work 60 hours per week and was able to put good food on the table for my family. Now I work 70 or 80 hours a week and can barely cover my expenses.

I have two kids in college – a daughter who is getting her MBA and a son who is getting his bachelor degree. I am so proud of my children and I'd like to be able to help them pursue their education, but I can barely cover the cost of my own bills and sometimes fall behind because I make so little money now. I have no money left over to offer them.

Uber considers me a part time driver even though I work 70 to

80 hours a week. Tell me, how many hours do I have to work to be considered full time?

Many weeks I have earned below minimum wage, sometimes as little as 3 or 4 dollars per hour.

Uber tells me who to pick up, where, and when. And yet they tell me I'm an independent contractor and say they don't have to pay me minimum wage or cover any of my expenses. I pay for gas, I pay for vehicle maintenance out of my own pocket. And when I'm driving around for hours looking for passengers because Uber has flooded the streets with so many vehicles I earn nothing that entire time.

What we are facing now is inhumane. No one should have to work so many hours for below minimum wage and be unable to support our families.

Uber treats us like we are machines not human beings. But we are human beings and we deserve rights on the job. Uber should follow the law and treat us as employees instead of as expendable contractors with no guaranteed income.

Thank you.

**Testimony by Nadia Marin-Molina, NYCOSH Associate Director:
Public Hearing on the State of Workers Rights in New York City
April 25, 2017**

I am here to speak on behalf of the New York Committee for Occupational Safety and Health (NYCOSH). We applaud the Department of Consumer Affairs, the Mayor's Office of Immigrant Affairs, and the New York City Commission on Human Rights, for your attention to this important issue and thank you for the opportunity to present testimony.

NYCOSH has worked for 38 years to extend and defend every person's right to a safe and healthy workplace. On Friday, we will be holding our annual commemoration of Workers Memorial Day, on which we remember the workers who have died on the job, often in preventable workplace incidents. From January 2016 to date, 34 New York City workers have been killed on the job. This does not even begin to count workers who suffered long term illness and death due to exposure to chemical and substances such as asbestos, silica, or the toxic mix of substances after 9-11. It also does not count the hundreds or thousands who are injured or become ill due to their working conditions.

Today we will focus our testimony on the most vulnerable workers in New York City, many of them low-wage, immigrant workers, and look at history in order to understand how best to protect immigrant workers rights in the current context. President Trump's Executive Order on Enhancing Public Safety in the Interior of the United States, issued January 25, 2017, enacted various policy changes related to immigration enforcement. The executive order is clear. Immigration Customs and Enforcement (ICE) now has its gloves off when it comes to detaining and deporting immigrants, and all agencies, including the U.S. Department of Labor and the Occupational Safety and Health Administration, will be deployed to enforce immigration law. The order also contains components which will impact the health and safety protections of immigrant workers, and as a result, undermine the safety of all workers and the public at large.

Directors, mandating that the use of ruses involving health and safety and the impersonation of OSHA was to be discontinued.

The Obama administration, after being pressured by labor unions and workers' centers, initiated a 2011 Memorandum of Understanding between the USDOL and ICE, where ICE agreed to stand down when OSHA was investigating a worksite. The MOU states that ICE will "refrain from engaging in civil worksite enforcement activities at a worksite that is the subject of an existing DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding." The MOU was later expanded to cover the NLRB as well.

These worker friendly policies of OSHA and the Department of Labor, combined with the outreach of labor organizations, ensured workers could report violations regardless of immigration status. However, these worker friendly policies are now being replaced with draconian measures that criminalize all workers who are here without documentation.

In addition to the intimidation and criminalization of immigrant communities, the budget proposed by the Trump Administration goes further to endanger the health and safety of all workers. The Administration's budget proposal contains 21 percent cuts to the Department of Labor, the elimination of funding for worker safety and health training programs (Harwood grants); and the elimination of grants that go toward training for workers with disabilities. The Occupational Safety and Health Administration - OSHA- (which is part of the Department of Labor) is already significantly understaffed: there are only 66 inspectors to cover every workplace in New York State. Less training and oversight will result in more illness, injury and workplace deaths.⁴

⁴ Trump Budget Would Slash Worker Training And Safety. The Huffington Post. 3/16/17. <http://huff.to/2m5QCPi>

Without Immigrants. Thousands, or millions more, may do the same on May 1st. This is an opportunity for agencies, such as the Commission on Human Rights, to make a public statement that workers have the right to take collective action, to stand up against discrimination, and to try to enforce their rights, and that any firings or retaliations will be investigated.

The health and safety movement in the United States began with a clear understanding that only workers can enforce health and safety protections on the job through sustained organizing. Local government should join together with workers organizations, labor unions, and communities at large to protect the right of all workers to a safe and healthy workplace. Thank you for the opportunity to provide testimony and we look forward to continuing to work with you on these crucial issues.

370 7th Avenue
14th Floor
New York, NY, 10001



April 25, 2017

Department of Consumer Affairs – Public Hearing on Worker’s Rights

LaGuardia College

Good evening.

I would like to thank the Department of Consumer Affairs for assembling these panels and providing the arena and opportunity for workers to engage with local government and find solutions to better enforce workers rights.

My name is Adrianna Hughes and I am a member of the Retail Action Project, a worker center initiative of the Retail, Wholesale and Department Store Union.

The Retail Action Project (RAP) is an organization of retail workers dedicated to improving opportunities and workplace standards in the retail industry. RAP was founded in 2005 as a community labor partnership which helped thousands of low-wage New York City retail workers fight wage theft and win millions in unpaid wages, and has since expanded into a membership organization.

At RAP we are very concerned about what the current political climate in Washington means for retail workers.....for all workers.

The growing retail workforce – which is now 1 in 9 workers nationally – face an ever-increasing obstacle, not just with low wages but also with few benefits, unfair scheduling, underemployment and daily disrespect.

This type of treatment in retail is often justified by the claim that retail is a low-skilled job. Yet, our members at RAP would be glad to tell you about the sharpness of our logistics and planning skills that come from having to juggle a full life and raise families without a reliable schedule or paycheck, how skilled we are at making a \$250 check magically stretch over a week and a half because we don’t know what the next week’s hours may be, how we manage the fast-paced, physically demanding multi-tasking and customized selling of the retail industry, smiling in the face of constant rudeness and lack of appreciation.

370 7th Avenue
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Retail requires significant **patience and emotional intelligence** and its **stressful dealing with all those customers just looking for retail therapy, an experience that our low pay and unreliable hours rarely affords us.**

Retail employers offer **fewer and fewer opportunities for training and advancement** so workers' expectations of our employers and **appreciation of our own industry expertise** has diminished as a result.

I came to RAP after working 4 years in the food and retail industry. My spirit was broken, I had never had a vacation, whatever hours were asked of me I worked without giving it a second thought, I never felt appreciated or valued. Hiring managers took advantage of my naiveté and paid me inadequately.

In the summer of 2014, my general manager came to the job to evaluate me, but his critical assessments turned into an antagonizing situation and I wound up having a panic attack. Some time later I was running late to where our cart was located on the South Street Seaport and the propane that we use to prepare our coffee was running but had not be pre-lit, as is company policy. In my rush to get things set up, I was not only inhaling huge amounts of propane fumes but I rushed without thinking and lit the pilot, taking a blast of fire that ran from my hand to my elbow. Even if I had wanted to shut the propane off it would have been impossible as the lever that turned it off had been jammed for weeks and still was.

I was hospitalized and upon attempting to return to work was gradually pushed out, being told that the cart was not in operation and eventually I was removed from the schedule all together without so much as an explanation.

It was demoralizing and inhumane and given the way I was prepared to put myself on the line for the company, I expected to be treated with more decency and respect.

So, how can local government support us in changing this reality?

First, you can continue to support our work to advance sustainable scheduling to create stable employment in retail by trying to address the most unpredictable scheduling practices like on-call scheduling. Retailers are increasing their demand for open availability – and are becoming less accommodating of workers other commitments. On-call is a practice that makes life so hard for workers and their families.

370 7th Avenue
14th Floor
New York, NY, 10001



You can provide **trainings and resources** to help organizations like RAP work with us to enforce sick time rules and employer adherence to the **minimum wage** increases.

You can take on the **discrimination cases** that we bring to light.

You can help ensure that **employers are mandated to follow OSHA regulations** and train all of their staff in the safest way to perform **our jobs**.

You could even host **Employer Sensitivity Trainings** so that they start to see and treat us more like human beings, recognize that we too have loved ones who need our time and attention.

The Retail Action Project is committed to both protecting standards in good retail jobs, turning bad retail jobs into good ones **through** organizing and policy change - and making sure that more retail workers – especially ones **like me**, women and people of color – can access these opportunities. We **believe it is possible** for the retail industry to provide jobs that are dignified, stable, consistent and well paid, **regardless of the color of your skin**, while still turning a profit and we're hopeful we can count on you all to work with us to make that a reality.

Thank you.

My name is Jose Francisco. I work in an Industrial laundry called Unitex. I have worked there 22 years. That company washes linen for hospitals, nursing homes and clinics and is one of the few industrial laundries that followed voluntary, model standards for cleanliness, even before the CLEAN Act. But I have talked with many workers at other industrial laundries where conditions are very bad.

The majority of workers that work in the industrial laundry industry are immigrants. Many employers in this industry will get away with whatever legal violations they can. As a volunteer organizer, I have spoken to many laundry workers work under hazards and dangerous conditions. Laundry workers that have reported bosses would block fire exits, have workers use sodium hydroxide and bleach solutions without eye protection or training and one particular employer even through hot coffee at a worker. Many of these employers use fear and intimidation to ensure immigrant workers do not report these outrages violation.

I worked as a volunteer organizer with my union and I remember very clearly this one particular case, this lady worked for JVK for more than one year. JVK is a company that launders linens for hospitals and hotels in New York City. This worker had told me that she worked long days, weekends and would never get paid overtime. As a worker I was outraged. As the union investigated further JVK had massive overtime violations, and OSHA violations too.

This company has not even bothered to register under the CLEAN Act – therefore it is not complying with the CLEAN act.

The CLEAN Act of New York City is legislation requiring laundries to deliver clean, safe linen and garments to the public. This legislation benefits customers, workers, and responsible owners by ensuring that all industrial laundries comply with standards that ensure the safety and cleanliness of linen and garments at our hospitals, hotels, and restaurants. Laws like the CLEAN ACT protect the workers and the consumers.

There are many Companies like JVK, that exploit immigrant workers and use the current political climate to their advantage.

I am happy to be a union member from the Laundry Distribution and Food Service Joint Board, Workers United, SEIU. Under our union contract all immigrants have protections. Our contract protect us. We applaud the administration for passing the CLEAN ACT to increase oversight. We also applaud any effort to further support immigrant workers and to decrease fear and intimidation.



Testimony of Rodney Stiles, Assistant Commissioner

New York City Taxi & Limousine Commission

Before the

New York City Department of Consumer Affairs, Mayor's Office of Immigrant Affairs, and

New York City Commission on Human Rights

Public Hearing on Workers' Rights

Good evening, everyone. My name is Rodney Stiles, and I am the Assistant Commissioner in the Policy and External Affairs division at the Taxi and Limousine Commission. Thanks to everyone for sharing their stories tonight, and thank you to Commissioner Salas, Commissioner Malalis, and Assistant Commissioner Pawria-Sanchez for inviting us to testify today on the state of workers' rights in New York City.

TLC is responsible for licensing and regulating for-hire transportation in New York City, including the companies and the drivers. TLC licenses over 160,000 drivers, and a vast majority of these drivers are classified as independent contractors. The number of licensed drivers has grown substantially in the last few years with the rise of app-based car services like Uber and Lyft. In addition, 91 percent of our licensed drivers are immigrants. Driving for-hire has historically been a pathway for new immigrants to make a reasonable living in the city, but with the growth in the number of drivers, we have increasingly heard concerns that wages may be falling.

TLC recently held an overflowing public hearing on April 6 about economics in the for-hire industries. Eighty people spoke, about 2,000 watched in person or via livestream, and over 4,600 people have viewed the hearing video since. The hearing was one of the longest in TLC history, underscoring drivers' feeling that their income is decreasing, as drivers shared their stories about trying to earn a living driving for-hire. With the rapid transformation of the industry in recent years, it's unsurprising that this issue generated an unprecedented level of interest and emotion from our licensees. The major recurring themes were decreasing income, increasing expenses and a lack of transparency in driver recruitment and compensation. We also heard that more drivers have entered into vehicle lease agreements that further reduce their income.

We took a first step in addressing the concerns around driver earnings last week in responding affirmatively to a petition from the Independent Drivers Guild which called for a tipping option within the Uber app, since passengers wishing to tip their drivers today must do so in cash, and since tips can sometimes be critical to a driver covering their expenses and netting a profit. We understand that opening up access for tips to drivers is only one small means of addressing drivers' income, and we will continue to research issues around industry economics.

We look forward to hearing comments from drivers at this hearing and other workers who have come to identify issues on workers' rights. We also look forward to working with your agencies to develop reasonable policies to ensure protection of workers' rights when we identify issues. Thank you again for the opportunity to speak publicly on these issues today.

TESTIMONY

ON

THE STATE OF WORKERS' RIGHTS IN NEW YORK CITY

PRESENTED BEFORE:

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

MAYOR'S OFFICE OF IMMIGRANT AFFAIRS

NEW YORK CITY COMMISSION ON HUMAN RIGHTS

PRESENTED BY:

MAGGIE MARRON

STAFF ATTORNEY
COMMUNITY DEVELOPMENT PROJECT
URBAN JUSTICE CENTER

APRIL 25, 2017

URBAN
JUSTICE
CENTER



COMMUNITY DEVELOPMENT PROJECT

Good evening. My name is Maggie Marron and I am a Staff Attorney with the Community Development Project of the Urban Justice Center. Thank you for the opportunity to testify at this first hearing of the new Office of Labor Policy and Standards (OLPS) on the state of workers' rights in New York City. I am here to speak to the potential of worker cooperatives as an affirmative and collective strategy to combat worker exploitation.

The Community Development Project strengthens the impact of grassroots organizations in NYC's low-income and other excluded communities by winning legal cases, publishing community-driven research reports, assisting with the formation of new organizations and cooperatives, and providing technical and transactional assistance in support of their work towards social justice. For more than ten years, CDP has collaborated with community organizations and worker centers to help low-income NYC residents form worker-owned cooperative businesses. Worker cooperatives are businesses that are owned and democratically governed by the workers. These ventures, many of which focus on sectors of the service industry and contingent workforce, including child care, home health care, housecleaning, handyman, and marketing services, have created more stable jobs for the primarily immigrant workforces in these traditionally low-income, high-exploitation industries. Worker cooperative jobs offer higher pay, help develop business skills, and allow worker-owners of all income levels asset-building opportunities. Furthermore, as institutions where real democracy is practiced via the principle of "one worker, one vote," worker cooperatives encourage civic engagement, self-advocacy, and participation in broader movements for economic justice.

The benefits and protections of worker cooperatives are becoming more pronounced in the new era under the current president. Extreme hostility of the federal administration toward immigrants translates directly into exploitation of workers on the ground. Workplace abuse

thrives on a culture of fear and power imbalance. The more misinformation and anti-immigrant sentiment permeating the environment, and the more dire the potential consequences of employer retaliation—such as the ever-present threat of immigration authorities being called—the more workers will submit to exploitative conditions for fear of rocking the boat or being exposed.

In this environment, worker cooperatives offer a sort of sanctuary workplace, hate-free zones where worker-owners are empowered with knowledge and collectivity. When organized cooperatively, workers have better footing to set their own wages and standards within a market, they have access to support and information networks among their fellow worker-owners and other cooperatives, and they are not as vulnerable to the instability of less regular work. These benefits strengthen the position of workers and provide crucial insulation against the threatening and chilling effects of anti-immigrant policies on workers' ability to meaningfully assert their rights.

Recognizing the potential of worker cooperatives to empower some of NYC's most vulnerable workers and create better quality jobs, the City Council has invested \$6 million in their development over the last three years through the Worker Cooperative Business Development Initiative, administered by the NYC Department of Small Business Services. This year alone, 27 new cooperative businesses are being developed through the Initiative, including a child care cooperative of Bengali-speaking nannies in the Bronx and Up & Go, a tech platform cooperative that enables New Yorkers to easily book professional home services of a number of worker cooperatives from their computers or phones. This represents the creation of hundreds of meaningfully safer, more stable jobs for primarily immigrant workers in low-wage industries

across NYC, at a time when these populations are being targeted by federal policies and the survival of their families and communities is made more precarious by the day.

If NYC is to be a true sanctuary for its residents during these difficult times, that must include ensuring New Yorkers ways to make a safe and sustaining living, free of abuse and exploitation. Many of the building blocks and support networks are already in place to build a bigger worker cooperative movement in NYC. Strengthening what already exists, increasing awareness, building out expertise, and finding ways to support more of NYC's vulnerable workers to organize into worker cooperatives and take control over their own economic survival and wellbeing is a concrete way to combat the attack on workers' and immigrant's rights coming down from the federal level.

Thank you for the opportunity to testify this evening.



**Testimony before New York City's Office of Labor Policy and Standards Public Hearing
on the State of Workers' Rights in New York City**

April 25, 2017

Comments of Tito Sinha, Senior Staff Attorney

Good evening, my name is Tito Sinha and I am an attorney in the Urban Justice Center's Community Development Project's Workers' Rights Practice. CDP appreciates the opportunity to share our concerns on the State of Workers' Rights in New York City relative to how City government can strengthen labor standards enforcement.

CDP's mission is to strengthen the impact of grassroots organizations in New York City's low-income and other excluded communities through direct representation, research reports, the formation of cooperatives and new organizations, and technical assistance. We work in close collaboration with 60 – 70 grassroots partners across the City. These partnerships enable CDP to track broad trends and shared concerns across boroughs and cultures at the community level.

The Workers' Rights Practice works closely with 15-20 of these partners to provide legal representation and advice to members of our partner organizations on a variety of issues including wage-and-hour claims, tip theft, employment discrimination, sexual harassment, retaliation, and civil trafficking. Most of the workers we serve are in industries such as restaurants and groceries, domestic work and home care, construction, nail salons, laundries, and garment factories, among others.

Wage Theft and Inability to Enforce Judgments

The vast majority of our clients come to us with claims of unpaid wages, and violations of the minimum wage and overtime laws. The Department of Labor remains the forum where the majority of our cases are filed -- but DOL investigations can take up to two or three years -- and even if the DOL ultimately issues an Order to Comply, the employer may appeal the Order which results in a further delay. We are able to file cases in court only on specific occasions where there are high damages and an employer with assets because these cases are attractive to private attorneys with whom we co-counsel.

Furthermore, when we are able to obtain a judgment for our clients, we face the increasing problem of being unable to collect damages as employers often use a variety of means to avoid paying judgments. CDP is a member of the SWEAT Coalition which supports bills introduced in the New York State Legislature that seek to increase workers' ability to recover unpaid wages. For example, the bills would establish a wage lien allowing low-wage workers to place a hold on the employers' property until their owed wages are paid, make it easier to attach an employer's assets pending resolution of a case for unpaid wages, and also make it easier for workers of non-publicly traded companies to hold the largest shareholders responsible. The new law would also allow the DOL to use these mechanisms such as filing a wage lien which would enhance DOL's ability to collect wages for workers.

Expanding the City's Enforcement Mechanisms

In collaboration with our partners, we are always exploring and supporting new mechanisms to enforce labor laws and hold employers accountable for unpaid wages. For example, several of CDP's partners and CDP have been discussing what role Department of Consumer Affairs can play in enforcing labor laws. Given that DCA licenses a wide variety of

businesses that employ workers, DCA has the potential to use its licensing powers to help insure that licensed businesses comply with judgments. For example, DCA can work to gather information about employers' labor law compliance from the federal and state Departments of Labor, the courts, and the public. DCA can then either deny licenses to and/or penalize businesses that have failed to pay a final judgment for wage theft issued by a court or enforcement agency. Finally, DCA can make information about licensees' labor law compliance available to the public. This transparency would benefit workers as well as consumers who will have this information to decide whether to work for or support a particular business. We and CDP's partners would be happy to have further discussions with DCA about these potential avenues for enforcement.

Protecting Immigrant Workers

In these times of increased immigration enforcement and harsh anti-immigrant rhetoric, we are seeing employers being emboldened to exploit and retaliate against immigrant workers. Employers are increasingly responding to workers seeking to enforce their rights under the labor laws by threatening to report a worker to immigration or other governmental authorities, or actually doing so. In one particular case, an employer filed a retaliatory lawsuit against a worker who filed a DOL claim and disclosed the workers' immigration status in the court filings. In that case, we were able to work closely with the DOL, and through our joint efforts, the employer withdrew their lawsuit. We would like to explore how City agencies can play an affirmative role to protect immigrant workers from their employers' retaliatory practices, such as thinking creatively about how City agencies can use their enforcement powers. For example, when employers threaten to report workers to immigration authorities in response to their complaints of unpaid wages, this constitutes retaliation under New York Labor Law. But

independently, could the Commission on Human Rights initiate investigations against employers who engage in such threats in response to complaints of unpaid wages as potential discriminatory harassment under the City Human Rights Law on the basis of immigration status while keeping the complainant's identities confidential.

Now more than ever, we are seeking new avenues for potential enforcement of labor laws and also seeking to strengthen existing mechanisms for such enforcement so that workers' rights are protected to the fullest extent possible.

Thank you for considering this testimony.

Hola, mi nombre es Glenda Sefla he estado trabajando en la industria de los salones de uñas por cinco años.

Estoy aquí para dar mi testimonio sobre las condiciones de trabajo en los salones de uñas, basado no solo en mi experiencia, sino también en la de las 500 compañeras que forman parte de la Asociación de Trabajadoras de Salones de Uñas, formada dentro del sindicato Trabajadores Unidos.

Uno de los problemas más grandes que tenemos es a cerca de salud y seguridad.

En cuanto al requisito de proveer equipo de protección a las trabajadoras, la realidad es que aun muy pocos salones utilizan el equipo de protección. Además de eso, en muchas situaciones, ni siquiera es la protección adecuada. Hay salones que tienen el equipo de protección adecuado, pero solo es para aparentar en caso de que lleguen a inspeccionar al salón.

En los cinco años que he estado trabajando nunca he visto a alguien usar la mascarilla adecuada, solo lo he visto allí por si acaso llega inspección. También, si permiten el uso de protección como guantes, que sirven para proteger al cliente y a la trabajadora de infecciones, hay condiciones. Por ejemplo, los jefes no nos dejan usarlos cuando estamos haciendo masajes en los pies de los clientes. Aunque, nosotras si queremos continuar usándolos.

Yo trabajaba para un salón de lujo donde acostumbraban re-usar materiales y herramientas, como limas y buffs, que se supone usen solo una vez. Sé que esto no solo ocurría en mi salón, pero también, en otros salones, no importa que tan lujosos o limpios parecen. Aunque nosotras como trabajadoras nos sentíamos mal y no queríamos hacer eso porque es antigénico, al fin, no importa lo que nosotras queremos, los jefes nos exigen.

La realidad es que hay mucha presión y estrés para las trabajadoras. No nos sentimos cómodas porque en cualquier momento nos pueden despedir, como le pasó a una compañera que por estar cansada y querer sentarse en los sofás, le gritaron y la castigaron sin poder regresar al trabajo por una semana.

Y con todo esto, hay mucho robo de salario y además de eso, la propina en muchas ocasiones ni es suficiente para llegar al salario mínimo. A pesar que el estado ha tratado de solucionar el problema de robo de salario, es un problema bien común que persiste. Queremos tener un sueldo estable y justo que no dependa en la propina.

Ante todo, no nos tratan dignamente. Es una industria donde, trabajadoras no pueden opinar en decisiones que afecta no solo nuestra salud y nuestra integridad. Nos tratan como si fuéramos unas máquinas. Queremos que se capaciten y sean entrenados los dueños y los managers en las leyes y reglamentos y sean implementos en los salones.

Hoy, solo he hablado sobre muy pocos problemas, de los muchos que existen en la industria. Hay compañeras que trabajan bajo condiciones más extremas.

Si esperamos cambiar esta realidad, las trabajadoras necesitamos poder de decisión y que sean tomados en cuenta. Merecemos que nos traten con dignidad y como seres humanos.

Gracias.

Writers Guild of America, East Testimony on Working Conditions of Freelancers in
Nonfiction/Reality Television

April 25, 2017

Thousands of New Yorkers work on nonfiction/“reality” television programs, which are extraordinarily popular with audiences and profitable to television networks. The vast majority of these jobs are freelance in nature – people move from company to company, from show to show. Although the work itself can be satisfying, the working conditions most definitely are not.

Hours are grueling, with 12- to 14-hour days and 6- or 7-day weeks very common. Pay rates are too low to enable people to build sustainable careers in this expensive city, with hourly rates often dipping below \$15. Some production companies offer health benefits, but only to the very few employees who stay with one company long enough to qualify for coverage, and only if the employees can afford to pay hefty premiums out of their own pockets.

This is how the gig economy works, a system of high-status sweatshops. Perhaps worst of all, there is plenty of money in this industry to solve the problems of long hours, low pay, and scant benefits. The television networks that distribute these shows make enormous amounts of money from advertising and from fees they negotiate with cable companies. Unfortunately, audiences and elected officials are simply unaware of the awful working conditions and therefore the TV networks have felt no pressure to make changes.

The Writers Guild of America, East has been working with freelancers in nonfiction TV for several years. We have learned firsthand from many hundreds of writers, producers, and others just how tough it is to make ends meet doing this work. We have tried to negotiate collective bargaining agreements with the production companies that employ the folks who actually make the shows.

At every turn, these production companies say, “Don’t blame us. We’re hired by the TV networks. They’re the ones who set all of the parameters.” The networks decide all of the economics – especially the production budgets and the production schedules. The networks decide which shows to make, what should be in the shows, how long it should take to make the shows, and how much to pay. (And, unlike in the rest of the television industry, the networks retain all of the rights to the shows; the production companies function as hired hands with no ongoing stake in any of the material and therefore no opportunity to share in the shows’ successes.)

One of the nonfiction production companies that has been most vocal about the role of the networks in determining how the workplace must be run is Leftfield Pictures – which, ironically is one of the largest production companies in the nation, and is owned by ITV, a massive multi-billion dollar media company headquartered in the United Kingdom. To test Leftfield's assertion that networks set the terms, the WGAE (accompanied by many dozens of writer-producers) has held rallies and delivered petitions to the networks that buy and air the company's shows, particularly A&E. Perhaps aware of its potential liability for the sweatshop conditions that pervade the production side of the industry, A&E has steadfastly refused to communicate with us. We are confident that A&E's millions of viewers would take a dim view of the network's ongoing attempts to evade a conversation about how its shows are actually made.

How does this translate into the working life of an average associate producer, for example? This AP, who is typically a college-educated person with a knack for creating content, might work on several shows a year, a few months at a time, sometimes with months between gigs. The pay is low – again, often less than \$15/hour. Depending on where in the production schedule she is, she might spend 60 hours a week for a few weeks doing research and preparatory work, followed by the actual production itself, which typically involves 12- to 14-hour days, sometimes without a day off for weeks at a time. Overtime pay is virtually unheard of, which means that wage theft is rampant. In some shops there are timesheets, but APs are often asked to fill them out in advance or to enter start and end times that are even more fictional than the shows they work on.

The pressure to deliver the shows on-time and on-budget to the TV networks makes it extremely difficult even to think about taking sick days, or to put in for overtime, or to complain about unsafe working conditions. The freelance, gig-to-gig nature of employment also scares APs into keeping their heads down and their mouths shut; after all, if you get a reputation as someone who stands up for your basic rights, you simply won't get hired for the next gig.

One New York production company – Peacock Productions, a division of the media giant Comcast/NBCU - went so far as to demand that the WGAE formally waive the right of the company's writer-producers to take paid sick days under the New York City sick leave law. We of course have refused to do so. But even less brazen employers put enormous pressure on their employees to forgo their right to take a day or two to recover from illness; after all, the networks require that shows be delivered on time.

Again, the power and the money to fix these rampant problems lies with the TV networks that buy these shows and make enormous profits from them. All it will take is public scrutiny and public pressure.

To put it another way, the New Yorkers who work on nonfiction/reality TV shows are suffering in the gig economy – not because there isn't enough money in the TV business for sustainable careers, but because the production companies blame the networks, which in turn evade responsibility. Sustained inquiry and analysis by the City would be invaluable to these hard-working people. And it is imperative that the networks like A&E be brought to the table to answer for the deplorable conditions suffered by the people who craft the shows that attract audiences and advertising dollars.

Alastair Bates
Testimony for Office of Labor Policy & Standards
New York City Dept. of Consumer Affairs
April 25, 2017

Good evening,

My name is Alastair Bates. I'm a member of the Writers Guild of America, East (WGAE) Industry-wide organizing committee for Non-Fiction television. I'm a writer and producer with more than 30 years' experience in the industry. I started my career in London and then worked in Los Angeles before settling in New York in 1990. Since then, I've worked for the networks and many different independent production companies primarily in the non-fiction/true crime area. More recently I was the supervising producer and then executive producer and show runner for the crime series RedRum that aired for 3 years on the Investigation Discovery channel.

Over the past 20 years non-fiction television has boomed in the city. Nonfiction TV now employs thousands of creative professionals here. Both true-crime shows and reality TV series have become a big slice of production and post production here in New York.

International companies and investors have taken note. A major production company in this sector, Leftfield Pictures, was recently sold for \$360 million dollars to the UK conglomerate ITV Studios.

However, unlike so-called scripted television, nonfiction TV is largely non-union and thus not regulated by collective bargaining.

And while the industry has been enormously profitable for the cable networks and production companies, the average wages for the people who actually make the shows -- producers and associate producers as well as production coordinators and assistants -- have stagnated or effectively declined over the last several years, especially when you factor in the rising costs of living in the city.

As the trend towards the so-called gig economy has continued, people in the non-fiction television industry here have not only seen their wages stagnate but other basic benefits eroded or simply withdrawn altogether.

Despite it's growing presence on the New York media landscape, non-fiction television has received little regulatory oversight. The reality about reality TV -- and much of non-fiction--is that it's a race to the bottom. The Production companies claim that they must do more with less, while networks like A&E take no responsibility for wages and working conditions in the industry and point to the production companies.

To name some of the more egregious practices that are common in the industry:

- Production companies routinely and illegally filled in time cards for employees and made their hires regularly work way longer than an 8-hour day and also on weekends without compensating them for overtime.

- In a recent Guild survey of workers in this industry, 69% of respondents said they work more than 8 hours in a day every day and 76% said they work more than 40 hours in a week every week. 84% said they receive no overtime pay. Regarding time cards, 62% said their time cards never reflect their actual hour worked. One company True Entertainment has recently been ordered to compensate employees more than \$400k for unpaid overtime going back six years.
- Occupational health and safety standards were ignored, particularly in the field and particularly in the reality tv industry (some of these incidents have been reported in the press.)
- Production companies failed to notify their hires that even as freelancers they were entitled to sick leave. According to the same recent survey, only 22% of respondents indicated that their job offers paid sick leave. 50% said their employers had not informed them of their right to paid sick time under NYC law and 19% weren't sure whether they'd been informed.

Those are just some of the issues.

People moving from TV gig to TV gig do not have adequate protection from the worst practices of the production companies. And as more and more people move into these contingent-economy jobs in television, we need to establish the ground rules for a better working environment and a sustainable industry – we think that should include:

- Agreed minimum rates of pay for the basic job categories
- Overtime
- Paid sick leave
- Strict health and safety compliance
- Employer healthcare contributions

And we'd like to see more accountability in the industry in general.

- Production companies often use sub-contractors or payroll companies to avoid their obligations to their hires.
- They have often let people go after a year or so to avoid having any obligation to so-called "permalancers."
- We need better research to and monitoring to understand whether this industry and the subcontractors/production companies and networks are following the laws.

Finally –we're talking about setting standards for the future of this industry and the many young people who come to New York and work in TV. They'll take the insecurity of the freelance life, and the long hours, the looming deadlines and the sometimes-difficult conditions– as long as they're properly compensated for their work and respected for their professional skills.

Thank you.

Testimony: Contingent worker Erica Rubinsky

Thank you for having me on the freelance panel. I work in the entertainment industry and I think we can all agree that this business contributes greatly to the local economy and job market. It's personally fulfilling and filled with hard working people. Film and television production work is by and large a freelance economy.

I've worked many freelance jobs in this field including lighting technician, production assistant, associate producer, driver, and researcher. Working conditions and rates vary widely depending on the production and position. Employment can be anywhere from 1 day to indefinite. Companies can be in business for a long time or just the couple of months it takes to film. Jobs can last as long as originally expected, or extend a few months at a time.

The Writers Guild has identified Reality TV as one segment of the workforce that has slid under the radar of protection and independent film is in a similar place. There are basic questions about how a 12 hour workday is supposed to be calculated in order to even determine your paycheck, much less if there is a violation. You take your day rate, split it into 8 hours straight time and 4 hours overtime, account for lunch and if you went over 12 or if you worked more than 6 without a break. This is why you will often have production filling out your timecard, because they also take into consideration their budget.

This makes it hard to interpret how the minimum wage, overtime, sick time and other labor laws apply to you. And what is the employer responsible for when the work is for different companies on a daily or bimonthly basis? Now that we can get healthcare through the state exchange that is really helpful to me, so please keep fighting for that. And I know a lot of us are excited about the steps the city has taken to ensure timely payment and a living minimum wage.

A means to find information in your spare time after a 14 hour workday would be a great service from this commission. There must be resources out there but we don't know what they are. What information should we collect when we work a job so that we can follow up if we don't get paid? Any information that can elucidate the compensation or health and safety rights of contingent and freelance workers would be extremely helpful to a large segment of entertainment industry professionals.



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Lowell Peterson
Executive Director

Marguerite Dunbar
Testimony for Office of Labor Policy & Standards
New York City Dept. of Consumer Affairs
April 25, 2017

I'm a freelancer working in nonfiction TV. My job title is associate producer. I've been involved in the Writers Guild industry-wide organizing campaign.

Working extremely long hours with no overtime pay is a rampant issue we face as "gig" workers in this industry.

My understanding is in my position as an associate producer, I'm entitled to overtime pay. But in reality, my bosses often tell me that I cannot get overtime pay no matter how long I work. This was the case when I was at ITV. One of my bosses wanted me to work at night and on the weekends, while my other boss who was in charge of paying me told me I couldn't get paid for those hours. I was told that I couldn't write on my timecard the actual hours I worked. As is supported by the recent Guild survey, many of us in this industry are told to fill out our timecards with just the word "worked" or to write that we've worked 8 hours every day even if I've worked longer hours.

At Leftfield, I filled in my timecard the same every day regardless of how late I stayed.

At ITV, I was also told that when I was working on shoots in the field, I was then entitled to overtime pay. The other producers and I would get up early and film during the day. Then when we got back to the hotel, we were considered off the clock. But there was still work to do. I might have hours of work to do for the next day, but my hours were only calculated from when I left to start filming to when I returned from filming.

Many producers work long hours and do not get compensated for those hours. We're expected to work for free. No one is monitoring to make sure we're not being exploited. We are excited about the formation of the Office of Labor Policy & Standards, and hope the city can help to monitor how many hours we are being expected to work and how many hours we are working.



WORKER'S JUSTICE PROJECT (WJP)

Tuesday, April 25, 2017

TESTIMONY

Presented to:

Department of Consumer Affairs
Department of Human Rights
Mayor's Office of Immigration Affairs

Prepared by:

Hernan Ayabaca, Member of the Worker's Justice Project (WJP)

Public Hearing on the State of Workers' Rights in New York City

Buenas noches a todos los presentes en esta audiencia pública sobre el estado stado de los derechos de los trabajadores en la ciudad de Nueva York. Mi nombre es Hernan Ayabaca y soy trabajador de la construcción y miembro del Proyecto Justicia Laboral. Primero, quiero agradecerles la oportunidad de testificar hoy en esta audiencia pública.

Yo llegue a este país a la edad de 25 años en el 1994 buscando un futuro mejor como todos los inmigrantes venimos este país. Cuando llegué a este país, mi primer trabajo fue ensamblando muebles en una factoría en Bronx en donde mi salario era \$ 6 la hora, lo cual no suficiente para cubrir mis gastos. Entonces busque otro trabajo en una factoría donde cosía ropa y igual me pagaba \$8 la hora y igual el salario no me permitía cubrir mis gastos como la renta, la comida, transporte y poder proveer a mi familia. Deje ese trabajo para ir a trabajar en una ferretería y donde me daban más horas de trabajo pero aún era mal pagado. Pero el salario no era suficiente y por querer ganar un mejor salario empecé a trabajar en la construction.

Empecé a buscar en la parada de la calle 147 and Northern Boulevard. Mi primer trabajo fue reparacion de rufo, lo cual era un trabajo super peligroso con un salario de \$100 por dia. En la parada el trabajo no siempre es estable, no hay mucho trabajo y hay mucha gente esperando por trabajo. En otra ocasión, un empleador me contrató como ayudante con la promesa de pagarse \$60 el día. Después de trabajarle me dejó en la parada y me prometió que me pagaria el dia siguiente, pero nunca llegó. En parada uno vive siempre con miedo, con incertidumbre y con mucha necesidad. Los trabajos de la parada son los más peligrosos, los más sucios y los

que nadie más los quiere hacer. La necesidad nos obliga a hacer estos trabajos con un mal trato, mal pago y muchos otros riesgo como perder salud. En mi caso llegue a tener un accidente en el cual tuve una lección en mis dos rodillas por cargar mas de 300 hojas de tablas de pared al piso 5. Tenía mucho dolor en la rodillas y me fui al doctor y me dijo que tengo desgaste en cartilago por la fuerza que hice en mi trabajo. Mi empleador ignoro su responsabilidad y hizo como si nada hubiera pasado. Tampoco respondió a cubrir los gastos médicos ni tampoco el tiempo que he dejado de trabajar. Ahora no puedo hacer trabajo pesado, mi tiempo esta mas el medico y soy yo mismo quien cubre mis gastos médicos.

Esto es una experiencia diaria de todos los trabajadores de la construcción y los Jornaleros vivimos en la ciudad Nueva York. Muchas veces sentimos que las compañías tienen más derechos que los trabajadores y que ellos usan el sistema para evadir sus responsabilidades, sobretodo en la construcción en la cual muchas veces ni siquiera sabemos quién mismo es nuestro empleador. Muchos empleadores nos miran como mano de obra desechable y sin humanidad.

Yo y muchos trabajadores Jornaleros vivimos estas experiencias porque que desconocemos que tenemos como trabajadores y que existen centros de trabajadores como el Proyecto Justicia Laboral que te puede respaldar para hacer respetar tus derechos, ayudarte a negociar un contrato por escrito y establecer mejores condiciones de trabajo y formalizar la relación de empleo.

A mi me hubiera gustado conocer al centro más antes y poder conocer mis derechos y no tengo que quedarme callado. Me hubiera gustado sentirme respaldado en mi lugar de trabajo y sin miedo.

Me gustaria ver que mi centro siga creciendo y proveyendo más entrenamiento de Salud y Seguridad y que más trabajadores puedan sentirse respaldado y sin miedo al reclamar sus derechos.

Me gustaria ver que la ciudad trabajará con nuestro centro para hacer que esta compañías cumplan con sus responsabilidades de proveer un salario justo, lugar de trabajo seguro, con equipo de seguridad y un mejor trato.

Me gustaría ver a la ciudad penalizará como crimen a los empleadores que nos roban el salario y diariamente poner en riesgo nuestra vidas y nuestra salud. Muchas de esta compañías que roban los salario y han matado a trabajadores no debería estar construyendo en esta ciudad.

También nuestro sueño es poder tener un centro de trabajadores más digno y con espacio más grande donde podamos hacer más entrenamiento, respaldar más trabajadores. Queremos construir nuestro poder para cambiar la cultura de explotación que existe en la construcción junto a mi centro y compañeros de la construcción que ha iniciado un proyecto de salud y seguridad que se llama Enlaces de Seguridad del Proyecto Justicia Laboral. Nosotros

queremos ser sus ojos y oídos para cambiar estas condiciones. Queremos trabajar juntos, porque sabemos que la unión hace la fuerza!



WORKER'S JUSTICE PROJECT (WJP)

Tuesday, April 25, 2017

TESTIMONY

Presented to:

NYC Department of Consumer Affairs
NYC Department of Human Rights
NYC Mayor's Office of Immigration Affairs

Prepared by:

Maria Aguilar, Member of the Worker's Justice Project (WJP)

Public Hearing on the State of Workers' Rights in New York City

Buenas noches a todos los presentes en esta audiencia pública sobre el estado de los derechos de los trabajadores en la ciudad de Nueva York. Mi nombre es Maria Aguilar y soy trabajadora de limpieza y miembro del Proyecto Justicia Laboral, una organización de de trabajadores/as que nos organizamos y unimos para mejorar la condiciones laborales y ganar justicia en el trabajo. Primero, quiero agradecerles la oportunidad de testificar hoy en esta audiencia pública.

El Proyecto Justicia Laboral es el lugar donde llegamos a reclamar nuestra dignidad como seres humanos y trabajadores. Es en donde aprendemos a usar nuestra voz para levantar el valor de nuestro de obra y negociar mejores condiciones de trabajo y de vida. El Proyecto Justicia Laboral me ha respaldado para recuperar sueldos no pagados y para tener más control de las condiciones de trabajo mediante una cooperativa de limpieza. En mi organización, creamos nuestro poder está en la unión de más trabajadores organizados.

Cuando llegue a este país en el 1994, desconocía mis derechos y por la necesidad simplemente me quedaba callada. En mis primeros años trabajé en las factorías, en los restaurante con un salario de \$ 5 la hora, lo cual era poco pero mi necesidad era mucha. Después que me quede sin trabajo y me encontré con la parada de Williamsburg como mi alternativa para buscar trabajo. La parada es una esquina donde las mujeres jornaleras nos paramos diariamente en busca de trabajo.

Me levantaba a las 5:30AM para llegar temprano a la parada con la esperanza de encontrar trabajo y algunas veces no encontraba trabajo y regresaba a mi casa sin dinero. En la parada sentia que perdía mi dignidad, porque los empleadores nos miran como sus esclavas y nos escogen basado en nuestra edad, en la estatura y fuerza. En la parada vivimos explotación y discriminación.

Los empleadores se aprovechan de la necesidad y porque muchas desconocemos nuestros derechos y no sabemos hablar inglés. Los empleadores te prometen pagar un salario y después no te quieren pagar o simplemente te dan lo que ellos creen que es gusto.

Mayormente los trabajos en la parada son trabajos de limpieza, son trabajos por día y muchas veces se trabaja con varios empleadores y pocas horas al día. En estos trabajos se limpia de rodillas, con trapos sucios, con productos químicos que muchas veces queman las manos, te dan alergias y dolor de cabeza. Nos sentimos como esclavas.

Pero mi vida cambió cuando conocí el Proyecto Justicia Laboral, cuando me respaldo para recuperar un salario en contra de una factoría de dulces. La organización es nuestro respaldo y el lugar donde nos sentimos que no estamos solos y descubrir que tenemos poder y una voz. Ahora soy parte de una cooperativa de limpieza que se llama Apple Eco-Cleaning en donde el trato es diferente. En la cooperativa, las trabajadoras establecen las condiciones de trabajo con un contrato y un mejor salario, sin tener que trabajar todo el día y **NO** de rodillas.

Me gustaría que la ciudad nos ayude a que nuestro centro siga creciendo y en un futuro tener nuestro centro de trabajadoras para poder tener un espacio digno donde podemos organizarnos, conocer nuestros derechos y en unión negociar mejores condiciones de trabajo en la limpieza con un contrato.

También soñamos con que nuestro trabajo será respetado y visto como una profesión que merece un salario digno de más de \$15, que los empleadores provean el equipo de salud y seguridad y los mismo derechos que tienen todos los trabajadores.

Si queremos cambiar la cultura de inseguridad, apoyen a crear más capacitaciones en nuestro centro y expandir el programa de enlaces de seguridad para desarrollar más líderes y capacitar más trabajadores en Salud y Seguridad. Nosotros queremos cambiar la cultura de inseguridad y explotación que existe en la industria de limpieza, pero sabemos que solos no podemos hacerlo. La Union hace fuerza!

*Testimony of Carolina Salas, Freelancer
Before the New York City Department of Labor Policy and Standards
In Relation to the "Freelance Isn't Free Act"*

April 25, 2017

My name is Carolina Salas, and I have been working as a freelance marketing consultant in New York City for 8 years. Overall, I've had very positive experiences throughout my freelance career. But I have learned the hard way, with few laws protecting freelance work, that things can easily go wrong.

I am currently in small claims court in the process of litigation against the Chelsea Dental Group who owes me \$3,500. Even though we agreed on the scope of work, the client refused to pay until the project was completed. The job was delivered 1 year ago and, despite completing the work, I wasn't paid in full, so now I find myself in court.

I learned that not having a contract is a huge disadvantage. Because I kept detailed records, I can prove that we had an agreement in court. However, having a mandatory contract would greatly help me win my case, and in avoiding these types of conflicts to begin with. Because using a contract is often not standard practice, many freelancers lack power in the relationship from the start.

Losing \$3,500 in payment would be difficult for anyone, regardless of their overall income. As a result of this nonpayment and the additional \$1,500 I have paid out in legal fees, I had to forgo several expenses, including the purchase of a computer I needed for work. Because of this, I have had to use my emergency savings which has been depleted to make up for the lost income on time spent on my court case.

My court case experience has been emotionally taxing and exhausting. Due to NYC Civil Court 208.41(f) clause detailed in the 2016 Civil Practice Annual, I was forced to "fire" my lawyer represent myself in court. Representing myself, there are many ways the client's attorney has tried to trip me inside and out of court. I needed lawyers to train me on how to communicate with the client's attorney via email, how to litigate in court, and how not to let my difficult emotions get to me in a stressful situation.

All of the clients I have worked with have lawyers that represent their businesses. It's cheaper to send their lawyer as a way to intimidate me from representing myself, and encourage me to drop the case all together. If my lawyer were to show up in court, along with the client attorney, my case would be sent to civil court without a hearing. I would then be required to pay additional fees required for civil court.

I am due back in court next week, however, the client attorney for the 3rd time is requesting to reschedule the hearing - this time to September. To add insult to injury, the client, who left to Paris for a getaway the week my payment was due, is claiming they have been under financial hardship, and is requesting that any payment be made over 2 years of monthly installments.

As a freelancer juggling multiple gigs, you must constantly be looking for new work, and saving for possible dry spells. Unpredictable income is challenging when dealing with monthly bills, and even worse when clients don't pay on time. 71% of freelancers have dealt with nonpayment, losing an average of \$6,000 each year. When asked about how they got by in the face of nonpayment, 44% of freelancers say they ran up credit card debts, and 7% relied on government assistance.

For these reasons, I campaigned on behalf of the Freelance Isn't Free Act -- so freelancers in my situation can get paid what they deserve. They would be able to seek attorneys' fees and their clients would face double damages. This is an essential protection. Even if I am awarded what I am owed by my client, it won't cover the time I've spent preparing for court, my legal fees, and the emotional distress this experience has caused. I filed my case on August 5th, 2016 and to date I have spent over 45 hours outside of court preparing my case file, and 15 hours at Civil Court.

38% of the workforce in New York City is now freelancing. Many such as myself would like to earn a sustainable living through freelance work; however, we're struggling with few labor protections and limited access to a safety net. The Freelance Isn't Free Act is an important first step to ensuring freelancers can get paid on time.

Hello. My name is Pierre Metivier and I live in East New York.

I have worked in the fast-food industry in Brooklyn for the past 4 years, first at McDonald's, then at Wendy's and for the past 5 months I've been making the donuts and cleaning at Dunkin Donuts on Eastern Parkway.

While I have worked for 3 big fast-food companies that make billions of dollars in sales, I have always struggled to support myself and my family.

Fighting for and winning a path to a \$15 minimum wage was a big victory but I can't get enough hours of work at my store. I usually only get 2 or 3 days of work a week and it's not enough to support myself, my girlfriend and our 4-year-old daughter.

We live with my girlfriend's family because we can't afford our own place. Right now, I don't have a cell phone because I haven't gotten enough hours of work to be able to pay the bill.

And the cost of childcare is so expensive that my girlfriend stays home with our daughter because we can't afford daycare for her and she doesn't start Pre-K until September.

I have a lot of dreams for myself and for my family but I'm worried about how I will achieve them if I can't find more hours of work.

From week to week, I don't know how much money I'll earn. I have to go to my store on Sundays to find out if I'm on the schedule for the week. And sometimes I only get 2 days. Other times, they call to ask me to come in the same day. It's very disruptive to my family but I need the money so I try to take the extra shifts.

I have asked for more hours at my store. The manager claims there's not enough business to hire me for more hours but sometimes it seems to me as if they just want as few people as possible to work in the store so they can make even more money.

Meanwhile I am struggling to put food on the table for my daughter.

The way I am treated by my employer is completely unfair. And while the fast-food companies claim they are not responsible for the franchises and their employment practices, they are making billions of dollars off of the hard work of workers like me.

That's why I have joined with thousands of other fast-food workers to fight for \$15, a fair work week, respect and better lives.

Thank you.