

Testimony of Commissioner Julie Menin
New York City Department of Consumer Affairs
Before the
New York City Council Committees on Small Business and Consumer Affairs

Oversight Hearing on
The Earned Sick Time Act:
Implementation and Business Education

October 29, 2014

Good morning Chairman Cornegy, Chairman Espinal, and members of the Committees on Small Business and Consumer Affairs. I am Julie Menin, Commissioner of the Department of Consumer Affairs (“DCA”), and I am joined by my colleagues Kristen Lasky, Executive Director of DCA’s Paid Sick Leave Division, Marla Tepper, General Counsel, Amit Bagga, Deputy Commissioner of External Affairs, and Connie Ress, Associate Commissioner of Communications and Marketing.

We are also joined by Gregg Bishop, Deputy Commissioner of the Business Development Division within the Department of Small Business Services (“SBS”). I would like to thank Mr. Bishop for being here today to represent SBS, an agency with which we work closely on a variety of issues and I would also like to thank SBS Commissioner Maria Torres-Springer for being a helpful partner in DCA’s efforts to educate New Yorkers about The Earned Sick Time Act (“paid sick leave”).

I would like to thank Manhattan Borough President Gale Brewer for her testimony in support of DCA’s efforts and in particular for her hard work on the issue of paid sick leave over many years. Her leadership and advocacy, as well as that of the Paid Leave Coalition, have been instrumental in making paid sick leave a reality in New York City.

I greatly appreciate the opportunity to speak with you about DCA’s implementation of a law that is of deep importance not only to Mayor de Blasio and Speaker Mark-Viverito, but also to the more than one million New Yorkers¹ who now have access to sick time to take care of themselves and their loved ones.

New York City’s paid sick leave law is being implemented at a scale larger than any other city’s and DCA is very proud to be the agency that is charged with the implementation of the law and also to be a national leader in the scope of its outreach efforts. It is DCA’s mission to empower and protect consumers as well as to educate and engage businesses, and implementing the paid

¹ A Better Balance, Background on Paid Sick Time in New York City: <http://www.abetterbalance.org/web/ourissues/127-paidsickdaysnyc>

sick leave law has afforded the agency the opportunity to do just that - not only with the 80,000 businesses across 55 industries that we license, but also with hundreds of thousands of businesses in all five boroughs.

Paid sick leave is beneficial to employers, employees, and to the public. It leads to healthier employees with better morale, less employee turnover, and lower healthcare costs in the long term. We also know that in other cities where paid sick leave has been successfully implemented, job growth following implementation has been strong, demonstrating that paid sick leave does not have a detrimental impact on businesses.

The Wall Street Journal has reported that in Seattle, which first began implementing its paid sick leave law in September 2012, job growth stood at 5.4% as of August 2013, outpacing the national average of job growth during the same period of time, which stood at 3.4%.²

To convey these messages, as well as to educate business owners about their obligations under the law and to inform employees of their rights, DCA has conducted outreach to both employers and employees about paid sick leave with an unprecedented \$2 million campaign and I am pleased to share the results of our efforts to date.

Overview of Paid Sick Leave Advertising and Outreach

DCA's approach to raising awareness about the paid sick leave law has been informed by several factors: DCA's obligation to effectively implement the law; the broad scope of the law, and demographic information about both employers and employees. Utilizing resources assigned to the agency for the purpose of raising public awareness, DCA mounted a major, multilingual advertising campaign earlier this year that included transit, outdoor, print, radio, and television advertising.

The agency is also engaged in significant direct outreach efforts, such as presenting at hundreds of events, joining forces with sister agencies to disseminate information, engaging in direct contact with employers, and working with dozens of industry groups, nonprofits, advocates, elected officials, and other stakeholders to raise awareness about paid sick leave. We are confident that our efforts to date have been effective in educating businesses about their obligations and notifying employees of their rights under the paid sick leave law and we are focused on furthering these efforts moving forward.

² Wall Street Journal: Seattle a Leader in Job Growth, August 25, 2013:
<http://online.wsj.com/articles/SB10001424127887323423804579024702316622012>

Advertising

To fulfill the goal of beginning to effectively implement a law that provides the fundamental right to sick time to so many New Yorkers, DCA launched its transit and outdoor advertisements in March 2014. These advertisements began running just before a key date in the timeline of the law's implementation – April 1 – which was when the law went into effect and eligible employees began accruing sick time.

Between March and August 2014, DCA ran 3,000 subway car and 3,000 bus advertisements in two phases, as well as 260 subway station advertisements about paid sick leave in English and Spanish. DCA also ran advertisements in bus shelters and on payphone kiosks beginning in April. Running such a large number of advertisements in mass transit enabled DCA to communicate with both employers and employees, as subways and buses are the primary modes of transportation for millions of New Yorkers.

In the weeks before and after another key date in the timeline of the law's implementation – July 30 – which is when eligible employees could begin using sick time they'd earned, DCA ran print, radio, and television advertisements in many different languages.

To ensure that we reached as many New Yorkers as possible, including the City's many immigrants, who are the backbone of our business communities, we placed print advertisements in 10 English-language community newspapers and 14 newspapers that are either printed in foreign languages or have primarily immigrant readerships.

In addition to these newspapers, "wrap" advertisements, which are "wrapped" around the front and/or back covers of newspapers, ran in amNY, Metro-NY, and The Daily News, bringing the total of newspapers in which we ran advertisements to 27. Furthering the agency's goal of reaching immigrant small business owners and employees, the agency featured radio advertisements in seven languages: Spanish, Bengali, Cantonese, Mandarin, Korean, Russian, and of course, also in English. Lastly, to reach New Yorkers through as many media as possible, DCA ran television advertisements in both English and Spanish during the month of August, which was the month immediately following the date on which one could begin using accrued sick time. These advertisements were not only featured on network television channels, but also on cable and NYC Media channels, as well as on Taxi TV.

While we know such advertising is an effective tool to communicate information about paid sick leave, such efforts must be complemented by making educational and implementation tools easily accessible and by speaking directly to as many New Yorkers as we can. To this end, the agency has engaged in language-accessible outreach and education.

Resources and Outreach

SBS estimates that approximately 40 percent of the City's businesses are owned by immigrant entrepreneurs and that one in two employed New Yorkers is an immigrant. It is precisely for these reasons that DCA has prioritized language access in the development of resources and in the structure of our outreach efforts.

To ensure that employers and employees have access to all the information they need – no matter what language they speak –and to further Mayor de Blasio's goal of ensuring City agencies serve all New Yorkers, DCA far exceeded the paid sick leave law's mandate to provide the Notice of Employee Rights in seven languages by translating it into 26 languages, including English, on our website, www.nyc.gov/paidsickleave.

In addition to providing this notice in 26 languages, DCA has also provided two additional documents: "Paid Sick Leave: What Employers Need to Know" and "Paid Sick Leave: What Employees Need to Know" in the same languages. From Arabic to Albanian and from Hindi to Haitian Kreyol, information about paid sick leave is now available for easy access and downloading. Additionally, recognizing that important nuances can sometimes be lost in translation, DCA, through its own multilingual staff and with the assistance of the Mayor's Office of Immigrant Affairs, conducted native-speaker reviews of all the translated documents, ensuring that the information provided was both clear and correct.

Effectively publicizing any new initiative requires the production of printed materials that can be easily read and distributed. To accomplish this goal, DCA designed and printed a slim brochure that features the most basic and important points about paid sick leave for both employers and employees. Our continued emphasis on language access is evidenced in this brochure, which contains information in English, Spanish, Chinese (simplified), Korean, Russian, Haitian Kreyol, Bengali, and Arabic, languages spoken by some of New York City's largest or fastest-growing immigrant and small business-owning communities.

Naturally, the resources we have developed can only enable us to accomplish our task of raising awareness about paid sick leave if we are able to effectively distribute them. I am proud to report that DCA, through its staff, its many partners, and through volunteers, has disseminated more than 1.5 million pieces of literature since April of this year, with the largest percentage of materials being provided to employers.

Through October 22 of this year, we have mailed or distributed 592,000 copies of "Paid Sick Leave: What Employers Need to Know," 469,000 copies of the Notice of Employee Rights, 77,000 copies of "Paid Sick Leave: What Employees Need to Know," and 424,000 copies of our paid sick leave brochure.

All of DCA's patrol inspectors carry paid sick leave materials with them when they conduct inspections and our Licensing Division has distributed over 26,000 copies of "What Employers Need to Know" to our licensees. The agency also plans on mailing information to 400,000 businesses and nonprofits within the coming month.

DCA has distributed materials at over 350 events across the five boroughs, 78 of which have been employer-focused. These events have included presentations at all 59 Community Boards, presentations before dozens of industry groups, ranging from The Bodega Association to the New York Hospitality Alliance, community events such as street fairs and NYCHA Family Days, and specific trainings for multi-branch businesses, such as Gregory's Coffee and Ricky's Cosmetics.

75 of the events we've attended or hosted have taken place in Spanish and 239 of the events have taken place in boroughs outside Manhattan. Because of these and other outreach efforts, DCA has had over 209,000 unique hits to our paid sick leave webpage.

As we are keenly aware that often the most effective forms of outreach and education are individual conversations as well as the conveying of information through trusted community leaders, the agency has devised an outreach strategy that utilizes both methods of engagement.

For example, DCA's paid sick leave staff, who speak Mandarin, Cantonese, Spanish, Korean, Bengali, Haitian Kreyol, and Russian, have engaged in robust door-to-door small business outreach, walking many of New York City's commercial corridors, speaking directly with business owners about the law. In fact, Esther Louis, a bilingual Haitian Kreyol and English speaker who is the Paid Sick Leave Division's Regional Field Director for Brooklyn East and Queens South, personally visited 92 businesses on Fulton Street in Bedford-Stuyvesant in just a few days earlier this month.

In addition to such outreach, we have worked with community leaders and advocates such as Michael Lambert, the Executive Director of the Bed-Stuy Gateway Business Improvement District, and the leadership of Make the Road-New York, to host events, conduct trainings, and distribute information to their networks and constituencies.

Many of these partners also participated in DCA's July 16 paid sick leave "Day of Action," the first of its kind held by a City agency. This Day of Action involved 1,400 business owners and leaders, community organizations, workers, unions, city employees, and everyday New Yorkers distributing more than 350,000 brochures in just four hours and talking to their friends and neighbors about paid sick leave at more than 120 subway stops throughout New York City.

The subway stations at which volunteers were placed were not chosen at random, but rather through a data-driven process that enabled DCA to identify the probability that populations living near these stations would likely benefit from access to sick leave.

The agency also benefitted from significant support from the office of Speaker Mark-Viverito, several Members of the Council, and their staffs, many of whom participated in the Day of Action. I would like to thank all of you for your support of our efforts on that day. So many New Yorkers captured our activities on social media that “#PaidSickLeave” was a top trend on Twitter that day in New York City.

We take great pride in our Day of Action, which not only informed New Yorkers of their rights, but was also an execution of Mayor de Blasio’s vision of having City agencies engage New Yorkers as directly as possible. Many of our sister agencies have joined us in this endeavor, and the City’s residents have been benefitting from our collaborations.

Interagency Collaboration

I would like to take this opportunity to highlight our partnership with SBS, as well as with some additional City agencies. SBS has provided key support to DCA in our outreach and education efforts.

SBS has distributed information to more than 150 community-based organizations and over 91,000 small businesses in New York City through a variety of channels. In addition to sending a targeted e-mail blast to more than 3,300 businesses that employ between five and 19 employees, SBS has also been including information about paid sick leave in its bi-weekly e-bulletin that reaches approximately 80,000 subscribers across the City. SBS has also shared information via e-mail with the 69 Business Improvement District (“BID”) Executive Directors, who have, by SBS’ estimation, distributed information to more than 85,000 businesses in all five boroughs.

At all of SBS’ seven Business Solutions centers, where SBS offers a range of business services including courses, pro-bono legal assistance, access to incentives, financing assistance, trainings, and technical assistance, SBS has been distributing paid sick leave materials targeted to employers. More than 30 SBS and Business Solutions staff members have received training to deliver information about paid sick leave to the more than 8,700 business owners who utilize the Business Solutions Centers every year.

SBS has also assisted with communications, featuring paid sick leave information on its website as well as on its Twitter and Facebook pages, which have a combined following of over 10,000. Lastly, SBS representatives have spoken about paid sick leave at town hall meetings they have

attended throughout City, many of which were hosted by Members of the City Council as well as Members of the New York State Assembly and Senate. We greatly appreciate all of the efforts undertaken by SBS, an agency that has been crucial in assisting DCA raise awareness of an initiative that is of high priority for the Administration and for the Council.

In addition to our collaboration with SBS, DCA has continued to leverage the extensive reach of other sister agencies to inform employees and employers about paid sick leave. The Health and Hospitals Corporation (“HHC”) and the Department of Health and Mental Hygiene (“DOHMH”) are two agencies with natural connections to paid sick leave and both have been central to our outreach efforts.

HHC, which serves a population we believe will greatly benefit from access to sick leave, is distributing 46,500 paid sick leave brochures in all of its clinics and hospitals. HHC is also running DCA’s public service announcement on video monitors in waiting areas of emergency rooms at its hospitals. Additionally, DCA staff members have been presenting on paid sick leave at HHC Advisory Council meetings and will be working with HHC to train the agency’s financial officers on paid sick leave so that they can counsel patients and their families about their rights to sick leave.

DOHMH, which has a natural interest in assisting DCA with our efforts, as the paid sick leave law can facilitate positive public health outcomes, is distributing paid sick leave materials in all of its licensing and permitting communications processed by DCA’s Licensing Center. The agency is also including an article about paid sick leave in its “Food Matters” newsletter, which is sent to thousands of New York City food service establishments.

Paid sick leave materials are also being disseminated at the Bureau of Childcare offices, Health Academy offices, and in the homes of New York City families who are visited by or sent materials by staff of the Early Intervention Services and the Nurse-Family Partnership program. Earlier this month, DCA presented on paid sick leave to outreach staff at DOHMH’s Bureau of Maternal, Infant, and Reproductive Health. Finally, DOHMH has worked with DCA to include questions about paid sick leave in a panel survey of low-income New Yorkers that it is conducting. This survey will help us better gauge respondents’ general awareness of the paid sick leave law and inform future outreach and advertising strategies.

DCA has also collaborated with several other City agencies, including the Human Resources Administration, the Department of Youth and Community Development, the Department of Parks and Recreation (“DPR”), and the Department of Education (“DOE”) on the distribution of materials. DPR is helping DCA reach an important set of beneficiaries of the paid sick leave law – domestic workers – who have access to an additional two days of sick leave under New York City’s law. DPR has granted DCA permission to distribute materials in City parks, which many

domestic workers frequent with children they are looking after. Speaking directly with domestic workers is central to our outreach efforts, as the employers of domestic workers are not brick-and-mortar businesses and therefore harder to reach.

DCA also collaborated with DOE in June of this year to insert 20,000 flyers in English and Spanish into the backpacks of students at several schools in neighborhoods with high concentrations of residents likely to benefit from new access to sick leave.

In addition to our extensive advertising and outreach, DCA has made specific tools and resources available to businesses to assist them with compliance.

Business Tools and Resources

Since July 16 of this year, the doors of our Paid Sick Leave Division, which is on the 11th floor at 42 Broadway, the building that also houses our Licensing Center, have been open for business five days per week. Both employers and employees can come in to obtain information, ask questions about compliance, and file complaints.

Recognizing that many of New York City's small businesses might not have formal human resources departments or timekeeping tools, we have developed a beta-tested, easy-to-use, downloadable Microsoft Excel document that businesses can access on our website to help them keep track of their employees' hours and accruals. The document contains built-in formulas that automatically calculate the number of hours an employee has accrued based on the number of hours worked.

As I am sure the members of the Committees are aware, under the paid sick leave law, eligible employees accrue one hour of sick time – paid or unpaid, depending on the size of the employer – for every 30 hours worked. The document easily allows employers to track hours on a daily, weekly, or bi-weekly basis. To ensure this tool can be used by as many businesses as possible, DCA is planning on translating the document into several languages.

As I have previously stated, DCA's paid sick leave outreach team also goes door-to-door in commercial corridors throughout the City, speaking directly with business owners and managers about paid sick leave. Just in the last several weeks, our staff members have spoken directly with more than 200 business owners on Mott and Mulberry Streets in Manhattan's Chinatown, Fordham Road and 3rd Avenue in the Bronx, as well as 5th Avenue and Fulton Street in Brooklyn. We will be expanding these efforts to ultimately reach thousands of businesses in all five boroughs.

Based on questions and feedback we've received from both employees and employers, DCA has published an extensive Frequently Asked Questions ("FAQs") document, from which most inquiries can be answered, significantly decreasing DCA's response time to questions. Naturally, more complicated questions are referred to the attorneys in the Paid Sick Leave Division. DCA updates the FAQs with new questions and answers on a rolling basis, as there are often questions asked that we believe might be relevant to a large number of employers.

We know that our extensive advertising and outreach efforts are working, as we have received over 7,700 inquiries about paid sick leave over the last several months. Our statistics to date demonstrate that New Yorkers know to call us with their questions and concerns.

DCA plans to run additional public advertising campaigns in the coming months. Television advertisements will be on the air in November and December, and advertisements in 19 foreign-language and community newspapers will run the last week in November and the first week in December. We will also be airing radio advertisements in several languages.

The agency will likely run an advertising campaign from February through June of 2015, as well. We anticipate this campaign will also include transit, outdoor, print, radio, and television advertising, and will expand into online advertising.

Our outreach staff continues to develop and foster new partnerships that enable the agency to effectively communicate information about the paid sick leave law, evidenced by our new collaboration with the Queens Library system. In the coming weeks, all of the Queens Library branches will begin to feature paid sick leave materials and DCA outreach staff will begin speaking at events hosted by the branches. Additionally, DCA staff will provide training to Queens Library staff so that library staff can answer basic questions they might receive from visitors who avail themselves of our materials.

Our mission to educate New Yorkers about paid sick leave extends into our enforcement of the law, which is aimed at protecting employees' rights and ensuring that businesses are given the opportunity to engage in mediation before more aggressive actions are pursued.

Overview of Enforcement (Implementation)

To execute Mayor de Blasio's vision, which seeks to ensure that all employees' rights are protected and also that businesses are given the opportunity to come into compliance before fines are assessed, DCA has adopted a focused and fair approach to enforcement of the paid sick leave law. The agency is charged with receiving and investigating complaints regarding non-compliance and we work with employees and employers to resolve complaints in the quickest and least costly way, which is through mediation. Mediation is always the first approach. In

cases of retaliation, there can be a chilling effect over a workplace that can prevent others from exercising their rights to sick leave. In such cases, DCA sends investigators to the workplace as soon as possible. Even in cases of retaliation, all employers are afforded multiple opportunities to resolve complaints and come into compliance before charges are issued. We also use mediation as another means of educating employers about their responsibilities under the law.

When mediation fails or when a complaint alleges serious employer misconduct, DCA is obligated to pursue a robust investigation. Even when an investigation is initiated, DCA will pursue opportunities to resolve the complaint before charges are issued and again before a hearing is held. Employers that come into compliance and provide their employees full access to sick leave can avoid the maximum penalties under the law.

An employee can file a Paid Sick Leave complaint with the Department of Consumer Affairs by coming into our office and speaking with an investigator, by calling 311, by completing a Complaint Intake Form and mailing, emailing, or faxing it to our office. We even follow-up with employees who inquire about filing a complaint on social media. Through all these channels, we have received a total of 355 complaints to date.

When an employee files a complaint, a DCA investigator gathers all the relevant information from the employee so that the agency can determine if it has jurisdiction and cause for an investigation. Once it does so, it accepts the complaint as a case in its docket. As of October 22 of this year, we have docketed 245 cases. The vast majority of docketed cases have alleged a failure to provide the required Notice of Employee Rights (60%), 29% have alleged a failure to pay for sick time used and 14% have alleged a failure to accrue sick time correctly. Almost 8% of the docketed cases to date have alleged retaliation or a threat of retaliation.

Once a complaint is docketed, DCA notifies the employer of the allegations made against them and gives the employer 30 days to respond to the allegations. Employers are required to include all documentation within this period of time, demonstrating their compliance. There are special circumstances, such as with complaints alleging retaliation, when DCA is permitted to access or receive employer records with only two days advance notice. I will speak more about investigations into allegations of retaliation shortly, but now return to the example of a non-retaliation complaint.

Within the initial 30-day response period given to an employer, DCA makes several attempts to mediate the complaint. In the original notice to the employer, it instructs the employer on how to contact the investigator assigned to the case if the employer would like a speedy resolution through mediation. Additionally, the DCA investigator makes at least two attempts by phone or email to engage the employer in mediation. In all of these communications, DCA stresses that if mediation is not successful, the employer must still provide a response and all documentation by

the 30-day deadline.

If an employer fails to mediate the complaint by the 30-day deadline, DCA reassigns the case to a different investigator for the investigation phase of the complaint's life cycle. Even before DCA serves a Notice of Hearing, which is the agency's official charging document, DCA will offer an employer an opportunity to resolve the complaint with reduced or no penalties. I am pleased to report that in the 70 cases closed at the time of the preparation for this testimony, all had been resolved without DCA issuing charges against the employer and DCA has been able to recover back wages and sick leave pay in two closed cases.

There will be cases where employers fail to come into compliance with the law and DCA will not hesitate to issue Notices of Hearing against those employers and we have recently issued our first Notices of Hearing against two employers. Once DCA issues a Notice of Hearing, an employer has two choices. Either the employer settles the violations with the agency or the employer decides to take the case to a hearing at the DCA Administrative Tribunal. In either case, an employer may face penalties, the payment of restitution, and injunctive relief, although the penalties would be reduced if an employer chooses to settle the complaint.

It is our sincerest hope that very few cases reach the hearing stage of the complaint life cycle. DCA's goal is to reach fast, fair, and cost-efficient outcomes for both employees and employers through mediation or other facilitated resolution.

As is expected, the agency has found that certain industries are targets of employee complaints more than others. To date, the highest percentage of cases (35%) are filed against employers in the professional services industries, which include security services firms, property and real estate management companies, and temporary employment agencies. The retail industry and health care industries, including medical and dental offices and home health agencies, receive significant percentages of the complaints, as well (18% and 13%, respectively).

As enforcement and outreach are intrinsically related, we are utilizing our complaint information to inform outreach strategies moving forward. DCA is in the process of working with appropriate industry groups and specific employers to facilitate education and the distribution of information and is, of course, open to any suggestions the Council might have.

Future Efforts

We believe that our outreach and implementation efforts to date constitute good news and that our efforts have been well-received. The number of inquiries we've received, the number of cases we are mediating, as well as the excitement of stakeholders as diverse as industry groups, advocates, and government agencies to partner with us are all indications of this.

I am proud of the work that our Paid Sick Leave division has done in a very short amount of time and I should note that many other divisions within the agency have proactively lent great support. I am confident that the agency's efforts to date have laid a strong foundation for the successful implementation of the paid sick leave law in the long term.

As we look ahead to continued outreach and implementation efforts, we seek to be responsive to businesses and protective of employees. We continue to learn every day about areas in which we can hone our outreach efforts and we welcome feedback and input from the Council.

DCA is committed to both maintaining its balanced approach to enforcement by always beginning with mediation as well as aggressively pursuing those employers who repeatedly violate the law or engage in retaliation against employees.

Once again, we are very proud to be implementing this historic law, one that is beneficial to all New Yorkers.

Thank you very much for the opportunity to testify before you today. I will be glad to answer any questions you might have.