

**Testimony of Acting Deputy Commissioner Elizabeth Wagoner
New York City Department of Consumer and Worker Protection**

**Before the Committee on
Consumer and Worker Protection**

**Hearing on
Introductions 613 and 640**

September 19, 2022

Introduction

Good morning, Chair Velázquez, and members of the Committee. My name is Elizabeth Wagoner, Acting Deputy Commissioner at the Department of Consumer and Worker Protection (DCWP) for the Office of Labor Policy and Standards. I am joined by Carlos Ortiz, Senior Advisor for Policy and Intergovernmental Affairs. Thank you for the opportunity to testify on Introductions 613 and 640, relating to penalties for violations of the Fair Workweek Law and trainings for certain fast food workers.

The Fair Workweek Law for Fast Food Workers

In 2017, the Council passed first of its kind legislation to provide fair scheduling protections to workers in the retail and fast food industries. In 2020, Council passed legislation to amend and strengthen the Fair Workweek Law, adding protections to provide greater job stability for fast food workers. For today’s discussion I’ll be focusing on the fast food provisions of the Fair Workweek Law.

The Fair Workweek Law gives fast food workers scheduling stability and an opportunity to move into full-time work. These rights include:

- A stable, regular schedule that does not change significantly from week to week;
- 14 days’ advance notice of each weekly work schedule;
- The opportunity to say “no” to working extra time;
- Premium pay for schedule changes;
- Premium pay and an opportunity to say “no” to clopening shifts;
- The opportunity to work more regular hours before new employees are hired; and
- Protections against arbitrary termination or loss of hours.¹

In New York City, there are more than 67,000 workers employed in the fast-food industry.² In our enforcement work, we’ve heard from thousands of these workers about their need for the regular, predictable schedules that the Fair Workweek Law provides. Many of the New Yorkers covered by this law are parents, with young children to take to school in the morning and pick up in the evening. Some are working towards high school or college degrees, and need to arrange their work schedules around their class schedules and to be able to leave on time. Some are

¹ See Local Laws [99](#), [100](#), [106](#), and [107](#) of 2017.

² <https://s27147.pcdn.co/wp-content/uploads/Just-Cause-February-2019.pdf>

active in religious organizations, and need predictable scheduling to attend their community's services.

Since the Fair Workweek Law went into effect, DCWP has received over 300 complaints from, launched more than 150 investigations, and recovered approximately \$22 million in restitution for more than 16,000 workers and \$1.3 million in civil penalties in the fast food industry alone. We are very proud of these recoveries, not only because they put money back in workers' pockets for harms they have experienced, but because they also create a deterrent effect that is increasingly making companies take a hard look at their compliance practices to ensure they are doing right by their workers and complying with the law.

I'd like to give you a picture of what the enforcement process behind those numbers looks like. When we receive a complaint about a violation of the Fair Workweek Law, we make a determination about the appropriate scope of the investigation. Our investigators conduct detailed interviews with complainants to make that assessment and tailor the investigation to the scope of the violations the complainant is reporting. For example, a worker may report that their employer usually posts work schedules one week in advance and does not post or email available open shifts at all. These are violations that affect all workers in that workplace, not just that complainant. With a complaint like that, we would open an investigation covering all workers affected by that alleged unlawful conduct, not just the complainant. If the restaurant employing that complainant has other locations, we'll also look into the appropriate geographic scope. Sometimes the complainant has worked at multiple locations under the same corporate umbrella, or knows workers in other locations, or has other information indicating the alleged unlawful conduct is company-wide. When that happens, our investigation would cover multiple business locations under the corporate umbrella.

During our investigations, we obtain records from the company about their compliance practices, which our teams of investigators, data scientists, and attorneys work together to analyze. We also reach out to workers by text message and email to gather information from them about their experiences with predictable scheduling. Putting all of this information together, we identify violations and the workers affected and present our findings to the company. Under the law, violations are counted on a per worker, per instance basis. Worker relief for most violations is either \$200 or \$300 per instance, and civil penalties are \$500 per instance. For companies with poor levels of compliance, there can be multiple violations per worker, per workweek, and the totals in relief and penalties can go into the millions of dollars.

We generally give companies an opportunity to resolve our investigation through a settlement negotiation, which results in a Consent Order with us that requires the company to come into compliance, pay monetary relief to workers in specific amounts, and pay civil penalties to the city. Most of our cases are resolved in this way. We settle cases because our enforcement priorities are swift monetary relief for affected workers and bringing companies into compliance. If a company does not want to enter into a Consent Order to resolve an investigation, we will file a petition at the Office of Administrative Trials and Hearings and try the case; DCWP does not have adjudicatory power to find violations on its own.

To provide a recent example of the effectiveness of this process, I'd like to highlight our settlement last month with Chipotle for violations of the Fair Workweek and Paid Safe and Sick Leave laws. That agreement will deliver up to \$20 million in compensation to approximately 13,000 workers. It is the largest worker protection settlement in New York City history, and the largest Fair Workweek settlement in the country.³

DCWP pairs its strong enforcement with proactive outreach. In partnership with community-based organizations, workers' rights groups, and restaurant trade associations, our outreach team seeks to ensure that both workers and employers understand the details of the Fair Workweek Law. Since 2017, we've held close to 2,000 events focused on our workplace laws, including the Fair Workweek Law, serving tens of thousands of New Yorkers.

Introductions 613 and 640

Today's hearing concerns legislation that seeks to amend the Fair Workweek Law. Introduction 613 would double civil penalties for second and subsequent violations of the law and double the allowable civil penalty from \$15,000 to \$30,000 for a pattern or practice of violations. Also, certain businesses in violation of the Fair Workweek or Paid Safe and Sick Leave Laws could have their Food Service Establishment permit suspended or revoked by the Health Department at DCWP's direction.

Introduction 640 would require DCWP to develop a training on municipal workplace laws for fast food workers. DCWP would have discretion over when to require an employer to make their employees available for training. DCWP could also designate an outside organization to conduct the training.

We are always happy to work with the Council on legislation that promotes a culture of compliance with municipal workplace laws. To that end, we are encouraged that these bills can work in concert to further this goal. Education is a cornerstone of compliance, so that workers know when a violation is occurring and how to report it. We look forward to working with the Council to ensure any training program is accessible, accurately provides information to workers, and effectively accomplishes the goals of the legislation.

However, with respect to civil penalties in the Fair Workweek Law, we do feel that the current civil penalty amounts are appropriate and effective tools to deter noncompliance. Increasing the civil penalty amounts payable to the City would not be in line with our enforcement practices, which prioritize payment of monetary relief to individual workers over payment of civil penalties to the City.

Conclusion

I would like to thank the Council for today's hearing and its commitment to addressing problems impacting workers in the fast food industry. DCWP is proud of its work enforcing the Fair Workweek Law and other municipal workplace protections, and welcomes continued

³ <https://www1.nyc.gov/office-of-the-mayor/news/581-22/mayor-adams-department-consumer-worker-protection-settlement-chipotle-mexican#/0>

collaboration with industry stakeholders, workers' advocates, and the Council to create stronger protections for New York City's workers, as well as ensuring that workers know their rights and are made whole for violations of the law.

I look forward to our discussion and any questions you may have.