

State of Worker's Rights Testimony on 7/17/2018-- Aruna Baskota, Domestic Worker,

Adhikaar

My name is Sharda Gurung. I am the nanny and a domestic worker leader at Adhikaar and have been a member since 6 years. My organization, Adhikaar works for workers rights, immigration rights and healthcare for the nepali speaking community. I will be reading my friend Aruna Baskota's testimone today because she could not be here due to work commitments.

My name is Aruna Baskota, and I apologize for not being able to come today. I wanted to bring forward an issue I have faced and many of my peers in the domestic worker industry have faced around employment agencies. I have been to employment agencies in NYC to find a job. The agencies charged \$100 - \$250 from vulnerable workers like us telling us they will find us good jobs, then they send 20-30 of us to the same jobs without giving us any information about the job. When we go to the interview we find out it does not pay well plus they do not give us transportation money. When we complain, and ask for our money back they do not give it back. Instead they give us job credit for the future but then never send us for another interview. For someone looking for a job, we are already financially struggling so that \$100 dollars is a lot for us. I have a lot of friends who have not received their deposits back.

The agencies also discriminates against older workers, they tend to send younger workers for interview as oppose to someone like my age. I have even tried going to other agencies that take the fees from the employer not the worker, but even with experience if we do not speak English, they do not accept our application. My question to you is what are you as a department doing to help workers from these fraudulent employment agencies. How can we assure that agencies like these are accountable, and are not exploiting workers like us. We as immigrant

workers don't want to end up having to go back to these fraudulent agencies, who take money from the employers as well as workers and do not even find us a decent job to survive here.



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: Jacqui Orié (jacqui@domesticworkers.org), Namrata Pradhan (Namrata@domsticworkers.org), Leydis Munoz (Leydis@domesticworkers.org) NDWA NY Chapter Peer Leaders in the Groundbreaker Program

Re: Testimony Submitted for New York City's State of Workers Hearing
Date: July 17th, 2018

My name is Jacqui Orié. I am a nanny in New York City for over 18 years. In 2017 I met another domestic worker who was doing outreach with NDWA. That began my deep involvement with NDWA. I am currently a peer leader for a program called Groundbreaker with the National Domestic Workers Alliance and this testimony is a joint statement with my co-peers and Groundbreakers, Namrata Pradhan, and Leydis Munoz.

As Groundbreakers, our responsibility is to educate, empower, inform domestic workers of their value in this industry and in this society. We were trained to teach not only the NY Domestic Worker Bill Rights, but also city protections like paid sick leave, bigger issues like sexual harassment, understanding retaliation and even how to screen potential trafficking victims.

When we are outside doing direct outreach we talk to hundreds of nannies in the parks and have in depth conversations about their work conditions. We want to find domestic workers whose rights have been violated and we want to bring them to our domestic worker legal clinic so they can fight for the wages they already worked for.

Because of our continued outreach, and more domestic workers are learning more about how the enforcement process works, we have seen changes in the number of workers interested in learning about enforcing their rights. More workers are coming to our legal clinic for their questions and to file their cases. More workers are getting their money back because of our sustained effort.

And it is a big effort. It is still not easy for workers to come forward. We spend a lot of time talking, and encouraging, and informing and giving space to be heard. The structure of domestic work is still very difficult to overcome without this big effort to change this work sector. For nannies this is in part because:

- Most employers offer a 50 hour work week upon hiring a worker, many workers believe a regular work week is 50 hour and do not realize that they are to be paid 1.5 after 40 hours. Workers accept this agreement in order to survive in NYC

- Although we've won rights for workers in the Worker bill of rights, At NDWA in our attempt to educate workers, in this present political climate, Workers are still very so fearful of sharing their contact information.
- The retaliation is real, there is a lot of surveillance of workers, the expectations are very high for very low pay, if an employer does not get what they want they threaten workers with a bad reference letter, if a worker speaks up about getting paid overtime the employer often fires the worker, and if a worker actually does stand up for themselves they are punished by being blacklisted from getting future work when employers post their complaints in the neighborhood groups or are threatened with police or immigration intervention. Therefore the vicious circle of exploitation continues because workers are fearful of speaking up for fear of retaliation.
- Domestic workers can't afford to be fired because they are often mothers themselves support households, they are immigrants who cannot afford to be exposed as such, the cost of living in the city is so high that any crisis can put a worker and her family at risk of losing everything.
- When you have a workforce that has, No benefits for workers, No health insurance, No Retirement plan, How can a worker come forward? There is no safety net.

How can the city help?

-The city can help build a better system of Enforcement of Worker Rights

- The city can hire peer leaders to work as groundbreakers to reach more workers.
- The city can help fund NDWA and other local affiliate organizations conduct training for the groundbreakers.
- We want the city to have visible public campaigns to inform employers of their responsibilities as a domestic worker employers and the values of domestic workers that work in their homes. We want to see employers riding the train home being reminded to respect and value the domestic workers in their homes.
- Continued involvement in Domestic Worker organizations and enforcing Worker Rights, workers will begin to trust that the city is truly concerned about them.
- Yearly meeting/convention in New York City with worker organizations and the City.
- Quarterly meetings to ensure worker rights are being enforced.
- Allow flyers for domestic worker events in all the NYC public libraries. This will bring greater visibility to the cause because domestic workers consider the library a safe place. We could even hold know your rights trainings in the same libraries where nannies bring the babies to their story time.

This platform is amazing to start the journey to bring greater visibility to the plight of workers in this industry, but nothing will be accomplished if we do not move forward with action. We know nothing happens without some sort of action. We're counting on you City Officials present here today to not let this be another meeting you check off your "things to do" list, but you seriously think about developing empathy for us workers what we go through, how we suffer silently, and allow that empathy to cause you to put in place policies and programs to help us build dignity and value and respect in our workplace. As you commit to taking care of Caregivers, you are also committing to better care for all those we care for as well.

"The State of Workers' Rights: Advances and Setbacks in Turbulent Times"

Testimony of José Payares, worker from NICE

Buenas Tardes respetado auditorio:

Mi nombre es José Payares. Pertenezco a la Organización New Immigrant Community Empowerment (NICE). Hoy quisiera hablarles un poco sobre mi experiencia como trabajador de la construcción en la ciudad de New York. He tenido la oportunidad de conocer muchas personas así como historias, además de desempeñar labores que tal vez nunca imagine que llegaría a hacer antes de venir a este país.

Como todos los presentes saben, la mayoría de los trabajadores de la construcción en New York City son inmigrantes y a su vez la mayoría de ellos son personas indocumentadas. Muchos por la necesidad nos hemos visto obligados a desempeñar labores potencialmente peligrosas sin las medidas de seguridad adecuadas, algunos con pleno conocimiento del peligro debido a los entrenamientos recibidos y otros que no han tenido la oportunidad de hacerlos, llevados por el desconocimiento.

Estas situaciones pueden tener varias causas como lo son falta de planeación, prisas o incluso negligencia por parte del empleador. Cuando se evalúan esas causas, muchas veces encontramos que dentro de los presupuestos de los empleadores la seguridad ocupa un segundo plano.

Grandes empresas de construcción a menudo delegan pequeños/medianos trabajos a empresas o personas sub-contratistas (quienes incluso llegan a sub-contratar) en orden de reducir costos. Estos subcontratistas a su vez para maximizar sus ganancias ponen en práctica estrategias para exprimir el presupuesto gastando lo menos posible y en entre esas prácticas, la seguridad de los trabajadores es la que se ve más afectada.

Desde mi experiencia he visto como los subcontratistas en general no proveen equipo de protección personal para los trabajadores, aun cuando existen leyes que se lo exigen, y entre aquellos que si lo proveen, generalmente se trata de elementos de baja calidad que no garantizan la protección de los trabajadores. En otros casos los empleadores piden a los trabajadores que lleven sus propios elementos de protección personal, lo cual lleva a otro problema y es que normalmente el trabajador elige aquellos que sean más baratos o algunos que no son adecuados para las labores que desempeñan.

Tenemos también aquellos que trabajan con herramientas y equipos viejos o defectuosos a los cuales no se les presta el mantenimiento apropiado, extensiones eléctricas en mal estado y/o sin polos a tierra. Generalmente los trabajadores son conscientes de estas situaciones, pero ya sea por temor a quedarse sin empleo o por simple negligencia (los trabajadores también pueden ser negligentes con su propia seguridad) prefieren no levantar su voz al respecto, lo cual permite que estas prácticas se perpetúen entre los subcontratistas.

Queda mucho trabajo por hacer en cuanto a la difusión de los derechos de los trabajadores para que estas situaciones cambien, así como también aumentar el acceso de los trabajadores a los servicios de capacitación pertinentes para mejorar las condiciones de salud y seguridad en el trabajo. Además se debe

Incitar a las compañías y a sus subcontratistas en el cumplimiento de sus responsabilidades legales concernientes a este tema.

Desde NICE, organización a la que pertenezco desde el año pasado, se ha venido trabajando incansablemente en el empoderamiento de los trabajadores, hombres y mujeres, por la lucha de su derecho al trabajo digno, un ambiente de trabajo seguro y se han brindado capacitaciones encaminadas al mejoramiento de sus condiciones de salud y seguridad.

Aprovecho la ocasión para agradecer al DCA y demás agencias y organizaciones que hicieron este evento posible por brindarnos este espacio para compartir nuestras inquietudes y experiencias y que aquellos con poder de decisión que están aquí hoy tomen las acciones necesarias para que estas situaciones no se sigan repitiendo.

Muchas Gracias por su atención.

“The State of Workers’ Rights: Advances and Setbacks in Turbulent Times”

Testimony of José Payares, worker from NICE

Translated from Spanish into English by OLPS

Good afternoon respected audience:

My name is José Payares. I belong to the organization New Immigrant Community Empowerment (NICE). Today I would like to tell you a little about my experience as a construction worker in New York city. I have had the opportunity to meet many people as well as share stories, as well as performing work that I may never imagine I would do before coming to this country.

As everyone here knows, most construction workers in New York City are immigrants and in turn most of them are undocumented people. Many, due to need, have been forced to perform potentially dangerous work without the appropriate security measures, some with full knowledge of the danger due to the trainings received and others who have not had the opportunity to receive them, proceed due to a lack of knowledge.

These situations may have several causes such as lack of planning, haste or even negligence on the part of the employer. When these causes are assessed, we often find that within the employers ' budgets safety is of second importance.

Large construction companies often delegate small/medium jobs to companies or sub-contractors (who even come to sub-hire) to reduce costs. These subcontractors in turn to maximize their earnings put into practice strategies to squeeze the budget spending as little as possible and among those practices, workers ' safety is the one that is most affected.

From my experience I have seen that subcontractors generally do not provide personal protective equipment for workers, even if there are laws that require it, and among those who provide it, usually these are low quality elements that do not guarantee the protection of the workers. In other cases, employers ask workers to carry their own personal protective elements, which leads to another problem and is that the worker usually chooses those that are cheaper or some that are not suitable for the work that they perform.

We also have those who work with old or defective tools and equipment that are not provided with proper maintenance, electrical extensions in bad condition and/or not secured. Workers are generally aware of these situations, but whether for fear of being unemployed or simply negligent (workers may also be negligent with their own safety) they prefer not to raise their voices about it, which allows That these practices be perpetuated among the subcontractors.

Much work remains to be done in terms of the dissemination of workers ' rights in order to change these situations, as well as to increase the access of workers to the relevant training services to improve health conditions and Safety at work.

In addition, companies and their subcontractors should be encouraged to comply with their legal responsibilities concerning this subject.

From NICE, an organization I belong to since last year, has been working tirelessly in the empowerment of workers, men and women, for the struggle of their right to decent work, a safe working environment and have been provided trainings aimed at improving their health and safety conditions.

I take this opportunity to thank the DCA and other agencies and organizations that made this event possible by giving us this space to share our concerns and experiences and that those with decision making authority that are here today take the necessary action to keep these situations from repeating themselves.

Thank you very much for your attention.



SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

HECTOR J. FIGUEROA
President

LARRY ENGELSTEIN
Executive Vice President

KYLE BRAGG
Secretary Treasurer

LENORE FRIEDLAENDER
Assistant to the President

VICE PRESIDENTS

SHIRLEY ALDEBOL
KEVIN BROWN
JAIME CONTRERAS
ROB HILL
DENIS JOHNSTON
GABE MORGAN
ROXANA RIVERA
JOHN SANTOS
JOHN THACKER

Capital Area District

Washington 202.387.3211
Baltimore 410.244.5970
Virginia 703.845.7760

Connecticut District

Hartford 860.560.8674
Stamford 203.602.6615

District 1201

215.923.5488

Florida District

305.672.7071

Hudson Valley District

914.328.3492

Mid-Atlantic District

215.226.3600

National Conference of

Firemen and Oilers
606.324.3445

New England District 615

617.523.6150

New Jersey District

973.824.3225

Western Pennsylvania District

412.471.0690

Testimony of Stephen Yearwood, Member of SEIU 32BJ

Office of Labor and Policy Standards, State of Workers' Rights Hearing

July 17, 2018

Good Evening Commissioners and thank you for the opportunity to testify here tonight.

My name is Stephen Yearwood. I'm a resident of Brooklyn and a member leader of my union SEIU 32BJ.

32BJ represents over 163,000 men and women working in property services, including 85,000 here in New York City. Our members include janitors, security officers, window cleaners and residential building workers like me.

Our membership is extremely diverse, but we are united in our fight to raise standards in our industry and to improve the lives of our families and communities.

As our city grows and developments spread across the five boroughs, our union has been organizing workers in newly developed buildings to win good family sustaining jobs.

The city prevailing wage law is important to the work we do. The law requires that projects in receipt of certain subsidies, and buildings where the city is a major tenant, pay prevailing wages to building service workers. The law creates a level playing field that assists our efforts to organize workers and to raise standards.

One challenge we face is the lack of information on which developments and buildings are covered by the law. Despite the law requiring the city to maintain, update and publish a list of covered buildings and developers, to the best of our knowledge, such a list is not available.

Without an accessible and accurate list it is difficult for workers to verify if they work at a building covered by the prevailing wage law. It also makes it harder for the union to proactively reach out to workers to ensure they are being paid correctly and to play a role in the enforcement of the law.

It would be extremely helpful for DCA to maintain and make public a searchable list of buildings covered by the prevailing wage law that is available on its website and regularly updated.

The availability of this information will go a long way to ensuring that the law is effectively implemented and benefits the hardworking men and women, who clean and maintain our city's building and keep safe and secure the tenants inside.

www.seiu32bj.org

Testimony of Shani Rahman, Member of Fast Food Justice
Office of Labor and Policy Standards, State of Workers' Rights Hearing
July 17th, 2018

My name is Shani Rahman. I'm a member of Fast Food Justice and I want to start by thanking the Commissioners for hearing my testimony today.

Fast Food Justice is a non-profit organization with over 2,000 members and growing, and we advocate for the interests of the 60,000 fast food workers in New York City.

Fast food workers like myself have organized to improve our lives. By the end of the year, we'll be making \$15 per hour, twice what we were making five years ago. More recently, we fought for and won a fair workweek. Now we are supposed to get two weeks advance notice of our schedules, extra pay for last minute changes, time between shifts that allows us enough rest, and access to more hours before new workers can be brought in. NYC also has a paid sick and safe leave law that covers us.

Over the past year, we've been working with the Department of Consumer Affairs to ensure that the industry complies with the new fair workweek law and pays sick pay to those entitled to get it.

Before I joined Fast Food Justice, I didn't know about these laws and what my rights were. After I joined, I learned that we were supposed to be getting our schedules two weeks in advance, and that many employers were not paying the premiums they owed us for last minute schedule changes or doing a clopening.

When I joined FFJ, my organizer took me to DCA, and DCA opened an investigation into the violations of these laws that workers were claiming. DCA has been very responsive, and has conducted thorough investigations. Thanks to DCA, I feel confident I will get the premiums I'm owed, just like many other fast food workers have as a result of DCA's investigations.

I'm grateful to DCA for taking our complaints seriously. FFJ members from across New York City have filed complaints with DCA involving hundreds of workers. There are 60,000 fast food workers in NYC, and thanks to DCA we are beginning to see changes in the industry. But as more complaints are filed, DCA will need more resources to appropriately staff these investigations.

A big part of the problem is that many workers don't know their rights, just like I didn't until a few months ago. Fast food workers would benefit from a mass education campaign informing both workers and employers about the new fair workweek laws and paid sick time.

Thank you again for hosting this panel to hear our concerns. We're looking forward to continuing to work with you all on these important issues.



Testimony for Saduf Syal

The State of Workers' Rights in New York City:

Advances and Setbacks in Turbulent Times

Tuesday, July 17, 2018

Good evening and thank you to the Department of Consumer Affairs (DCA) Office of Labor Policy & Standards, the City Commission on Human Rights, the Mayor's Office of Immigrant Affairs for inviting me to offer my testimony to this hearing. My name is Saduf Syal and I am the Coordinating Director for NYC Network of Worker Cooperatives (NYC NoWC). NYC NoWC, as we call it, is the trade association for worker cooperatives in NYC; our members are made up of worker cooperatives and support organizations from NYC.

We want to thank MOIA for the interest they have taken in worker cooperatives and the the Office of Labor Policy and Standards for all the work they have already done supporting worker cooperative and broader economic democracy initiatives in NYC. We thank you for your work supporting financial literacy for worker owners, the development of a financial toolkit for worker owners, and the research into democratic enterprises and projects in New York City.

We expect through your research you saw the diversity of industries, cooperative models and development approach strategies that exist in a variety of different communities across NYC. We believe this diversified approach creates a stronger cooperative economy long term than putting all our efforts into one specific model. In fact, the bottom up, experimental nature of cooperative development in NYC have been one of our greatest strengths. It has allowed for many creative approaches and innovative models to flourish here, which we know many cities around the country look to as an example.

Worker Cooperatives and the Broader Solidarity Economy

Worker Cooperatives alone will not create a sustainable, holistic and just economy. However, these enterprises are expanding in NYC alongside housing cooperatives, community credit unions, community land trusts, community gardens, food cooperatives, and other consumer cooperatives. These sectors have already started working together to envision and build a just economy in NYC. We would love to align the goals and strategies we have collaboratively developed with the DCA's future plans to support economic democracy initiatives in NYC.

Similarly, we know the mayor's office has taken an interest in economic democracy issues, in particular through Deputy Mayor Phil Thompson's office. We hope to collaborate with the mayor's office as well as city agencies such as DCA, MOIA and the Commission on Human Rights to create a comprehensive vision and approach for economic democracy city-wide in order to build a sustainable economy that works for all New Yorkers.

In this vein, we hope to hold, with MOIA, DCA, The Commission on Human Rights and other values-aligned agencies, a forum on worker cooperatives or some other educational

program for agencies throughout NYC about strategies they can take to integrate worker cooperative and broader solidarity economy initiatives into their work.

Thank you for the time and opportunity to share insights about the intersections of the cooperative business movement and other cooperative initiatives in NYC with you today. My colleagues and I are happy to take any questions and look forward to working together in the future.



Testimony by

Nancy Rankin, VP for Policy Research and Advocacy
Community Service Society of New York

Before the New York City Department of Consumer Affairs Office of Labor Policy & Standards

July 17, 2018

Thank you for the opportunity to testify today on the importance of outreach and enforcement of labor standards.

My name is Nancy Rankin. I am Vice President for Policy Research and Advocacy for the Community Service Society of New York, a nonprofit organization that works to advance upward mobility for low-income New Yorkers.

New York, the birthplace of progressive labor standards that paved the way for the New Deal, is now advancing bold policies to address the needs of today's workers. State actions are raising the minimum wage to \$15 an hour and providing one of the strongest paid family leave laws in the nation.

Under Mayor Bill de Blasio's leadership, New York City has expanded paid sick leave to cover employees in smaller businesses, made the definition of family more inclusive, and allowed the leave to be used to deal with domestic violence. Fair Workweek laws are combatting unpredictable scheduling practices in the fast food and retail sectors and enabling paycheck deductions to support a nonprofit to advocate for the interests of fast food workers. A new law designed to end the perpetuation of the wage gap for women bans employers from asking job applicants for their salary history. And the funding of Fair Fares will enable the working poor to actually be able to afford to get to work.

Collectively, the promise of these actions is enormous. But passing laws is just the start. For ordinary workers—especially the most vulnerable low-wage and immigrant workers—to benefit, they, their employers, and the general public must be aware of the laws and how they work. The standards need to be enforced and become the new norms.

Earlier this year, the Community Service Society released a report, *Expanding Workers' Rights*, examining public awareness of some of these new labor standards, and their impact on low-income workers in New York City. The analysis is based on findings from our annual scientific survey, *The Unheard Third*.

We found that since New York City's earned sick time law went into effect in 2014, access to paid sick days has climbed dramatically from 47 to 71 percent for low-income workers covered by the law. This substantial progress can be credited to the extensive public outreach and advertising surrounding the launch of paid sick days, as well as strong enforcement by DCA's Office of Labor Policy & Standards.

Despite these efforts, gaps remain. Nearly half of low-income part-time employees and 44 percent of low-income workers in small businesses with five to 14 employees still lack paid sick time.

Since enforcement is largely complaint-driven, awareness of the law matters. Yet 63 percent of low-income workers who said their employers failed to provide paid sick days had heard little or nothing about their right to paid sick time. And even if they are aware of the law, vulnerable workers, especially immigrants, are likely to be fearful of retaliation, and reluctant to lodge complaints with their employers or a government agency to assert their rights.

Since we released our findings, DCA has launched a new public awareness campaign to educate New Yorkers about their rights under the expanded paid safe and sick leave law that went into effect in May 2018. Ads highlight that the law applies to workers employed part-time and by small firms, and that retaliation is illegal. This is a promising and needed step, but our concern is whether the scale of the campaign will be adequate. We urge the city to expand these efforts with additional funding for both outreach and proactive investigations of industries where widespread violations are suspected.

To strengthen awareness, why not require posters about the right to paid sick leave at every pharmacy, clinic and in doctors' offices? This is a low-cost means of targeting information to people precisely when it has high relevance to them. Moreover, widespread public awareness makes it harder for employers to deny vulnerable workers their rights.

Every flu season provides an opportunity for the Mayor to urge New Yorkers to stay home and keep children home from school if they have flu symptoms – and to remind them that they can do that because in New York City they have a right to paid time off to care for their own illness or a sick family member. We were pleased to see DCA Commissioner Lorelei Salas and Health Commissioner Dr. Mary Bassett doing just that as a press event during last winter's severe flu epidemic. Mayor de Blasio should be using his bully pulpit, as well, to reach an even wider audience repeatedly with the same message.

During July and August, CSS is fielding this year's survey that will allow us to continue to track both awareness of the right to paid sick time and whether workers actually receive it on the job.

We will also be asking about awareness of the Fair Workweek laws which went into effect November 2017. In contrast to the rollout of paid sick days, these laws have not been widely publicized. In particular, we are asking retail and fast food workers how much, if anything, they have heard about the new provisions to address unpredictable scheduling and we will track whether the prevalence of unpredictable scheduling has declined. This data can be helpful in targeting future outreach efforts to raise awareness of these important new laws to combat abusive practices.

In addition, for the first time this year's survey will explore the prevalence of wage theft in the various forms it can take: not being paid on time, not being paid for all the hours worked, or being paid less than the applicable minimum wage.

Let me now briefly turn to paid family leave which went into effect January 2018. The Empire State Poll, conducted by the Cornell Survey Research Institute this spring, found that statewide two-thirds (66.7%) of employed New Yorkers in households with incomes below \$50,000 had heard little or nothing about New York's paid family leave program. While this is a state law, it affects those of us employed in New York City, and there are actions the city can take to raise public awareness using institutions it controls, such as NYC Health + Hospitals. The city should work together with the state to make sure outreach materials and posters are available at H + H prenatal clinics, and that discharge planners are trained so they can inform family caregivers. Medicaid pays for 59 percent of births in New York City, and well over a third of deliveries covered by Medicaid were to women who were employed during their pregnancies according to a special tabulation by the Bureau of Vital Statistics. Medicaid and other health insurance claims for 6-month prenatal visits should automatically trigger a notice to patients informing them about paid family leave. This simple step would precisely target information to many low-wage workers exactly when it is needed.

New York has been leading the nation in expanding workers' rights. If we want to ensure that all workers, especially the most vulnerable low-wage and immigrant workers actually benefit from the laws designed to help them, we must follow passage of laws with the persistent monitoring, outreach and enforcement needed to make them truly effective. Today's hearing is an important step towards that end and I thank you for the opportunity to testify.



**Chinese-American Planning Council, Inc.
Testimony at the Department of Consumer Affairs
Office of Labor Policy & Standards with
The City Commission on Human Rights and
The Mayor's Office of Immigrant Affairs**

**The State of Workers' Rights in New York City:
Advances and Setbacks in Turbulent Times
July 17, 2018**

Thank you for the opportunity to testify today on behalf of the Chinese-American Planning Council, Inc. (CPC). CPC's mission is to promote social and economic empowerment of Chinese American, immigrant, and low-income communities. CPC was founded in 1965 as a grassroots, community-based organization in response to the end of the Chinese Exclusion years and the passing of the Immigration Reform Act of 1965. Our services have expanded since our founding to include four key program areas: Childhood Development, Education & Career Services, Senior Services, and Community Services.

CPC is the largest Asian American social service organization in the U.S., providing vital resources to more than 60,000 people per year through more than 50 programs at over 30 sites across Manhattan, Brooklyn, and Queens. CPC employs over 700 staff whose comprehensive services are linguistically accessible, culturally sensitive, and highly effective in reaching low-income and immigrant individuals and families. As a parent company, CPC also oversees CPC Home Attendant Program (CPCHAP), one of the largest not-for-profit home care service agencies in New York City. To that end, we are grateful to testify about issues that impact the individuals and families we serve, and the constraints we face as a provider and employer. We are grateful to the Department of Consumer Affairs and the Mayor's office for their attention to these issues.

Though a large provider of human services, CPC is also a large employer, with over 700 community and social services staff and 4,000 home attendant/home care aides. Our testimony reflects findings that both highlight the persistent needs and emerging trends faced by our community members, and the constraints and hurdles faced by non-profit and community based organizations (CBOs) who also function as employers in the field.

Workers' Rights

CPC provides workforce development and adult education services in Sunset Park, Brooklyn, Flushing, Queens, and the Lower East Side/Chinatown. While many of our community members are Asian American and immigrant, we also reflect the wider diversity of greater NYC. Each year reach over 4,000 community members through either youth internships and employment experience, adult workforce development and careers training, or adult literacy education.

Know Your Rights Training, Discrimination Reporting

From entry to exit interview and everything in between, Know Your Rights training is a major component of CPC's education and career services curriculum. Community-based providers are well-poised to understand the cultural complexities involved in adjusting to American workplace culture. As some individuals feel emboldened by national anti-immigrant, racist, and discriminatory rhetoric, it's more important than ever that the City continue to lead in providing streamlined reporting opportunities and oversight and KYR trainings.

Through support of city initiatives and resources like those provided through CCHR, DCA, and MOIA, CBOs are better able to integrate anti-discrimination and Know Your Rights information into our curricula whether it's fair and protected information in interview questions, paid work and sick hours, scheduling, assessing employer practices and behaviors, retaliation, and other important worker protections. Importantly, CBOs are able to help our community members navigate systems for reporting and holding employers accountable and can plug into a network of the City's affordable or no-cost legal service providers or other community-based providers who can advocate on their behalf.

Adult Literacy, Workforce Development, & Language Access

Critical to working New Yorkers' navigation of their rights is the City's continued provision of translated materials into top spoken languages. Similarly, offering telephonic interpretation for on-the-spot translation is helpful. However, CPC would like to point out that despite the City's efforts to provide access and readability for these materials, the newest and most vulnerable workers are often those who may lack digital fluency or literacy in their native language. Further, wait times for telephonic interpretation can be exceedingly long, deterring many from using it altogether. The space the CBOs fill in providing navigation and interpretation of these rights cannot be understated.

To that end, CPC is also grateful to see the initial FY16 investment in Adult Literacy has now moved toward higher baselined inclusion in FY 19. While there are important resources like We Speak NYC (formerly WANY), the trust that CBOs have with their constituency is important in supporting success and providing access to critical support services like entitlement enrollment, legal services, healthcare navigation, and housing. Further, CBO adult literacy programs offer the rigor and intensity needed to gain educational attainment while also removing navigating the complex cultural and linguistic barriers our community members face. There are 2.2 million adult New Yorkers currently lacking English proficiency and/or a high school diploma – 1/3 of the entire adult population of the city. As federal funding for programs like WIOA come under threat or seek to further eliminate eligibility opportunities for immigrants, the City has an opportunity to invest in new and innovative immigrant workforce and workforce development programs. Further permanent investment in these community programs elevates immigrant workers' ability to find stable, higher paying jobs, and allow greater interfacing with workforce systems and navigation of their rights.

Financial Literacy, Economic Security

New immigrants can be vulnerable to predatory lenders who prey on limited financial literacy, low capital, and ability to navigate/self-advocate. City programs like IDNYC that allow credit and capital building through community credit unions is a great example of ways to democratize economic security. CPC also recognizes DCA's leadership in pursuing predatory lenders and proprietary schools who may take out loans on behalf of consumers. Both building capital and navigating options to achieve financial security are important to supporting working New Yorkers.

Non-Profit Employers

As a human services sector employer, CPC brings a unique perspective faced by non-profit providers. New York's human services employment has doubled since 1990 with job growth occurring primarily through non-profits with public contracts. According to a 2017 FPWA report, human services workers annual salary averages at \$29,600, only 40% of the average for all other workers. Inadequate pay is the norm across all human services occupations, even credentialed roles like social workers, mental health, and substance abuse counselors.

CPC commends the City for its leadership on important issues like paid sick leave, overtime pay, and wage floor increases that have put pressure on the State to follow suit. The influence that New York City's workforce size and policy has on state level decisions is important, and a real opportunity exists for city contracting to again set high standards for fair and dignified human services worker pay.

Contract Procurement and Disbursement

Contract delays are a very real issue for human services providers like CPC. The time between notification of award and procurement/disbursement has certainly improved in some city agencies though not all. Timely delivery is important in providing continuity of services, reducing staff turnover, and minimizing human services employers' financial risk. Delays force nonprofits to take out loans or potentially cut services, just to deal with the shortfall in cash. The risks are much higher for niche organizations, serving the most hard-to-reach communities, that can't afford wagering operations against the unpredictable timeline of contract delays.

Additionally, COLA and Indirect Rate increases are given to some contracts but not all. There is often a months-long lag between notice and disbursement for both. When COLA notices arrive after the end of a fiscal year, some staff, who may have left to seek more competitive pay, have already turned over. Immediate COLAs go a long way toward supporting community based workers, especially as affordability in our neighborhoods

diminishes. Second, disbursement is often delayed. In one instance, we calculated that one team's COLAs would amount to \$500,000 but without immediate disbursement, we would have been forced to cover costs upfront. Other times, indirect rate adjustments are delayed with some not disbursing until the penultimate month of the fiscal year. These delays force CPC to put off planned hiring of mission-critical staff as well as key upgrades that would allow more efficient programming.

Last, the reasons COLAs and indirect rate adjustments are granted to some contracts but not others is not always clear. Within CPC, different departments and teams may have a portfolio of contracts where different staff take on responsibilities from parts of each contract. For example, a team may include an outreach worker, a case worker, and a data administrator. Depending on the work, it may not be feasible to have three separate outreach workers. That staff's salary may have a split allocation with time is lent "in kind" toward work on contracts where they have smaller (or in some case no) allocation. When some contracts receive COLAs but others do not, some staff will not receive a salary increase. This leads to low staff morale and increased turnover. Similarly, for indirect rates, federal uncertainty has led to a sharp increase in demand for our services, but chronic underfunding of city contracts and delay in disbursement of increases has led to us being unable to meet that demand. Whenever possible, CPC funds increases for other staff internally, but because of high cost and reduced cashflow, we are sometimes unable to front the cost.

Salary Parity for Community Based Childhood Education Workers and Uncovered Costs

Administration for Children's Services (ACS) is now transferring Early Childhood Education to Department of Ed (DOE). It is imperative that the issue of pay parity for these educators is addressed. Community Based Educators have the same credentials as their DOE counterparts and work longer hours throughout the year because of summer programming, but are paid far less than DOE teachers. Many of our staff have given years of their life to community based care because they know the value it brings to families, especially immigrant parents who need the wrap around supports that a community based organization can offer in-house. Salary parity is long overdue for these educators and CPC is grateful to the Council for continuing to take leadership on this issue.

In addition to salary parity, summer programming stretches the capacity of our early childhood centers. Currently, rent and utilities are not covered for summer months. We have been told by ACS that how we do our budget is "up to us" but it is near impossible to balance the year long budget when rent must be made up through other parts of the contract. So many of our children's activities rely on supplies that stimulate their imaginations and development. Community based providers should not have to sacrifice quality programming to make up uncovered costs in their contracts.

Unfunded Mandates

New York City also has an opportunity to lead in practices that build mandates as they pass into existing and future public contracts. Over time, City contracts have now caught up to building in wage floor lifts into contracts, either through direct amendments or COLAS. However, State contracts have yet to catch up.

While human services providers are largely depended on public contracts, the internal diversity of their federal, state, and city catalog can differ. Some providers feel that staff time is often lent in kind for overlap duties (like outreach, data maintenance, facilities) where either City or private funding are stretched over a widening gap.

As a home health aide provider, CPC has made recommendations on the Department of Labor's upcoming 13 hour rule, insisting that aides are paid for all 24-hours worked, including their sleep and meal periods that often go interrupted. In order for these recommendations to not decimate the sector with an unfunded mandate, DOL must work across multiple stakeholders like NYS Department of Health (DOH) and Managed Care Organizations (MCOs) and the Human Resource Administration (HRA) to adjust the contracting for home health contracts. Currently, CPC provides 49,000 24-hour cases annually. At existing rates, it is impossible for providers to consider alternative options like rotational 12-hour shifts because contracts currently base their reimbursement on the 13-hour formula, hurting workers and providers alike.

Strengthen the Sector, Strengthen Working New Yorkers

As both a human services provider and employer, CPC makes the following recommendations to provide further support to working New Yorkers and support non-profit employers.

Continue to strengthen education and outreach programs, especially for Know Your Rights and Civic Engagement, Adult Literacy, and Financial Literacy and Empowerment. Pairing education and empowerment with the City's existing language resources is one of the best ways to support working immigrant New Yorkers who are new to the workforce or navigating it on their own.

Echoed recommendations in Comptroller Stringer's non-profit contracting report. Non profits are undervalued and under funded but are a partner in delivering Agencies should have specific timeframes in which to review contracts. A standardized time frame allows providers to make plans between award notice and disbursement. We also support the creation of a public facing tracking system for contract monitoring for added transparency.

Investment \$200 million in human services contracts, a recommendation not included in the FY 19 budget. A trend factor/cost escalation formula would eliminate the COLA and Indirect Cost issues we face, as well as the year-long costs issue, like covering rent gaps for summer services. These recommendations would free providers to put funds toward to innovative programming, supporting staffing, and serving the community needs unmet by existing contracts. As benefit, occupancy, and liability insurance costs rise, human services providers need city investment to close the gap. The model budget process should take these considerations into account, not only looking at the costs incurred by service provision, but the gaps that are covered on the back end by providers.

CPC appreciates the opportunity to testify on these issues that so greatly impact the communities we serve. We look forward to working with you on them. For further questions, please contact Director of Policy and Advocacy, Amy Torres at atorres@cpc-nyc.org or Chief Policy and Public Affairs Office, Carlyn Cowen at ccowen@cpc-nyc.org.

**Testimony of Sonia Guior, Senior Policy Analyst
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 the State of Workers' Rights**

Good evening, everyone. My name is Sonia Guior and I'm Senior Policy Analyst at the Taxi and Limousine Commission. Thanks to everyone for sharing your stories tonight, and thank you to Commissioner Salas, Commissioner Malalis, and Commissioner Mostofi for inviting us to testify tonight on the state of workers' rights in New York City.

The Taxi and Limousine Commission is the regulatory agency responsible for licensing and regulating for-hire transportation in New York City. We currently license over 180,000 drivers, and this number has increased by 440% since 2015. The TLC has watched this number rise hand-in-hand with the growing popularity of FHV app companies, such as Uber and Lyft. As with other sectors in the for-hire industry, drivers for these companies are considered independent contractors and therefore have no protections in place for them when it comes to a mandated minimum wage, healthcare coverage, or retirement contributions.

Testimony provided by over one hundred drivers during our April 2017 commission hearing on driver income and expenses, meetings with industry stakeholders including driver groups, and a TLC survey of drivers all reinforced the growing sense by drivers that their earnings are falling. As a response to the growing evidence of declining driver pay, TLC commissioned an academic study of FHV economics, including driver income and earnings, to provide a comprehensive review of driver earnings data from app-based FHV companies. These data show that driver earnings declined by almost \$3.00 per hour for the median driver from 2016 to 2017. For 85 percent of these drivers, this decline has resulted in a net income of less than \$17.22 per hour.

The team of economists also analyzed the impacts of a proposal that would ensure a minimum pay for trips including a component to cover costs such as the vehicle lease, insurance, gas and administrative fees. Should the new standard be implemented, driver net earnings would increase by 22%, which would equate to around over \$6,000 per year per driver.

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 continuing to work with your agencies to ensure protection of workers' rights when we identify issues. Thank you again for the opportunity to speak publicly on these issues today.

State of Worker's Right Testimony on 07/17/2018 - Megha Lama, Organizer, Adhikaar

Good evening. My name is Megha Lama and I am here to speak on behalf of more than 1,000 Nepali-speaking nail salon technicians that Adhikaar serves and organizes. Adhikaar is a worker center and community center that serves and organizes the Nepali-speaking refugee and immigrant community.

Despite historic nail salon legislation and regulations that this state passed in 2015, there remain a multitude of issues that still plague the industry's workers.

Our membership reports that there are still violations of overtime practices. Currently, the industry is in full swing with the summer, and this forces workers in situations where they are made to work overtime without overtime pay. They tell us that their managers will clock in and clock out for them, making it seem as though they are not working overtime in the books.

The majority of nail salon workers are women, and also mothers. We have had members tell us that salon owners ask them if they have children or not in the hiring process, and consequently have not been hired upon answering "yes" while seeing others without children hired instead.

In another form of discrimination, one member recently shared with us that her child fell ill at school and when asking her employer if she could leave to tend to her child, the employer threatened to cut back her hours or worse, fire her.

This leads me to another issue: no requirements to provide prior notice of termination. This leaves workers in incredibly vulnerable situations where they feel like they must keep their mouth shut in the face of clear injustices in the workplace. In these situations, it is clearly not enough for workers to "know their rights".

For many, this work is their main form of income to support themselves, their families, and as immigrants, their families back home thousands of miles away. What does it say to these workers who are professional technicians— what does it say to them about what we think about their profession and its value when the government allows employers to fire them with zero notice?

These are women of color who work in highly risky environments, exposed to harmful chemicals, is literally back-breaking work where they are subject to sexual harassment from clients, yet, despite all of these hardships, are able to go through a rigorous licensing and exam process to receive the certification necessary to do their job well. I meet with members daily that have enough knowledge to rival a certified nurse's skillset and have 10-15 years of experience under their belt, YET are forced to work 10-12 hours a day for as little as \$5 or \$6 per hour.

I ask all those here listening today who have the power to do something, to understand one thing, and that is to understand that improving working conditions does not end with legislation. There must be a coordinated effort to enforce legislation, accountability on the enforcement mechanisms and work to expand these protections to ensure that the organizing efforts that made legislation possible in the first place are not gone to waste.

Thank you.

State of Worker's Rights Testimony on 7/17/2018-- 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 work on workers rights, immigration rights and healthcare. We are one of the newest immigrant communities in New York City, and the majority of our members are low-wage workers.

I came here last year and spoke about employers being empowered by this administration to retaliate against workers for speaking out. There are laws that protect workers, for domestic workers we have the NY Domestic Worker Bill of Rights, yet, things have not changed much. I would like to again request the city to do more around employer accountability so that the burden is not just on the worker but equally on the employer.

In addition to that, I want to bring up my experience with the hotline to report a paid sick leave case in 2016. She was a domestic worker who got injured at her work, and instead of getting paid sick leave she was told to not come back to work. She was ready to file a complaint and I had gone to her house because I was told the complaint had to be made on the phone. We called in, I interpreted and gave the operator all the information we had. I followed up after about a month and a half, but they could not find her complaint. We tried her name, her address and still could not find it. The worker would call every week, asking what happened and if there were any updates. She eventually gave up, and I had the difficult job of telling her that her complaint was lost so we might need to refile and she did not want to. I do want to acknowledge that the second time around, we had a better experience with DCA because we did not use the hotline. One of the biggest challenges our workers face is access. Even through 311 and the hotlines seem easy

for most, it very difficult for our workers to navigate. Even to get to a department, whether it is for paid sick leave, human rights commission or Action NYC, it requires a physical interpreter present for the worker to even ask for a interpreter. And if even if workers file a complaint, if complaints are getting lost in the system, how is that empowering the worker? This is why workers choose to not call, so the city must take the responsibility to find a better and more appropriate and efficient way to serve the worker community. We as immigrant workers experience enough barriers, we do not need another barrier to get justice. Thank you.

**Testimony by Nadia Marin-Molina, NYCOSH Associate Director:
Public Hearing on the State of Workers Rights in New York City
July 17, 2018**

I am here to provide testimony on behalf of the New York Committee for Occupational Safety and Health (NYCOSH). NYCOSH is a membership organization of workers, unions, community-based organizations, workers' rights activists, and health and safety professionals. Founded in 1979 on the principle that workplace injuries, illnesses and deaths are preventable, NYCOSH works to extend and defend every person's right to a safe and healthy workplace. NYCOSH works with diverse industries, and has developed targeted programs around the issues faced by construction workers, nail salon workers, young workers, and 9/11 responders and survivors. We applaud the Office of Labor Policy and Standards, 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.

Importance of enforcement to health and safety protections

The enforcement of occupational safety and health regulations is essential to protecting workers on the job. Multiple studies have demonstrated the effectiveness of government enforcement in protecting workers health and safety. In one extensive study conducted by the U.S. Department of Labor, companies that were inspected once or twice experienced a reduction in citations of 50 percent. Our testimony will provide updates in three specific areas: 1) construction; 2) sexual harassment; and 3) nail salons, as well as recommendations for actions that can be taken by New York City to better enforce the laws that protect worker health and safety.

Construction industry

The construction industry is highly dangerous for workers. In our most recent report on fatalities in the construction industry, *Deadly Skyline*, the most common (85%) causes of construction deaths are the “fatal four” hazards, which include falls, electrocution, struck by an object, and caught in/between equipment or machinery. These are all preventable, and in most cases, would never have happened if employers had followed legal requirements or standards.

A record-breaking 71 construction workers were killed on the job in New York State in 2016. However, in New York City, construction deaths dropped by 19 percent, from 2015 to 2016, with the fatality rate trending downwards. Local enforcement mechanisms, such as increased criminal prosecutions, and increased resources for the NYC Department of Buildings, are proving effective.

One positive step was that in October 2017, the construction safety training Local Law 196 was enacted by New York City. It establishes new site safety training requirements and penalties for violations, develops a site safety training provider and card system, creates a timeline for phasing in the additional training requirements, and creates a yearly reporting program to monitor the implementation of the law. A broad coalition of construction unions and workers centers supported this legislation and are monitoring its implementation. NYCOSH is following the implementation of this legislation closely, as it is crucial that the implementation be carried out in a way that is open and accessible for all workers in the industry.

Sexual Harassment

In the wake of the #MeToo movement, sexual harassment has gained exposure and prominence as a key issue in New York City. In April 2018, New York City passed legislation called *Stop Sexual Harassment in New York City*, which mandates anti-sexual harassment training for private sector workplaces with 15 or more employees. While this is a very

positive step, it needs to be broadened to cover more employees, as small workplaces can be as hazardous as large ones.

NYCOSH recently participated in the launch of the national Our Turn at Work network, through which worker organizations are uniting to learn from different strategies to fight sexual harassment across the country, and to support local campaigns to build power and create work environments that are free from sexual harassment, discrimination, and violence. New York City can learn from enforcement strategies that are targeted to fight sexual harassment and assault in specific industries, such as Chicago's Hands Off, Pants On campaign and California's Ya Basta coalition.

Nail salon workers rights

The nail salon industry has experienced an array of changes over the past 3 years, including the implementation of a Nail Salon Workers' Bill of Rights, a new, more inclusive trainee licenses, and the phasing in of ventilation requirements for nail salons. Most of these requirements are implemented and enforced at the state level. However, New York City can play a positive role by helping to educate local nail salon employers about their obligations to workers through the Department of Small Business Services. We have been glad to collaborate with SBS and with the Office of the Public Advocate on some nail salon employer outreach and training events in the past year and look forward to continuing this work.

Key Challenges or Setbacks

As mentioned above, OSHA enforcement has been declining. In fact, OSHA's overall budget has remained stagnant since 2010, despite increases in costs from operations and inflation. According to the AFL-CIO's annual report, Death on the Job, OSHA's staffing level falls far below international standards for effective labor protection: "The current level of federal and state OSHA inspectors provides one inspector for every 76,402 workers. This compares

with the benchmark of one labor inspector for every 10,000 workers recommended by the International Labor Organization for industrialized countries." *Death on the Job.*" AFL-CIO. Apr. 2017.

In addition to the lack of staff, OSHA is decreasing, rather than increasing, its inspections, through which it conducts enforcement. We can see this when we compare the year of the highest number of inspections, 1986, to the most recent year, 2017. The number of inspections dropped by 62%, despite increases in the numbers of both workplaces and employers.

Finally, the Trump administration's attacks on immigrant workers are making all workers less safe. Workers may be less likely to report violations out of fear of retaliation. Increased raids and worksite enforcement effectively criminalizes thousands of workers in the construction industry. While the administration is looking to bring on nearly 26,000 new Immigrations and Customs Enforcement employees in the next several years, the number of OSHA inspectors has been reduced to only 1,000 for the whole country.

What is the City doing/can the City do/should the City do more or less of to help?

In the face of the lack of enforcement from OSHA that would be needed to adequately enforce workers rights, New York City needs to continue to take leadership and implement creative strategies to protect workers. In addition to the points mentioned above, New York City can:

1) *Support collaborative enforcement strategies with worker organizations*

NYCOSH is currently leading an initiative called the Manhattan Justice for Workers Collaborative, a collaboration between seven organizations in New York City - La Colmena, Labor Institute, National Day Laborer Organizing Network (NDLON), New Immigrant Community Empowerment (NICE), Workers Justice Project, Queens College, and NYCOSH.

MJWC seeks to: 1) Increase the reporting of workplace related crimes; 2) Provide support to workers who report cases of wage theft and health and safety violations at their workplace; 3) Collaborate with the Manhattan District Attorney to hold employers criminally responsible for workplace crimes; and 4) Promote a justice system where workers lives are valuable and criminal contractors are held responsible for violating workers rights. Through this collaboration the Manhattan District Attorney's office is providing funding to community organizations to support the enforcement work that needs to happen on the ground. These kinds of collaborations, modeled on similar enforcement initiatives in San Francisco and Seattle, can build the strength of both community organizations and enforcement agencies to help protect workers from exploitation.

2) Use licensing powers to hold employers accountable.

For example, New York City can use its existing city powers to suspend or revoke licenses and construction permits for criminal contractors. The city has the power to hold employers accountable in a worker death or injury, so that construction employers face real consequences for their actions.

3) Maintain and expand sanctuary policies to protect immigrant workers in New York City

As described above, attacks on immigrant workers undermine the well being of all workers. By supporting workers, regardless of immigration status, in enforcing their rights against wage theft, health and safety hazards, discrimination, and other forms of exploitation, New York City can step in as a valuable resource for immigrant workers, so that employers are not able to use immigration as an additional threat.

Thank you for the opportunity to provide testimony, and we look forward to continuing our work with you in the future.

Hello. My name is Kristine Azzoli and I would like to testify on behalf of construction workers that deal with deadly silica dust on a daily basis. I am a member of Local 1 NY Bricklayers and Allied Craftworkers. I am a Pointer, Caulker, and Cleaner - Restoration Specialist. My work often requires me to work on a suspended scaffold, hanging hundreds of feet above the New York City streets, but let me tell you that suspending off the side of a skyscraper scares me less than the dangers I face from exposure to Sillica.

Concern over silica exposure has led to the passage to lower exposure standards by OSHA last year, and although people may consider this a victory, these standards are not restrictive enough, and more importantly: higher standards do no good to the worker if they are not properly implemented and more importantly, properly enforced. Contractors, both signatory with my Union and those that employ non-union workers, face as far as I have found in OSHA, EPA, and DOB documents, a MAXIMUM fine of \$25,000 for violations that can expose both workers and the public to this deadly dust. Do you really believe that any contractor that wins a bid for a job in New York City, many of which are multimillion dollar contracts, will really be affected by the loss of \$10,000 or \$20,000?? I am here to tell you with certainty that they will not. OSHA as an agency is grossly understaffed and contractors know it. Most can go about continuing their dangerous practices, confident that they will not even face a fine no matter the size, because they will not be caught.

In a time where workers' rights are sliding backwards, and people are forgetting the purpose of and the need for unions, when half of the country is "right to work" states; now more than ever, we need departments, agencies, and the government to stand behind the workers. The members of my Union are still being forced to chose between putting themselves in harm's way to earn their paycheck or standing up for themselves and facing termination. My trade is weather dependent, and it is common for us to work only 7-8 months out of a year. With families and children to support, some of us cannot afford to choose our long term health over the immediate needs and responsibilities. With an issue that overlaps multiple government agencies, and in most cases is obvious, as we are on the side of a building, not concealed by walls or doors, I find it inexcusable that plumes of silica dust are permitted to pollute the lungs of the people and workers of the City of New York.

My request to the City for the concern of all New Yorkers, and especially my fellow tradesworkers is : that penalties need to be raised to a minimum of \$100,000 for violations, and the money used to hire more inspectors to police enforcement of these very important protections for the workers and the public.



Thank you for the opportunity to testify today. My name is Jared Odessky and I am here on behalf of the National Employment Law Project (NELP), 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.

NELP testifies today to offer its expertise in four areas that pose unique challenges to labor standards enforcement in the current climate.

1) Immigrant workers and 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.

We propose adopting policies that would 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.

2) Contingent work, including independent contractor misclassification and subcontracting arrangements

The number of industries in which companies contract out responsibility for overseeing workers is growing rapidly.¹ 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. 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.

Employers are increasingly misclassifying employees as independent contractors.² This practice hurts workers through lost wages and benefits, and all of us through lost public revenues. We offer the following policy recommendations:

- Create inter-agency task forces and commissions to study the problem and coordinate and strengthen enforcement. A city-level task force, similar to New York state's, may be valuable for laws enforced by the city agencies.
- Through law, create a presumption of "employee" or "employer" status for those performing or receiving labor or services for a fee.³
- Pass "presumption" laws or other enforcement and coverage mechanisms that designate any worker in a particular job as a covered employee, regardless of what the company calls that worker.

3) Paid care workers

The New York City metropolitan area has the highest number of home care workers in the country.⁴ New Yorkers depend on these paid caregivers who 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 fully support the recommendations put forth in its recent report, "Lifting up Paid Care Work."

4) Wage theft

As income inequality worsens, ensuring that low-wage workers are paid the minimum wage and overtime required by law must be a priority. 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."⁵

Thank you for the opportunity to provide testimony today, and please do not hesitate to contact us for any further information.

¹ 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/>.

² 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/>.

³ Examples in *Id.*

⁴ 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.

⁵ 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>.

Testimony of Meisha Brooks

Before the NYC Department of Consumer Affairs and the NYC Commission on Human Rights for The State of Workers' Rights in New York City

July 17, 2018

My name is Meisha Brooks and I work as a fashion model in NYC. Like many other models, I have experienced wage theft and difficulty getting paid by my agency.

New York's fashion industry has been operating unregulated for far too long. This industry is an integral part of New York City's economy and, yet, the models who are the faces of the business remain largely unprotected. I personally have been the victim of financial abuse by agencies whereby they withhold models' earnings and hold models to one-sided, exclusive contracts. Agencies take advantage of their models by intimidating them with threats of deportation, non-payment, and homelessness. Despite the enactment of the Freelance Isn't Free Act, models still struggle with lack of financial transparency and trouble getting paid monies owed.

Often as a society we encourage the abused to leave their abusers. In the agency-model relationship, this is not so simple. Abusive agencies threaten the models by refusing to release them from their contracts, threatening to sue the models with the full knowledge that models cannot afford to go to court, and asking for exorbitant buyout fees for the models to be released (and if the fee isn't paid, threats to damage their reputation in the industry). If this happened in any other work environment it would clearly be unacceptable. Why is this allowed to continue in our industry?

We need legal protections to ensure the safety of the young (often underage) and financially vulnerable individuals who are being exploited in the modeling industry.

Testimony of Tamiris Freitas

Before the NYC Department of Consumer Affairs and the NYC Commission on Human Rights for The State of Workers' Rights in New York City

July 17, 2018

My name is Tamiris Freitas. I'm from Brazil, based in New York, and have been working as a model for 15 years.

My two previous agencies have not paid me in the proper manner. It took Trump Model Management over six months after I left them to pay me. My last agency, Major Models, has taken nine months and I still have not being paid. With Major, my clients have shown me proof of paying Major, but Major still refuses to pay me.

I followed the Model Alliance's suggestion and filed a claim with the Department of Consumers Affairs (DCA). However, in response, Major claimed that they didn't pay me because I didn't provide my documents, which is not true. In my opinion, they are just stalling to hold on to my money. Apparently the DCA can't do anything else as Major is claiming I broke the contract, when in fact Major was the one that broke the contract by not paying me when the clients paid them (as stated in contract).

I also filed a claim with the Better Business Bureau, but they don't help with this issue. In order to file a lawsuit I would have to spend a lot of money and, due to not being paid the money I am owed, I can't pursue this option because all the lawyers I've spoken with have said it will be very expensive.

Testimony of Ashley Dolgoff

Before the NYC Department of Consumer Affairs and the NYC Commission on Human Rights for The State of Workers' Rights in New York City

July 17, 2018

My name is Ashley Dolgoff and I work as a model in New York City. My experience with my former modeling agency demonstrates the pervasive unscrupulous culture in the world of modeling.

I was represented by a modeling agency in New York City that did not pay me my earnings for the work I performed for multiple designers during New York Fashion Week, as well as other modeling work. Although the designers say they have paid the agency on my behalf, the agency has failed to transfer the money to me.

It is disheartening to work hard, and spend time and money (i.e. transportation costs) and, yet, not be compensated for your efforts. It is my hope that the Department of Consumer Affairs will take a closer look at the lack of financial transparency and accountability at modeling agencies that scam young women.

Testimony of Brittney Thompson

Before the NYC Department of Consumer Affairs and the NYC Commission on Human Rights for The State of Workers' Rights in New York City

July 17, 2018

My name is Brittney Thompson and I work as a photographer at BBT Photography. As a photographer, I am in contact with models who have various degrees of work experience. I form bonds with my models and constantly look out for them when it comes to different modeling scams and things that are going on in the modeling world. This testimonial, however, concerns me directly.

A so-called modeling agency, Ambush Models, messaged me on social media saying that they wanted me to come to New York City to model for their cover shoot. After looking at their Instagram profile “@ambush_models” it seemed apparent that they were not a legitimate modeling agency, as they had no models or photographers tagged in any of their photographs. I asked the man who had messaged me – who told me he was the CEO and that his name was Shaun – for references. He ignored my question and asked me to send explicit photographs. When I denied his request and pushed for more information, he continued to ignore my questions.

I noticed that I was “friends” with a model who had posted something about Ambush Models, so I messaged her and asked her if she worked with the company and if she could send me any references. When I told her that her CEO, Shaun, had reached out to me, she replied saying I need a code. Then I received a message from the CEO with the code to send her. I sent the code, but continued to ask for references. When I got fed up and questioned the agency’s legitimacy, the model blocked me on social media. Shaun, however, continued to message me.

I asked for an address of their studio, and he gave me a New York City address. After googling the address, I learned that it was an address to a different company, named Ambush Agency. A woman who does marketing in New York City runs this company. I contacted her about the situation. She was already aware and said she had contacted the police because they were using her business address as their own. She stated that she had asked Facebook and Instagram to shut them down. However, they made new Instagram and Facebook pages that are still up and running.

These people, and others like them, are reaching out to women everywhere. They are promising photo shoots and all-expense-paid trips to New York City to unsuspecting girls and young women who aspire to work as models. They are requiring explicit photographs before any other information is given out.

After doing more research, I have learned that these people have done this before. They have had a different 'business' under the name TrendNista. Several other models and photographers are doing what they can to warn models about what is

going on and we are trying to prevent them from working with these people. I have contacted the police, the Human Trafficking Hotline and the FBI Cyber Defense. However, because we do not have a real name or phone number, and it appears that no one has met them in person, I have been told that there is nothing that we can do other than try to warn others.

Bogus modeling agencies and modeling scams are a huge problem in the fashion industry. I hope the NYC Department of Consumer Affairs and the NYC Commission on Human Rights will work with the Model Alliance investigate this problem.



New York State Department of Labor Public Hearing on State of Workers' Rights in New York City

Tuesday, July 17, 2018 - Testimony Cornell ILR Worker Institute

This submission is from the Worker Institute of Cornell University in the School of Industrial and Labor Relations. The Worker Institute conducts research, training, and advocacy in partnership with a wide variety of organizations including unions, worker centers and other groups assisting low-wage workers such as day laborers, restaurant workers, and domestic workers.

The past year has seen significant changes in labor rights. From the challenges facing immigrant workers with the new administration to the impact of the Janus Supreme Court decisions, workers, including those based in New York City, are facing unique threats. In today's testimony, I will be focusing on three types of precarious workers in New York State: nail salon employees, domestic workers and those who work in the arts and entertainment industry. Faculty at The Worker Institute have been conducting extensive research as well as training and engaging closely with these workforces in the past year and have recommendations for the City on what they can be doing to enforce workers' rights and ensure a just and equitable workplace for all.

The State of Domestic Workers

For domestic workers, who are predominantly female and work in the home-care and house cleaning industries, Worker Institute Faculty have been conducting research into the unique ways their precarious work environment makes them vulnerable and been conducting trainings on sexual harassment and their rights in the gig economy.

Unpredictable schedules and minimum work hours are prevalent issues in home-health care, food service, retail, and janitorial/housekeeping industries. Women workers in the home-care and house cleaning industries are uniquely vulnerable due to the highly contingent nature of their employment and working for small employers. Working for small private household employers (with fewer than four employees), domestic workers (house cleaning, etc.) are excluded from New York City paid sick leave, FMLA, and anti-discrimination laws. They are also excluded from workers compensation, unemployment insurance, and social security coverage if they do not reach the minimum number of work hours/year required to qualify.

It should be noted that the Domestic Workers Bill of Rights has brought new worker protections to this group, but the gaps mentioned above in labor and employment protections remain. The cost of misclassification of employees as independent contractors and non-compliance with wage

and hour laws (described as wage theft) is great. Estimated wage losses resulting just from minimum wage violations reach up to \$20 million per week in New York State. Our research showed that the enforcement of worker protections in low wage sectors is challenged by workers' isolation, lack of access to legal assistance, intermittent employment and language barriers, along with informal employment relationships (with no records of pay and work hours), and multiple layers of contracting and subcontracting.

The Worker Institute recommends that the Department of Consumer Affairs Office of Labor Policy and Standards not only be focused on enforcement but also work on broadly educating workers on their workplace rights and their right to form a union. Further recommendations for the City to assist these workers in turbulent times is to expand anti-misclassification laws to more industries and eliminate grey areas in existing laws. Creating protections for contractors and strengthening enforcement systems might help mitigate the negative impacts of the on-demand economy on the workforce. The City should also be aware that a threat to workers' rights is worker isolation resulting in a lack of trust in government agencies, an issue exacerbated since the presidential election and particularly due to immigration policies put in place in the last year. The City must do more outreach to employees that fear coming forward due to immigration status.

The State of the Artist

In June 2017, the Worker Institute released a report on the State of the Artist and the challenges that workers in the arts & entertainment (A&E) industry face in New York State. Contingent employment is characteristic of this industry where multiple employers hire most workers on a project by project basis. The proportion of self-employment is over three times higher than the pattern for the New York workforce as a whole. Part-time and part-year employment in arts occupation results in multiple job-holding and "moonlighting" outside the industry.

Many A&E workers lack the legal protections afforded to most New York workers. Irregular and nonstandard employment deprive many A&E workers of the protections afforded to other workers under labor laws (unemployment insurance, minimum wages, and workers' compensation) and increases the risk of wage theft and employee misclassification. Many are expected to work without pay, either as interns or as volunteer workers, to acquire professional credentials and recognition.

Artists often work more than the standard forty hour workweek. While those employed under a union contract are compensated for overtime, workers in new sectors lacking collective representation are frequently expected to work free for experience or are subjected to inadequate compensation and wage theft. Arts organizations are also turning to unpaid labor to increase their bottom line. A recent survey conducted by the Strategic National Arts Alumni Project (SNAAP) found that over half of those who graduated from an undergraduate art major between 2009 and 2013 have been an unpaid intern at one point in their career, compared to just 15% of those graduating before 1984. Those who majored in the media arts had among the highest rates of unpaid internships at 70%. Aspiring artists undertake unpaid internships to gain valuable experience in the field and form relationship with industry insiders, hoping to graduate from college with the knowledge and resources for success.

A&E workers, as a result of irregular employment, lack a social safety net. A&E Workers, even when covered by union contracts, may not qualify for health and retirement benefits as a result of their irregular work patterns. New York passed the Freelance Isn't Free Act in November 2016 the first of its kind in the United States to tackle the widespread issue of non-payment of agreed-on compensation that freelancers face, and to discourage the misclassification of workers as independent contractors. Rigorous enforcement of existing labor laws is recommended to prevent misclassification of employees as independent contractors, denying them rights to minimum wage, worker and unemployment compensation and other basic labor protections. Also supported is increased enforcement of worker compensation and occupational safety laws, which are frequently violated.

The State of Nail Salon Employees

In regards to Health and Safety in New York, nail salon employees often don't make a living wage and face distinct safety issues with the toxic chemicals they work with on a daily basis. Since 2015, New York State has taken great strides to reform the nail salon industry and ensure rights for workers. Over the past year, faculty at Cornell have conducted training programs on nail salon hazards and the New York State salon ventilation requirements, particularly in western New York, where the regulations primarily impact Vietnamese workers. One concern that has been observed by faculty is that at trainings on nail salon hazards, employers are far more likely to attend than employees. Nail salon technicians have been hesitant in attending these trainings for fear of reprisal and retaliation if their employer is present. Another observation from these training is that employers are providing salon employees with surgical masks that are ineffective in protecting the employees from dust and mists.

The Worker Institute recommends that the City do more to ensure that nail salon technicians are provided with N95 disposable respirators as they should be according to OSHA recommendations. New NYS salon ventilation requirements are excellent, but as they are being phased in over five years, the City must ensure that the inspection and the enforcement are done correctly and that the ventilation systems are operated and maintained successfully in the future. The City should also be aware of and put in place ways to prevent salon owners and managers from tampering with the ventilation system once it is installed, as the amount of air turnover will mean heating/cooling a lot of air and likely be costly for the owner.

We appreciate the opportunity to offer this testimony. We believe that precarious workers face unique challenges, but there is much the City can do to ensure their rights are enforced. We commend the Department of Consumer Affairs Office of Labor Policy and Standards for focusing its attention on this critical issue.



populardemocracy.org

449 Troutman Street
Brooklyn, NY 11237

11 Dupont Circle, Suite 240
Washington, DC 20036

T 347-985-2220
F 718-228-9165

Jill Maxwell
Legal Director
Office of Labor Policy and Standards
NYC Department of Consumer Affairs

July 31, 2018

Dear Jill Maxwell,

The Center for Popular Democracy (CPD) appreciates the opportunity to submit testimony to the New York City Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS). Our testimony focuses on the effectiveness and strength of the community enforcement model used in several cities to successfully address labor violations against low-wage workers.

CPD is a high-impact, national organization dedicated to creating equity, opportunity and democracy in partnership with base-building organizations. CPD builds the power of communities to ensure a pro-worker, pro-immigrant, racial and economic justice agenda. We support low-wage and immigrant workers and we are committed to building a city where these workers can thrive. We work closely with affiliates and allies rooted in communities of low wage workers, including Make the Road New York, New York Communities for Change and Fast Food Justice, to support their advocacy for strong worker-protection policies and effective enforcement of those laws.

OLPS's enforcement duties include the NYC Paid Sick Leave law, the Living Wage law, the Fair Workweek law, the Freelance Isn't Free Act and the Earned Sick and Safe Time Act. OLPS has extensively and thoughtfully engaged with labor and community organizations in implementing and enforcing these laws. We now urge DCA to advance a formal, adequately resourced partnership with community organizations.

Wage theft is rampant across the country and in New York City. A recent EPI study concluded based on data from the ten most populous states (which includes New York) that: "2.4 million workers lose \$8 billion annually (an average of \$3,300 per year for year-round workers) to minimum wage violations – nearly a quarter of their earned wages."¹ Other studies have

¹ David Cooper & Teresa Kroeger, Economic Policy Institute, Employers Steal Billions From Workers' Paychecks Each Year (May 2017), *available at* <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

shown that wage theft disproportionately affects women, people of color and immigrants.² Foreign-born workers experience wage theft at almost twice the rate of their U.S.-born counterparts.³ The wage theft epidemic is further exacerbated by race, gender and economic inequalities as well as social power differentials and employer retaliation. To effectively address wage theft and other workplace violations for low-wage workers, local enforcement agencies need community partnership and assistance.

One of the most effective, promising methods for addressing workers' rights violations is the community enforcement model: formalized partnerships between local enforcement agencies and community-based organizations embodied in contracts through which community groups conduct specific enforcement-related activities. Local labor standards offices often have limited resources, impeding the agencies' ability to both timely respond to complaints and conduct strategic investigations into high-violation industries. To address the enforcement gap, cities including San Francisco, Seattle and Los Angeles have worked to develop partnerships with community organizations to fully integrate community partners into enforcement work via dedicated city grants for community outreach and education programs.

Community groups can reach and build trust with low-wage workers in ways that local agencies cannot. Formally enlisting these organizations to play a role in enforcement brings culturally and linguistically appropriate outreach, industry-specific expertise, and sensitivity to the fears of an immigrant community that is increasingly under attack. Community organizations disseminate information about employment standards at their workplaces and in community settings, conduct know-your-rights trainings, perform outreach to business to foster compliance, help workers detect violations in their workplaces and gather information that the enforcement agency can use to prosecute cases, assist workers in filing complaints, identify patterns in high-violation industries to assist in targeted, proactive investigation and enforcement; and assist the enforcement agency in monitoring of workplaces.⁴ Worker organizations in New York City already perform many of these activities as part of their organizing work, but could do so far more effectively and at scale with reliable funding.

The community enforcement model has a proven track record in other U.S. cities. In 2002, the City of San Francisco created the Office of Labor Standards Enforcement (OLSE), one of the first such municipal agencies in the country. Like OLPS, the OLSE enforces citywide worker protection ordinances as well as several laws governing recipients of city contracts.⁵ Since 2009, the OLSE has contracted with community-based, worker-led organizations to support enforcement; these groups are led by the Workers' Rights Community Collaborative (WRCC), a collaborative of worker centers, legal-aid organizations and community-based

² Annette Bernhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009) at 2, *available at* <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nondn=1>.

³ *Id.* at 5.

⁴ National Employment Law Project, *Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties* (March 2015), *available at* <https://www.nelp.org/publication/building-robust-labor-standards-enforcement-regimes-in-our-cities-and-counties/>.

⁵ <https://sfgov.org/olse/> (last visited July 30, 2018).

organizations rooted in ethnic or linguistic communities.⁶ These groups have deep experience in labor-law education, outreach to low-income and immigrant communities, training workshops and counseling.⁷ The community groups educate workers about their rights on the job, perform preliminary investigations by consulting workers with potential claims, attempt to settle cases and make referrals to the OLSE.⁸ Approximately one-third of the complaints received by OLSE come from the contracted community groups, and 85% of the cases that result in recovery for workers originate with the WRCC.⁹ The efforts of community-based organizations were so successful that the San Francisco Board of Supervisors increased the annual funding for the contracts to these organizations from \$186,500 to \$482,125 in Fiscal Year 2013.¹⁰ In Fiscal Year 2016, the Board of Supervisors increased the annual funding to \$660,000.¹¹

One of the most significant successes derived from San Francisco's community enforcement model was OLSE's settlement with a large San Francisco restaurant, Yank Sing. The restaurant's monolingual immigrant workers approached community groups to address their poor working conditions: workers made less than minimum wage, they lacked proper meal and rest breaks, they received no benefits and they were verbally abused by supervisors.¹² The cultural and linguistic competency of the community groups and investigators was essential to developing a factual record for the case. Community groups worked closely with the OLSE to achieve a \$4.25 million settlement that included prospective relief for nearly 300 workers to change workplaces practices that were driving the violations.¹³ The Yank Sing case demonstrates that importance of connecting enforcement with worker organizing.¹⁴

In 2015, the City of Seattle created the Office of Labor Standards (OLS) to advance labor standards through community and business engagement. The OLS is responsible for implementing seven citywide labor laws. In 2017, the OLS contracted with 21 community-based organizations for two-year contract cycles.¹⁵ In the first three quarters of work, the organizations reached over 36,000 workers through 616 outreach activities, 247 trainings and 613 intakes of workers with potential labor violations.¹⁶ In August 2017, OLS Seattle assessed \$1 million in remedies for almost 2,000 Seattle workers under Seattle's labor standards through 200 closed

⁶ The Los Angeles Black Worker Center and the National Employment Law Project, *Ensuring Equality for All Californians in the Workplace: The Case for Local Enforcement of Anti-Discrimination Laws* (Oct. 2017), *available at* <https://www.nelp.org/publication/the-case-for-local-enforcement-of-anti-discrimination-laws-in-ca/>.

⁷ National Employment Law Project, *Delivering \$15: Community-Center Wage and Hour Enforcement in Seattle* (Oct. 2014), *available at* <https://www.nelp.org/wp-content/uploads/2015/01/Delivering-15-Community-Centered-Wage-and-Hour-Enforcement-Seattle.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Letter to Los Angeles City Council from the Bureau of Contract Administration re: OLS Implementation Plan (June 19, 2015), *available at* http://clkrep.lacity.org/onlinedocs/2014/14-1371-S1_rpt_BCA_06-24-2015.pdf.

¹¹ Seema N. Patel, et al., *California Co-Enforcement Initiatives that Facilitate Worker Organizing*, *available at* <http://harvardlpr.com/wp-content/uploads/2017/11/Patel-Fisk-CoEnforcement.pdf>

¹² *Id.*

¹³ *Id.*

¹⁴ Video of Yank Sing worker organizing, *available at* <https://vimeo.com/126830757>

¹⁵ https://www.seattle.gov/Documents/Departments/LaborStandards/OLS%20Presentation_01-30-18%20Summary%20of%20Seattle%20Labor%20Standards.pptx. (last visited July 30, 2018).

¹⁶ *Id.*

investigations.¹⁷ For its 2018 budget, the OLS has allocated \$2.3 million for outreach contracts with community based organizations.¹⁸

The City of Los Angeles is adopting a community enforcement model similar to San Francisco and Seattle. Los Angeles recently enacted a \$15 minimum wage law and developed the Office of Wage Standards (OWS) to implement and enforce the law.¹⁹ The OWS is also responsible for implementing paid sick leave and the Fair Chance Initiative for Hiring (Ban the Box) law.²⁰ Although data on approved funding and partnerships is not readily available, the Los Angeles Office of Labor Standards implementation plan for the minimum wage law contemplates “enforcement mechanisms modeled on the San Francisco Labor Standards Divisions.”²¹ The implementation plan indicates that Los Angeles will be dedicating funding and partnering with community-based organizations with cultural and linguistic expertise for outreach and education to workers and employers.²²

The community enforcement model improves enforcement of minimum labor standards, including in “economic sectors with substantial immigrant populations where violations are endemic and difficult to eradicate.”²³ Formalizing and resourcing collaboration with community groups rooted in communities of low-wage workers also supports the leadership development of low-wage workers and complements the organizing work that is equally important in creating a culture of compliance in low-wage workplaces.²⁴

Adopting a community enforcement model can support DCA in achieving its mission of protecting New York’s workers. We urge DCA to advocate for funding for community enforcement grants in the budget. We would be pleased to offer technical assistance to support DCA’s work in this area.

Sincerely,
Elizabeth Nicolas, Staff Attorney for Worker Justice
The Center for Popular Democracy

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ <https://bca.lacity.org/wage-standards> (last visited July 30, 2018).

²⁰ *Id.*

²¹ Letter to Los Angeles City Council from the Bureau of Contract Administration re: OLS Implementation Plan (June 19, 2015).

²² *Id.*

²³ Seema N. Patel, et al., California Co-Enforcement Initiatives that Facilitate Worker Organizing, *available at* <http://harvardlpr.com/wp-content/uploads/2017/11/Patel-Fisk-CoEnforcement.pdf>

²⁴ Janice Fine & Jennifer Gordon, Strengthening Labor Standards Enforcement through Partnerships with Workers’ Organizations, 38 *Pol & Soc’y* 552 (2010).



**TESTIMONY
Of
The Democracy at Work Institute (DAWI)**

**Worker Cooperatives in Uncertain Times—Protecting and Creating
Opportunities for Immigrant Workers**

Presented to

Department of Consumer Affairs Office of Labor Policy & Standards
Lorelei Salas, Commissioner

Tuesday, July 17, 2018

Prepared By:

Anh-Thu Nguyen

Director of Special Projects

Melissa Hoover

Executive Director

Worker Cooperative Business Development Initiative
Democracy at Work Institute
1904 Franklin Street, Suite 400
Oakland, CA 94612
Phone: 415-379-9201

Good evening, Commissioner Salas, distinguished members of the City Commission on Human Rights, and the Mayor's Office of Immigrant Affairs. My name is Anh-Thu Nguyen and I am the Director of Special Projects for the Democracy at Work Institute.

On behalf of the Democracy at Work Institute and the 13 members of the Worker Cooperative Business Development Initiative (WCBDI), I want to thank Commissioner Salas and the Department of Consumer Affairs Office of Labor Policy & Standards, as well as the City Commission on Human Rights and the Mayor's Office of Immigrant Affairs, for this opportunity to testify on how worker cooperatives are playing a key role in creating increased equity, greater opportunities and better working conditions for immigrant workers in NYC, and how we at Democracy at Work Institute are taking steps to protect the immigrant worker-owners we serve in these uncertain times.

The Democracy at Work Institute (DAWI) is the only national organization dedicated to building the field of worker cooperative development. Worker cooperatives are values-driven businesses that put worker and community benefit at the core of their purpose through worker-ownership and democratic control of the business. The Democracy at Work Institute was created by the U.S. Federation of Worker Cooperatives (USFWC) to ensure that worker cooperative development in economically and socially marginalized communities is adequately supported, effective, and strategically directed. Here in New York City, DAWI plays a backbone role in supporting the city-funded Worker Cooperative Business Development Initiative, along with FPWA and the NYC Network of Worker Cooperatives.

Worker Cooperatives: Greater Prosperity and Better Jobs for Immigrant Workers

New York City is defined by its rich immigrant history and communities, profoundly shaped socially and economically by immigrant workers who come here in search of opportunities. According to the 2016 'City of Immigrant Workers' study by Center for an Urban Future, immigrants make up 47% of NYC's workforce, and in 2011 accounted for 31% of the city's gross product, or \$210 billion. In addition, over 50% of small businesses in NYC are owned by immigrants. However, despite significant labor force participation rates and major economic contributions, immigrant workers in NYC have lower incomes than their native-born counterparts, higher poverty rates, and are more likely to be working in low-wage industries where there is little room for advancement.

Worker cooperatives have the potential to address these chronic economic and social inequalities faced by our communities' most vulnerable residents. As worker cooperative developers focused on economically and socially marginalized communities, the bulk of our cooperative development work in NYC is in low-wage occupations with a high concentration of immigrant workers, such as home health care, janitorial and construction services. According to a 2017 report from the NYC

Comptroller's office, 77% of nursing and home health workers, 65% of janitorial services, and 74% of construction workers are foreign-born.

NYC's three largest worker cooperatives, Cooperative Home Care Associates, Si Se Puede, and Beyond Care, are in low-wage occupations dominated by immigrant women of color—home care, cleaning/janitorial services, and child care respectively. These three immigrant and women-of-color led worker cooperatives have led and continue to lead the way in transforming low-wage industries by improving work conditions, increasing average pay, and creating opportunities for growth through training and access to equity. For example, Cooperative Home Care Associates, the largest worker-cooperative in the United States, has a workforce of over 2000 people, the vast majority of whom are immigrant women. It was from its inception in 1985 conceived to impact the home health care industry by modeling best practices to show how home care jobs could be improved, then diffusing those practices by becoming a 'yardstick' corporation for the industry by improving training for workers and offering benefits, work support, and better pay. Si Se Puede, the second largest worker-cooperative in the U.S. and the largest cleaning cooperative, with over 80 worker-owners, is 100% immigrant women-owned and led. They are on average earning double the cleaning industry mean wage of \$11 an hour. In addition, their use and advocacy of green cleaning, alongside other cleaning cooperatives in NYC—is setting the tone for the cleaning industry in being accountable to the health of both workers and consumers.

Members of the NYC Worker Cooperative Business Development Initiative--which includes the Democracy at Work Institute as backbone-- are actively incubating, starting and converting cooperative businesses and working to improve conditions in industries with a large percentage of immigrant workers. These industries include child care, janitorial and cleaning services, food service, and health care/social assistance. Our research shows that more than 90% of the 84 cooperatives started under the Initiative in every borough include at least one immigrant worker-owner. We are also exploring sector-specific strategies inspired by the model established by Cooperative Home Care Associates, using worker-ownership to positively transform industries and increase equity and opportunity for immigrant workers.

Protecting Immigrant Workers and Entrepreneurs

Of the 3.3 million foreign-born New Yorkers, 1.44 million are non-U.S. citizens. Of this group, an estimated 500,000 are undocumented, and 20,000 have been identified for deportation. Protecting immigrant workers in NYC is thus an issue of paramount importance. Immigrant workers, are less likely to report workplace abuses, as immigration status can and has been used by employers as leverage. Undocumented workers, particularly, have in practice little recourse in case of workplace abuses, as bringing attention to them may threaten their livelihoods and ability to stay in the United States, especially as immigration enforcement has ramped up in recent years.

Since the arrival of the current federal administration, the worker cooperative community has much higher awareness and vigilance with regards to threats facing

the immigrant communities that we serve, and has responded robustly to address community concerns. At the Democracy at Work Institute, we have created programming tailored to immigrant worker-owner needs that also applies more generally to immigrant workers and entrepreneurs. We launched a Sanctuary Workplace campaign alongside the U.S. Federation of Worker Cooperatives that included workplace know-your-rights presentations, strategies for talking to the media, information on legal business forms beneficial to workers, and battling “isms” (sexism, ageism, homophobia, etc.) in the workplace. We created an Asset Protection for Noncitizen Business Owners series alongside the Lawyers Committee for Civil Rights of the San Francisco Bay Area, designed for individuals concerned about the disposition of their businesses and personal assets in case of deportation. We also convened a cohort of attorneys working specifically with immigrant worker cooperatives to share best practices and provide peer support and learnings to each other. We have found a high demand for assistance from our immigrant worker cooperative community members, as they continue to work to build a better life for themselves and their communities while actively seeking resources to stay safe, protect their families and assets.

Recommendation

New York has tripled the number of worker cooperatives and is now home to the greatest concentration of these businesses in the United States, thanks to investments of over \$12 million by the City Council since 2014. The Initiative has supported the starting up of 84 worker cooperatives and created 506 worker-owner positions in all five boroughs. It has provided 3,000+ technical assistance services to these and hundreds more businesses, the majority of which are owned and operated by immigrants.

The Worker Cooperative Business Development Initiative is at the heart of a historic shift in New York City’s approach to lasting economic and community development that is accessing communities and bringing them into the city’s economy at an impressive rate. Immigrant workers have been the greatest beneficiaries of this policy, and we are focusing on new strategies to amplify and deepen this impact. This includes working with retiring small business owners to convert to worker-ownership to preserve their legacy; funding new groups working with diverse communities in different parts of NYC; and exploring sector-specific strategies, such as in childcare, to bring to scale.

We must ensure that the growing worker cooperative community, and the immigrant worker-owners at center driving its growth, continues to have access to qualified technical assistance providers that can address their unique needs, such as language-specific technical assistance; legal support to ensure protections inside and outside the workplace; and financial education and workplace rights trainings.

The Department of Consumer Affairs, the City Commission on Human Rights, and the Mayor’s Office of Immigrant Affairs play a critical role in helping sustain an

ecosystem of support and ensuring protections for working New Yorkers, regardless of their background and country of origin, so that they can lead happy, productive lives and achieve the successes dreamed of when arriving here to our great city.

Conclusion

We thank the Department of Consumer Affairs Office of Labor Policy & Standards, in partnership with the City Commission on Human Rights and the Mayor's Office of Immigrant Affairs, for the opportunity to testify. We especially urge the Department of Consumer Affairs and the Mayor's Office of Immigrant Affairs to partner with the Worker Cooperative Business Development Initiative to continue our work in creating jobs and business ownership opportunities, improving wages and transforming low-wage, immigrant-dominated industries to provide more equity and opportunity for immigrant workers. We look forward in continuing to work closely with you to ensure hard working individuals and families--regardless of their circumstance or place of origin-- have opportunities to achieve economic advancement and create shared prosperity for all New Yorkers.

Written Testimony on State of Workers' Rights in NYC
Samaschool
July 2018

Samaschool commends the NYC Department of Consumer Affairs (DCA) Office of Labor Policy & Standards, NYC Commission on Human Rights, and Mayor's Office of Immigrant Affairs for holding this hearing on the state of workers' rights in New York City.

Samaschool's mission is to equip people to benefit from independent work while advocating for a gig economy in which all workers thrive. Our flagship training is an 8-hour curriculum on how to succeed as a freelancer delivered to low-income jobseekers, aspiring entrepreneurs, and out-of-school, out-of-work opportunity youth. In 2017, Samaschool trainees engaging in independent work earned \$1,800/month on average and built work experience that furthered their careers.¹

While independent work has its limitations given things like income volatility and limited worker protection, it can also provide immediate income, build confidence in one's skills, and create a bridge to employment for people struggling to find full-time work. Based on surveys of our trainees, existing research, and discussions with worker rights advocates and policymakers, we put forth the following recommendations to improve conditions for independent workers in New York City.

Extend anti-discrimination protections to independent workers.

Everyone who works, regardless of their employment classification, has a right to a safe and supportive work environment. Under current federal law, independent workers are not protected from discrimination and harassment as are employees. City Council Int. No. 136-A, sponsored by Councilman Lander, is a bill that would ensure independent workers are treated as employees for the purpose of anti-discrimination protection, and this is the type of support workers need and deserve.

Ensure independent workers' platform-mediated earnings, which cannot be negotiated, meet the minimum wage.

Minimum wage protections do not extend to independent workers, and low- and middle-skill work for which gig platforms set rates such as delivery and driving often do not pay rates that add up to minimum wage. Minimum wage protections should be adapted and applied broadly to independent work to ensure equal treatment regardless of how income is earned, and all workers should be able to set their own rates without interference from gig platforms to ensure that workers maintain control over their earnings.

Protect public assistance for independent workers until they achieve income stability.

The system of public benefits (e.g., food stamps, subsidized housing) has unintended disincentives for jobseekers to engage in independent work, despite its potential as a pathway to reenter the workforce. For some programs, spikes in income can result in the loss of benefits. In other cases, benefit recipients simply are unclear of the income thresholds and avoid earning income through inconsistent channels for fear of losing public support programs. To incentivize returning to work, NYC agencies should 1) clarify the income thresholds for each type of benefit and 2) ensure benefits can be maintained during times of income volatility and/or uncertainty.

¹ For a review of Samaschool's 2017 results, please read the second paper in this series, available at <https://www.samaschool.org/future-of-work>.

Lead and support benefits options for independent workers.

When workers are classified as independent contractors, employers are not required to provide the benefits they offer employees, including health insurance, retirement savings, employee assistance programs, and others. Independent workers need access to affordable, stable services including health insurance, retirement savings, employee assistance programs, and others. The lack of benefits disproportionately affects low-income workers who may lack alternative ways to access these supports. NYC should explore a portable benefits pilot; these supports are not tied to an employer and are universally available to all workers regardless of classification.²

Offer independent work training through the NYC Department of Small Business Services, Department of Youth and Community Development, and other agencies preparing jobseekers.

Given the rapid growth of independent work opportunities, particularly through online platforms (e.g., TaskRabbit, Thumbtack, Handy), more and more people are turning to the “gig economy” for work. Samaschool believes these workers deserve education on not only how to earn income, but about the rights they do and do not have as independent workers and how to keep themselves safe while working for individual and corporate clients. Samaschool’s curriculum covers these topics and more, and trainees report feeling more prepared to successfully conduct independent work after our course. This training is currently offered through a pilot with the SBS Business Solution Centers, but should be expanded to allow more workers to access this training prior to conducting independent work. This could occur through Workforce1 Centers, libraries, NYCHA programming, shelter programs, and other city-funded services.

² Aspen Institute. (2016). Portable benefits resource guide. Retrieved from <https://www.aspeninstitute.org/publications/portable-benefits-resource-guide/>; Cake and Arrow. (2018). Gig economy insurance. Retrieved from <https://cakeandarrow.com/work/gig-economy-insurance/>.