

**Testimony of Liz Vladeck, Deputy Commissioner, Office of Labor Policy and Standards,
New York City Department of Consumer Affairs
Before the
New York City Council Civil Service and Labor Committee
Hearing on
The City University of New York Murphy Institute 2016 State of the Unions Report**

September 15, 2016

Good afternoon, Chairman Miller and members of the Civil Service and Labor Committee. I am Liz Vladeck, Deputy Commissioner of the Office of Labor Policy and Standards (“OLPS”) at the Department of Consumer Affairs (“DCA”). I am joined by my colleagues, Amit S. Bagga, Deputy Commissioner of External Affairs, and two colleagues from OLPS – Litigation and Operations Director Jill Maxwell and Legal Director Steven Kelly. On behalf of Commissioner Salas, OLPS, and all of DCA, thank you for inviting me to testify this morning about The City University of New York’s (“CUNY”) 2016 Murphy Institute report on union membership in our city and state. CUNY’s Murphy Institute conducts valuable original research and education about and for our city’s labor movement and working people. The Institute’s annual report, co-authored by Ruth Milkman and Stephanie Luce, leading experts in the field of worker education and labor studies, serves as a barometer for the economic health of working people in our communities. As such, it is an important tool for those of us who focus on issues relating to the workplace and workers’ rights.

Union density, driven in part by the outcomes of unionization efforts, is an important indicator of how workers are doing overall, whether they have a voice to resolve issues that arise with their employers, and whether they are positioned to achieve and maintain livable wages, benefits, and other safe working conditions. This year’s *State of the Unions* report tells us that workers in New York City and State are making some progress – and specifically points to an increasing minimum wage and the enactment of

paid family leave as key victories of the last few years that were driven by organized labor. Indeed, the report notes that these victories are poised to “greatly enhance the well-being of New York workers.”

As we applaud and honor such victories, we know that more needs to be done. Too many workers – particularly those toiling in industries where unionization rates are low – still face too much uncertainty about their economic lives and are not afforded a variety of what we might consider basic protections. As part of our continued commitment to serving all workers, I’d like to take this opportunity to share with the committee two important announcements that the de Blasio Administration is making today: one that outlines a plan for the City to take a groundbreaking and leading role in ensuring that some of our most vulnerable workers are armed with tools to lead more stable, better lives and the other that projects a new vision and mission for the Department of Consumer Affairs as the City’s lead agency on workplace justice issues.

Just an hour ago, I was proud to stand with Mayor de Blasio, Commissioner Salas, advocates, workers, and elected officials to announce the Administration’s intent to pursue Fair WorkWeek legislation that would benefit our city’s 65,000 fast food workers by introducing predictable, stable, and transparent scheduling practices to that industry. Currently, employers aren’t required to provide their hourly employees with advance notice of upcoming shifts. As a result, too many families cannot budget in advance, plan for education or family care, or secure a necessary second job.

Across the country, nearly one in five Americans has an unstable work schedule and about 40 percent of early career workers, defined as workers aged 26-32, typically receive less than one week advance notice of their schedules. We know this is particularly an issue with fast food workers, whose national average age is 29 and more than a quarter of whom are parents raising children. Too many of New York

City's fast food workers can't make the arrangements necessary to provide for the care of children and older loved ones. Unpredictable schedules make it nearly impossible to budget expenses or plan for the future.

In the coming months, we seek to work with the City Council, advocates, labor groups, and the business community to draft specific legislation to support hardworking fast food hourly employees who are currently hit hardest by these practices. Specifically, Fair WorkWeek legislation would:

- Require employers, beginning with the fast food industry, to schedule a majority of expected shifts and publicly post a workplace schedule two weeks in advance;
- Protect workers by requiring employers to provide additional compensation when workers are required to accommodate last-minute changes to their schedules for reasons within employers' ability to plan or control;
- Address problems created by the practice of "clopenings," or shifts that require employees to consecutively work closing and opening shifts with fewer than ten hours between them.

These measures will give hourly fast food employees more stability and predictability, while preventing employers from deliberately under scheduling workers and forcing them to remain "on call," a state in which employees do not know if they will be called into work or not. These measures will also allow employers and employees flexibility to adjust schedules when unforeseen issues arise outside of either party's control. By knowing their schedules ahead of time, employees will have more certainty over their income and finances, and a greater ability to accommodate extra work if it's available. Most importantly, this proposal means employees will now have more flexibility: flexibility to take classes, care for their children, or work a second job.

We at OLPS eagerly look forward to leading education and enforcement efforts around Fair WorkWeek and similar laws and we are grateful to the Council for your support and partnership through this process.

This work, which is focused on enhancing the economic well-being of New Yorkers, is consistent with all of the work we do at DCA. That is why I am also very proud today to present to the Chairman and to the Committee DCA's brand new mission, being discussed at this hearing for the first time: **to protect and enhance the daily economic lives of New Yorkers so our communities can thrive.**

DCA, which was established in 1969, has now evolved to stand at the nexus of consumers, businesses, and working families in New York City. Our new mission reflects the expansion of the agency's work, which builds on its historic efforts to "ensure a fair and vibrant marketplace for businesses and consumers." Our work now includes everything from consumer complaint mediation, to legal investigations and patrol enforcement, to policy and legislative advocacy, to the mounting of large-scale consumer education campaigns, to consumer financial protection and education, and of course, with the establishment of OLPS earlier this year, a real, first-ever commitment by the City of New York to giving workers a formal, and institutionalized voice in City government. Together, all of our efforts demonstrate our unique ability to play the role of the City's natural convener of consumers, businesses, and working families, which together form a complex set of constituencies, each with specific needs.

DCA's commitment and ability to serve the needs of this diverse group is borne by the numbers included in my written testimony, which we have submitted for your review:

- In 2015, DCA secured \$3.9 million in restitution for consumers, of which more than \$2 million were achieved through mediation;
- Since 2014, DCA has achieved and maintained a more than 50 percent reduction in fines levied on small businesses, averaging \$15 million annually, down from a high of close to \$32 million;
- On an annual basis, our licensing and small business service centers in downtown Manhattan and in Jamaica, Queens collectively serve an average of 110,000 individuals in dozens of languages;
- For the 2016 tax season DCA, which has been operating the City's annual Tax Season Initiative for 14 years, helped more than 160,000 New Yorkers file their returns for free, resulting in \$250 million in saved tax preparation fees and refunds going back into the pockets of hardworking New Yorkers; and
- In the two years since DCA began enforcing the Paid Sick Leave Law, the agency has secured nearly \$4 million in fines and restitution for approximately 15,000 workers who were denied their legal right to sick leave.

Within DCA, the Office of Labor Policy and Standards is proud to lead the implementation of New York City's key labor laws enacted in recent years as the result of the joint leadership of the Mayor and Council Speaker Melissa Mark-Viverito. As I mentioned a moment ago, DCA has secured paid sick leave restitution for close to 15,000 workers through our work on over 800 cases. The number of workers positively impacted by each of our cases goes far beyond the number of individual complainants, as our investigations largely result in company-wide changes and compliance. Our cases have come most commonly from lower-wage professions, such as security guards, home health aides, restaurant workers, and retail workers. We have seen that it is the lowest wage-earners who generally

lack access to paid sick leave. For those workers, loss of pay for even just one day can compromise their ability to afford life's necessities, like housing and food. These results demonstrate our deep and unwavering commitment to enforce the law and the impact robust enforcement has on the daily lives of New York City's most vulnerable workers. Paid sick leave laws also make sense for employers: they foster employee retention and productivity, enhance job and economic security, and ultimately benefit employers' bottom lines, even after taking into account the law's costs. This is in line with a study authored by Ruth Milkman and Eileen Appelbaum that was released just last week.¹ The Study found that, by and large, coming into compliance with New York City's paid sick leave law has not represented a financial burden to New York City's employers.² The study is aptly titled "No Big Deal."

OLPS also enforces the Commuter Benefits law; in the first year of that law's implementation, DCA rolled out a robust outreach campaign to inform businesses and workers about the law and its benefit to business and workers alike: workers lower their monthly expenses by using pre-tax income to pay for their commute and businesses save by reducing payroll taxes. To date, we have distributed more than 80,000 pieces of Commuter Benefits literature and participated in more than 400 outreach events. If you count every time a subway passenger sees our provocative ads (the commuters here have surely seen the young woman looking unhappily at the sweaty armpit above her as she hangs on to the handrail!), DCA's efforts have informed millions of New Yorkers about this important new program. As we say in our public education campaign: There is a better way to work!

¹ Eileen Appelbaum and Ruth Milkman, "No Big Deal: The Impact of New York City's Paid Sick Days Law on Employers." Center for Economic and Policy Research and The Murphy Institute, City University of New York, Sept. 2016.

² "The vast majority of employers (just under 85 percent) reported that the new law had no effect on their overall business costs, and a few (a little less than two percent) reported a decline in overall costs. Among those who did report an increase in costs (14 percent of all respondents), nine percent reported an increase of less than three percent in their overall costs; another three percent of respondents reported an increase of three percent or more, and two percent reported increased costs but were unsure of the exact percentage." <http://cepr.net/press-center/press-releases/employers-report-little-difficulty-in-complying-with-new-york-city-s-paid-sick-days-law>

Both Paid Sick Leave and Commuter Benefits are now housed in DCA's Office of Labor Policy and Standards, where we are building on our groundbreaking work in these areas to fulfill our mandate to engage in advocacy, education, research, and policy work, in addition to the pursuit of new legislative initiatives. For example, a new Paid Care Division in OLPS will focus on developing creative strategies to improve employment standards for paid care workers, a group that, for legal and practical reasons, is often unable to unionize.³ All of this is aimed at raising the floor for working people in New York City. We are tasked with keeping a particular focus on the City's most vulnerable workers, including domestic workers and home care workers who take care of our children, and our parents, as well as early career adults, especially those under the age of 25, who as the State of the Unions reports, are the least likely to have union representation and a voice at work.

In connection with this, we are glad to highlight the Murphy Institute's key conclusion: that unionization is increasing in our city and state, including in the private sector. This is particularly good news in the fight for racial and gender justice, as we know that unions and higher unionization rates mitigate race and gender inequality,⁴ and that compliance with labor and employment laws, such as those that regulate health and safety and wages and hours, is greater in unionized workplaces.⁵ This is all consistent with our experience enforcing the Paid Sick Leave law, which has suggested to us that unionized workers are more likely to have access to paid sick leave, and less likely to experience violations of their rights under the law.

³ The National Labor Relations Act (NLRA), which guarantees employees the right to organize, **excludes domestic workers from the definition of "employee"**. The NLRA would be of little practical help to domestic workers even if did not explicitly exclude them, however, because the law is predicated on workers organizing collectively to negotiate with a common employer. (Home care workers employed by agencies are covered by the NLRA, although they face many practical barriers to exercising their NLRA rights.)

⁴ https://www.epi.org/publication/briefingpapers_bp143/

⁵ David Weil. "Regulating the Workplace." *Advances in Industrial and Labor Relations* Vol. 7, p247-286 (1996).

At OLPS, we are committed to doing all we can to ensure workers have a voice in the issues that affect them. We seek to build broad, deep relationships with stakeholders who share our commitment, such as the Murphy Institute, labor unions and community-based organizations, and of course, the City Council, including this committee under Chairman Miller's leadership.

I thank you again for the opportunity to speak before you today; my colleagues and I will be happy to answer any questions you might have.