

**Testimony of Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection**

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

Oversight Hearing on the Fair Workweek Law

April 17, 2024

Introduction

Good morning, Chair Menin, and members of the Committee. I am Vilda Vera Mayuga, Commissioner of the Department of Consumer and Worker Protection (DCWP). I am joined today by my Deputy Commissioner of our Office of Labor Policy and Standards, Elizabeth Wagoner, and my Assistant Commissioner of External Affairs, Carlos Ortiz. Thank you for the opportunity to testify today on one of our cornerstone protections for workers across the city, the New York City Fair Workweek Law.

Protecting New York's Workers

DCWP enforces key protections and offers financial empowerment resources that improve critical aspects of New Yorkers' daily economic lives. We ensure that consumers who have been deceived or exploited have recourse, that workers have a passionate defender of their rights, and that all New Yorkers have the support they need to improve their financial health. Since the start of the Adams' Administration, DCWP has helped deliver ~\$320 million dollars into the pockets of New Yorkers, through debt relief, restitution, and financial empowerment programming. Today, I'm excited to share more on how our agency has been a nationwide leader in protecting workers.

Fair Workweek Law

The laws that we enforce in the workplace ensure that workers benefit from minimum labor standards that provide greater stability in their schedules, income, and employment. We strive to guarantee that any worker that experiences a violation of their rights has recourse to relief. In 2017, New York City implemented the Fair Workweek Law in response to a crisis of irregular and unpredictable scheduling practices in the fast food and retail industries. The law is designed to disincentivize or prohibit once-common practices, such as keeping workers involuntarily in part-time status, giving workers their schedules with little advance notice, assigning shifts that vary from day-to-day and week-to-week, and assigning "clopening" shifts that do not give workers enough time to sleep at night between shifts. These practices cause income instability and leave workers unable to reliably schedule other commitments outside of work, like second jobs, childcare, or school. In 2020, the law was strengthened through added "just cause" protections, providing greater job stability for fast food workers.

Under the Fair Workweek Law, retail employers must give their workers their schedule at least seventy-two hours before the first shift on the schedule. Retail employers are also prohibited

from scheduling employees for on-call shifts, cancelling scheduled shifts with less than seventy-two hours' notice, and requiring an employee to work with less than seventy-two hours' notice without the employee's written consent.

Similarly, the Fair Workweek Law addresses scheduling instability for fast food workers in several ways. First, it mandates that fast-food employers give workers a stable, regular schedule that does not change significantly from week to week. Second, it requires employers to provide workers each weekly schedule 14 days in advance. Third, it requires that employers provide fast-food workers premium pay for schedule changes and "clopening" shifts, as well as the opportunity to say no to "clopening" shifts or working extra time. Finally, to address involuntary part-time work, fast-food employers must offer current workers the opportunity to work more regular hours before hiring new employees; and cannot reduce a worker's hours by more than 15% without just cause.

Since the Fair Workweek Law went into effect in 2017, DCWP has received over 800 complaints, launched more than 400 investigations, and recovered approximately \$27 million in restitution for workers and \$2 million in civil penalties. This includes our settlement with Chipotle for violations of the Fair Workweek and Paid Safe and Sick Leave laws which delivered \$20 million to approximately 13,000 workers. It was the largest worker protection settlement in New York City history.¹ Just last year, we secured more than \$7 million in worker restitution from Au Bon Pain, Paris Baguette and Panda Express for nearly 4,000 workers under the Fair Workweek Law. We are very proud of these successes, not only because they have put money back into workers' pockets for harms they experienced, but also because they ensure that companies operating in our city understand the importance of following the law.

DCWP also pairs its strong enforcement with proactive outreach. In partnership with community-based organizations, workers' rights groups, and trade associations, our outreach team seeks to ensure that both workers and employers understand the details of the Fair Workweek Law. Since 2018, we've held close to 1,400 events focused on our workplace laws, including the Fair Workweek Law, serving tens of thousands of New Yorkers.

Conclusion

Under Mayor Adams, we have been able to secure \$37 million in monetary relief for 28,000 workers through our enforcement of critical workplace laws. I am immensely proud of these accomplishments. Protecting workers in our city will always be a top priority of this agency. We welcome continued collaboration and partnership with all stakeholders, workers' advocates, and the Council to strengthen protections for New York City's workers. This includes ensuring that workers know about their rights and are made whole for violations of the law, and that employers are educated and aware of their responsibilities. I look forward to our discussion and any questions you may have.

¹ <https://www1.nyc.gov/office-of-the-mayor/news/581-22/mayor-adams-department-consumer-worker-protection-settlement-chipotle-mexican#/0>

Hello Committee Chair Julie Menin and members of the Committee on Consumer and Worker Protections. My name is Autumn Weintraub and I am the Fast Food Director at 32BJ SEIU.

SEIU 32BJ is the largest property services union in the nation, with 175,000 members across 11 states and Washington, DC., including more than 85,000 members in New York State. In the past several years, 32BJ has also been organizing fast food workers to fight for fair pay, better working conditions, and respect on the job including partnering with Starbucks Workers United. Through our work, we have become acutely aware of fast food workers' struggle to get sufficient and predictable hours and pay, and the challenge of attempting to resolve violations of workplace laws on a case-by-case basis. The Department of Consumer and Worker Protection (DCWP)'s critical efforts to implement and enforce the Fair Workweek Law have gone a long way towards improving scheduling standards in the low-wage fast food industry and have aided countless low-wage workers, but violations persist. We believe a city-wide investigation into Starbucks, a repeat FWW violator, can help ensure ongoing and sustained compliance within the company and in the broader fast food sector.

The fast food sector is rife with workplace violations and characterized by poor labor standards. In 2023, fast food workers saw the lowest median weekly earnings of the over 350 industries surveyed by the Bureau of Labor Statistics—a mere \$610 a week.ⁱ Fast food corporations, meanwhile, continue to pull in ever-soaring profits. In 2021, the top seven publicly traded fast food companies earned \$16 billion in profits and paid out over \$12 billion to their shareholders in the form of stock buybacks and dividends.ⁱⁱ And, the industry has grown rapidly over the past two decades, especially in New York City. While employment in the sector fell during the pandemic, it has again been climbing as the City's economy and employment recover. Recent data from the Center for an Urban Future's State of the Chains report shows that fast food employment in New York City returned to pre-pandemic levels in 2022.ⁱⁱⁱ

It is these conditions that compelled SEIU 32BJ, city leaders, and workers to come together to pass the Fair Workweek Law. Higher wages that workers and allies won with the Fight For \$15 were vitally important, but the industry's cutthroat scheduling practices required a law to regularize hours for workers. Fast food workers struggle to get full-time, consistent hours, meant they can't plan for school or childcare, or work a sometimes-necessary second job. Regular scheduling could better ensure higher earnings and more stable jobs. The Council subsequently passed groundbreaking Just Cause legislation, making New York the

first City in the country to protect fast food workers against unfair firings and reductions in hours, as well as protections for delivery workers.^{iv}

DCWP has demonstrated itself to be a strong advocate for workers' rights. It has effectively enforced the Fair Workweek Law to hold the industry accountable in just a few short years. Notable successes include investigations against a prominent McDonald's franchisee^v and Taco Bell,^{vi} putting millions of dollars back in the hands of working-class New Yorkers. In 2022, DCWP supported Chipotle workers in winning a \$20 million settlement after filing complaints alleging thousands of violations to their predictable scheduling rights.^{vii}

Over the past year, 83 Starbucks have filed FWW complaints across 63 cafes in New York City, representing nearly a quarter of cafes in the city. And earlier this year, Starbucks workers in Chicago and Philadelphia,^{viii} filed 22 fair scheduling complaints under their city's fair scheduling laws.

The widespread nature of the allegations against Starbucks, spanning across several cities, suggests that the corporation has continued to routinely violate scheduling laws, despite having undergone numerous investigations. That Starbucks has apparently still not brought its company practices into compliance several years after NYC's scheduling law and other city scheduling laws have gone into effect, affecting the lives of thousands of NYC workers and their families, underscores how important it is to hold them accountable in our city. We have called upon DCWP to launch a comprehensive city-wide investigation of Starbucks,^{ix} as workers have alleged pervasive and systemic violations of Fair Workweek.

Investigating a multinational company is no small task, and we deeply appreciate the work that DCWP does. The victories DCWP has achieved are a testament to the caliber of the Department and its staff. Currently, DCWP is responsible for enforcing the Fair Work Week and Just Cause laws at more than 2,600 fast food establishments and continuing implementation of the Just Cause law. It's a Herculean task. All of these workplace protections are a tremendous step forward for working New Yorkers, but our laws are only as strong as our ability to effectively enforce them and deter future violations.

We note that Starbucks Workers United union campaign has recently announced a foundational framework^x for future labor agreements. While this is a promising step forward for workers' rights, we still affirm the need for an investigation into Starbucks' practices to ensure its compliance with NYC laws.

We hope to continue working with DCWP to accomplish the important task of standing up for working-class New Yorkers.

Thank you for the opportunity to testify today on this important topic.

ⁱ “Labor Force Statistics from the Current Population Survey.” US Bureau of Labor Statistics. January 25, 2023. Retrieved at <https://www.bls.gov/cps/cpsaat39.htm> on March 16, 2023.

ⁱⁱ For McDonald’s, Starbucks, YUM! Brands, Wendy’s, Restaurant Brands International, Domino’s and Chipotle. Total profits equal \$15.935 billion and total buybacks and dividends equal \$12.414 billion. See table entitled “*National profit, buybacks, and dividends at the seven largest publicly traded fast food companies*” for a company by company breakdown.

ⁱⁱⁱ Center for an Urban Future. *State of the Chains, 2021*. Dec 2021.

https://nycfuture.org/pdf/CUF_StateoftheChains_2021_final.pdf See the table entitled “New York City’s Largest National Retailers, 2021,” beginning on page 11.

Analysis of this data available on Sheet2 of the “Sourcing for CM TP Paper” excel spreadsheet.

^{iv} “The State of Workers’ Rights in New York City: Fifth Annual Report.” NYC Consumer and Worker Protection.

September 2022. Retrieved from <https://www.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRights-Report-2022.pdf> on March 16, 2023.

^v “Department of Consumer and Worker Protection Announces Settlement With Mcdonald’s Franchisee Over Repeated Workplace Violations.” NYC DCWP. October 31, 2022. <https://www.nyc.gov/site/dca/news/054-22/department-consumer-worker-protection-settlement-mcdonald-s-franchisee-over>. Accessed April 15, 2024.

^{vi} Graham, Aidrian. AMNY. “Six companies forced to pay almost \$3 million for violating city labor laws: DCWP.” January 26, 2024. <https://www.amny.com/news/six-3-million-violating-city-labor-laws-dcwp/>. Accessed April 15, 2024.

^{vii} “Mayor Adams, Department of Consumer and Worker Protection Announce Settlement with Chipotle Mexican Grill, Securing \$20 Million for Approximately 13,000 Workers.” NYC.gov. August 9, 2022. Retrieved at <https://www.nyc.gov/office-of-the-mayor/news/581-22/mayor-adams-department-consumer-worker-protection-settlement-chipotle-mexican#/0> on March 6, 2023

^{viii} Romeo, Peter. Restaurant Business. “Union baristas hit Starbucks with 22 allegations of violating scheduling regulations.” February 21, 2024. <https://www.restaurantbusinessonline.com/workforce/union-baristas-hit-starbucks-22-allegations-violating-schedule-regulations>. Accessed April 15, 2024.

^{ix} Bellafante, Ginia. NY Times. “Has Starbucks Surpassed Amazon as the Villain of Big Labor?” February 23, 2024. <https://www.nytimes.com/2024/02/23/nyregion/starbucks-baristas-labor-nyc.html>. Accessed April 15, 2024.

^x <https://www.nytimes.com/2024/02/27/business/economy/starbucks-workers-united-union.html>

Max:

Hello and good morning, my name is Max. I am currently a Starbucks Partner at the Starbucks store on West Broadway and Leonard Street. Prior to working at Starbucks in NYC, I worked at a store in Iowa. But it was not until I came to the city that I started to experience scheduling issues.

It was night and day, frankly. Consistently my hours were fluctuating well outside the 15% allowed by the Fair Workweek law. Plus, I was often being scheduled outside of the availability windows I had provided to my manager. Eventually, things came to a head last summer and I filed a fair work week complaint with the Department of Consumer and Worker Protection (DCWP).

It might be hard for those who don't depend on scheduled hours for work to understand how much of an impact the scheduling of hours has on workers like me. It impacts everything though. From how I plan my off time to what bills I'll be able to pay. Everything hinges on my hours.

That's why the fair work week law and the work that DCWP does is so important to workers like me. Currently, my complaint has not been resolved yet. But I am hopeful that I will get justice.

I want to thank the committee for hearing my testimony today.

Autumn:

Good morning, Chair Julie Menin and other members of the Committee. My name is Autumn. I worked at Chipotle. During my time there, I got sick one day and told a supervisor about my symptoms. When I came in a couple days later for my next shift, because the company hadn't told me that I could stay home, I explained again that I had left my previous shift early because I was sick. Later, the company claimed that I didn't tell them about my symptoms. Even though that wasn't true, I was terminated.

I refused to just accept being fired that way. So I filed a Just Cause complaint. While it took over a year for the DCWP to resolve my complaint, eventually they did. I received \$8,000 in the settlement but not reinstatement. To be clear here, I did not want the money, I wanted my job back. I liked working at Chipotle and I thought my termination was deeply unfair. Still, I was able to get some justice thanks to DCWP and the Just Cause Law.

I want to thank the Committee for hearing my testimony.

Lee:

Good morning Chair Menin and members of the committee on consumer and worker protection. My name is Lee. I have been a partner at Starbucks for nearly 3 years. I currently work at Church and Murray. Previously, I worked at the Starbucks store at 100 William St.

I filed a fair workweek complaint because my hours were significantly. That had an enormous impact on my financial situation. It meant I had to reorganize my life so I could pay my bills. Luckily, I had learned about the fair workweek and decided to file a complaint. I'm proud to say that I was among the first big group of Starbucks workers who filed fair workweek law complaints in February 2023. As a working New Yorker, I deeply appreciate what an agency like the Department of Consumer and Worker Protection does to hold giant corporations like Starbucks accountable. And that's why it is critical that DCWP has the resources it needs to continue this work.

I want to thank the committee and Chair Menin for hearing me today.

Eddie:

Good morning Chair Menin and members of the Committee on Consumer and Worker Protections.

My name is Eddie. I worked at the Chipotle store on 56th street and 6th avenue for nearly four years. Towards the end of my time working at Chipotle, I decided to go back to school. In order to help save for school, I asked my manager for more hours in the four months before classes started. I was not provided those hours. In fact, I had to practically beg for shifts.

Without those hours, my finances took a huge hit. I had to cut a lot of corners to get by. It was not easy. The bottom line was that I was not getting the hours I needed.

Thankfully, I knew about the Fair workweek law and filed a complaint with the Department of Consumer and Worker Protections (DCWP). I am proud to say that my complaint was part of the many fair workweek complaints that led to the historic \$20 million settlement with Chipotle.

That settlement showed me how much justice the fair workweek law and DCWP could provide for working New Yorkers like myself.

At the same time, the victory was bittersweet for me because Chipotle eventually terminated me. My experience at Chipotle and the struggle to receive a consistent set of hours convinced me of the importance of DCWP's work and that this is an agency that should get the resources it needs to do its vital job well.

Thank you for taking the time to listen to my testimony.

Joe:

Good morning Committee Chair Julie Menin and other members of the Committee on Consumer and Worker Protections.

My name is Joe. I have worked as a Starbucks Partner at 195 Broadway Street for about a year and a half. About two months ago, I filed a fair workweek complaint. My complaint revolved around two core issues. First, were the differing number of hours offered each week. The second was that my store did not allow my coworkers and I to pick up open shifts before bringing in new workers to our store. The whole point of this part of the Fair Workweek law is to lead to full time work or people having enough hours to get by.

Lacking access to those hours made it harder to pay bills and harder for me to save. It goes beyond a simple inconvenience. When you can't work the additional hours you need, you have to reduce your plans across the board. You can't save as much, you can't go to dinner with your friends, you have to prioritize your bills and even THAT can be hard.

I want to thank Chair Menin and the committee for listening to me today



April 22, 2024

The Honorable Julie Menin
Chairperson, Committee on Consumer and Worker Protection
New York City Council
New York, NY 10007

Written Testimony on behalf of the National Restaurant Association Regarding Enforcement of the Fair Workweek Law

Chairperson Menin and Committee Members, thank you for the opportunity to provide written testimony regarding enforcement of the Fair Workweek Law in New York City. My name is Michael Monrroy, and I am the Manager of State Affairs for the National Restaurant Association.

The National Restaurant Association is the leading business association for the restaurant and foodservice industry, representing national and small restaurant businesses which employ more than 15.5 million people at more than 1 million outlets. Along with our state restaurant association partners, like the New York State Restaurant Association, we represent America's restaurant industry in communities across the country.

In New York City, the vast majority of quickservice restaurants (QSRs), are engaged in good faith efforts to comply with the existing Fair Workweek Law, a law which poses more compliance challenges than any other similar legislation in the country. The law does not distinguish between occasional human or technological errors versus real patterns of non-compliance leading to additional penalties. And in an industry that is known for its flexibility, Fair Workweek is producing the opposite effect, punishing an employer for accommodating an employee's schedule change when life happens unexpectedly. To solve these issues, Fair Workweek should allow for a voluntary call-in list like other cities with scheduling laws, and there should be more user-friendly guidance on approved software for managers and staff.

Our industry is also familiar with the NYC Department of Consumer Worker Protection's (DCWP) pursuit of noncompliance claims and associated publicity. DCWP is taking five times longer to investigate Fair Workweek claims than they did in 2018, and our understanding is that DCWP is not notifying restaurant operators about ongoing complaints and investigations. This lack of notification is unfair to businesses that would appreciate the chance to fix noncompliant behavior in a timely manner. To solve this, there should be an obligation for timely notifications of noncompliance and creation of warning periods. The Fair Workweek Law should not be used as a tool to reach high settlements, it should be about helping operators and workers comply.

We appreciate the Council's focus on protecting workers and preventing bad actors from intentionally violating Fair Workweek Law. The National Restaurant Association and the New York State Restaurant Association look forward to working with the Council on this and all issues that impact the restaurant industry. If there are any questions we can answer or resources that we can provide, please let us know.



Sincerely,
Michael Monrroy
Manager of State Affairs
National Restaurant Association



Regarding the Enforcement of Fair Workweek

Good morning. My name is Kathleen Irwin, and I am the NYC Government Affairs Manager for the New York State Restaurant Association (NYSRA). We are a trade association representing food and beverage establishments in New York City and State, including a number of chain restaurant brands covered by the Fair Workweek law. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City.

New York City's Fair Workweek legislation poses more compliance challenges than any other similar legislation around the country. In particular, the fact that NYC Fair Workweek does not allow for a voluntary call-in list is a major obstacle to operators. Operators can easily set schedules with two weeks' advance notice, and if their employees' lives also go according to schedule for those two weeks, they have no problem. But when an employee calls out sick, or has a last minute family or school obligation to attend to, then employers are punished with hefty penalties when they fill the shift. The restaurant industry is known for its flexibility, but Fair Workweek actually punishes employers for trying to be flexible when employees' needs and schedules change unexpectedly.

Even so, we recognize the goals of the Fair Workweek legislation, and we want to support operators in complying with the law. We also understand that public attention directed at one-off cases of noncompliance may give the wrong impression about how quick service restaurants (QSRs) are treating their obligations. The real underlying picture is that the vast majority of QSR operators are engaged in good faith efforts to comply with the existing Fair Workweek legislation, even though it is challenging.

From what we understand about the current state of Fair Workweek enforcement, DCWP has taken great pride in pursuing claims of noncompliance, and tends to issue press releases celebrating the settlements reached with brands that received complaints. The counterpoint to that publicity, though, is that DCWP is not notifying operators when their workplaces are the subject of a complaint and investigation. Meanwhile, the investigations are left open for periods more than five times longer than 2018 timelines. Taking all of that together, the lack of notification to businesses about Fair Workweek complaints is **not acceptable**. If DCWP truly shares the goal of promptly getting businesses back into compliance, to the benefit of both the workers and operators of these businesses, then they would promptly notify operators about complaints and the steps to become compliant. Any other avenue – like nearly yearlong investigations taking place unbeknownst to operators – creates the impression that Fair Workweek enforcement is prioritizing high-value settlements over real-time compliance.

We so appreciate the Council's intentions to protect workers and prevent bad actors from intentionally breaching Fair Workweek regulations, and we share those goals. If the Council and

DCWP are seeing gaps in understanding and knowledge of Fair Workweek, we encourage the agency to create and distribute robust and user-friendly training materials to operators so they can more accurately implement Fair Workweek. We strongly encourage a change in policy to require prompt notification to businesses when they are the subject of a Fair Workweek complaint. Please, understand that operators are striving for compliance, and approach them with tools and resources, not ever-harsher fines. Looking ahead, instead of creating an overly punitive new fine schedule and requiring burdensome and generalized offsite training, we suggest putting resources towards an education-based approach, improving and adding to any existing training materials, and supporting restaurants in offering in-house training on Fair Workweek for their managers and staff. Thank you for considering our feedback, and we look forward to continued conversations on this issue.

Respectfully Submitted,

Kathleen Irwin

NYC Government Affairs Manager

New York State Restaurant Association

401 New Karner Road

Albany, New York 12205

April 16, 2024

Dear Chair Menin and members of the Committee on Consumer and Worker Protection:

I am a sociologist of work and organizations with expertise in fair scheduling and related labor standards. I am writing to share some observations and recommendations regarding enforcement of the Fair Workweek Law in New York City. While the Office of Labor Policy and Standards (OLPS) has excelled at winning restitution for workers, its staffing and outreach budget lag behind peer cities relative to population. I believe increased funding and stakeholder engagement are needed to deliver on the promise of a fair workweek.

My testimony draws on work in progress on a comparative study of scheduling legislation in eight jurisdictions, including New York, Seattle, San Francisco, Chicago, and Philadelphia. It also draws on prior research and discussions with my academic colleagues and mentors, particularly Susan Lambert and Janice Fine. I cite enforcement metrics for New York City from the most recent report released by the Department of Consumer and Worker Protection.¹ Metrics for peer agencies come from a 2022 report by Terri Gerstein and Lijia Gong.² Estimates of total private-sector employment come from the American Community Survey.³

The following table shows the number of labor enforcement staff and private-sector employees in New York and four peer cities. In 2022, OLPS had the greatest number of enforcement staff (38 FTEs). However, these staff were responsible for protecting a much larger population (3,287,000 private-sector employees). The number of employees per staff person indicates the relative burden on these agencies—like a student-teacher ratio for a school. There were approximately 87,000 private-sector employees in New York City for each staff person at OLPS in 2022. By contrast, Seattle had only 11,000 employees per staff person. This comparison suggests OLPS is understaffed relative to peer agencies responsible for enforcing fair workweek laws.

Agency	Full-time equivalent staff	Private-sector employees (1,000s)	1,000 employees per staff person
Chicago Office of Labor Standards	8	1,142	143
New York City Office of Labor Policy and Standards	38	3,287	87
Philadelphia Office of Worker Protections	9	613	68
San Francisco Office of Labor Standards Enforcement	30	402	13
Seattle Office of Labor Standards	34	370	11

¹ “Worker Protection Metrics at the New York City Department of Consumer and Worker Protection.” DCWP, not dated. <https://www.nyc.gov/assets/dca/downloads/pdf/workers/SOWR-Metrics-2022.pdf>

² Terri Gerstein and Lijia Gong. “The Role of Local Government in Protecting Workers’ Rights.” Economic Policy Institute, June 13, 2022. <https://files.epi.org/uploads/251489.pdf>

³ U.S. Census Bureau. “Selected Economic Characteristics.” *American Community Survey, ACS 5-Year Estimates Data Profiles, Table DP03*, 2022. <https://data.census.gov/table/ACSDP5Y2022.DP03>

Despite its relatively lean staffing, OLPS has achieved impressive results with fair workweek enforcement. It has returned more money to more workers than any other jurisdiction with fair scheduling laws. The best-known case is the \$20 million settlement the city reached with Chipotle in 2022. This settlement not only resulted in substantial fines and restitution (approximately \$1,500 per affected worker) but also attracted widespread media coverage, which related research suggests can help deter further violations.⁴ Even in lower profile cases, OLPS has obtained significant financial remedies. In 2022, 66 retail workers received an average of \$1,727 in restitution under the Fair Workweek Law.

However, the amount of restitution may not be the best measure of success for fair workweek enforcement. Even in the banner year of 2022, fewer than 5 percent of workers covered by the Fair Workweek Law received any restitution. An overall assessment must consider how the other 95 percent of covered workers are faring. Unfortunately, it is difficult to answer this question with publicly available data. I am aware of only two studies that attempt to evaluate the effects of this law. One finds that involuntary part-time work—defined as working fewer than 35 hours per week while preferring full-time hours—was higher in places with predictive scheduling laws than elsewhere in California, New York, and Washington state.⁵ A more focused study of fast food workers in New York City finds no change in employment or average earnings resulting from the 2017 provisions of the Fair Workweek Law.⁶ Yet neither of these studies evaluates the predictability or stability of scheduling which the law was meant to provide.

OLPS can shed light on the incidence of scheduling problems and compliance by releasing more information on Fair Workweek investigations. The most recent DCWP report includes a breakdown of complaints by the kind of violation alleged under Paid Safe and Sick Leave as well as Freelance Isn't Free protections (tables 6 and 7). But there is no comparable table for violations of the Fair Workweek Law. While the number of investigations and settlements give some idea of the level of enforcement, they do not tell us how often OLPS found violations of the various Fair Workweek provisions. This lack of information complicates comparisons between fast food and retail workers covered by the law. Does the greater number of settlements (13 for fast food vs. 5 for retail) reflect a higher incidence of violations, a greater volume of complaints, or more robust protections in the law? These alternative interpretations point to different courses of action. If the greater settlements are due to stronger legislative protections for fast food workers, then OLPS cannot close this gap in enforcement without City Council granting equal protections to retail workers.

The Fair Workweek Law is a relatively new and ambitious experiment in regulating labor scheduling. For all the success OLPS has had in its first few years of enforcing the law, it is far from clear that fast food, retail, and utility safety workers now enjoy the predictability and stability promised them by the government of this great city. I believe continued evaluation and sharing of best practices—within OLPS and among peer agencies—can contribute to further success in this regard. However, substantial increases in the level or extent of enforcement will likely require additional funding for OLPS and wider coverage under the Fair Workweek Law. Beyond increasing staffing levels, OLPS could benefit from dedicated funding to support stakeholder engagement in identifying potential violations and bringing employers into compliance. New

⁴ Johnson, Matthew S. 2020. "Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws." *American Economic Review*, 110 (6): 1866-1904. <https://doi.org/10.1257/aer.20180501>

⁵ Aaron Yelowitz. "Predictive Scheduling Laws do not Promote Full-Time Work." University of Kentucky, January 2022. <https://isfe.uky.edu/sites/ISFE/files/research-pdfs/Predictive%20Scheduling%20Laws%20Do%20Not%20Promote%20Full-Time%20Work.pdf>

⁶ Pickens, Joseph, and Aaron Sojourner. "Effects of Access-to-Hours and Just Cause Regulations on Labor Market Outcomes." Social Science Research Network, November 5, 2022. <http://dx.doi.org/10.2139/ssrn.4269218>

York City could learn from the example of Seattle, which provides over \$2 million in grants to community and business partners, extending and reinforcing the outreach and education activities of the Office of Labor Standards. Seattle also offers a model for sponsored research and open data to promote scholarly and public understanding of the benefits of scheduling legislation and related enforcement actions.⁷⁸⁹

I would be happy to answer questions about my testimony or recommend experts who can speak to other aspects of fair workweek enforcement and oversight. I can be reached by phone at 260-468-8528 and by email at peter.fugiel@rutgers.edu. Thank you for your consideration.

Sincerely,



Peter J. Fugiel, Ph.D.
Postdoctoral Research Fellow
Department of Labor Studies and Employment Relations
Rutgers School of Management and Labor Relations

⁷ Harknett, Kristen, Daniel Schneider, and Veronique Irwin. “Seattle’s Secure Scheduling Ordinance: Year 2 Worker Impact Report.” Seattle City Auditor, February 2021.

<https://www.seattle.gov/documents/Departments/CityAuditor/auditreports/SecureSchedulingYearTwoReport.pdf>

⁸ Lambert, Susan, Anna Haley, Hyojin Cho, and Resha Swanson. “Seattle’s Secure Scheduling Ordinance 2022 Employer Implementation Report.” Seattle City Auditor, December 2022.

<https://www.seattle.gov/documents/Departments/CityAuditor/auditreports/SecureSchedulingReport2022.pdf>

⁹ Seattle Office of Labor Standards. “Data Interactive Dashboards.” <https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards>

April 16, 2024

The Legal Aid Society's Testimony Regarding the Department of Worker and Consumer Protection's Enforcement of the Fair Workweek Law

Submitted by Rebekah Cook-Mack

Thank you for the opportunity to present this testimony. I am a Staff Attorney in the Employment Law Unit of The Legal Aid Society.

The Legal Aid Society is the oldest and largest not-for-profit public interest law firm in the United States, working on more than 300,000 individual legal matters annually for low-income New Yorkers with civil, criminal, and juvenile rights problems. The Society also brings law reform cases that benefit all New Yorkers. The Society delivers a full range of comprehensive legal services to low-income families and individuals in the City. Our Civil Practice has local neighborhood offices in all five boroughs, along with centralized citywide law reform, employment law, immigration law, health law, homeless rights, consumer rights, and family law practices. Many of these units represent people experiencing discrimination and are impacted by the work of the Commission.

The Society's Employment Law Unit represents low-wage workers in employment-related matters such as claims for violations of leave laws, unpaid wages, claims of discrimination, and unemployment insurance hearings. Our clients are overwhelmingly people of color living paycheck to paycheck. The Unit conducts litigation, outreach, and advocacy designed to assist the most vulnerable workers in New York City, among them, low-wage workers who are sexually harassed; discriminated against based on race, national origin, immigration status, pregnancy, disability, sex, sexual orientation, gender identify, age, domestic violence, or criminal background; or denied reasonable accommodations needed due to pregnancy or disabilities.

Justice in Every Borough.

The Department of Consumer and Worker Protection (DCWP) is an indispensable partner for New York's most vulnerable residents working low wage jobs in industries ranging from fast food to retail, delivery workers and paid care. Disproportionately these workers are people of color. The DCWP helps to interpret and enforce the laws passed by our city council to ensure all workers have the advantage of fair workplaces. They ensure all workers can realize their rights, regardless of immigration status. They do important work that supports sustainable jobs and improves the wellbeing of families and communities.

The DCWP's approach to fair workweek investigations is commendable. Rather than limiting their investigations to a single worker's individual complaint, DCWP has taken a broader approach. In seeking to ensure individual complaints do not reflect a systemic problem, the DCWP extends its reach and impact. Investigations that are workplace wide are more time consuming and labor intensive but can have significant impacts for all workers and send an essential message to industries.

The DCWP's efficacy is threatened by the hiring freeze it is currently subjected to. This freeze makes it impossible for the agency to hire when staff leave or are promoted. **The City should lift the hiring freeze to allow DCWP to replace any departing staff on a 1:1 basis.** The City should invest in this Agency so that it can do its job to protect low income working New Yorkers.

We thank the Council for its consideration of this testimony. For more information or to address concerns, please feel free to contact me at rcook-mack@legal-aid.org or (212) 298-5311.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/17/24

(PLEASE PRINT)

Name: Joe Winograd

Address: _____

I represent: 3233 SEIU / SBW

Address: 25 W 18th St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Vilda Vera mayuga

Address: Commissioner

I represent: DCWP

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carlos Ortiz

Address: Assistant Commissioner for

I represent: External Affairs

Address: DCWP

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Elizabeth Wagoner

Address: Deputy Commissioner,

I represent: Office of Labor Policy & Standards

Address: DCWP

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Peter Engiel

Address: [Redacted], Philadelphia 19148

I represent: self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/17/24

(PLEASE PRINT)

Name: Autumn Bethany Senarra

Address: [Redacted]

I represent: the union 32BJ

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/17/24

(PLEASE PRINT)

Name: Lee Lambert

Address: _____

I represent: Starbucks Workers United

Address: 25 W 18th St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/17/24

(PLEASE PRINT)

Name: Max Pilcher

Address: _____ Brooklyn, NY

I represent: 32BJ Starbucks Workers United

Address: 25 W 18th St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/17/24

(PLEASE PRINT)

Name: Gabriel Seminario

Address: _____ Bronx, NY 10462

I represent: 32BJ Myself

Address: _____ Bronx, NY 10462

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Autumn Weintraub

Address: [Redacted] Bklyn

I represent: 32BJ SEIU

Address: 25 W. 18th St. NYC

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/17/24

(PLEASE PRINT)

Name: Christopher Leon Johnson

Address: [Redacted]

I represent: self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: [Redacted]

Address: [Redacted]

I represent: _____

Address: _____