

**Testimony of  
Julie Menin, Commissioner, New York City Department of Consumer Affairs  
Before the  
New York City Council Committees on Civil Service and Labor  
and Women's Issues**

**Testimony on Intro. 743 and Intro. 197**

**April 20, 2015**

Good afternoon Chairman Miller, Chairwoman Cumbo, and members of the Committees on Civil Service and Labor and also on Women's Issues. I am Julie Menin, Commissioner of the New York City Department of Consumer Affairs ("DCA"), and I am joined by my colleagues Marla Tepper, General Counsel and Deputy Commissioner of Legal Affairs, Kristen Lasky, Executive Director of the Paid Sick Leave division, Sandra Abeles, Deputy Chief of Staff, and Amit Bagga, Deputy Commissioner of External Affairs.

I greatly appreciate the opportunity to speak with you about the two bills before the committee today, one that would establish an Office of Labor Standards ("OLS") to be housed within a City agency, and another that would make unlawful employer retaliation against an employee who discloses his or her income.

Intro. 743 would endow a new OLS with the authority to enforce chapters 8 and 9 of title 20 of the administrative code. DCA currently enforces these chapters, which are the paid sick leave law and the transit benefits law, respectively. In addition to enforcing both of these laws, DCA licenses approximately 80,000 businesses across 55 different industries and also houses the Office of Financial Empowerment, the first municipal initiative in the country with the specific mission to empower and protect consumers with low incomes.

DCA works hard every day to execute Mayor de Blasio's vision of City government serving all New Yorkers – no matter what language they speak or how much they earn. The administration is committed to ensuring that the rights of workers are protected and that our City's small businesses both comply with all laws without having to face punitive violations and fines. Equity in the workplace and improved labor standards for all New Yorkers, particularly those with lower incomes who are often deprived of equal access to employment and fair wages, are of great importance to us and we welcome today's dialogue with the Council.

Through our successful implementation of paid sick leave, a law that has been a top priority for both Mayor de Blasio and Speaker Mark-Viverito, DCA has demonstrated its commitment to protecting the rights of workers while also adopting an education- and compliance-focused approach to resolving complaints with businesses. This approach, along with our aggressive reduction of fines in other categories by \$5 million in this fiscal year, as well as the implementation of two dozen reforms that increase education and language access as well as ease compliance, evidences that protecting workers' rights

while lifting onerous burdens faced by businesses are not mutually exclusive; in fact, they are shared goals in creating the fair and vibrant commercial and labor marketplaces that is central to our mission.

### **Paid Sick Leave: Outreach, Education, and Implementation**

DCA's Paid Sick Leave division was established in April 2014, following the passage of an extended version of New York City's Earned Sick Time Act ("ESTA" or "paid sick leave").

New York City's paid sick leave law is being implemented at a scale larger than any other city's. Paid sick leave is beneficial to employers, employees, and to the public. It leads to healthier employees with better morale, less employee turnover, and lower healthcare costs in the long term. DCA is proud to be a national leader in the scope of our outreach efforts and also in the implementation of the law.

#### **Outreach and Education**

The successful implementation of paid sick leave, which is subject to complaint-based enforcement, has required making employees and employers aware of their rights and obligations under the law. To accomplish this, DCA has conducted robust outreach to both employers and employees about paid sick leave with a \$3 million campaign and I am pleased to share the results of our efforts to date.

As of today, DCA has distributed more than 2 million pieces of paid sick leave literature, visited more than 1,500 businesses in person to educate owners about the law, and held or attended nearly 850 paid sick leave-related events across the five boroughs. These events have included workshops with SBS' Jobs Plus participants, presentations before dozens of industry groups, ranging from The Bodega Association to the New York Hospitality Alliance, community events such as street fairs and NYCHA Family Days, and specific trainings for multi-branch businesses, such as Gregory's Coffee and Ricky's Cosmetics. Of our events, 482 have taken place in boroughs outside of Manhattan and more than twenty five percent of them have taken place in a language other than English. Additionally, we have posted information about paid sick leave in 26 languages on our website, ensuring that all New Yorkers – where they speak Bangla or Haitian Creole, Yiddish or Yoruba – have access to information about the important rights to which they are entitled.

Since March 2014, DCA has also run large-scale transit advertisements in three rounds and several rounds of television and radio advertisements. Our advertisements have been ubiquitous in New York City's subways and buses and our television advertisements have run in both English and in Spanish on networks with high viewership at prime times.

To ensure that we reached our City's immigrants, we placed print advertisements in 10 English-language community newspapers and 14 newspapers that are either printed in foreign languages or have primarily immigrant readerships. DCA has also run web and

digital advertising on the web sites of several foreign-language or immigrant-oriented news websites, as well as on Facebook. Additionally, the agency has featured radio advertisements in six foreign languages: Spanish, Bangla, Cantonese, Mandarin, Korean, and Russian.

DCA has been working closely with advocates, community leaders, business leaders, and elected officials on raising awareness about paid sick leave and soliciting feedback about the law's implementation. Many of these partners participated in DCA's July 2014 paid sick leave "Day of Action," the first of its kind held by a City agency. This Day of Action involved 1,400 business owners and leaders, community organizations, workers, unions, city employees, and everyday New Yorkers distributing more than 350,000 brochures in just four hours and talking to their friends and neighbors about paid sick leave at more than 140 subway stops throughout New York City.

I'd like to thank the great support we received from Speaker Mark-Viverito and the many Members of the Council who participated in our Day of Action. So many New Yorkers captured our activities on social media that "#PaidSickLeave" was a top trend on Twitter in New York City that day.

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

#### Business Tools and Resources

Since July 2014, the doors of our Paid Sick Leave Division have been open for business five days per week. Both employers and employees can come in to obtain information, ask questions about compliance, and file complaints.

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

Under the paid sick leave law, eligible employees accrue one hour of sick time – paid or unpaid, depending on the size of the employer – for every 30 hours worked. The document easily allows employers to track hours on a daily, weekly, or bi-weekly basis.

Based on questions and feedback we've received from both employees and employers, DCA has published a very extensive Frequently Asked Questions ("FAQs") document, significantly decreasing DCA's response time to questions. DCA updates the FAQs with new questions and answers on a rolling basis, as there are often questions asked that we believe might be relevant to a large number of employers.

We remain focused on education as a means of facilitating compliance, and we hope to bring as many businesses as possible into compliance without drafting charges or issuing fines. This approach has been successful and continues to evolve as the implementation

of the law enters a new, case management-focused phase.

### Implementation

The initial structure of the Paid Sick Leave division reflected the dual priorities of educating the public and focusing on mediation as the primary method of enforcement. Perhaps the best indicator of our outreach efforts is that DCA has received 473 complaints to date. We have closed 186 complaints, of which 70 percent were closed through mediation. When we cannot mediate, DCA investigates complaints. Even then, we work diligently to achieve a resolution that avoids high penalties and the additional burden of having to prepare for a hearing. To date, we have issued five Notices of Hearing (our charging documents) and we have settled eight complaints with significantly reduced fines. DCA has collected nearly \$40,000 in fines and more than \$38,000 in restitution for 70 employees.

These results have been achieved by the 17 staff in our division, which includes investigators, legal analysts, outreach staff, project management staff, and an executive director. Including funding allotted in Fiscal Year 2014, DCA has received approximately \$6.59 million for the paid sick leave division to date. This funding has covered staffing of the division as well as advertising, translation, and outreach costs.

While we have been able mediate to or are in the process of mediating most of our complaints, we are now receiving an increasing number of complaints that require investigation. The percentage of complaints alleging retaliation, for example, has been on the rise: in January, 31 percent of complaints alleged retaliation, in February this figure was 40 percent, and in March 46 percent of all new complaints alleged employer retaliation. Considering the severe “chilling effect” that retaliation can have on an employer’s workforce, DCA takes such cases very seriously and commits greater resources to such cases. In such cases, we send investigators to the workplace for an on-site compliance review, which allows DCA to collect a large amount of information from records, we conduct employer interviews, and sometimes, employee interviews, as well.

Additionally, most of our complaints allege either general non-compliance or, upon initial investigation, uncover general non-compliance, situations that also require a full investigation. Surprisingly, we have received many complaints against large companies that have sick leave policies that either deny sick leave to some category of their employees (typically part-time and seasonal employees) or do not provide the statutory rate and amount of sick leave. To fully investigate these large employers, DCA investigators must review and analyze complex policies, time-keeping tools, and payroll records for hundreds, if not thousands, of employees over a long period of time.

All that we continue to learn about the prevalence of sick leave policies across New York City’s many different industries has informed the next round of our rulemaking, a process which will be commencing shortly. We welcome the Council’s comments on draft rules upon their publication, and we are eager to work with the Council to ultimately adopt rules that clarify our authority to enforce paid sick leave.

### **Transit Benefits**

DCA is also in the process of preparing for our first round of rulemaking pertaining to the implementation of transit benefits. Though the law does not go into effect until January 2016, we have already engaged both advocates and private sector benefit providers on outreach and implementation strategies. DCA is currently working with benefit providers to understand how their programs are priced and structured and to solicit from them questions they have received about how to provide transit benefits. This type and level of engagement will allow us to proactively develop a “Frequently Asked Questions” document before the law goes into effect and also inform rulemaking. The agency has also already begun engaging key stakeholders, such as the Riders Alliance, on the nature and scope of outreach to employees, as we are focused on ensuring that those who stand to benefit from this law are made aware of it and have the tools to request the benefits to which they are entitled from their employers.

As has been evidenced, DCA has approached its enforcement of paid sick leave in innovative and strategic ways that have educated both employers and employees, and ensured that employees’ rights are protected, and that employers are given adequate opportunities to comply with the law. We will be pursuing a similar approach with the implementation of transit benefits and look forward to working with the Council on incorporating your comments on our first round of draft rules, which are to be published later this year.

Before turning to Intro 197, I will briefly offer comments on DCA’s enforcement of the Fair Wages for New Yorkers Act (“Living Wage”) and Mayor de Blasio’s Executive Order No. 7 (“EO 7”).

### **Living Wage Law**

The Living Wage law requires certain companies that receive \$1 million or more in financial assistance from City agencies to pay no less than a “living wage,” which has been set at \$13.13 per hour. In September 2014, Mayor de Blasio signed EO 7, which significantly broadened the scope, applicability, and impact of the Living Wage Law by, among other things, limiting the exemptions under the Living Wage Law and increasing the dollar amount of the living wage floor.

The Office of the Comptroller is vested with the authority to monitor and investigate compliance with the requirements of the Living Wage Law and EO 7. Comptroller investigations will be commenced in response to employee complaints, or as a result of the Comptroller’s monitoring of employer compliance. The Comptroller will report the results of investigations to DCA, which is vested with the authority to enforce the Living Wage Law and EO 7 by prosecuting administrative enforcement actions.

In order to carry out its obligations under the law and the executive order, DCA, working in conjunction with the Law Department and other City agencies, is in the process of preparing implementation rules. Following this, we will be preparing FAQs and other outreach materials; drafting standard contract provisions for inclusion in agreements

between financial assistance recipients and City agencies; implementing inter-agency protocols to facilitate investigation and enforcement activities; and preparing and posting required information and reports.

We anticipate we will begin engaging in enforcement actions referred to us by the Comptroller before the end of 2015.

I will now offer comments on Intro 197, a bill that would make it unlawful for an employer to engage in retaliation against an employee who discloses his or her wages.

### **Intro. 197**

DCA believes, that as a general matter, employees should not be retaliated against for disclosing their own wages. As our experience with implementing paid sick leave has shown, employer retaliation can have a chilling effect on a workplace, leading to low morale, lost productivity, and sometimes, an infringement of an employee's rights. It is also our understanding that the Council seeks to address the issue of gender inequity in pay through the passage of this bill.

The agency supports the intent, as we understand it, of this bill. We also know that there are federal laws and executive orders that address the issue of pay secrecy and that there are also laws in numerous states that address this issue. We will work with the Mayor's Office, the Law Department, and other relevant state authorities to better understand the City's jurisdiction in terms of regulating issues of pay secrecy and we look forward to further engagement with the Council once we have been able to make progress on this.

Once again, thank you for giving me the opportunity to testify before you today; my colleagues and I will be happy to answer any questions you might have.



**Testimony of Beverly Cooper Neufeld  
on Retaliatory Personnel Actions and Wage Transparency before the  
New York City Council Civil Service and Labor Committee  
and Women's Issues Committee  
Monday, April 20, 2015**

Good Afternoon. I am Beverly Cooper Neufeld. President of BCN Consulting Group LLC which focuses on issues critical to the well-being of women and children. As well, I am Founder of PowHer New York and head of its Equal Pay Campaign, formerly known as the Equal Pay Coalition NYC. Thank you for this opportunity to offer testimony on Int. No. 197 - In relation to retaliatory personnel actions by employers and wage transparency.

The PowHer NY Equal Pay Campaign represents a thirty year fight to reform New York's equal pay laws and policies. Since 2007 the Equal Pay Coalition NYC led the cause for equal pay reform in New York. To create a stronger voice for wage equality, the Equal Pay Coalition NYC and PowHer NY joined forces in 2014 to expand our public education and policy reform campaign. This statewide network of over 50 civic groups, in coordination with other state and national coalitions, is working in 2015 to pass the NY Equal Pay Bill (A6075/S1) and municipal strategies around the state and in NYC. We highlighted this work last week at our 9<sup>th</sup> Annual Equal Pay Day commemoration and want to thank members of the Council for their enthusiastic participation in that rally.

The PowHer NY Equal Pay Campaign fully supports all legislation which addresses closing the gender wage gap by protecting employees who voluntarily share wage information. We applaud the New York City Council for this timely and important action. The provisions of Int. No. 197 will be a clarion call that wage transparency is protected and retaliation for sharing salary information will not be tolerated in New York City. It is a significant public statement to write this basic worker's right into the charter of New York City, the international center of finance. In addition to the enforcement and penalties outlined in the new law, the requirement for "notice of rights" to be provide or posted in every workplace is key to the establishment of a new and more open employer/employee relationship.

Guaranteeing workers the right to share salary information without penalty creates wage transparency and makes detection of wage discrimination possible. How does an employee know if she/he is receiving equal pay for equal work if she/he does not know what others are paid for the same work?

This protection targets pay discrimination which results in a wage gap that deprives women and their families of much need finance resources and long-term security. The gender wag gap exists in almost every profession, at all levels of education, and at all ages. The wage gap is smaller for younger women than older women, but it begins right when women enter the labor force. AAUW's study *Graduating to a Pay Gap* finds that just one year out of college, women are paid 82% of what their male classmates earn. After taking account of many factors like college majors, GPA, hours worked, occupation, there is still an unexplained gap of 7%. Education increases earnings, but at every level of academic degrees, women earn less than men, and the pay gap is larger at higher levels of education.

Thus, older women who have experienced decades of a gender wage gap are at a severe disadvantage. As reported by the National Women's Law Center, "A typical woman who worked full time, year round would lose \$464,320 in a 40-year period due to the wage gap. This woman would have to work more than twelve years longer to make up this gap. A typical woman working full time, year round who starts, but does not finish high school would lose \$357,680 over a 40-year period, an enormous amount of money for women who are typically paid \$21,387 a year. This woman would have to work nearly seventeen years longer to make up this gap. These lost wages severely reduce women's ability to save for retirement."

The NYC wage gap of 85% (\$8,429 annually) is smaller than the national average of 78%, although in some Congressional districts it is as low as 77%. And, the penalty is much greater for African American women and Latinas who earn 66% and 55% respectively. Eliminating the wage gap would provide much-needed income to all women whose salaries are of critical importance to them and their families, as well as \$23,000,000,000 of lost revenue to New York State's economy. To make the loss more tangible, according to the National Partnership for Women and Families, if the wage gap were eliminated, a working woman in the New York City metro area would have enough money for approximately:

- 64 more weeks of food (1.2 years' worth);
- Three more months of mortgage and utilities payments;
- Seven more months of rent; or
- 2,156 additional gallons of gas.

Working families in New York are especially harmed by the gender wage gap. Women head more than 1,000,000 households in New York, and more than 63% of working mothers in New York are primary breadwinners or co-breadwinners. Paying women their fair share will boost the growth of the middle class and reduce the unacceptable rate of 29% percent of women-headed households who live below the poverty level.

However, pay confidentiality policies make it impossible for workers to determine if they are receiving equal pay for equal work, and the “[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination,” according to the Supreme Court. With over 60% of private sector employees reporting that they are discouraged or prohibited from discussing wage and salary information, workers need protection from retaliation if they discuss salary information.

Now workers suffer in silence out of fear of retaliation or lack of proof that they are the victims of wage discrimination. Lilly Ledbetter’s story has come to represent their struggle. After twenty years of devoted employment, she learned that she was paid significantly less than male colleagues performing the same job. Confronting her employer led to retaliation and eventual dismissal. Lilly’s ensuing legal battle is part of American history, but ultimately she was not compensated for her lost wages. If she had the protections of the NYC law, the result could have been different.

There is overwhelming support in New York and across the United States for legislative measures to ensure equal pay for equal work. On a national level, the Paycheck Fairness Act which addresses wage transparency is, unfortunately, unlikely to progress due to the current political environment. However, President Obama has used his executive authority to provide protection from retaliation to workers employed by federal contractors, which covers 22% of the U.S. workforce.

States and cities are taking the lead on this issue. Here in New York, later in April, the Assembly will be voting on A.6075/S.1, the New York Equal Pay bill which passed in the Senate unanimously in January. We anticipate that after decades of advocacy, unprecedented bi-partisan support will carry this much needed reform to the Governor to be signed into law.

Ten states have instituted some form of wage transparency protections. Other approaches include a Rhode Island Pay Equity Tip Line, a telephone line allowing women and men to report employers who violate the Rhode Island law that bans gender-based wage discrimination.

The New York City Council’s expansion of wage transparency protections is a significant step in solving the complex problem of wage inequality. But, closing the wage and opportunity gap must be addressed from multiple fronts. We urge the City Council to also consider in the near future:

- Expansion of data collection requirements for NYC contractors to ensure compliance with equal pay laws and encourage workplace and leadership diversity;
- Equal pay review requirements for the workforce of all New York City agencies;
- Equal opportunity for women in high-wage jobs, particularly STEM and construction;
- Public/Private sector initiatives to encourage wage and opportunity equality, like the Boston Compact or the Women’s Empowerment Principles;
- Equal Pay for work of equivalent value protections;
- Protections for workers when requesting flexible work schedules;
- Paid family leave provisions for NYC workers;
- Accommodations for pregnant and nursing mothers.

Thank you for the opportunity to provide testimony today.

**POWHER NY:** PowHer New York is a statewide network of organizations and individuals working together to accelerate economic equality for New York’s women. Through our collaborative actions, we will attain **P-O-W-H-E-R: Poverty Solutions, Opportunity and Access, Workplace Fairness, Healthier Lives. Equal Pay, and Representation at all Tables.** In addition to informing and energizing the public, and promoting the excellent work of our Network Partners, PowHer NY and the Equal Pay Coalition NYC have teamed up to create a stronger voice for pay equity by forming the PowHer NY Equal Pay Campaign. **Contact: Beverly Neufeld, PowHer NY Founder [equalpay@powherny.org](mailto:equalpay@powherny.org)**





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**Testimony by  
A Better Balance  
New York, N.Y.**

**Before the New York City Committee on Civil Service and Labor and  
the Committee on Women's Issues  
Hearing on Policies to Assist Working Families in New York State  
April 20, 2015**

I am submitting this testimony on behalf of A Better Balance, a legal advocacy organization whose mission is to fight for policies that will protect American workers from having to choose between caring for their families and maintaining their economic security. For the last ten years, we have advocated for legislation to promote fairness in the workplace, while also working to enforce and support sound workplace standards. We are delighted that the committees are holding a hearing on these important issues and, for the sake of the families of New York City, are hopeful that the full Council will pass these bills this session.

**Int. No. XX : Establishment of an Office of Labor Standards**

**We strongly support the establishment of an Office of Labor Standards and hope that the Council will work with us and others in the advocacy community with experience helping to enforce labor standards in New York City.**

A Better Balance helped draft and pass the Earned Sick Time Act and is one of the leading organizations in the city representing workers who are having trouble accessing their rights under this new law. Our experience with earned sick time representation has made it clear that a dedicated city agency is necessary to support worker legislation and, accordingly, we applaud the proposal to create a new Office of Labor Standards.

Without an agency that enforces labor standards, it is difficult to enact and implement legislation protecting workers in New York City. During the four years we struggled to pass the Earned Sick Time Act ("ESTA"), one of the hardest questions to answer from this Council was "If we pass this ordinance, who will enforce it?" Ideas of giving the Mayor control, placing it with the Comptroller, and giving the enforcement responsibility to the Department of Health were all rejected. Ultimately, during last minute negotiations, enforcement was housed in the Department of Consumer Affairs ("DCA"), a city agency responsible for protecting consumers, as well as supporting and licensing businesses. In order to give DCA authority to enforce ESTA, the City Charter had to be amended because enforcement of a labor standard was not within DCA's mission.



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The difficulty we had in finding an agency to enforce ESTA is repeated whenever new legislation to regulate labor standards is proposed. If the Council intends to pass any legislation in the coming years to protect labor rights in our city, it is important that there be an agency whose mission is solely to do that type of enforcement.

A dedicated labor department is necessary for several reasons. First, an Office of Labor Standards would have a clear mission and presence and New Yorkers encountering problems with enforcing their labor rights would have a clear understanding of where to go for help. Second, an Office of Labor Standards, could create an expert staff to deal with a variety of connected workplace issues, which complement each other and, thereby, improve the efficiency and quality of service. We have found – in representing callers who contact us about ESTA problems – that, very often, there are additional labor problems at their place of employment. This is not surprising, as bad employers tend to be bad employers in many ways. A city labor office with expertise in a variety of related issues would enable aggrieved employees and advocacy organizations to use the labor agency to holistically evaluate and address all of their issues – an efficient one-stop shop for worker’s rights.

These considerations are particularly important if the Council passes further progressive legislation aiding workers and promoting equality. We wholeheartedly support such measures, but also realize they would be ineffective without an agency funded, staffed, and given the specific mission of enforcing those laws. Furthermore, creating an Office of Labor Standards signals a real dedication to workers’ rights by the City of New York. In particular, the creation of such an agency creates a long-term and indelible commitment to protecting workers and families – the backbone of our City.

In our work advocating for paid sick leave laws across the country, we have seen the success of departments, similar in function to the Office of Labor Standards envisioned in this bill, in both Seattle and San Francisco. We believe these examples are indicative of how an Office of Labor Standards could greatly benefit New York City workers. In Seattle, the recently created Office of Labor Standards enforces the city’s labor laws and serves as a “one-stop shop for workers and businesses seeking information on implementing the new requirements.”<sup>1</sup> Before it created this agency, Seattle used its Civil Rights agency to enforce its paid sick leave law, but came to the conclusion that to a dedicated Office of Labor Standards was needed insure to the best possible enforcement.

In San Francisco, the Bureau of Labor Standards is a comprehensive city agency charged with enforcing San Francisco’s progressive worker protections. This single, dedicated program addresses all of the issues raised by the City’s labor laws: paid sick days, minimum wage, health insurance guarantees and scheduling issues. San Francisco benefits from an efficient and expert agency able to enforce all labor laws, engaging the community in education and enforcement for a distinct set of interconnected laws. For example, when San Francisco enacted a paid sick leave law, the Office of Labor Standards simply folded the enforcement and education initiatives into their already



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existing infrastructure for wage and health coverage laws. According to Division Manager, Donna Levitt, having a specialized Bureau allowed for quick and easy implementation of San Francisco's paid sick leave law.<sup>ii</sup>

In conclusion, we strongly support the creation of an Office of Labor Standards for New York City. Particularly if the council intends to enact further labor protections, an Office of Labor Standards will be important – it is the most efficient and effective way to ensure new legal standards are actually reflected in the city's workplaces. However, we do urge the Council that in developing legislation to establish this new Department, it is important to involve advocates (especially legal advocates), labor unions, and community groups who are familiar with the needs of workers in enforcing their labor rights.

### Int. No. 197: Wage Transparency

**We strongly support Int. No. 197, the wage transparency bill, because it would help combat NYC's substantial and pernicious gender wage gap.**

Illegal wage discrimination often remains undetected due to workplace policies that punish employees for voluntarily sharing wage information with their colleagues. In response to the prevalence of these policies, Int. No. 197 would prohibit retaliation based on wage disclosure. By allowing workers to discuss wage information, this bill would make it easier for workers to detect and report discrimination, striking a significant blow against the pervasive gender wage gap faced by women working in New York City, their families, and our economy.

Over 50 years after the Equal Pay act became law, women in New York are still paid just 84 cents to the dollar compared to their male counterparts.<sup>iii</sup> The gap between male and female workers means the average woman working full-time makes \$8,274 less per year than her male counterpart, an amount equal to over a year of groceries, 8 months of rent, or 2,201 gallons of gas.<sup>iv</sup> Many women of color are hardest hit: African American women earn only 64%, and Latinas only 54%, of the amount earned by white men.<sup>v</sup> Overall, the loss of revenue strips New York's economy of nearly \$24 billion every single year.<sup>vi</sup> This injustice is particularly hard on NYC's families, since around 28% of women-headed households live below the poverty line.<sup>vii</sup>

While various equal pay laws make it illegal for employers to pay employees differently because of their sex, widespread pay secrecy policies prevent wage discrimination from coming to light and make equal pays laws largely ineffective. The story of Lilly Ledbetter's search for justice and trip to the Supreme Court is a salient example of the problems with wage secrecy. Ms. Ledbetter worked as one of the few female managers at Goodyear Tire, where she faced sexual harassment and unequal pay.<sup>viii</sup> Due to wage secrecy rules, Ms. Ledbetter did not know she was paid significantly less than her male



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counterparts until two decades (and the statute of limitations on her claim) had already passed.<sup>ix</sup> Although the statute of limitations holding in *Ledbetter* was later overturned by Congress, there is still a legislative gap that allows for wage secrecy policies that hide discriminatory pay practices.<sup>x</sup>

As Ms. Ledbetter's example demonstrates, wage secrecy prevents individual employees, as well as enforcement agencies, from uncovering wage discrimination.<sup>xi</sup> Regrettably, wage secrecy policies and practices are common: according to one study, 61% of private sector employees are discouraged or prohibited from discussing wage and salary information.<sup>xii</sup> Such fear places an immense burden on employees who want to vindicate their rights to an equal workplace. In the words of the Supreme Court: "[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination."<sup>xiii</sup>

By passing this wage transparency bill, the City Council would not only allow employees and enforcement agencies to uncover wage discrimination, it would also help prevent the discrimination in the first place. By making it easier to discover and punish violators of equal pay laws, employers will be discouraged from having illegal pay practices in the first place.<sup>xiv</sup> Substantial evidence for this concept comes from the public sector and unions, where wage transparency is the norm and, as a result, there are significantly lower pay disparities linked to race or sex.<sup>xv</sup>

In addition to helping uncover wage discrimination, wage transparency laws root out employers who refuse to comply with other wage and hours laws; thereby helping to enforce legal mandates and protect workers.<sup>xvi</sup> Like other advocacy organizations, we at A Better Balance often find that when an employer violates one law against one employee, they are often also violating many other laws against many different employees. Wage transparency can help find bad employers by bringing pay practices to light. This bill would allow enforcement agencies and advocacy organizations to more easily discover systemic cheating of timekeeping, sick time tracking, minimum wage, and other illegal practices, by freeing information currently shackled by wage secrecy rules.

Lastly, wage secrecy severely hinders the market forces that allow employees to make informed decisions about where they want to work. While regulations provide minimum standards for some aspects of employment in New York City, the rest is left to a competitive market. With this bill, and the death of wage secrecy rules, employees would have more information about their own pay and prospective employers' pay practices, which would allow them to make the educated decisions a free market requires to operate effectively.

In short, A Better Balance agrees with legal scholar, Cynthia Estlund, who in analyzing wage transparency concluded: "The public cost is trivial, the private cost to law-abiding employers is nominal, and the value to both informed private decision making and public



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law enforcement is quite obvious.”<sup>xvii</sup> Thus, we urge the City Council to pass Int. No. 197 and ban wage secrecy from New York City workplaces.

**However, we suggest the City Council amend the Int. No. 197 to allow the Mayor to change, if necessary, the agency tasked with enforcing wage transparency.**

We are in favor of wage transparency, but we also recognize that strong enforcement is essential to the successful implementation of Int. No. 197. As an organization that represents many women who suffer discrimination, we are eager to help the Council create an effective enforcement mechanism. As such, we suggest that Int. No. 197 be amended to allow the Mayor to change the agency responsible for enforcing wage transparency.

Currently, Int. No. 197 is modeled after the Earned Sick Time Act (“ESTA”), so the power and responsibility for enforcing the law would fall to the Department of Consumer Affairs. Unlike ESTA, however, the wage transparency bill does not provide authority to the Mayor’s office to change the enforcement agency. Yet, providing the Mayor with this authority is important, particularly, if the Council creates the proposed Office of Labor Standards, which would seem to be the most logical and best-equipped agency to implement and enforce a wage transparency law.

Amending the wage transparency bill to provide this authority to the Mayor is a simple fix, but an important one. A Better Balance is open to assisting the Council, in anyway, to make this adjustment because we recognize effective enforcement of wage transparency is vital to the law’s success.

**We also urge further action on the gender wage gap, such as a local equal pay law.**

We strongly encourage the City Council to explore further options for addressing the gender wage gap. For example, as we discuss in the next section of this testimony, we applaud the committees for considering the resolution asking the New York State Legislature to strengthen the state equal pay law. However, we also think the Council should go further and enact an equal pay law for the City of New York.

Surprisingly, New York City does not have an equal pay law and, therefore, does not have a clear enforcement mechanism for addressing the pay discrimination this wage transparency bill is designed to uncover. While wage transparency would shed light on discriminatory pay schemes, the city would still be limited in how it could prevent and eliminate illegal pay practices because it does not have the power to investigate and penalize equal pay violations. Thus, New York City workers must try and vindicate their rights using outdated federal and state laws that have, historically, proven to be a barrier to justice.<sup>xviii</sup>



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Recently, many municipalities across the country have acknowledged the need for local enforcement and leadership on equal pay issues. New York City workers deserve strong equal pay protections that will ensure meaningful changes in their workplaces and justice in their paychecks. We believe this can be done with an equal pay bill crafted to close loopholes in existing state and federal law, while avoiding any preemption issues. We would welcome an opportunity to work with the City Council in creating such legislation.

....

In sum, we fully support the passage of Int. No. 197 to combat wage secrecy, although we suggest that the bill be amended to allow the Mayor’s Office to change the enforcement agency. In addition, we encourage the City Council to explore additional measures for addressing the gender wage gap, such as a local equal pay law, and pledge our support for such action.

**Res. No. XX: Strengthening the State Equal Pay Law**

**We strongly support the amendment to the state Equal Pay Law, which would improve the conditions of New York City workers and our business environment.**

We support the resolution calling on the state to pass an equal pay law amendment for the same reason we support the city’s wage transparency bill – it provides additional tools for combatting the city’s costly gender wage gap. The aim of this amendment is to establish and maintain equal status and equal opportunities for women and men in the workplace by addressing loopholes in the current law. Its effect would be to help ensure employees have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender. The amendment is not only a matter of basic fairness to women, but vital to protecting the economic security of the thousands of households headed by women in the New York City metro area.

State action on equal pay is particularly important to New York City. In a metropolis as uniquely diverse as New York, our unity depends upon the populace benefiting from hard work and dedication, not suffering from bigotry and bias. In order to keep pace with a globalized economy, New York City needs to utilize the talents of all our citizens. Only by investing in workers of all genders can this city maintain its status as a leader among its global economic competitors. Furthermore, as an immigrant and a migrant city, we need to attract the best of both genders to work here and strengthen our community. Currently, the United States is ranked 20<sup>th</sup> among countries in its Gender Gap.<sup>xix</sup> If New York is to remain a worldwide business and cultural hub, we need to distinguish ourselves from this national problem by eradicating the gender wage gap within our borders.



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Thus, we strongly support this resolution to fix loopholes in the state equal pay law, which would help New York, and especially our business-driven city, to combat the pervasive gender wage gap and its insidious consequences.

### **Res. No. 615: Paid Family Leave Insurance**

Again, A Better Balance is a legal advocacy organization whose mission is to fight for policies that will protect American workers from having to choose between caring for their families and maintaining their economic security. To that end, we have been working on paid family leave issues in states throughout the country for the last ten years, and have been part of the effort to pass paid family leave in New York State for the past eight years. We appreciate the City Council's support of this issue and fully support Res. No. 615 and hope it will help influence the New York state legislature to take action on a paid family leave bill this session.

#### **Paid family leave is an issue whose time has come.**

It comes as a shock to most Americans that the United States is the only developed country that does not provide paid leave to workers when a new child is born. Among industrialized nations, the United States stands alone in its failure to guarantee workers paid leave. As of 2011, 178 countries have national laws that guarantee paid leave to new mothers. Only three countries in the world provide absolutely no legal right to paid maternity leave — Papua New Guinea, Swaziland, and the United States.<sup>xx</sup> With no right to paid family leave, workers must rely on their employers to provide these benefits, but because paying for a worker to be on leave for an extended period is costly, most employers do not or cannot voluntarily provide those benefits: as of March 2013, only 12% of American workers received paid family leave through their employers.<sup>xxi</sup> Among the lowest wage earners in the country, only 4% of workers have access to paid family leave.<sup>xxii</sup> Therefore, far too many workers are forced to choose between their jobs and their family's health and wellbeing.

The lack of paid family leave reflects the fact that our workplace laws and policies have failed to keep up with the changing nature and demographics of working families. The labor force participation rate of women and mothers has increased significantly during the past 40 years, and the number of dual-income families and single working parents has skyrocketed. This means that there is no one at home to care for seriously ill family members and that women of child bearing years are in the labor force, having children and in need of time off when they do. Despite these changes in our workplaces, we have failed to pass laws and policies that allow workers to care for loved ones without risking their economic security. It is critical that we pass laws to guarantee paid family leave to bond with new children and care for seriously ill loved ones.



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Americans are beginning to recognize the importance of this issue for our families. In his 2015 State of the Union address, our President recognized that the U.S. is “the only advanced country on Earth that doesn’t guarantee paid sick leave or paid maternity leave to our workers.” He pledged to make Federal money available to the states to study the issue with the hope that they would lead the way in providing paid family leave for their citizens. California, New Jersey and Rhode Island already have paid family leave programs that have been extremely successful and have caused no problems for employers.

And this year, there are dozens of other states exploring the possibility of setting up their own paid family leave programs. Those states do not have an infrastructure as we do here in New York in the form of a Temporary Disability Insurance (TDI) program and setting up a paid family leave program will be expensive for those states. In contrast, for New York as for California, New Jersey and Rhode Island, there is virtually no cost to using our existing TDI program to support a paid family leave component. It verges on embarrassing that other states without an existing infrastructure for paid family leave are nevertheless considering it, while New York has not been able to pass a paid family leave add-on to its existing TDI program.

The emergence of paid family leave as an important issue is a reflection that paid family leave is a win for everyone: workers, businesses, children, elders, and the economy. A paid family leave program would make it easier for new parents—both mothers and fathers—to care for their children without undue financial hardship. Research has shown that paid family leave helps parents to recover from childbirth, bond with newborn or newly adopted children, and better meet their children’s health needs.<sup>xxiii</sup> Access to paid family leave also increases the likelihood and average duration of breastfeeding, which improves the health of newborn children and their mothers.<sup>xxiv</sup> Seriously ill children benefit when their parents can afford time off to care for them. Research shows that ill children have better vital signs, faster recoveries, and reduced hospital stays when cared for by parents.<sup>xxv</sup>

In addition, with paid family leave, workers would not have to sacrifice their economic security in order to care for seriously ill or aging relatives. The benefits of family caregiving to elderly and sick individuals are clear: family caregivers can help these individuals recover more quickly and spend less time in hospitals.<sup>xxvi</sup> As a result, policies that support family caregiving create savings that benefit all New York taxpayers. Unpaid family caregivers not only help to ease the burden on our crowded hospitals and long-term care facilities but also create enormous financial savings. For example, recipients of family caregiving are less likely to have nursing home care or home health care paid for by Medicare.<sup>xxvii</sup> In 2007, unpaid family caregivers in the United States provided services valued at approximately \$375 billion a year.<sup>xxviii</sup>

As noted above, California, New Jersey, and Rhode Island have adopted—and successfully implemented—paid family leave laws that are similar to the paid family





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leave proposals in New York. Research shows that an overwhelming majority of California employers believe paid family leave has had a positive or neutral effect on their business operations.<sup>xxix</sup> Studies have also shown that paid family leave leads to business savings, by increasing employee retention, lowering turnover costs, improving productivity, and enhancing worker morale and loyalty.<sup>xxx</sup> In today's economy, paid family leave is a low-cost way to keep workers employed and to help workers meet family needs. For example, women who take paid leave after a child's birth are more likely to be employed 9-12 months after the child's birth than working women who take no leave. New mothers who take paid leave are also more likely to report wage increases in the year following the child's birth.<sup>xxxi</sup> When forced to leave their jobs or take unpaid leave, many poorer workers must turn to public assistance programs for support. By keeping workers with caregiving needs attached to the workforce, paid family leave can decrease reliance on public assistance, in turn creating significant taxpayer savings.<sup>xxxii</sup>

### **The New York proposal.**

A Better Balance is on the steering committee of the effort to pass paid family leave in New York and helped draft the bill that has been introduced in the Senate as S.3004. That bill has the following provisions:

- Uses New York State's existing temporary disability insurance (TDI) system.
- Provides workers with wage replacement during time off from work to care for a child in the first 12 months after the child's birth or placement for adoption with the worker's family. Paid family leave benefits may also be used for time off to care for a seriously ill family member and for military families to care for an injured service member or prepare for deployment.
- Family members include child, spouse, domestic partner, parent, grandchild, grandparent, sibling and parent of a spouse or domestic partner.
- Provides up to 12 weeks of benefits.
- The paid family leave benefit level is two-thirds of the worker's average weekly wage up to a maximum cap. That cap will be 35% of the statewide average weekly wage in the first year, and then gradually increased over 3 years to a cap of 50% of the statewide average weekly wage. The bill will also adopt the same benefit levels and maximum cap for TDI, the first raise in the TDI benefit level in more than 25 years.
- The bill applies to all private sector employees and contains an "opt in" provision for public employees through their unions.
- The benefit is subject to a one-week waiting period.



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- The paid family leave benefit will only be financed by payroll deductions from employees. Employers will not be required to make any contribution to the paid family leave program. The cost of TDI, as under the current TDI system, will continue to be shared by workers and employers.
- The bill provides job protection for workers who take this benefit.

**The demand for and necessity of paid family leave in New York.**

We run a clinic for workers who are having problems due to their caregiving responsibilities. We get so many calls from workers asking us about paid family leave here in New York, upset to learn there is no income support for them when they have a child. Many workers call who live in New Jersey and work in New York and are shocked to learn that the paid family leave program they have heard about in the state where they live doesn't cover them in New York where they work. We also have a petition to the Governor about paid family leave that has garnered over 12,000 signatures with more every day filled with heartbreaking stories of financial hardship as workers struggle to fill the gap in their income caused by needing to take time to bond with a new child or care for a dying parent.

New Yorkers should not have to wait any longer. Thank you to the City Council for recognizing the importance of this issue and calling for passage of paid family leave in New York State.

**Res. No. 610: New York City Authority to Set the Minimum Wage**

We strongly support this bill.

**Res. No. 611: New York City Authority to Enforce State Worker Protection Laws**

We strongly support this bill.

**Res. No. 612: Strengthening the Wage Theft Prevention Act**

We strongly support this bill.



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### Conclusion

We wish to express our sincere gratitude to Committees for considering such an important set of issues. New York City's workers deserve these greater protections. We look forward to the passage of these measures and a brighter economic future for women and families in New York.

<sup>i</sup> Office of Mayor Murray, *Mayor Proposes New Office of Labor Standards for Education, Enforcement on City Wage and Benefit Rules*, (Sept. 15, 2014) available at: <http://murray.seattle.gov/mayor-proposes-new-education-enforcement-on-city-wage-and-benefit-rules/#sthash.NmmruGNn.dpuf>.

<sup>ii</sup> See Donna Leviitt, Testimony before the NYC Committee on Civil Service and Labor, *Hearing Transcript*, (Nov. 7, 2009), available at: <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=465028&GUID=8DAC13D8-84A5-447D-B022-D1568274521D>.

<sup>iii</sup> National Partnership for Women & Families, *New York Women and the Wage Gap* (April 2014), available at [http://go.nationalpartnership.org/site/DocServer/Wage\\_Gap\\_ny.pdf](http://go.nationalpartnership.org/site/DocServer/Wage_Gap_ny.pdf).

<sup>iv</sup> *Ibid.*

<sup>v</sup> *Ibid.*

<sup>vi</sup> *Ibid.*

<sup>vii</sup> *Ibid.*

<sup>viii</sup> See *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), abrogated by Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.

<sup>ix</sup> *Ibid.*

<sup>x</sup> See, Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.

<sup>xi</sup> See, e.g. Deborah Thompson Eisenberg, *Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 ARIZ. ST. L.J. 951, 982-1006 (2011).

<sup>xii</sup> Institute for Women's Policy Research, *Pay Secrecy and Paycheck Fairness: New Data Shows Pay Transparency Needed*, Nov. 2010, available at: [www.iwpr.org/press-room/press-releases/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed](http://www.iwpr.org/press-room/press-releases/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed).

<sup>xiii</sup> *Crawford v. Metro. Gov't of Nashville & Davidson Cnty, Tenn.*, 555 U.S. 271, 279 (2009) (quoting Deborah L. Brake, *Retaliation*, 90 Minn. L.Rev. 18, 20 (2005)).

<sup>xiv</sup> See Marianne DelPo Kulow, *Beyond the Paycheck Fairness Act: Mandatory Wage Disclosure Laws—A Necessary Tool for Closing the Residual Gender Wage Gap*, 50 HARV. J. ON LEGIS. 385, 427-34 (2013). 427-34

<sup>xv</sup> Cynthia Estlund, *Extending the Case for Workplace Transparency to Information About Pay*, 4 UC IRVINE L. REV. 781, 786 (2014).

<sup>xvi</sup> See Jennifer J. Lee, *Private Civil Remedies: A Viable Tool for Guest Worker Empowerment*, 46 LOY. L.A. L. REV. 31, 67-74 (2012).

<sup>xvii</sup> Cynthia Estlund, *Extending the Case for Workplace Transparency to Information About Pay*, 4 UC IRVINE L. REV. 781, 784 (2014).

<sup>xviii</sup> See, e.g. Nicole Buonocore Porter, *Choices, Bias, and the Value of the Paycheck Fairness Act: A Response Essay*, 29 ABA J. Lab. & Emp. L. 429, 441 (2014).

<sup>xix</sup> World Economic Forum, *Global Gender Gap Index 2014*, (2014), available at: <http://reports.weforum.org/global-gender-gap-report-2014/rankings/>.

<sup>xx</sup> *Failing its Families: Lack of Paid Leave and Work-Family Supports in the US*, Human Rights Watch (Feb. 2011), p. 1. There is insufficient information on paid leave in Bhutan, Liberia, Tuvalu, Samoa, Sierra Leone, Bosnia-Herzegovina, Marshall Islands, Micronesia, and Suriname.

<sup>xxi</sup> U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2013* (September 2013), Civilian Workers Table 32, available at: [www.bls.gov/ncs/ebs/benefits/2013/ebb10052.pdf](http://www.bls.gov/ncs/ebs/benefits/2013/ebb10052.pdf).

<sup>xxii</sup> *Ibid.* (figure for the bottom 10% of wage earners)

<sup>xxiii</sup> *Ibid.*, pp. 37-48.

<sup>xxiv</sup> *Ibid.*, pp. 37-38.

<sup>xxv</sup> See S. J. Heymann, A. Earle & B. Egleston, *Parental Availability for the Care of Sick Children*, *Pediatrics*, Vol. 98 No. 2 (Aug. 1996), pp. 226-30; S.J. Heymann, *The Widening Gap: Why America's Working Families are in Jeopardy and What Can Be Done About It*, Basic Books (2000), p. 57.

<sup>xxvi</sup> See, e.g., A. Houser & M.J. Gibson, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*,

AARP Public Policy Institute (Nov. 2008), pp. 1-2, 6; --, *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, AARP (June 2007), p. 6.

<sup>xxvii</sup> Houser and Gibson, *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, p. 6.

<sup>xxviii</sup> --, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*, pp. 1-2.

<sup>xxix</sup> E. Appelbaum & R. Milkman, *Leaves that Pay: Employer and Worker Experiences with Paid Family Leave in California*, CEPR (Jan. 2011), p. 4.

<sup>xxx</sup> See, e.g., *Ibid.*, pp. 5, 8; E. Rudd, *Family Leave: A Policy Concept Made in America*, Sloan Work and Family Research Network (2004).

<sup>xxxi</sup> L. Houser & T. Vartanian, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*, commissioned by the National

Partnership for Women & Families and conducted by the Center for Women and Work at Rutgers University (Jan. 2012), pp. 6-7.

<sup>xxxii</sup> See, e.g., A. Dube & E. Kaplan, *Paid Family Leave in California: An Analysis of Costs and Benefits*, Labor Project for Working Families (July 2002), pp. 44-49 (estimating annual savings of \$23.5 million in usage of food stamps and TANF).



# NYCLU

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FOR THE RECORD

**Testimony of the New York Civil Liberties Union**

**Before**

**The New York City Council Committee on Women's Issues**

**In support of**

**Res. No. 615 calling upon New York State Policy Makers to pass the Paid Family Leave Act**

**April 20, 2015**

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The New York Civil Liberties Union would like to thank the Committee on Women's Issues for the opportunity to provide testimony in support of Res. No. 615 calling upon the New York State Legislature to pass, and the Governor to sign, the Paid Family Leave Act to provide security for New York's working families. We thank you for your leadership on an issue that is so critical for women and families in New York State.

The New York Civil Liberties Union ("NYCLU"), the state affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state, and nearly 50,000 members. The NYCLU's mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. This includes the right to equal opportunities that is the foundation of policies that seek to advance gender equity and fairness in our society. To this end, the NYCLU strongly supports a paid family leave policy that helps working families in New York make sound choices about having children and caring for one another.

When a family welcomes a new child or a family member has a medical emergency, many New York workers face a difficult dilemma. If they are among the 60 percent of workers covered by the federal Family and Medical Leave Act (FMLA), they have the option of taking time off from their jobs unpaid. But if workers can't afford to forego the pay – which is often the

case<sup>1</sup> – their families are without a caregiver at a time of urgent need. The fact is, only 12 percent of employees nationwide receive paid family leave from their employers.<sup>2</sup>

Given that the vast majority of care giving continues to be provided by women, the lack of paid family leave is not only a matter of economic justice – it is an injustice that implicates constitutional principles of gender equality.

The Paid Family Leave Act (S.3004/A.3870) would guarantee workers up to 12 weeks of paid leave to bond with a new child or care for a seriously ill family member. This legislation would establish a paid family leave benefit that is administered through the state’s Temporary Disability Insurance (TDI) program, a longstanding insurance system familiar to New York businesses. Established in 1950, the TDI system provides temporary cash benefits for workers injured off the job or for disabilities arising from a pregnancy. When this new benefit is fully phased in, workers who need time off to care for a loved one could apply for family leave benefits through TDI and receive a “wage replacement” for two-thirds of their average weekly wage for up to 12 weeks. And while TDI is jointly funded by employers and employees, the paid family leave benefit will be financed *solely* through small employee payroll deductions of up to 45 cents a week in the first year.<sup>3</sup>

The proposed legislation also contains a critical modernization of our TDI benefit program. Since 1989, workers have been able to claim up to \$170 a week in temporary disability insurance benefits. While other states have raised benefits to reflect increased cost of living, New York’s benefit level has remained unchanged for over 25 years. This legislation would phase in, over a period of four years, increases in the TDI and paid family leave benefit levels – up to a maximum benefit level equaling 50 percent of the state’s average weekly wage. Based on this

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<sup>1</sup> Jacob Klerman, et al., *Family and Medical Leave in 2012: Technical Report*, Abt Associates for U.S. Dep’t of Labor (Sept. 2012), at 161, available at: <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

<sup>2</sup> Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2013* (released Sept. 2013) at 108 (table 32, leave benefits for civilian workers), available at: <http://www.bls.gov/ncs/ebs/benefits/2013/ebb10052.pdf>.

<sup>3</sup> In subsequent years, New York’s Superintendent of Financial Services will determine the amount of employee contributions based on the cost per worker of providing paid family leave through the state insurance fund. A report from the Fiscal Policy Institute estimated the midpoint range of benefit contributions for an employee when the legislation is fully phased in at 88 cents per week. *Reform of New York’s Temporary Disability Insurance Program and Provision of Family Leave Insurance: Estimated Costs of Proposed Legislation*, A Fiscal Policy Institute Report, June 2, 2014, at 12, available at [www.fiscalpolicy.org](http://www.fiscalpolicy.org) (in New Jersey for 2014 the weekly employee contribution for the paid family leave benefit was 60 cents).

formula, the maximum weekly benefit when fully phased in would be approximately \$600. In a state where the cost of living has gone up 88 percent since TDI was last raised in 1989, and where the minimum wage is \$8.75 per hour, no family can hope to cover even the minimum cost of housing and food on \$170. This long-overdue increase will make the TDI benefit a meaningful one – for those who suffer temporary disabilities on the job and for those who need to take leave to care for a loved one.

Over the past several decades, New York’s workplaces and families have changed dramatically – there are more women in the paid workforce than ever before; in most families, both parents have outside jobs; many households are headed by single parents; and family members are living longer and require more care in the latter part of their lives. Given these realities, paid family leave is essential to the health and well-being of New York’s workforce – especially those who live paycheck to paycheck and lack job security. This benefit will provide critical support to women, who disproportionately bear the burden of both child care and elder care. For less than the cost of a cup of coffee per week for each worker who pays into the system, all workers can receive a paid family leave benefit.

And the benefits of paid leave accrue to employers as well. Research has found that the availability of paid family leave helps businesses retain valued employees, reduce turnover, boost productivity, and increase loyalty and morale among workers.<sup>4</sup> This is particularly true for small business settings, where colleagues work closely together. In fact, paid family leave will help small businesses remain competitive and retain talented employees by providing a benefit that is currently offered to employees of large companies.<sup>5</sup> Indeed, a Small Business Majority poll found that 8 in 10 small businesses in New York support expanding the state’s disability insurance program to provide paid family leave.<sup>6</sup> And for businesses that already provide paid

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<sup>4</sup> A recent study showed that an overwhelming majority of California employers believe PFL has had a positive or neutral effect on their business. See Eileen Appelbaum & Ruth Milkman, *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy* (2013), at 68-72; Eileen Appelbaum & Ruth Milkman, *Leaves that Pay: Employer and Worker Experiences with Paid Family Leave in California*, Ctr. for Econ. & Policy Research (Jan. 2011) at 4, 8; see also Elizabeth Rudd, *Family Leave: A Policy Concept Made in America*, Sloan Work and Family Research Network (2004), available at <http://workfamily.sas.upenn.edu/wfrn-repo/object/ed5rb04oq4vm53b1>.

<sup>5</sup> See Eileen Appelbaum & Ruth Milkman, *Achieving a Workable Balance*, Rutgers Ctr. for Women & Work (2006) at 23.

<sup>6</sup> Small Business Majority, *Opinion Poll: New York Small Businesses Support Family Medical Leave* (Dec. 2013), at 7, available at: <http://www.smallbusinessmajority.org/small-business-research/downloads/121213-Family-Medical-Leave-NY-poll-report.pdf>.

family leave, a state paid leave program will help to offset existing costs. As with the TDI program, employers will be able to provide paid family leave through the state insurance fund, or they can choose to provide family leave to their employees on their own or through a private insurer and seek reimbursement for some of the cost.<sup>7</sup>

The United States is the only developed nation that does not provide paid family leave, putting us in the company of Papua New Guinea and Swaziland. Some states, however, are changing that—individual states are leading the way in developing paid leave policies that support workers and their families. California, New Jersey, and Rhode Island have successfully integrated paid family leave into their TDI programs; and studies show that an overwhelming number of employers found a neutral to positive impact on business, productivity, and employee morale.<sup>8</sup>

Lawmakers have an opportunity to promote equal opportunities for women, healthy families, and a stable workforce with the adoption of a paid family leave program. This law will ensure that no New Yorker has to choose between a paycheck and the health and well-being of her family. The NYCLU urges our State Legislature to make paid family leave a reality for all New York workers.

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<sup>7</sup> N.Y. Workers' Comp. Law § 211.

<sup>8</sup> See note 4, *supra* (describing findings from surveys and studies of California employers regarding PFL).

TESTIMONY

**Day Laborer Centers- Fair Wages and Workplace Safety  
for all New Yorkers**

Presented to  
New York City Council, Committee on Civil Service and Labor  
Hon. J. Dancek Miller, Chair  
Jointly with the Committee on Women's Issues  
Monday, April 20, 2015

Prepared by:  
**Valeria Teves and Jesus Bueno,**  
**New Immigrant Community Empowerment**





Good afternoon, Chairperson Miller, Chairperson Cumbo, and the distinguished members of the New York City Council Committee on Civil Service and Labor and New York City Council Committee on Women's Issues. On behalf of New Immigrant Community Empowerment (NICE) I want to thank you for this opportunity to testify today on the importance of creating safe and fair working conditions for all New Yorkers. My name is Valeria Treves, I am Executive Director of NICE.

*My nombre es Jesus Bueno, Y soy miembro líder de NICE. Yo trabajo en construcción todos los días solo que hoy por la lluvia el patrón cancelo el trabajo. Sino trabajo, no gano pero por lo menos tengo la oportunidad de presentar este testimonio frente ustedes. También cuando me enfermo nadie me reconoce los días, esta es la vida de un jornalero (My name is Jesus Bueno, I am a member leader of NICE. I work in construction every day, but today because it is raining work has been cancelled. If I don't work, I don't get paid, but at least I have the opportunity to present testimony before you today. Also when I get sick, it is not recognized. This is the life of a day laborer.)*

NICE is an organization dedicated to immigrant workers' rights, focused on organizing and serving primarily day laborers and domestic workers. Today I will focus primarily on our work with day laborers and the pervasive wage theft that they experience in our community of Northwest Queens. A situation that, as I will elaborate, is similar to that faced by day laborer across the city. We are here today in support of LS 4455, Resolution 610, 611 and Resolution 612 because of primarily our work with Day Laborers in New York City. We strongly believe both the bill and resolutions will help to bring change to some of the harsh realities we witness every day in this community.

As part of our work organizing day laborers, NICE runs a monthly wage theft clinic at our offices, in collaboration with UJC, where immigrant workers meet as a group with organizers but also individually with an attorney to discuss their wage theft cases. In 2014 alone, we had 87 different individuals from the Northwest Queens community who came to the clinic due to unpaid wages. Together they had \$239,333 dollars stolen from their wages, this was also a total of 653 days of work that they worked and were not paid for. Often after doing grueling back breaking work under all types of harsh weather including excavation, moving sand, pouring concrete, or cleaning construction sites, among others. This theft of the wages of low income New Yorkers is an affront on their human dignity, when you work you must get paid.

*Para darles un ejemplo, les voy a contar lo que le sucedió a un compañero, Adrián, que es jornalero de la Parada 69 y llegó por primera vez a NICE la semana pasada. Esto es lo que dice el compañero: (To give you an example and I am going to tell you the story of what happened to a compañero, Adrian, he is a day laborer from the 69th St. day laborer stop and came for the first time to NICE last week. Here is what he has to say: )*

*“Cogí un trabajo en la parada de la 69 st. Trabajé de 10 am hasta las 6pm. Antes de subirnos al carro con otro compañero de la parada negociamos y el empleador nos dijo que nos iba a pagar \$120 por el trabajo del día. El trabajo fue de sacar arena de un piso alto de una casa y bajarla hasta la planta baja con botes. Al terminar el día, nos fuimos en el carro del empleador. Cuando nos dice que nos bajemos del carro y nos pagó 35 dólares a cada uno. Cuando eso pasó yo le dije que él me había dicho que me iba a pagar \$120 por el trabajo, y en vez de darme una respuesta me gritó y me dijo que me bajara. Nos dejó en el medio de la nada y nos robó. (“I got a job at the 69th St. stop working from 10 AM to 6 PM. Before getting into the employer’s car, with another worker, we negotiated a wage with the employer. He said he would pay \$120 for the day’s work. The work was to remove sand from a high up floor in a house and bring it down in buckets. When the day was over, we left in the employer’s car. Suddenly, he tells us to get out of the car and he gives us each \$35. When I told him he had promised me \$120 for the job, instead of giving me an answer he yelled at me to get out of his car. He left us in an unknown place and he robbed our wages.)*

*En otro caso. Trabajé limpiando un basement y el segundo piso, sacando toda la basura de la construcción. El empleador nos decía que nos iba a pagar en la semana. Cuando llegó el sábado pensé que ya iba a pagar porque confié en su palabra. Pero llegó ese día y no pagó. Ya que no tenía otro trabajo y confié en el jefe seguí trabajando. Además creía que si seguía trabajando cuando me pagara me iba a pagar una cantidad bien grande. Mientras tanto yo gastaba mi dinero para transportarme. Pero al final ya no pude, se dieron 2 semanas de trabajo de las 8pm hasta las 6am. No me quiso pagar. Por causa de esto me tuve que ir a dormir a la calle. No tenía para pagar la renta. Me quedé confundido y transtornado.” (In another case, I worked cleaning a basement and second floor doing construction clean up. The employer said he was going to pay us for the week. When Saturday arrived, I thought he was going to work because I trusted him at his work. But that day came and he didn’t pay. Since I didn’t have another job*

and I trusted him I stayed working. I believed that if I kept working he would pay me, the now bigger amount that he owed me. But at the end I could no longer do it. Two weeks went by that worked from 8 AM to 6 PM, and he didn't want to pay me. Because of this I ended up having to sleep on the street because I could not pay rent. I was left confused and very distressed" )

*Asi como le ocurre a Adrian, nos a pasado a los jornaleros de la parada de la 69.* (Just like this story that happened to Adrian, this is what happens to us as workers in the day laborer stop at 69th St.)

There are currently 8,000-10,000 day laborers in New York City. Day laborers often experience rampant wage theft. The 2006 National Day Laborer report "On the Corner" Over 49% have experienced wage theft where they did not receive the agreed upon payment or did not receive payment altogether and a median income for this community of \$15,000. We are talking about very poor New Yorkers. In addition to wage theft, this community faces as well as pervasive construction accidents, workforce hazards, lack of access to workforce development training and lack of infrastructure which are topics we can discuss more at length at another hearing.

Although Day Laborers, like all workers, are protected under current workers protections laws, they are often difficult to enforce. In a recent report by the SWEAT Coalition, "Empty Judgments: the Wage Collection Crisis in NY", researchers found that almost \$130 million in court judgments and NYS Department of Labor decisions have gone uncollected. State enforcement mechanisms are clearly leaving our community short.

It is for that reason we strongly support and call on the City Council to pass LS 4455, Resolutions 610, 611 and 612, we believe that both the bill and resolutions will assist the city in preventing wage theft by bolstering the city's enforcement powers so they can act in this issue of crisis proportions for New York City Day laborers as well as other low wage working New Yorkers.

In addition, today we are also asking members of the City Council to support the Day Laborer Workforce Initiative with an allocation of 365,000 in the FY16 budget. The Day Laborer Workforce Initiative supports the expansion and development of Day Laborer Centers across the five boroughs., specifically the Bay Parkway Community Job Center and Williamsburg Community Job Center, in Brooklyn (run and operated by Worker's Justice Project), NICE Worker's Center in Queens (run and operated by New Immigrant Community Empowerment), and Staten Island Community Job Center. With expanded support these workers' centers can not only

continue to assist workers that have experienced wage theft, collaborating hopefully soon with a city office of labor Standards. Our centers, actually prevent wage theft by creating a safe space for workers and employers to come together to negotiate fair wages and safe condition. When day laborers secure jobs at a worker's center rather than on the street, it is clear who is hiring and what they conditions are. This is in extreme contrast to securing a job at a the day laborer stop where workers often don't know who the employer is aware more vulnerable to wage theft. The Day Laborer Workforce initiative will support the expansion of these four Day Laborer Centers, which will provide dignified, physical space for day laborers, curtailing wage theft, also providing much needed workforce development and health and safety training and resources.

*Esperamos contar con su apoyo no solo para estas importantes leyes y resoluciones sino también para nuestros Centros de Trabajadores.* We hope to count on your support not only for this important bill and resolutions, but also for our Day Laborer Centers.

## 15 Now NYC

302 Morgan Ave. Suite B2  
Brooklyn, NY 11211  
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<http://15nownyc.tumblr.com>



### **Testimony of DANIEL KROOP, Lead Organizer, 15 Now NYC**

New York City Council, Joint Meeting Of The Committee On Civil Service & Labor and  
The Committee On Women's Issues

April 20, 2015

Good afternoon, and thank you to the Chairs of the Civil Service & Labor Committee and the Committee on Women's Issues for inviting me to speak today. I would also like to thank Councilmember Johnson for endorsing our campaign, and encourage all Councilmembers to support \$15 as well.

My name is Daniel Kroop and I am New York's Lead Organizer for 15 Now, part of a nationwide grassroots movement for a \$15/hr minimum wage. On behalf of thousands of people who have signed our petition, I speak in support of Resolution 610, which calls on Albany to grant New York City home rule on the minimum wage. However, we believe there are additional steps the City Council must take now, including supporting \$15 for all city workers.

First, I would like to share with Councilmembers the massive scale of the \$15/hr movement. 63% of Americans now support a \$15/hr federal minimum wage (National Employment Law Project, January 2015). One April 15<sup>th</sup>, we saw the largest-ever mobilization of low-wage workers in the history of the country, with 60,000 people in the streets, and 15,000 in New York.

My organization, 15 Now, was formed in Seattle in January 2014 with the support of Socialist Alternative City Councilmember Kshama Sawant, labor unions and community groups. 15 Now played a key role in the historic victory of \$15 in Seattle, and there are now chapters in over 25 cities.

The fight for \$15 is key in New York because poverty and inequality are at crisis levels. 46% of our neighbors live at or beneath the poverty line, and our paltry minimum wage of \$8.75 contributes directly to that (*The CEO Poverty Measure, 2005-2012*, Office of the Mayor).

Comptroller Stringer's recent report shows that New York's minimum wage is the lowest of any major city after cost-of-living is taken into account (*Comptroller Stringer Report: Raising Minimum Wage in New York City*, April 14, 2015).

Yet this poverty festers in the shadow of extreme wealth. New York has more billionaires than anywhere in America, and New York's financial sector gave out bonuses of \$28.5 billion last

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year alone. That is *twice* what all full-time federal minimum wage workers earn in a year (The Institute for Policy Studies).

Run-away inequality and poverty are fueling the fight for \$15, and in two years it has grown into the largest workers' movement in decades. It represents the aspirations of Americans fed up with the rule of big corporations and the 1%. It is joining up with the women's movement, Black Lives Matter, the immigrant justice movement, and many others, because women, African-Americans and Latinos make up a disproportionate share of low-wage workers.

We support Resolution 610 and the Council's call for Home Rule on the minimum wage. But we should have no illusions: Albany has already shown its priorities. Governor Cuomo's state budget was riddled with tax breaks on yachts and private jets, but lacked any raise for low-wage workers.

That is why the Council must do the right thing and support \$15 for city workers as a first step towards winning \$15 for every New Yorker. A similar law was adopted in February in Portland, Oregon, which also lacks home rule.

The need is urgent. According to MIT's Living Wage Calculator, a living wage is closer to \$25/hr for a single working parent in New York. But many city workers, from crossing guards to custodians, earn far less than \$25 or even \$15/hr.

In conclusion, 15 Now's task is to help build a mass movement of the working class, for only that can ensure lasting change.

I put to the Council its task, to vote in favor of Resolution 610 and then take immediate steps to support \$15 in every way possible, including by raising city workers' wages. For millions of New Yorkers, the rent can't wait. Thank you.

# TESTIMONY

## **Day Laborer Centers- Fair Wages and Workplace Safety for all New Yorkers**

Presented to  
New York City Council, Committee on Civil Service and Labor  
Hon. J. Daneek Miller, Chair  
Monday, April 20, 2015

Prepared by:  
**Staten Island Community Job Center**

### **Opening**

Good afternoon, Chairperson Miller, Chairperson Cumbo, and the distinguished members of the New York City Council Committee on Civil Service and Labor and New York City Council Committee on Women's Issues. On behalf of the Staten Island Community Job Center I want to thank you for this opportunity to testify today on the importance of creating safe and fair working conditions for all New Yorkers.

The Staten Island Community Job Center was established by a group of day laborers, domestic workers and allies to provide a space where workers and potential employers can come together. The informal way in which many day laborers access work is the main reason for the high rates of wage theft and workplace accidents. Job Centers are a proven alternative that offers the employers access to qualified and dependable workers at the same time the workers have access to education and training and dignified wages.

We are here today in support of LS 4455, Resolution 611 and Resolution 612 because of our work with Day Laborers and other immigrant workers in New York City. We strongly believe both the bill and resolutions will help to bring change to some of the harsh realities we witness every day.

### **Background**

There are currently 8,000-10,000 day laborers in New York City. Day laborers often experience rampant wage theft, pervasive construction accidents, workforce hazards, lack of access to workforce development training and lack of infrastructure. Women Day Laborers who are often in-house domestic workers have experienced high volumes of sexual harassment and/or assault. Day Laborers who are undocumented immigrants are often threatened with deportation after completing their jobs and cannot advocate for their pay.

In 2009 A final report issued by a City Council NYC Temporary Commission on Day Laborer Job Centers recommended that New York City Government should encourage and assist the development of appropriately located and configured community facilities where low-wage immigrant workers, including day laborers, can receive the critically needed job-related programs. However, eight years later no significant investment has been made and the working conditions of day laborers continue to deteriorate. Workers continue to suffer wage and hour violations and workplace accident and fatalities continue to climb.

The proposed legislation would only enhance the protections of workers in our city and we must support any efforts that will improve their working conditions and wellbeing. We have to also keep in mind the nuances of the day laborer workforce to make sure the implementation of these proposed legislations will impact the day laborer community



### **Closing**

Although Day Laborers (including those who are undocumented) are protected under current workers protections laws, they are often difficult to enforce. It is for that reason we strongly support and call on the City Council to pass LS 4455, Resolution 611, and Resolution 612, we believe that both the bill and resolutions will assist the city in preventing wage theft, educating and enforcing existing laws for the protection of workers, and most importantly help to uplift the Day Laborer workforce which often bears the brunt of unsafe and unfair work practices and conditions.

Also, we ask members of the City Council to support the Day Laborer Workforce Initiative with an allocation of 365,000 in the FY16 budget. The Day Laborer Workforce Initiative supports the expansion and development of Day Laborer Centers across the five boroughs. There are four main day laborer centers in New York City: Bay Parkway Community Job Center and Williamsburg Community Job Center, in Brooklyn (run and operated by Worker's Justice Project), NICE Worker's Center in Queens (run and operated by New Immigrant Community Empowerment), and Staten Island Community Job Center. This initiative will support the expansion of these four Day Laborer Centers, which will provide dignified, physical space for day laborers, and provide support through job referrals, wage theft legal clinics, referral to critical services, and workplace development.



**Testimony by**

**Nancy Rankin, Vice President for Policy Research and Advocacy  
Community Service Society of New York**

**Before the Joint Hearing of the New York City Council**

**Committee on Civil Service and Labor and the Committee on Women's Issues**

**April 20, 2015**

Thank you for the opportunity to testify today in support of several proposed actions that would help raise the incomes of New York City's working women and low-income families. These measures include resolutions calling upon the State to enact paid family leave and to grant New York City the authority to set its own minimum wage, as well as local legislation to create an Office of Labor Standards and protect workers who share wage information needed to uncover and fight wage discrimination. Not only would these actions bolster family earnings, they would drive economic growth by increasing spending at local businesses and enabling women to fully participate in the labor market.

My name is Nancy Rankin. I am Vice President for Policy Research at the Community Service Society of New York, a nonprofit organization that works to advance upward mobility for low-income New Yorkers. Today, CSS continues its remarkable 172-year legacy in using rigorous research to drive changes in public policy to combat poverty and economic inequality.

Paid family leave is an economic necessity for all working families in New York State, but especially for working women struggling to survive on low wages. They cannot afford to take unpaid leave or risk losing their jobs when a new baby arrives, an aging parent survives a devastating stroke, or a child is stricken with cancer. According to the latest BLS statistics (March 2014 National Compensation Survey), a mere five percent of workers in the bottom wage quartile have paid family leave from their employers. Because many are working for smaller employers, they do not even have federal FMLA protections of unpaid family leave.

In New York City, one out of four working women lives in a low-income household. That's close to half a million working women, scraping by on less than \$38,000 for a family of three.

Almost two-thirds of them are black or Latina. Their jobs and earnings are essential for keeping both their families afloat and the local businesses where they shop and work thriving.

Some will argue workers could use saved up vacation and sick days to deal with family needs. But that ignores the stark reality that half of low-wage workers do not get any paid vacation according to 2014 BLS statistics. While the Council can take pride that legislation it passed in 2013 and 2014 have ensured that all workers have access to sick leave, those five days are for routine illnesses, not the extended time needed to care for a newborn or seriously ill family member. Low-paid workers are unable to save anything from their inadequate wages to sustain themselves and their families for days, much less weeks, without a paycheck. According to CSS's latest annual Unheard Third survey, close to half (46%) of low-income working mothers in New York City have \$500 or less to fall back on in an emergency. For someone earning the current minimum wage, seven days lost pay would entirely wipe out their life savings.

When critical family needs trigger job loss, a low-income family's hardships skyrocket. CSS's survey found that among low-income households reporting job loss, the proportion failing to meet their rent doubled, and the number unable to fill a needed prescription shot up to 38 percent from 18 percent. Compared to low-income families that did not experience job loss in the past year, those that did were 25 percent more likely to report being on Medicaid and 32 percent more likely to receive food stamps.

CSS recently conducted a series of focus groups with low-income new moms. They told us of feeling pressured to return to work, in some cases in as little as two weeks after giving birth, for fear of losing their jobs and worries over mounting bills. As one young mother put it, "I'm petrified I'm going to lose my job." Another described her anxiety about falling behind with Con Edison and other payment plans, "I'm constantly in fear, waking up in the middle of the night." Almost none of the new mothers were informed by their employers, as required by law, of their right to Temporary Disability Insurance benefits, which even though inadequate in duration and amount, would have provided at least some help.

As an immediate step, the Council should consider actions that can be taken even ahead of passage of paid family leave to ensure that pregnant working women in the City are aware of their existing rights to FMLA leave, to reasonable accommodation at their workplace during their pregnancy and to the few weeks of minimal TDI benefits we currently have. For example, can medical providers treating pregnant patients be encouraged or required to provide a basic guide developed and distributed by the City? Can the City create an app for pregnant New Yorkers?

Beyond this outreach to raise awareness of laws already on the books, we need to make New York the next state to provide paid family leave. Modernizing our existing Temporary Disability Insurance system is a smart, affordable way to provide paid family leave. It makes sense to build on this statewide system, as the Council resolution urges. Three of the other five

TDI states—California, New Jersey and Rhode Island—have already moved forward to provide paid family leave. To be meaningful, however, benefits must be adequate. The current TDI cap of \$170 a week, frozen since 1989, lags dramatically below every other TDI state. So we need to gradually raise the maximum concurrently for existing purposes and paid family leave to half the statewide average weekly wage. Under the legislative proposal supported by the City Council’s resolution, workers would receive two-thirds of their own weekly wage, up to this cap of about \$600.

Concerns have been raised by some upstate business groups that paid family leave could have a negative impact on business. But studies of the experience in California and New Jersey show just the opposite. Eighty-seven percent of employers surveyed in California said that their state’s program had not resulted in cost increases. A program that helps workers pay their bills while they care for an infant or seriously ill family member allows employees to return to work feeling more productive and committed to their jobs, grateful that they were able to meet their family responsibilities. But we need not look all the way to California, we can look right here to New York City, where very similar concerns were raised that requiring small businesses to provide paid sick days would be a “job killer”. What’s happened in the year since paid sick time went into effect? New York City has experienced record job growth and is the strongest local economy in the state according to a recent report from the New York Federal Reserve Bank.

Fortunately, New York is poised and ready to become the next state to provide paid family leave.

- Not only do we have a TDI program already in place as the foundation, but
- We have the Cuomo administration’s own Medicaid Redesign Team that made enacting paid family leave one of its top three priorities in its October 2014 report. This respected group of statewide leaders, that I had the honor of being part of, cited ample research showing the benefits to maternal and child health, as well as projected long run savings from improved health outcomes, averting job-loss induced Medicaid enrollment, and reducing hospital readmissions by enabling family caregivers to assist with increasingly complex post-discharge needs.
- And we have widespread public support. Eighty-four percent of New York City adults polled in a 2014 CSS/Lake survey support modernizing TDI to provide paid family leave. Most striking is the growing intensity of that support; two-thirds now strongly support the idea, up from 42 percent a decade ago. Support crosses party lines with 89 percent of Democrats, 83 percent of independents and 65 percent of Republicans all favoring paid family leave legislation.

Paid family leave is an idea whose time has come.

Along with paid family leave, of course, workers need to earn adequate wages. But what is even minimally adequate varies tremendously depending on where you live. In 2003, two U.S. cities

had higher local minimum wages, but since 2012, 18 additional cities and counties have established local minimum wages. Allowing New York City to set its own minimum wage to better reflect the high costs of living in New York City in comparison to rural upstate towns makes sense and enjoys widespread public support. Community Service Society's latest annual survey found that three-quarters of city residents polled favor the idea, including 64 percent who do so strongly.

Community Service Society also endorses the proposal to establish a city office of labor standards. As someone involved in the effort to pass paid sick days, I recall the challenges faced in figuring out which city agency would be appropriate to enforce it, given the absence of a local labor department. The Department of Consumer Affairs has done an impressive job implementing the city's new paid sick leave law, including spearheading a robust outreach effort. However, as we consider adopting other laws, including a local minimum wage and the wage transparency act, it would be better to have an agency with a clear focus on labor to administer and enforce these measures.

Taken together, these resolutions and bills will do much to address economic inequality now and in the next generation of New Yorkers.



# NEW YORK PAID FAMILY LEAVE INSURANCE CAMPAIGN

Testimony by

Donna Dolan, Executive Director of the New York Paid Leave Coalition

Before the New York City Council Committee on Civil Service and Labor jointly with the Committee on Women's Issues

Hearing on Res. No 615 Resolution calling upon the New York State Legislature to pass, and the Governor to sign, the Paid Family Act to provide support and security for New York's working families.

April 20, 2015

Thank you very much for the opportunity to testify today in support of Resolution No 615 calling upon the New York State Legislature to pass, and the Governor to sign, the Paid Family Act to provide support and security for New York's working families.

My name is Donna Dolan, I am Executive Director of the New York Paid Leave Coalition, one of the organizations leading the New York Paid Family Leave Insurance Campaign.

Today's families are working families. Over recent decades, the number of workers who carry or share primary responsibility for family care has continued to rise. Yet, today the United States stands virtually alone as a nation in not providing a federal policy of paid family leave. Instead, those times when families should come first-- the first months after a new child's arrival, recovery of a child or family member from an accident or serious illness, the last weeks of a dying parent or grandparent--are too often a time of severe stress and economic hardship. As families become more and more dependent on each paycheck to meet their financial obligations, the decision to take unpaid time to care for a loved one is difficult for many families, if not impossible.

Paid family leave is a program with a proven track record of helping working families. California, New Jersey, and Rhode Island all have paid family programs that build on pre-existing temporary disability programs. This is the same format proposed in New York legislation.

California implemented their paid family leave program on July 1, 2004. Since the implementation of the program noted researchers and authors Ruth Milkman and Eileen Appelbaum have studied the program. Ruth and Eileen were unable to join us today, in their absence I would like to share with you some of their findings.

The California paid family leave program added wage replacement for up to six weeks of family leave – either to care for a seriously ill family member or bond with a new child. Those who take paid family leave receive up to 55% of their normal pay up to the maximum benefit of about \$1,000 per week, indexed to inflation. This is an insurance program that can be drawn upon when a covered life event occurs. The program is paid for entirely through employee payroll deductions. It has no carve outs: the state’s entire private sector is covered. Both men and women can receive the benefit and domestic partners as well as adoptive and foster parents are eligible.

The research conducted by Ruth and Eileen show many positive benefits from the program. Paid family leave not only makes it easier for workers to care for a new child or a seriously ill family member, but also promotes breastfeeding, makes it easier to arrange for child care, and positively affects the health of family members receiving care. Low wage workers with access to paid family leave during a covered event experience higher wage replacement while on leave ensuring financial stability.

As California considered paid family leave legislation the business community had many concerns. The state’s Chamber of Commerce and other business lobbyists vociferously opposed paid family leave. They argued that it would be a “job killer” and that small businesses in particular would be greatly burdened. They were especially concerned about how the work of employees on leave would be covered and expressed concern about potential abuse of the program.

Ruth and Eileen surveyed a representative sample of 250 businesses in California five years after implementation of the program. These businesses reported that paid family leave had no effect or a positive effect on the vast majority of businesses in regard to profitability/performance, productivity, employee turnover, and employee morale. 91% of respondents reported that they had not experienced *any* cases of paid family leave abuse, and among the 9% that did report abuse, it was typically a single instance. Most employers, 87%, reported no increased cost as they were able to reassign the work of the absent employee. The research also showed a growing use of paid family leave by fathers – paid family leave is a social leveler for income inequality as well as gender inequality.

The experience of California shows that paid family leave provides benefits for working families and business. Now is the time for New York to enact paid family leave. Thank you for your consideration of this important resolution and we call upon the Committee of Civil Service and Labor together with with Women’s Issues Committee to send Res. 615 to the Council to vote to call upon the New York state Legislature to pass, and the Governor to sign, the Paid Family Leave Act to provide support and security for New York’s working families.

Thank you for your consideration of Resolution 615.

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TESTIMONY

ON

RESOLUTION 0612-2015, WHICH CALLS UPON THE NEW YORK STATE LEGISLATURE  
TO PASS, AND THE GOVERNOR TO SIGN,  
STATE ASSEMBLY BILL NO. A5501,  
TO STRENGTHEN THE PROVISIONS OF THE WAGE THEFT PREVENTION ACT

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL  
COMMITTEE ON CIVIL SERVICE AND LABOR AND  
COMMITTEE ON WOMEN'S ISSUES

CHAIRS I. DANEEK MILLER AND LAURIE A. CUMBO

PRESENTED BY:

AMY TAI

SENIOR STAFF ATTORNEY  
URBAN JUSTICE CENTER  
COMMUNITY DEVELOPMENT PROJECT

APRIL 20, 2015



Good afternoon Chair Miller and Chair Cumbo and Committee Members. Thank you for the opportunity to testify. My name is Amy Tai, and I am a Senior Staff Attorney at the Community Development Project of the Urban Justice Center. I am here today on behalf of the Urban Justice, and the Coalition to Secure Wages Earned Against Theft (“SWEAT”) to speak about Resolution 0612-2015, which calls upon the New York State Legislature to pass, and the Governor to sign, State Assembly Bill No. A5501, which would strengthen New York’s labor laws and help workers collect their stolen wages.

The Urban Justice Center, a non-profit organization based in New York City, represents low-wage workers who have been exploited by their employers. We litigate cases against employers for their failure to pay the minimum wage and overtime, retaliation against workers, labor trafficking, and other violations of federal and state labor laws. We are part of the SWEAT Coalition, which is a growing group of grassroots organizations, workers’ centers, legal service providers, advocates, and faith-based organizations fighting to ensure that New York’s workers are able to recover the wages they are owed by their employers.

Wage theft is rampant in New York. For example, we often represent:

- Restaurant workers who have been paid monthly salaries of \$400 or less yet they work 60 to 70 hours per week, the equivalent to an hourly wage of less than \$2 without any overtime pay;
- Day laborers who are often not paid at all for days or weeks of work; and
- Domestic workers who work long hours for weekly salaries that do not include any overtime pay.

Even worse, when workers take their exploitative employers to court and win their case, they still are not able to collect on their hard-earned wages. During the course of an investigation by the New York Department of Labor or a lengthy court case, employers often hide or transfer their assets to avoid paying an eventual judgment to the workers. Workers walk away with empty judgments—anywhere from thousands of dollars to millions of dollars. A recent report that the Urban Justice Center co-authored, *Empty Judgments: The Wage Collection Crisis in New York*, found that over \$25 million was owed to almost 300 New Yorkers who recently had won their cases in court.<sup>1</sup> In addition, the state Department of Labor was not able to collect over \$101 million in wages owed to workers over a 10-year period.

When low-wage workers are unable to collect the wages they are owed, the minimum wage and overtime laws are rendered useless. Scofflaw employers not only steal workers’ wages but also cheat the government of payroll taxes and undermine law-abiding competing businesses. This hurts working families, legitimate business, and our city and state’s economy.

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<sup>1</sup> The 2015 report, *Empty Judgments: The Wage Collection Crisis in New York*, by the Urban Justice Center, the Legal Aid Society, and the National Center for Law and Economic Justice, is available at: [https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc\\_Empty\\_Judgments\\_The\\_Wage\\_Collection\\_Crisis\\_In\\_New\\_York\\_2015220.pdf](https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Empty_Judgments_The_Wage_Collection_Crisis_In_New_York_2015220.pdf).

State Assembly Bill No. A5501, also known as the SWEAT Bill, proposes to:

- Expand New York's Lien Law to allow all workers the right to put a temporary lien on their employer's property when they have not been paid.
- Modify the Attachment Standard to help workers preserve their employers' assets during litigation. Current law already allows plaintiffs to ask a court to hold a defendant's assets at the beginning of a case – but only when there is evidence of “fraudulent intent.” This standard is too high when most workers are not privy to their employer's financial information.
- Amend New York's Business Corporation and Limited Liability Company Laws to eliminate the hurdles in existing laws that are intended to allow workers to hold the largest owners of privately held companies liable for wage theft.

We call on the City Council to pass Resolution 0612-2015 to encourage the state legislature to pass the SWEAT Bill so that New Yorkers have the tools that they need to actually collect their hard-earned wages, and ensure that our labor laws are enforced and meaningful.

Thank you again for the opportunity to testify.

# SWEAT COALITION MEMBERS

SWEAT is a growing group of grassroots organizations, workers' centers, legal service providers, and advocates fighting to ensure that New York's workers are able to recover the wages they are owed by employers.

Adhikaar for Human Rights and Social Justice  
Alianza Laboral de Westchester  
Asian American Legal Defense and Education Fund  
Brandworkers  
Center for Popular Democracy  
Chinese Staff & Workers Association  
Communications Workers of America District 1  
CUNY Law School Labor Coalition  
Damayan Migrants Workers Association  
Domestic Workers United  
Don Bosco Workers, Inc.  
Downtown Independent Democrats  
El Centro del Inmigrante  
Empire Justice Center  
Flushing Workers Center  
Harlem Community Nutritional Services Agency  
Hunger Action Network  
Jews for Racial & Economic Justice  
Joy of Resistance  
Judeotutor Services  
Labor-Religion Coalition of NYS  
Latino Justice  
Legal Aid Society  
Long Island Immigrant Alliance  
MFY-NY  
Mount Vernon United Tenants  
National Center for Law and Economic Justice  
National Mobilization Against Sweatshops  
National Organization for Women (NOW)

National Employment Law Project (NELP)  
National Employment Lawyers Association - NY  
New Economy Project  
New Immigrant Community Empowerment  
National Lawyers Guild - NYC  
NYS Dairy Workers Organizing Committee  
Outten & Golden, LLC.  
Pelton and Associates P.C.  
Retail, Wholesale and Department Store Union  
ROC-NY  
Safe Horizons  
Sepa Mujer  
Sisa Pakari Centro Cultural & Laboral  
Sister Margaret of North Folk Spanish Apostolate  
Systemic Disorder  
Three Parks Independent Democrats  
Tompkins County Workers' Center  
Trinity Lutheran Church  
UAW Region 9-A  
Upper West Side Sweatshop Free Campaign  
Upstate New York Alliance of Worker Centers  
Urban Justice Center  
Worker Justice Center of NY  
Workers Justice Project

# SUMMARY OF PROVISIONS OF BILL A5501

By the Securing Wages Earned Against Theft Coalition (SWEAT)

Legislation introduced by Assemblymember Linda B. Rosenthal (D-WF/ Manhattan) to provide additional tools to employees victimized by wage theft but whose employers may seek to evade responsibility by transferring corporate or personal assets to frustrate a judgment.

## **1. EXPAND THE LIEN LAW TO PROVIDE A REMEDY TO MORE EMPLOYEES**

The bill would expand the New York Lien Law so that more workers can establish liens on their employers' property and reduce the likelihood that the property will be transferred prior to the issuance of a judgment. Currently, only workers who suffer wage theft violations while working on a project to improve real property can obtain a lien (called a "mechanic's lien"), and that lien is on the property they have improved rather than property owned by their employer. The bill would allow all employees – not just employees working on projects to improve real property – to obtain a lien against their employer's real or personal property, prior to or during litigation, so that the employer cannot frustrate a judgment by disposing of that property. As with mechanics' liens, existing due process protections and other safeguards would be in place to prevent misuse of the lien law.

## **2. MODIFY THE STANDARD THAT COURTS USE TO DETERMINE WHETHER TO HOLD AN EMPLOYER'S ASSETS DURING LITIGATION**

Current New York law allows a judge to "attach" a defendant's assets during the pendency of litigation. A court order of attachment holds the assets so the owner cannot transfer them without court approval. It is a critical tool to prevent employers from disposing of property after being sued and before a court renders a judgment. However, New York's court practice rules currently impose on employees—who are usually not privy to their employer's financial information—an unduly high burden to obtain attachment. The current standard requires the employee to show that the employer has an "intent to defraud" the employees by transferring or hiding property. Proving "intent to defraud" is almost impossible under these circumstances, and employers who have successfully defeated motions for attachment have then proceeded to transfer their assets during litigation. This bill would adopt the standard currently in place in Connecticut and allow plaintiffs to obtain an attachment if they are likely to succeed with their claims, removing the requirement in wage theft cases that an employee prove an "intent to defraud." The bill does not alter any existing due process protections.

## **3. REMOVE UNNECESSARY ROADBLOCKS TO HOLD THE LARGEST OWNERS OF PRIVATELY HELD CORPORATIONS LIABLE FOR WAGE THEFT**

The ten largest shareholders of privately held corporations and the ten largest owners of limited liability companies can be held personally liable for wage theft, but existing laws contain several hurdles that make it unnecessarily difficult for workers to hold the owners liable. Current law requires employees to give notice to the owners within 180 days of the end of their employment but provides no mechanism for the employees to learn the identity of the owners. In addition, current law requires an employee to get a final judgment against the corporate entity, and for the corporate entity to fail to pay the judgment, before the employee can even begin a case against the individual owners. The requirement of two successive lawsuits is inefficient and unaffordable for low-wage workers. This bill removes these unnecessary hurdles by providing that wage theft victims can pursue remedies against the largest owners of non-publicly traded business corporations and LLCs at the same time that they pursue remedies against the corporate entity, and without advance notice.

# SWEAT BILL A5501: HOW THE WAGE LIEN WORKS

## THE BASICS

An Employee<sup>1</sup> with a wage claim<sup>2</sup> can file a lien within 6 years of the end of his or her employment on the employer's property. The property can be:

- Real property, just as with the existing mechanic's lien for construction workers; or
- Personal property,<sup>3</sup> but not bank accounts or goods for sale.<sup>4</sup>

## HOW TO GET AN EMPLOYEE LIEN

**Filing:** The Employee prepares a Notice of Lien with: 1) the name, residence or business address of the Employer, or the Employer's attorney; 2) the property subject to the lien; and 3) the amount of the wage claim.

- To put the lien on real property, the Employee files the Notice of Lien with the county clerk where the property is located, just as with notice of a mechanic's lien in current law.
- To put the lien on personal property, the Employee files a financing statement with the Department of State ("DOS") following existing procedures - UCC 9-501, using the UCC-1 form, available on the DOS website.

**Service:** The Employee serves the Notice of Lien and the financing statement, if applicable, on the Employer, either five days before filing the lien or 30 days after, and then files proof of service within 35 days of service.

## HOW LONG DOES THE EMPLOYEE LIEN LAST?

One year. It can be extended for another year by filing a document with the county clerk for real property, or with the DOS for personal property. The document has similar information as the Notice of Lien.

**Extension through Litigation or Filing DOL Claim:** The wage lien can also be extended if, within one year of filing the lien, one of four things happen: 1) the Employee files a civil wage-and-hour action in court; 2) the Employee files a claim at the New York State Department of Labor ("DOL"); 3) the New York Attorney General's office or the DOL initiates an investigation into the Employee's wage claim; or 4) the Employee files a foreclosure action. The lien is then extended during that litigation until 120 days after that action or investigation has concluded. The Employee must file a notice of extension under any of these circumstances.

## ENFORCEMENT OF THE LIEN

The Employee can, as under current law for mechanic's liens, file a foreclosure action within a year of filing the lien (or an extension of the lien); or file a foreclosure action after obtaining judgment on the lien in another litigation or through the DOL process.

## EMPLOYER'S REMEDIES

The current lien law provides several mechanisms for Employers to challenge a lien, and those mechanisms are also available for an employee's lien. The Employer can demand an itemized statement requiring the employee to provide more details about the wage claim. If the lien appears invalid on the face of the documents filed, the Employer can begin an action in court to contest the lien's validity.

The Employer also can dispute the lien by sending a notice to the Employee stating that she must either file a foreclosure action or an action to obtain judgment in 90 days (Employee could also file a claim with the DOL).

The Employer can also post a bond in the amount of the wage claim while a court determines the validity of the wage claim. If a court determines that the amount stated in the wage lien is willfully exaggerated, the lien is void.

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<sup>1</sup> Defined according to the New York Labor Law (“NYLL”) and the Fair Labor Standards Act (“FLSA”).

<sup>2</sup> Defined as claims under NYLL and FLSA, including minimum wage, overtime, illegal deductions, spread-of-hours, unlawful retention of tips, gratuities or other charges meant to be tips, unpaid commissions, unpaid contract claims; includes liquidated damages, attorneys’ fees and costs; and includes the same remedies the Department of Labor or the Attorney General’s office could enforce.

<sup>3</sup> Defined in section 9-108 in the Uniform Commercial Code (“UCC”).

<sup>4</sup> Defined in section 9-102 in the UCC.

# EMPTY JUDGMENTS

The Wage Collection Crisis in New York



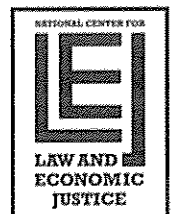
2015

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organizations

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## SECTION 01 / NEW YORK'S WAGE COLLECTION CRISIS: EMPLOYERS AVOID PAYING MILLIONS OF DOLLARS IN WAGE THEFT JUDGMENTS

**A**cross all low-wage industries, employers regularly fail to pay workers the wages required by law.<sup>1</sup> However, despite increased efforts to combat rampant wage theft, New York law fails to hold employers accountable. Even when workers take an employer to court and win, employers often avoid paying what they owe. In the months or years it takes to get a court judgment, employers transfer money from their bank accounts, put property in the names of family members, close down their business or change its name, create sham corporations, ignore court orders, or leave the country with their property. Unlike other states, New York law does not provide adequate protection against these tactics. As a result, many workers never get paid the wages they earned, even when they engage in a lengthy legal process.

This report is a snapshot of this wage collection crisis in New York. We explain why New York law fails to stop evasive employers from paying their workers, and we share the stories of workers affected by this failure. From 17 legal service organizations and employment attorneys who represent low-wage workers, we identified 62 recent New York federal and state court wage theft judgments that employers have not paid.<sup>2</sup> These 62 cases collectively represented a total of over \$25 million owed to 284 workers.<sup>3</sup> New York law was of no assistance: the employers in these cases successfully avoided paying the wages ordered by the courts.

Out of these 62 cases, 69% were default judgments (43 cases). This is not surprising: the most evasive employers simply refuse to participate in the legal system, leaving workers who seek to enforce their rights with only a piece of paper declaring how much they are owed.

***“[The workers] got a judgment in court for \$1.8 million but we haven’t collected a penny. It’s only a piece of paper.”***

// Jin Ming Cao, former employee of Wu Liang Ye Restaurant.

These unpaid judgments only scratch the surface of this crisis. Attorneys who represent the low-wage workers most commonly victimized by wage theft report that the majority of cases are resolved for far less than is actually owed due to the fear that a judgment for the full amount owed will never be paid. Many workers and lawyers do not even bring claims in the first place because collection seems so unlikely. Of the industries represented in the 62 cases, the restaurant and construction industries ranked highest in avoiding the payment of judgments: 26% of the cases (16 cases) were from the restaurant industry and 34% (20 cases) were from the construction industry. But employers' evasion of judgments occurred across all low-wage industries, including domestic work, garment factories, nail salons, and grocery stores.

The problem is not limited to civil litigation. Documents obtained from the New York State Department of Labor (DOL) show that the DOL was not able to collect over \$101 million in wages the agency had determined employers owed to workers over a 10-year period (from 2003 to 2013).<sup>4</sup> The lowest wage workers are particularly hard hit: 74% of the amount of wages DOL determined to be owed to workers were based on minimum wage violations.<sup>5</sup>

In sum, our research identified at least \$125 million in empty judgments and orders, providing a glimpse into the scope of the wage collection problem in New York. Our analysis of the law and the stories of affected workers show that New York law must be amended to stop this crisis.

Our  
research  
identified  
at least  
**\$125**  
**Million**  
in unpaid  
judgments  
and orders.

**This report identifies three necessary changes to New York law that will strengthen the ability of workers to collect their hard-earned wages before the employers' assets disappear:**

**01 / Expand New York's mechanic's lien law to include all workers, not simply those working to improve real property;**

**02 / Change the standard in civil procedure law to allow workers who demonstrate a likelihood of success on their wage theft claims to obtain court-supervised attachment of an employer's property prior to the resolution of the case; and**

**03 / Amend the law to remove unnecessary barriers that make it difficult for workers to collect wage judgments from the top shareholders of privately held corporations and top members of limited liability companies.**

## SECTION 02 /

### **LIMITATIONS IN CURRENT NEW YORK LAW:**

### HOW NEW YORK LAW FAILS WORKERS AND EVASIVE EMPLOYERS WIN

**N**ew York law currently fails to ensure that workers who win wage claims will be able to collect the money they are owed from their employers.

#### 02.01 /

### **NEW YORK'S LIEN LAW FAILS TO PROTECT WORKERS FROM WAGE THEFT**

Since 1909, New York has had a lien law that permits certain workers in the construction industry to file a “mechanic’s lien” on the specific property on which they worked if they are not paid in full.<sup>6</sup> However, the remedy as it is used today is too limited to help even most construction workers. The current law only permits workers to put a lien on the property if the owner of the property has not paid the workers or the contractor.<sup>7</sup> Since most construction workers today are employed by contractors—and not the property owners themselves—this remedy does nothing for these workers, as well as workers in other industries where wage theft is also a common practice.

However, New York’s existing mechanic’s lien shows there is a basis in New York law to use liens to enforce wage claims. Ten other states allow a spectrum of workers to put a lien on an employer’s property in connection with a wage claim. Using the existing mechanisms, New York’s lien law could be expanded to help stem wage theft across all industries. Allowing all workers with meritorious wage claims to put a temporary lien—usually called a “wage lien”—on their employers’ property would bring New York in line with other states that have enacted wage liens to provide better protections for their workers.

// A “lien” allows someone who is owed a debt to record the debt in the property records of the person that owes the debt. The lien does not automatically transfer title of the property to the person owed money or prohibit its sale. A lien puts any potential buyer on notice that if the amount is not paid, the lienholder could eventually obtain payment through a court action called foreclosure.

An expanded wage lien would be particularly helpful for workers whose employers refuse to participate in the legal process. When an employer fails to show up in court after a worker brings a case, workers can get a default judgment but must then spend time hunting down the employer and his assets in order to collect and enforce the judgment. Employers who default and never pay the workers in accordance with the court order force workers to exhaust their resources in pursuit of their claims. A wage lien not only encourages an employer to dispute the matter and play fair in court, but ensures that if the workers win their case, they may actually be able to enforce a judgment against the employers' property and collect the wages they are owed.

// A “wage lien” would allow all workers the right to put a temporary lien on an employer’s property when they have meritorious claims for wage theft.

# EXAMPLES

Two cases where a wage lien could have made the difference.

// A wage lien gives an employer greater incentive to appear in court. Two workers explain how, with no wage lien in place, they were not able to collect after winning in court by default.

**R**aimundo Calderon,<sup>8</sup> a devoted father, was justifiably upset when the real estate company employing him for construction work failed to pay him a week's worth of wages: "I did this work during Christmas time hoping to earn money to buy gifts for my family and more importantly to pay for the most basic necessities—things we need to survive." Worse, the company locked him out of the worksite without advance notice, leaving him unable to retrieve his tools and effectively stealing them from him. Regrettably, this happens all too often to workers like Raimundo. He estimates bringing at least five other incidents of wage theft to small claims court or the DOL, saying, "While sometimes I am demoralized, I think it is important to stand up to employers who break the law... These employers are stealing bread from my children and many families."

Unfortunately, sometimes there is no employer to "stand up to." When Raimundo pursued his claims against the real estate company, the employer did not bother showing up in court. Raimundo won a default judgment but was never paid any of the money that he was owed.

**A**fter Hurricane Sandy, Santiago Torres<sup>9</sup> worked gutting and rebuilding damaged houses for only \$150 a day, and no overtime. The construction company that employed him stopped paying him for his work, however, and Santiago took his employer to small claims court after the company owed him more than \$2,000.

It took about six months to get a hearing, and as Santiago recalls, "It was frustrating because we put in about 10 to 15 hours of work preparing [for the hearing] but the employer never came." Despite winning the case against his employer, the employer has thus far evaded collection, leaving Santiago distrustful of the current laws in place: "I feel like the fact that a judge ruled in my favor means nothing. I used to think courts had power but now I'm not sure."



**“I feel like the fact that a judge ruled in my favor means nothing. I used to think the courts had power but now I’m not sure.”**

// Santiago Torres, construction worker.

# EXAMPLES

## **Employers' Bankruptcy Filing Halts Workers' Case in Court: Sanchez v. Best Boat Seafood Restaurant <sup>10</sup>**

In 2011, five workers from a restaurant known as Charm Thai, located in Manhattan, filed suit in federal court in New York alleging minimum wage and overtime violations, and unlawful retaliation after they complained of the violations. The court granted a default judgment against the two individual owners for \$830,000. The owners, husband and wife, managed to avoid responsibility for their violations by closing the several restaurants they owned and filing for bankruptcy protection. The bankruptcy filing served the purpose of halting the district court case against them and gave the owners time to gather their assets and leave the country. The bankruptcy court ultimately threw the case out because the owners disappeared and failed to cooperate in their own proceeding, but not before 15 months had elapsed and the owners were long gone. Their whereabouts are unknown and they have not paid a penny of the judgment to the workers.

## **Restaurant Closes in Response to DOL Fine and Avoids Collection: Green Café <sup>11</sup>**

At Green Café in Ithaca, New York, bussers, dishwashers, and other workers were repeatedly denied wages and regular days off. The DOL found the owner owed \$623,000 for violations at his Ithaca location and \$377,000 for his New York City deli. Shortly after, Green Café shut its doors. The DOL has not been able to collect any money and the workers have not been paid.



### **Employer Interferes with DOL Investigation to Cause Delay, Then Closes Down and Claims He Cannot Pay DOL Order of Over \$1.45 Million: La Posada Restaurant<sup>12</sup>**

In January 2009, with the help of a community organization, a group of waitresses from La Posada Restaurant, Gaviota's Restaurant and Sports Bar, and Tequila Song, three co-owned restaurants in Manhattan, spoke with the DOL to report extreme wage violations. After receiving the workers' complaint, the DOL initiated an investigation and the employer provided payroll records. However, the workers advised DOL that the primary employer, Angel Moina, had directed the workers to sign fabricated payroll records and told them to lie to investigators. Relying on the workers' testimony instead of the employers' fraudulent records, the DOL issued orders to comply directing the payment of over \$1.45 million in wages and penalties. One of the employers agreed to pay a small portion and the other two appealed. After a hearing in April 2012, the Industrial Board of Appeals upheld the majority of the DOL's order, but the employers appealed once more. In the meantime, Mr. Moina dissolved the corporation doing business as La Posada Restaurant and his restaurant now operates under a different name. While the appeal was pending, the New York Attorney General's office issued a felony criminal complaint against Angel Moina and La Posada Restaurant Inc. for false tax filings. Mr. Moina entered a plea and paid a small fraction of what he owed to the workers, claiming he had no other funds.

### Saigon Grill Restaurant Closes: Default Judgment<sup>13</sup>

Four months after three workers filed a lawsuit in federal court against the new owners of Saigon Grill Restaurant in Manhattan's Upper West Side, the owners shut down the restaurant and never showed their face in court. In May 2013, the court awarded the workers close to \$181,000 in a default judgment for the defendants' labor law violations. Collection efforts thus far have been unsuccessful and the workers are now in bankruptcy court against the largest shareholder who reported in his bankruptcy filings that he owned 80% of the corporation, yet has also denied having any actual financial investment in the company.

Notice:  
Restaurant  
official Closed.  
We're sorry for  
inconvenience  
with you.

Saigon Grill Management 02-26-13

SANITARY INSPECTION GRADE

GRADE  
PENDING



*Construction workers, along with other members of New Immigrant Community Empowerment (NICE), protest outside their former employer's home for failing to pay their wages.*

### **Employers Shut Down Business and Ignore Lawsuit: Alvarez v. Well-S Industrial, Inc.<sup>14</sup>**

In 2012, a group of eight construction workers filed a federal lawsuit against their employers for their unpaid wages for the construction work they performed at an elite private school in Manhattan. The construction company and its principal owner ignored the lawsuit and the workers are currently awaiting the judge's decision on the amount of damages they are owed by the defaulting defendants. One of the defendants who did appear in court claimed that the corporation was defunct and that the workers would have to chase down the assets of the owner in attempt to collect on an eventual judgment.

## MARYLAND & WISCONSIN WAGE LIENS IN ACTION

**// Ten states have wage liens of varying kinds<sup>15</sup> and other states are considering wage lien legislation,<sup>16</sup> to either improve, update, or add to current law. The impact of these efforts in Maryland and Wisconsin highlight the need for such legislation in New York.**

# MARYLAND

In Maryland, an employee may record a lien for unpaid wages against an employer's property if the employer does not contest the employee's written notice of lien within 30 days after service, or if the circuit court issues an order to establish a lien.<sup>17</sup>

Since going into effect in late 2013, the Maryland Department of Labor, Licensing and Regulation (DLLR) has published template forms online to assist both workers and employers in the lien process.<sup>18</sup>

Advocates in Maryland report that the availability of the lien has enabled more representation of individual low-wage workers who would otherwise have difficulty finding an attorney, especially for smaller amounts of unpaid wages.<sup>19</sup> Attorney Camilla Roberson of Baltimore's Public Justice Center notes that the lien is good for legitimate businesses: "We're filing liens against the employers who are really at the bottom of the barrel."<sup>20</sup>



# WISCONSIN

Wisconsin's wage lien law<sup>21</sup> is one of the oldest and most extensive in the country.<sup>22</sup> Passed in 1993, the law applies to all employees and is designed to ensure collection of wage claims.<sup>23</sup> Employees, or the Wisconsin Department of Workforce Development (DWD), may file liens on employers' real and personal property for the full amount of any wage claim if a wage claim has been filed, even if a final determination has not been made.<sup>24</sup> The lien becomes effective on the employer's property once the agency or the worker files the notice, pays the fee to the clerk and serves a copy of the petition on the employer.<sup>25</sup> This limits the employer's ability to transfer assets while a case is ongoing.

Notably, Wisconsin's wage lien provision is not used very frequently because workers have very high collection rates there.<sup>26</sup> A 2013 study by the National Employment Law Project and the UCLA Labor Center found that Wisconsin had

much higher rates of collection for wage theft than California.<sup>27</sup> According to the authors' analysis, of the roughly 3,300 claims for unpaid wages filed each year with Wisconsin's DWD, approximately 95% of claims were settled, dismissed or paid in full from 2007 to 2012.<sup>28</sup> Between 2005 and 2013, the DWD filed liens in 234 wage theft cases, brought suit to enforce wage liens in 98 of those cases and successfully recovered some payment in about 80% of those cases.<sup>29</sup> This 80% figure is particularly significant given the fact that DWD generally brings suit in those cases where the risk of employer default, closing or bankruptcy is highest. In contrast, in California—a state with no wage lien provisions—only 17% of the workers who prevailed before the Division of Labor Standards Enforcement and received a judgment were able to collect any payment at all.<sup>30</sup>



## 02.02 / NEW YORK LAW FAILS TO PRESERVE AN EMPLOYERS' ASSETS DURING LITIGATION

**N**ew York Civil Procedure Law allows a plaintiff to ask a court to hold or “attach” a defendant’s assets at the beginning of a case but the requirements are extremely difficult to meet.<sup>31</sup> In practice, the “attachment” law is not an effective tool for workers seeking to stop employers from transferring funds or property to avoid paying eventual judgments.

Currently, a court can order an employer to hold assets only when a worker can prove that an employer has acted, or is about to act, with “fraudulent intent” to avoid a potential judgment.<sup>33</sup> Finding evidence to prove an employer’s intent to transfer or encumber its property is extremely difficult, particularly for low-wage workers who often work for businesses that pay bills and wages in cash, operate “off the books” or without clear accounting records, and do not comply with their obligations to produce business records in litigation. Even when presented with clear evidence of rapidly depleted bank accounts and suspicious transfers of property, as the workers’ stories show, courts generally avoid finding an intent to defraud and instead attribute possible non-fraudulent motives to explain the transfers of assets.

In contrast, Connecticut law allows for a pre-judgment attachment of assets if a plaintiff can show at a court hearing that she is likely to succeed in her claims.<sup>34</sup> A worker can ask for an attachment of assets even if the employer has not made any indication that they intend to transfer assets to evade collection of a judgment. In Connecticut, workers with meritorious wage claims have a mechanism to ensure that workers who win their wage claims are able to enforce their judgment and actually collect the wages they earned.



**// Attachment is a procedure used in litigation that allows the plaintiff to hold or “attach” the defendant’s assets at any time during the case before there is a judgment. Similar to a lien, it does not automatically transfer the title of the property or prevent the sale of property. A property that has been attached is usually held by the county sheriff, or in the case of real property, an attachment is registered with the county clerk. Current state and federal laws provide various protections for individuals who owe money on judgments: all those same protections apply in the case of attachment.<sup>32</sup>**

# EXAMPLES

## Motion for Attachment of Assets Could Not Stop Employers' Fraudulent Transfers: Babi Nails Salon<sup>35</sup>

Yan Zhang, Sam Song, and four of their co-workers sued their former employer, Babi Nails—a chain of three salons on Long Island—for wage theft in December 2009. On June 26, 2012, after a jury trial, the federal district court entered a judgment of over \$474,000 against Babi Nails and its owners for their willful failure to pay minimum wage and overtime as well as retaliatory firing of the workers after the case was filed.

Upon being served with the complaint, the defendants stated their intention to declare bankruptcy and sell the largest of the three salons, as well as put their million-dollar home in Nassau County up for sale.

The workers asked the court to attach the defendants' assets in an amount that could satisfy a potential judgment. At a hearing on the workers' request for attachment, the plaintiffs also introduced bank records showing that while defendants had roughly \$400,000 in their bank accounts when the lawsuit was filed, virtually all of it was transferred or withdrawn within a year of the lawsuit being filed. The court found that the workers were likely to win their wage claim, but denied the attachment motion. Noting the "stringent burden" of proving "fraudulent intent," the court found that "such depletion [of cash] may also reflect a downturn in the economy, as well as the need to pay counsel," even though the defendants produced no documentary evidence to support such a conclusion.<sup>36</sup>

Sam Song explained that the workers also took action to try to stop the employer from dissipating his assets: "We started a picket at the nail salon to demand [the employer to] stop transferring assets and pay the workers now. [Even though the boss claimed he no longer owned the salon,] we went to . . . the nail salons and found out that [our former employer]



was still there.” The workers reported this to the Court, but before long, “everything was gone from the nail salon.”

After the court’s decision, the defendants continued to hide the rest of their assets. Just days before the trial, they sold a \$2 million commercial property, sold their home on Long Island for \$1.13 million, and gave a mortgage of \$145,000 against another commercial property to a family member. Soon thereafter, one of the three nail salons was sold to a relative for a mere \$10,000. With no judgment yet entered, the workers could only sit and watch this happen.

By the time the judgment of almost half a million dollars was finally entered in 2012, the defendants pleaded poverty. While funds were somehow available for them to continue traveling internationally and driving luxury cars, not a cent was paid to the workers. Indeed, after two years of aggressively pursuing any assets the defendants once had or might still have, only \$110,000 has been collected to date: \$60,000 was obtained by placing a lien on a commercial property that the defendants were unable to sell while the litigation was pending and \$50,000 from successors who agreed to settle once their bank accounts were frozen. In sum, despite filing a lawsuit back in 2009 when the defendants had millions of dollars in assets, and even winning their case, these workers remain unable to collect the wages they earned through hours of laboring in those nail salons.

Yan Zhang concludes: “We won this case and we got a judgment but it does not mean victory because until now, the boss still has not complied with the law. The first thing they did was to fire all of us. Then they transferred assets—they transferred the company and properties into their family member’s name. They closed down the nail salon and reopened using their son’s name. If workers win the case, they should be able to collect their money.”



## Wu Liang Ye Restaurant Re-opens in Another Location to Avoid Paying \$1.8 Million Judgment<sup>37</sup>

Jin Ming Cao worked as a waiter at Wu Liang Ye, a Chinese restaurant in midtown Manhattan. “I worked 66 to 70 hours a week. The restaurant paid me \$300 a month in cash.” The owners also took 10% of his tips. When he and 25 of his co-workers filed a lawsuit to obtain the wages they were owed, their total claim came to almost \$2 million. Their lawyer estimated Jin Ming’s owed wages to be \$140,000 alone.

However, once the workers brought a lawsuit, the owners of the restaurant shut down their restaurant and opened another nearby that was staffed with many of the same workers.<sup>38</sup> A few weeks later, their original restaurant re-opened, but under a different name. Jin Ming explained the effect of this on the lawsuit: “[The workers] got a judgment in court for \$1.8 million but we haven’t collected a penny. It’s only a piece of paper.”

“It was so obvious that it was the same owners. They didn’t even bother to change the restaurant decor or menu but our lawyers said there is nothing we can do with the current laws.” These evasive tactics allowed the employers to dodge responsibility for their workplace violations by presenting themselves as having no assets. To prevent this from happening to other workers, Jin Ming would like to see a change in the law that would make it difficult for employers to fraudulently transfer property while a case is pending in court. “We should be able to freeze their assets and property when we first file the claim, not wait until we get a judgment because by then, they’ve already transferred everything.”

**“We should be able to freeze [the employer’s] assets and property when we first file the claim, not wait until we get a judgment because by then, they’ve already transferred everything.”**

// Jin Ming Cao, former employee of Wu Liang Ye Restaurant.

**“We won this case and we got a judgment but it does not mean victory because until now, the boss still has not complied with the law. . . . [T]hey transferred the company and properties into their family member’s name. They closed down the nail salon and reopened using their son’s name. If workers win the case, they should be able to collect their money.”**

*// Yan Zhang, former employee of Babi Nails Salon.*

## 02.03 / **NEW YORK LAW FAILS TO MAKE SHAREHOLDERS PAY EVEN WHEN THEY ARE LIABLE FOR WAGE THEFT**

Workers experience particular difficulty collecting judgments when their employers are under-capitalized. Under current New York law, the 10 largest shareholders of non-publicly traded business corporations, and the 10 members of limited liability companies with the largest ownership interest, are each personally liable for any unpaid wages, debts or salaries if the corporation fails to satisfy a judgment awarded to employees.<sup>39</sup> However, the law currently contains so many hurdles that workers rarely can collect from shareholders even when the corporation cannot pay.<sup>40</sup>

// Although shareholder liability for wage theft judgments is part of long-standing New York law, in practice, shareholders are rarely required to pay.

For instance, the law requires workers to give written notice to shareholders within 180 days of their last date of work, but provides no mechanism for an employee to learn the identity of shareholders within that time period.<sup>41</sup> Even worse, employees cannot initiate any legal action against the shareholders unless they have spent years to obtain a judgment against the corporation, and the corporation has then failed to pay. By that time—often two to three years of litigation having already occurred—the individual shareholders are likely to have hidden assets. The employees must then litigate a second successive lawsuit against them, having already prevailed against the corporation without getting paid. Low-wage workers cannot afford to pay attorneys to file successive lawsuits, and attorneys are unlikely to spend years in court pursuing these claims given the ease with which shareholders can dispose of assets.

Although shareholder liability for wage theft judgments is part of long-standing New York law, in practice, shareholders are rarely required to pay.

# EXAMPLES

## Shareholders Avoid Liability By Refusing to Disclose Identities: *Yang v. Shanghai Cafe, Inc.*<sup>42</sup>

In 2010, six workers brought suit against Shanghai Café Inc. alleging that the well-known restaurant in Manhattan's Chinatown had violated minimum wage and overtime laws, and unlawfully retained tips earned by the wait-staff. The alleged violations were egregious, and the wage theft was estimated at close to \$460,000, not including penalties and interest. The corporation that employed the workers closed down and defaulted in the legal proceeding. The individual defendants who ran the restaurant also defaulted, except for one defendant who claimed not to have owned or operated the restaurant. None of the defendants ever disclosed the identity of all the corporate shareholders; thus, the workers were unable to serve all of the shareholders with notices within the 180-day deadline, as required by section 630 of the Business Corporation Law. The 180-day deadline and the lack of access to shareholder records meant that workers effectively had no remedy under this provision.

## Restaurant Refuses to Reveal Top Shareholders: *East Market Restaurant*<sup>43</sup>

Workers at East Market Restaurant, a popular banquet hall in the heart of Manhattan's Chinatown, sued the employer for failure to pay minimum wage and overtime. Many had worked there for years but did not know who the shareholders were. The employer repeatedly refused to identify the shareholders and when the attorneys sent notices for the shareholders to East Market's corporate address, some came back, unopened and marked as undeliverable. The workers' attorneys filed a motion with the court to compel the employer to provide information on the shareholders, but even then, the employer continued to deny knowledge of its shareholders. The law's requirement that the workers serve the shareholders in 180 days with no mechanism to learn the shareholders' identity was an insurmountable hurdle to shareholder liability in this case. The workers' case is still on going, but East Market recently closed, and without shareholder liability, it is possible these workers will not recover on a judgment.

## SECTION 03 / EXPLOITATIVE EMPLOYERS SHIFT THE COST OF DOING BUSINESS TO WORKERS, LAW-ABIDING BUSINESSES, AND THE STATE

***“I did this work during Christmas time hoping to earn money to buy gifts for my family and more importantly to pay for the most basic necessities—things we need to survive. . . . These employers are stealing bread from my children and many families.”***

// Raimundo Calderon,  
construction worker.

**W**age-and-hour lawsuits around the country have surged.<sup>44</sup> However, because of the wage collection crisis, increased attempts to enforce the wage laws do not lead to increased compliance. Because of the gaps in New York law, too many employers who engage in wage theft know that even if they face a lawsuit, they will not have to pay their workers in full and perhaps not at all.

### The Crisis Undermines State Laws

Even the remote possibility that a judgment will be difficult to collect drives down the amount of a settlement. Workers sometimes must settle for even less than they should have been paid in the first place. In this way, employers benefit from underpaying their workers and threatening to dissipate assets when faced with workers' claims. With so many workers going empty-handed even after winning a wage theft case, many decide not to pursue stolen wages at all. The collections problem undermines the New York Labor Law and the vicious cycle of wage theft continues unabated.

### The Crisis Harms Individual Workers and Their Families

This under-enforcement of wage-and-hour law harms not just individual workers, but entire families. Low-wage individuals and their families already have to struggle to make ends meet, often without any benefits such as paid sick leave, a pension, or even health insurance. As described in one report, “[t]heir difficult lives are made immeasurably harder when they do the work they have been hired to do, but their employers refuse to pay, pay for some hours but not others, or fail to pay overtime premiums when employees' hours exceed 40 hours in a week.”<sup>45</sup> According to the U.S. Department of Labor, minimum wage violations alone lead to up to 25,600 families in New York living below the poverty line.<sup>46</sup>

Unchecked wage theft does not only affect low-wage workers. Even employees receiving higher hourly wages fall victim to wage theft – and their employers may use evasive tactics to avoid paying: shutting down business, transferring assets, or threatening bankruptcy. Employers often use the same strategies against workers organizing and seeking union contracts. Until the law can hold these employers accountable, all workers' attempts to seek better working conditions are undermined.



### **The Crisis Hurts Law-Abiding Employers**

When the law fails to hold exploitative employers accountable, law-abiding employers are also hurt. An employer who pays employees according to the law must charge more for its goods and services than the business next door that skims the workers' wages and pays workers less. When workers cannot enforce their rights against that business, the employer who follows the law pays the price.

### **The Crisis Limits New York's Economic Growth**

The collections problem also limits the economic growth of New York State. When workers' wages are stolen and the judicial and law enforcement systems fail to help them collect, the workers lose purchasing power, the government wastes any expenditures invested in fighting wage theft, and our economy suffers as a result.

Unchecked wage theft cheats governments out of millions of dollars in tax revenue. Employers who underpay workers also underpay their share of income and employment taxes for workers' compensation and unemployment insurance.<sup>47</sup> As an example of the scope of the loss to the state, the DOL found that as a result of \$282.5 million in unreported wages due to employee misclassification, employers had failed to pay \$9.7 million in unemployment insurance in 2012.<sup>48</sup> In the construction industry alone, misclassified and off-the-book workers in New York costs the state \$271.6 million annually in lost payroll taxes for social security and Medicare, and social insurance premiums, such as workers' compensation and unemployment insurance.<sup>49</sup>

In another cost to the state, workers who experience wage theft are often forced to turn to public assistance, such as food stamps and Medicaid. One study estimates that wage theft in the construction industry shifts approximately \$111 million in annual Medicaid costs to New York taxpayers. Another study found that minimum wage violations alone led to a \$2.8 million increase per month in the Supplemental Nutrition Assistance Program (SNAP), also known as food stamps.<sup>50</sup> Taxpayers thus inadvertently subsidize employers who steal from their workers.<sup>51</sup> In effect, exploitative businesses have shifted the cost of doing business on to workers, other businesses, our government, and taxpayers.

***“We’re  
filing liens  
against the  
employers  
who are  
really at the  
bottom of  
the barrel.”***

*// Camilla Roberson,  
Attorney at the  
Public Justice  
Center in Maryland.*

**SECTION 04 /**  
**CONCLUSION**  
POLICY RECOMMENDATIONS

**New York law must be updated to allow workers to collect wages stolen by employers. We thus propose the following changes, which will provide New Yorkers with crucial legal tools for collecting wages rightfully owed to them.**

- 01/ Expand New York’s mechanic’s lien law to allow all workers the right to put a temporary lien on an employer’s property when they have not been paid for their work.**
  
- 02/ Adopt Connecticut’s attachment standard to allow workers with wage theft claims to temporarily hold an employer’s property during litigation if the workers show a likelihood of success on their claims.**
  
- 03/ Amend New York Business Corporation Law and Limited Liability Company Law to help workers collect from shareholders and members who are already liable under existing law for unpaid wage judgments against corporations and companies.**

## SECTION 05 / CITATIONS

- 
- <sup>1</sup> Each year, in New York City alone, employers cheat low-wage workers out of more than a billion dollars in wages. Annette Bernhardt et al., *Working Without Laws: A Survey of Employment and Labor Law Violations in New York City* (2010), 44, available at [http://nelp.3cdn.net/990687e422dcf919d3\\_h6m6bf6ki.pdf](http://nelp.3cdn.net/990687e422dcf919d3_h6m6bf6ki.pdf).
- <sup>2</sup> These cases were filed in state and federal courts, with judgments dated between 2007 and 2013, and involved claims under the New York Labor Law and/or the Fair Labor Standards Act.
- <sup>3</sup> While the 62 judgments were for a total of \$28 million, because \$263,000 had been paid to the workers at the time of the survey, the \$25 million reflects the amount that has been uncollected in the 62 cases.
- <sup>4</sup> New York State Department of Labor Data 2003-2013. Data obtained by the Urban Justice Center is available upon request.
- <sup>5</sup> *Id.*
- <sup>6</sup> N.Y. Lien Law § 3.
- <sup>7</sup> N.Y. Lien Law §§ 4, 10. A mechanic's lien will only attach to the amount that is owed by the owner to the general contractor; if the owner pays the full amount to the contractor, then the subcontractor cannot obtain a lien on the property. See *Peri Formwork Sys. Inc. v. Lumbermans Mut. Cas. Co.*, 975 N.Y.S.2d 422, 425-26 (App. Div. 2013).
- <sup>8</sup> Raimundo Calderon is a pseudonym. This worker was a member of Make the Road New York.
- <sup>9</sup> Santiago Torres is a pseudonym. This worker was a member of Make the Road New York.
- <sup>10</sup> *Sanchez v. Best Boat Seafood Rest. Inc.*, No. 11-cv-05558 (S.D.N.Y. July 30, 2013). Plaintiffs in this case are members of National Mobilization Against Sweatshops and represented by the Urban Justice Center and Patterson, Belknap, Webb & Tyler LLP.
- <sup>11</sup> The Green Café workers were supported by the Tompkins County Workers' Center. Eliza LaJoie, "Green Cafe Owner Hit With \$1 Million Fine for Labor Violations," *The Cornell Daily Sun*, Sept. 7, 2010, available at <http://cornellsun.com/blog/2010/09/07/green-caf-owner-hit-with-1-million-fine-for-labor-violations/>.
- <sup>12</sup> See *Moina*, No. PR 10-069, N.Y. Indus. Bd. of App. (July 26, 2013). Claimants in this case were represented by The Legal Aid Society.
- <sup>13</sup> See *Wu v. Glyphs Garden Inc.*, No. 12-cv-07995 (S.D.N.Y. decided May 20, 2013). Plaintiffs in this case are members of Chinese Staff and Workers Association and represented by the Urban Justice Center and Vladeck, Waldmen, Elias & Engelhard, P.C.
- <sup>14</sup> See *Alvarez v. Well-S Indus.*, No. 12-cv-08835 (S.D.N.Y. filed Dec. 5, 2012). Plaintiffs in this case are members of New Immigrant Community Empowerment and represented by the Urban Justice Center and the Kathryn O. Greenberg Immigration Justice Clinic at Cardozo Law School.
- <sup>15</sup> In addition to Maryland and Wisconsin, the following states have wage liens: Alaska Stat. § 34.35.440, § 34.35.445; Idaho Code Ann. § 45-620; Ind. Code § 32-28-12-1; N.H. Rev. Stat. Ann. § 275:51; Ohio Rev. Code. Ann. § 1311.34; Tenn. Code Ann. § 66-13-101; Tex. Lab. Code Ann. § 61.081, § 61.0825, § 61.051; Wash. Rev. Code Ann. § 49.48.084, § 49.48.086.
- <sup>16</sup> For example, see California Assembly Bill No. 1164.
- <sup>17</sup> Md. Code Ann., Lab. & Empl. § 3-1101 et seq.
- <sup>18</sup> Maryland Department of Labor, Licensing and Regulation, Division of Labor and Industry, *Maryland Lien for Unpaid Wages*, available at <http://www.dlir.state.md.us/labor/wages/essunpaidwageslien.shtml>.
- <sup>19</sup> Telephone Interview with Camilla Roberson and Sally Dworak-Fisher, Public Justice Center (Dec. 22, 2014).
- <sup>20</sup> *Id.*
- <sup>21</sup> Wis. Stat. Ann. § 109.09 et seq.
- <sup>22</sup> Eunice Cho et al., *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers* (2013), available at [http://nelp.3cdn.net/f6fc363a30266f0cd3\\_pzm6id1xa.pdf](http://nelp.3cdn.net/f6fc363a30266f0cd3_pzm6id1xa.pdf).
- <sup>23</sup> See Wis. Stat. Ann. § 109.03(5) ("An employee who brings an action against an employer under this subsection shall have a lien upon all property of the employer...as described in § 109.09(2).").
- <sup>24</sup> Wis. Stat. Ann. § 109.09.
- <sup>25</sup> *Id.*
- <sup>26</sup> *Id.*
- <sup>27</sup> Cho, *supra* note 22, at 17-18.
- <sup>28</sup> *Id.* at 17-18.

- 
- <sup>29</sup> *Id.*
- <sup>30</sup> *Id.* at 2, 18.
- <sup>31</sup> New York law currently allows attachment of assets when “the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff’s favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts.” N.Y. C.P.L.R. § 6201(3).
- <sup>32</sup> For example, state and federal law prevents judgment creditors from forcing someone to use certain money to pay a debt on a judgment such as social security benefits (42 U.S.C. § 407), workers compensation (N.Y. Work. Comp. § 313; 5 U.S.C. § 8130), unemployment assistance (N.Y. Labor § 595), and public assistance (N.Y. Soc. Serv. § 137).
- <sup>33</sup> N.Y. C.P.L.R. § 6201(3).
- <sup>34</sup> Conn. Gen. Stat. §§ 52-278c, 52-278d.
- <sup>35</sup> See *Song v. 47 Old Country, Inc.*, No. 09 Civ. 5566 (E.D.N.Y. filed Dec. 21, 2009). Plaintiffs in this case are members of Chinese Staff and Workers Association and represented by The Legal Aid Society and Gibson, Dunn & Crutcher LLP.
- <sup>36</sup> See *Song v. 47 Old Country, Inc.*, No. 09 Civ. 5566, 2011 WL 3846929 (E.D.N.Y. decided Aug. 30, 2011).
- <sup>37</sup> See *Cao v. Wu Liang Ye Lexington Rest., Inc.*, No. 08 Civ. 03725 (S.D.N.Y. decided Oct. 27, 2010). Plaintiffs in this case are members of Chinese Staff and Workers’ Association and represented by the Asian American Legal Defense and Education Fund and Davis Polk and Wardwell LLP.
- <sup>38</sup> David Noriega, “The Case of The Missing Wage Thief,” BuzzFeed News, Dec. 18, 2014, available at <http://www.buzzfeed.com/davidnoriega/the-case-of-the-missing-wage-thief#.hoNDXl18EI>.
- <sup>39</sup> N.Y. Bus. Corp. Law § 630; N.Y. Ltd. Liab. Co. Law § 609.
- <sup>40</sup> We use the term “shareholders” to refer to both shareholders of corporations and members of limited liability companies. We use the term “corporations” to refer to both corporations and limited liability companies.
- <sup>41</sup> *Id.*
- <sup>42</sup> See *Yang v. Shanghai Cafe Inc.*, No. 10 Civ. 08372 (S.D.N.Y. filed Nov. 5, 2010). Plaintiffs in this case are members Chinese Staff and Workers’ Association and represented by the Urban Justice Center and Kirkland & Ellis LLP.
- <sup>43</sup> See *Cao v. East Market Rest., Inc.*, No. 13 Civ. 03902 (S.D.N.Y. filed June 7, 2013). Plaintiffs in this case are supported by Chinese Staff and Workers’ Association and represented by the Urban Justice Center and Lichten & Bright P.C. Some are also members of 318 Restaurant Workers Union. The Legal Aid Society represents the Union in related proceedings before the National Labor Relations Board.
- <sup>44</sup> Christine Simmons, “Wage-and-Hour Lawsuits Surge in New York Federal Courts,” *New York Law Journal*, Apr. 30, 2013, available at <http://www.newyorklawjournal.com/id=1202598006707>.
- <sup>45</sup> Brady Meixall et al, *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year (2014)*, available at <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds>.
- <sup>46</sup> U.S. Department of Labor, *The Social and Economic Effects of Wage Violations: Estimates for California and New York (2014)*, available at <http://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>.
- <sup>47</sup> Tim Judson et al, *Cracking Down on Wage Theft: State Strategies for Protecting Workers and Recovering Revenues (2012)*.
- <sup>48</sup> There are two categories of employee misclassification: Employers who misclassify their employees as independent contractors to avoid paying lawful wages and required taxes, or employers who pay their employees off-the-books to shirk tax obligations. The DOL report found misclassification violations in construction, restaurant, retail, car wash, automotive repair, wholesale food distributor, and entertainment industries. New York State Department of Labor, 2013, available at <http://www.labor.ny.gov/agencyinfo/PDFs/Misclassification-Task-Force-Report-2-1-2013.pdf>.
- <sup>49</sup> Fiscal Policy Institute, *Building Up New York, Tearing Down Job Quality (2007)*, available at [http://www.fiscalpolicy.org/publications2007/FPI\\_BuildingUpNY\\_TearingDownJobQuality.pdf](http://www.fiscalpolicy.org/publications2007/FPI_BuildingUpNY_TearingDownJobQuality.pdf).
- <sup>50</sup> U.S. Department of Labor, *supra* note 46.
- <sup>51</sup> A recent survey of retail workers showed that just over half made under \$10 an hour and 34% relied on public assistance. Stephanie Luce, *Discounted Jobs: How Retailers Sell Workers Short (2012)*, available at [http://retailactionproject.org/wp-content/uploads/2012/03/7-75\\_RAP+cover\\_lowres.pdf](http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf).

## SECTION 06 / APPENDIX EXPLANATION OF DATA COLLECTION METHODOLOGY

### *Quantitative Data:*

#### **A. Method 1: Problems Collecting Judgments**

In order to identify wage theft cases in New York State in which workers had won judgments but had not been able to collect, we surveyed legal services organizations and private employment law firms. Legal service organizations were asked to identify cases where workers had won a judgment against their employers but were not yet successful in collecting the wages owed to them despite the court orders. Each organization was given the same instructions and case criteria in identifying cases with collection issues. From this survey, we were able to identify 62 cases with significant collection issues after a judgment was issued, including key pieces of information about each case, such as the date the case was filed, forum, case number, number of plaintiffs, industry, amount of judgment, date of judgment, and amount collected, if any. Using this information, we were able to verify the information provided by reviewing publicly filed documents in the respective courts' online filing systems and avoid any duplicative filings. The information for the 53 cases were provided by nine legal service organizations, including UJC, Legal Aid, NYLAG, AALDEF, MinKwon Center, MRNY, Workers Justice Center of New York, Empire Justice Center, and Safe Horizon.

The other nine cases were identified by eight attorneys in a similar but simpler poll conducted among plaintiff-side private employment firms, which were asked to identify a couple cases with collection issues.

While illustrative, the data from both legal service organizations and employment firms is limited due to various recordkeeping methods and other

limitations. For example, the data does not include all the cases where there have been collection issues nor does it account for the many cases that settle before there is a court-awarded judgment.

#### **B. Method 2: New York Department of Labor Data**

In October 2013, the Urban Justice Center obtained documents from the DOL through New York's Freedom of Information Law. The documents contained data showing the amounts that the DOL assessed and collected each year from 2003 to 2013. The data provided by DOL does not show on a yearly basis how much of that year's assessed wages were ultimately collected, or when. Rather, the data shows for each year, the total amount of wages that DOL assessed to be due, and the total amount of wages DOL collected. Wages assessed in one year may have been collected in a subsequent year. As such, we have aggregated the total amount assessed and collected over the ten-year period to determine the amount that was uncollected during the same ten-year period and to reduce the distortion from collection delays.

The underlying data is available upon request from the authors.

### *Qualitative Data:*

We developed a survey and guidelines to conduct interviews with workers who had brought wage theft cases, prevailed, and had difficulty collecting on the judgment. Through informal inquiries, we identified lawyers and staff members of community organizations who volunteered to interview affected workers. The interview guide and survey are available upon request from the authors.

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Adhikaar for Human Rights and Social Justice; Alianza Laboral de Westchester; Asian American Legal Defense and Education Fund; Brandworkers; Center for Popular Democracy; Chinese Staff & Workers' Association; Communications Workers of America District 1; CUNY Law School Labor Coalition; Damayan Migrants Workers Association; Domestic Workers United; Downtown Independent Democrats; El Centro del Inmigrante; Empire Justice Center; Flushing Workers Center; Harlem Community Nutritional Services Agency; Hunger Action Network; Jews for Racial & Economic Justice; Joy of Resistance; Judeotutor Services; Labor-Religion Coalition of NYS; Latino Justice; Long Island Immigrant Alliance; MFY-NY; Mount Vernon United Tenants; National Center for Law and Economic Justice; National Mobilization Against Sweatshops; National Organization for Women (NOW); National Employment Law Project (NELP); National Employment Lawyers Association- New York; New Economy Project; New Immigrant Community Empowerment; National Lawyers Guild – NYC; NYS Dairy Workers Organizing Committee; Outten & Golden, LLP; Pelton and Associates P.C.; Retail, Wholesale and Department Store Union; ROC-NY; Safe Horizons; Sepa Mujer; Sisa Pakari Centro Cultural & Laboral; Sister Margaret of North Folk Spanish Apostolate; Systemic Disorder; The Legal Aid Society; Three Parks Independent Democrats; Tompkins County Workers' Center; Trinity Lutheran Church; UAW Region 9-A; Upper West Side Sweatshop Free Campaign ; Urban Justice Center; Worker Justice Center of NY; Workers Justice Project.

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TO TRANSLATE  in favor  in opposition  
FOR MARCO LIND

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I represent: myself

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in favor  in opposition

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 615

in favor  in opposition

Date: 4/20/15

(PLEASE PRINT)

Name: Katharine ES Bodde

Address: 125 Broad St

I represent: NYCLU

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. All Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4/20/15

(PLEASE PRINT)

Name: Jake McDonald

Address: 146 Hopkins Ave #1 Jersey City, NJ 07306

I represent: A Better Balance

Address: 80 Maiden Ln, Suite 606, New York, NY

10036

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. 743/197 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4.20.15

(PLEASE PRINT)

Name: Kristen Lasky

Address: \_\_\_\_\_

I represent: DCA

Address: 42 Bway

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 743/197 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4.20.15

(PLEASE PRINT)

Name: Marla Tepper

Address: \_\_\_\_\_

I represent: DCA

Address: 42 Bway

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 743/197 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4.20.15

(PLEASE PRINT)

Name: Sandra Abeles

Address: \_\_\_\_\_

I represent: DCA

Address: 42 Bway

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

1

I intend to appear and speak on Int. No. 743/197 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4.20.15

(PLEASE PRINT)

Name: Julie Menin, Commissioner

Address: \_\_\_\_\_

I represent: DCA

Address: 42 Broadway

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. 743/197 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4.20.15

(PLEASE PRINT)

Name: Amit Bagga

Address: \_\_\_\_\_

I represent: DCA

Address: 42 B way

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