

Advances and Setbacks in Turbulent Times

Second Annual Report on the State of Workers' Rights in NYC



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Consumer
Affairs

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Acknowledgments

The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards thanks the workers, experts, advocates, and organizations that delivered testimony at the July 17, 2018 public hearing on the state of workers' rights in New York City. Specifically, we thank the following people and organizations for providing spoken and written testimony (listed in alphabetical order by organization):

Manuela Blanco
Jorge Rivera
Elva Ladiz Rios, *1199SEIU*
Stephen Yearwood, *32BJ SEIU*
Sharda Gurung, Megha Lama, Tsering Lama, *Adhikaar*
Elias Rojas, *Brandworkers*
Kristine Azzoli, *Bricklayers and Allied Craftworkers Local 1*
Silvia Reyes, *Carroll Gardens Association*
The Center for Popular Democracy
Amy Torres, *Chinese-American Planning Council*
Nancy Rankin, *Community Service Society*
Edith Mendoza, *Damayan*
Democracy at Work Institute
El Centro del Inmigrante
Shani Rahman, *Fast Food Justice*
Clemente Martinez, *Make The Road New York*
Meisha Brooks, Ashley Dolgoff, Tamiris Freitas, Brittney Thompson, *Model Alliance*
Jacqui Orie, *National Domestic Workers Alliance*
Jared Odessky, *National Employment Law Project*
José Payares, *New Immigrant Community Empowerment*
Sofia Bugdady, *New York City Department of Education*
Ruth Lopez-Martinez, Saduf Syal, *New York City Network of Worker Cooperatives*
Sonia Guior, *New York City Taxi & Limousine Commission*
Nadia Marin-Molina, *New York Committee for Occupational Safety & Health*
Mathurin Lobe, *New York Taxi Workers Alliance*
Christina Vanderveen Gupta, *Restaurant Opportunities Center of New York*
Rachel Laforest, *Retail Action Project*
Camilo Montes, *Retail, Wholesale and Department Store Union*
Samaschool
Gene Carroll, *The Worker Institute at Cornell*
Silvia Gaston, *Worker's Justice Project*
José Francisco, Francisco Mejia, *Workers United, Laundry, Distribution and Food Service Joint Board*
Glenda Sefla, *Workers United, New York Nail Salon Workers Association*

We acknowledge the following DCA staff who contributed to this report: Zani Ahmad, Kristina Arakelyan, Niki Culma, Greg Fries, Debra Halpin, Ben Holt, Steven Kelly, Sam Krinsky, Abigail Lootens, Jane Mae, Jill Maxwell, Leah Obias, Brittany Rawlinson, Alberto Roldan, Felice Segura, Liz Vladeck, Andrew Wilson.

Acronyms

CPD	The Center for Popular Democracy
DCA	Department of Consumer Affairs
FBI	Federal Bureau of Investigation
FFJ	Fast Food Justice
FLSA	Fair Labor Standards Act
ICE	Immigration and Customs Enforcement
MOIA	Mayor's Office of Immigrant Affairs
NDWA	National Domestic Workers Alliance
NICE	New Immigrant Community Empowerment
NLRB	National Labor Relations Board
NYC	New York City
NYCOSH	New York Committee for Occupational Safety & Health
NYSDOL	New York State Department of Labor
NYTWA	New York Taxi Workers Alliance
OATH	Office of Administrative Trials and Hearings
OLPS	Office of Labor Policy & Standards
OSHA	Occupational Safety and Health Administration
RWDSU	Retail, Wholesale and Department Store Union
SEIU	Service Employees International Union
the Commission	NYC Commission on Human Rights
TLC	Taxi & Limousine Commission
USDOL	U.S. Department of Labor

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Message from Commissioner Lorelei Salas

As the report title indicates, 2018 was a year of advances and setbacks for workers.

We made tremendous progress in implementing workplace protections that put money back into the pockets of workers. Laws such as Paid Safe and Sick Leave, Freelance Isn't Free, and Fair Workweek address the income instability caused by wage theft, unpredictable scheduling, and lack of paid leave.

At the same time, we heard harrowing testimony from workers who are coping with an environment that is increasingly hostile to immigrants and low-income workers owing to recent federal policies and increased immigration enforcement. While New York City remains a city that welcomes all, we in City government have difficult hurdles to overcome when misinformation and fear abound in our communities.

That is why I am inspired by the ambitious agenda set by Mayor Bill de Blasio in his 2019 State of the City address. Renaming the Agency to the Department of Consumer and Worker Protection (DCWP) sends a strong signal to working New Yorkers that their well-being is a priority for this administration and for this Agency.

And we are not wasting any time.

The administration has announced that it will seek to make Paid Personal Time real for New Yorkers by requiring employers to pay for up to 10 days of leave time. New York City will be the first in the country to guarantee paid leave so workers can spend more time with their families or simply take time for themselves without the fear of losing income.

This year, we will launch a targeted public awareness campaign to publicize our work around worker rights, including assisting freelancers to get paid by the companies that hire them.

To address rampant wage theft among paid care workers, we will pilot an alternative dispute resolution program to help domestic workers get paid their legally required wages. Our strong relationships with paid care advocates and domestic worker organizations will facilitate worker input to inform program development and the necessary ongoing feedback during execution.

Of course, I would be remiss not to mention the incredible dedication, smarts, and creativity the staff from the Office of Labor Policy & Standards bring to the table. As we continue to learn about the challenges New Yorkers face and as we work to develop solutions to address these challenges, I am heartened by the deep commitment of all Agency staff to roll up their sleeves and *get to work to benefit all workers*.



Lorelei Salas
Commissioner

Executive Summary

In 2017, the NYC Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) released its first annual report, [*The State of Workers' Rights in New York City*](#), which detailed findings from OLPS's first public hearing. In its continuous efforts to align the office's work to the needs and critical concerns of workers, OLPS organized a second public hearing on the state of workers' rights on July 17, 2018 at LaGuardia Community College in Long Island City, Queens, in collaboration with the NYC Commission on Human Rights (the Commission) and the Mayor's Office of Immigrant Affairs (MOIA). July's hearing featured oral and written testimony from 40 workers and organizations.

In testimony, workers and worker advocates vividly depicted a wide array of labor rights violations:

- The issue of wage theft, including for independent contractors, permeated the testimonies of immigrant and non-immigrant workers alike.
- Some workers, particularly in the construction and nail salon industries, expressed concerns about physical health due to inadequate workplace safety standards.
- Inadequate job security, discrimination, fraud, and waning workplace protections—all were recounted as a source of physical and emotional strain.

Participants also highlighted the unique challenges for immigrant workers in both learning about and acting on their rights, including new rights under NYC's expanded Paid Safe and Sick Leave Law and Fair Workweek Law.

The concerns and insights voiced during the second hearing mirror findings from the first hearing and demonstrate the pervasive nature of labor rights violations, which remain widespread despite positive economic markers. Even with unemployment in the city at a record low¹ and minimum wage increases pushing earnings upward for many New Yorkers, countless workers continue to lack adequate resources to take advantage of the thriving economy.²

Home care aides, who constituted over 200,000 members of the city's workforce in 2017,³ and independent contractors, who are part of the contingent economy, recounted the unique challenges they regularly face in seeking protections for their rights. In effect, as the many calls for policy and enforcement changes indicate, federal, state, and municipal policies remain insufficient for providing reliable enforcement of protections, especially for vulnerable workers.

To make matters worse, recent federal policies, including a sharp increase in Immigration and Customs Enforcement (ICE) arrests, detentions, and deportations,⁴ along with less-publicized but still critical operational and regulatory changes at the National Labor Relations Board (NLRB) and U.S. Department of Labor (USDOL),⁵ are chipping away at critical remaining resources and diminishing workers' rights. At the same time, big corporations and their lobbyists have been pushing state legislators to preempt cities and counties from implementing their own minimum wage, sick leave, and scheduling laws.

As a result, in 2018, a number of states and municipalities across the United States worked to strengthen existing protections to offset inadequate protections at the federal level. The City of New York has enforced new measures to expand and strengthen the rights of workers, including setting minimum rates for for-hire drivers and enhancing protections against gender-based harassment in the workplace.

OLPS's strategic efforts in 2018 included:

- doubling staff size and augmenting outreach and enforcement efforts to reach more workers and bring more workplaces into compliance with the City's labor standards specifically and workplace protections more broadly;
- restructuring response to allegations of retaliation to address workers' pressing needs on a fast track;
- implementing a directed enforcement investigation model to reach workers in industries with historically high rates of labor rights violations;
- implementing new laws that grant substantive rights to workers, including Fair Workweek and the expanded Paid Safe and Sick Leave Law;
- continuing to administer the Freelance Isn't Free Law to aid New Yorkers in combating nonpayment in the contingent economy; and
- continuing to strengthen the Paid Care Division in protecting the rights of home care aides and domestic workers.

OLPS's close collaboration with workers, labor advocates, and community organizations remains as important today as in 2016 in shaping the office's efforts to build a new generation of minimum labor standards, in both law and practice.

About DCA's OLPS

Launched in August 2016 within DCA, OLPS is tasked with enforcing municipal labor laws to improve working conditions; educating and helping workers assert their rights; and conducting research to advance new policy initiatives in response to social and economic changes. OLPS embraces its mandate to focus on issues affecting immigrants, people of color, and women in the workplace.



I. In Their Own Words: Testimony from the 2018 State of Workers' Rights Hearing

On July 17, 2018, the Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) convened its second annual hearing on the state of workers' rights in New York City. The hearing was held at LaGuardia Community College and chaired jointly by DCA Commissioner Lorelei Salas, Mayor's Office of Immigrant Affairs (MOIA) Commissioner Bitta Mostofi, and NYC Commission on Human Rights (the Commission) Chair and Commissioner Carmelyn P. Malalis. At the hearing, the City heard oral testimony from 31 workers, advocates, and representatives of community organizations and received 22 written testimonies. Forty total workers and organizations provided testimony, with several providing both oral and written testimony.

The program included four panels that covered:

1. concerns about paid care work;
2. nontraditional employment arrangements;
3. labor standards enforcement; and
4. recent campaigns for higher wages.

There was also an opportunity for open testimony, which captured a broad range of other issues concerning New Yorkers' rights at work.

Echoing testimony from the first hearing in 2017, participants highlighted the urgent need for the City to continue building on its recent efforts to combat discrimination, wage theft, hazardous workplace conditions, and fraud, all of which remain common realities for low-wage, immigrant, and other vulnerable workers in

the city. The 2018 hearing also provided a nuanced look at the City's recent efforts to raise minimum labor standards, revealing that although new protections such as those provided by the Paid Safe and Sick Leave, Fair Workweek, and Freelance Isn't Free laws are highly valued and already reshaping workers' jobs and lives, too many New Yorkers still face acute challenges in asserting these new rights.

Testimony was almost exclusively delivered by workers in manual and other low-wage occupations, or was delivered on their behalf. Workers in occupations traditionally at high risk for labor rights violations, including home care aides, childcare workers, nail salon workers, laundry workers, and car wash workers, had strong attendance.

Under the NYC Charter, OLPS's mandate is to focus on "achiev[ing] workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers."⁶ Hearing directly from workers in industries with the harshest conditions who tend to be among the most difficult to reach is critical to the City in pursuing its mandate.

Immigrant workers encounter exploitation, threats of harm, and severe challenges in asserting their rights

More than half of the speakers at the hearing highlighted the extraordinary impact of labor standards violations on immigrant workers and the many obstacles they face in seeking to assert their rights. While workplace rights and protections generally apply regardless of immigration status, those who testified revealed how the absence of federal work authorization and concern about losing an existing status greatly undermine workers' ability to realize their rights. Many speakers described instances in which immigrants faced exploitation at the hands of their employers.

“... domestic workers cannot afford to be fired because ... they have families to support. They are immigrants who cannot afford to be exposed. When you have a workforce that has no benefits for workers, no health insurance, no retirement plan, how can a worker come forward, there is no safety net.”

— Jacqui Orie, nanny, Groundbreaker,
National Domestic Workers Alliance
(*Hearing Transcript*, at 28)

Edith Mendoza, a domestic worker and Damayan worker organizer and board member, spoke about the severity of exploitation that occurs in paid care work which, in New York City, is performed predominantly by immigrant women workers.⁷ She recounted working as a domestic worker for more than 80 hours per week while receiving less than the minimum wage and no benefits.⁸

Jacqui Orie, a nanny and Groundbreaker⁹ at the National Domestic Workers Alliance (NDWA), similarly spoke about exploitation of domestic workers, describing how her employer threatened her with termination, loss of work status, and blacklisting.¹⁰

Meisha Brooks, a model and member of the Model Alliance, testified that “[modeling] agencies take advantage of their models by intimidating them with threats of deportation, nonpayment, and homelessness ... Abusive agencies threaten the models by refusing to release them from their contracts.”¹¹

Echoing others' testimony, Orie requested that the City devote more resources to community organizations that help vulnerable workers and

use more public awareness campaigns to educate both employers and their employees about workplace rights in New York City.¹²

A recurring theme was that the absence of secure legal status creates a tremendous barrier to enforcement of workplace rights and protections.

A construction worker and member of El Centro del Inmigrante who suffered an injury on the job recounted how the fear of how he would be treated as an immigrant led him to decide against contacting the police for protection from his employer.¹³

Manuela Blanco, a grocery worker who was fired after missing a shift to care for her sick children, testified that she believes her employer fired her precisely because she is an immigrant and, therefore, not protected and unlikely to speak up.¹⁴

Tsering Lama of Adhikaar pointed to language barriers as an additional deterrent to many immigrant workers in obtaining the information and assistance they need to protect their rights.¹⁵

According to some who testified, lack of access to “safety net” products and programs also contributed to workers not wanting to risk retaliatory termination.

Silvia Gaston, member of the Worker’s Justice Project, stressed that immigrant workers have limited access to mainstream financial products.¹⁶

Orie of NDWA emphasized that immigrant workers are unable to access many public or employment-based benefits.¹⁷

The City heard similar concerns about immigrant workers’ rights at the 2017 hearing. In the intervening year, the situation appears to have only worsened amid Trump administration actions that included:

- sharp increases in ICE arrests, detentions, and deportations;¹⁸
- proposed rules that seek to deter immigrants from accessing public benefits;¹⁹ and
- attempts to coerce state and local governments, including the City of New York, into redirecting law enforcement efforts from protecting the public to implementing the administration’s agenda.²⁰

As exploitative employers lower labor standards for immigrant workers, they drive down standards for all workers, making it harder for enforcement agencies to enforce the laws and for compliant employers to remain competitive.

Wage theft is a daily reality for many New Yorkers

Immigrant and non-immigrant workers alike testified to the blight of wage theft, including wage and hour violations against workers and payment violations against independent contractors. Yet, it was clear in testimony that some workers are at greater risk of wage theft than others.

The Center for Popular Democracy (CPD) testified that wage theft “disproportionately affects women, people of color and immigrants” and, therefore, is not an equal opportunity scourge.²¹

The Worker Institute at Cornell testified about the significant costs borne specifically by workers who are misclassified as independent contractors.²²

Increasing Access to Safe and Affordable Financial Products and Services

As one of its core strategies, DCA’s Office of Financial Empowerment works with financial institutions and other companies to increase access to transparent, safe, and low-cost financial products that meet the unique needs of consumers, overcome barriers to banking, and build financial stability. One such product is the NYC SafeStart Account.

Paid Care Occupations in NYC

	Number	Percent
Home Care Aides	202,464	79%
House Cleaners	32,957	13%
Nannies	20,913	8%
Total	256,334	100%

Source: OLPS analysis of the 2017 American Community Survey, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.

Immigrant Labor Force in NYC

	U.S.-Born	Foreign-Born	NYC Total
% in the Labor Force (age 16+)	64.1	65.6	64.8
\$ Median Earnings	45,341	30,253	38,287
% No Health Insurance Coverage	6.4	18.8	11.1

Source: NYC Mayor's Office of Immigrant Affairs, *State of Our Immigrant City (2018)*, available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf.

For-hire Drivers in NYC

	Medallion Taxis	High Volume For-Hire Services
% Female	1.1	3.5
% Foreign-Born	95.5	90.6
Average Age	45-50	40-45

Source: NYC Taxi & Limousine Commission, *2018 Factbook (2018)*, available at http://www.nyc.gov/html/tlc/downloads/pdf/2018_tlc_factbook.pdf.

“I ... want people to understand that we are here to serve people and we need help too to live healthy and happy lives and to make a living in the city.”

— Christina Gupta, restaurant worker,
Restaurant Opportunities Center
(*Hearing Transcript*, at 75)

“... We are considered workers that live off tips, and we don’t make enough tips, and the owners do not make themselves responsible to see if we are legally getting the minimum salary.”

— Glenda Sefla, nail salon worker, Workers United
(*Hearing Transcript*, at 65)

Because of the complex rules governing how tipped workers get paid, many restaurant workers and others who rely on tips for a portion of their income are especially vulnerable to wage theft. These workforces tend to be disproportionately women, workers of color, and immigrants. Women are estimated to comprise 66 percent of all tipped workers.²³ And 33 percent of tipped workers are parents.²⁴ Workers of color comprise 40 percent of tipped workers.²⁵

Under New York State law, in 2018, most food service workers in New York City were guaranteed only \$8.65 per hour, provided that the amount they earned in tips averaged at least \$4.35 per hour over their workweek, bringing them up to at least \$13 per hour—the minimum hourly wage for most workers in New York City in 2018.²⁶ When a worker’s tips fell short, the employer was required to increase the worker’s wages according to the difference (\$4.35 minus the worker’s actual hourly tips).

Such “tip credit” rules also govern how other tipped workers are paid, though the dollar amounts differ based on occupation, industry, and employer size.²⁷ National studies show that tipped workers receive a median wage, inclusive of tips, of \$10.22 per hour compared with \$16.48 per hour for other workers.²⁸

Many workers and advocates assert that this system facilitates wage theft by presenting employers with opportunities to appropriate tips before they reach employees and making it difficult for workers to keep track of how much pay they are actually owed.

Camilo Montes, a car wash worker with the Retail, Wholesale and Department Store Union (RWDSU) Car Wash Campaign, reported that the tip credit benefits employers and not employees because tips in the car wash industry are too low and unreliable.²⁹

Clemente Martinez, a food delivery worker who relies on tips and a member of Make The Road New York, reported being paid less than the minimum wage.³⁰ He stated:

“I have worked ... many long hours ... making less than minimum wage without any extra payments ... We have testified ... and protested, asking for any increases in our salary just like ... every other worker, just so it would be ... a better salary to cover the needs.”³¹

Both Martinez and Montes asked the City to work to ensure that vulnerable workers are protected from wage theft and adequately compensated.³²

Glenda Sefla, a nail salon worker and member of Workers United, also echoed others’ testimony about inadequate tips, and noted how the tip credit invites wage theft against nail salon workers.³³

A sustained campaign by many of these workers and organizations led the New York State Department of Labor (NYSDOL) to hold several hearings in 2018; the State received hundreds of written comments regarding whether or not to eliminate the tip credit, which would give tipped workers the same minimum wage protections that nearly all other workers enjoy.³⁴ OLPS gave testimony at these hearings, urging the State to eliminate the tip credit system and create one minimum wage for tipped and non-tipped workers alike.³⁵

The City also heard testimony about other wage and hour violations in various sectors:

Paid Care: Mendoza and Orie testified that domestic workers and nannies can work 50 to 100 hours per week with no overtime pay.³⁶

Nail Salons: Megha Lama, a nail salon worker and organizer at Adhikaar, and Sefla testified that many nail salon workers do not earn minimum wage and are not paid for overtime. These workers also reported not receiving meal breaks.³⁷

Modeling: Brooks, Tamiris Freitas, Ashley Dolgoff, models and members of the Model Alliance, wrote about several incidents of modeling agencies failing to compensate them for their work on time, or even at all.³⁸

Arts and Entertainment: The Worker Institute at Cornell testified that many aspiring workers in the arts and entertainment industries are expected to work without pay as either interns or volunteers to acquire necessary professional credentials and recognition.³⁹

Building Services: Stephen Yearwood, a member leader of Local 32BJ of the Service Employees International Union (32BJ SEIU), testified that some employers in the building services industry are not paying workers the prevailing wage,⁴⁰ which requires that workers on public sector contract jobs receive elevated compensation.

Transportation: Sonia Guior, Senior Policy Analyst at the NYC Taxi & Limousine Commission (TLC), testified about the precarious situation of those working for companies like Juno, Lyft, Uber, and Via. She noted that because these drivers are “considered independent contractors ... [they] therefore have no protections in place for them when it comes to a mandated minimum wage, healthcare coverage or retirement contributions.”⁴¹ Despite a recent ruling by the New York State Unemployment Insurance Appeal Board finding that Uber drivers are employees,⁴² in practice, most app-based drivers continue to be treated as independent contractors by their companies.

Although increases to the minimum wage in New York City—\$13 in 2018 and \$15 in 2019 for employers with 11 or more workers,⁴³ with an estimated third of the workforce affected by the new minimum in 2019⁴⁴—represent a tremendous improvement in wage and hour protections for many New Yorkers, recent federal developments in wage and hour enforcement still point to efforts to undermine workers’ rights:

- Most significantly, the Supreme Court decision in *Epic Systems Corp. v. Lewis* strengthened employers’ ability to use “forced arbitration” agreements, which prohibit workers from filing civil suits against their employer for wage theft, among other violations of labor and employment law.⁴⁵
- The USDOL introduced the Payroll Audit Independent Determination program, which allows employers to complete self-audits and rectify any identified overtime or minimum wage violations without paying penalties or damages.⁴⁶ But by eliminating deterrent penalties for wage and hour violations and rightful damages to workers, the USDOL is undermining labor rights.⁴⁷

Under these circumstances and absent new advances in wage and hour enforcement, the types of abuses illustrated in workers’ testimony are likely to become both more common and more severe.

Workers face obstacles accessing information and exercising rights under NYC’s new labor laws

In recent years, the City of New York has pursued a number of new measures aimed at ensuring higher labor standards at private businesses, including the expanded Paid Safe and Sick Leave Law in 2018, Fair Workweek Law in 2018, and Freelance Isn’t Free Law in 2017. See Appendix B for an overview of workplace laws that OLPS enforces.

From the testimony it appears that these measures are already having an important impact and that OLPS’s enforcement actions are effective. However, significant gaps remain. In particular, lack of awareness about these rights is hindering their reach, and employers’ retaliatory threats are deterring workers from exercising their new rights, despite strong anti-retaliation provisions in the laws.⁴⁸

Shani Rahman, a fast food worker with Fast Food Justice (FFJ), testified about the important positive changes workers experienced at work due to Fair Workweek. Enacted about eight months before the hearing, the law’s intent is to help stabilize unpredictable work schedules for fast food and retail workers.⁴⁹ She stated:

“When I joined Fast Food Justice my organizer took me to DCA, and DCA opened an investigation into the violations of these laws that workers were claiming. DCA has been very responsive and has conducted thorough investigations.”⁵⁰

Speakers also testified that some employers remained noncompliant.

Christina Gupta, a restaurant worker and member of the Restaurant Opportunities Center, stated that she did not have a predictable schedule in her fast food workplace and that she continued to struggle with last-minute schedule changes.⁵¹

Rachel Laforest, Executive Director of the Retail Action Project, testified that discussions with retail workers revealed that disruptive on-call shifts continue to be prevalent in the industry.⁵²

“... DCA ... spoke with me and the employer about my case ... If I did not [speak] up, neither would I have been compensated for the sick leave and neither would the situation [have] changed at the meat supermarket.”

— Manuela Blanco, grocery worker
(Hearing Transcript, at 57; A5)

Laforest and Rahman also testified that many workers in retail and fast food, respectively, are not familiar with Fair Workweek and Paid Safe and Sick Leave and, consequently, do not exercise their rights under these laws.⁵³

To underscore this point, citing her organization’s annual scientific survey, Nancy Rankin, Vice President for Policy, Research and Advocacy at the Community Service Society, testified that disproportionately more low-income and part-time workers either have not been informed about or are fearful of seeking the benefits of Paid Safe and Sick Leave and, consequently, are not using sick leave as much as they should, if at all. She also testified that low-income workers are less likely to exercise their rights under Paid Safe and Sick Leave for fear of retaliation.⁵⁴

After her complaint about being terminated for taking sick leave spurred an investigation, Blanco received restitution for wrongful termination and her employer worked to come into compliance.⁵⁵ Although Blanco had not sought reinstatement, OLPS's strong stance with employers in cases involving retaliatory termination in which complainants wanted their jobs back resulted in three workers being reinstated to their jobs in 2018.

Indeed, retaliation is a significant factor deterring workers from exercising their rights.

Elva Ladiz Rijos, a home care aide and member of 1199SEIU, testified about home care agencies bullying their employees not to take paid sick leave.⁵⁶

Laforest testified that retail workers face retaliation for trying to use paid sick leave.⁵⁷

Rankin urged the City to “expand [its] efforts with additional funding for both outreach and proactive investigation and to strengthen awareness. Why not require posters about the right to paid sick leave at every pharmacy, clinic, and doctor’s office ... In addition, provide an opportunity for the Mayor to urge New Yorkers to stay home and keep children home from school, if they have flu symptoms...”⁵⁸

Workers, especially in the construction and nail salon industries, have grave concerns about their health and safety

Some jobs are, by their very nature, more dangerous than others. Those who testified, however, asserted that certain dangers may be mitigated, and perhaps altogether eliminated, with more stringent standards as well as firm and consistent enforcement.

“We often hang off the side of skyscrapers to do our work. But let me tell you that some of that work scares me a lot—we rig our own-selves and we have protection. We control it. But what we are given from contractors, we have no control over.”

— Kristine Azzoli, construction worker, Bricklayers and Allied Craftworkers Local 1 (Hearing Transcript, at 113-114)

Nadia Marin-Molina of the New York Committee for Occupational Safety & Health (NYCOSH) and José Payares, a construction worker and member of the New Immigrant Community Empowerment (NICE), testified about the hazards of inadequate compliance with health and safety standards and widespread use of improper safety equipment.⁵⁹ Payares explained that even though some workers have trainings and know what they ought and ought not do, sometimes they are still forced to engage in dangerous practices at worksites.⁶⁰

Kristine Azzoli, a construction worker and member of Bricklayers and Allied Craftworkers Local 1 (BAC Local 1 NY), testified about inadequate protection against silica—a chemical hazard—and also echoed Marin-Molina’s concern about inadequate enforcement on the part of the federal Occupational Safety and Health Administration (OSHA).⁶¹

NYC's New Site Safety Training Law

Local Law 196 of 2017, which took effect March 1, 2018 and is administered by the NYC Department of Buildings, requires many construction workers to receive a minimum of 10 hours of safety training, increasing to a minimum of 40 hours in 2019. Many workers and organizations have raised concerns about implementation of this law. Reported challenges include demand for training exceeding existing capacity and complaints of unscrupulous actors defrauding vulnerable workers with phony training and job placement ads.

Source: Jeff Coltin, *A year later, NYC's construction safety law is being ignored*, City & State, Nov. 9, 2018, <https://www.cityandstateny.com/articles/policy/infrastructure/new-york-city-construction-safety-law-being-ignored.html>.

Construction workers were not alone in expressing worries over safety standards.

Lama and Sefla testified about the prevalence of improper safety equipment in nail salons.⁶² Workers in nail salons are exposed to salon and cleaning chemicals in multiple ways, including inhalation, ingestion, and skin absorption.⁶³ In fact, the New York State Department of Health's 2016 report *Review of Chemicals Used in Nail Salons* reviewed several studies on the health of workers in the nail salon industry that collectively indicate that working in a nail salon is associated with various respiratory, musculoskeletal, and neuropsychological symptoms.⁶⁴

Lama and Sefla also testified about hazardous violations of, and employer pushback against, new ventilation standards,⁶⁵ given the presence of chemicals like formaldehyde, toluene, and dibutyl phthalate in nail care products.

Ventilation was also a concern for Laundromat workers.

José Francisco, a laundry worker with Workers United, testified about the harmful impact of poor ventilation in Laundromats on the health of workers and consumers.⁶⁶

Insecure employment undermines workers' rights and bargaining power, leading to a range of harms

In addition to alarm about their physical well-being, workers also testified about the emotional and psychological harms from insecure work, inadequate protection of rights, and insufficient bargaining power against employers.

Taxi driver and member of the New York Taxi Workers Alliance (NYTWA) Mathurin Lobe testified about the severe financial toll that companies like Juno, Lyft, Uber, and Via are having on taxi drivers: "[I]n those days, all you needed was one good rush hour, you got a couple hundred bucks, we would say go and chill. Nowadays you work 20 hours, lucky you make 50 bucks."⁶⁷

Tragically, eight drivers committed suicide in 2018. While reasons for suicide are complex and cannot be generalized, the financial struggles among professional drivers are real and ruinous.⁶⁸

Francisco Mejia, a beer distributor delivery worker and member of Workers United, testified that delivery workers are being replaced by contractors, resulting in less bargaining power to protect their rights and interests: "[At] Amazon Delivery Service ... [the drivers] are not even employees of Amazon ... There are conditions that are required for the health and safety of the employees. ... this company, the richest one in this country, it [has] reduced our standards and it doesn't assume the responsibilities for...[its] actions."⁶⁹

“[O]ne member recently shared with us that her child fell ill at school and when asking her employer if she could leave to attend to the child, the employer threatened her to cut back hours or at worse fire her.”

— Megha Lama, nail salon worker, Adhikaar (Hearing Transcript, at 101)

Mejia urged the City to stand up to exploitative corporate interests.⁷⁰

The Worker Institute at Cornell testified that numerous workers, including domestic workers and arts and entertainment workers, fall outside the protections offered by many labor standards laws because of independent contractor status, exemptions for small employers, or other factors. As such, these workers are more vulnerable to abuse.⁷¹

Bargaining power is likewise minimal for workers who are unable to secure employment due to discrimination during the hiring process.

Lama testified that nail salons prefer workers without children and screen out parents in the hiring process.⁷²

Payares testified that construction companies discriminate based on race during the hiring process.⁷³

Sharda Gurung, a nanny and domestic worker and member of Adhikaar, testified that domestic worker agencies practice age-based discrimination.⁷⁴

Gurung also testified about the impact of fraud on New Yorkers' prospects for employment. She discussed how employment agencies defraud customers by collecting fees without actually helping customers find employment: "... they say [to] 20 to 30 of us [to] do the same job without giving us any information about the job. When we go to the interview we find it doesn't pay well, plus they do not give us transportation money."⁷⁵

Combating Employment Agency Fraud

Employment agencies must have a DCA license to operate in New York City. DCA makes sure that agencies uphold job hunters' rights and protects job hunters from deceptive practices.

Brittney Thompson, a photographer and member of the Model Alliance, provided written testimony about the prevalence of fraud and sexual exploitation in the modeling industry, concerns that led her to contact the police, Human Trafficking Hotline, and Federal Bureau of Investigation (FBI): "They are promising photo shoots and all-expense-paid trips to NYC to unsuspecting girls and young women who aspire to work as models. They are requiring explicit photographs before any other information is given out."⁷⁶

Please see transcripts of all testimonies on the DCA website nyc.gov/dca.



II. NYC's Actions in 2018 to Strengthen Workers' Rights

Informed by testimony from workers and worker advocates, both at the first hearing detailed in [The State of Workers' Rights in New York City](#) and the second in July 2018, and mindful of actions by progressive municipal and state governments to protect workers' rights, OLPS pursued strategies in 2018 to address the structural impediments that make it difficult for workers to fully access their rights at work, including:

- adapting enforcement to address key deterrents in exercising rights;
- implementing new NYC standards that fill gaps in state and federal law; and
- pursuing a sectoral approach to address the needs of workers long excluded from core labor protections and policymaking.

The following sections describe these efforts in more detail.

Adapting Enforcement to Address Key Deterrents in Exercising Rights

In recent years, scholarship and practical experience have identified key industries and worker populations in which violation of minimum labor standards is endemic.⁷⁷ At both public hearings the City learned how the fear of retaliation deters workers from exercising their workplace rights. Indeed, fear of retaliation appears to be increasing under the current federal administration.

As a result, OLPS has adapted its enforcement model in two key ways to aggressively combat retaliation and to shift the burden of filing complaints away from vulnerable workers:

1. OLPS has implemented a Fast Track Retaliation Project; and
2. OLPS has piloted directed enforcement initiatives.

Through its directed enforcement practice in particular—enforcement targeted to a specific industry to investigate labor law violations—OLPS is sending a clear message to industries with problematic records that the Agency will take proactive action and pursue remedies even for those labor violations not under the City’s direct enforcement authority.

Rapid response to retaliation claims

In early 2018, OLPS implemented a new Fast Track Retaliation Project to expedite worker complaints about unlawful termination and threats of retaliatory termination with special consideration for retaliation complaints related to a worker’s immigration status. The project’s intent is to minimize the impact of retaliation on other workers and to ensure all workers know they can assert their rights without fear of reprisal.

It can be extremely difficult to undo the harm caused by retaliation against workers who exercise their rights—a common refrain in hearing testimony and common wisdom among those with experience in workplace rights and enforcement. This is especially true when a worker is fired or seriously disciplined. Such action by the employer sends a chilling message to other workers: complain about workplace issues at your peril.

The Fast Track Retaliation Project prioritizes swift identification and resolution of worker complaints about retaliatory firing or threats from intake through trial, if need be. The project is staffed by investigators and attorneys with expertise handling retaliation complaints. Consistent with all of its work, OLPS assists workers without regard to immigration status and directs its enforcement to industries characterized by a high incidence of workplace violations, low wages, and key demographic indicators such as limited English proficiency.

Cases that are part of the Fast Track Retaliation Project have involved small employers with 10 employees and large employers with hundreds of employees across a variety of industries, including fast food, retail, restaurant, security services, childcare, cleaning services, construction, and cultural institutions. Where the facts suggest retaliation under multiple laws, OLPS connects workers to, and collaborates with, other government agencies to protect workers’ labor rights as broadly as possible. OLPS also offers retaliation-specific training to employers to prevent future violations when workers speak up about their rights relating to safe and sick leave or scheduling.

In 2018, the project’s staff:

- opened investigations in 46 cases;
- resolved 15 cases, averaging 62 days from intake to final resolution;
- recovered \$36,255 for 12 unlawfully fired workers and secured the reinstatement of three workers; and
- filed two cases at the NYC Office of Administrative Trials and Hearings (OATH) after being unable to reach a pre-litigation resolution with the employer.

In at least one case in which an investigation was already underway, OLPS worked with an employer that had intended to terminate a complainant to instead ensure that the worker kept her job.

Already the Fast Track Retaliation Project has seen results. However, OLPS will continue to develop and refine this project because of the impact of:

- moving quickly and decisively when retaliation is suspected to prevent or swiftly undo the harm to the worker and the workplace;
- preserving the ability to conduct an effective investigation of the underlying claims; and
- achieving employer compliance with the law.

Creating a compelling, credible enforcement deterrent to employer retaliation will remain a critical OLPS priority because, for the most vulnerable workers, threats of retaliation are a very real barrier to exercising all other workplace rights.

Directed enforcement of NYC's Paid Safe and Sick Leave Law

Amid the growing call by advocates and policy experts to address the problem of the most vulnerable workers lacking access to effective enforcement, OLPS has devoted substantial resources to building its expertise and practice in the conduct of directed investigations. Indeed, this systematic approach to shift practices in key industries where workers face particular barriers coming forward has informed all of OLPS's work. Directed enforcement is a necessary complement to complaint-based enforcement which, on its own, often fails to reach the most vulnerable workers and can disperse enforcement too broadly to change prevailing practices in any one sector.

Based on high rates of paid sick leave and other workplace violations, as well as the nature of the workforce—predominantly women, people of color, and immigrants—OLPS launched its first directed enforcement initiative in the home care industry. As part of this initiative, OLPS:

- launched investigations into 42 home care agencies that collectively employ close to 30 percent of home care aides in New York City to look into compliance with paid sick leave requirements, as well as key wage and hour and other workplace standards;
- interviewed close to 500 home care aides about their working conditions, including access to paid sick leave, pay practices, and receipt of benefits under the New York State Wage Parity Law, which guarantees aides an elevated rate of compensation on Medicaid-funded work; and
- reviewed records provided by both workers and employers during investigations.

The investigations revealed a range of consistently recurring problems:

- **Egregious denial of paid sick leave rights.** OLPS found cases of widespread denial of paid sick leave requests, workplacewide restrictions on the use of paid sick leave, and retaliation for the use of paid sick leave.
- **Wage and hour violations.** OLPS found significant violations of minimum wage and overtime rights, hours shaving, inadequate compensation for 24-hour shifts, and other violations.
- **Lack of required notice of paid sick leave.** OLPS found pervasive violations of the notice and policy provisions of the Paid Safe and Sick Leave Law that create real obstacles to workers knowing about or accessing their paid sick leave rights.
- **Lack of transparency around wage parity.** OLPS found consistent lack of meaningful disclosure to workers of the benefits and supplements used to comply with wage parity and the provision of low-level benefits, raising serious questions about actual compliance with the law.
- **Lack of stability.** OLPS found persistent economic insecurity related to a lack of stable or sufficient hours of work.
- **Discrimination.** OLPS found favoritism and discrimination among the coordinators who control access to work assignments.

- **Harassment on the job.** OLPS found incidents of on-the-job harassment by clients, exacerbated by the private nature of home care work.

OLPS resolved 21 home care agency investigations covering approximately 20,000 home care aides with consent orders, recovering more than \$65,000 in combined employee relief and civil penalties. The settlement agreements in these cases prioritized forward-looking requirements to secure tangible change in employer practices that will ensure workers better understand their rights and how to exercise them. Under the agreements, agencies are required to:

- develop and implement compliant safe and sick leave policies;
- train managers and other responsible staff on compliance;
- notify workers of OLPS's investigation and provide OLPS contact information to workers;
- appoint a compliance officer at each agency and provide the officer's contact information to all workers to support them in learning about and exercising workplace rights;
- regularly report on the training provided to workers about their rights; and
- allow OLPS access to worker trainings.

In September 2018, OLPS filed 11 home care agency cases at OATH. Several of these cases include allegations of significant and pervasive violations of workers' paid sick leave rights and could result in substantial monetary relief for workers who have been denied access to paid sick leave. The resolution of these cases is likely to affect more than 13,500 home care aides.

OLPS identified two cases for joint enforcement with the New York State Attorney General's Office for violations of workers' paid sick leave, wage and hour, and wage parity rights, which guarantee aides an elevated rate of compensation on Medicaid-funded work. OLPS and the Attorney General's Office are currently conducting joint investigations on these cases, which cover more than 6,000 home care aides.

The investigations also revealed evidence of noncompliance with the Wage Parity Law, so OLPS referred 13 cases to the NYSDOL and the Office of Medicaid Inspector General for further investigation and continues to coordinate with these agencies.

Finally, after careful review of interview notes and employer records, OLPS developed several policy recommendations for actions that the State can take even without new legislation to stem the high volume of wage theft that appears to be taking place under the Wage Parity Law:

- **Itemize expenditures that fulfill employer wage parity obligations on workers' pay stubs.**

OLPS's investigations consistently revealed that home care aides had little knowledge of, or way of knowing, how their employers calculated wage parity rates or how applicable benefits or supplements satisfied the law's requirements. Employers often had limited documentation regarding compliance.

To achieve transparency and disclosure so workers can verify they are getting what they are owed and employers can demonstrate they are following the law, wage parity payments should be specifically itemized on a worker's pay statement to indicate benefits provided and the hourly credits the employer is taking against the benefits.

- **Clarify the interaction between the Wage Parity and Paid Safe and Sick Leave laws.**

Existing administrative guidance from the State is silent as to whether provision of a locally mandated benefit counts toward an employer's wage parity requirements. Many agencies count the value of paid sick leave toward wage parity compensation both at the time of accrual (when the worker is not actually paid anything for sick leave) and then again at the time of use (when the worker is paid based on an actual usage of sick leave).

The State should issue new guidance stating that employers cannot count an employee's accrual of leave under the Paid Safe and Sick Leave Law toward the employee's wage parity pay rate. Allowing home care agencies to count as an extra benefit an entitlement that is guaranteed to almost all private sector workers in New York City diminishes the value of home care aides' hard-won wage parity rights. The State can clarify through administrative guidance that this "double-counting" was not the intent of the law.

- **Workers need clear avenues for enforcement of their wage parity rights.**

Private enforcement should be promoted to complement the enforcement authority of NYSDOL. The only existing private actions to enforce wage parity rights take the form of contract claims to which the workers are third-party beneficiaries—whether this legal theory will be approved by the courts has not been decided yet. The State should consider weighing in on the existing litigation to lend its support to plaintiffs' legal theory, which, based on the State's expertise, should warrant deference.

While the home care agency initiative has been OLPS's largest directed enforcement initiative to date, OLPS has also conducted similar sweeps in the industrial laundry and nail salon industries, both of which are known for endemic labor violations. Those initiatives are ongoing.

Implementing New NYC Standards that Fill Gaps in State and Federal Law

Over several decades, the fissuring of traditional employment relationships and the advent of new technology have allowed employers to exploit gaps in workplace protections and diminish workers' role in determining key aspects of their working conditions. Two problems that have required particular attention include:

- "just in time" scheduling that has caused chaos for workers in the fast food and retail industries in recent years; and
- nonpayment—amounting to wage theft—to freelance and other independent contract workers for their work.

In 2017, the City of New York passed new laws to address these problems: the Fair Workweek and Freelance Isn't Free laws.

OLPS's early experience implementing both laws indicates that they can be effective tools for workers to successfully redress problems. However, there is a vital need for greater awareness among workers and those who hire them of these new rights and obligations.

Making fair scheduling a reality for retail and fast food workers through NYC's Fair Workweek Law

On November 26, 2017, NYC's Fair Workweek Law went into effect. The law provides fast food and retail workers protection against abusive scheduling practices that have become rampant in these industries as large chains have capitalized on "just in time" scheduling technology that has wreaked havoc on workers' lives and budgets. In response to the common problem of these workers often not knowing when or how much they might work from day to day, the law helps provide retail and fast food workers with transparency and stability in scheduling and, for fast food workers, offers more control over scheduling and pathways to full-time work.

In order to educate employers, workers, and members of the public about Fair Workweek, OLPS created a set of informational materials and distributed them broadly to both workers and employers.

Materials included:

- overviews of the law for fast food and retail employers and workers in multiple languages;
- the required notices that employers must post in multiple languages;
- complaint forms for workers; and
- frequently asked questions.

Wage Parity Minimum Rate of Total Compensation for Home Care Aides

Wages	As of 12/31/17	As of 12/31/18
Base Wage	\$13.00	\$15.00
Additional Wages	\$1.69	\$1.69
Supplemental Wage	\$2.40	\$2.40
Total Compensation	\$17.09	\$19.09

Source: New York State Department of Health, MRT 61 - Home Care Worker Wage Parity, Home Care Worker Wage Parity Minimum Rate of Total Compensation, https://www.health.ny.gov/health_care/medicaid/redesign/mrt61/2017-10-31_ww_parity_min_nyc.htm (last visited Dec. 10, 2018)

Fair Workweek: Overview of Worker Rights

Fast Food	Retail
Good Faith Estimate and first work schedules in writing on or before first day of work	72 hours' (3 days') advance notice of work schedule
14 days' (2 weeks') advance notice of work schedule Written worker consent for any additions to a written schedule within 14 days of the start of the shift	No on-call shifts
Premium pay for all schedule changes with less than 14 days' notice	No call-in shifts within 72 hours of the start of the shift
Written worker consent plus \$100 premium to work <i>clopening</i> * shifts <small>*A <i>clopening</i> involves working 2 shifts over 2 days when the first shift ends a day and there are less than 11 hours between shifts.</small>	No shift additions with fewer than 72 hours' notice unless worker consents
Priority to existing workers to work newly available shifts before employer hires new employees	No shift cancellations with fewer than 72 hours' notice

Distribution channels included:

- visits to local business districts based on mapping to reach more than a thousand employers when the law first took effect;
- employer trainings at the request of interested businesses; and
- partnership with worker organizations, such as FFJ, to educate covered workers about their rights under the new law. Members of FFJ have subsequently brought a high volume of complaints alleging a range of employer violations.

On November 19, 2018, DCA announced the results of its first year enforcing the Fair Workweek Law. In a leading case, OLPS entered into a settlement with an owner-operator of 30 Kentucky Fried Chicken (KFC) locations across Brooklyn, Queens, and the Bronx to resolve violations of City law. The settlement, which followed a months-long investigation, required the KFC operator to:

- repeal an illegal waiver of rights under the law that employees were required to sign;
- pay \$80,000 in restitution to more than 600 employees; and
- submit to intensive and comprehensive auditing by an independent monitor for 18 months—at the employer’s cost—to ensure compliance with the City’s workplace laws.

Through the close of 2018, OLPS received 134 complaints under the Fair Workweek Law, which has resulted in more than 100 investigations. With enforcement remedies tailored to the varying severity of the violations, OLPS obtained settlement agreements in a wide range of cases, securing a total of \$252,135 in restitution for 1,270 workers and \$69,140 in fines. OLPS has also obtained forward-looking, non-monetary remedies in the cases it closed, including reinstatement and back pay for workers who were unlawfully terminated, and has filed numerous cases at OATH, alleging violations such as unlawful termination, unlawful shift cancellation, unlawful retaliation, and other compliance failures.

While early efforts suggest that Fair Workweek is a practical and effective policy for providing workers with stable, predictable employment, OLPS has observed firsthand what it heard in workers’ and advocates’ testimony at the July hearing: too few employers and workers are familiar with the law and its application to them. This is true both generally and regarding specific rights, such as existing fast food workers’ access to additional work, which employers must offer before hiring new employees, to give existing workers a voice in determining their schedule and a pathway to full-time work.

Moving into its second year of enforcement, OLPS will seek to strengthen the efficiency and effectiveness of investigations; focus on those parts of the law with which workers and employers are least familiar; and focus its outreach and enforcement efforts on building greater awareness of the law.⁷⁸

Combating nonpayment through NYC’s Freelance Isn’t Free Law

The Freelance Isn’t Free Law took effect May 15, 2017. The only law of its kind in the nation, it:

- creates a new right to a written contract for freelance work worth \$800 or more;
- incentivizes timely payment for services; and
- empowers freelancers to enforce their rights in court.

This new law makes clear to hiring parties that they risk incurring concrete and significant costs if they do not pay freelancers for the goods or services they provide. The law includes several provisions designed to make it easier for freelancers to initiate and win lawsuits alleging breach of contract for hiring parties’ failure to pay, key among them payment by the hiring party of double damages and attorneys’ fees when freelancers prevail in their suits for nonpayment. This makes effective legal counsel economically viable for freelancers, as private

attorneys can take cases that may result in significant monetary awards for freelancers but that, in the past, would have brought little return to their attorneys.

Under the law, OLPS administers a Navigation Program to assist freelancers in exercising their rights. Navigators:

- field general inquiries;
- conduct initial consultations with freelancers who believe their hiring party may have violated the law;
- administer a complaint procedure that involves noticing the hiring party of a claim against them; and
- guide freelancers through the process of pursuing their claims in civil court in the small percentage of cases that are not resolved prior to reaching that stage.

Through the close of 2018, OLPS received 638 complaints from freelancers, most of which alleged late payment or nonpayment for services provided.

OLPS's early experience indicates that the Navigation Program is highly effective. Through the close of 2018, freelancers who filed complaints recovered a total of \$685,652, with an average recovery of \$3,047. Of freelance workers alleging nonpayment, 74 percent recovered the full amount they had not been paid after filing complaints with OLPS.

Among complainants who received payment after engaging OLPS, 24 percent received payment following the initial consultation with a Navigator, 74 percent received payment after a Navigator sent a notice of complaint to the hiring party, and 2 percent were paid after the freelancer filed a suit in civil court.

Complaints came from a wide range of industries and occupations, though workers in the arts and entertainment industry were overrepresented.⁷⁹ Compared to all of the city's freelance workers, workers filing complaints with OLPS were more likely to be young, English-speaking, highly educated, and have higher incomes.⁸⁰

However, the law is heavily underused by the city's freelance workers in general. OLPS estimates that more than 150,000 of the city's freelancers experience late payment or nonpayment on an annual basis,⁸¹ compared to 510 workers who filed complaints in 2018.

Over the past year and a half, OLPS learned that ensuring payment for workers involves more than disputes and court claims. By educating workers about the law in conjunction with information on misclassification and the laws applicable to independent contracting, Navigators have helped freelance workers protect their rights in future freelance work arrangements. Navigators have also helped misclassified workers enforce their rights through education and strategic referrals. Freelance workers who filed complaints with OLPS report high levels of satisfaction with the Navigation Program.

Since the law came into effect, OLPS has educated the public through a social media campaign, with targeted outreach via partner organizations. Going forward, OLPS will continue its efforts, emphasizing outreach to low-income, immigrant, and other vulnerable workers who have been underrepresented among freelance workers filing complaints with OLPS.

Ensuring vulnerable workers can access care without jeopardizing their livelihood through NYC's expanded Paid Safe and Sick Leave Law

On July 5, 2018, NYC's Paid Sick Leave Law was expanded to include safe leave. Now, employees can use earned leave—for themselves or to help a family member—for care and treatment, or to seek help or take other safety measures for any act or threat of domestic violence, unwanted sexual contact, stalking,

or human trafficking. The law also expanded the definition of “family member” to include chosen family—anyone whose close association with an employee is the equivalent of family.⁸²

The safe leave expansion has given OLPS the opportunity to widen outreach and stakeholder engagement to community service providers that help survivors of intimate partner violence and sex trafficking.

OLPS also mounted a small-scale public awareness campaign to alert workers in New York City about the law’s expansion to include safe leave.

Pursuing a Sectoral Approach to Address the Needs of Workers Long Excluded from Core Labor Protections and Policymaking

The history of the adoption of foundational labor standards in the United States is also the history of exclusion of entire groups of workers based on race, gender, place of birth, and other social categories. For example, when the Fair Labor Standards Act (FLSA) and the National Labor Relations Act were passed in the 1930s, domestic workers and agricultural workers—predominantly black, especially in the Jim Crow South—were excluded from coverage.

While there are recent encouraging signs of increasing participation by women, people of color, and those with a wide range of ethnic backgrounds in politics, the policies that most impact these populations historically have been made by institutions insensitive to their needs and experience.

OLPS approaches its work with the view that government must take a more tailored approach to particular workers, sectors, and issues to ensure that workers who historically have been excluded from structures of power play a central role in informing the development and application of policies that most directly impact them. This principle has been most explicit in OLPS’s building of its Paid Care Division, the only government office in the nation dedicated specifically to improving conditions for home care workers, nannies, and house cleaners. The Division consults intensively with paid care worker organizations to ensure its work reflects paid care workers’ priorities and values.

In 2018, OLPS was one of several NYC agencies that took on long-standing issues that disproportionately harm specific groups of workers:

- As the agency that governs the taxi and for-hire vehicle industries, TLC made the working conditions of drivers the subject of City regulation and a critical component of the industry’s overall health and success. Most significantly, on August 14, 2018, the City of New York enacted a new local law directing TLC to establish by rule minimum amounts that app companies must pay their drivers, making New York City the first jurisdiction in the nation to impose such a requirement for workers treated as independent contractors.⁸³ The new rule, promulgated on December 4, 2018, will deliver raises to 68,000 drivers, resulting in an average 22.5 percent increase in take-home pay, or about \$7,500 per driver.⁸⁴
- Informing and responding to the #MeToo movement, the Commission took important steps to strengthen New Yorkers’ civil rights at work, in particular through implementation of NYC’s groundbreaking Stop Sexual Harassment in NYC Act.⁸⁵ Effective April 1, 2019, the new legislation expands the NYC Human Rights Law’s protections against gender-based harassment to all employees, regardless of employer size, and requires employers of 15 or more employees to conduct anti-gender-based harassment trainings annually, among other measures.⁸⁶ The law also extended the statute of limitations for filing claims of gender-based harassment at the Commission from one year to three years.⁸⁷ And a new unit was established at the Commission to investigate gender-based and sexual harassment complaints in the workplace to escalate high priority cases more quickly, reduce instances of retaliation, and identify widespread harassment within specific employers.⁸⁸

Building the Paid Care Division

Created in February 2017, OLPS's Paid Care Division is dedicated to improving working conditions for home care workers, house cleaners, and nannies. Overwhelmingly immigrants and women of color, these workers historically have been excluded from the protections afforded to most other workers. The Division, the result of sustained efforts by workers and advocates to raise standards for this workforce at the municipal, state, and federal levels, seeks to correct this legacy.

The city's home care workforce is large and growing—increasing by approximately 69 percent over the past decade.⁸⁹ The home care industry is expected to continue to grow, with the city projected to be home to approximately 1.4 million seniors by 2040, 70 percent of whom will require some form of long-term care, which has shifted from institutional care to in-home care.⁹⁰

Meantime, care workers' critical work has been long undervalued, in particular due to gendered assumptions about the value of caregiving. Paid care workers labor in people's private homes, outside of public view and with little recognition of the physical and emotional difficulty of their work. They are generally isolated from one another by the nature of care work, exacerbating the risk of labor violations for a dispersed workforce. All too often, and despite their important contributions to many New Yorkers, home care aides experience wage theft, discrimination, harassment, and overall economic insecurity.⁹¹

In response, key OLPS staff in outreach, legal services, enforcement, research, and policy development have been collaborating to build the Division to ensure that it comprehensively serves paid care workers and their communities and informs recommendations on how to raise industry standards.

Invaluable to its work are OLPS's partners. They have helped OLPS reach paid care workers, and OLPS has collaborated with them both formally through a working group and on an ongoing basis on joint initiatives. In addition to its work with organized workers, OLPS has prioritized reaching the large swaths of paid care workers who remain out of reach of existing worker groups. To this end, OLPS has designed an outreach strategy aimed at reaching unorganized workers to engage with them about activities and available resources and how to connect with worker centers, advocacy and community organizations, and unions.

Highlights of the Division's work in 2018 follow:

Outreach and Research

Outreach and research teams collaborated to map where paid care workers live and work and the distribution of paid care workers by various demographics, including race/ethnicity, language spoken at home, poverty status, and number of organizational contacts the outreach team has in the community district where the worker lives.

Because reaching unorganized paid care workers requires individual engagement with each worker, OLPS has established contact with nannies and babysitters by going to playgrounds and libraries in neighborhoods where there are high concentrations of paid care workers during work hours. Similarly, during evenings and weekends, OLPS has targeted transit hubs, commercial thoroughfares, and faith-based organizations in neighborhoods where high concentrations of nannies live.

Also, based on where paid care workers live, OLPS held an Open House on Saturday, October 27, 2018 at Queens Central Library. The Open House attracted a diverse range of paid care workers who had the opportunity to learn about the Paid Care Division and gain skills in negotiating employment terms.

Information about languages spoken by paid care workers will inform how the Division staffs outreach to certain areas; moreover, the service providers that are convenient to where paid care workers live will assist the Division in making meaningful referrals.

Enforcement

In the home care setting, workers' physical isolation from one another and their "employer"—commonly the agency—often is a barrier to workers gaining key information about their workplace rights. The complexity of protections also makes it very difficult for workers to know whether their pay and compensation track with what the law requires.

Conditions are especially difficult for nannies who are generally the only worker in a private household. This means there is no possibility of complaining "anonymously" about violations; a great fear of blacklisting; and a lack of any institutional engagement to help workers and the families that employ them understand key workplace obligations.

OLPS's attention to the unique challenges that the nature of these employment relationships poses to enforcement informed the Agency's home care agency enforcement initiative, described earlier in this report. In enforcement work going forward, OLPS will maintain its industry focus on home care agencies and work to develop new enforcement tools tailored to the unique aspects of employment—in particular, employment as a nanny—in private households.

Policy Development

OLPS recently updated its legal rules to clarify the long-standing position that home care aides are entitled to the full 40 hours guaranteed to "employees" under NYC's Paid Safe and Sick Leave Law, not the two days following at least one year of employment afforded to "domestic workers." The new rules also strengthen anti-retaliation and other protections.

Highlighting the unique challenges faced by home care workers and underscoring their vital role in our economy, OLPS submitted public comments on a proposed NYSDOL rule that would codify a long-standing practice of employers deducting eight hours of sleep time and three hours of meal time from hours that are required to be compensated during 24-hour shifts. OLPS's comments urge the State to amend its proposed rule to ensure that employers bear the burden of ensuring workers either genuinely receive real rest and meal breaks or are paid for those hours of work.⁹²

OLPS also submitted comments on the federal Certified Medical Assistant Rule Regarding the Reassignment of Medical Provider Claims, which proposes to repeal the current rule allowing home care workers paid through Medicaid to make payments to third parties. This would seriously undermine home care workers' right and ability to engage in collective bargaining, despite the vital advances this undervalued workforce has won through organizing. Furthermore, the proposed rule would hurt workers and their clients because it complicates workers' prospect to obtain health insurance.

Reports

On March 27, 2018, DCA released [*Lifting up Paid Care Work: Year One of New York City's Paid Care Division*](#), which provides an analysis of what the Division learned from stakeholders, which culminated in the adoption of model standards for paid care jobs; an overview of accomplishments; and a roadmap for action in the years to come. In partnership with Ruth Milkman of The City University of New York (CUNY), DCA also released [*Making Paid Care Work Visible: Findings from Focus Groups with New York City Home Care Aides, Nannies, and House Cleaners*](#), which documents the concerns of the city's home-based paid care workers whose voices are rarely heard by policymakers or by the wider public.

Together, these reports provide critical insight into the growing need for OLPS to participate in developing innovative policies that raise job standards and for the Paid Care Division to expand its outreach and educational resources to workers and employers alike.

Conclusion

In 2018—against the backdrop of a turbulent national political and social environment—OLPS continued its work to protect and promote labor standards and policies that create fair workplaces to ensure all workers can realize their rights, regardless of immigration status.

Indeed, while the federal government has pursued an anti-worker agenda through its immigration policy and less-publicized but still critical operational and regulatory changes at the NLRB and USDOL⁹³ and many conservative state governments have been pursuing aggressive strategies to prevent cities from setting the higher labor standards their constituents demand,⁹⁴ progressive cities and states, among them New York, have acted to strengthen workers' rights.

When the City of New York enacted its Paid Sick Leave Law in April 2014, it was only the seventh jurisdiction in the nation with such a law.⁹⁵ As of October 2018, 11 states and 35 localities have paid sick leave laws.⁹⁶ The year 2018 saw many additional state and local actions, including:

- creation of a new office of labor standards in Chicago;⁹⁷
- adoption of fair scheduling laws in Philadelphia⁹⁸ and Oregon;⁹⁹
- continued state and local action on the minimum wage;¹⁰⁰ and
- first-ever city-level adoption of a Domestic Workers' Bill of Rights in Seattle.¹⁰¹

Together, these measures promote a vision of an economy for all workers who, regardless of race, gender, or place of birth, can expect fair compensation for their work, effective protection under the law, and a greater say in setting the rules that govern their work, their pay, their benefits, and their share of the wealth their labor helps to create.

Across the country workers, advocates, and policymakers are insisting on a public response to decades of increasing inequality, attacks on unions and working people, and the fundamental imbalance and unfairness that too many workers are confronted with in their employment. As more cities and states pursue institutional responses to the inequity workers face, OLPS will continue to prioritize creative and effective enforcement tools, innovative policy development, deeply collaborative outreach, and an emphasis on the most vulnerable workers to contribute to broader efforts to achieve equity for all working people.

Endnotes

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- ² See Office of the NYC Comptroller, Report, *Q3 2018 NYC Quarterly Economic Update*, https://comptroller.nyc.gov/reports/new-york-city-quarterly-economic-update/#NYC_Economic_Growth_Advances_But_Lags_the_Nation (last visited Dec. 20, 2018).
- ³ OLPS analysis of the 2017 American Community Survey, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.
- ⁴ U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf> (2017).
- ⁵ Joint Employment Under the Fair Labor Standards Act, 29 C.F.R. § 791 (proposed 2018); The Standard for Determining Joint-Employer Status, 83 Fed. Reg. 46,681, 46,696 – 46,697 (Sept. 14, 2018) (to be codified at 29 C.F.R. pt. 103).
- ⁶ NYC Charter Section 20-a Sec. b(vi).
- ⁷ See NYC Department of Consumer Affairs, *Lifting Up Paid Care Work* (2018), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Lifting-up-Paid-Care-Work.pdf>.
- ⁸ *State of Workers' Rights: Public Hearing before Commissioner Lorelei Salas et al.* (July 17, 2018) (Hearing Transcript) at 20-23 [hereinafter Hearing Transcript].
- ⁹ “Groundbreakers” is a community-based domestic worker leadership program at National Domestic Workers Alliance (NDWA).
- ¹⁰ *Hearing Transcript*, at 27-28.
- ¹¹ *State of Workers' Rights: Public Hearing before Commissioner Lorelei Salas et al.* (July 17, 2018) (Written Testimony) at 34 [hereinafter Written Testimony].
- ¹² *Hearing Transcript*, at 27-30.
- ¹³ *Hearing Transcript*, at 42-43.
- ¹⁴ *Hearing Transcript*, at 55-58.
- ¹⁵ *Hearing Transcript*, at 105.
- ¹⁶ *Hearing Transcript*, at 31-32.
- ¹⁷ *Hearing Transcript*, at 28.
- ¹⁸ U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, <https://www.ice.gov/removal-statistics/2017> (last visited Nov. 9, 2018).
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- ²¹ *Written Testimony*, at 42-43.
- ²² *Written Testimony*, at 39-40.
- ²³ Restaurant Opportunities Centers United, *Better Wages Better Tips: Restaurants Flourish with One Fair Wage 3* (2018), available at http://rocunited.org/wp-content/uploads/2018/02/OneFairWage_W.pdf.

²⁴ Restaurant Opportunities Centers United, *Recipe for Success: Abolish the Subminimum Wage to Strengthen the Restaurant Industry 2* (2014), available at http://rocunited.org/wp-content/uploads/2014/03/ROCUnited_Recipe-for-Success.pdf.

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²⁹ *Hearing Transcript*, at 77-78, A2 and A5.

³⁰ *Hearing Transcript*, at 61.

³¹ *Hearing Transcript*, at 61-62.

³² *Hearing Transcript*, at 61-63, 78 and A5.

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³⁴ New York State Department of Labor, Worker Protection, *Subminimum Wage Hearings*, <https://www.labor.ny.gov/workerprotection/laborstandards/subminimumwage.shtm> (last visited Nov. 14, 2018).

³⁵ Letter from Lorelei Salas, Commissioner, NYC Department of Consumer Affairs, to Roberta Reardon, Commissioner, New York State Department of Labor (June 29, 2018), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Advocacy-Letter-DOL-Eliminating-Subminimum-Wage-062918.pdf>.

³⁶ *Hearing Transcript*, at 24 and 27.

³⁷ *Hearing Transcript*, at 64-66 and 100-102.

³⁸ *Written Testimony*, at 34-36.

³⁹ *Written Testimony*, at 40-41.

⁴⁰ *Hearing Transcript*, at 47-48.

⁴¹ *Hearing Transcript*, at 98.

⁴² Press Release, National Employment Law Project, *On New York State's Employee Status Ruling for New York Uber Drivers* (July 19, 2018), <https://www.nelp.org/news-releases/nysdols-employee-status-ruling-new-york-uber-drivers/>.

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⁴⁵ Ceilidh Gao, *The Supreme Court's Decision in Epic Systems—What You Need To Know*, National Employment Law Project blog (June 5, 2018), <https://www.nelp.org/blog/supreme-courts-decision-epic-systems-need-know/>.

⁴⁶ U.S. Dep't. of Labor, *PAID*, <https://www.dol.gov/whd/paid/> (last visited Jan. 23, 2019).

⁴⁷ Terri Gerstein, *Labor Department's program on wage theft enforcement is the wrong approach*, The Hill, (Mar. 22, 2018), <https://thehill.com/opinion/finance/379750-labor-departments-program-on-wage-theft-enforcement-is-the-wrong-approach>.

⁴⁸ As per Paid Safe and Sick Leave Law, retaliation “shall mean any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.” (Title 20 of the Administrative Code of the City of New York, Section 20-912). As per Fair Workweek Law, “[t]aking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, reducing the hours or pay of an employee, informing another employer that an employee has engaged in activities protected by this chapter, and discriminating against the employee, including actions related to perceived immigration status or work authorization” (Title 20 of the Administrative Code of the City of New York, Section 20-1204).

⁴⁹ *Hearing Transcript*, at 52-53.

⁵⁰ *Hearing Transcript*, at 53.

⁵¹ *Hearing Transcript*, at 73-74.

⁵² *Hearing Transcript*, at 95-96.

⁵³ *Hearing Transcript*, at 53-54.

⁵⁴ *Hearing Transcript*, at 84-87.

⁵⁵ *Hearing Transcript*, at 57.

⁵⁶ *Hearing Transcript*, at 15-16.

⁵⁷ *Hearing Transcript*, at 94-95.

⁵⁸ *Hearing Transcript*, at 87.

⁵⁹ *Hearing Transcript*, at 39-40 and 110-111.

⁶⁰ *Hearing Transcript*, at 39.

⁶¹ *Hearing Transcript*, at 110-111 and 113-115.

⁶² *Hearing Transcript*, at 64-65 and 102.

⁶³ UCLA Labor Center, *Nail Files: A Study of Nail Salon Workers and Industry in the United States* (2018), available at https://www.labor.ucla.edu/wp-content/uploads/2018/11/NAILFILES_2018nov29_FINAL_3.pdf.

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⁶⁵ *Hearing Transcript*, at 64-66 and 102-103.

⁶⁶ *Hearing Transcript*, at A2-A3.

⁶⁷ *Hearing Transcript*, at 69.

⁶⁸ NYC Taxi & Limousine Commission, Commissioner's Room, Commissioner's Corner, *July 2018*, http://www.nyc.gov/html/tlc/html/about/column_2018_07.shtml (last visited Dec. 12, 2018).

⁶⁹ *Hearing Transcript*, at 37-38.

⁷⁰ *Hearing Transcript*, at 36-38.

⁷¹ *Written Transcript*, at 39-41.

⁷² *Hearing Transcript*, at 101.

⁷³ *Hearing Transcript*, at 44-45.

⁷⁴ *Hearing Transcript*, at 18.

⁷⁵ *Hearing Transcript*, at 17.

⁷⁶ *Written Testimony*, at 37.

⁷⁷ Annette Bernhardt et al, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (University of California, Los Angeles 2009), available at <https://cloudfront.escholarship.org/dist/prd/content/qt1vn389nh/qt1vn389nh.pdf?t=nya8l1>; David Weil, *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division* 16 (Boston University May 2010), available at <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

⁷⁸ As of publication date, litigation is pending in New York State court challenging NYC's authority to promulgate the Fair Workweek laws. Enforcement of the Fair Workweek laws has not been stayed, and OLPS's Fair Workweek enforcement continues.

⁷⁹ *Demanding Rights in an On-Demand Economy: Key Findings from Year One of NYC's Freelance Isn't Free Act* (2018), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Demanding-Rights-in-an-On-Demand-Economy.pdf>.

⁸⁰ *Demanding Rights in an On-Demand Economy: Key Findings from Year One of NYC's Freelance Isn't Free Act* (2018), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Demanding-Rights-in-an-On-Demand-Economy.pdf>.

⁸¹ OLPS estimates the number of violations by applying a published national estimate of the frequency with which freelancers experience late payment and nonpayment to OLPS's original coverage estimate of the number of freelancers covered by NYC's Freelance Isn't Free Law (see NYC Department of Consumer Affairs, *Demanding Rights in an On-Demand Economy: Key Findings from Year One of NYC's Freelance Isn't Free Act* (2018), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Demanding-Rights-in-an-On-Demand-Economy.pdf>).

⁸² Under NYC's Paid Safe and Sick Leave Law, a "family member" includes any "individual whose close association with the employee is the equivalent of a family relationship" (Title 20 of the Administrative Code of the City of New York, Section 20-912).

⁸³ A Local Law to amend the administrative code of the city of New York, in relation to establishing minimum payments to for-hire vehicle drivers and authorizing the establishment of minimum rates of fare, Local Law 2018/150 (Aug. 14, 2018).

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⁸⁷ *Ibid.*

⁸⁸ See Press Release, Office of the NYC Mayor, *De Blasio Administration Launches Gender-Based Anti-Harassment Unit*, <https://www1.nyc.gov/office-of-the-mayor/news/058-19/de-blasio-administration-launches-gender-based-anti-harassment-unit>.

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Appendix A: OLPS by the Numbers

	Total	Calendar Year 2018	Calendar Year 2017
Intake, Outreach, and Referral			
Intakes	> 20,500	3,178	3,007
Outreach events	> 1,600	292	445
Materials distributed	> 2,000,000	70,620	60,938
Referrals	460	266	188
Enforcement			
Complaints	2,426	883	486
Paid Safe and Sick Leave	1,658	262	344
Fair Workweek	134	124	10
Freelancers	638	510	128
Cases closed	2,085	797	425
Paid Safe and Sick Leave	1,543	386	315
Fair Workweek	77	76	1
Freelancers	437	342	95
Restitution (\$)	\$7,527,818	\$2,350,503	\$2,253,954
Paid Safe and Sick Leave	\$6,716,784	\$1,899,897	\$2,062,690
Fair Workweek	\$252,135	\$252,135	0
Freelancers	\$685,652	\$555,516	\$130,136
Employees receiving restitution	28,890	7,703	6,235
Paid Safe and Sick Leave	28,589	7,496	6,141
Fair Workweek	1,270	1,270	0
Freelancers	224	169	56
Penalties (\$)	\$2,435,979	\$444,668	\$644,591
Paid Safe and Sick Leave	\$2,414,329	\$424,699	\$643,191
Fair Workweek	\$69,140	\$69,140	0
OATH Petitions	120	45	51
Paid Safe and Sick Leave	108	36	48
Fair Workweek	11	11	0

Note: Enforcement statistics include the Paid Safe and Sick Leave, Fair Workweek, and Freelance Isn't Free laws, as well as four additional laws not individually shown: Commuter Benefits, Living Wage, Prevailing Wage, and Grocery Worker Retention. If a matter concerns both the Paid Safe and Sick Leave and Fair Workweek laws, it is reflected in the statistics for each of the laws, but only once in the enforcement totals. The **Total** column reports Department data from the effective date for Paid Sick Leave (April 1, 2014) through December 31, 2018. This includes information regarding intake, outreach, referral, and enforcement prior to the Office of Labor Policy & Standards being established in mid-2016.

Appendix B: OLPS's Workplace Laws

Paid Safe and Sick Leave

Under NYC's Paid Safe and Sick Leave Law (Earned Safe and Sick Time Act), certain employers must give their employees safe and sick leave. Employees who work 80+ hours a year at any size business or nonprofit in NYC can earn up to 40 hours of safe and sick leave each year. Employees can use leave for themselves or to help anyone they consider family for care and treatment, or to seek help or take other safety measures for any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

Retaliation is illegal.

For more information, visit nyc.gov/dca and search "paid safe and sick leave."

Fair Workweek and Fast Food Deductions

Under NYC's Fair Workweek Law, fast food employers in NYC must give employees good faith estimates of when and how many hours they will work, predictable work schedules, and the opportunity to work newly available shifts before hiring new workers.

Retail employers in NYC must give employees predictable work schedules.

Under NYC's Fast Food Deductions Law, fast food employers must honor employee requests to deduct voluntary payments from their paychecks to send to nonprofits that have a registration letter from DCA. The law does not allow contributions to labor organizations.

Retaliation is illegal.

For more information, visit nyc.gov/dca and search "fair workweek."

Freelance Isn't Free

NYC's Freelance Isn't Free Law establishes and enhances protections for freelance workers, including the right to a written contract and timely and full payment. The law establishes penalties for violations of these rights, including statutory damages, double damages, injunctive relief, and attorneys' fees and costs.

Retaliation is illegal.

For more information, visit nyc.gov/dca and search "freelance."

Paid Care Division

The Paid Care Division was established by Local Law 98 of 2016 to focus on the needs of paid care workers, such as domestic workers and home care aides who are often women and immigrants, and develop education and other resources. The Division develops policies and programs for paid care workers; conducts public outreach and information campaigns for paid care workers, employers, and care recipients; conducts and promotes research on the paid care industry; and coordinates with stakeholders to provide programming and training.

For more information, visit nyc.gov/dca and search "paid care."

Commuter Benefits

NYC's Commuter Benefits Law requires for-profit and nonprofit employers with 20 or more full-time non-union employees in NYC to offer their full-time employees the opportunity to use pre-tax income to pay for qualified transit expenses. Under federal tax law, employees can currently use up to \$265 of pre-tax income a month to pay for their commute.

For more information, visit nyc.gov/dca and search “commuter benefits.”

Grocery Worker Retention

The Grocery Worker Retention Act requires new grocery store owners to retain employees of the previous owner for a 90-day transitional period following a change in control of the grocery store.

For more information, visit nyc.gov/dca and search “grocery worker retention.”

Living and Prevailing Wage

The Living Wage Law requires certain employers that receive at least \$1 million of financial assistance from the City or a City economic development entity to pay no less than the living wage to their employees at the project site, unless the employer qualifies for certain exemptions.

For more information, visit nyc.gov/dca and search “living wage.”

Temporary Schedule Change

NYC's Temporary Schedule Change Law requires employers to grant a temporary change to hours, times, or locations of work to accommodate a worker's “personal event.” Employees have the right to two (2) temporary schedule changes per year—up to one (1) business day per request, or two (2) business days for one request.

Retaliation is illegal.

For more information, visit nyc.gov/dca and search “temporary schedule change.”

Displaced Building Service Workers Protection

The Displaced Building Service Workers Protection Act requires certain new building owners, managers, contractors, and commercial lessees to retain pre-existing building service employees for a 90-day transition period. During the transition period, employees can only be terminated for cause or if the new employer determines that fewer building service employees are required to perform building service work. At the end of the transition period, employees will be offered continued employment if the new employer considers their performance to be satisfactory.

For more information, visit nyc.gov/dca and search “displaced service worker.”

Notes

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