



**Testimony of the Center for Law and Social Policy (CLASP)
Public Hearing on the State of Workers' Rights in New York City
April 25, 2017**

The Center for Law and Social Policy (CLASP) is a national organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. We advocate for and conduct research and analysis on job quality policies, including paid sick days, paid family and medical leave, and fair scheduling. Further, we work with community and government partners to promote effective implementation and enforcement of labor standards policies.

New York City Office of Labor Standards Policy

CLASP commends the City of New York for its recent creation of the Office of Labor Standards Policy (OLPS). New York joins a growing number of cities—including San Francisco and Seattle—that have established offices focused specifically on the enforcement of local labor laws. As more cities establish their own labor standards, such dedicated offices are crucial to effective outreach and enforcement.

CLASP has worked closely with the NYC Paid Sick Leave Division (PSLD) in supporting its efforts to implement NYC's paid sick days law, facilitating connections between PSLD staff and other agencies around the country that are implementing paid sick days laws. In 2015, CLASP and the City of New York co-hosted a successful convening for paid sick days enforcement agencies and advocates that brought together more than 80 participants from 17 jurisdictions and 14 advocacy organizations around the country to share best practices and strategies for effective paid sick days enforcement.

New York's PSLD—and now the OLPS—has been a leader in the paid sick days enforcement arena and the labor standards enforcement arena more broadly. In addition to offering expertise at the 2015 convening and a 2016 convening CLASP co-hosted in San Francisco, PSLD staff have frequently spoken on our webinars and conference calls, providing insights and sharing best practices to assist other cities in shaping their enforcement programs.

Local Labor Standards Enforcement

Concerted efforts to support and provide resources for local labor standards enforcement are crucial to the wellbeing of low-wage workers around the country. Low-wage workers, many of whom experience wage theft and other labor standards violations, are concentrated in major

cities like NYC, making the need for enforcement in these jurisdictions particularly urgent. Moreover, just as NYC and other localities have been on the cutting edge of passing progressive labor standards, they now serve as models for the nation. Stakeholders nationwide are watching closely to see how effective these laws are and the extent to which vulnerable workers benefit from them; the outcomes of these laws will affect whether other cities, states, and the federal government move forward with similar legislation.

The importance of local enforcement is, in part, a function of the current limitations of labor standards enforcement at other levels of government. Many state labor departments are strapped for resources and can only offer a limited presence on the ground in major cities. As a result, millions of workers experience labor standards violations each year, yet their employers experience no penalties. With the current political climate likely to limit enforcement efforts at the federal level, local enforcement is more important than ever. In light of these factors, CLASP urges NYC to provide sufficient resources to OLPS to ensure that it can begin to close the enforcement gap.

This enforcement gap has been documented in a groundbreaking 2008 study, which found that more than half of surveyed low-wage workers in NYC had been victims of wage theft in the previous workweek.¹ Yet the vast majority of workers who experience violations do not file complaints with government agencies. Many fear retaliation, including job loss, as a result of reporting their employers. National data demonstrate the significant mismatch between the industries where workers file federal Department of Labor complaints concerning violations and the industries in which violations actually occur.²

Strategic Enforcement and Partnerships with Community Based Organizations

While complaint-based enforcement (enforcement driven primarily by worker-initiated complaints) is an important part of labor law enforcement—indeed NYC’s PSLD has collected \$3.3 million in restitution for nearly 16,000 employees over the past three years based on complaints—it is insufficient.³ CLASP urges the OLPS to move toward a strategic enforcement model that uses directed investigations in high-violation industries. Strategic enforcement makes use of data and intelligence from a variety of sources to direct resources and investigative efforts in ways that are likely to have the most impact—helping the most workers or those who are particularly vulnerable—and creating the deterrent effect necessary to foster a culture of employer compliance.⁴

Such an approach would be complemented by continued support for OLPS’s relationships with community-based organizations (CBOs), which often enjoy a level of trust from vulnerable workers that government agencies can almost never replicate. As such, they perform the vital functions of both supporting vulnerable workers to move forward and file claims, despite sometimes high levels of fear and distrust, and passing on important information from low-wage industries to OLPS to help inform enforcement efforts. Yet, many CBOs struggle to continue to perform these functions due to limited funding and capacity. Cities like San

Francisco, Seattle, Los Angeles, Oakland, and Pasadena have established funding mechanisms to support enforcement partnerships with CBOs (“co-enforcement”).⁵

Private Right of Action

Another crucial mechanism for bolstering workers’ rights in NYC is a private right of action. CLASP urges NYC to pursue the addition of a private right of action for the laws it currently enforces and those that may pass in the future. Such a right expands the scope of workers’ abilities to demand what they are owed and pursue employers that violate the law. Moreover, a private right of action supports strategic enforcement by providing workers whose cases are not ultimately pursued with an alternate option for justice. (As a part of strategic enforcement, agencies must make difficult decisions in prioritizing their use of resources; this may mean that some cases are not investigated). A private right of action is included in 24 of the 31 local paid sick days laws that have been enacted around the country.⁶

Fair Scheduling: The New Frontier for Workers’ Rights

CLASP strongly supports NYC’s proposed fair scheduling ordinances: Int. 1384, Int. 1396, Int. 1395, Int. 1388, Int. 1387, and Int. 1399. Research demonstrates that many service workers in NYC, particularly low-income workers, are struggling with the effects of volatile work schedules and inadequate hours.⁷ Unstable scheduling creates stress for working families; makes it difficult to pay the bills; and limits workers’ ability to pursue higher education, hold a second job, or perform caregiving obligations.⁸ Just as NYC has led the nation with its paid sick days law, it is poised to be a leader on fair schedules. With the passage of fair scheduling legislation, NYC will join a handful of leading jurisdictions in the country who are improving job quality by stabilizing workers’ schedules. Many more jurisdictions are currently considering fair scheduling legislation.⁹

Fair scheduling laws can have far-reaching positive effects on workers’ lives, but they are also new to both employers and employees and somewhat more complex than some other labor standards. For this reason, CLASP urges NYC to devote resources to allow OLPS and its community partners to effectively engage with both employees and employers should NYC’s proposed fair scheduling laws pass. To ensure that these laws meet their supporters’ goals, it is essential that workers know their rights and employers can get the technical assistance they need to comply.

Local and National Leadership

OLPS plays a crucial role not just for low-income workers in NYC, but also for workers nationwide. By acting as a model for other enforcement agencies around the country – particularly other local agencies – OLPS’s work has impact beyond NYC’s borders. CLASP congratulates OLPS for its important work and urges NYC to devote sufficient resources to ensure its continued success and leadership. If well-resourced, OLPS’s dedicated staff will be

equipped to maximize the impact of NYC’s labor laws on its most vulnerable citizens, and to build on its existing national leadership role.

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References

¹ Annette Bernhardt, Diana Polson, and James DeFilippis, *Working Without Laws: A Survey of Employment and Labor Law Violations in New York City*, National Employment Law Project, 2010, <http://www.nelp.org/publication/working-without-laws-a-survey-of-employment-and-labor-law-violations-in-new-york-city/>.

² David Weil and Amanda Pyles, "Why Complain-Complaints, Compliance, and the Problem of Enforcement in the US Workplace." *Comp. Lab. L. & Pol'y. J.* 27 (2005): 59. <http://projects.iq.harvard.edu/files/hctar/files/hr08.pdf>.

³ "Paid Sick Leave Facts: April 1, 2014 to April 10, 2017," NYC Consumer Affairs, 2017, http://www1.nyc.gov/assets/dca/downloads/pdf/about/PSLFacts_2014to041017.pdf.

⁴ See for example, <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

⁵ For information on Seattle’s co-enforcement program, see David Weil, *Improving Workplace Conditions Through Strategic Enforcement*, U.S. Department of Labor, Wage and Hour Division, 2010, <http://www.seattle.gov/laborstandards/outreach/community-fund/2017-2019-community-outreach-and-education-fund>.

For information on San Francisco’s program, see the City and County’s RFP: http://mission.sfgov.org/OCA_BID_ATTACHMENTS/FA48677.pdf.

⁶ "Paid Sick Time Legislative Successes," A Better Balance, January 2017, <http://www.abetterbalance.org/resources/paid-sick-time-legislative-successes/>.

⁷ Harold Stolper, *Unpredictable: How unpredictable schedules keep low-income New Yorkers from getting ahead*. Community Service Society. 2016 http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads/pubs/Scheduling_12_19_16_Final_Web.pdf. See also, CLASP Testimony, http://www.clasp.org/resources-and-publications/publication-1/NYCSchedulingBills_CLASPTestimony.pdf.

⁸ Liz Ben-Ishai, *Federal Legislation to Address Volatile Job Schedules*, Center for Law and Social Policy, 2015, http://www.clasp.org/resources-and-publications/publication-1/2015.07.23_SchedulesThatWorkActBrief_FINAL.pdf.

For more information on fair scheduling, visit CLASP’s National Repository of Resources on Job Scheduling Policy, http://www.clasp.org/resources-and-publications/publication-1/2015.07.23_SchedulesThatWorkActBrief_FINAL.pdf.

⁹ See "Proposed Federal, State, and Local Legislation," CLASP National Repository of Resources on Job Scheduling Policy, <http://www.clasp.org/issues/work-life-and-job-quality/scheduling-resources>.