



Policy solutions that work for low-income people

Testimony of Tanya L. Goldman, Senior Policy Analyst, Center for Law and Social Policy
at the DC Council Budget Oversight Hearing: Committee on Labor & Workforce Development
April 18, 2018

Good morning, Councilmember Silverman and members of the Labor and Workforce Development Committee. My name is Tanya Goldman, and I am a Senior Policy Analyst and Attorney at the Center for Law and Social Policy (CLASP), where I focus on issues related to job quality. I am also a resident of Ward 6. Prior to joining CLASP, I held several positions at the U.S. Department of Labor, including serving as Deputy Chief of Staff and Senior Policy Advisor in the Wage and Hour Division during the Obama administration.

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. CLASP has a long history of working to both develop critical social policies and to advocate for the proper implementation and enforcement of these policies. We work closely with state and local agencies charged with implementing policies, labor enforcement agencies, and advocates to improve policy implementation and foster systems change that increases access and improves services.

I thank you for the opportunity to provide testimony on the Department of Employment Services (DOES) and about my recommendations for best practices in strategically enforcing the laws it is charged with administering. My testimony reinforces many of the recommendations in the [Report and Recommendations of the Committee on Labor and Workforce Development on the Fiscal Year 2018 Budget for Agencies under Its Purview](#).¹ I further recommend clarifying DOES's legal authority to engage in proactive investigations.

Strategic Enforcement of Labor Laws

The District's wage law requirements and paid sick and safe days law provide a basic level of economic security to the district's workers. We recognize, however, that a law is only effective if it is correctly implemented and robustly enforced. For example, wage theft continues to plague our labor market, though many states and cities have adopted strong penalties. An [Economic Policy Institute study](#) of wage theft in the 10 most populous states found that 2.4 million workers per year report being paid less than the minimum wage in their state, accounting for a total underpayment of over \$8 billion in wages annually.² The reason these violations continue to abound is because most enforcement agencies are overburdened and under-resourced.

These laws must be enforced to protect the district's workers, but also to create a level playing field for responsible employers. Most employers want to do the right thing; they want to run successful businesses and comply with the law. It is hard to compete, however, against unscrupulous businesses that do not play by the rules. Wage violations impact not just workers and their families, therefore, but the whole industry.

DOES has an important and challenging mission. The Labor Standards Bureau is charged with enforcing laws that affect the lives of **over half a million private sector workers** in the district, working in almost **40,000 different establishments**.³ DOES will never have enough investigators to improve compliance visiting one employer at a time. Further, it will never be able to improve compliance by exclusively remedying violations that have already happened. DOES's goal should not be just to find back wages after the fact, but to improve compliance in the first place.

Additionally, a complaint-driven approach will leave behind some of the district's most vulnerable workers. It may sound counter-intuitive, but sometimes the worst violations are not where agencies receive the most complaints, but where workers may not be aware of their rights or are too afraid of reprisal to speak up. Workers in many industries with high levels of noncompliance may be **reluctant to complain** for a number of reasons beyond just a lack of knowledge of their rights.⁴ For example, workers' immigration statuses may be a perceived barrier to complaining, or create particular vulnerabilities to threats and reprisals. In the current national context, this fear is likely to be exacerbated. Additionally, most workers have well-founded fears of retaliation. Retaliation against workers who speak out or raise concerns about their rights unfortunately continues to be widespread. According to a national survey, 43 percent of workers who complained to their employers about their pay and working conditions were subject to retaliation.⁵ While this is a problem for anyone, low-wage vulnerable workers literally cannot afford to lose their jobs and may be hesitant to come forward.

We recommend that DOES be strategic about where and how it uses its resources, by prioritizing and directing its efforts to where the problems are largest, where workers are least likely to exercise their rights provided by the law, and where it can have an impact on industry-wide compliance. Transitioning to strategic enforcement includes increasing the use of proactive investigations; setting enforcement priorities; using all enforcement tools; improving outreach; using strategic communications; resolving investigations with agreements that promote ongoing compliance; and building a culture of planning, evaluation, review, and continuing improvement. My testimony today focuses primarily on identifying priority industries and conducting proactive investigations.

Identifying Priority Industries and Conducting Proactive Investigations

One aspect of strategic enforcement is conducting proactive investigations. This means that in addition to responding to complaints, enforcement agencies are also directing their resources to where they know through their enforcement experience and other evidence that workers are most at risk for violations. DOES should consider where the data and evidence show wage violations are most likely to occur, where emerging business models lend themselves to such violations, and where workers are vulnerable and often reluctant to raise their voices and exercise their rights.

For example, when I worked at the Wage and Hour Division of the U.S. Department of Labor, the agency used data from the Bureau of Labor Statistics' Current Population Survey. They developed a list of priority industries based on the prevalence of wage violations across industries. They further refined the

list of industries by combining the results with their complaint data, which showed industries with the highest violations and the lowest complaints. This analysis allowed the agency to focus on those industries with the highest violation rates that employed workers that were the least likely to complain.

We recommend that DOES develop a similar strategic enforcement model for enforcing the District's wage and hour and paid sick days laws. It should identify industries for investigation based on evidence, including a review of survey data on the areas where wage theft and other violations are common but individual complaints are rare, as well as considering the input of community stakeholders.

Using all Enforcement Tools

In addition, we recommend that DOES fully enforce the District's and federal labor laws to properly redress violations and to deter future violations. It should consistently pursue, and include in its initial determinations, the full liquidated damages, in addition to back wages owed under the District's laws. Without these additional damages, employees are not fully compensated for all the harm they suffer from lost wages. When employers steal workers' wages, the worker does not just lose out on that money, but may suffer additional consequences, such as an inability to pay the rent or other important bills. Additionally, when employers are only required to compensate workers by paying them the wages they should have paid in the first place, employers have essentially received a no-interest loan. Collecting liquidated damages increases the costs of non-compliance and incentivizes future compliance.

Outreach and Education to Increase Compliance

Enforcement alone is insufficient to achieve DOES's mission of protecting workers and creating a level playing field for employers. Employers who are aware of their legal responsibilities (and the consequences of breaking the law) and workers who are aware of their rights are better positioned to identify and remedy violations, or to prevent them from occurring in the first place. Outreach events, compliance assistance documents and resources in multiple languages, community outreach and coordination; and a strategic communications plan should also be part of strategic enforcement.

Authority for Proactive Investigations

While CLASP believes that DOES's existing laws permit it to engage in strategic enforcement, much of the language focuses on how to respond to employee complaints. We encourage the D.C. Council to clarify DOES's authority in the Budget Support Act to ensure that DOES feels empowered to most strategically use the funds provided by the D.C. Council to pursue enforcement of labor laws and does not need to expend future resources considering or defending this authority.

Conclusion

We know that strategic enforcement works. One metric for evaluating an enforcement agency is to measure the benefits to workers. At Wage and Hour, even though the agency focused on low-wage industries, the average back wages it found per worker continued to climb. That means that even though it was helping more workers paid lower rates, it was still finding more money due for each worker.

I look forward to continuing to work with you and DOES on policies that benefit workers, create a level playing field for employers, and create a stronger economy for all. Thank you again, and I look forward to hearing your ideas and answering your questions.

¹ “Report and Recommendations of the Committee on Labor and Workforce Development on the Fiscal Year 2018 Budget for Agencies under Its Purview,” **May 17, 2017**, available at http://dccouncil.us/files/user_uploads/budget/labor_final.pdf.

² David Cooper and Teresa Kroeger, *Employers steal billions from workers’ paychecks each year*, Economic Policy Institute, May 10, 2017, available at <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>.

³ D.C. Department of Employment Services, District of Columbia Annual Economic Report 2016, available at https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/2016%20LMI%20Annual%20Econ%20Report-Final.pdf.

⁴ David Weil, “Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division,” May 2010, available at <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

⁵ “Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States,” National Employment Law Project, July 2013, available at <http://www.nelp.org/content/uploads/Policy-Brief-Top-Five-Enforcement-Tools-Local-Minimum-Wage.pdf> (citing Annette Bernhardt, Ruth Milkman, Nik Theodore et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (September 2009)).