



**Testimony of Amy Traub  
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**Re: The State of Workers' Rights in New York City**

**Submitted electronically to the  
Office of Labor Policy and Standards,  
New York City Department of Consumer Affairs  
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April 25, 2017

Dear Commissioners Salas, Agarwal, and Malalis:

Demos appreciates the opportunity to offer testimony on the state of workers' rights in New York City. We are a non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. We are a national organization proud to be based here in New York City. And we recognize that workers' rights are critical to our mission of reducing economic inequality.

Our testimony will focus on four key areas of concern for working New Yorkers:

- Widespread violations of basic wage and hour laws;
- The need for greater public awareness of the right to paid leave, under both New York City's Paid Sick Leave law and New York State's pending Paid Family Leave law;
- The pressing necessity for greater public investment in child care, in the interest of working parents and paid child care workers;
- Combating employment discrimination, particularly New York City's statutes banning discrimination based on credit history and on arrest or conviction record.

Addressing concerns on each of these fronts will require **resources for legal enforcement, public education and outreach, and research** to improve understanding of conditions for working New Yorkers and the efficacy of the city's efforts at redress. Demos welcomes the establishment of New York City's Office of Labor Policy and Standards to serve as the city's focal point on workplace issues and we appreciate the continuing efforts of the Mayor's Office

of Immigrant Affairs and the New York City Commission on Human Rights in combatting discrimination.

### **Widespread violations of basic wage and hour laws**

Research into violations of basic employment laws reveals the critical importance of enforcing wage statutes, both for low-paid New Yorkers and for our city and its overall economy. The National Employment Law Project's landmark 2008 survey of thousands of people employed in low-paying industries in New York City exposed pervasive violations of workplace protections: more than half of workers surveyed reported being subjected to pay violations such as failure to pay minimum wage, not being paid for overtime, being required to work off the clock or being compelled to work through meal breaks.<sup>1</sup> Illegal employer retaliation against workers who complained was also widespread. Meanwhile, a 2011 U.S. Department of Labor study assessing minimum wage violations alone estimated that workers throughout New York State were losing \$10-\$20 million dollars every week exclusively to violations of the federal minimum wage.<sup>2</sup> When workers are cheated out of wages, the city bears a greater burden as fewer taxes are collected, impoverished workers turn to public programs to support their families, and workers have less money to spend supporting neighborhood businesses and the local economy. A growing body of research also details how strained family budgets negatively impact the next generation of New Yorkers.<sup>3</sup>

These findings highlight the need for greater city-level enforcement efforts for wage and hour and other basic workplace protections, especially as the budget of the federal Department of Labor faces severe cuts and potentially a shift in priorities away from enforcing core workplace rights.<sup>4</sup> Indeed, the much-needed increases in New York State's minimum wage that are now being phased in will only be effective to the extent that the minimum is meaningfully enforced. The pervasiveness of violations also demonstrates the importance of the Office of Labor Policy and Standards mandate to work in close partnership with workers and their organizations

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<sup>1</sup> Annette Bernhardt, Diana Polson, and James Defilippis, "Working Without Laws: A Survey of Employment and Labor Law Violations in New York City," *The National Employment Law Project*, March 2015, available at <http://www.nelp.org/publication/working-without-laws-a-survey-of-employment-and-labor-law-violations-in-new-york-city/>.

<sup>2</sup> U.S. Department of Labor, "The Social and Economic Effects of Wage Violations: Estimates for California and New York," *The U.S. Department of Labor*, Eastern Research Group, December 2014, available at: <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>.

<sup>3</sup> "Child Poverty," NCCP | Child Poverty, *National Center for Children in Poverty*, n.d., available at: <http://www.nccp.org/topics/childpoverty.html>.

<sup>4</sup> . Office of Management and Budget, "America First: A Budget Blueprint to Make America Great Again," *Executive Office of the President of the United States*, The White House, March 2017, available at: [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf).

to raise awareness of pay regulations and gain an understanding of the industries, occupations, and circumstances where violations persist and how to combat them more effectively. Working with employers to understand and comply with the changing law is also essential. The greater rate of wage violations among immigrant workers makes translation and interpretation of public information about workers' rights into the languages understood by New Yorkers especially important, as is the emphasis that workers' fundamental rights apply regardless of immigration status.

Finally, the need to rely on research data collected in 2008 (National Employment Law Project) and 2011 (U.S. Department of Labor) to assess the pervasiveness of violations highlights the imperative for additional, up-to-date research to better understand compliance with wage and hour and other vital workplace laws and to assess the extent to which regulatory and enforcement efforts are effective and how they could be improved. Alongside enforcement, public outreach, and coordination efforts, rigorous, critical research into the conditions faced by workers will require significant resources but is vital to protecting New Yorkers' right to fair compensation for their labor.

### **Public Awareness of Paid Leave**

Throughout the nation, 6 in 10 low-paid workers have no access to paid sick time.<sup>5</sup> Working New Yorkers *do* have this right – and multilingual public outreach efforts like the “Feel 100%, Work 100%” campaign on subways and buses have undoubtedly helped to increase awareness. These efforts must be ongoing, with resources devoted to continuous outreach to workers and their employers. As with violations of wage and hour laws, public outreach and education must be coupled with enforcement, partnership with worker organizations, research and a continued emphasis that the law applies regardless of immigration status. As OLPS's mission appropriately includes conducting public education and outreach about not only city workplace laws but also state and federal protections that apply to New Yorkers, it will also be vital to work with New York State to educate expectant parents, family caregivers, and their employers in the city about rights and responsibilities under the state's new paid family leave law, going into effect on January 1, 2018.

### **Investment in Child Care**

Access to child care must be considered a core element of workers' rights in New York City: first, because quality, affordable child care is essential for parents of young children to

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<sup>5</sup> U.S. Bureau of Labor Statistics, “Table 6: Selected paid leave benefits: Access,” March 2016 National Compensation Survey, *U.S. Department of Labor*, Bureau of Labor Statistics, revised July 2016, available at: <https://www.bls.gov/news.release/ebs2.t06.htm>.

participate in the workforce and second because the Census estimates that more than 27,000 people are employed as child care workers in the New York City metropolitan area (a number which may dramatically undercount child care employment given the extent to which child care employment is often informal).<sup>6</sup> The reality that child care is both unaffordable for parents and offers unlivable wages to child care workers indicates that private markets are not adequately meeting the need for care: child care is – and must be treated as – a public good to serve all New Yorkers.

The guarantee of universal preschool to all four-year-olds in New York City is a giant step toward addressing the crisis of care facing working parents. Yet parents of younger children still face daunting obstacles to participation in the labor force, particularly among low-income households whose expenses for child care often exceed the cost of rent. In 2015, the Public Advocate’s Office concluded that the average annual cost of infant care in New York City was \$16,250 and was increasing by almost \$1,612 each year.<sup>7</sup> While child care subsidies currently serve just 17 percent of eligible families statewide, the most recent New York State budget cuts an additional \$7 million in child care subsidies to low-income families. Despite promises to help families with child care costs, Trump’s budget and tax plans may make matters worse for working New Yorkers.<sup>8</sup> To participate in the labor force, New Yorkers need greater access to affordable, quality child care.

A focus on the city’s child care workforce is vital as caregivers, predominantly women of color and immigrants, are among New York’s most vulnerable employees, facing low wages and economic insecurity whether they are employed in home- or center-based care. Since 1997, child care workers nationwide have experienced no real increase in earnings despite a near doubling in the cost of child care services to parents.<sup>9</sup> Domestic Workers United’s 2006 survey of child care and other workers employed in New York City’s private homes found even more troubling

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<sup>6</sup>U.S. Bureau of Labor Statistics, “39-9011 Childcare Workers,” *U.S. Department of Labor*, Bureau of Labor Statistics, May 2016, available at: <https://www.bls.gov/oes/current/oes399011.htm#st>.

<sup>7</sup> Letitia James, “Policy Report: Child Care in New York City- Part II: Investing in Child Care,” The Public Advocate for the City of New York, November 2015, [http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/child\\_care\\_report\\_nov\\_2015.pdf](http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/child_care_report_nov_2015.pdf).

<sup>8</sup> Lily L. Batchelder, Elaine Maag, Chye-Ching Huang, and Emily Horton, “Who Benefits from President Trump’s Child Care Proposals?” *Tax Policy Center*, Urban Institute & Brookings Institution, February 28, 2017, available at: <http://www.taxpolicycenter.org/sites/default/files/publication/138781/2001170-who-benefits-from-president-trumps-child-care-proposals.pdf>.

<sup>9</sup> Marcy Whitebook, Deborah Phillips, and Carollee Howes, “Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study,” Center for the Study of Child Care Employment at Institute for Research on Labor and Employment, *University of California, Berkeley*, 2014, available at: <http://cscce.berkeley.edu/files/2014/ReportFINAL.pdf>.

patterns of low pay, legal violations, lack of health coverage and abusive treatment by employers.<sup>10</sup> OLPS' focus on the child care workforce is important for educating workers and employers about their rights, enforcing the Domestic Workers' Bill of Rights and other relevant laws, and undertaking research to better understand the scope of serious challenges that continue to face the workforce.<sup>11</sup> This effort must be well-resourced to accomplish its aims.

### **Combating Discrimination**

Eliminating discriminatory barriers to employment for qualified workers is essential so that all New Yorkers have an equal chance in our economy. In 2015, New York City enacted the Stop Credit Discrimination in Employment Act banning the use of consumer credit history for employment decisions and the Fair Chance Act barring employers from inquiring about or considering the criminal history of job applicants until after extending a conditional offer of employment. These laws further strengthen New York City's robust anti-discrimination laws by ensuring that jobseekers with an arrest or conviction record and those with blemished personal credit histories have a fair opportunity to be judged and their qualifications and attain employment. **The effectiveness of these and other laws prohibiting employment discrimination will rely on continued public education and outreach** so that job seekers, employees, and employers are aware of their rights and responsibilities. The New York City Commission on Human Rights must also be proactive in detecting patterns of discrimination and taking action to prevent employment bias.

The protection offered by the Fair Chance Act and Stop Credit Discrimination in Employment Act is particularly important because both personal credit history and criminal record can become proxies for racial discrimination. People of color face disproportionate challenges in attaining and maintaining good credit due to the enduring impact of racial discrimination in employment, lending, education, and housing.<sup>12</sup> Despite the prevalence of employment credit checks throughout the United States, there is a lack of evidence connecting personal credit history with job performance.<sup>13</sup> Thus New York's law banning credit checks at *any* stage of the employment process is critical. At the same time, a racially biased criminal justice system means

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<sup>10</sup> Dr. Robin D.G. Kelley and New York University Immigrant Rights Clinic, "Home is Where the Work is: Inside New York's Domestic Work Industry," Domestic Workers United, *Data Center*, 2014, available at: <http://www.datacenter.org/reports/homeiswheretheworkis.pdf>.

<sup>11</sup> New York State Department of Labor, "Domestic Workers' Bill of Rights," Labor Standards, *New York State Department of Labor*, December 2016, available at: <https://labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>.

<sup>12</sup> Dēmos, "Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job," February 2013, available at <http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job>.

<sup>13</sup> Amy Traub, "Credit Reports and Employment: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households," *Suffolk Law Review*, December 19 2013, available at: <http://suffolklawreview.org/author/amy-traub/>.

people of color are disproportionately likely to have a record of arrest or conviction. Long after a sentence has been served, the stigma of a criminal record persists on employment background checks, decreasing a job-seekers' chances of a job callback or offer of employment by almost 50 percent.<sup>14</sup> Yet rates of criminal recidivism are significantly lower among former offenders who are able to obtain steady employment.<sup>15</sup> Removing questions about conviction and arrest records from job applications and not inquiring about conviction history until the conditional offer stage of the hiring process ensure that job applicants have a fair chance to be judged on their qualifications.

### **In Conclusion**

Thank you again for the opportunity to provide testimony. Improving conditions for working New Yorkers by upholding wage and hour laws, paid sick time and paid family leave, and protection from employment discrimination, while increasing public investment in child care and the well-being of the child care workforce is a formidable challenge and will demand significant resources for legal enforcement, public education and outreach, and research. Given appropriate resources, we are confident that New York City's Office of Labor Policy and Standards, the Mayor's Office of Immigrant Affairs and the New York City Commission on Human Rights are up to the task.

Dēmos is eager to answer any questions and offer assistance in any way possible. Please feel free to contact us.

Sincerely,

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<sup>14</sup> Michelle Natividad Rodriguez and Maurice Emsellem, "Need Not Apply: The Case for Reforming Criminal Background Checks for Employment," *The National Employment Law Project*, March 2011, available at: [http://www.nelp.org/content/uploads/2015/03/65\\_Million\\_Need\\_Not\\_Apply.pdf](http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf).

<sup>15</sup> The National Employment Law Project, "Fact Sheet: Research Supports Fair-Chance Policies," *The National Employment Law Project*, August 2016, available at: <http://www.nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>.