

Testimony of Sarah Leberstein

National Employment Law Project

Int. No. 1084-2016: Establishment of a Division of Paid Care

**Hearing before the New York City Council
Committee on Civil Service and Labor jointly with
the Committee on Aging and the Committee on
Finance**

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The National Employment Law Project is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We are based in New York with offices across the country, and we partner with federal, state and local lawmakers on a wide range of workforce issues. Across the country, our staff is recognized as policy experts in areas such as unemployment insurance, wage and hour enforcement, minimum wages, and workplace protections for low-wage workers.

NELP's work has long included a special focus on improving conditions for home care and domestic workers. Among other projects, NELP has played a critical role in campaigns to pass Domestic Worker Bills of Rights in several states, including New York, and to extend federal minimum wage and overtime rights to home care workers. We have also researched and documented the workplace conditions of and the incidence of wage theft in these sectors. Through our work, we have become acutely aware of the overwhelming need to not only raise workplace standards for workers who have historically been excluded from the protection of key laws, but to ensure that workers know about and can effectively enforce those rights.

NELP testifies today in support of Int. No. 1084 which would establish a new Division of Paid Care within the Office of Labor Standards. Staffed by a coordinator and an advocate, the Division would create and disseminate educational materials to domestic and home care workers on their rights, the services available to them, and their options for redressing workplace violations. Because these two overlapping workforces labor in uniquely isolated workplaces, and because the industries are shaped by idiosyncratic funding and regulatory regimes, a dedicated staff well-versed in domestic and home care work has enormous potential to address pervasively low standards and improve workers' lives. Boosting job standards and stabilizing the workforce is not only the right thing to do for workers; it will also be a smart investment in workers' families and in the communities that count on workers' wages. It will also be an investment in the services on which tens of thousands of New Yorkers rely to live independently, or to provide supports to a loved one so they may work and participate in the community.

This reform is desperately needed now for the following reasons:

I. Care workers suffer from persistently low wages and high rates of workplace violations.

- A. A report conducted by the National Domestic Workers Alliance from 2011-2012 found that nannies earned an average of \$11 per hour.¹
- B. According to research by PHI, in 2014, personal care aides in New York earned a median hourly wage of \$10.98. Home health aides' median hourly wages were \$10.37.
- C. Care workers' low wages are compounded by a high incidence of wage theft. Their physical isolation in private homes makes them less likely to be able to exercise

their rights or negotiate for decent standards, placing them at unique risk of abuse. Working without Laws,² a landmark NELP-led survey of 1,432 low-wage workers in New York City, found that workers employed in private households experienced especially high rates of wage and hour violations: 37.5% of workers employed in this industry experienced a minimum wage violation (in the week before the survey); 84.6% experienced an overtime violation; 76.4% worked before and/or after their scheduled shifts without being paid for that time; and 81.3% experienced a meal break violation.

- D. The same survey found that 8.4 % of home care workers suffered a minimum wage violation; 82.9% experienced an overtime violation; 86% worked before and/or after their scheduled shifts without being paid for that time; and 83.7% experienced a meal break violation.
- E. A companion report, Broken Laws, Unprotected Workers,³ found that when workers complained about their working conditions or tried to organize a union, employers often responded by retaliating against them. Many workers never made complaints in the first place, often because they feared retaliation by their employer. One in five workers reported that they had made a complaint to their employer or attempted to form a union in the last year. Of those, 43 percent experienced one or more forms of illegal retaliation from their employer or supervisor, such as being fired or suspended, or receiving threats to cut pay or call immigration authorities. Another 20 percent of workers reported that they did not make a complaint to their employer during the past 12 months, even though they had experienced a serious problem such as dangerous working conditions or not being paid the minimum wage. Half were afraid of losing their job; 10 percent were afraid they would have their hours or wages cut; and 36 percent thought it would not make a difference.
- F. The effects of wage theft are devastating. Workers with full-time, full-year work schedule, lose, on average, an estimated \$2,634 annually due to the workplace violations summarized above.⁴ These lost wages depress family income and siphon money from their communities. Low pay and high rates of wage theft also drains the city's tax revenues and heightens workers' need for city services.

II. Major shifts in both labor and health care policy have the potential to strengthen the City's care systems, but the City must intervene now to ensure workers and consumers benefit fully from these changes.

- A. Numerous reforms hold the potential to drastically improve job standards and alleviate the persistent wage theft that have long plagued the City's large and growing caregiver workforce, including the passage of the Domestic Worker Bill of Rights in 2010, the New York Wage Parity Law, passed in 2011 to raise and equalize wage rates and benefits for Medicaid-funded Home Health Aides, the extension of federal minimum wage and overtime rules to almost all home care workers,⁵ and

State minimum wage increases. New York State's transition to Managed Care has created disruptions for both workers and consumers, even as it aims to strengthen New York's home care system, as some home care providers have attempted to curb costs by illegally reducing services. Many workers are likely unaware of the full range of changes taking place, and are not well-equipped to evaluate whether home care agency employers are fully complying with Wage Parity requirements, especially the requirement to provide benefits at a certain level. They risk [losing their eligibility](#) for critical housing, child care, medical and other benefits even as their wages rise.⁶ And, because home care and domestic often cross the City caring for multiple consumers in a day, they may not get paid for travel time required for work, even as they are burdened with the cost of metrocards. An intervention by the City at this critical juncture could set New York City's home care system and the domestic work industry on the path towards a more stable future with improved standards for both workers and those they serve.

- B. On Demand Companies using an app- or internet-based platform to connect consumers to services employ only a small percentage of the workforce, but they are growing rapidly and have received a great deal of attention from policymakers and the public. Some on-demand companies have come under fire for misclassifying workers as independent contractors, denying them the benefit of workplace protections that apply only to "employees" and shifting tax burdens to workers,⁷ while others have taken important steps towards establishing and publicizing good employment practices.⁸
- C. Recent policy and enforcement reforms have helped shine a spotlight on and improve conditions for car wash workers, nail salon workers and others. The huge size of the City's home care workforce, numbering around 150,000 – around 1 in every 7 low wage workers in the City – and the anticipated burgeoning need for more workers to meet the demand, militates in favor of increased scrutiny on the City's home care industry as well.

III. By prioritizing rights education and enforcement, collaboration with workers' rights organizations, and coordination with relevant City and state agencies, the Office of Paid Care can achieve deliver real change to care workers.

- A. As explained above, while home care workers and domestic workers have suffered the ill effects of decades of exclusion from core workplace rights, recently-enacted labor reforms have the potential to put them on more equal footing with other workers and to boost rights and wages. Investing staff and resources into a mass public education and outreach campaign just as the laws are being implemented can help ensure these policy reforms take hold. Equally important will be supporting workers' ability to redress legal violations. NELP's experience working with home care and domestic workers has shown us that overwhelming numbers of workers

experience a violation of wage and hour or other workplace laws, yet few seek assistance or effectively resolve their issues. Home care and domestic workers face unique barriers to enforcing their rights: their physical isolation makes it less likely that they will get support from other workers; they are especially susceptible to retaliation by employers, who can explain away changes to work schedule or terminations through claims that the care recipients' needs have changed; and they may fail to take action out of a reluctance to disturb often close personal relationships with care recipients. Workers who reside on the employer's premises may also fear homelessness. And some home care workers may not know or have regular contact with the various companies with whom they have an employment relationship, complicating enforcement efforts. The Office of Paid Care should prioritize an education and enforcement program that recognizes and responds to these challenges with the goal of removing barriers to workers' redress of their rights.

- B. To help implement a truly successful education and enforcement program, the Office of Paid Care should collaborate with the City's domestic and home care worker organizing and advocacy groups that have already made huge inroads into educating and mobilizing these workforces to improve and protect rights. These organizations have valuable experience, expertise in reaching workers, and specialized skills – like language capacity, and a high level of trust in the communities in which they work – that make them indispensable partners for a new Office. Contracting with domestic and home care worker organizations would help the Office to maximize its resources and increase its ability to rapidly and effectively connect with workers.
- C. The Office of Paid Care should also coordinate its activities with the city and state agencies with ties to workers and ability to effect industry conditions. For example, the Office of Paid Care should coordinate with the Office of Immigrant Affairs to protect immigrant caregiving workers from unjust retaliatory action by employers. In addition to working with labor enforcement agencies, the Office of Paid Care should also coordinate with the city and state agencies that, through their role as payors for home care and childcare services, and licensors of certain agencies, influence pay rates and determine which employers stay in business. The New York State Department of Health helps to enforce the State's Wage Parity requirements and can help hold Medicaid-funded entities accountable for labor conditions in their workforces. City agencies that contract with private agencies to deliver public-funded care can also be important partners in ensuring public funds promote good workplace standards.
- D. Finally, the Office of Paid Care should aim to uncover, understand, and uphold labor standards in nonstandard work structures by addressing independent contractor and subcontracting abuses in the on-demand economy, as well as similar abuses that have long persisted among domestic and home care referral agencies and "registries", home care subcontractors and the agencies they contract with, and other segments of the industry. The Office should also recognize the on-demand

and conventional businesses that have adopted good employment models and encourage technological innovation that supports workers' and consumers' rights.⁹

Conclusion

The National Employment Law Project strongly supports this effort to establish an Office of Paid Care.

Thank you very much for giving me the opportunity to speak today. I am happy to answer any questions now, or at any time after the hearing.

¹ Linda Burnham, et al, Home Economics: The Invisible and Unregulated World of Domestic Work (2012) <http://www.domesticworkers.org/sites/default/files/HomeEconomicsEnglish.pdf>.

² Annette Bernhardt, et al., Working without Laws: A Survey of Labor and Employment Law Violations in New York City (2008), <http://www.nelp.org/content/uploads/2015/03/WorkingWithoutLawsNYC.pdf>.

³ Annette Bernhardt, et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities (2009) <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1>

⁴ Id.

⁵ See, for example, NELP webpage on the fight for fair wages for home care workers, at <http://www.nelp.org/campaign/implementing-home-care-reforms/>.

⁶ Steve Dawson and Carol Rodat, The Impact of Wage Parity on Home Care Aides (PHI 2014), <http://phinational.org/sites/phinational.org/files/research-report/phi-benefitcliffs-20140623.pdf>.

⁷ See, for example, Rebecca Smith and Sarah Leberstein, Rights on Demand: Ensuring Workplace Standards and Worker Security in the On-Demand Economy (NELP, 2015), <http://www.nelp.org/publication/rights-on-demand/>.

⁸ NELP Fact Sheet, Employers in the On-Demand Economy: Why Treating Workers as Employees is Good for Business, (March 2016) <http://www.nelp.org/content/uploads/Fact-Sheet-Employers-in-the-On-Demand-Economy.pdf>.

⁹ See, for example, Sarah Leberstein, Irene Tung & Caitlin Connolly, Upholding Labor Standards in Home Care: How to Build Accountability in America's Fastest Growing Jobs (2015), <http://www.nelp.org/publication/upholding-labor-standards-in-home-care-how-to-build-employer-accountability-into-americas-fastest-growing-jobs/>.