

**Testimony of
Julie Menin, Commissioner, New York City Department of Consumer Affairs
Before the
New York City Council Committees on Civil Service and Labor
and Women's Issues**

Testimony on Intro. 743 and Intro. 197

April 20, 2015

Good afternoon Chairman Miller, Chairwoman Cumbo, and members of the Committees on Civil Service and Labor and also on Women's Issues. I am Julie Menin, Commissioner of the New York City Department of Consumer Affairs ("DCA"), and I am joined by my colleagues Marla Tepper, General Counsel and Deputy Commissioner of Legal Affairs, Kristen Lasky, Executive Director of the Paid Sick Leave division, Sandra Abeles, Deputy Chief of Staff, and Amit Bagga, Deputy Commissioner of External Affairs.

I greatly appreciate the opportunity to speak with you about the two bills before the committee today, one that would establish an Office of Labor Standards ("OLS") to be housed within a City agency, and another that would make unlawful employer retaliation against an employee who discloses his or her income.

Intro. 743 would endow a new OLS with the authority to enforce chapters 8 and 9 of title 20 of the administrative code. DCA currently enforces these chapters, which are the paid sick leave law and the transit benefits law, respectively. In addition to enforcing both of these laws, DCA licenses approximately 80,000 businesses across 55 different industries and also houses the Office of Financial Empowerment, the first municipal initiative in the country with the specific mission to empower and protect consumers with low incomes.

DCA works hard every day to execute Mayor de Blasio's vision of City government serving all New Yorkers – no matter what language they speak or how much they earn. The administration is committed to ensuring that the rights of workers are protected and that our City's small businesses both comply with all laws without having to face punitive violations and fines. Equity in the workplace and improved labor standards for all New Yorkers, particularly those with lower incomes who are often deprived of equal access to employment and fair wages, are of great importance to us and we welcome today's dialogue with the Council.

Through our successful implementation of paid sick leave, a law that has been a top priority for both Mayor de Blasio and Speaker Mark-Viverito, DCA has demonstrated its commitment to protecting the rights of workers while also adopting an education- and compliance-focused approach to resolving complaints with businesses. This approach, along with our aggressive reduction of fines in other categories by \$5 million in this fiscal year, as well as the implementation of two dozen reforms that increase education and language access as well as ease compliance, evidences that protecting workers' rights

while lifting onerous burdens faced by businesses are not mutually exclusive; in fact, they are shared goals in creating the fair and vibrant commercial and labor marketplaces that is central to our mission.

Paid Sick Leave: Outreach, Education, and Implementation

DCA's Paid Sick Leave division was established in April 2014, following the passage of an extended version of New York City's Earned Sick Time Act ("ESTA" or "paid sick leave").

New York City's paid sick leave law is being implemented at a scale larger than any other city's. Paid sick leave is beneficial to employers, employees, and to the public. It leads to healthier employees with better morale, less employee turnover, and lower healthcare costs in the long term. DCA is proud to be a national leader in the scope of our outreach efforts and also in the implementation of the law.

Outreach and Education

The successful implementation of paid sick leave, which is subject to complaint-based enforcement, has required making employees and employers aware of their rights and obligations under the law. To accomplish this, DCA has conducted robust outreach to both employers and employees about paid sick leave with a \$3 million campaign and I am pleased to share the results of our efforts to date.

As of today, DCA has distributed more than 2 million pieces of paid sick leave literature, visited more than 1,500 businesses in person to educate owners about the law, and held or attended nearly 850 paid sick leave-related events across the five boroughs. These events have included workshops with SBS' Jobs Plus participants, presentations before dozens of industry groups, ranging from The Bodega Association to the New York Hospitality Alliance, community events such as street fairs and NYCHA Family Days, and specific trainings for multi-branch businesses, such as Gregory's Coffee and Ricky's Cosmetics. Of our events, 482 have taken place in boroughs outside of Manhattan and more than twenty five percent of them have taken place in a language other than English. Additionally, we have posted information about paid sick leave in 26 languages on our website, ensuring that all New Yorkers – where they speak Bangla or Haitian Creole, Yiddish or Yoruba – have access to information about the important rights to which they are entitled.

Since March 2014, DCA has also run large-scale transit advertisements in three rounds and several rounds of television and radio advertisements. Our advertisements have been ubiquitous in New York City's subways and buses and our television advertisements have run in both English and in Spanish on networks with high viewership at prime times.

To ensure that we reached our City's immigrants, we placed print advertisements in 10 English-language community newspapers and 14 newspapers that are either printed in foreign languages or have primarily immigrant readerships. DCA has also run web and

digital advertising on the web sites of several foreign-language or immigrant-oriented news websites, as well as on Facebook. Additionally, the agency has featured radio advertisements in six foreign languages: Spanish, Bangla, Cantonese, Mandarin, Korean, and Russian.

DCA has been working closely with advocates, community leaders, business leaders, labor, and elected officials on raising awareness about paid sick leave and soliciting feedback about the law's implementation. Many of these partners participated in DCA's July 2014 paid sick leave "Day of Action," the first of its kind held by a City agency. This Day of Action involved 1,400 business owners and leaders, community organizations, workers, unions, City employees, and everyday New Yorkers distributing more than 350,000 brochures in just four hours and talking to their friends and neighbors about paid sick leave at more than 140 subway stops throughout New York City.

I'd like to thank the great support we received from Speaker Mark-Viverito and the many Members of the Council who participated in our Day of Action. So many New Yorkers captured our activities on social media that "#PaidSickLeave" was a top trend on Twitter in New York City that day.

In addition to our extensive advertising and outreach, DCA has made specific tools and resources available to businesses to assist them with compliance.

Business Tools and Resources

Since July 2014, the doors of our Paid Sick Leave Division have been open for business five days per week. Both employers and employees can come in to obtain information, ask questions about compliance, and file complaints.

Recognizing that many of New York City's small businesses might not have formal human resources departments or time-keeping tools, we have developed a beta-tested, easy-to-use, downloadable Microsoft Excel document that businesses can access on our website to help them keep track of their employees' hours and accruals. The document contains built-in formulas that automatically calculate the number of hours an employee has accrued based on the number of hours worked.

Under the paid sick leave law, eligible employees accrue one hour of sick time – paid or unpaid, depending on the size of the employer – for every 30 hours worked. The document easily allows employers to track hours on a daily, weekly, or bi-weekly basis.

Based on questions and feedback we've received from both employees and employers, DCA has published a very extensive Frequently Asked Questions ("FAQs") document, significantly decreasing DCA's response time to questions. DCA updates the FAQs with new questions and answers on a rolling basis, as there are often questions asked that we believe might be relevant to a large number of employers.

We remain focused on education as a means of facilitating compliance, and we hope to bring as many businesses as possible into compliance without drafting charges or issuing fines. This approach has been successful and continues to evolve as the implementation

of the law enters a new, case management-focused phase.

Implementation

The initial structure of the Paid Sick Leave division reflected the dual priorities of educating the public and focusing on mediation as the primary method of enforcement. Perhaps the best indicator of the success of our outreach efforts is that DCA has received 473 complaints to date. We have closed 186 complaints, of which 70 percent were closed through mediation. When we cannot mediate, DCA investigates complaints. Even then, we work diligently to achieve a resolution that avoids high penalties and the additional burden of having to prepare for a hearing. To date, we have issued five Notices of Hearing (our charging documents) and we have settled eight complaints with significantly reduced fines. DCA has collected nearly \$40,000 in fines and more than \$38,000 in restitution for 70 employees.

These results have been achieved by the 17 staff in our division, which includes investigators, legal analysts, outreach staff, project management staff, and an executive director. Including funding allotted in Fiscal Year 2014, DCA has received approximately \$6.59 million for the paid sick leave division to date. This funding has covered staffing of the division as well as advertising, translation, and outreach costs.

While we have been able mediate to or are in the process of mediating most of our complaints, we are now receiving an increasing number of complaints that require investigation. The percentage of complaints alleging retaliation, for example, has been on the rise: in January, 31 percent of complaints alleged retaliation, in February this figure was 40 percent, and in March, 46 percent of all new complaints alleged employer retaliation. Considering the severe “chilling effect” that retaliation can have on an employer’s workforce, DCA takes such cases very seriously and commits greater resources to such cases. In these cases, we send investigators to the workplace for an on-site compliance review, which allows DCA to collect a large amount of information from records; we also conduct employer interviews, and sometimes, employee interviews, as well.

Additionally, most of our complaints allege either general non-compliance or, upon initial investigation, uncover general non-compliance, situations that also require a full investigation. Surprisingly, we have received many complaints against large companies that have sick leave policies that either deny sick leave to some category of their employees (typically part-time and seasonal employees) or do not provide the statutory rate and amount of sick leave. To fully investigate these large employers, DCA investigators must review and analyze complex policies, time-keeping tools, and payroll records for hundreds, if not thousands, of employees over a long period of time.

All that we continue to learn about the prevalence of sick leave policies across New York City’s many different industries has informed the next round of our rulemaking, a process which will be commencing shortly. We welcome the Council’s comments on draft rules upon their publication, and we are eager to work with the Council to ultimately adopt rules that clarify our authority to enforce paid sick leave.

Transit Benefits

DCA is also in the process of preparing for our first round of rulemaking pertaining to the implementation of transit benefits. Though the law does not go into effect until January 2016, we have already engaged both advocates and private sector benefit providers on outreach and implementation strategies. DCA is currently working with benefit providers to understand how their programs are priced and structured and to solicit from them questions they have received about how to provide transit benefits. This type and level of engagement will allow us to proactively develop a “Frequently Asked Questions” document before the law goes into effect and also inform rulemaking. The agency has also already begun engaging key stakeholders, such as the Riders Alliance, on the nature and scope of outreach to employees, as we are focused on ensuring that those who stand to benefit from this law are made aware of it and have the tools to request the benefits to which they are entitled from their employers.

As has been evidenced, DCA has approached its enforcement of paid sick leave in innovative and strategic ways that have educated both employers and employees, and ensured that employees’ rights are protected, and that employers are given adequate opportunities to comply with the law. We will be pursuing a similar approach with the implementation of transit benefits and look forward to working with the Council on incorporating your comments on our first round of draft rules, which are to be published later this year.

Before turning to Intro 197, I will briefly offer comments on DCA’s enforcement of the Fair Wages for New Yorkers Act (“Living Wage”) and Mayor de Blasio’s Executive Order No. 7 (“EO 7”).

Living Wage Law

The Living Wage law requires certain companies that receive \$1 million or more in financial assistance from City agencies to pay no less than a “living wage,” which has been set at \$13.13 per hour. In September 2014, Mayor de Blasio signed EO 7, which significantly broadened the scope, applicability, and impact of the Living Wage Law by, among other things, limiting the exemptions under the Living Wage Law and increasing the dollar amount of the living wage floor.

The Office of the Comptroller is vested with the authority to monitor and investigate compliance with the requirements of the Living Wage Law and EO 7. Comptroller investigations will be commenced in response to employee complaints, or as a result of the Comptroller’s monitoring of employer compliance. The Comptroller will report the results of investigations to DCA, which is vested with the authority to enforce the Living Wage Law and EO 7 by prosecuting administrative enforcement actions.

In order to carry out its obligations under the law and the executive order, DCA, working in conjunction with the Law Department and other City agencies, is in the process of preparing implementation rules. Following this, we will be preparing FAQs and other outreach materials; drafting standard contract provisions for inclusion in agreements

between financial assistance recipients and City agencies; implementing inter-agency protocols to facilitate investigation and enforcement activities; and preparing and posting required information and reports.

We anticipate we will begin engaging in enforcement actions referred to us by the Comptroller before the end of 2015.

I will now offer comments on Intro 197, a bill that would make it unlawful for an employer to engage in retaliation against an employee who discloses his or her wages.

Intro. 197

DCA believes, that as a general matter, employees should not be retaliated against for disclosing their own wages. As our experience with implementing paid sick leave has shown, employer retaliation can have a chilling effect on a workplace, leading to low morale, lost productivity, and sometimes, an infringement of an employee's rights. It is also our understanding that the Council seeks to address the issue of gender inequity in pay through the passage of this bill.

The agency supports the intent of this bill. We also know that there are federal laws and executive orders that address the issue of pay secrecy and that there are also laws in numerous states that address this issue. We will work with the Mayor's Office, the Law Department, and other relevant state authorities to better understand the City's jurisdiction in terms of regulating issues of pay secrecy and we look forward to further engagement with the Council once we have been able to make progress on this.

Once again, thank you for giving me the opportunity to testify before you today; my colleagues and I will be happy to answer any questions you might have.