COUNCIL OF THE DISTRICT OF COLUMBIA
SUBCOMMITTEE ON WORKFORCE

John A. Wilson Building 1350 Pennsylvania Avenue, NW Washington, DC 20004

MINUTES COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

CHAIRPERSON ELISSA SILVERMAN

PUBLIC HEARING

- **Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015**
- **Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016**

Wednesday, October 26, 2016

10:00 AM

Hearing Room 412

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

AGENDA

A. CALL TO ORDER @ 10:05 AM

B. COUNCILMEMBERS IN ATTENDANCE

1. Councilmember Nadeau
2. Councilmember White

C. WITNESS LIST

Public Witnesses (In the Order of Appearance)

1. Hannah Kane, Worker Justice Organizer, Many Languages One Voice (MLOV)
2. Jose Cruz, Many Languages One Voice (MLOV)
3. Julio Palomo, Assistant Business Manager, LiUNA Local 11
4. Jhonny Castillo, Many Languages One Voice (MLOV)
5. Bruno Avila, Many Languages One Voice (MLOV)
6. Maria Sandoval, Many Languages One Voice (MLOV)
7. Zeferina Avila, Many Languages One Voice (MLOV)
8. Jonathan C. Puth, Metropolitan Washington Employment Lawyers Association, Correia & Puth, PLLC
9. Ilana Boivie, Senior Policy Analyst, DC Fiscal Policy Institute
10. Phillip Fornaci, Executive Director, DC Employment Justice Center
11. Andrew Hass, Litigation Attorney, DC Employment Justice Center
12. Elizabeth Falcon, Executive Director, DC Jobs with Justice
13. Dennis A. Corkery, Washington Lawyers' Committee for Civil Rights and Urban Affairs
14. Daniel A. Katz, Senior Counsel, Metropolitan Washington Employment Lawyers Association
15. Ian Paregol, Executive Director, DC Coalition of Disability Service Provider
16. Albert Wynn, Capital Area Minority Contractors and Business Association
17. Eric J. Jones, Associated Builders and Contractors (ABC) of Metro Washington
18. Robert Green III, Capital Area Minority Contractors and Business Association **(NO WRITTEN STATEMENT)**
19. Stephen W. Courtien, Community Hub for Opportunities In Construction Employment (C.H.O.I.C.E.) Field Representative
20. John Collins, Director of Organizing, International Brotherhood of Electrical Workers (IBEW) Local 26
21. Carlos Jimenez, Executive Director, the Metropolitan Washington Council, AFL-CIO
22. Emma Cleveland, Political Coordinator, Capital Area District, SEIU 32BJ
23. Nick Wertsch, Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University
24. Sophie Bauerschmidt Sweeney, Student, Georgetown University

Government Witnesses (In the Order of Appearance)

1. Natalie Ludaway, Chief Deputy Attorney General, Office of the Attorney General
2. Sally Gear, Deputy Attorney General **(NO WRITTEN STATEMENT)**
3. Deborah A. Carroll, Director, Department of Employment Services
4. Michael Watts, Associate Director of Wage and Hour Office **(NO WRITTEN STATEMENT)**

D. TESTIMONY FOR THE RECORD

1. DC Chamber of Commerce
2. Philip Fornaci, Executive Director, DC Employment Justice Center
3. Wage Theft Mid-Year Report 2016
4. Edward J. Smith, Esq., Executive Director, District of Columbia Nurses Association
5. Vincent Melehy, Esq., Melehy & Associates LLC

E. ADJOURNMENT @ 2:50 PM

COUNCIL OF THE DISTRICT OF COLUMBIA
SUBCOMMITTEE ON WORKFORCE
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRPERSON ELISSA SILVERMAN

COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

PUBLIC HEARING

- **Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015**

- **Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016**

Wednesday, October 26, 2016

10:00 AM

Hearing Room 412

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

AGENDA

A. **CALL TO ORDER**

B. **OPENING STATEMENT**

C. **WITNESS LIST**

Public Witnesses

Panel 1

1. Hannah Kane, Worker Justice Organizer, Many Languages One Voice (MLOV)
2. Jose Cruz, Many Languages One Voice (MLOV)
3. Julio Palomo, Assistant Business Manager, LiUNA Local 11

Panel 2

4. Jhonny Castillo, Many Languages One Voice (MLOV)
5. Bruno Avila, Many Languages One Voice (MLOV)
6. Maria Sandoval, Many Languages One Voice (MLOV)
7. Zeferina Avila, Many Languages One Voice (MLOV)

Panel 3

8. Elizabeth Falcon, Executive Director, DC Jobs with Justice
9. Ilana Boivie, Senior Policy Analyst, DC Fiscal Policy Institute
10. Phillip Fornaci, Executive Director, DC Employment Justice Center
11. Andrew Hass, Litigation Attorney, DC Employment Justice Center

Panel 4

12. Dennis A. Corkery, Washington Lawyers' Committee for Civil Rights and Urban Affairs
13. Jonathan C. Puth, Metropolitan Washington Employment Lawyers Association, Correia & Puth, PLLC
14. Daniel A. Katz, Senior Counsel, Metropolitan Washington Employment Lawyers Association
15. Ian Paregol, Executive Director, DC Coalition of Disability Service Provider

Panel 5

16. Albert Wynn, Capital Area Minority Contractors and Business Association
17. Robert Green III, Capital Area Minority Contractors and Business Association
18. Eric J. Jones, Associated Builders and Contractors (ABC) of Metro Washington
19. Michael Sindram, Organization Justice for DC/ Disabled Veteran

Panel 6

20. Stephen W. Courtien, Community Hub for Opportunities In Construction Employment (C.H.O.I.C.E.) Field Representative
21. John Collins, Director of Organizing, International Brotherhood of Electrical Workers (IBEW) Local 26
22. Carlos Jimenez, Executive Director, the Metropolitan Washington Council, AFL-CIO
23. Emma Cleveland, Political Coordinator, Capital Area District, SEIU 32BJ

Panel 7

24. Nick Wertsch, Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University
25. Sophie Bauerschmidt Sweeney, student, Georgetown University

Government Witnesses

1. Natalie Ludaway, Chief Deputy Attorney General, Office of the Attorney General

2. Deborah A. Carroll, Director, Department of Employment Services

D. ADJOURNMENT

COUNCIL OF THE DISTRICT OF COLUMBIA
SUBCOMMITTEE ON WORKFORCE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRPERSON ELISSA SILVERMAN
COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

ANNOUNCES A PUBLIC HEARING

on

Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015

Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016

on

Wednesday, October 26, 2016
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Elissa Silverman, Chairperson of the Subcommittee on Workforce, announces a public hearing before the Subcommittee on Bill 21-120, the "Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015" and Bill 21-711, the "Wage Theft Prevention Revision Amendment Act of 2016." The hearing will be held at 10:00 a.m. on Wednesday, October 26, 2016, in Room 412 of the John A. Wilson Building.

The purpose of **Bill 21-120** is, among other things, to clarify that the Attorney General and certain membership organizations can bring civil enforcement actions in court, to revise criminal penalties for noncompliance, to remove the overtime exemption of parking lot and garage attendants from District overtime laws to maintain consistence with federal overtime law, to clarify language access requirements for notices provided by employers, to require overtime exempt employees to be paid at least once rather than at least twice a month, and to clarify the remedies and procedures available to those who claim employers are noncompliant with this legislation.

The purpose of **Bill 21-711** is, among other things, to clarify that the Office of Administrative Hearings has jurisdiction over all administrative hearings in wage theft cases, to require all bona fide administrative, executive, and professional employees be paid at least once rather than at least twice a month, to revise criminal penalties for noncompliance, to clarify and amend business recordkeeping protocols and access, to amend the minimum wage law notice requirements, and to put lower limits on the amount of attorney fees that a prevailing plaintiff may be awarded.

Those who wish to testify before the Subcommittee are asked to contact Ms. Charnisa Royster at croyster@dccouncil.us or (202) 724-7772 by close of business Monday, October 24,

2016, to provide your name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and individuals will have three minutes to present their testimony; less time will be allowed if there are a large number of witnesses. A copy of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at croyster@dccouncil.us or mailed to the Subcommittee on Workforce, Council of the District of Columbia, Suite 408 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 31, 2016.

Chairman Phil Mendelson

Councilmember Elissa Silverman

Councilmember Anita Bonds

Councilmember Brianne K Nadeau

Councilmember Charles Allen

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To provide for the payment and collection of wages in the District of Columbia to exempt an employer from paying wages to bona fide executive, administrative, and professional employees at least twice during each calendar month, provided that the employer pays wages to such employees at least once per month; to clarify that the Attorney General can bring civil enforcement actions in court; to clarify which membership organizations may bring civil actions on behalf of their members; to revise criminal penalties for violations of the act; and to authorize the Mayor to issue rules; to amend the Minimum Wage Revision Act of 1992 to remove the exemption prohibiting parking lot and garage attendants from receiving the protections of the District's overtime laws; to clarify how long an employer must keep records of precise time worked for most employees and to exempt employers from keeping precise time records for bona fide executive, administrative, professional, and certain other employees; to require an employer or a temporary staffing firm to provide notice regarding payment to an employee in a second language if the Mayor has made available a translation of the form in that language and the employer knows that language to be the employee's primary language or the employee requests notice in that second language; to require the Mayor to make available a translation of the form to be used by an employer or a temporary staffing firm when providing notice to an employee regarding payment; to clarify how the Mayor shall make certain information available to employers; to clarify when a subcontractor or a temporary staffing firm must indemnify a jointly liable intermediate or general contractor or client for violations; and to clarify the remedies and procedures available to claimants; and to amend the Wage Theft Prevention Amendment Act of 2014 to repeal a retroactive applicability provision.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015".

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 32-1302) is amended by striking the phrase "Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer;" and inserting the phrase "An employer shall pay all wages earned to its employees on regular paydays designated in advance by the employer and at least twice during each calendar month, except that all bona fide administrative, executive, and professional employees as defined in 7 D.C.M.R. 999.1 shall be paid at least once per month;" in its place.

(b) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

(1) Paragraph 5 is amended to read as follows:

"(5) A subcontractor, any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor's employees for the subcontractor's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act. Except as otherwise provided in a contract between the subcontractor, any intermediate subcontractor, and the general contractor, the subcontractor shall indemnify any intermediate subcontractor and the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the subcontractor's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act, unless those violations were due to the lack of prompt payment in accordance with the terms

of the contract between the subcontractor, any intermediate subcontractor, and the general contractor.".

(2) Paragraph 6 is amended to read as follows:

"(6) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the client shall be jointly and severally liable for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act to the employee and to the District. The District, the employee, or the employee's representative shall notify the temporary staffing firm and client of the alleged violations at least 30 days before filing a claim for these violations. Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the temporary staffing firm's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act."

(c) Section 7 (D.C. Official Code § 32-1307) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) An employer who negligently fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

"(A) For the first offense, an amount per affected employee of not more than $2,500;

"(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

"(2) An employer who willfully fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

"(A) For the first offense, be fined not more than $5,000 per affected employee, or imprisoned not more than 30 days, or both; or

"(B) For any subsequent offense, be fined not more than $10,000 per affected employee, or imprisoned not more than 90 days, or both.

"(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).".

(d) Section 8 (D.C. Official Code § 32-1308) is amended as follows:

(1) Paragraph (a)(1) is amended as follows:

(A) Strike the phrase "Any employee or person" and insert the phrase "The Attorney General, or any employee or person" in its place.

(B) Strike the phrase "any entity" and insert the phrase "any labor organization or association of employees" in its place.

(e) Section 8a (D.C. Official Code § 32-1308.01) is amended as follows:

(1) Subsection (c) is amended as follows:

(A) Paragraph (1) is amended by striking the word "deliver" and inserting the word "mail" in its place.

(B) Paragraph (7) is amended by striking the word "delivered" and inserting the word "mailed" in its place.

(2) A new subsection (g) is added to read as follows:

"(g) Appeals of any order made or fine assessed under this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act shall be made to the District of Columbia Court of Appeals."

(f) A new section 10b is added to read as follows:

"Sec. 10b. Rules.

"The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.".

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

(a) Section 5(b)(5) (D.C. Official Code § 32-1004(b)(5)) is repealed.

(b) Section 9 (D.C. Official Code § 32-1008) is amended as follows:

(1) Subsection (a)(1) is amended as follows:

(A) The lead-in language is amended to read as follows:

"Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall make, keep, and preserve for a period of not less than 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, a record of:"

(B) Subparagraph (D) is amended to read as follows:

"(D) The precise times worked each day and each workweek by each employee, except for employees who are exempt from the minimum wage and overtime requirements under section 5(a); and"

(2) Subsection (c) is amended by striking the phrase "shall furnish to each employee at the time of hiring a written notice, both in English and in the employee's primary language, containing the following information" and inserting the phrase "shall furnish to each employee at the time of hiring, and whenever any of the information contained in this written

notice changes, a written notice in English in the form made available by the Mayor pursuant to subsection (e) of this section. If, pursuant to subsection (e) of this section, the Mayor has made available a translation of the form in a language that the employer knows to be the employee's primary language or that the employee requests, the employer shall also furnish the written notice to the employee in that language. The notice shall contain the following information:" in its place.

(3) Subsection (d) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(l) Within 90 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157), every employer, except as specified in section 9a, shall furnish each employee with a written notice containing the information required under subsection (c) of this section. As proof of compliance with this subsection and subsection (c) of this section, every employer shall retain copies of the written notice furnished to employees that are signed and dated by the employer and by the employee or copies of the written notice furnished to employees and an email from the employee acknowledging receipt of the notice.".

(B) Paragraph (3) is amended by striking the phrase "subsections (b) and (c) of".

(4) Subsection (e) is amended to read as follows:

"(e) The Mayor shall make available for employers a form of the notice required by subsection (c) within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157). The Mayor also shall make available for employers a translation of the form in any language required for vital

documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933) and in any additional languages the Mayor deems appropriate to carry out the purposes of this section.".

(c) Section 9a (D.C. Official Code § 32-1008.01) is amended as follows:

(1) Section (a)(1) is amended by striking the phrase "containing the information required by section 9(c)" and inserting the phrase "containing the information required by section 9(c) and in the form made available by the Mayor pursuant to section 9(e). The notice shall be provided in English and if, pursuant to section 9(e), the Mayor has made available a translation of the form in a language that the temporary staffing firm knows to be the employee's primary language or that the employee requests, the temporary staffing firm shall also furnish written notice to that employee in that second language." in its place.

(2) Section 9a(b) is amended to read as follows:

"(b)(1) When a temporary staffing firm assigns an employee to perform work on behalf of or to the benefit of a client, the temporary staffing firm shall furnish the employee a written notice in English, in the form made available by the Mayor pursuant to subsection (c) of this section, of:

"(A) The specific designated payday for the particular assignment;

"(B) The actual rate of pay for the assignment and the benefits, if any, to be provided;

"(C) The overtime rate of pay the employee will receive, or, if applicable, notice that the position is exempt from additional overtime compensation and the basis for the overtime exemption;

"(D) The location and name of the client and the temporary staffing firm;

"(E) The anticipated length of the assignment;

"(F) Whether training or safety equipment is required and who is obligated to provide and pay for the equipment;

"(G) The legal entity responsible for workers' compensation should the employee be injured on the job; and

"(H) Information about how to contact the designated enforcement agency for concerns about safety, wage and hour, or discrimination.

"(2) If, pursuant to subsection (c) of this section, the Mayor has made available a translation of the form in a language that the temporary staffing firm knows to be the employee's primary language or that the employee requests, the temporary staffing firm shall also furnish written notice to that employee in that language."

(3) Section 9a(c) is amended to read as follows:

"(c) The Mayor shall make available for temporary staffing firms a form of the notice required by subsection (b) of this section within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157). The Mayor also shall make available for temporary staffing firms a translation of the form in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933) and in any additional languages the Mayor deems appropriate to carry out the purposes of this section."

(d) Section 10 (D.C. Official Code § 32-1009) is amended as follows:

(1) Subsection (c) is amended to read as follows:

"(c) The Mayor shall make copies or summaries of this act publicly available on the District government's website within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157). An employer shall not be liable for failure to post notice if the Mayor has failed to provide to the employer the notice required by this section.".

(e) Section 12 (D.C. Official Code § 32-1011) is amended by striking the phrase "or whatever the prevailing federal standard is, whichever is greater" and inserting the phrase "or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater," in its place.

(f) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Paragraph (b)(2) is amended by striking the phrase "The court may award an amount of liquidated damages less than treble the amount of unpaid wages, but not less than the amount of unpaid wages. In any action commenced to recover unpaid wages or liquidated damages, the employer shall demonstrate" and inserting the phrase "The court may award an additional amount of liquidated damages less than treble the amount of unpaid wages, but not less than the amount of unpaid wages, only if the employer demonstrates".

(2) Subsection (c) is amended to read as follows:

"(c) A subcontractor, any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor's employees for the subcontractor's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act. Except as otherwise provided in a contract between the subcontractor, any intermediate subcontractor, and the general contractor, the subcontractor shall indemnify any intermediate subcontractor and the general contractor for

any wages, damages, interest, penalties, or attorneys' fees owed as a result of the subcontractor's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act, unless those violations were due to the lack of prompt payment in accordance with the terms of the contract between the subcontractor, any intermediate subcontractor, and the general contractor.".

(2) Subsection (f) is amended to read as follows:

"(f) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the client shall be jointly and severally liable for violations of this act to the employee and to the District. The District, the employee, or the employee's representative shall notify the temporary staffing firm and employer of the alleged violations at least 30 days before filing a claim for these violations. Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the temporary staffing firm's violations of this act."

(g) Section 12a (D.C. Official Code § 32-1011.01) is amended by striking the phrase "liquidated damages of not less than $1,000 and not more than $10,000" and inserting the phrase "all appropriate relief provided for under section 10a of the Wage Payment Act" in its place.

(h) Section 13(a) (D.C. Official Code § 32-1012(a)) is amended by striking the phrase "according to" and inserting the phrase "according to, and with all the remedies provided under," in its place.

(i) Section 13a (D.C. Official Code § 32-1012.01) is amended by striking the phrase "same procedure and available for a violation of the Wage Payment Act" and inserting the

phrase "same procedure and with the same remedies, including attorneys' fees and other legal or equitable relief, available for a violation of the Wage Payment Act" in its place.

Sec. 4. The Wage Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157), is amended by repealing section 7.

Sec 5. Conforming amendments.

(a) The Wage Theft Prevention Clarification Temporary Amendment Act of 2015 (B21-0053) is repealed.

(b) The Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014, enacted on January 22, 2015 (D.C. Act 20-591; 61 DCR 1332), is repealed.

(c) All rules or forms issued in accordance with the Wage Theft Prevention Clarification Temporary Amendment Act of 2015 (B21-0053) or the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014, enacted on January 22, 2015 (D.C. Act 20-591; 61 DCR 1332) shall continue in effect according to their terms until lawfully amended, repealed, or modified.

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813: D.C. Official Code § 1-206.02(c)(1)) and publication in the District of Columbia Register.

MURIEL BOWSER
MAYOR

APR 19 2016

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed please find for consideration and enactment by the Council of the District of Columbia the "Wage Theft Prevention Revision Amendment Act of 2016".

Last year, the Council of the District of Columbia passed the "Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157) (referred to here as the "Wage Theft Act") to address the issue of worker protections when an employer does not fully compensate an employee for work performed or for the promised rate agreed upon by an employer and employee. Several provisions of the legislation lacked clarity and contained drafting errors that required correction. Twice the Council passed emergency and temporary legislation to clarify and improve the law.

The proposed legislation incorporates the provisions of two sets of amendment packages. The first set is incorporated under the "Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014", effective December 29, 2014 (D.C. Act 20-544, DCR 243) and "Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014", effective March 13, 2015 (D.C. Law 21-241, DCR 4511). The temporary legislation expired on October 24, 2015. Substantially identical emergency and temporary legislation was approved by the District Council on October 6, 2015 (B21-434, effective January 30, 2016, and referred to here as the "Clarification and Correction Temporary Amendments").

The second set of amendments is provided under "Wage Theft Prevention Clarification Emergency Amendment Act of 2015", approved February 26, 2015 (D.C. Act 21-8); 62 DCR 2669) and the "Wage Theft Prevention Clarification Temporary Amendment Act of 2015", effective June 4, 2015 (D.C. Law 21-2; 62 DCR 4552) (referred to as the "2015 Amendments"). The legislation was renewed by the District Council with the passage of B21-561, effective January 27, 2015.
The enclosed legislation includes most of the changes in the Clarification and Correction Amendments and all of the changes in the 2015 Amendments.

The legislation makes several legislative changes contained in neither the Clarification and Correction Amendments nor the 2015 Amendments. The bill makes clear that the Office of Administrative Hearings has jurisdiction over all administrative hearings. The bill also includes changes to the Wage Theft Act's recordkeeping provisions consistent with the U.S. Supreme Court's decision in *Patel v. City of Los*

Angeles (135 S. Ct. 2443), which limited the right of government law enforcement officials to access business records. The change contained in the bill was incorporated at the suggestion of the Office of the Attorney General.

The legislation also restores a provision that authorizes the Mayor to take an assignment in trust from an employee who not been paid all wages due and to settle and adjust those claims. A related provision would also expressly provide the Office of Attorney General to bring appropriate legal action to collect these claims.

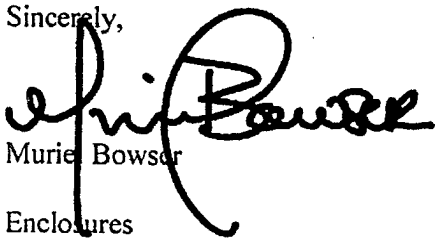
The Wage Theft Act amended the minimum wage law notice requirements to allow an employer to maintain an electronic acknowledgement from an employee as a receipt copy to satisfy recordkeeping purposes. The Wage Theft Act also required employers to keep records for 3 years, or the "prevailing federal standards, whichever is greater." The 2015 Amendments amended one such provision to require the District government to issue regulations to identify the prevailing federal standard. In order to make the standard consistent, the bill applies the amendment to other recordkeeping provisions of the Wage Theft Act.

The Wage Theft Act also contained two provisions that allowed any prevailing plaintiff to be entitled to attorney's fees as provided under a matrix established under *Salazar v. District of Columbia*, 123 F. Supp.2d 8 (D.D.C. 2000). The District of Columbia opposes the rates established under the *Salazar* ruling. Over the past 15 years, nearly every except for the D.C. Circuit Court has determined that the U.S. Attorney's Office Laffey matrix sets the maximum prevailing market rates in the District. The *Salazar* compensation rates are higher, and the District has appealed the Court's most recent ruling of *Salazar* rates. If the Council approves legislation awarding "*Salazar rates*", plaintiffs will argue that the District of Columbia has endorsed those rates as the prevailing market rates and result in significantly higher attorney's awards against District cases where a fee-shifting provision applies. I and the Attorney General strongly recommend that the *Salazar rates* provisions be deleted.

There are inconsistent references in the Wage Theft Act as to whether complaints may be mailed or delivered by some other means. The bill makes appropriate changes to apply uniform language usage.

I urge you to transmit this legislation to the Council for its introduction and consideration.

Sincerely,



Muriel Bowser

Enclosures

Chairman Phil Mendelson at
the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To provide for the payment and collection of wages in the District of Columbia, to require administrative hearings to be conducted by the Office of Administrative hearings, permit certain employees may be paid monthly, limit joint and several liability among contractors and subcontractors, and employers and temporary agencies, clarify for whom and for how long certain employment records must be kept, clarify that the government's demand to review records must be subject to review by a neutral decisionmaker, require an employer to provide an itemized wage statement to an employee, amend criminal penalties, provide that the Mayor and respondent must take certain actions within specified periods after a notice is served on an employer, identify who may take action in an administrative proceeding or court to assist an employee who is owed wages, and authorize the Mayor to issue rules; to amend the Minimum Wage Act Revision Act of 1992 to clarify for whom and for how long certain employment records must be kept, clarify that the government's demand to review records must be subject to review by a neutral decisionmaker, provide that attorney's fees are not required to be based on a schedule established in an unrelated court proceeding, limit the number of languages in which notices must be provided to employees, identify the content of notices to be provided to employees and specify how the fact of notice may be established, and require the Mayor to provide a template of various required notices, limit joint and several liability among contractors and subcontractors, and employers and temporary agencies; to amend the Workplace Fraud Amendment Act of 2012 to clarify for how long certain employment records must be kept; to amend the Sick and Safe Leave Act to clarify that employees in the building and construction industry covered by a bona fide collective bargaining agreement shall be exempted from the paid leave requirements of the Act only if the agreement expressly waives those requirements and to clarify for how long certain employment records must be kept; to amend the Living Wage Act to clarify for how long certain employment records must be kept; and to amend the Wage Theft Prevention Amendment Act of 2014 to repeal a provision making that legislation retroactive.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wage Theft Prevention Revision Amendment Act of 2016"

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976, DC Official Code § 32-1301 *et seq.*), is amended as follows:

(a) Section 1 (D.C. Official Code § 32-1301) is amended by adding a new paragraph (6) to read as follows:

"(6) "Administrative Law Judge" means an administrative law judge of the Office of Administrative Hearings.".

(b) Section 2 (D.C. Official Code § 32-1302) is amended by striking the phrase "Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer," and inserting the phrase "Every employer shall pay all wages earned to his employees on regular paydays designated in advance by the employer and at least twice during each calendar month, except that all bona fide administrative, executive, or professional employees (those employees employed in a bona fide administrative, executive, or professional capacity, as defined in 7 DCMR § 999.1 as it may be amended from time to time) shall be paid at least once per month;" in its place.

(c) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

(1) Paragraph (5) is amended is amended by striking the phrase "When the employer is a subcontractor alleged to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act." and inserting the phrase "When the employer is a subcontractor found to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this act, the Living

Wage Act, and the Sick and Safe Leave Act, except as otherwise provided in a contract between the contractor and subcontractor in effect on February 26, 2015." in its place.

(2) Paragraph (6) is amended by striking the phrase "When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of another employer pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the employer shall be jointly and severally liable for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act to the employee and to the District." and inserting the phrase "When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of another employer pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the employer shall be jointly and severally liable for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act to the employee and to the District, except as otherwise provided in a contract between the temporary staffing firm and the employer in effect on February 26, 2015." in its place.

(d) Section 6 (D.C. Official Code § 32-1306) is amended as follows:

(1) Subsection (a)(2) is repealed.

(2) A new subsection (d) is added to read as follows:

"(d)(1) Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall make, keep, and preserve, for a period of not less than 3 years or whatever the prevailing federal standard is, if identified in regulations issued pursuant to this act, whichever is greater, a record of:

"(A) The name, address, and occupation of each employee;

"(B) A record of the date of birth of any employee under 19 years of age;

"(C) The rate of pay and the amount paid each pay period to each employee;

"(D) The precise time worked each day and each workweek by each employee, except for employees who are exempt from the minimum wage and overtime requirements under section 5(a) of the Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-218; D.C. Official Code § 32-1001 *et seq.*); and

"(E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of the subchapter or of the regulations issued under this subchapter.

"(2)(i) Any records shall be open and made available for inspection or transcription by the Mayor or the Mayor's authorized representative upon demand by the Mayor at any reasonable time. Every employer shall furnish to the Mayor or to the Mayor's authorized representative on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor.

"(ii) No employer may be found to be in violation of subsection (i) of this paragraph unless the employer had an opportunity to challenge a demand made pursuant to paragraph (i) of this subparagraph and have that challenge decided by a neutral decisionmaker.".

(3) A new subsection (e) is added to read as follows:

"(e) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Mayor may prescribe by regulation.".

(e) Section 7(a) (DC Official Code § 32-1307(a)) is amended to read as follows:

"(a)(1) Any employer who negligently fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

"(A) For the first offense, an amount per affected employee of not more than $2,500;

"(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

"(2) Any employer who willfully fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, up on conviction, shall:

"(A) For the first offense, be fined not more than $5,000, or imprisoned not more than 30 days, or both; or

"(B) For any subsequent offense, be fined not more than $10,000, or imprisoned not more than 90 days, or both.

"(3) The fines set forth in paragraphs (1) and (2) of this section shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).".

(f) Section 8 (D.C. Official Code § 32-1308) is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase ", or any entity a member of which is aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act".

(2) Subsection (b) is amended by striking the phrase ", including attorney's fees computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F. Supp. 2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney services. The court shall use the rates in effect at the time the determination is made".

(g) Section 8a (D.C. Official Code § 32-1308.01) is amended as follows:

(1) By amending subsection (c) to read as follows:

"(c)(1) The Mayor shall issue rules identifying how a complaint may be served, and serve the complaint and a written notice to each respondent upon completion . The written notice shall set forth the damages, penalties and other costs for which the respondent may be liable, the rights and obligations of the parties, and the process for contesting the complaint.

(2) The Mayor shall also include an additional notice to employees stating that an investigation is being conducted and providing information to employees on how they may participate in the investigation. Upon service, the respondent shall post this additional notice for a period of at least 30 days.

(3) Within 20 days of the date the complaint and written notice are served, the respondent shall:

(A) Admit that the allegations in the complaint are true and pay to complainant any unpaid wages or compensation and liquidated damages owed and pay to the Mayor any fine or penalty assessed; or

(B) Deny the allegations in the complaint and request that the agency make an initial determination regarding the allegations in the complaint.

(4) If a respondent admits the allegations, the Mayor shall issue an administrative order requiring the respondent to pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations. The Mayor may also proceed with any audit or subpoena to determine if the rights of employees other than the complainant have also been violated.

(5) If a respondent denies the allegations, the respondent must notify the Mayor of that decision and may provide any written supporting evidence within 20 days of the date the complaint is served.

(6) If a respondent fails to respond to the allegations within 20 days of the date the complaint is served, the allegations in the complaint shall be deemed admitted and the Mayor shall issue an initial determination requiring the respondent to pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations.

(7) The Mayor shall issue an initial determination within 60 days of the date the complaint is served. The initial determination shall set forth a brief summary of the evidence considered, the findings of fact, the conclusions of law, and an order detailing the amount owed by the respondent or other relief deemed appropriate, if any. The initial determination shall be provided to both parties and set forth the losing party's right to appeal under this section or to seek other relief available under this chapter.

(8) In addition to determining whether the complainant has demonstrated that the employer has violated one or more provisions of this chapter, or the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, by applying the presumption required by § 32-1305(b), the Mayor shall make an initial determination of whether the complainant is entitled to additional unpaid earned wages due to other District laws such as the Living Wage Act, the Sick and Safe Leave Act, or the Minimum Wage Revision Act.

(9) If the Mayor fails to issue an initial determination within 60 days of the service of a complaint, the complainant shall have a right to request a formal hearing before an administrative law judge.

(2) By adding a new subsection (d-1) to read as follows:

"(d-1)(1) Whenever the Mayor determines that wages have not been paid, as herein provided, and that such unpaid wages constitute an enforceable claim, the Mayor may,

upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, and the Attorney General may bring any appropriate legal action necessary to collect such claim, and may join in one proceeding or action to collect such claims against the same employer as the Attorney General deems appropriate. Upon any such assignment the Attorney General shall have the power to settle and adjust any such claim or claims on such terms as may be deemed just.

"(2) The court in any action brought under this section shall, in addition to any amount awarded to the complainant, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the respondent. The District shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this section.".

(3) By amending subsection (h)(3) by striking the phrase ", and, unless dissolved by payment, shall as of that date be considered a tax due and owing to the District, which may be enforced through any and all procedures available for tax collection".

(4) By deleting subsection (i).

(4) By amending subsection (m)(1) by deleting the phrase "computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F. Supp. 2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney services. The administrative law judge shall use the rates in effect at the time the determination is made".

(h) A new Section 10b is added to read as follows:

"Sec. 10b. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-*501 et seq.*), may issue rules to implement the provisions of this act.".

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (DC Law 9-248, DC Official Code § 32-1001 *et seq.*) is amended as follows:

(a) Section 9 (DC Official Code § 32-1008) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "3 years or whatever the prevailing federal standard is, whichever is greater" and inserting the phrase "3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater" in its place.

(2)Subsection (a)(1)(D) is amended to read as follows:

"(D) The precise time worked each day and each workweek by each employee, except for employees who are exempt from the minimum wage and overtime requirements under section 5(a) of this act (D.C. Official Code § 32-1004(a)); and".

(3) Subsection (a)(2) is amended to read as follows:

"(2)(i) Any records shall be open and made available for inspection or transcription by the Mayor or the Mayor's authorized representative upon demand by the Mayor at any reasonable time. Every employer shall furnish to the Mayor or to the Mayor's authorized representative on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor.

"(ii) No employer may be found to be in violation of subsection (i) of this paragraph unless the employer had an opportunity to challenge a demand made pursuant to paragraph (i) of this subparagraph and have that challenge decided by a neutral decisionmaker.".

(4) Subsection (c) is amended by striking the phrase "shall furnish to each employee at the time of hiring a written notice, both in English and in the employee's primary language, containing the following information;" and inserting the phrase "shall furnish to each employee at the time of hiring a written notice in English in the form made available by the Mayor pursuant to subsection (e). If, pursuant to subsection (e) , the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee's primary language or that the employee requests, the employer also shall furnish written notice to the employee in that second language. The notice shall contain the following information:" in its place.

(5) Subsection (d)(1) is amended to read as follows:

"(d)(1) Within 90 days of February 26, 2015, or within 90 days of any date on which the information required by this subsection changes, every employer, except in those instances where notice is provided pursuant to section 9a of this act (D.C. Official Code § 32-1008.01), shall furnish each employee with an updated notice containing the information required by subsection (c) and in the form of the sample template made available by the Mayor pursuant to subsection (e). The notice shall be provided in English and if, pursuant to subsection (e), the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee's primary language or that the employee requests, the employer also shall furnish written notice to that employee in that second language. Receipt of an electronic acknowledgement from an information processing system the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, or a copy of the written notice furnished to an employee, if signed by the employer and employee acknowledging receipt of the notice, shall suffice as proof of compliance." in its place.

(6) Subsection (e) is amended to read as follows:

"(e) The Mayor shall make available for employers a sample template of the notice required by subsection (c) of this section within 60 days of February 26, 2015. The Mayor also shall make available for employers a translation of the sample template in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167, § 4; D.C. Official Code § 2-1933).".

(b) Section 9a (D.C. Official Code § 32-1008.01) is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase "containing the information required by section 9(c)" and inserting the phrase "containing the information required by section 9(c) (D.C. Official Code § 32-1008(c)) and in the form of the sample template made available by the Mayor pursuant to section 9(e) (D.C. Official Code § 32-1008(e)). The notice shall be provided in English and if, pursuant to section 9(e), the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee's primary language or that the employee requests , the employer also shall furnish written notice to that employee in that second language." in its place.

(2) Subsection (b) is amended to read as follows:

"(b)(1) When a temporary staffing firm assigns an employee to perform work at, or provide services for another organization, the temporary staffing firm shall furnish the employee a written notice in English, in the form of the sample template made available by the Mayor pursuant to subsection (c) of this section, of:

"(A) The specific designated payday for the particular assignment;

"(B) The actual rate of pay for the assignment and the benefits, if any to be provided;

"(C) The overtime rate of pay the employee will receive or, if applicable, inform the employee that the position is exempt from additional overtime compensation and the basis for the overtime exemption;

"(D) The location and name of the client employer and the temporary staffing firm;

"(E) The anticipated length of the assignment;

"(F) Whether training or safety equipment is required and who is obligated to provide and pay for the equipment;

"(G) The legal entity responsible for workers' compensation, should the employee be injured on the job; and

"(H) Information about how to contact the designated enforcement agency for concerns about safety, wage and hour, or discrimination.

"(2) If pursuant to subsection (c) of this section, the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee's primary language or that the employee requests, the employer shall also furnish written notice to that employee in the second language.".

(3) Subsection (c) is amended to read as follows:

"(c) The Mayor shall make available for temporary staffing firms a sample template of the notice required by subsection (b) of this section within 60 days of February 26, 2015. The Mayor also shall make available for employers a translation of the sample template in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167, D.C. Official Code § 2-1933).".

(c) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Subsection (c) is amended by striking the phrase "When the employer is a subcontractor alleged to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act." and inserting the phrase " When the employer is a subcontractor found to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be jointly and severally liable to the subcontractor's employees for violations of this act, the Living Wage Act, and the Sick and Safe Leave Act, except as otherwise provided in a contract between the contractor and subcontractor in effect on February 26, 2015." in its place.

(2) Subsection (f) is amended by striking the phrase "District." and inserting the phrase "District, except as otherwise provided in a contract between the temporary staffing firm and the employer in effect on February 26, 2015."

(d) A new section 13b is added to read as follows:

"13b. Collection.

" Whenever the Mayor determines that wages have not been paid, as herein provided, and that such unpaid wages constitute an enforceable claim, the Mayor may, upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, and the Attorney General may bring any appropriate legal action necessary to collect such claim, and may join in one proceeding or action to collect such claims against the same employer as the Attorney General deems appropriate. Upon any such

assignment the Attorney General shall have the power to settle and adjust any such claim or claims on such terms as may be deemed just.

"(2) The court in any action brought under this section shall, in addition to any amount awarded to the complainant, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the respondent. The District shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this section.".

(e) Section 10 (DC Official Code § 32-1009) is amended to read as follows:

"(3) A new subsection (d) is added to read as follows:

"(d) The Mayor shall make copies or summaries of this act publicly available on the District government's website or some other appropriate method within 60 days of February 26, 2015. An employer shall not be liable for failure to post notice if the Mayor has failed to provide to the employer the notice required by this section.".

Sec. 4. Section 212(a) of the Workplace Fraud Amendment Act of 2012, approved April 27, 2013 (D.C. Law 19-300, D.C. Official Code 32-1331.12(a)) is amended by striking the phrase "3 years, in or about its place of business," and inserting the phrase "3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater, in or about its place of business,".

Sec. 5. The Accrued Sick and Safe Leave Act, effective May 13, 2008 (D.C. Law 17-152, D.C. Official Code § 32-131 *et seq.*) is amended as follows:

(a) Section 7(b) is amended by striking the phrase "agreement." and inserting the phrase "agreement that expressly waives the requirements in clear and unambiguous terms." in its place.

(b) Section 10b(a) is amended by striking the phrase "3 years" and inserting in its place "3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater.".

Sec. 6. Section 7 of the Living Wage Act, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code § 2-220.07) is amended to read as follows:

"Sec. 7. Records.

All recipients and subcontractors shall retain payroll records created and maintained in the regular course of business under District of Columbia law for a period of at least 3 years from the payroll date for employees subject to section 103 of the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; § 2-220.03) or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater.".

Sec. 7. Section 7 of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157 20-426; 61 DCR 10157), is repealed.

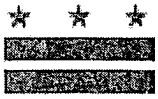
Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 26, 1973 (87 Stat. 9813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(1)), and publication in the District of Columbia Register.

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO:	The Honorable Phil Mendelson Chairman, Council of the District of Columbia
FROM:	Jeffrey S. DeWitt Chief Financial Officer
DATE:	October 19, 2015
SUBJECT:	Fiscal Impact Statement – "Wage Theft Prevention Correction and Clarification Amendment Act of 2015"
REFERENCE:	Draft Bill as provided to the Office of Revenue Analysis on October 9, 2015

Conclusion

Funds are sufficient in the fiscal year 2016 through fiscal year 2019 budget and financial plan to implement the bill.

Background

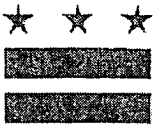
The District amended[1] its recently enacted wage theft law[2] to ensure its procedural provisions are clear. This bill makes the amendments permanent, and makes some additional technical amendments.

Financial Plan Impact

Funds are sufficient in the fiscal year 2016 through fiscal year 2019 budget and financial plan to implement the bill. The amendments offered in the bill are technical and do not have a fiscal impact.

[1] Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-240; 62 DCR 1332).
[2] Wage Theft Prevention Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Lolita S. Alston
Director
Office of Legislative Support

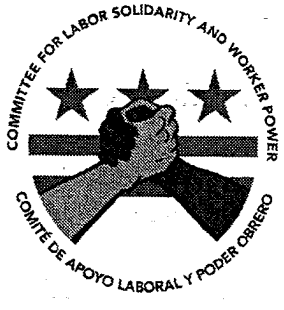
FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

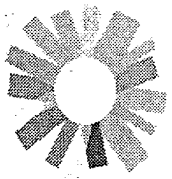
DATE: December 28, 2015

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Wage Theft Prevention Revision Amendment Act of 2015
(AL-14-563-L)

This is to Certify that this Office has reviewed the above-referenced draft proposed bill and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Janet M. Robins





many languages
one voice

TESTIMONY OF HANNAH KANE
WORKER JUSTICE ORGANIZER, MANY LANGUAGES ONE VOICE
COW SUBCOMMITTEE ON WORKFORCE
OCTOBER 26, 2016

Good morning, and thank you Councilmember Silverman for holding this hearing today. My name is Hannah Kane, and I am the worker justice organizer of the Committee for Labor Solidarity and Worker Power at Many Languages One Voice (MLOV). We organize with DC's immigrant workers to defend their rights on the job and develop long term solutions for abuses they experience at work. In my capacity as an organizer at MLOV, I have accompanied numerous workers to file claims at the DC Office of Wage-Hour (OWH), and have sent numerous others there on their own, who have later reported back to me on their experiences. Therefore, I am testifying from a point of expertise of not only how OWH is supposed to work, but how they are actually working to advocate for DC workers' wages.

I am here today to testify on B21-120 and B21-177 - the good, the bad, and the hideous.

First, the good. Thank you for clarifying:

- That the Mayor would be required to provide sample written notices of employment at the time of hiring in all languages mandated by the DC Language Access Act. We look forward to working with your office to ensure that these forms are made available. As of yesterday, the only forms available on the DOES website are in English and Spanish.
- Ending the overtime exemption for parking lot attendants. This is a long overdue change. There is no logical reason why parking lot attendants should not be eligible for overtime when they work long hours.
- That general contractors and subcontractors should be held jointly liable for wage theft violations. Subcontractors are often fly-by-night, under the radar, small operations, who disappear once the job is completed, leaving their workers without options to demand their unpaid wages. Joint liability gives those workers recourse to seek their unpaid wages, while still allowing general contractors the ability to indemnify their subcontractors.
- Thank you for clarifying that wage theft cases should be heard by administrative law judges at the Office of Administrative Hearings. The ability to appeal a decision from OWH to an ALJ was a core part of the Wage Theft Prevention Act, in order for workers fighting wage theft to have access to a formal process with timely and enforceable judgements, be able to present witness testimony, and giving ALJs the ability to issue

subpoenas. This has been in limbo since the law went into effect, and this clarification will finally give a much needed resource to workers fighting wage theft.

- Finally, thank you for clarifying when triple liquidated damages are required under the law. Liquidated damages are key to making sure that employers do not get away with using their employees' wages as if they were an interest free loan. They also recognize the hardship that a worker suffers when they are not paid their wages, including late fees, high-interest loans, and time and money spent on the metro (or missing days' work at a new job) getting down to Minnesota Avenue to demand their wages through DOES. As of now, in my experience, OWH does not advise workers of their right to liquidated damages. In DOES' oversight hearing testimony in 2016, Director Carroll reported a pitiful amount of liquidated damages recovered.

Now for the bad. It is unfathomable that the Mayor's administration, with little effort to implement most of the provisions of the Wage Theft Prevention Act of 2014, would wish to scale back the tools at their disposal to enforce DC's wage and hour laws in the following ways:

- The Mayor's ability to revoke business licenses of willful violators or suspend the license of businesses that don't follow orders to comply. It should be noted that suspending a business license would not be the first course of action - a business license would only be suspended if, after a determination is made that there has been a violation, and the business has been ordered to pay, *and refuses to comply*, that they would have their business license suspended. If the Mayor is truly dedicated to enforcing DC law, a business license suspension is a logical next step, so that there are real consequences to refusing to comply. If you don't comply with an order to pay the wages that are owed, we don't want your business in our city.
- Requiring that workers who file their claims at OWH assign their claims to the city. We recognize one intent of assigning claims - and we want the Office of the Attorney General to be able to bring appropriate legal action. However, we do not agree that the Mayor should be able to take an assignment in order to settle and "adjust" those claims in a way that does not recover the full amount of wages that are owed to the worker. In addition, the worker should be able to preserve their ability to file a private lawsuit without concern that they have given their claim over to the city.

We have been unenthused, underwhelmed, disappointed, and outraged by OWH's approach to implementing the Wage Theft Prevention Act. From Director Carroll's oversight hearing testimony this year, we are aware that they collected none of the administrative fines that the Act has authorized them to collect. They have blatantly refused to proactively investigate claims, and patiently wait for workers to file in, one by one, to demand their wages. This is not an approach that will lead to the eradication of wage theft in our city. In addition, they have claimed no authority to enforce anti-retaliation provisions of this law, stating that they have no authority to demand that a worker be reinstated if terminated in retaliation for demanding their wages.

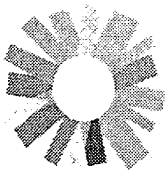
Finally, Mayor Bowser, in addition to cosponsoring and supporting the Wage Theft Prevention Act in 2014, has also spearheaded efforts within DC government to increase the DC minimum wage to $15/hour by 2020. However, those efforts will be meaningless without strong,

proactive enforcement of that law from her administration. Otherwise, DC will remain a city with pretty-sounding laws with no real impact for its residents and citizens.

I am happy to speak with you more in-depth about the specific claims on which OWH has failed DC workers, as well as connect your offices with those workers to hear from them directly. Here are a few stories:

- One woman was not paid for 139 hours of work, including several overtime hours, for a cleaning subcontractor cleaning apartment buildings in Northwest DC. She filed at OWH, and though she requested liquidated damages, she was paid slightly less than the full amount of wages owed. When she asked the investigator if he would also investigate the company more completely, since she knew that at least one other coworker was not paid her wages, the investigator informed her that he could take no more action unless her coworker filed the claim herself. In addition, the investigator told her that his first approach to any business owner claiming that they were unaware of DC law was to believe them, and to use the opportunity to educate them, instead of levying the fines and damages as laid out in the Wage Theft Prevention Act.
- One man was being paid significantly less than the minimum wage, and no overtime, for work at a local fast food joint. He did not want to lose his job, but wanted to get his back wages and earn the minimum wage. When he went to OWH, he was told that he would likely be fired if he filed a claim, and that he could not file the claim confidentially since he was paid in cash and had no proof of his employment. The investigator suggested that he find another job, and then in a year or so, file a claim for his unpaid wages.
- One man was offered a $12,000 settlement from the restaurant where he had worked through the OWH process. He decided to take the settlement, though it was about half of the overtime that he was owed. He also decided to accept the offer of the money being paid in $500 monthly installments, though it meant that he had to miss a day's work every month in order to go and pick up his check. After 10 months of payments, the restaurant closed and the employer stopped making payments, with $7,000 still owed. According to the worker, an OWH representative told him that they could go after the man's business license at his other restaurants, but they didn't want to close his restaurants.

The Wage Theft Prevention Act must be maintained at full strength. The District cannot grant leniency to those who would steal their workers' wages. Thank you.



TESTIMONY OF JOSE CRUZ
MEMBER, COMMITTEE FOR LABOR SOLIDARITY AND WORKER POWER
MANY LANGUAGES ONE VOICE
COW SUBCOMMITTEE ON WORKFORCE
OCTOBER 26, 2016

Good morning everyone, my name is Jose Cruz and I am from El Salvador and have been a DC resident for 20 years. I live in Ward 1 on Spring Place.

We are here today because we want to be sure of how our government works. We want laws - but laws that truly support us.

What good is it that we worked for two years on the Wage Theft Prevention Act without seeing any movement to implement it? There are no fines, there is no follow-up on the cases.

When a contractor doesn't pay his workers, what can we do? Fine them? Revoke their business license? We want for these actions to be taken. If you don't support us, the community will suffer and the government doesn't function.

Madam Mayor - what we want is for the law to punish employers who don't pay wages. What can we do? Will you support us? We need your support.

You have had the ability to suspend business licenses for two years. I have not seen you suspend one. And now you are saying that you don't want to suspend any business licenses, even if the business doesn't pay their workers' wages? I do not agree with this.

You should pay attention to what is happening with workers. Even the president is in favor of paid sick days. I know one person who was fired for taking a sick day. She should be supported. Where was the law for her?

Madam Mayor, I was there at the plaza on Park Road when you told us that in 2020 we will be earning $15/hour. But these laws do us no good is they are not enforced.

I was there when you told us that you would support workers. But these amendments do not support us. Your job is to make laws that punish employers that do not pay wages.

You passed this law for us, but you've thrown us to the curb. We want to know - what will happen? We want justice for workers.

Thank you.

Buenos días a todos, mi nombre es Jose Cruz y soy del Salvador y residente de Washington DC por 20 años. Vivo en la zona 1, en la Spring Place.

Estamos aquí hoy porque queremos estar seguro de lo que hace el gobierno. Nosotros queremos leyes - pero leyes que nos apoyan de verdad.

De qué nos sirve que trabajamos dos años en la Acta de Prevención del Robo de Salarios sin ver ningún movimiento? No hay multas, no hay seguimiento de los casos.

Cuando un contratista no le paga a sus trabajadores, que se puede hacer? Multarle? Quitarle su licencia de negocio? Queremos que tomen esas acciones. Si no nos apoya, vamos mal la comunidad y va mal el gobierno.

Señora Alcaldesa: Nosotros lo que queremos es que haya una ley para castigar a los empleadores que no pagan. Qué es lo que se puede hacer? Nos va a apoyar? Necesitamos el apoyo suyo.

Has tenido las habilidad de suspender las licencias de negocio por dos anos. No he visto que ha suspendido a ningún. Y ahora está diciendo que no quiere suspender a ninguna licencia de negocio aunque no paguen los salario de sus trabajadores. Yo no estoy de acuerdo en eso.

Usted debe ver lo que está pasando con los trabajadores. Hasta el presidente ha dicho que está a favor de los días de enfermedad. Yo conozco una persona que salió despedida por tomar un día de enfermedad. Esa mujer debe ser apoyada. Dónde está la ley para ella?

Señora alcaldesa, yo estuve alli en la parque por la Park Road cuando usted nos dijo que ya en 2020 vamos a ganar a $15 la hora. Pero esas leyes no nos sirven si no los aplican.

Yo estuve allí cuando used nos dijo que iba a apoyar a los trabajadores. Pero no nos está apoyando con las esas enmiendas. Es su trabajo poner leyes castigando a los empleadores que no pagan.

Nos han aprobado esa ley, pero nos han dejado tirados. Queremos saber - qué es lo que va a suceder? Queremos justicia para los trabajadores.

Muchas gracias.

TESTIMONY OF JULIO PALOMO

before the Committee of the Whole Subcommittee on Workforce on
B21-120: Wage Theft Prevention Clarification and
Overtime Fairness Amendment Act of 2015 and
B21-711: Wage Theft Prevention Revision Amendment Act of 2016
October 26, 2016

Thank you Chairman Silverman and members of the subcommittee for holding this hearing on B21-120 and B21-711, each of which make technical revisions and clarifications to the Wage Theft Prevention Amendment Act of 2014.

My name is Julio Palomo. I am the Assistant Business Manager for Local 11 of the Laborers' International Union of North America, or LiUNA for short. LiUNA is one of the largest trade unions in the country, representing more than 500,000 members nationwide. Local 11's jurisdiction includes the District of Columbia, and I am proud to say our main office is located in Ward 5. Altogether, Local 11 represents more than 2,500 construction craft laborers in the Washington metro area, about a third of which are District residents.

Who are laborers? We are the backbone of any construction project. We dig trenches, remove asbestos, demolish old buildings, and install concrete foundations, bridges, tunnels, curbs, gutters, alleys, and roadways.

It is critical that the District's wage theft prevention law protects workers to the fullest extent possible, and LiUNA supports making the technical revisions necessary to accomplish this. On a union job site, a worker who believes he or she is not being paid correctly can ask their union representative to investigate their claim and file a grievance if need be. Non-union workers do not have this level of protection and recourse, which is why a robust and effective wage theft law is necessary. There are many unscrupulous employers. They need to be held accountable, and workers who have been cheated need to be made whole as quickly as possible.

One of the best mechanisms for protecting workers from wage theft and holding employers accountable is a strong Office of the Attorney General, or OAG. I would therefore ask the subcommittee to incorporate the following two measures along with the technical revisions:

1. Provide the OAG with subpoena powers for wage theft cases so that when determining whether to bring legal action, it can compel individuals to provide records or oral testimony.

2. Grant independent authority for the OAG to litigate wage theft cases directly in court, and allow DOES to assign cases to the OAG. This will enable the OAG to take on serious, repeat violators and free up DOES to focus on routine administrative cases.

Thank you Chairman Silverman for the opportunity to testify. We at LiUNA appreciate your on-going support of workers and workers' rights. In closing, LiUNA urges the subcommittee to move forward with a single bill that incorporates all of the technical changes needed to smooth out implementation of the Wage Theft Prevention Amendment Act of 2014, and includes as well subpoena power and litigation authority for the OAG with regard to wage theft cases.

TESTIMONY OF JHONNY CASTILLO
MEMBER, COMMITTEE FOR LABOR SOLIDARITY AND WORKER POWER
MANY LANGUAGES ONE VOICE
COW SUBCOMMITTEE ON WORKFORCE
OCTOBER 26, 2016

Good morning, my name is Jhonny A. Castillo, Ecuadorian, a DC resident for 16 years.

From the first days of my arrival, I started to work at maintenance and cleaning companies, and I loved the money, not realizing that the salaries that I was earning for my work didn't include overtime.

With time I learned about my right to overtime, realizing that I had not been paid for many hours, and I decided to complain to my supervisor and the company.

And they, using strategies and tricks to keep us enslaved and without any progress or growth, made us keep working anyway.

On July 14, 2014, through my involvement with organizations advocating to the Office of Wage-Hour and the government, acted to create solutions for the tsunami of problems that our community faces, with the Wage Theft Prevention Act.

At the end we succeeded, the law was passed and we thought that the economic situation in DC communities would improve.

With the law passed, we decided to help the Office of Wage-Hour with their work, investigating which companies and restaurants were violating the laws, telling them their locations, addresses, and names.

Now we understand that this office is like a ghost, that doesn't even come out with the bats to do their work. We have been waiting 2 years and nothing has changed.

We are certain that some of the amendments that the Mayor has proposed to the Wage Theft Prevention Act would bring grave problems, giving greater benefit to companies and gravely injuring our communities.

It is urgent that we have more severe laws against contractors and subcontractors that have ghost-like offices with false addresses, and cause enormous harm to the most needy people, who are picked up from shopping malls to go to work, using them for a week and then firing them without pay.

They suffer the most damaged, and don't' have anywhere to go to recover their wages. The contractors and subcontractors are truly criminal.

We ask that you make the law stronger with this amendments, not weaker. Thank you.

Muy buenos dias, mi nombre es Jhonny A. Castillo, ecuatoriano, residente hace como 16 años.

Desde mis primeros cinco días de mi llegada, comencé a trabajar en compañías de mantenimiento y limpieza, e increíblemente me gustaron los dólares, y no me daba cuenta de los salarios que cobraba por mi trabajo en especial horas extras.

Con el tiempo me eduque sobre mi derecho a overtime, dándome cuenta que me faltaban muchas horas por cobrar, entonces decidí hacer los reclamos al supervisor y a la compañía misma.

Y ellos usando estrategias y mañas para mantenernos esclavizados y sin crecimiento o progreso alguno, debíamos seguir trabajando.

El 14 de julio del 2014 me involucre con las organizaciones para exigir a la Oficina de Hora y Pago y al gobierno mismo, actúe dando soluciones a este tsunami de problemas que atraviesa toda la comunidad, con la Acta de Prevención del Robo de pago.

Al fin logramos, sea aprobada esta acta y pensamos que la situación económica de las comunidades mejoraría en Washington DC.

Estando aprobada esta ley, decidimos adelantarles el trabajo a las Oficinas de Hora y Pago, investigando cuales son las compañías y restaurantes que violan muchas leyes, dándoles a conocer ubicaciones y direcciones como nombres.

Ahora entendemos que estas oficinas son fantasmas que no salen ni como murciélagos a hacer sus trabajo, tenemos 2 años y no ha cambiado nada.

Estamos seguros que algunas enmiendas que ha presentado la alcaldesa sobre la Acta de Prevención del Robo de Pago nos traería graves problemas, dándoles más beneficia a las compañías y perjudicando gravemente a las comunidades.

Nos urge dar con leyes más severas para los contratistas y subcontratistas quienes mantienen oficinas fantasmas como direcciones falsas, y perjudican enormemente a las personas mas necesitadas, que son recogidas para trabajar en los shopping, a quienes los utilizan una semana y los botan sin pagarlos.

Son ellos los más perjudicados ya que no tienen absolutamente a donde recurrir, o quien cobrar por su trabajo. Los contratistas y subcontratistas son verdaderamente criminales.

Le pedimos que hacen la ley más fuerte con esas enmiendas, no más débil. Muchas gracias.

TESTIMONY OF BRUNO AVILA
MEMBER, COMMITTEE FOR LABOR SOLIDARITY AND WORKER POWER
MANY LANGUAGES ONE VOICE
COW SUBCOMMITTEE ON WORKFORCE
OCTOBER 26, 2016

Good morning, my name is Bruno Avila, and thank you for the opportunity to testify about the Wage Theft Prevention Act, first approved on exactly July 14, 2014.

The bill had very good ideas. The deceptive part has been that these ideas and proposals are not being respected and enforced as they were established.

For example: the Office of Wage-Hour in particular, which is responsible for resolving these cases, has continued to be incompetent. They have long and tedious processes, asking for illogical amounts of proof, with many questions, and ultimately saying that they will call you in a month with a solution.

They have only resolved 4 of the 20 cases that I have brought there. I can say that because I have myself taken victims of wage theft to that office.

Of the four cases that were resolved, it wasn't necessarily convenient for the worker. Many times, they get less than what they are owed.

I ask that the Office of Wage-Hour truly be supervised, since it is not an effective office. The only impact is that contractors and business owners flaunt their abuses, mocking the laws that you propose and pass.

With a more effective system, you will make your citizens have more confidence in you, our representatives, so that we can confidently go and present our complaints and claims.

You asked us for our vote to represent us; now, we ask that you truly work for us, starting with listening to us here and proposing new methods and laws that make your ideas respected.

I know that it isn't easy to be a public servant, but we elected you because you are capable of not only representing us, but also truly making DC a more just place and making our society better.

Everyone here is the community, you and us, with different responsibilities, but all one society. Working together, we can make change, and make the system more effective.

I have not seen businesses fined, or having their business licenses revoked, but I would like to see cooperation with the fines and taxes that should be collected every year to have improved and effective public services.

I want to be able to get rid of the idea that I live in a first world country, with public servants with a third world mentality.

Thank you so much.

Buenos días, mi nombre es Bruno Avila, y gracias por la oportunidad de testimoniar acerca de la ley en contra del robo de pago, aprobada exactamente el 14 de julio, del 2014.

Fueron muy buenas las ideas y propuestas, lo que ha sido decepcionante es que esas mismas ideas y propuestas no se están haciendo respetar y aplicar como se establecieron.

Por ejemplo: la Oficina de Hora Y Pago en particular que es la encargada de atender estos asuntos sigue siento incompetente. Hacen que los procesos sean tediosos, pidiendo innumerables pruebas cuestionarios largos y al final dicen que se comunicaran en un mes con el trabajador y le daran solucion.

Solo se resuelven 4 de los 20 casos que he llevado alli. Esto lo puedo constatar porque yo mismo he llevado a esa oficina a víctimas de robo de pago.

De esos 4 casos que se resuelven, no de manera convincente para el trabajador. Puesto que muchas veces se consigue menos de lo adecuado.

Les pido en verdad que la Oficina de Hora y Pago sea más vigilada porque al no ser esta una oficina efectiva, provoca que contratistas y dueños de negocios abusen y se burlen de las leyes que ustedes proponen y aprueban.

Al tener un sistema más efectivo, hace que la ciudadanía tenga más credibilidad en ustedes. Nuestros representantes y vayan con confianza a presentar sus quejas y denuncias.

Ustedes quienes pidieron un voto para representarnos, ahora les pedimos que en verdad trabajen, iniciando por escucharnos aquí y proponiendo nuevos métodos y leyes que sean respetadas sus ideas.

Yo se que no es facil ser servidor público, pero los elegidos porque son capaces de no solo representarnos sino de en verdad hacer justicia y hacer una sociedad mejor.

Todos aquí somos pueblo, ustedes y nosotros, con diferentes responsabilidades pero siendo una misma sociedad. Trabajando juntos, podemos hacer el cambio y darle una efectividad al sistema.

Yo no he visto empresarios multados, o que les revoquen sus licencias, pero me agradaría ver que todos cooperemos que con las multas y los impuestos que se recolectan cada año sirvan para tener unos mejores y efectivos servicios públicos.

Quiero quitarme la idea de que vivo en un país de primer mundo con servidores públicos que tienen una mentalidad de tercer mundo.

Muchas gracias.

Testimony of Maria Sandoval
Victim of Wage Theft
Committee on Workforce
October 26, 2016

My name is Maria Sandoval. I am here to speak in favor of the Wage Theft Prevention Act.

In this city, there are many people who are suffering from wage theft. It is happening in different places, with many different employers but it is always an injustice. There needs to be a stop to this mistreatment. This form of exploitation that employers act out against workers is bad. There needs to be a way to help workers, to support them in the situation they are suffering here in Washington DC.

There is a lot of abuse on the part of employers and it seems that they do not care whether the workers are able to survive. They do not recognize the sacrifices they make. If the employer walked in the workers' shoes for a moment, they could see all that they do to survive. However, instead of recognizing this, they mistreat workers. They rob them of their pay without a conscience.

In my life also, I was made to work more than a month without receiving any pay. Three pay periods passed until I finally received a check. It was difficult because I have a family and I need to pay rent, food and more. Everyone has needs in order to live. We have a job in order to get ahead and pay our expenses, so we can live.

So, we ask that there are laws put in place to help remedy this problem. We need a resolution. We ask that you do your part to pass a law that puts more protections for workers so that employers will be more responsible to their workers. Please, pass the Wage Theft Prevention Act.

Mi nombre es Maria Sandoval. Estoy aquí para hablar a favor de la propuesta de ley en contra el robo de pago.

En esta ciudad, hay muchas personas que están sufriendo del robo de su sueldo. Esta pasando en diferentes lugares, con muchos empleadores diferentes pero

es siempre injusto. Hay que parar esta maltrato. Esta vista de aprovechamiento que tienen los jefes con los trabajadores es mala. Se necesita una manera de ayudar, para tener un apoyo al situación que estan sufriendo los trabajadores en Washington DC.

Hay mucho abuso de parte de los empleadores y parece que no les importa que los trabajadores pueden vivir. No reconocen el sacrificios que se hacen. Si el dueño se puso en el zapato de un trabajador, pueden ver lo que hacen para vivir. Pero en vez de reconocer, hacen maltrato. Roban su salario sin conciencia.

En mi vida también, me hicieron trabajar más de un mes y no recibí ni un cinco. Pasaron 3 quincenas hasta que recibí un cheque. Fue difícil porque tengo una familia y necesito mi pago para la renta, para comida y mas. Todos tienen necesidades de vivir. Buscar un trabajo es para salir adelante y pagar los gastos para vivir.

Entonces, pedimos que hay los medios que pueden ayudar a arreglar este problema. Necesitamos una resolución. Pedimos que pongan a su parte que haga una ley para poner más protecciones que los dueños sean más responsables a sus trabajadores. Por favor, pasen la propuesta de ley en contra el robo de pago.

TESTIMONY OF ZEFERINA AVILA
MEMBER, COMMITTEE FOR LABOR SOLIDARITY AND WORKER POWER
MANY LANGUAGES ONE VOICE
COW SUBCOMMITTEE ON WORKFORCE
OCTOBER 26, 2016

My name is Zeferina Avila, I am originally from Mexico, and have been living in Ward 1 in DC for 26 years, for 21 years in Adam's Morgan and 5 years in Columbia Heights.

I am here today to give my testimony in favor of strong laws against wage theft. In the time that I have been living in this area, I have seen many abuses of workers.

We need for subcontractors to stop exploiting our Latino community. We are the only ones with the courage to do any type of work, even if it's rough, dirty, dangerous, or puts our health at risk.

And there are the subcontractors, charging a lot of money for jobs that others don't want to do. For this reason, Latino families always live in poverty, because we work twelve or fourteen hours to earn what should be the equivalent of eight hours of work paid at a decent wage.

I have a story about my niece, Betty. She worked cleaning big houses, and they paid her $25 per house, working an average of eight hours per house. And the woman with the contract charged $150 per house. I have also experienced these kinds of abuses.

It's as if it were slavery, which supposedly shouldn't exist anymore. And because we have need, to have the basics for our family, we accept these types of abuses.

I ask that you enact strong laws against subcontractors that abuse their workers. There should be strong laws to ensure that they pay the correct wage to their workers, with the rights and benefits that they deserve.

I agree that contractors should be responsible for wages stolen by their subcontractors, so that they supervise them strictly and stop the abuse of their power and authority.

Workers should have a healthy physical and emotional environment in order to better carry out their work. Because there have been cases in which subcontractors have mistreated, humiliated, sexually harassed and assaulted, and even hit their workers.

Please, listen to these problems that I've presented to you. We need your help so that our people can get better, our families can live better, and so our city has peace and progress for everyone.

Mi nombre es Zeferina Avila, soy originalmente de México, con 26 años viviendo aquí en DC en el distrito uno, con 21 años en Adam's Morgan y 5 años en Columbia Heights.

Estoy aquí hoy para dar mi testimonio a favor de leyes fuertes contra el robo de salarios. En mi tiempo viviendo en esas zonas, he visto muchos abusos con los trabajadores.

Necesitamos que los subcontratistas dejen de explotar a nuestra gente Latinoamericana. Porque solamente nosotros tenemos el coraje para hacer cualquier tipo de trabajo, ya sea rudo, sucio, peligroso, o de riesgo para nuestro salud.

Y alli siempre estan los subcontratistas cobrando mucho dinero por los trabajos que otros no quieren hacer. Por eso, las familias Latinoamericanas vivimos siempre en la pobreza porque trabajamos doce o catorce horas para tener el equivalente a 8 horas de trabajo pagadas con el salario digno.

Yo tengo un testimonio de mi sobrina, Betty. Trabajaba limpiando casas grandes, y le pagaban $25 por casa, trabajando un promedio de 8 horas en cada casa. Y la señora del contrato cobraba $150 por esa casa. Yo tambien he pasado por los mismos abusos.

Es como si fuera una esclavitud, lo que supuestamente ya no debe de existir. Y por nuestra necesidad, por tener lo más básico para la familia, aceptamos estos tipos de abusos.

Yo les pido que pongan leyes fuertes contra los subcontratistas que abusan de sus trabajadores. Que pongan leyes fuertes para asegurar que paguen lo justo a sus trabajadores, con todos los derechos y beneficios que merecen.

Yo estoy de acuerdo con que los contratistas sean responsables para los robos cometidos por sus subcontratistas, para que los vigilen estrictamente y paren los abusos de poder y autoridad.

Y que los trabajadores tengan un ambiente saludable física y emocionalmente para mayor rendimiento de su trabajo. Porque ha habido casos en los cuáles los subcontratistas han

maltratado, humillado, acosado o hostigado sexualmente, y hasta golpeado a sus trabajadores y trabajadoras.

Por favor, escuchen estos problemas que les presento. Necesitamos su ayuda para que nuestra gente mejore, nuestras familias vivan mejor, y que nuestra ciudad esté en paz con mejor progreso para todos.

TESTIMONY OF JONATHAN C. PUTH
ON BEHALF OF THE METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF BILL 21-120 WAGE THEFT PREVENTION CLARIFICATION AND OVERTIME FAIRNESS AMENDMENT ACT, AND IN OPPOSITION TO PROVISIONS OF BILL 21-711, WAGE THEFT PREVENTION REVISION AMENDMENT ACT OF 2016
OCTOBER 26, 2016

To the Chair and Members of the Committee, I am honored to testify on behalf of the Metropolitan Washington Employment Lawyers Association (MWELA) regarding the Budget Support Act. I am Immediate Past President of MWELA, an association of over 300 lawyers who primarily represent employees and who are dedicated to the advancement of employee rights. MWELA is among the largest and most active affiliates of the National Employment Lawyers Association (NELA), the country's largest bar association that advances equality and justice in the workplace and whose members represent individuals in employment disputes. As a member of a small law firm, 100% of my practice is devoted to the representation of employees, including employees who have claims for unpaid wages in the District of Columbia.

MWELA salutes the work of the Chair and this Committee for its work in ensuring that employees in the District of Columbia are paid fairly and on time for their labor, and that they are provided meaningful recourse when unscrupulous employers refuse to pay promised wages. MWLEA is acutely aware of the great difficulty facing low wage workers in need of adequate legal representation. The fact is that unpaid wages may be too small to justify the expense of an attorney, which is why the fee shifting provisions of our wage statutes are so critical. It's important that employees receive all of their promised wages and that employers, not employees, remain responsible for the legal costs of recovery. What may be

considered relatively small amounts of wages represent many employees' very livelihood. MWELA is pleased to offer our support for Bill 21-120, the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act.

My address to you is geared toward the Mayor's proposal, Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016, and most specifically the portion of the of the bill that would strike the provision of attorneys' fees at the rates approved in the *Salazar* court decision for prevailing wage litigants. MWELA opposes that portion of the Mayor's proposal and appears here to clarify the record. We believe that continued inclusion of the *Salazar* rate provision is critical to effective enforcement of the law by providing sorely-needed incentives for legal representation in wage theft cases.

The United States Supreme Court has emphasized that "reasonable fees" under fee-shifting statutes "are to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (U.S. 1984). The Wage Theft Prevention Act has operated on the assumption that "prevailing market rates" for the representation of employees in wage theft cases is best represented by the hourly rate schedule established in the case of *Salazar v. District of Columbia* and updated since that time, in order to reduce disputes over proper reimbursement of attorneys' fees and to attract legal representation for targets of wage theft. Based on this litigation and other cases in the District of Columbia, we wish to emphasize that the so-called "*Salazar* rates" do, in fact, provide the most accurate reflection of the prevailing market rate for legal services in employment cases in Washington, DC.

The Mayor's April 19, 2016 letter to Council Chair Mendelson requesting

introduction of Bill 21-711 bears comment. *See* Mayor Bowser letter to Chair Mendelson, p. 2, April 19, 2016 ("April 19 letter"). The Mayor is correct that the District of Columbia appealed the *Salazar* decision, but the key decision at issue here regarding prevailing attorneys' fees rates in the District of Columbia was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit last year. *See Salazar v. District of Columbia*, 809 F.3d 58, 65 (D.C. Cir. 2015). That issues is settled. In that case, the D.C. Circuit found that there was ample evidence that the hourly rates at issue in S*alazar* fairly reflect the market for legal services in the District of Columbia.

Second, we respectfully suggest that the claim that the lower U.S. Attorneys' Office *Laffey* Matrix "sets the maximum prevailing market rates in the District," is mistaken. *See* April 19 letter at 2. The so-called "USAO *Laffey* Matrix" is a schedule of attorneys' fee rates that the U.S. Attorneys' Office claims is appropriate for awards to prevailing plaintiffs against the United States. That is, the U.S. Attorneys' Office maintains that USAO *Laffey* Matrix rates should be awarded in the cases that the U.S. Attorneys' Office defends. It does not represent the maximum rates in the District of Columbia.

Indeed, in the *Salazar* case itself sheds considerable light on the accuracy of the USAO *Laffey* Matrix on the one hand, and the higher "LSI *Laffey* Matrix" at issue in the *Salazar* case on the other. The district court and the D.C. Circuit found that the adjustments made to the USAO *Laffey* Matrix over the last three decades according to the Consumer Price Index resulted in market rates for attorneys' fees being underestimated, finding that the "USAO *Laffey* Matrix rates were 38% lower than the average national law firm rates." *Salazar v. District of*

Columbia, 809 F.3d 58, 65 (D.C. Cir. 2015). By contrast, the *Salazar* rates were updated using the more accurate "legal services index" of the Consumer Price Index, such that the *Salazar*, or "LSI *Laffey* Matrix" rates fell a more modest "14% lower than the average national law firm rates." *Id.* The D.C. Circuit concluded that the district court possessed sufficient evidence to conclude that "'the LSI-adjusted matrix is probably a conservative estimate of the actual cost of legal services in this area.'" *See id.*, quoting *Salazar v. District of Columbia (Salazar III)*, 991 F. Supp. 2d 39, 48 (D.D.C. 2014).

We write to emphasize, therefore, that the USAO *Laffey* rates have not been found to be a ceiling but instead, based on the findings of the *Salazar* case, may be an outdated and artificially low reflection of the market for legal services in the District of Columbia.

Additionally, we suggest that the Mayor's supposition that approval of *Salazar* rates may serve as an endorsement of such rates in other types of cases may be misplaced. Notwithstanding the approval of the USI *Laffey* Matrix rates in *Salazar*, the D.C. Circuit recently rejected application of those rates in a case against the District of Columbia under the Individuals with Disabilities Education Act (IDEA) where the prevailing party in that case failed "to demonstrate that her suggested [LSI *Laffey*] rates were appropriate." *Eley v. District of Columbia*, 793 F.3d 97, 105 (D.C. Cir. 2015). As made clear in that case, the determination of appropriate is dependent upon the specific facts of the case and the evidentiary showing by litigants. MWELA contends that scrapping the *Salazar* rates entirely is an inappropriate instrument for addressing the concern voiced by the Mayor and reflected in Bill 21-711.

MWELA respectfully requests that the Mayor's proposal in this regard be rejected.

Thank you for the opportunity to present this testimony.

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DC Fiscal Policy Institute

15 Years

TESTIMONY OF ILANA BOIVIE, SENIOR POLICY ANALYST
DC FISCAL POLICY INSTITUTE

For the COW Subcommittee on Workforce Public Hearing on
B21-120, Wage Theft Prevention Clarification and
Overtime Fairness Amendment Act of 2015 and
B21-711, Wage Theft Prevention Revision Amendment Act of 2016
October 26, 2016

Subcommittee Chairwoman Silverman and members of the COW Subcommittee on Workforce, thank you for the opportunity to speak today. My name is Ilana Boivie, and I am the Senior Policy Analyst at the DC Fiscal Policy Institute. DCFPI is a non-profit organization that promotes budget and policy choices to expand economic opportunity and reduce income inequality for District of Columbia residents, through independent research and policy recommendations.

Wage theft is a significant problem in the District of Columbia, and our wage theft law should be strengthened. To that end, I am here today to testify in support of B21-120, the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015, and against certain provisions of B21-711, the Wage Theft Prevention Revision Amendment Act of 2016.

Wage Theft Is a Major Problem in the District

The Council should be commended for passing several laws in recent years to improve workers' rights, such as Accrued Sick and Safe Leave, increases to the minimum wage, and the original wage theft law. These new workplace rights and benefits are only beneficial to workers if their employers comply. Strong wage theft legislation and enforcement is crucial to ensuring that workers fully receive what they are entitled to under the law.

The challenge in the District is great, and growing. In 2015, the Department of Employment Services (DOES) received a total of 699 wage theft complaints, with a total of over $21 million in compensation at stake.[1]

In addition, as stronger labor laws continue to be enacted in the District, the potential for even more wage theft claims rises. For example, DOES reported in its FY 2016 Performance Oversight responses that after the enactment of the Wage Theft Prevention Act, the Office of Wage-Hour experienced a 27 percent increase in minimum wage cases, and an astounding 182 percent increase in living wage cases. Overall, the department projected a 23 percent increase in claims for FY 2016 over the previous year.[2]

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[1] DOES FY 2015-2016 Performance Oversight Hearing Questions.
http://dccouncil.us/files/user_uploads/budget_responses/DOESFY1516PRQAFinal3.pdf
[2] DOES FY 2015-2016 Performance Oversight Hearing Questions.
http://dccouncil.us/files/user_uploads/budget_responses/DOESFY1516PRQAFinal3.pdf

Last spring, the Council voted to raise the minimum wage again, rising to $15 per hour by 2020, and an increase to $5 per hour for tipped workers. As a result, some 114,000 DC workers will see a wage increase by 2020; this represents roughly 14 percent of the city's workforce.[3] While this will be tremendously beneficial to District residents at the bottom of the wage scale, they can only enjoy this benefit if the new minimum wage law is properly enforced. Therefore, now is the time to ensure that our wage theft law is as strong as possible.

Bill B21-120 Will Strengthen our Wage Theft Law

Most of the provisions of the Overtime Fairness and Wage Theft Prevention Clarification Act are technical corrections to the original wage theft law, which have already been passed on an emergency basis. This bill would simply make those provisions permanent, and also add some additional clarifying amendments. For example, the legislation clarifies that the same procedures and remedies are available for violations of the minimum wage law as for unpaid wages, and also clarifies when smaller awards may be given because the employer shows a "good faith" mistake. The bill also ends the overtime exemption for parking lot attendants, which will avail these workers of the same local processes and remedies that all other workers have, to receive what they are rightfully owed.

Overall, the legislation will serve to make our wage theft law clearer, and therefore stronger.

Several Provisions of B21-711 Would Weaken Our Wage Theft Law

The Wage Theft Prevention Revision Amendment Act would also make the temporary laws permanent, but the bill contains several additional provisions, some of which we welcome, and others that we find somewhat problematic.

For example, the bill calls for administrative hearings to be conducted by the Office of Administrative Hearings (OAH), rather than at DOES. This make sense and will clear up ambiguities in the law, so that hopefully these hearings will be set up and available to workers.

On the other hand, we are concerned about a provision that would reduce fees owed to attorneys representing successful wage theft victims, by eliminating the current "Salazar" rates. Lowering the rate would disincentivize private attorneys from taking up wage theft cases. Private attorneys are an important source of wage theft representation because the capacity of nonprofit and pro-bono legal assistance does not meet the full need.

Also, we oppose a provision of the bill that would repeal the Mayor's authority to revoke business licenses of willful violators of wage theft laws, and to suspend the licenses of businesses that don't follow settlement agreements. We believe that this capability provides the Mayor's office with strong leverage to ensure that businesses comply with the law, and should be maintained.

Proactive Enforcement Is Needed As Well

I also would like to reiterate that strong education and enforcement of workers' rights laws is just as important—if not more so—as strong legislation. To that end, while educational initiatives such as

[3] David Cooper. 2016. "Raising the DC Minimum Wage to $15 by 2020 would Lift Wages for 114,000 Working People." Economic Policy Institute.

last year's Zip Code Project have ended, additional proactive public outreach measures can be taken, including bus, metro, and media ads; regular community forums; and worker-friendly fact sheets. We are encouraged by statements from DOES officials this year that further education and outreach is priority.[4] In addition, DCFPI would like to see DOES begin to shift its focus to more proactive enforcement of worker protections, such as collection of fines and liquidated damages.

Thank you again for the opportunity to testify. I am happy to answer any questions.

[4] Budget Briefing to the Fair Budget Coalition. April 6, 2016.

D.C. COUNCIL COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

The Overtime Fairness and Wage Theft Prevention Clarification Act
Wage Theft Prevention Revision Amendment Act

Testimony of Philip Fornaci
Executive Director, D.C. Employment Justice Center
October 26, 2016

On behalf of the D.C. Employment Justice Center (EJC) and the low-wage workers we represent, thank you for this opportunity to offer comments on two bills proposing changes to the Wage Theft Amendment Act of 2014: *The Overtime Fairness and Wage Theft Prevention Clarification Act* and the *Wage Theft Prevention Revision Amendment Act.* The EJC provides direct legal representation and legal advice to more than 1,300 low-income workers every year, and outreach to hundreds more. The most prominent issue that our worker clients bring to us are complaints of wage theft, and those complaints have only increased over the last two years.

As the Council considers the two pieces of legislation under review today, it is important to recognize the enormous achievements of the Wage Theft Prevention Amendment Act of 2014 ("Wage Theft Law"). All legislation requires minor changes after the experience of enactment, and the Wage Theft Law is no exception. The bill offered by Council member Silverman, the Overtime Fairness and Wage Theft Prevention Clarification ("Wage Theft Clarification"), addresses certain technical changes necessary for full implementation of the Wage Theft Law and the EJC supports these changes. With regard to the Wage Theft Prevention Revision Amendment Act legislation, the EJC has some concerns, as described below.

But at the outset, it is important to recognize clearly that wage theft is in fact a crime committed against D.C. workers, usually our lowest paid workers. At the EJC, we see a steady flood of workers whose wages are routinely and illegally withheld, whose overtime hours are not adequately paid according to long-standing wage and hour law or who are simply not paid at all. It is simply inconceivable that any employer in the District is unaware of the minimum wage, of the requirement that workers be paid time and a half for overtime hours or that workers must be paid their agreed-upon wages. Yet rather than treating this deliberate refusal to comply with the law and with agreements made with workers, the District has chosen to require workers to enforce their own rights against criminal behavior by their employers. For this reason, we have strong legal protections under the Wage Theft Law. Rather than discussing how to limit workers' ability to prosecute employers who cheat them out of their legally-earned wages, we should be discussing how to provide more assistance to them. In the spirit of supporting workers to secure appropriate legal remedies in the face of employer misconduct, the EJC supports the Wage Theft Clarification bill proposed by Council member Silverman.

One of the most difficult obstacles for workers in trying to secure unpaid wages from employers who refused to pay them is the use of subcontractors and temporary staffing entities. Many employers use subcontractors and temporary staffing agencies to insulate themselves from legal liability for failing to pay their workers the wages to which they are entitled. The Wage Theft Law has been enormously beneficial in enabling workers to hold contractors liable in situations where employers utilize subcontractors to hire workers, and these subcontractors may simply go out of business or otherwise avoid liability. We have encountered numerous situations where contractors hire "fly-by-night" contractors that quickly become insolvent after failing to pay workers, leaving workers without a legal remedy, and harming the workers and their families. The Wage Theft Law allows the EJC and individual workers to enforce liability for basic wage violations by a subcontractor or temporary staffing entity by making the general contractor liable for the illegal activities of its subcontractors. But even under current law, these can be extremely complicated and difficult cases to win.

The provisions of the Wage Theft Law that allow workers to hold general contractors liable for their subcontractors' refusal to pay workers their fair wages must be preserved and expanded to insure that workers are treated fairly. We support the Wage Theft Clarification bill's efforts to maintain this essential ability for workers to hold general contractors, subcontractors, temporary agencies and clients of temporary agencies jointly liable for wage theft violations, with appropriate concessions to legitimate subcontractor indemnification arrangements. This is a common sense reform that must be supported.

The EJC also supports the other provisions of the Wage Theft Clarification bill, including: the removal of the overtime exemption for parking lot attendants, clarification of circumstances when treble damages for wage theft are required, clarification of the common understanding that wage theft enforcement procedures and remedies are available for both violations of minimum wage laws and for unpaid wages, and clarification of rules around collective actions and class actions to insure that workers have every available right. Again, these are sensible efforts designed to resolve ambiguous language in the Wage Theft Law, and to clarify the legal protections of workers in the face of illegal behavior by their employers.

The Wage Theft Law was an extraordinary accomplishment by the District's lawmakers, achieving a delicate balance between the rights of workers to secure their legitimate wages and employers' needs for clear rules and procedures. Indeed, the Wage Theft Law includes many concessions to employers that were agreed upon in the interests of securing passage of the overall legislation. We therefore advise caution against aspects of the Wage Theft Prevention Revision Amendment Act ("Wage Theft Revision bill") introduced by the Mayor and also under Council consideration today.

The Wage Theft Revision bill most notably seeks to undermine the ability of the private bar to take on wage theft cases by cutting legal fees available to attorneys in successful cases. Since the enactment of the Wage Theft Law, a small number of private firms have become able to file cases for workers who would otherwise lack legal representation. Particularly in larger,

complex cases involving multiple workers at the same workplace, often also involving subcontractors, the expertise of the private bar is essential. Most workers are neither sufficiently sophisticated nor have time to file lawsuits on their own. The EJC has the capacity to bring fewer than two dozen cases annually to court, leaving the vast majority of victims of wage theft to rely on the private bar or the Department of Employment Services (DOES), or to go unrepresented.

The *Salazar* fee structure specifically included in the Wage Theft Law was designed to meet this very particular need of low-income workers who would otherwise lack representation by enabling the private bar to become involved. Again, wage theft is a crime, and the District has identified enforcement of the law in this area as a priority, creating incentives for the private bar to play a pivotal role in enforcement. Unfortunately, the Wage Theft Revision bill rejects this approach but attempting to cut back on attorneys' fees available in wage theft cases, but does not provide any alternative to replace the role played by the private bar in these cases. By removing the ability of the private bar to secure *Salazar* fees, the Mayor's bill is restricting the ability of low-income workers to secure a remedy for wage theft by discouraging private bar involvement. It is important to note here that the fees paid in wage theft cases are not even borne by the District but rather by private sector employers who are found to have deliberately cheated their employees. The District has no financial stake in this issue and is in fact taking a position in support of lawbreaking by employers by limiting some of the few tools workers have to defend themselves. Unless the District is prepared to bear the costs of providing direct representation to hundreds of low-income workers who have been cheated out of their wages and who cannot find legal representation, the availability of reasonable attorneys' fees as provided under current law must be preserved.

Similarly, the Wage Theft Revision bill seeks to remove the language in the Wage Theft Law that allows the District to revoke the business licenses of willful violators of the law and to disallow the District the ability to suspend business licenses of those employers who refuse to follow orders and settlements reached with the District in wage theft cases. The Wage Theft Revision bill seeks to take away one of the most important enforcement mechanisms available for enforcing the law, albeit one that is rarely used by the District. Rather than stripping away this authority, we urge the Mayor to instead mandate that the District utilize these tools. Repeat offenders under the law can be criminally prosecuted (although none has been prosecuted), yet the Mayor's bill is seeking to actually reduce penalties for repeat and recalcitrant criminal behavior. This is step backward in the struggle against wage theft, with the only beneficiaries being those found to engage in illegal criminal activity.

The Wage Theft Revision bill also burdens workers victimized by wage theft in other ways. It seeks to require workers to assign their wage theft claims to the District in cases where the Office of the Attorney General (OAG) is working to pursue their claims. This revision would force workers to give up control over their own cases in return for OAG involvement. It is completely unnecessary. The Wage Theft Revision bill also requires workers to pay for serving a complaint on a defendant, rather than allowing for service under the same rules allowed under the Federal Rules of Civil Procedure, that is, service via certified mail. Again, this revision

proposed by the Mayor is unnecessary and creates more burdens on the aggrieved worker seeking a remedy.

Notably, we applaud the Wage Theft Revision bill's clarification that tribunals mandated under the Wage Theft Law will be held at the Office of Administrative Hearings (OAH). This is at least an implicit announcement that these long-awaited tribunals will finally be created, and that workers will have the ability to present their cases before an administrative body, as contemplated under the Wage Theft Law. There is a pressing need for these hearings to take place and we commend this step toward finally enacting this aspect of the law.

The Wage Theft Law must be preserved and the ability of workers to enforce their rights must be supported by the District. There is a crime wave of wage theft in the District, and our most vulnerable workers are victims, often by repeat offenders. The EJC supports the efforts of Council member Silverman to support these vulnerable workers through common sense amendments to the Wage Theft Law. We encourage the Mayor to take a similar approach by quickly implementing rules for administrative hearings in wage theft cases at the OAH, while also stepping back from its efforts to discourage private bar involvement in combatting wage theft.

D.C. COUNCIL COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

The Overtime Fairness and Wage Theft Prevention Clarification Act
Wage Theft Prevention Revision Amendment Act

Testimony of Andrew Hass
Litigation Counsel, D.C. Employment Justice Center
October 26, 2016

Thank you Councilmembers for the opportunity to speak today about this proposed legislation. As Phil said, every year at our clinic we see hundreds of workers who are owed wages. These workers are coming from all wards in D.C., and also include Maryland or Virginia residents who work in D.C. My job is to take some of those cases and recover unpaid wages and damages for these workers. Perhaps the biggest obstacle faced in this work is the consequence of established general contractors and subcontractors hiring incompetent or outright deceitful fly-by-night labor brokers who routinely violate federal and state wage laws, and who lack the funds to pay a settlement or judgment against them. In industries where businesses are incentivized to use contract labor and where little or no safeguards are in place to ensure that workers are paid their wages, the cost of mistakes, delays, and outright greed is pushed to low-wage workers. These workers are often in the worst position to absorb such losses.

The story of one of my clients, Peter, embodies this problem. Peter found work installing drywall during a renovation of the D.C. Superior Court in 2011 and 2012. He and over 15 co-workers were hired by a small, fly-by-night labor broker, who had contracted with a larger subcontractor. Because this was a government project, they initially received a high prevailing wage. But after a few weeks of work, the payments started coming later, then not at all. When the workers asked when they would be paid, the broker told them, "keep working and I'll pay you when I get more money," an all-too-familiar refrain heard by many of my clients. After weeks of work with no pay, Peter and his co-workers quit, owed collectively over $100,000.

Their case found its way to us, and we pursued both the labor broker and the subcontractor in court. After years of delay, the case went to trial last year, primarily on the issue of whether the higher-level subcontractor on the job exercised sufficient control over Peter and his co-workers to be considered an "employer" under the standard set under federal and local wage laws at the time. Now, nearly 5 years after Peter and his co-workers worked hundreds of unpaid hours, we are still waiting for a decision in that case. If a provision had been in place at the time establishing liability for general contractors for the wage violations of their subcontractors, I suspect that the workers would have been spared much of this years-long delay.

It is vital, for the benefit of D.C. area workers, that the Council keeps the general contractor liability provision intact. This provision was carefully considered when the Wage Theft Prevention Amendment Act was passed in 2014. It struck a delicate balance, pushing responsibility up the chain of contracting while also allow general contractors to seek indemnification from their subcontractors. Our fear is that to alter the language to allow only for general contractor liability when subcontractors are "found" to have committed wage theft could leave workers like Peter in nearly an identical position, waiting months or years for a judgment or administrative decision.

Peter is not the only one. I, like many of the advocates here today, have had numerous other cases where, without a general contractor liability provision, some of the area's most vulnerable workers would be left without any ways to reliably collect their owed wages. Incentivizing general contractors to hire subcontractors who, quite simply, can pay workers for the hours they work, is a key step in combating wage theft in this area.

Thanks to you and your staff for your efforts.

TESTIMONY OF ELIZABETH FALCON
EXECUTIVE DIRECTOR, DC JOBS WITH JUSTICE
COW SUBCOMMITTEE ON WORKFORCE
OCTOBER 26, 2016

Good morning, thank you Councilmember Silverman for holding this hearing today. My name is Elizabeth Falcon and I am the Executive Director of DC Jobs with Justice, and I am going to speak about B21-120 and B21-177 together to ensure strong wage theft protections for residents of the District of Columbia.

DC JwJ is a coalition of labor organizations, community groups, faith-based organizations, and student groups. Together, we are dedicated to protecting the rights of working people and supporting community struggles to build a more just society. DC Jobs with Justice is committed to fairness on the job, and we were part of the effort to improve the DC Wage Theft laws that were enacted by this Council in 2014. I am here today to ensure that DC's Wage Theft laws remain strong and provide workers the protection and compensation they need.

DC Jobs with Justice also convenes the Just Pay coalition, to ensure that workers have full knowledge about - and access to – protections on the job. Wage theft is a major aspect of this work and includes: failure to pay the minimum wage or the wage promised, failure to pay overtime, refusing to provide paid sick days, and misclassifying and/or ignoring prevailing wage requirements on construction sites. Unfortunately, we and other members of the coalition hear regularly from workers who are simply not getting paid what they are owed. Disproportionately, wage theft impacts working women, people of color, and immigrants in low-wage jobs. As DC's economy booms, but wage disparities grow, we must ensure that hourly workers have access to all the money they are owed for the time they work. In addition, as the DC minimum wage rises, we must remain vigilant to ensure the law becomes a reality for the tens of thousands of hourly workers in the District .

Strong wage theft protections include real opportunity for workers to access wages, legal support, and penalties and REAL impact on businesses who break the law and underpay workers. In particular this means:

- Allowing the Mayor to revoke or suspend the licenses of businesses that are egregious or repeat offenders: those whose business model involves stealing from their employees. We ask that the Council not only to keep this option, but encourage the executive to use it, demonstrating to DC employers that you cannot do business in the District if you do not follow the law and pay your employees as you are required.
- Maintaining join contractor/subcontractor liability. Workers should not be left empty-handed when fly-by-night contractors fail to fully compensate them. We must hold DC businesses to a higher standard – maintaining joint liability with the general contractor engages them in the process of fully vetting and ensuring they are hiring trustworthy subcontractors. If they fail, both are negligent and should be liable.

- A robust and clear role for the Attorney General. The Office of the Attorney General is well positioned to take on cases by major violators, relieving the pressure on the Department of Employment Services and private litigators. DC government should fully utilize this office, including providing a clear referral system from DOES and allowing the independent OAG to pursue cases as they identify them. If necessary, additional resources should be committed to the OAG to allow for greater opportunity to bring suits against bad employers.

In conclusion, I want to reiterate the importance of strong wage theft protections. As a community we need to hold employers to a clear standard: you will pay your employees what they are owed. The Department of Employment Services must make employers aware of their requirements (and employees aware of their rights), help to identify bad actors and take appropriate steps, and work quickly and protect from retaliation workers who step up to ensure they have access to what they are owed. The OAG must be fully engaged in this process as well, to take on major offenders. The DC Council and Mayor must hold DOES accountable for this enforcement, and we in the community must continue to engage workers where ever they are to make sure they are aware of their rights and the consequences. I encourage the Council to vote to clarify and pass improvements and clarifications which strengthen the tools we have to fight wage theft in Washington, DC.

WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

HEARING ON

B21-120:
Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015

&

B 21-711
Wage Theft Prevention Revision Amendment Act of 2016

OCTOBER 26, 2016

TESTIMONY OF THE
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS
AND URBAN AFFAIRS

Chairwoman Silverman and members of the D.C. Council. My name is Dennis Corkery. I am a Senior Staff Attorney at the Washington Lawyers' Committee for Civil Rights and Urban Affairs and a Ward 1 resident.

For over a quarter of a century, the Washington Lawyers' Committee has helped hundreds of workers across the region secure wages that their employers have unlawfully withheld from them, including 26 workers who recently recovered $600,000 in back wages and damages from a D.C. based contractor who refused to pay overtime.

As someone who litigates in multiple jurisdictions to fight wage theft, I am proud to say that the District of Columbia is the leader in the protections that it provides for its workers. From treble damages and reinstatement for all claims, to prime contractor liability, D.C.'s wage theft laws provide a national model for wage theft advocates. The Washington Lawyers' Committee is grateful for the Council's commitment to preserving these protections for our clients.

Stronger wage theft laws are still desperately needed. Nearly ninety people reach out to the Lawyers' Committee per month to seek help with various violations of their civil rights. What makes those who contact us about wage theft unique, however, is that with only a few exceptions, individuals who report that they have not been paid properly – whether because they have not been paid the minimum wage, have not received an overtime premium, or just flat out have not been paid – turn out to have viable causes of action.

Wage theft continues to be a significant problem for D.C. workers. According to the D.C. Fiscal Policy Institute, a majority of families that live in poverty are supported by a full time worker.[1] Therefore it is not just work that brings people out of poverty, but work for a fair standard of living. That is why D.C.'s wage theft laws are so vital to the workers that the Washington Lawyers' Committee assists in enforcing their rights

Many of our clients represent a segment of vulnerable D.C. residents who frequently face exploitative working conditions and intimidation at the hands of their employers. For example, one of our clients worked sixty hours a week at a restaurant in Georgetown. He was paid only a few hundred dollars a week, less than D.C.'s minimum wage even when it was $8.25 an hour. His employer threatened to call the police if our client or his fellow co-workers ever complained about their pay. He added that for any undocumented employees, the employer also threatened deportation. Our client needed the job so he continued to work. Because of D.C.'s strong laws, however, he was able to recover several thousand dollars in back wages shortly after he filed suit.

This story paints a picture of the reality many of our clients face, often living in the shadows of society and working upwards of 70 hours a week to cover the basic costs of food and housing for themselves and their families. Their wages and the damages incurred frequently only amount to a few thousand dollars when a case comes to an end. But for families who are living paycheck to paycheck in a city where housing costs are untenable, every dollar is necessary for survival.

That is why it is vital for our clients to be able to recover their missing wages, and recover them expeditiously. It is a testament to their courage that they call out their employers

[1] http://www.dcfpi.org/who-is-low-income-in-dc

for breaking the law, and D.C. must continue to do whatever it can to make sure that their path to justice is an easy one.

Although our clients understand that they have been cheated by their employers, they often do not understand precisely how the law works or what steps are necessary to vindicate their rights.

That is why attorneys are essential to assisting victims of wage theft and why the fee-shifting component of D.C.'s wage theft bill is so important.

As I have just described, most wage theft claimants cannot afford to hire an attorney, and they will often only recover a few thousand dollars. Traditional contingent fee agreements, where an attorney takes a portion of a client's award, would not be economically feasible for an attorney in these cases. Furthermore, such arrangements would likely dissuade clients from coming forward and holding their employers accountable, as it would reduce what they could recover. Awarding attorneys' fees to a prevailing client helps to solve this problem, and we are grateful that this provision is a part of, and will continue to be a part of, D.C. law. Fee-shifting is an essential part of civil rights statutes because it makes a private cause action possible for any plaintiff no matter the plaintiff's wealth or the economic size of her damages.

Therefore, the Washington Lawyers' Committee is concerned about Mayor Bowser's proposal to eliminate a provision in the D.C. Wage Payment and Collection Law that calls for updated *Salazar* rates. These rates have continually been upheld as accurately reflecting the cost of legal services in the District of Columbia. The price of commercial real estate, law school, and technology have made the cost of being a lawyer in D.C. skyrocket at rates faster than inflation. The *Salazar* rates better reflect these costs and would more fairly cover the expense of litigating lawsuits to enforce the wage and hour rights of workers. If more attorneys can be assured that it is economically feasible to assist victims of wage theft, then more attorneys will make themselves available to provide that assistance.

Further, by eliminating the mandated use of the *Salazar* matrix, the statue will default to the use of the ambiguous term "reasonable rate." What is a reasonable rate? That is a question that will now need to be fought over and litigated in each and every case – creating a delay for employees in securing the money that they are owed.

Finally, the higher *Salazar* rates serve as a monetary deterrent for employers just as the treble damages provisions do. A greater potential exposure in terms of attorneys' fees creates an incentive for businesses in the District to proactively follow the law and to quickly resolve cases when they have broken it.

Wage Theft is still a disappointing and shocking reality in the District of Columbia. We need to remain leaders to make it a thing of the past.

COMMITTEE OF THE WHOLE
SUBCOMMITTEE ON WORKFORCE

PUBLIC HEARING

- Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015.
- Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016.

October 26, 2016

Testimony of Daniel A. Katz
Metropolitan Washington Employment Lawyers Association

Good Morning. My name is Daniel A. Katz, I am a member of the Board of Directors of the Metropolitan Washington Employment Lawyers Association, also known as "MWELA." I practice law in the District of Columbia and Maryland. Over the last 20 years, the bulk of my practice has been representing employees who have not been paid properly or not paid at all. The majority of my clients are low wage workers in the construction, restaurant, retail, and home care industries. The majority of them are immigrants, most of whom speak little or no English. I will address two issues relevant to these hearings and to the vital enforcement of the protections provided to low wage workers by our local wage and hour laws, and specifically, the Wage Theft Prevention Act of 2014.

To put my comments in context, the members of this Council, the Mayor, other city officials, and District residents should be proud that the District of Columbia has helped lead the country in the fight to ensure that low wage workers earn an livable minimum wage and that when they are not paid correctly – when their wages are stolen – they have the statutory and regulatory protections they need to seek legal relief. This is no small matter. Low wage workers live paycheck to paycheck, often working multiple jobs just to meet their basic needs. In a report

issued in February 2015, the Economic Policy Institute estimated that employers' failures to pay minimum wages costs low wage workers nationally between 8.6 and 13.8 billion dollars a year. When low wage workers are not paid what they have earned, the results are catastrophic. It means families lose their homes, they go without food, children do not attend school, and basic health care is out of reach.

It is in this context that I urge the Council to maintain the protections of the 2014 Wage Theft Prevention Act by maintaining (1) the provision that allows for joint and several liability when a subcontractor fails to pay wages earned, and (2) the provision that calls for the court to award so-called "Salazar" rates to the plaintiff who prevails in litigation.

When an employer is a subcontractor and has failed to properly pay an employee, the Wage Theft Prevention Act of 2014 allows for both the subcontractor and the general contractor to be jointly and severally liable for those violations. Why is this so important? Far too often, subcontractors are thinly capitalized, if at all. Far too often, subcontractors take advantage of vulnerable employees, often immigrants, and do not pay them for all hours worked, do not pay them minimum wages, and/or do not pay them proper overtime rates. Far too often, general contractors, who jointly supervise and otherwise control subcontractors' employees' job conditions, are in a position to know about these violations, and correct them. Far too often, general contractors turn a blind eye to obvious employment law violations.

And, far too often, when an employee is able to secure legal representation and sue for unpaid wages, that subcontractor is nowhere to be found, has no assets, has declared bankruptcy and cannot be required to pay unpaid wages, or simply, closes up shop and the owner opens up somewhere else under a different name. This has occurred in numerous cases in which I have represented low wage construction workers. The workers come forward, they defy the odds and

find one of the few attorneys willing to take on their cases, they sue and prevail in court, only to find that the judgment they receive is worth no more than the paper it is printed on. And, my experience is not unique. The scenario I describe happens frequently.

The only solution to this problem – recognized in the Wage Theft Prevention Bill – is to hold general contractors liable for these unpaid wages. This provision has immeasurably strengthened the legal tools available to low wage workers who suffer the abuses I have described in their search to simply be paid what they have already earned. Absent this protection – the joint and several liability of general contractors and subcontractors – low wage workers have little recourse, or hope for justice, when their wages are stolen.

I further urge the Council to maintain the provisions in the Wage Theft Act that call for the Court to award a prevailing plaintiff wages consistent with the matrix approved in the case known as *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (2000). As earlier mentioned, it is very difficult for low wage workers, who have had their wages stolen, to secure legal representation. Often, attorneys will decline to take these cases because they are risky. The amount owed may be relatively small. There is a likelihood that unscrupulous employers who will go to great efforts to delay court proceedings in the hope that the employees will simply give up. There is again the likelihood that an employer will not be solvent at the conclusion of litigation. This legal work is done on a contingency basis, and the attorneys who take these cases assume substantial financial risk over an extended period of time while the case is litigated.

In 2000, United States District Judge Gladys Kessler recognized that the rates as computed in the *Salazar* matrix properly establish a market rate for attorneys engaged in complex litigation in the District of Columbia. *Salazar* rates recognize the skill, experience, and

quality of an attorney's work, and these rates account for the changes in the Consumer Price Index in the Washington, D.C. area.

The prospect that an attorney who litigates these claims on behalf of low wage workers will someday receive proper compensation is critical to making sure there are attorneys available to help these vulnerable employees. The provision calling for awarding *Salazar* rates in these cases is consistent with the remedial purpose of preventing wage theft, and consistent with the statutory provision that seeks to ensure that those who have suffered from having their wages stolen can secure counsel to seek the protections they have under our wage laws.

Thank you.

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DC Coalition of Disability Service Providers

DC Council
COW - Subcommittee on Workforce - Public Hearing
Wednesday, October 26, 2016
10:00AM - Room 412

B21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015
B21-711, Wage Theft Prevention Revision Amendment Act of 2016

My name is Ian Paregol. I am the Executive Director of the DC Coalition of Disability Service Providers. The DC Coalition currently represents 54 human service providers, supporting over 2,000 persons with intellectual and developmental disabilities and employing over 4,700 staff, most of whom are residents of the District of Columbia. The Coalition members provide residential, day, employment, in-home and other waiver services as well as Intermediate Care Facility or "ICF" supports to some of the most vulnerable, medically fragile and high risk residents from the District for persons with Intellectual and Developmental Disabilities.

Our testimony provides a discussion of the District's Wage Theft Prevention measures and how those procedures impact the provider community.

The most recent version of the Wage Theft Prevention Amendment Act (WTPAA) was designed to enhance remedies, fines, administrative penalties, and enforcement of wage payment and collection laws by increasing the accountability of employers and strengthening worker protection laws. Specifically, the Act increased penalties for employers who commit wage-hour violations; provided anti-retaliation protections for workers who hold employers accountable for failing to pay wages owed; established a formal hearing process with enforceable judgments; and provided for better access to legal representation for victims of wage payment violations, while making it easier for workers to collect awards from businesses who fail to pay, either in whole or in part, an employee's regular wages.

Since passing the 2014 measure, the DC Council has identified several unintended consequences of the WTPAA and began to remedy them; first with Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014 and now with the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015 and the Wage Theft Prevention Revision Amendment Act of 2016.

<u>Our Concern</u>

Funding for supports for the District's citizens impacted by intellectual and developmental disabilities is provided through Department of Health Care Finance ("DHCF") and Department of

Disability Services ("DDS") in coordination with the Department of Employment Services ("DOES"). Human service providers are exclusively funded through Medicaid-appropriated Federal and DC funds. Under the present and proposed language of the WTPAA, service providers are responsible for paying staff at the prevailing Living Wage even though the District may not have *funded* a reimbursement rate that accounts for the increase, thereby creating a wage payment liability for the provider for an occurrence that is entirely outside of the provider's control.

Our concern is borne out of a system that requires the coordination of many departments within the District and how the requirements of each department can potentially adversely impact providers. I have offered two examples that are illustrative of our apprehension.

In January 2013, the District's Living Wage escalated per statute; however, it was not funded by the District until October 1, 2013. Providers were told that this lag was caused by delays in rate approval at DOES. While we do not expect that result in 2017, should an extended delay in funding occur during this or any subsequent year, providers would be saddled with exposure under the WTPAA.

More recently, DDS implemented a retroactive decrease in 19 different waiver rate categories with an effective date of April 22, 2016. While the department also increased reimbursement rates in 19 other categories, the concern for providers is the impact that the retroactive application has on money that was *already spent*. The District's notice of this retroactive application in rates was provided more than four months after the implementation date. Scenarios like this one exemplify our concern when looking at any aspect of funding and potential liability to employees with respect to the punitive measures contemplated by WTPAA liability.

It comes down to the District's accountability on one question:

> Can DDS, DHCF and DOES commit to a rate adjustment that includes the new Living Wage rate (and does not take from the other existing funding components) by the 1st pay period after the updated Living Wage rate goes into effect?"

The reimbursement for these wages *must be paid* - not pledged, but paid - by the District *prior to* any possible exposure employee under the Wage Theft Act. As a matter of fundamental fairness, Medicaid providers cannot be held responsible for fines, penalties and attorneys' fees for the delays occasioned by the District's delay in making a timely and proper funding payment. There should be no expectation that the provider community would be in any position to "float" reimbursement from the District. Providers simply do not have the cash reserves available to float any increase in wages, and it should not be the provider's responsibility to cover a cost that is entirely the obligation of the District.

<u>In Summary</u>

I/DD Service Providers have zero control over the timing of when disbursements that incorporate the updated Living Wage will occur. While we trust that the District's agencies are well-intentioned in ensuring that updated funding is reflective of the living wage and is disbursed to

the providers, it is the providers who will ultimately be held accountable for any delays in implementation or payment, delays occasioned in securing budgetary approval from DOES, or misapplied budgetary calculations (like the one which generated the retroactive decrease noted above).

We are hopeful that testimony has demonstrated to the Committee why the DC Coalition is deeply concerned about the application of the Wage Theft Prevention Act.

We will be sitting down with the leaders of the District's agencies who play a part in provider funding to better understand the process for 2017 and plan for a future where the Minimum Wage and the Living Wage will be accelerating to meet the District's targets in 2020. If we can secure a plan that addresses the process for 2017 and for the future, the DC Coalition would be happy to step back from the issue of Wage Theft. However, if the timing of the District's payments remains unresolved or if it appears that allocations that are components of other aspects of rate development are being used to cover the increases occasioned by the Living Wage, we would like the opportunity to seek the DC Council's intervention to assist or revisit the WTPA.

On behalf of the DC Coalition of Disability Service Providers, I thank you for the opportunity to provide this testimony.

Respectfully submitted,

Ian M. Paregol
DC Coalition of Disability Service Providers, Executive Director

5

Capital Area Minority Contractors and Business Association

Council of the District of Columbia
Subcommittee on Workforce
Chairwoman Elissa Silverman (At-Large)

October 26, 2016

Good afternoon Chairwoman Silverman and members of the Subcommittee on Workforce. My name is Albert Wynn, and I am testifying today on behalf of the Capital Area Minority Contractors and Business Association, or "CAMCBA." This organization seeks to increase construction employment and vocational training opportunities for minorities in the Washington Metropolitan Area and advocates for the participation of minority-owned contracting firms on construction projects in the region. I am joined at the table by CAMBCA's President, Robert Green III.

We are pleased to testify on Bills 21-120 and 21-711, which share the laudable goal of protecting District of Columbia workers from "wage theft." Today, on behalf of CAMBCA, I would like to discuss a few related, *but equally important,* issues facing District construction workers on projects in the city; specifically, those construction projects covered by a Project Labor Agreements ("PLA"). Among these issues is a form of wage theft that we characterize as the unfair practice of "Pension Theft," by requiring workers to contribute to multi-employer pension plans in which they have little or no hope of ever vesting.

Traditionally, when a construction project is covered by a PLA, both in the District and elsewhere, local residents:

1. Have great difficulty getting on a job if they do not belong to a union;

2. If they do get on a job, they must give 20 percent of their wages to a multi-employer pension plan for which they will not vest – This is what me mean by Pension Theft; and
3. Even If they do vest, the multi-employer plan is unlikely to be sufficiently solvent to pay benefits in the future.

Pension Theft - the mandatory diversion of worker wages to multi-employer pension plans – is required by virtually all project labor agreements. Due to plan vesting requirements and the lack of solvency of multi-employer plans, the worker stands virtually no chance of ever receiving a future benefit in return for the portion of their wages that was diverted to the plan. In the absence of a PLA, construction workers would retain these wages in the form of increased pay or employer provided benefits.

Under the terms of PLAs union hiring halls effectively decide which workers are eligible to work on a project and which workers are not. Not surprisingly, hiring halls favor union members with seniority in the union. This puts the District's construction workers at a severe disadvantage since 91.1 percent of the city's construction workforce does not belong to a labor union.[1] Data from past PLAs suggest that, like other jurisdictions, District residents too often find themselves behind out-of-state "travelers" or "boomers" for opportunities to work on PLA projects. For instance, District residents performed just 28% of journeyman hours on Nationals Stadium despite the legal requirement to perform a *minimum* of 51%. In short, by their very design, PLAs frustrate local hiring efforts.

While recent PLAs, such as the one for the D.C. United Stadium, may appear in theory to attempt to remedy this longstanding issue, these attempts are somewhat of a smokescreen. In

[1] Data compiled from the U.S. Bureau of Labor Statistics, Current Population Survey, available at www.UnionStats.com.

practice the local hiring requirements for the D.C. United PLA contains many loopholes which subvert these goals, for instance the PLA allows unions to "assess" the work experience of nonunion workers and gives them the authority to deem local residents as "unqualified" in their sole discretion. It also creates extra paperwork for contractors wishing to hire local residents and severely limits their ability to use their own non-union employees on their portion of the stadium work.

The key point today however is that even when a District construction worker is able to successfully navigate the hiring hall process and finds themself on a PLA project, he or she must give up approximately 20 percent of their take-home pay to a multi-employer pension plan.[2] In order to recoup these wages, the worker would need to first vest in the union pension plan and then the plan would need sufficient assets to pay them benefits in the future. The likelihood of either of these occurrences for the District's constructions workers is remote at best and impossible at worst.

The vesting period for nearly every multi-employer pension plan is far longer than the length of time that a non-union worker will spend on a PLA project. For example, it requires five full years of vesting service to receive benefits from the pension plan of the Laborers Local 657 (LiUNA) in the District of Columbia. The simple reality is that a non-union worker employed in a craft trade stands little chance of fulfilling this requirement because they will not be on the project or subsequent union projects long enough to vest in the pension plan. The pension contributions that are taken from the worker during their time on the PLA project are effectively stolen. This is unacceptable.

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[2] McGowan, John R. Phd., "The Discriminatory Impact of Union Fringe Benefit Requirements on Non-Union Workers Under Government-Mandated Project Labor Agreements," 2012.

To make matters worse, even if the worker does vest in the multi-employer plan, there is a decreasing likelihood that the plan will be solvent enough to pay the worker's benefits in the future. Attached to our written testimony, you will find a list of the multi-employer pension plans in the District's construction market. As you can see, the overwhelming majority of the plans are classified by the U.S. Department of Labor and the federal Pension Benefit Guarantee Corporation as Critical, Endangered, or Seriously Endangered.[3] In fact, most of these plans have earned these designations multiple times over the preceding several years.[4] Moreover, nearly all plans have ratios of inactive to active participants exceeding 1 to 1, which, according to Department of Labor, makes them particularly vulnerable to insolvency.[5] Thus, when the City Government mandates that a PLA be used on a project, they are requiring District construction workers to put their wages into these dangerously underfunded pension plans. While these plans gain revenue from workers who are unlikely to vest, non-union workers lose 20% of their wages and the right to plan for their own retirement security.

On behalf of minority contractors doing business in the District of Columbia, CAMBCA respectfully asks the Subcommittee amend either Bill 21-120 or 21-711 – whichever bill moves forward – to prevent Pension Theft from taking place in the District. We will be sharing suggested amendment language with your Subcommittee to accomplish this goal. This issue is more timely than ever given the recent requirement for PLAs on District projects above $75 million contained in Bill 21-334, the "Procurement Integrity, Transparency, and Accountability Act of 2016," which was approved by the Council in June.

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[3] https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/critical-status-notices

[4] The Pension Funding Equity Act of 2004 (P.L. 108-218) as amended by the Pension Protection Act of 2006 (P.L. 109-280) and the Multi-employer Pension Reform Act of 2014 (P.L. 113-235) require the trustees of an underfunded pension plan to provide notice to the Pension Benefit Guarantee Corporation each plan year.

[5] "Multi-employer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006," United States Departments of Labor, Treasury, and the Pension Benefit Guarantee Corporation, January 22, 2013.

In closing Madame Chair, I would like to point out one common myth about PLAs that may be on people's minds as they contemplate this issue. PLAs have **no** impact on wage and benefit levels for construction projects in the District of Columbia. Wages for all government funded projects in the District – both federal and local – are determined by the federal Davis-Bacon Act and, as a result, are the same whether there is a PLA or not. Thus, there is no added wage benefit to workers for having a PLA.

Ironically, for the 91.1 percent of District residents who are non-union construction workers, PLAs result in jobs they won't get and wages that are stolen from them. We hope that you too will find this situation unacceptable and will take action to stop Pension Theft in the District of Columbia. Thank you, and I am happy to answer any questions that you might have.

###

Stop Pension Theft in the District of Columbia

Project Labor Agreements allow union pension funds to steal take home wages of nonunion workers

What is Pension Theft?

Pension theft occurs when employers are required by a Project Labor Agreement ("PLA") to contribute a portion of their employee's wages to a multiemployer pension fund from which the employee will not receive retirement benefits.

How does Pension Theft occur?

The overwhelming majority of construction workers in the District of Columbia – 91.1 percent – do not belong to a labor union.[6] When working on a project covered by a PLA, the employers of these workers must contribute a portion of their wages to a union pension fund (i.e., a multiemployer plan). In order to recoup these wages a worker would need to vest in the union pension plan. A typical multiemployer pension plan, however, maintains a vesting period that is far longer than the length of time that the worker works on a construction project covered by a PLA. For example, the vesting period for the Laborers' District Council Pension and Disability Trust Fund No. 2 – the pension plan for the Laborers' Local 657 (LiUNA) in the District of Columbia – requires five years of vesting service. Thus, while a portion of workers' take home pay is diverted to a union pension fund, the worker will never vest in the pension plan and therefore never receive a benefit from the plan.

Don't PLAs ensure that nonunion workers receive higher wages and benefits on government funded projects?

No. Workers on government-funded construction projects in the District of Columbia make the same wage, whether they are in a labor union or not. That is because the District is covered by the federal Davis-Bacon Act, which sets the hourly wage and benefit amounts on every federal and District government funded project. A PLA has absolutely no bearing on these amounts. Perversely, the only impact of a PLA on wages is to effectively *reduce* the wages of nonunion workers through Pension Theft.

What percentage of workers' wages is subject to Pension Theft?

According to an academic study by Professor Jon McGowan of Saint Louis University, when a PLA is imposed on a project covered by the Davis-Bacon Act (or a similar state prevailing wage law), the take home pay of construction workers is reduced by an average of **20**

[6] Data compiled from the U.S. Bureau of Labor Statistics, Current Population Survey, available at www.UnionStats.com.

percent.[7] This reduction occurs because, as discussed, the wages and benefits on government funded projects in the District are set by the federal Davis-Bacon Act. Under a PLA, however, employers must pay the amount of the Davis-Bacon benefit requirement to the union pension fund instead of directly to the worker. According to McGowan, this reduction amounts to 20 percent of the worker's take home pay on average. In addition, PLAs typically require another 2 percent of a worker's wages to be paid in the form of union dues despite the fact that the worker does not participate in the union.[8]

Example: How PLAs Reduce Workers' Take-Home Pay

From a real world situation:

On a normal federal or state job, the required base rate for journeymen is $34.40 per hour, with a required benefit rate of $18.96 per hour, totaling $53.36 per hour for the prevailing wage. This means the contractor must pay its licensed journeymen working in the field an aggregate of $53.36 in wages and benefits. Per state DOL standards, the company is permitted to "credit" against this $53.36 the hourly value of the benefits provided to employees for vacation days, paid holidays, sick days, profit sharing and health insurance. For licensed journeymen, the state DOL recognizes this "credit" for the company's benefits at $9.33 per hour, which means the journeymen receive the remaining $44.03 per hour in gross wages.

Were it to perform these same jobs under a PLA, the company also would have to pay the listed benefits of $18.96 per hour directly to the trade union. The remaining "base rate" of $34.40 would then be paid to the individual journeyman as gross wages. The $9.63 difference in the wages actually received represents a **greater than 21 percent decrease in take-home pay** for the journeymen in this example. In addition, the union and its trust would have a windfall of $449,288 (24,471 hours worked by the contractor's employees x $18.96 fringe benefits paid to unions). Another 2 percent could be added, as employees would be required to pay union dues.

Excerpted from: McGowan, John R. Phd., "The Discriminatory Impact of Union Fringe Benefit Requirements on Non-Union Workers Under Government-Mandated Project Labor Agreements," 2012.

[7] McGowan, John R. Phd., "The Discriminatory Impact of Union Fringe Benefit Requirements on Non-Union Workers Under Government-Mandated Project Labor Agreements," 2012.
[8] Id, p. 12.

America's Multiemployer Pension Crisis

Even if a nonunion worker vests in a multiemployer pension plan, the benefit is illusory

According to the Congressional Budget Office, multiemployer pension plans have less than half of the assets they need to fulfill current pension obligations.[9] To address the country's pension crisis, on December 16, 2014, Congress passed the bipartisan Multiemployer Pension Reform Act of 2014, nicknamed the "Kline-Miller" law for Rep. George Miller (D-CA) and Rep. John Kline (R-MN), the Chairman and Ranking Member of the House Education and Workforce Committee.[10]

> "In all, multiemployer defined benefit plans have promised nearly $850 billion worth of benefits to their participants but have assets worth only $400 billion."
>
> Congressional Budget Office, August 2016

As of December 31, 2015, nearly a quarter of all people covered by a multiemployer pension plans are in one of the 214 plans classified as Critical and Declining. This means that their plan is less than 65 percent funded. Another 337 plans are less than 80 percent funded.[11] *In total, union pension plans have promised nearly $850 billion worth of benefits to participants but have assets of only $400 billion to pay those benefits.*[12]

In theory, multiemployer pension plans are backstopped by the PBGC's Multiemployer Program, which provides partial insurance for pensioners in the event that their plan becomes insolvent. The PBGC's Multiemployer Program is funded by premiums charged to covered pension plans. Due to the rapidly deteriorating condition of many union pension funds, however, the PBGC fund *itself* is projected to become insolvent – for the first time in its history – in 2025.[13] Even doubling plan premiums only postpones insolvency until 2036.

Recognizing the inevitable failure of the PBGC's Multiemployer Program, the Kline-Miller law, among other things, allows troubled union pension plans to cut benefits to current retirees in an effort to avoid insolvency. In June 2015, the Obama Administration appointed Kenneth Feinberg to serve as a Special Master to oversee the implementation of the Kline-Miller Law.[14] In May 2016, in what may believe is a test case for the law, Feinberg rejected the proposal of the Central States Pension Fund to cut Teamster retiree benefits by an average of 22 percent. Feinberg concluded the Central States proposal relied on unrealistically high investment returns. This effectively means that the pension cuts proposed by Central States plan administrators would need to be even deeper than 22 percent in order to avoid insolvency.

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[9] "Options to Improve the Financial Condition of the Pension Benefit Guarantee Corporation's Multiemployer Program," Congressional Budget Office, August 2016.
[10] http://www.pbgc.gov/prac/pg/mpra/kline-miller-multiemployer-pension-reform-act-of-2014-faqs.html
[11] Segal Consulting Group, Survey of Plans' Zone Status, Spring 2016
[12] Congressional Budget Office, August 2016.
[13] Id. p. 1.
[14] https://www.treasury.gov/press-center/press-releases/Pages/jl0078.aspx

The District of Columbia's Multiemployer Pension Crisis

Union pension plans in the District are among the most endangered in the nation

As discussed, on average, PLAs take 20 percent of a non-union worker's take-home pay and divert it to a multiemployer pension plan.[15] These workers are almost certain not to meet the vesting requirements that would permit them to recoup any of their diverted wages. This is precisely why labor unions love PLAs. They help them to prop up distressed multiemployer pension plans on the backs of non-union construction workers. In other words, they benefit from contributions from these workers without incurring an obligation to pay the worker a future benefit. Even with these stolen funds, however, construction union pension plans in the District are among the worst funded in the nation.

How troubled are the local union pension plans?

The 2006 Pension Protection Act (P.L. 93-406) required multiemployer pension plans to begin certifying their funding status each year beginning in 2008. As a result of this Act, distressed plans are classified as *Endangered*, *Seriously Endangered*, or *Critical* and must undertake efforts to improve or rehabilitate the plan. In 2014, the Kline-Miller law created an additional status designation – *Critical and Declining* – for plans projected to be insolvent within the next 15 years, or within the next 19 years if they maintained an inactive to active ratio of 2 to 1.

The Laborers' District Council Pension and Disability Trust Fund No. 2

Year	Plan Status
2016	*Seriously Endangered*
2015	*Seriously Endangered*
2014	*Seriously Endangered*
2013	*Seriously Endangered*
2012	*Endangered*
2011	*Endangered*

Source: U.S. Department of Labor, https://www.dol.gov/ebsa/criticalstatusnotices.html

The overwhelming majority of local multiemployer pension plans are classified as Critical, Endangered, or Seriously Endangered by the U.S. Department of Labor and PBGC. Nearly all plans have ratios of inactive to active participants exceeding 1 to 1, and a plan with more inactive participants than active participants is particularly vulnerable to asset losses.[16]

The pension plan for Laborers Local 657 (LiUNA) has been classified as "Seriously Endangered" for *each* of the last four years. According to the DOL:

> *"The Fund is considered to be in seriously endangered status because it has funding and liquidity problems. More specifically, the Fund's actuary determined that the Fund's funded percentage for the 2016 plan year is*

[15] McGowan, 2012.

[16] "Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006," United States Departments of Labor, Treasury, and the Pension Benefit Guarantee Corporation, January 22, 2013.

less than 80%, and the Plan is projected to have an accumulated funding deficiency within 7 years."[17]

The following table contains the classification status for the pension plans associated with the union participating in the PLA on the D.C. United Soccer Stadium project in the District.

Table: Status of Multiemployer Pension Funds for Unions Participating in the PLA on the D.C. United Soccer Stadium

Local Construction Union	Multiemployer Pension Plan	Status of Plan[1]	Ratio of Inactive to Active Participants[2]
Laborers 657	Laborers' District Council Pension and Disability Trust Fund No. 2	Seriously Endangered: 2016, 2015, 2014, and 2013 Endangered: 2012 and 2011	1.5 to 1
Painters and Allied Trades District Council 51	International Painters & Allied Trades Industry Pension Plan	Endangered: 2016 and 2011	1.4 to 1
Plasterers' and Cement Masons 891	Washington, D.C. Cement Masons Pension Trust Fund	Endangered: 2012 and 2010 Critical: 2016	2.7 to 1
Washington, DC Local 5 Plumbers	Plumbers and Pipefitters National Pension Fund	Endangered: 2015, 2013, 2012, 2011, and 2010	1.1 to 1
UA Local Union 669 Road Sprinkler Fitters	National Automatic Sprinkler Industry Pension Plan	Critical: 2015, 2014, 2013, 2012, 2011, and 2010	1.2 to 1
Roofers Union Local 30	Roofers Union Local 30 Combined Pension Plan	Critical: 2016, 2011, and 2010	1.9 to 1
SMART (Sheet Metal, Air, Rail, Transportation) Local 100	SMW National Pension Fund	Critical: 2013, 2012, 2011, and 2010 Endangered: 2016 and 2015	1.5 to 1
Steamfitters UA Local 602	Heating, Piping, and Refrigeration Pension Fund	Endangered: 2013, 2014, 2011, and 2010	0.6 to 1

[17] https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/public-disclosure/status-notices/endangered/2016/laborers-district-council-pension-and-disability-trust-fund-no-2.pdf

Local Construction Union	Multiemployer Pension Plan	Status of Plan[1]	Ratio of Inactive to Active Participants[2]
Teamsters Local 639	Teamsters Local 639 Employers Pension Trust Fund	Endangered: 2009	1.6 to 1
Mid-Atlantic Regional Council of Carpenters	Mid-Atlantic Regional Council of Carpenters Pension Plan	Endangered: 2015	2.0 to 1
Bricklayers 1, MD, VA, DC	Stone and Marble Masons of Metropolitan Washington D.C. Pension Fund	---	1.1 to 1
	Bricklayers and Allied Craftsman Local #1 of Maryland Pension Plan	---	1.2 to1
International Union of Operating Engineers Local 77	Central Pension Fund	---	1.4 to 1
International Brotherhood of Electrical Workers 26	Electrical Workers Local No. 26 Pension Trust Fund	---	0.76 to 1
Iron Workers Local 5	Iron Workers Local No. 5 & IWEA Employees Pension Trust Fund	---	0.75 to 1
Ironworkers Local 201	Rodman Local Union 201 Pension Fund	---	2.4 to 1

[1]From data published by the U.S. Department of Labor
[2]From IRS Form 5500 published by the U.S. Department of Labor

Summary of Multiemployer Pension Plan
Status Designations

- *Endangered/Seriously Endangered Status*
  - The plan is less than 80 percent funded; or
  - Has an accumulated funding deficiency, or is expected to have a deficiency in any of the next six plan years.
  - The plan is Seriously Endangered if it meets both conditions.

- *Critical Status*
  - The plan is less than 65 percent funded, and the sum of the plan's assets and present value of contributions of the current and next six plan years is less than the present value of the non-forfeitable benefits projected to be paid from the plan during the current or next six plan years.
  - The plan has an accumulated funding deficiency.
  - The plan is expected to have an accumulated funding deficiency in any of the next three plan years.

- *Critical and Declining Status*
  - The plan meets the definition of Critical Status and is projected to be insolvent within any of the next 14 plan years or any of the next 19 years if the number of inactive to active participants exceeds 2 to 1.

PLAs Place District Residents at the Back of the Line

Union hiring halls privilege out-of-town "travelers" at the expense of local residents

PLAs require workers wishing to work on a project to go through a union hiring hall whether the worker is a member of a union or not. In doing so, they discriminate against local District residents. This is because union hiring halls operate on a seniority system that does not consider one's residency in determining how work is allocated on a PLA project. In the District, nearly all construction unions have cross-state jurisdiction and give priority to one's seniority within the union. This means that out-of-area union "travelers" or "boomers" receive hiring preference over District residents.

> In assigning work, union hiring halls prioritize out-of-town union "travelers" or "boomers" over local District residents.

While recent PLAs, such as the one for the D.C. United Stadium, may appear in theory to attempt to remedy this longstanding issue, these attempts are somewhat of a smokescreen. In practice the local hiring requirements for the D.C. United PLA contains many loopholes which subvert these goals. For instance the PLA allows unions to "assess" the work experience of nonunion workers and gives them the authority to deem local residents as "unqualified" in their sole discretion. It also creates extra paperwork for contractors wishing to hire local residents and severely limits their ability to use their own non-union employees on their portion of the stadium work.

It is no surprise that then that a whopping 74 percent of journeyman hours on the Washington Nationals Stadium – which was covered by a PLA – went to non-District residents.[18] This problem has occurred everywhere that PLAs have been imposed on local construction projects. In 2010, San Francisco found that less that than 25 percent of the construction work on projects supported by its Redevelopment Agency went to local residents.[19] In San Diego, Detroit, and recently in Rochester, NY school construction projects covered by PLAs failed to live up to promises of local hiring prompting local officials to question their efficacy. After a PLA failed to increase the number of locally hired apprentices as promised, the Rochester official in charge of the project said of using a PLA, "There's really nothing, no sort of value added. Why do it?"[20]

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[18] Data obtained from the Clark/Hunt/Smoot Joint Venture September 2008 Progress Report, Setting a New Standard for Economic Inclusion for District Business and Workers in the Construction of the New Nationals Ballpark, A Report to the DC Sports & Entertainment Commission, 09/10/2008

[19] San Francisco Examiner, 8/4/2010

[20] http://www.democratandchronicle.com/story/news/2016/08/04/labor-deal-shot-down-rochester-school-modernization-project/88069926/

5 Facts About Pension Theft

1. **FACT**: Project Labor Agreements ("PLAs") have **no** impact on hourly wages and benefits for construction projects in the District of Columbia. These wages are set by the federal Davis-Bacon Act.

2. **FACT**: While the hourly wages for union and nonunion workers are identical on government funded construction projects, PLAs *reduce* the take home wages of nonunion workers, by approximately 20 percent.

3. **FACT**: This reduction occurs when wages that would otherwise be paid to the worker are transferred to a multiemployer pension play as required by the PLA.

4. **FACT**: Given that there is virtually no chance that a nonunion worker would ever satisfy the vesting requirements of a multiemployer pension plan during a PLA project, these wages are effectively stolen. This is called Pension Theft.

5. **FACT**: Even if a worker *were* to vest in the union pension plan, most local plans are so distressed that they will not be able to provide promised benefits to the worker in the future.

Testimony of
Eric J. Jones, Associate Director of Government Affairs
Associated Builders & Contractors (ABC) of Metro Washington
On Bill 21-711 the "Wage Theft Prevention Revision Amendment Act of 2016" and Bill 21-0120 the "Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015"
Wednesday, October 26, 2016

Hello Chairman Sliverman and the members of the Subcommittee on Workforce, I am Eric J. Jones, Associate Director of Government Affairs for the Associated Builders and Contractors (ABC) of Metro Washington. ABC Metro Washington is the pre-eminent advocate for fair and open competition and the merit shop philosophy, and the premier construction association in the metropolitan Washington, D.C. area. As such, it is our mission to protect and enhance the merit shop philosophy within the construction industry, to speak for the industry to the public, and to engage members in a challenging marketplace. Today I am here on behalf of our nearly 600 member companies to offer testimony on Bills 21-711 the "Wage Theft Prevention Revision Amendment Act of 2016" and Bill 21-0120 the "Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015"

ABC Metro Washington is in support of Bill 21-711 which was proposed by Mayor Muriel Bowser with moderate amendments. It is our hope that this council would follow the lead of other legislation passed by the council and would return the language of the first two emergencies. In those emergencies it mandated that all employees both union and non-union would be subject to all District laws. The currently legislation however would allow for unions via Collective Bargaining Agreements (CBAs) to opt out of these mandated leave laws during the bargaining process. We would ask that the language is amended to state that while current CBA's are not subject to the law, that all future negotiated CBA's must fully comply with this law and would not allow for the union to opt out of this or other mandatory leave and workforce laws.

As it relates to Bill 21-0120, we would ask that the Council table this legislation and work with the Mayor to support the efforts negotiated with the government and greater business community. In closing I thank you for the chance to appear before you today and am available to answer any questions you may have.

Stephen W. Courtien
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(202) 756-4660

Testimony before COW Subcommittee on Workforce Public Hearing

B21-120 and B21-711

The Community Hub for Opportunities in Construction Employment (CHOICE) represents all of the Building Trades Unions in Washington DC, and are acutely aware of the pain and financial hardship construction workers and their families endure because of wage theft.

The passing of the Wage Theft Prevention Law has been instrumental in curbing one of the business practices that low road employers use in order to win construction contracts by not paying workers what they are owed. Intentionally, contractors will under bid a project to win the contract all the while knowing they are never going to pay their workers the correct wages and benefits.

Because of the Wage Theft Prevention Act our affiliates have been able to refer individual workers to lawyers to start the process to get their money they are owed. Previously, a worker may not hear anything for months or not even pursue the money they were owed through small claims courts. Now we have noticed that cases referred to private law firms have increased the speed in which workers are paid. We are seeing many employers immediately trying to settle the cases with the employee once they receive notification from the employees lawyer. Most of the time the employee just settles for a lesser amount then what they are owed since they have moved on.

Unfortunately, the increase in settlements has done little to deter employers from continuing the business practice of wage theft.

We support many of the amendments to this legislation especially the ability of the Office of the Attorney General to prosecute cases. By giving the OAG the authority to investigate, subpoena and prosecute cases we believe low road contractors will be deterred from continuing this practice. Further, the Department of Employment Services should also be allowed to refer cases to the Office of Attorney General while the OAG should be allowed to request case from DOES. The OAG is more suited for

prosecution of cases of this magnitude.

As in previous hearings and testimony we agree that mistakes are made by the employers. Unintentional oversites and clerical errors are almost immediately fixed by employers when brought to their attention. I just caution that making this too lenient or open may allow employers to constantly claim that it was a mistake. Rarely do these mistakes go in the employees favor.

We also urge that the Office of Attorney General is adequately funded. Specifically, the OAG must be able to hire lawyers with proven track record of prosecuting contractors through a stringent application of wage theft law.

Further, contractors who engage in the business practice of wage theft should not be allowed to have a registered apprenticeship program in the District of Columbia. Does it make sense for the District to allow such employers to register an apprenticeship program, all the while knowing their track record of wage theft?

In closing adequate enforcement of the law means the construction industry can provide family supporting careers for construction workers while allowing contractors that are union or non-union to continue to be competitive without having to resort to low road tactics.

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In closing adequate enforcement of the law means the construction industry can provide family supporting careers for construction workers while allowing contractors that are union or non-union to continue to be competitive without having to resort to low road tactics.

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Testimony before COW Subcommittee on Workforce Public Hearing
B21-120 and B21-711

I'm John Collins a member and the Director of Organizing for The International Brotherhood of Electrical Workers local 26. I'm also here to speak for the CHOICE Organizing Committee which is made up of all the Building Trades Unions in Washington DC.

Since the passage of the Wage Theft act we have been able to get many workers money owed to them by unscrupulous contractors in DC. We have referred well over 30 cases to lawyers that have all received satisfactory settlements for the worker. This law has been very helpful getting individual workers money they were owed.

We support the amendment for the Office of Attorney General to have the authority to investigate and litigate large-scale wage theft cases or contractors that have made wage theft a model of business in their company. We also would like DOES to be able to assign cases they receive to the Office of Attorney General for prosecution as well.

By allowing the Attorney General to have these powers the law will become a larger deterrent to contractors cheating their employees out of hard earned money. Wage Theft on large scales as we see in the District creates an environment where honest contractors cannot compete.

If the Office of Attorney General had the authority to litigate large cases the IBEW and other locals have contractors that they could immediately refer to the Attorney General for investigation and prosecution under the this act. These contractors have many workers that have been filing complaints for wage theft, or the contractor has made Wage Theft a business practice to avoid Workers Comp, Taxes and many other laws.

One of these contractors is Power Design (PD). Based on our investigations, Power Design has a fraudulent business model based upon the misclassification of virtually all of its non-managerial workforce as "independent contractors." Power Design hires unlicensed labor brokers who recruit unlicensed electrical workers to perform all of PD's work in DC. PD managers supervise and control the work of the unlicensed electrical workers, but despite the fact that PD is the true legal employer, the company pretends that its labor brokers are "subcontractors." PD is trying to avoid responsibility for the consistent failure to withhold DC and federal taxes from payroll, failure to provide workers' compensation coverage, failure to pay unemployment insurance taxes, and failure to pay overtime or minimum wages for all hours worked. Power Design does not provide the mandated notices or keep the mandatory payroll records, because it is perpetuating the fraud that its non-supervisory workers are not

its "employees." By funneling its payroll through the labor brokers, PD can underbid law-abiding electrical contractors. Power Design is the poster child for "payroll fraud," the basis for why DC had to pass the Workplace Fraud Act.

So far we have finished our investigation of two sites, resulting in two lawsuits:

1. 460 New York, Avenue, NW

Power Design hired three different unlicensed labor brokers: RKC Services, LLC, EA Electric, LLA, and JVA Services, LLC. Misclassified workers -- all unlicensed -- worked on the project from February 28, 2014 through May 22, 2015. The workers in some cases were not paid anything. There are no payroll records and no withholdings from checks.

2. 2121 H St., NW

Power Design hired DDK, an unlicensed labor broker, to recruit unlicensed electrical workers for this site commencing in the fall of 2015. The workers were misclassified as "independent contractors" and given 1099s. Their checks have no payroll withholding, no taxes for unemployment insurance, no workers' compensation coverage, and they are not paid overtime for hours worked over forty in each workweek. Power Design provides the supervision and control, but it fraudulently maintains that DDK is a "subcontractor." The general contractor on the site is Clark Construction Group, LLC.

Power Design has numerous worksites in DC, all of them operating under the business model of "workplace fraud."

Will the District investigate this company and at least ask for the non-existent payroll records? Or is it up to the exploited workers to risk their livelihoods to address this injustice?

Metropolitan Washington Council, AFL-CIO

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Testimony of Carlos Jimenez,

Executive Director

In Support of B21-120, the "Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015"

Before the Committee of the Whole,

Subcommittee on Workforce

Honorable Elissa Silverman, Chair

26 October 2016

Good morning Madam Chair and members of the Committee of the Whole Subcommittee on Workforce.

My name is Carlos Jimenez and I am the Executive Director of the Metropolitan Washington Council, AFL-CIO. We are the regional labor federation comprised of 175 local unions representing over 150,000 members, 40,000 of whom live in the District of Columbia. Our mission is to represent the interest of our members and all working families under our jurisdiction.

I am glad to be here today to testify in support of Bill 21-120, the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015. Our labor council and many of our members were deeply involved in previous efforts to address the problem of wage theft in the District, and we believe that this legislation would strengthen the existing law and provide additional enforcement mechanisms to ensure that the law is having its intended impact - assurance that in the District of Columbia all workers can count on a just wage for an honest day of work.

When this Council took action on the issue of wage theft, it was a clear signal to everyone in this city, employers and employees, that there was recourse for those in the most precarious of situations. It was a signal that workers no longer had to be afraid to come forward and ask for wages justly earned, that they no longer had to tolerate continuous threats of losing their jobs and livelihoods – and put their families at risk – for speaking up for what was rightly theirs after having put in an honest day of work. This legislation would put in place additional safeguards and let all employers and employees know that on this issue there will be accountability on the utmost of levels.

Wage theft is a national problem, evidenced by the fact that just earlier this year Congress introduced legislation that sought to address the issue head on. Unfortunately that legislative effort was unsuccessful, though we take comfort in knowing that in the District our elected officials are attune to the issue and have acted locally to address the practice. Bluntly put, we are going to need an all hands on deck approach to deal with this issue effectively. We need to provide the Department of Employment Services (DOES) and the Office of the Attorney General (OAG), which both play an integral role in dealing with this issue, with the tools and additional support that may be needed to ensure the law is having its intended impact.

Specifically as it relates to the OAG's office, we ask this committee to:

- Support providing the Office of Attorney General with the authority to thoroughly investigate and litigate large scale wage theft
- Provide DOES the ability to assign cases they receive to the OAG's office for possible prosecution where appropriate
- Allow the OAG's office to implement a more extensive vetting process for companies who receive city contracts and disqualify companies who have violated wage theft laws

I'll conclude by saying that in my opinion and in spite of the growth and progress around us, far too many of our residents are struggling to get by. Low wages; lack of benefits such as paid sick leave, a pension, or even health insurance; and lack of full time jobs and stable schedules – these are things that are holding us back. I also know that by and large, most businesses are doing the best they can to do right by their employees. The vast majority of employers are not trying to steal their employees' wages. But for employers that do, and those who put all law-abiding employers at a competitive disadvantage by virtue of taking from their employees

to increase their profit margins, we need to ensure that we deal with them appropriately and to the fullest extent of the law through the appropriate channels and agencies.

By providing the OAG's office with additional authority and oversight concerning large scale wage theft violations, it sends a clear message to those that would engage in this practice that we intend to enforce the law, and that there will be real consequences for their actions.

The Metropolitan Washington Council, AFL-CIO urges this Committee and the Council to vote in favor of Bill 21-120. Thank you for your time and the opportunity to speak before you today.

32BJ SEIU
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Testimony of Emma Cleveland, Political Coordinator, 32BJ SEIU

The Committee of the Whole Subcommittee on Workforce Hearing on

Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015, and
Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016

October 26th 2016

Good morning Chairman Mendelson and Committee members. My name is Emma Cleveland, Political Coordinator for SEIU Local 32BJ. Thank you for the opportunity to testify here today on behalf of our members.

32BJ represents over 155,000 men and women in 11 states on the East Coast, as well as Washington, DC. We have over 17,000 members here in the Capital Area. Our members fight to support their families in jobs that form the backbone of the property service industry – cleaners, janitors, security officers and other building services.

Wage theft is a significant problem in the low-wage service sector. Workers are exposed to violations such as sub-legal wages, non-payment of overtime, unpaid hours and illegal deductions. The Economic Policy Institute estimates that the total value of wage theft offences committed against low-wage workers across the country could be as high as $50 billion per year – a cost that exceeds the value of all reported property theft in the country. [1] Jurisdictions need to recognize the severity of these actions and implement robust enforcement systems to combat them.

We believe the provisions contained in Bill 21-120 will aid the District's efforts in this cause. The Bill removes an existing exemption for a classification of vulnerable employees and contains a number of operational improvements, including: specifying the DC Court of Appeals to be the designated appellant court; clarifying the circumstances in which less than treble damages can be awarded; and, aligning the procedures and remedies available in minimum wage and unpaid wage matters. Further to this, the Bill will give certainty to the enforcement system by making provisions of the 2014 and 2015 Temporary Amendment Acts permanent.

Approving Bill 21-120 will serve as an essential complement to the steps the council has already taken to lift low-wage workers out of poverty by increasing the minimum wage. Passing these measures will help to ensure that every dollar earned by low-wage workers, rightfully ends up in their pockets, and is able to be spent supporting their families and in their communities.

[1] Meixell, B and Eeisenbrey, R. (2014). An epidemic of wage theft is costing workers hundreds of millions of dollars a year (page 2). Accessed 20 October 2016 at http://www.epi.org/files/2014/wage-theft.pdf

Written Testimony of Nick Wertsch
Submitted to the Council of the District of Columbia
Committee of the Whole Subcommittee on Workforce
Public Hearing on Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015 and Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016

October 26, 2016

Thank you Councilmember and Committee Chair Silverman and thank you to the rest of the Subcommittee on Workforce for hearing my testimony today. My name is Nick Wertsch, and I am the program coordinator at the Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University. My office focuses on labor and workers' rights issues and we use a combination of academic research, student programs, community engagement, and special projects to engage these issues of economic justice.

I am here today to voice some concerns about the Wage Theft Prevention Revision Amendment Act of 2016 that was introduced at the request of the Mayor. While certain aspects of this bill have beneficial effects, like allowing employees to acknowledge the terms of their employment electronically instead of having to always use physical paperwork, there are other parts of the bill that should give us pause. Specifically, I am worried about the language in the Mayor's bill that would eliminate the Mayor's ability to suspend or revoke business licenses of willful violators or businesses that refuse to follow court orders or settlement agreements with workers. This is a valuable tool for making sure workers get paid what they are owed. If a restaurant served unsafe food to the public, it jeopardizes the restaurant's operating license. If that restaurant steals its workers' wages, then it should also be worried about losing its operating license.

Our work at the Kalmanovitz Initiative has brought us into contact with a number of workers in DC who experienced wage theft. Our students frequently work with individuals affected by this issue, and we have seen the ways in which many of our community partner organizations have been able to stand with workers successfully to win back what they are owed. By weakening the tools available to the city to help workers get their wages back, this bill would be an unnecessary and unwise step backwards.

In addition to my work at the Kalmanovitz Initiative during the day, I go to law school in the evenings. As part of some of my law classes, I have had the privilege of getting to work with community organizations and individual workers seeking to win back what they are owed. This on-the-ground experience with this issue has shown me two things.

First, the city must take a much more proactive approach to resolving the cases of workers who have wage theft claims. Many workers have been waiting months and months for their cases to move forward because there is some confusion about which agency's administrative law judges should hear these cases. While I am aware that the two bills before the subcommittee today would help clear up that confusion, there has still been a stunning lack of movement in resolving these cases or attempting to pursue bad actor employers to get workers the money they are owed.

Second, while I am currently in a position to assist community organizations and individual workers through some of my classes at the law school, it is crucial that the lawyers in the DC community who take on wage theft cases receive the attorney's fees that will sustain their work. Therefore, the attorneys doing this important work should be

able to earn the higher *Salazar* fees that would be awarded based on a realistic market rate. The Mayor's bill, however, would strike the higher (and fairer) *Salazar* fees owed to attorneys who successfully represent wage theft victims. This has the effect of letting off bad actor employers easier and making it harder for the legal community to take wage theft cases on behalf of marginalized workers.

In conclusion, I ask that you protect these basic safeguards built into the original Wage Theft Prevention Act and consider ways in which we can better put this law into action on behalf of DC residents who have been robbed of their wages.

Written Testimony of Sophia Bauerschmidt Sweeney
Submitted to the Council of the District of Columbia
Committee of the Whole Subcommittee on Workforce
Public Hearing on Bill 21-120, Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2015 and Bill 21-711, Wage Theft Prevention Revision Amendment Act of 2016

October 26, 2016

Hello and thank you to the committee for hearing my testimony. My name is Sophie Bauerschmidt Sweeney and I am a senior at Georgetown University. In addition to my studies there, I also am part of a student group that organizes workers on campus and am a student coordinator with Many Languages One Voice through one of the programs of the Kalmanovitz Initiative at Georgetown.

Earlier this month, I attended a protest as part of my job with MLOV. The protest was in support of a woman named María Rodríguez. She worked at the 14th Street Cafe for almost a year and was paid only $8/hour her whole time there. That's $1.50 below the minimum at the time. For someone working 50 to 60 hours a week, that means $75-90 a week in stolen wages, or about $40,000 a year. Maria's employer stole as much from her as many people make in a year.

A few years ago, a restaurant on Georgetown's campus was committing blatant wage theft. Because of student pressure, the University conducted an audit, but this was only possible because Georgetown was willing to go beyond where DC law goes. And even so, students have received renewed reports of unpaid work happening off the clock. Even after being found to violate wage theft laws, the owner of this restaurant felt he could continue because the consequences weren't severe enough to scare him.

As a student and a resident of DC, I don't want to patronize establishments that are stealing from their employees. It's that simple. If a company or restaurant doesn't pay its workers a fair wage, it shouldn't be able to operate in DC. A strong law with clear and powerful enforcement mechanisms is necessary to preventing this. The city needs to have every possible tool at its disposal to combat this issue.