



Coalition of Labor Union Women

815 16th St. NW, 2nd Fl. So. • Washington, DC 20006 • 202-508-6969 (fax 202-508-6968) • www.cluw.org

Council of the District of Columbia: Committee on Labor and Workforce Development

FY 22 Budget Oversight Hearing: Department of Employment Security - June 9, 2021

TESTIMONY OF CAROL ROSENBLATT, COALITION OF LABOR UNION WOMEN

Good afternoon, Chairperson Silverman and Committee Councilmembers. Thank you for the opportunity of testifying before you today. I am a current homeowner in the Forest Hills neighborhood in Ward 3 and have been a resident of DC for 27 years. I am also testifying on behalf of my organization, the Coalition of Labor Union Women (CLUW) where I served as its Executive Director for twenty years, retiring last year. The Coalition of Labor Union Women is a national membership organization based in Washington, DC with chapters throughout the country. Founded in 1974 it is the national women's organization within the labor movement which is leading the effort to empower women in the workplace, advance women in their unions, encourage political and legislative involvement, organize workers into unions and promote policies that support women and working families.

Obtaining paid leave policies on a local and national level has long been a high priority for CLUW. The COVID-19 pandemic has impacted Black and brown, poor and working class residents the hardest in our city and throughout the country. We have to address those critical needs now. I am personally invested in the District of Columbia as being and becoming a good, healthy, equitable place to live and work.

I am here today to address the DC Paid Family and Medical Leave program and am calling on Council to reject Mayor Bowser's proposed payroll tax cut, to use any surplus to expand leave benefits, and to make a few needed eligibility changes.

My personal experience and those of my organization's members (CLUW) attests to the need for family and medical leave. During my adulthood I have had 4 surgeries, one while working and living in Philadelphia and the remaining while living and working in DC. All required rehabilitation and time away from work for a period of 6 to 12 weeks. During my first surgery I was working as a social worker for the City of Philadelphia and had the benefit of a collective bargaining agreement under the American Federation of State, County and Municipal Employees that protected my employment and provided leave benefits. I could attend to my health and not have to worry about my job circumstances. During my time in DC from 2008-2015 I underwent 3 surgeries while serving in a supervisory capacity at work; while I did not have the benefit of a union contract, I did have leave benefits and my employer recognized FMLA which was extended to its employees (even though a small employer), so my job was protected. However, my sick leave benefits did not cover all the time needed so I was able to use vacation time that I had accumulated (saving for this purpose) but was still forced to utilize some time without pay. I recognize how fortunate I was in these circumstances in having a protected job and leave and realize that so many other women were without these benefits. These surgeries were not

optional for me, so I would have had to schedule them and I cannot imagine if I had also to worry about finances and the possible loss of a job during this time.

CLUW has a considerable number of older, dedicated members who are now caring for elderly parents and many who are encountering health problems of their own that require far more than the 6 or 2 weeks for family or individual care in the current legislation.

It is shocking to me that Mayor Bowser would use the last year during the pandemic to justify tax cuts for big businesses from the surplus from the Paid Family and Medical Leave budget item and then also use this as a reason to cut going forward. An article by the American Progress on February 1, 2021 “When Women Lose All the Jobs: Essential Actions for a Gender-Equitable Recovery” states, “Over the course of the first 10 months of the pandemic, women—particularly women of color—have lost more jobs than men as industries dominated by women have been hit the hardest. Overall, women have lost a net of 5.4 million jobs during the recession—nearly 1 million more job losses than men.... This push of job losses, combined with the pull of increased caregiving at home, has created a recession in which more women have been affected...”

In addition, studies of leave policies in existence in various states for a longer period of time than in DC confirm their popularity and the need for expanded benefits. Please find the fact sheet from the National Partnership for Women and Families: <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-works-evidence-from-state-programs.pdf>

Lastly I want to strongly urge Council to endorse the recommendations of the Coalition for DC Paid Family Leave of which the Coalition of Labor Union Women is a part by:

- Rejecting Mayor Bowser’s tax cuts for businesses
- Use the surplus in the Paid Family and Medical Leave fund to expand paid family leave benefits by a one-year expansion of individual medical and family caregiving leave to 8 weeks, to match the 8 weeks currently given for parental leave.
- Address eligibility by adding: job protection – allowing those who utilized the leave have a guaranteed job when they return; those individuals who lost their jobs during this period (when their employers paid on their behalf) should be covered; protect workers who lost jobs or income during the pandemic by looking back for a longer time period and base leave benefit amounts on earnings from the highest quarters and; make it easier for workers to receive paid leave by reducing the 7-day waiting period and apply for leave they have already taken.

Thank you,

Carol Rosenblatt
4700 Connecticut Ave. NW #608
Washington, DC 20008

From: [Elliott Becker](#)
To: [Committee on Labor and Workforce Development](#)
Subject: Testimony of Elliott Becker
Date: Tuesday, June 8, 2021 9:21:54 AM

To the Committee:

I recently had a COVID baby, Cedar, (who will hopefully join me to testify). She's only a couple months old but has already changed everything in my life. I'm very fortunate to work for the federal government and to have paid family leave as a recent change to federal benefits. As someone presently on paid family leave, I know how vital it is. I can't imagine what I would do if my partner and I had both had to work for the past couple months. Nevertheless, I know this is a common experience for many families.

My understanding of the present situation is that because of the massive layoffs brought on by COVID there is more money in DC's paid family leave fund than expected, and folks on the council and the Mayor's office have different ideas of what to do with it. I think the Mayor and some others have essentially adopted the ideology of Ronald Reagan and other rightwing Republicans and are embracing trickle-down economics, thinking that if we just give enough money to businesses, it will get to poor and working folks.

I disagree with this proposition. I'm here today to support the approaches championed by Councilmembers Silverman, Lewis George, and others. I think it is extremely perverse to suggest that people who are laid off don't need support from the government. It is terrible to be laid off from your work, and we should be using whatever funds we have available to support those people, not glorified business development. I would ask the Mayor to reconsider her position as an acolyte of Ronald Reagan and stand with the working people of DC. I believe now is a great time to rebuild and reopen DC in a way that emphasizes the needs of poor and working people in DC. When those people have the resources they need to live, they will spend those resources in DC on DC businesses.

Thank you for having me today and listening to my thoughts.

From: Doug Foote <douglas.foote@gmail.com>

Sent: Tuesday, June 8, 2021 10:13 PM

To: Committee on Labor and Workforce Development <Labor@DCCOUNCIL.US>

Subject: Testimony from Doug Foote, Jews United for Justice & DC Paid Family Leave Campaign

Committee on Labor and Workforce Development

FY22 Budget Oversight Hearing: Department of Employment Security, 6/9/2021

Testimony from Doug Foote, Jews United for Justice & DC Paid Family Leave Coalition

Good morning Chairman Silverman and members of the Committee, my name is Doug Foote and I am an 11-year resident of DC, currently living in Ward 3. I've also served as a volunteer leader with Jews United for Justice and the DC Paid Family Leave Coalition, starting when the paid family leave bill was first introduced in 2015. This is my third time testifying to this Council on this issue. First, to pass the original bill, then to stop the repeal-and-replace proposal the following year. And I am back, along with many of the same advocates, experts, parents, children, and caretakers to strongly urge the Council to reject the proposed payroll tax cut, to use any surplus to expand benefits, and to stand firmly on the side of racial and economic justice for all DC residents by strengthening, not threatening, this critical program.

Please remember that the Universal Paid Leave Act passed in 2016 was the result of over a year of negotiation. The law we have now is already a compromise. It includes HALF the length of leave and a little more than HALF the funding mechanism originally proposed. As a resident, as a voter, and as a child of aging parents who wants this benefit available to me when I need it, it's incredibly frustrating that some leaders in our city would suggest raiding these limited funds for a tax cut that would overwhelmingly benefit the biggest businesses in our city.

Over the years, I've heard every elected official in the District agree with the need for a paid family leave program. I've heard promises and commitments to furthering racial justice, and economic security, serving all eight wards, and creating a path to the middle class. Councilmembers, now is your chance to walk the walk.

I strongly urge the Council to reject the proposed payroll tax cut. Use the paid family leave's surplus to increase the length of medical leave to match the 8 weeks for parental leave, badly needed as we recover from the pandemic. Allow those who aren't currently employed to access benefits. And match federal FMLA regulations by protecting workers who were laid off and then hired back by the same company so they can take their leave.

This program has already gone through its fair share of scrutiny, compromise, and threats. Please give relief -- not a generous luxury, but hard-earned relief -- to your constituents by protecting the program's funding and making programmatic changes so

every single person who needs these benefits, regardless of color, background, or zip code, can access them.

Thank you for the opportunity to testify today.

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Doug Foote

douglas.foote@gmail.com

(he/him/his)

DOES Budget Oversight Hearing Testimony of Daniel Michelson-Horowitz

June 9, 2021

Chairperson Silverman and Committee members, my name is Daniel Michelson-Horowitz, and I appear today in my personal capacity to express deep concern with portions of the Mayor's Budget that defund and undermine the Paid Family and Medical Leave (PFML) program passed by the Council and which is desperately needed by our city's workers and their families. I am disappointed by the misguided and shortsighted vision presented by the Budget. I ask that the Council reject these proposals, and instead expand the program during the pandemic and ensure that it can serve the needs of DC workers for generations to come.

In recent years, I have seen my parents' health decline and I have seen colleagues and neighbors have new children or be faced by medical challenges. When my mother had heart surgery, I worked from the hospital waiting room and her bedside because I would otherwise have had to use my limited paid leave. Had she needed continued care, I would have had to take leave without pay, threatening my ability to pay bills or forcing me to dip into savings. I have seen friends rush back to work shortly after giving birth, because they could not afford to take off more time. This is why I was involved in getting the PFML program passed, including at hearings much like this one.

I believe that all District residents and workers should have access to a reliable, sustainable, and robust PFML program in their time of need, including Black and Brown DC workers who due to systemic racism are less likely to have access to employer-paid leave programs. The Mayor's Budget also would overwhelmingly benefit large corporations, while harming small and minority-owned businesses that want to provide family and medical leave benefits. By my estimation, the Budget would spend \$178 million of our Federal relief funds on business supports, compared to only about \$75 million on worker programs. Coming out of such a terrible year, we need to be investing more in supporting workers directly, as PFML is intended to do. I am asking the Council to reinvest any surplus back into the program by implementing a one-year expansion of medical leave and family caregiving leave to 8 weeks. When PFML was passed, I remember Councilmembers at hearings discussing the importance of including medical leave in the program and that we could always improve the program by extending the benefit once the program's funds allowed. I always understood that was the Council's intention and I believe that we should follow through. This is how we build back better both from a public health and financial security perspective.

Additionally, I call on the Council to make changes to the program that would guarantee the benefits of PFML to workers laid off during the pandemic, ensure protections for rehired workers who take paid leave, look back farther to determine the highest possible benefits that can be awarded under the program, and reduce the waiting period to start benefits. Together, these changes would strengthen the program and put families ahead of corporations.

Thank you for your time today, and I welcome any questions.

Testimony by Jessica Champagne
June 9, 2021
CLW- DOES Budget Oversight Hearing

Thank you to Councilmember Silverman and the other members of the council for this opportunity to testify.

My name is Jessica Champagne and I live in Ward 4, in Petworth. I'm here to express my serious concerns about the proposal to siphon off funds from the Universal Paid Leave program.

I've told my story before in the Wilson building about what paid family leave has meant to me in my own life. First, it enabled me to care for my partner, who is transgender, after he received medical necessary care related to his transition. Then, as the parent of two children, I was able to take time to be with my children in their earliest months. I came to several hearings with my then-infant child, who is now counting down the days to his sixth birthday.

As you know better than anyone, Councilmember Silverman, the people of DC waited a long time to have universal paid leave - this has been a long journey and it is very frustrating to see the mayor throw more wrenches into the works. It is extremely disturbing to me that the mayor would raid funds meant to help families, partly in order to benefit big corporations. I have friends who were counting the days until UPL was implemented to see if they would be covered, and for whom it has made a huge difference. As a manager at a non-profit with staff in multiple geographies, I have also seen how DC's UPL program has provided an equitable and family-friendly framework for providing benefits to our staff across the board.

As a city, we should avoid any actions that would endanger this new program, which is an essential part of making this city a place that supports all families, and should instead be expanding it. In saying this, I'm keenly aware of the particular challenges facing queer families like mine, and even more so Black and Brown queer families who, because of systemic racism, compounded by transphobia and homophobia, are less likely to have employer-provided paid family and medical leave. All of us need to be able to care for our families.

Given that, I urge the Council to:

- Reject the Mayor's proposed tax cuts for businesses
- Use the surplus in the Paid Family and Medical Leave fund (1) to expand paid family leave benefits, in particular to expand the time allowed for medical and family caregiving leave to 8 weeks and also (2) to support excluded workers.
- Make key programmatic changes outlined by the DC Paid Family Leave Coalition to ensure that everyone eligible can use the program.

Thank you.

At the Budget Oversight Hearing for the Department of Employment Services
DC Council Committee on Labor and Workforce Development
June 9, 2021

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**Joint Testimony of
Drake Hagner, Supervising Attorney, Legal Aid Society of the District of Columbia and
Tonya Love, Program Director and Attorney, Claimant Advocacy Program**

**Before the Committee on Labor & Workforce Development
Council of the District of Columbia**

**Fiscal Year 2021 Budget Oversight Hearing on the
Department of Employment Services (DOES)**

June 9, 2021

The Legal Aid Society of the District of Columbia (Legal Aid)¹ and Claimant Advocacy Program (CAP)² submit the following joint testimony about the Department of Employment Services' (DOES) unemployment compensation program and Fiscal Year 2021 budget.

Looking ahead

On September 4, 2021, when federal pandemic unemployment benefits expire, tens of thousands of unemployed workers³ will receive their last benefit payment from the Department of Employment Services (DOES). Over the past fifteen (15) months, these locally administered

¹ The Legal Aid Society of the District of Columbia is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² The Claimant Advocacy Program (CAP) is a free legal counseling service available to individuals who file unemployment compensation appeals in the District of Columbia. CAP is a program of the Metropolitan Washington Council AFL-CIO, which works with over 200 affiliated union locals and religious, student, and political allies to improve the lives of workers and families throughout the greater metro Washington area. For more information, visit <http://www.dclabor.org/unemployment-help.html>.

³ According to a U.S. Department of Labor report, as of the week ending May 8, 2021, 12,763 claimants claimed PUA, and as of the week ending May 15, 2021, 18,654 claimants remained insured, with 1,329 additional claimants who filed initial claims. U.S. Department of Labor, Unemployment Insurance Weekly Claims, May 27, 2021, available at: <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/ui-claims/20210963.pdf>

federal benefits⁴ were a lifeline for more than one-hundred thousand District workers who lost work due to COVID-19.

While some workers may secure work this summer, the uneven “K-shaped recovery”⁵ means that far too many low-wage workers and Black and Latinx workers of all income levels will remain unemployed or earning less than their pre-pandemic wages. Unfortunately, after federal programs expire, few workers will remain eligible for traditional unemployment compensation.

As we look ahead to assess the budget needs of the District in Fiscal Year 2021, we must prioritize the needs of tens of thousands of District workers who remain unemployed. While the Mayor’s proposed Fair Shot budget proposes needed increases to workforce development programs, there is little to no support for unemployed workers who are heading straight off a benefit cliff by summer’s end.

Legal Aid urges the District to pursue an aggressive action plan to ensure that unemployed workers have the resources they need to prevent dire economic consequences in the fall and winter of 2021. It is of utmost importance that DOES pay all benefits due to workers before federal benefits expire.

Proposed DOES plan of action for summer 2021

1. DOES must clear the backlog of unprocessed initial and continuing claims for benefits.

For the past year, District workers have faced obstacle after obstacle to receiving timely payment of unemployment benefits. Legal Aid and CAP have testified extensively about these benefit problems,⁶ including delayed PUA back payments and Weekly Benefit Amount adjustments and denials of PEUC benefits without adequate notice.

⁴ These federal programs were created by the CARES Act (March 2020) and then extended by the Continued Assistance Act (December 2020) and American Rescue Plan (March 2021). The benefits include Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Extended Benefits (EB). The Mixed-Earners Unemployment Compensation (MEUC) was created by the Continued Assistance Act.

⁵ “K-Shaped Recovery: Economic Recovery Shows Pandemic’s Uneven Impact, Even a Year Later,” CBS News, March 9, 2021, available at: <https://www.cbsnews.com/news/economy-k-shaped-recovery-covid-pandemic-impact-uneven/> (“Thirty-eight percent of Hispanics and 29% of Black Americans have experienced a layoff in their household at some point during the past year, compared with 21% of white Americans.”).

⁶ Legal Aid and CAP jointly submitted testimony for the (1) March 4, 2020 Public Oversight Hearing Regarding DOES, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/03/DOES-Oversight-Testimony-03-04-2020-final-PDF.pdf>; (2) May 28, 2020 DOES Budget Hearing, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/05/Joint-Written-Budget-Oversight-Hearing-Testimony-FINAL-2-1.pdf>;

Additionally, several major benefit disruptions occurred in the past five months. The first disruption began when DOES updated the claimant portal (dcnetworks.org) in order to comply with the Continued Assistance Act and American Rescue Plan shutting thousands of claimants out of filing their weekly continuing claims and payments. However, a second wave of benefit disruptions occurred in April 2021 shortly after the one-year anniversary of the COVID-19 public health emergency, when thousands of claimants again lost access to their benefits when their benefit year expired and they received sometimes contradictory guidance from DOES representatives on whether to reapply for benefits. Last month, DOES confirmed that approximately **13,000 claimants** – or one in five – had their benefits disrupted this spring.⁷

Unfortunately, claimants are still contacting Legal Aid and CAP each week alleging that they are missing weeks or even months of back-benefits even after repeated and persistent attempts to resolve the issue directly with DOES. Other claimants report long wait times on their initial claims – far past the 21-day benchmark provided by the U.S. Department of Labor.

DOES must make every effort to process back payments, issue adjustments for PUA weekly benefit amounts, and process any manually filed weekly continuing claims before federal benefits expire on September 4, 2021. DOES must also decrease initial claims processing times for newly filed claims.

2. DOES must immediately issue a written notice (informing workers of their right to appeal) when denying or terminating benefits.

DOES has problematic practices with regard to its denial and termination of unemployment benefits. First, DOES persistently **denies** unemployment benefits without issuing a written notice. Without a written notice, unemployed workers are unable to obtain an appeal hearing where an Administrative Law Judge from the Office of Administrative Hearings would review the denial decision.

(3) September 16, 2020 Public Oversight Hearing on the District’s Unemployment Compensation Program During the Public Health Emergency, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/09/Joint-Testimony-of-CAP-First-Shift-Legal-Aid-WLC-WWLS-on-DOES-performance-9.16.2020-1.pdf>; (4) November 17, 2020 Public Hearing on B23-985 Unemployment Benefits Extension Amendment Act of 2020, available at: <https://www.legalaiddc.org/wp-content/uploads/2021/03/Joint-Testimony-of-CAP-First-Shift-Legal-Aid-Seven-Week-Extension-of-Benefits-11.17.2020-final.pdf> and (5) March 3, 2021 Performance Oversight Hearing, available at: <https://www.legalaiddc.org/wp-content/uploads/2021/03/Joint-Testimony-DOES-performance-3.3.2021-FINAL.pdf>. Additionally, Legal Aid provided oral testimony at the December 9, 2020 Public Oversight Roundtable on Unemployment Insurance Programs in the District During the COVID-19 Pandemic.

⁷ “DC Unemployment Woes Explored at Council Roundtable,” Washington Post, May 12, 2021, available at: https://www.washingtonpost.com/local/dc-politics/dc-unemployment-council-morris-hughes/2021/05/12/3dd202de-b337-11eb-9059-d8176b9e3798_story.html.

For example, at a recent unemployment stakeholders meeting organized by the Office of Administrative Hearings (OAH), Legal Aid and CAP learned that OAH received more than 500 requests for appeals in unemployment hearings in April 2021 – however, approximately 400 of these requests were not scheduled for a hearing because the worker did not attach a written notice from DOES. Thus, in one month alone, **80%** of unemployed workers who were told by DOES that their claim for benefits were denied were unable to secure a hearing. Although DOES attended the stakeholder meeting, the agency did not engage in any discussion about this troubling issue.

Second, DOES also persistently **terminates** unemployment benefits before issuing a written notice in violation of federal rules and District law. Claimants contact Legal Aid and CAP desperate to reverse a sudden and unexplained termination of their benefits – and it is only when claimants’ attorneys contact DOES seeking information that we learn the reason for termination. There are a variety of reasons that these terminations are occurring. Claimants may allegedly appearing on a “new hire” database – even though federal rules forbid DOES from terminating benefits based on such a data hit without an investigation and issuance of a written notice.⁸ We have also seen cases of DOES offsetting current benefits to pay back an alleged overpayment – again, without sending notice explaining why and how the claimant was overpaid.

Again, if DOES fails to issue a written notice, claimants cannot obtain an appeal hearing from an Administrative Law Judge at OAH making it frustrating and time-consuming to correct any errors DOES may have made.

DOES must immediately stop its practice of denying and terminating unemployment benefits before a written notice (with appeal rights) has been issued.

3. DOES must immediately stop withholding 100% of FPUC benefits where federal rules forbid DOES from collecting more than 50%.

In prior years, Legal Aid and CAP raised concerns with the accuracy and fairness of DOES’s overpayment and fraud penalty assessment and collection practices.⁹ Recently, Legal Aid has

⁸ If the state agency obtains a “hit” on the “new hires directory” or state wage database indicating that a claimant is currently earning wages, the state must independently verify this information *before* making a determination of overpayment. U.S. Department of Labor, Unemployment Insurance Program Letter 01-16, available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16.pdf. The state may request information from the claimant and terminate benefits for “failure to respond” (and must notify the claimant of the consequences of failing to respond) – but not the underlying alleged overpayment until a determination of overpayment has been made. [UIPL 01-16, change 1, section I, questions 6-7.](#)

⁹ Joint testimony of Legal Aid and CAP, Public Oversight Hearing Regarding DOES, March 4, 2020, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/03/DOES-Oversight-Testimony-03-04-2020-final-PDF.pdf>.

uncovered a troubling problem related to DOES's "offset" (or withholding) of current unemployment benefits to pay back an alleged overpayment. While DOES may offset all of the weekly benefit amount toward an overpayment, DOES may not withhold more than 50% of the \$300 per week of FPUC benefits.¹⁰ This rule was enacted during the COVID-19 pandemic to provide a minimum income of \$150 per week to claimants even where a state agency may withhold all of the underlying benefit. Unfortunately, DOES appears to be offsetting 100% of FPUC, thus robbing claimants of \$600 per month in often desperately needed income.

DOES must immediately stop withholding 100% of FPUC benefits and instead cap withholdings at 50% in compliance with federal rules, thus allowing claimants to receive \$150 per week during the public health emergency.

4. DOES must commit to waiving no fault PUA overpayments.

There are numerous reasons why unemployed workers may incur an overpayment of Pandemic Unemployment Assistance benefits due to no fault of their own such. Legal Aid has already worked with several workers who incurred a PUA overpayment due to DOES's administrative error. [REDACTED] recent law change in the Continued Assistance Act allows DOES to "waive" (or forgive) repayment of a PUA overpayment if the claimant is not at fault and cannot afford to pay back the overpayment.¹¹ The PUA funds have already been spent on basic living expenses like food and utilities and it would be unfair to require their repayment. Since PUA is 100% federally funded, a waiver of PUA should not negatively impact the District's Unemployment Trust Fund.

DOES should commit to waiving PUA overpayments where the claimant is not at fault and notify claimants assessed PUA overpayments of their right to request waiver.

5. DOES must timely pay-out OAH Final Orders.

Legal Aid and CAP have observed a noticeable slowdown in DOES processing OAH Final Orders awarding unemployed workers their benefits after an appeal hearing. While DOES previously processed Final Orders and paid workers within a few weeks, some workers are now waiting months for benefits owed to them. In one of Legal Aid's cases, an unemployed worker has been waiting more than six months for DOES to release benefits she is entitled to.

DOES must improve its appeal processes to ensure OAH Final Orders are promptly processed and benefits paid to eligible claimants.

¹⁰ "A state may not offset more than 50% from the FPUC payment to recover overpayments from other state and federal unemployment benefit programs." Department of Labor, Unemployment Insurance Program Letter, UIPL 15-20, available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf.

¹¹ See Department of Labor, Unemployment Insurance Program Letter UIPL 16-20, change 4, available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_4.pdf.

6. Prioritize Re-opening American Job Centers to the Public.

Legal Aid and CAP have repeatedly raised concerns about the “digital divide” that leaves unemployed workers without home computers with unequal access to DOES services. As District Government offices re-open, American Job Center offices throughout the District should be prioritized for re-opening to allow an additional alternative for those with limited access or to or knowledge of technology. . Thousands of District residents can benefit from in-person access to job search and benefit application assistance – especially low-income residents.

The District should prioritize reopening the American Job Centers with evidence-based safety protocols and safety equipment to ensure that District employees and the public stay safe.

Conclusion

We thank the Committee for its continued oversight of DOES operations, and we look forward to working with the Committee and DOES to resolve problems for claimants.

Zachary Hoffman
Commissioner, ANC 5D06 - Vice Chair, ANC 5D
Committee on Labor and Workforce Development
DOES Budget Hearing 6/9/21

Good Morning, thank you councilmembers and committee staff for allowing me to speak with you today. My name is Zachary Hoffman, I am the ANC Commissioner representing 5D06 in Trinidad as well as serving in the role of Vice Chair for ANC 5D. Over the last few months, ANC 5D has passed numerous letters and resolutions regarding DOES and its oversight of the UI system. In our latest resolution to this committee that outlines ANC 5D's budget priorities for FY22, we asked for adequate funding for a complete overhaul of the UI portal and other DOES service platforms that desperately need modernization. It is critical that this budget includes necessary funding for these updates to our social safety net in light of the vulnerabilities showcased during the height of the COVID-19 pandemic. Failure to adequately provide funds to DOES specifically designated for modernization will lead to a continued trend of our technology failing the most vulnerable across the District.

At the ANC 5D monthly public meeting last night, Mayor Bowser said she felt confident that this budget fully funds the department to achieve the goals set out by the Director and their mandate. There are still however several aspects of the budget that I feel need to be addressed to fully commit to that sentiment. These include:

- **Mobile Functionality** - DOES must be charged with the creation and execution of mobile-friendly platforms for all portals and services.
- **Weekly Benefit Amount** - An effort must be made to increase the WBA, multiplying the impact that UI funds have on the lives of claimants.
- **Fully Funded Workers Rights Portal** - An important aspect of the Tipped Wage Workers Fairness Clarification Amendment Act of 2018 was a portal for workers to

access the rights and benefits to which an individual is entitled under DC's labor and anti-discrimination laws.

- **Micro Grants/Traditional Grants for Workforce Development within ANC Grant Programs** - ANCs are already funding micro-targeted workforce development programs in our communities, funds should be available to expand successful programs across the District.

All of the above items should be included in the FY22 Budget for DOES and I hope this committee will make these changes. It should also be noted that I support the use of Paid Family Leave surplus funds to fund much-needed programs and be proactive when we have the opportunity to implement or expand opportunities in FY22. Thank you for your time and I am available for any questions.

**Benjy Cannon's Testimony Before the Committee on Labor and Workforce
Development
Wednesday, June 9th, 2021**

Good morning. My name is Benjy Cannon and I am the Communications Director at UNITE HERE Local 25. We represent approximately 7,200 workers in hotels, restaurants, and casinos in the D.C. area. I'm here today to express our opposition to the mayor's proposed corporate tax cut, which draws from the Paid Family Leave Fund.

As we have testified numerous times before this committee, COVID-19 has been devastating for our members. It has been well over a year after the first lockdowns went into effect, and 85% of our members are still out of work. As a result, we are joining allies today to advocate for a just recovery in D.C., a recovery that ensures that the workers who have suffered tremendously over the course of the pandemic do not get left behind.

Using surpluses in the Paid Family Leave Fund to slash corporate taxes does precisely the opposite. If there is extra cash anywhere in the D.C. budget, it should be used to expand benefits for workers, not fund corporate tax cuts. Expanding the benefits of the Paid Leave program is one way we would support spending the money, expanding the excluded worker fund is another. But using it for corporate tax breaks, especially given the massive Federal relief large corporations have received, does not help the District's workers or their families.

While the contracts our members have won provide them with family and medical leave, we have no doubt the program could be stronger for workers across the city.

According to Talk Poverty, if D.C. became a state tomorrow, it would be the most unequal in the nation in terms of income inequality, despite being the most highly educated. Black and Brown workers are disproportionately affected; the average white family D.C. family possesses a staggering 81 times as much wealth as the average Black family. These numbers do not suggest a city where big business is struggling, but one where wealth distribution perpetuates economic inequality and systemic racism.

So, we ask that the Council reject the Mayor's tax cuts, heed the testimony of our allies today, and invest city resources in the people who live and struggle here. Thank you.

Committee on Labor and Workforce Development
Elissa Silverman, Chair
Department of Employment Services
Performance Oversight Hearing
Wednesday, June 9
Testimony of Nikko Bilitza, Organizer, DC Jobs With Justice

Chairperson Silverman, members of the Committee, thank you for the opportunity to testify. My name is Nikko Bilitza and I am an organizer with DC Jobs with Justice (DC JWWJ). DC JWWJ is a 70 plus member coalition made up of labor, community, and faith-based organizations. We work to advance the rights of working people and support community struggles to build a more just society. We also convene the Just Pay Coalition, a coalition of organizations working together to end wage theft and prioritize quality enforcement and implementation of programs like Paid Family Leave and Sick Days.

The pandemic has been an incredibly difficult time for working people in the District. It has shown a dire need for an expanded social safety net and effective enforcement of the worker protections that keep working people safe. I would like to touch on several topics in my testimony relating to the needs of District workers:

Protect Paid Family Leave

We are outraged by the Mayor's attempt to weaken the Paid Family and Medical Leave Program and implement a tax cut that would overwhelmingly benefit the largest corporations in the District. We believe that now is the time for us to expand our investment in worker protections and benefits, not weaken them. We strongly urge the council to reject the Mayor's proposed tax cuts for businesses and redirect any surplus in the Paid Family & Medical Leave fund to what the program was designed to provide: leave benefits for workers. The surplus could also be used to ensure that excluded workers receive the assistance they need to fully recover from the pandemic.

Rather than weaken the program, DC should strengthen it by enacting four programmatic changes to the rules of the Paid Family and Medical Leave Program.

1. **Protect the right to PFL for furloughed workers:** DC should match federal law so that workers who were laid off and then hired back by the same company have job protection to take their paid leave.
2. **Protect the right to PFL for laid off workers:** Change the program so that people do NOT have to be currently employed in order to access paid leave. So many people have lost their jobs this past year - they should not lose access to the paid family and medical leave that their former employers already paid for on their behalf.
3. **Protect workers who lost jobs or income during the pandemic.** The Paid Family Leave program should look back for a longer time period and base leave benefit amounts on earnings from the highest quarters. This would protect

workers from losing their access to their paid family and medical leave benefits if - like so many - they had no or low income during the pandemic.

4. Make it easier for workers to receive paid leave by reducing the 7-day waiting period and apply for leave they have already taken.

Public Education and Enforcement

A recent report from the Catholic Labor Network entitled "[The Underground Economy and Wage Theft](#)" revealed evidence of extensive misclassification in the commercial construction sector. This report is yet another example of the kind of widespread violations that plague a variety of sectors in the District. The issue of non-compliance with the District's labor laws must be addressed through expanded public education and strategic directed investigations on the part of DOES. It is crucial that public education is done in cooperation with trusted community partners and in multiple languages especially Spanish, French, and Amharic.

DC Jobs with Justice recommends the following actions by DOES to strategically enforce DC's labor laws and protect workers:

- Develop metrics for evaluating compliance rates by target industries (or rates of noncompliance if that is easier to measure).
- Institute a plan to improve noncompliance in target industries.
- Create a rubric for determining which complaints automatically trigger a full investigation (multiple complaints against one company, one complaint in a target industry, etc.).
- Publicize agency metrics for evaluating compliance rates and improving noncompliance, and be transparent about the types of complaints the agency will prioritize for investigation. Enhanced transparency can provide additional deterrent effects, including through providing more information to employer and worker networks.
- Develop and share annual goals regarding: number of investigations opened and closed; number of violations investigated by area including failure to pay tip minimum, failure to provide sick or safe leave, misclassification, and failure to pay overtime; and total penalties assessed. Reports should then reflect DOES' success in reaching those goals
- Implement a policy for how to respond to retaliation attempts by employers to occur within 48 hours.

Agency transparency

As part of the Tipped Wage Workers Fairness Amendment Act of 2018 employers of tipped workers are required to submit quarterly reports certifying that all employees have been paid the minimum wage and provide detailed information on employee compensation. DC Jobs with Justice has long sought access to these reports to get a better sense of employer compliance and the District's enforcement of the tipped minimum wage. Starting in 2019 we have attempted to submit FOIA requests to obtain access to the quarterly wage reports, which should be available to the public. However DOES has never fully cooperated with us on sharing all of the requested reports. A DC JWWJ activist recently won a ruling in which the judge rejected DOES' claims about why they would not share the information requested in the FOIA. We are disappointed that DOES was not more forthcoming with sharing the data in a usable format. We

look forward to their compliance with the judge's ruling and the ability to access vital information regarding tipped wage compliance.

Thank you for the opportunity to testify today. I would be happy to answer any questions.

Testimony for DC Council
Clayton Sinyai, Executive Director
Catholic Labor Network
9 June 2021

My name is Clayton Sinyai. I am the Executive Director of the Catholic Labor Network, a national organization of Catholic clergy and union activists based at Georgetown University. I'm here to speak about wage theft in the Washington DC Commercial Construction industry in relation to the DOES budget.

For decades, the related phenomena of tax fraud and wage theft have plagued the residential construction industry. Employers in this sector routinely evade required social security contributions, unemployment insurance payments, overtime pay requirements and even the minimum wage either by representing their employees as independent contractors or not reporting them at all. The problem has created a vast underground economy in residential construction, one that largely preyed upon immigrant workers who do not know their rights or fear exercising them by filing a complaint.

In 2020, responding to anecdotal reports from community and labor activists, the Catholic Labor Network set out to determine whether and to what extent this underground economy had penetrated the commercial construction sector in the District of Columbia. We recently shared our findings with DC Council members and DC government officials in a report, *The Underground Economy and Wage Theft in Washington DC's Commercial Construction Sector*. The findings were alarming.

In the course of 2020 a representative of the Catholic Labor Network visited the District's largest construction sites – those valued at \$25 million and up – and conducted interviews with a stratified sample of 79 construction workers in a variety of trades and occupations.

- Nearly half the workers surveyed were part of the underground economy, either paid with a check that lacked payroll deductions or paid in cash.
- Twenty-nine of the workers, or 37%, reported not being paid overtime when they worked more than 40 hours per week.
- Eight workers in the sample, or 10%, were paid less than the DC minimum wage.

In certain trades the percentages were much higher: 45% of workers employed by electrical contractors, 73% of those employed by mechanical contractors, and 85% of those employed by drywall contractors were part of the underground economy. In each of these trades a well-developed system of labor brokers had emerged to shield contractors of record on the jobsite from liability for the violations by acting as intermediaries between the contractor and his or her workforce.

When we asked workers why they did not report these violations they usually told us they were afraid of losing employment during the pandemic. The workers victimized by this system were also virtually all recent immigrants unsure of their rights; some acknowledged that they were undocumented and feared the consequences of reporting a violation.

It is apparent that an extensive underground economy has developed in DC construction, one marked by unpaid unemployment insurance premiums and often by overtime and minimum hour law violations. The current complaint-driven enforcement system used by DOES offices to address the problem is not sufficient. A modest investment in strategic enforcement relying on aggressive payroll audits in the most affected sectors would go a long way to rooting out the abuses that our modestly-financed investigation documented. We urge the council to consider giving DOES the resources to do such work.

Clayton Sinyai
Catholic Labor Network

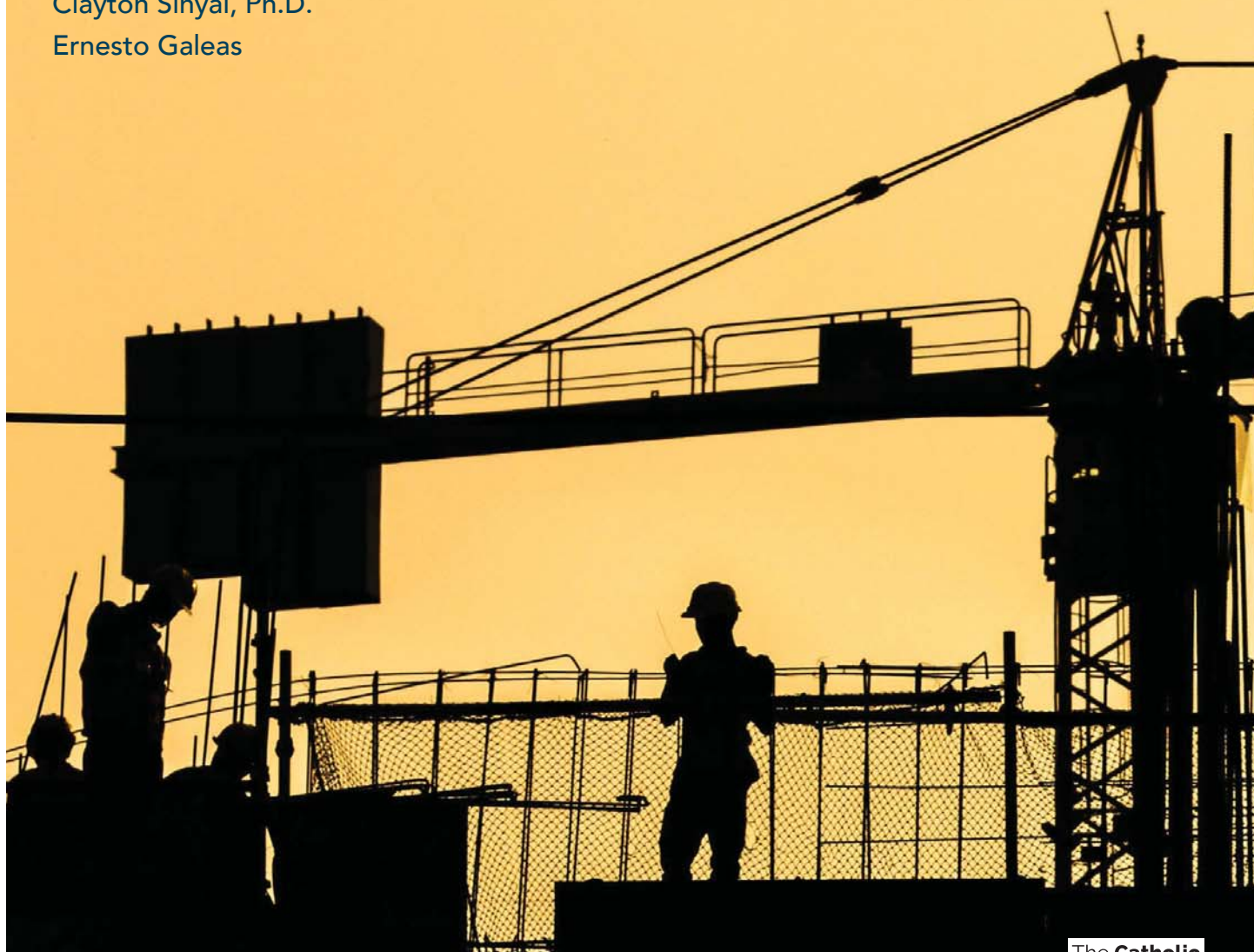
APRIL 2021

THE UNDERGROUND ECONOMY AND WAGE THEFT

in Washington DC's Commercial Construction Sector

Clayton Sinyai, Ph.D.

Ernesto Galeas



A study by the Catholic Labor Network, with generous support
from the Catholic Campaign for Human Development





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The Underground Economy and Wage Theft in Washington DC's Commercial Construction Sector

Executive Summary: The construction industry in the District of Columbia features an extensive underground sector in which workers are misclassified as independent contractors or paid in cash off the books, denying the public necessary tax revenues and denying workers the protection of wage and hour laws – what this report will refer to as construction's "underground economy." While this has long been the case in single-family residential construction and renovation, today this form of workplace fraud has penetrated the largest commercial construction sites in the District of Columbia.

The Catholic Labor Network set out to investigate the prevalence of misclassification and wage theft in the D.C. commercial construction market and document patterns within the industry. We conducted extensive surveys with a stratified sample of 79 construction workers in various trades employed on 24 large commercial or public construction projects. We found that:

- Nearly half of the workers surveyed (47%) were part of the underground economy, either paid with a check without required payroll tax deductions or paid in cash.
- The underground economy was a major component of the private sector of the construction market. Of the 64 survey participants employed on private sector construction projects, 37 (58%) were part of the underground economy. In contrast, all 15 workers surveyed who were employed on public construction contracts received paychecks with legally required pay stubs and payroll tax deductions.
- The underground economy was concentrated in the non-union sector of the construction market. Among the 68 workers surveyed who did not belong to a union, 37 (54%) were part of the underground economy. All 11 union members surveyed received checks with legally required paystubs and payroll tax deductions.
- There was a strong association between the underground economy and minimum wage violations. Eight workers in the sample (10%) were paid less than the DC minimum wage; all 8 were part of the underground economy. None of the workers issued a proper paycheck with a pay stub and tax deductions received less than the DC minimum wage.
- There was a strong association between the underground economy and overtime violations. Twenty-nine workers in the sample reported that they were not paid required overtime rates when they worked more than 40 hours per week. Of these, 28 (97%) were part of the underground economy.
- About half the interview participants employed by electrical contractors, and majority of workers employed by mechanical contractors (plumbing and HVAC) and drywall contractors, participated in the underground economy. A well-developed system of "labor brokers" – employers of record who pay employees on behalf of specialty contractors – has sprung up in these segments between the established firms and their workforce to facilitate payroll violations. Most of the workers recruited by these labor brokers were immigrants unfamiliar with their rights or hesitant to exercise them.
- The heavy concentration of payroll violations and wage theft on the District's large commercial construction projects, especially among employees of mechanical, electrical and drywall contractors, offers good opportunities for strategic enforcement initiatives targeting these specific sectors within the broader construction industry.

Introduction

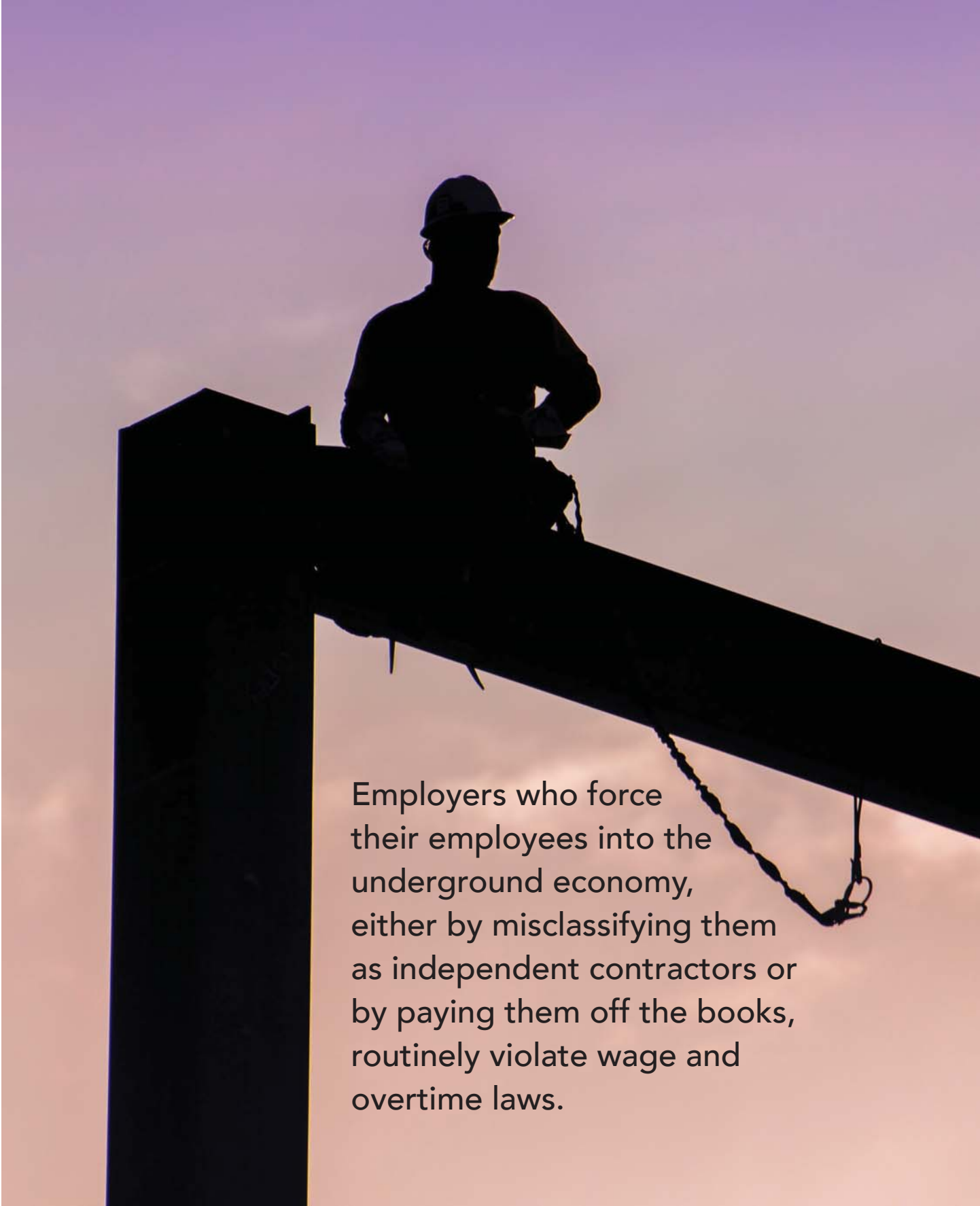
On August 6, 2018 the Washington DC Office of the Attorney General announced a lawsuit against Power Design, Inc., for misclassifying workers as independent contractors in order to deny these workers minimum wage and overtime protections and to evade required payroll tax contributions (Office of the Attorney General, 2018). Power Design was one of the nation's largest electrical contractors, listed in the ENR 600, the construction industry's equivalent of the Fortune 500. Power Design was found on some of the District's largest construction projects; the OAG complaint alleged that at least 535 employees were misclassified as independent contractors.

The Power Design case resulted in a payment of \$2.75 million in damages and penalties and a consent decree enjoining Power Design from further violations of DC Wage and Hour laws. (Office of the Attorney General, 2020). Moreover, it revealed to the public that a practice widespread among small residential construction firms had migrated, at least in the District of Columbia, to the commercial construction sector. In a striking example of what David Weil has famously labeled "the fissured workplace," (Weil, 2014) major construction contractors and subcontractors have become accustomed to executing large construction projects with few employees of record. That doesn't mean that they have few employees – just that the employees performing the work are either misclassified as independent contractors or not reported at all. They are part of a vast underground economy in the District of Columbia's construction industry.

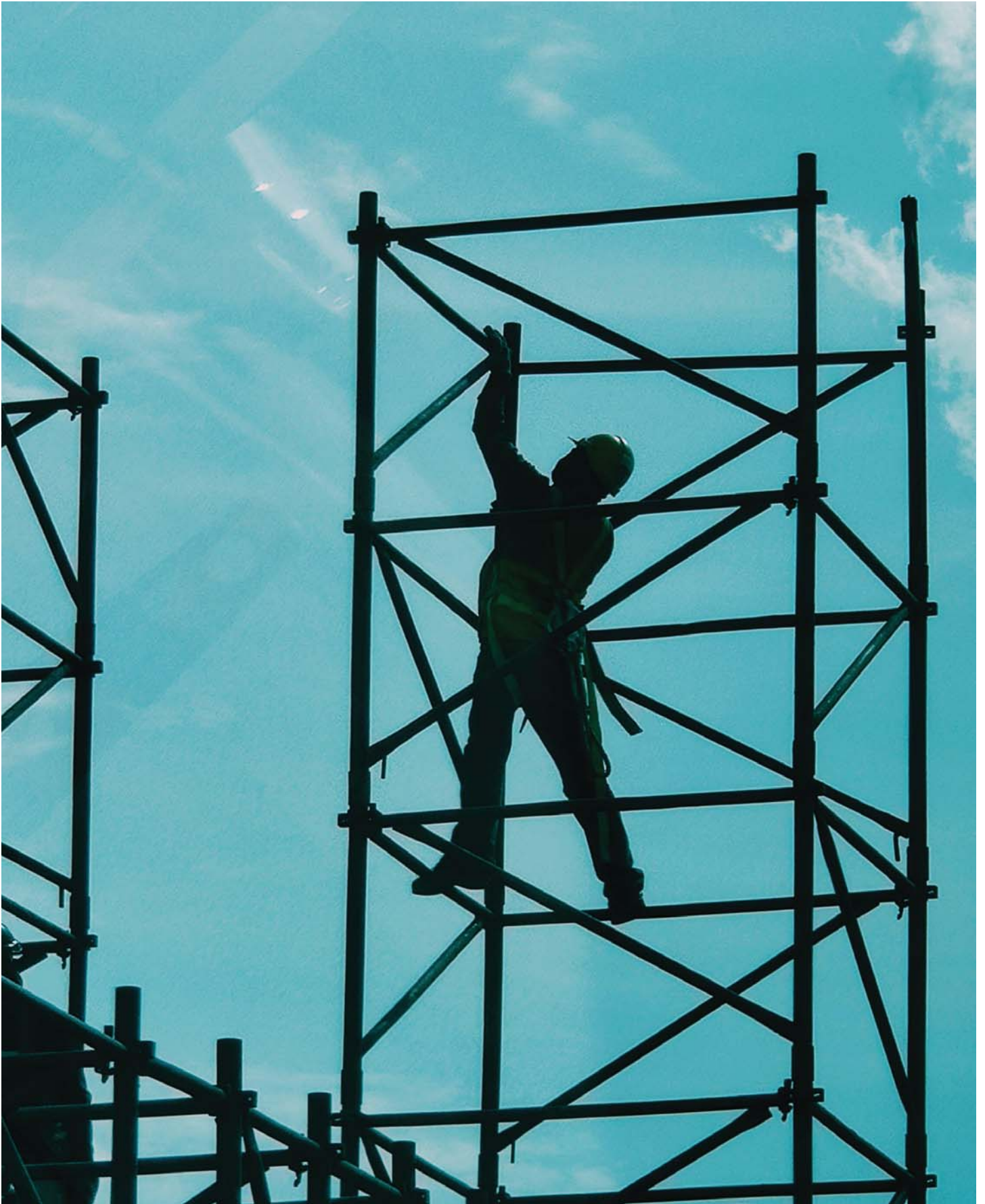
This practice hurts workers, law-abiding businesses, government, and taxpayers.

- Employers who force their employees into the underground economy, either by misclassifying them as independent contractors or by paying them off the books, routinely violate minimum wage and overtime laws. They do not pay workers' compensation or unemployment insurance premiums, leaving the workers themselves on the hook if they are injured or laid off. They do not pay required social security contributions, leaving these workers without proper retirement benefits.
- According to a 2019 study commissioned by the Office of the Attorney General, employers who successfully push their workforce into the underground economy (by mislabeling them independent contractors or paying them off the books) save between 16.7% and 48.1% of payroll and fringe benefit costs for their workers – substantially undercutting their law-abiding business competitors (Office of the Attorney General, 2019).
- When workers are forced into the underground economy by employers who misclassify them or do not report them at all, public programs experience significant tax losses. Social security contributions are not made; state and federal income taxes are not paid. Law-abiding taxpayers or cuts in crucial programs must make up the difference.

The Catholic Labor Network (CLN), a nonprofit worker advocacy organization based at Georgetown University's Kalmanovitz Initiative for Labor and the Working Poor, sought to investigate the patterns of wage theft and misclassification in the Washington DC commercial construction industry. The CLN canvassed DC jobsites and conducted extensive interviews with workers to determine the prevalence and distribution of violations. The findings are related in this report.

A silhouette of a construction worker wearing a hard hat and safety harness, standing on a large steel beam. The worker is positioned in the upper center of the frame, looking down. The background is a soft, hazy sky with a gradient of purple and pink, suggesting a sunset or sunrise. The steel beam is dark and runs diagonally across the frame. A chain is visible hanging from the beam on the right side.

Employers who force their employees into the underground economy, either by misclassifying them as independent contractors or by paying them off the books, routinely violate wage and overtime laws.



Previous Studies

Wage theft is an extensive problem in the United States, one often associated with both the “fissured workplace” and the underground economy (Bernhardt, 2009). Workers in the construction industry are especially vulnerable, because of the vast, highly articulated networks of contracting and subcontracting that mark the sector. In conventional design-bid-build construction, a general contractor will develop an estimate for the project based on design drawings and place a bid to execute for the project owners, but will then subcontract most of the work to specialty contractors in large “packages” including mechanical (plumbing and/or HVAC), electrical, concrete, masonry, and drywall/interiors. Each of these specialty contractors may in turn identify particular tasks and subcontract these to smaller firms specializing in that type of work. This web of relationships featuring considerable legitimate subcontracting makes it easier to conceal independent contractor misclassification than in many other industrial sectors.

Previous investigations have substantiated the significance of this problem in the construction industry. One method of research is an audit of **employers** participating in the unemployment insurance system or – in some states – a state-run workers’ compensation program. For example, a 2019 study that reviewed workers’ compensation insurance audit data for the State of Washington found that between 2013 and 2017 an average of 19% of construction employers had misclassified at least some employees (Xu & Erlich, 2019). In Virginia, a 2012 Joint Legislative Audit and Review Commission report based on UI contribution of audits of several hundred construction employers in 2010 found that some 33% of construction employers had some misclassified employees – amounting to some 30% of workers (JLARC, 2012).

As high as these numbers are, they are almost certainly an undercount, for an audit of employers participating in unemployment insurance or workers’ compensation will miss the most egregious violators, who don’t report any employees to either program. An alternative method is to survey employees about misclassification. The Workers’ Defense Project, based in Austin, Texas, has led a series of such studies – first in Austin, then the state of Texas, and finally across six cities in the Southeastern United States. The surveys found that between 32% and 41% of employees were misclassified or working off the books entirely (Theodore, Boggess, Cornejo, & Timm, 2017; Workers Defense Project, 2009, 2013).

Finally, one may rely on federal government statistics for a general, national assessment of the problem. While no government program can directly count misclassified or off-the-books employees, it is possible to compare programs that survey workers (such as the Census) and those that survey employers (such as the Occupational Employment Survey) to estimate how many construction workers are not reported. A recent study using this method estimated that in 2017, between 12.4% and 20.5% of the construction workforce nationwide was misclassified or working off the books at any given time (Ormiston, Belman, & Erlich, 2020).

Purpose and Methods of the Current Study

The data gathered to date are sufficient to establish that an underground economy exists in construction, and that it is large. However, previous studies have not sought to identify the industry segments where violations are most widely practiced. The CLN determined that surveying a stratified sample of construction workers from a variety of project types, trades and occupations would enable us to provide a map of the construction industry's underground economy.

To build a sample, the Catholic Labor Network consulted the Dodge Reports, the construction industry's premier source for information on construction lettings, running a search for all construction projects underway in the District of Columbia with an estimated value of \$25 million and up. CLN field representative Ernesto Galeas conducted site visits at all of the reported sites and identified several additional comparable sites not reported in Dodge, which were added to the sample.

Between January and November 2020, Galeas conducted interviews with 79 construction workers on major commercial and public construction sites across the District of Columbia, inquiring about their method of payment, hourly wage, and whether they were paid at overtime rates when working more than 40 hours in one week. The sample included workers employed by 43 different contractors across 24 DC construction sites. Respondents included 11 union members and 68 nonunion construction workers; 15 workers were employed on public construction sites at the time of interview, while the remaining 64 were employed on private construction projects.

Table 1: Interview Participants in Sample (n = 79)

By Union Status	Union	11
	Nonunion	68
By Project Funding	Public	15
	Private	64
By Employer Trade	Concrete Contractor	11
	Drywall Contractor	13
	Electrical Contractor	11
	Masonry Contractor	10
	Mechanical (Plumbing/HVAC) Contractor	22
	Other Contractor	12
By Worker Occupation	Bricklayer	4
	Carpenter	15
	Electrician	11
	Laborer	19
	Plumber/Pipefitter	15
	Sheet Metal Worker	6
	Other	9

Behind the Statistics: Ivan's Story

Behind the statistics on the underground economy and wage theft are real people. Some of the workers we met in the course of our interviews shared their stories with us. Here's Ivan's story, in his own words.

I'm 28 years old. I fled gangs in El Salvador four years ago and came to Houston, Texas. I was a bus driver in San Salvador, but the gangs were becoming more violent, and charged protection money from bus drivers, so I came to the United States. I worked as a car mechanic in Houston and sometimes as a carpenter. I moved to Woodbridge, Virginia because I heard wages were better here.

I was looking for work in February 2020 and heard that they were hiring at a job on Eckington Place. Advantage Mechanical was the sheet metal contractor doing ductwork for the air conditioning, but a man named Jimmy Rivas was doing the hiring. He asked if I had experience in HVAC. I said no, I was a carpenter, but I was willing to learn. He said he would hire me as a helper at \$12 per hour and if I learned quickly, I would get a raise. He said there were no benefits like medical insurance. The minimum wage then in DC was \$14 per hour but I needed a job, so I took it. He didn't ask me to fill out any paperwork like a W-4 or anything. I just showed up and signed in each day in a notebook.

When my first payday came on March 18, 2020, I got a check that read "R & L General Contractors." It didn't look like a paycheck, just a regular check, and didn't have a pay stub or anything. It was for \$864, which is \$12 an hour for 72 hours of work (the number of hours I

had worked). There were no deductions for taxes or anything. I took it to the bank and tried to cash it, but they told me that there was no money in the account and I would have to wait two weeks to get my money.



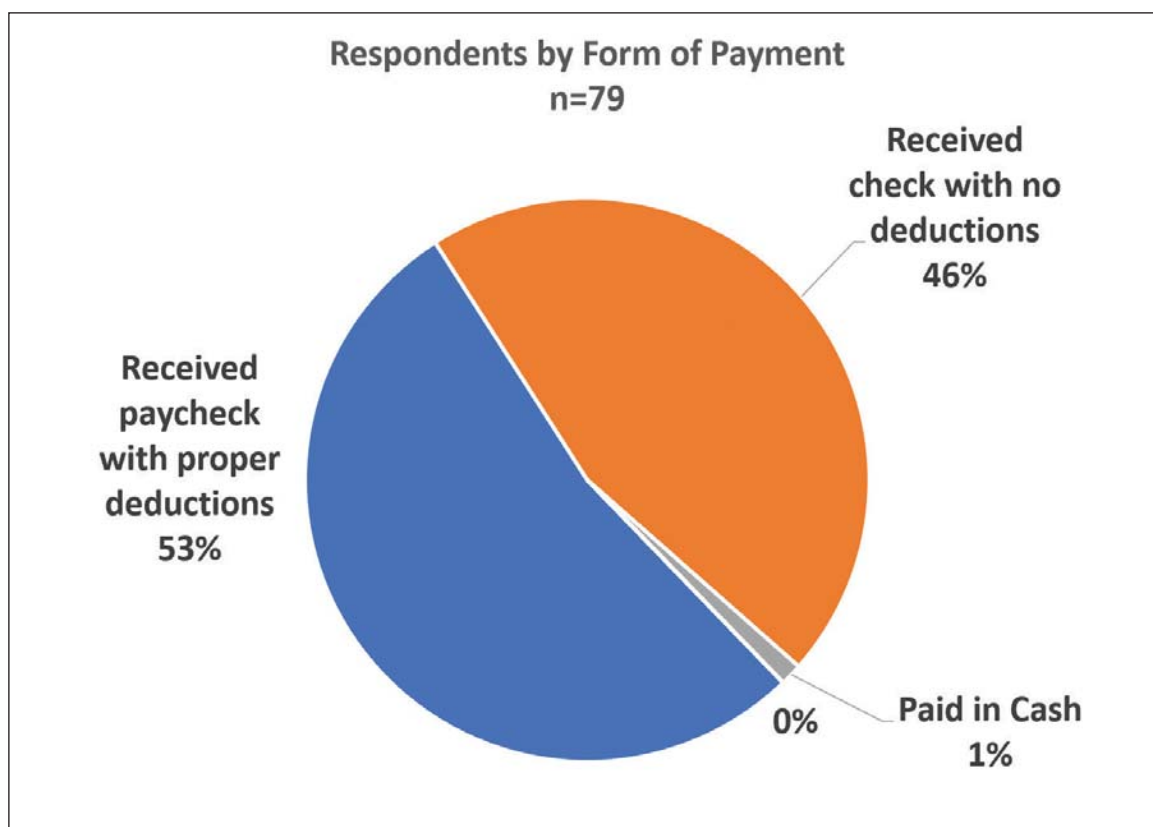
I learned from my co-workers that I was supposed to take my check to a special check-cashing place in Manassas where they would cash it for me after taking out a 2% fee. I guess Jimmy had some kind of deal with that place.

The other guys told me that they worked overtime sometimes but never got paid time and a half. A lot of people quit during the time I was there because of the low pay. I never got the raise Jimmy promised, so I quit in June. Labor brokers like Jimmy take advantage of us because they know we are immigrants and some of us are undocumented.

Results

Of the 79 workers surveyed, 42 (53%) reported that they received a paycheck with a paystub and with taxes deducted, while 36 (46%) reported being paid with a personal or business check without any payroll deductions and 1 worker (1%) reported simply being paid in cash. That is to say, nearly half (47%) the workers in the sample appeared to be part of the underground economy (see Fig. 1). It was not clear whether the labor brokers that paid these workers were reporting them as independent contractors or not reporting them at all – most of them had worked less than a year and did not know if they would receive the 1099 required for independent contractors.

Fig. 1: Interview Respondents by Form of Payment

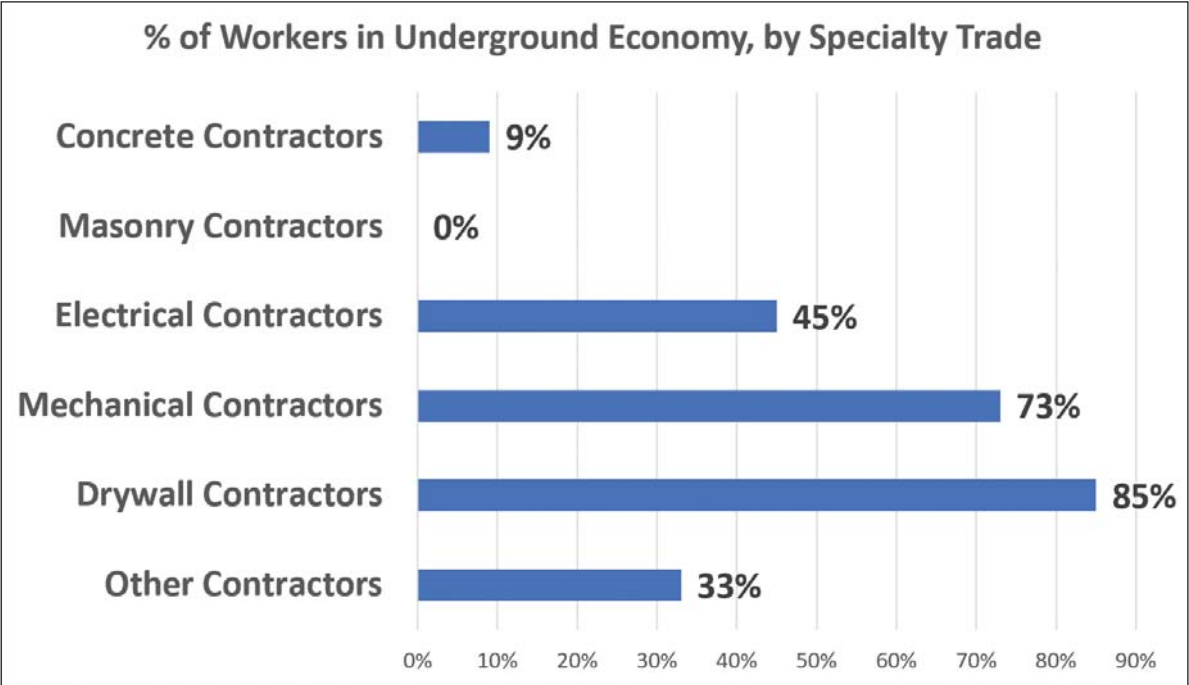


Could they have been actual independent contractors? Independent contractors are a real part of the construction industry who have specialized skills, tools and equipment, and perform tasks for hire on a construction project. Readers might ask, were some or all of these workers legitimate independent contractors? However, the interview participants in this sample all understood themselves to be employees, either of a specialty contractor or a labor broker working as their agent. All reported to work on a schedule determined by their employer or supervisor and were paid by the hour or day, not by the piece or by the contract. They had no opportunity for profit or loss. It is highly unlikely that any of these workers could meet the legal requirements to establish independent contractor status.



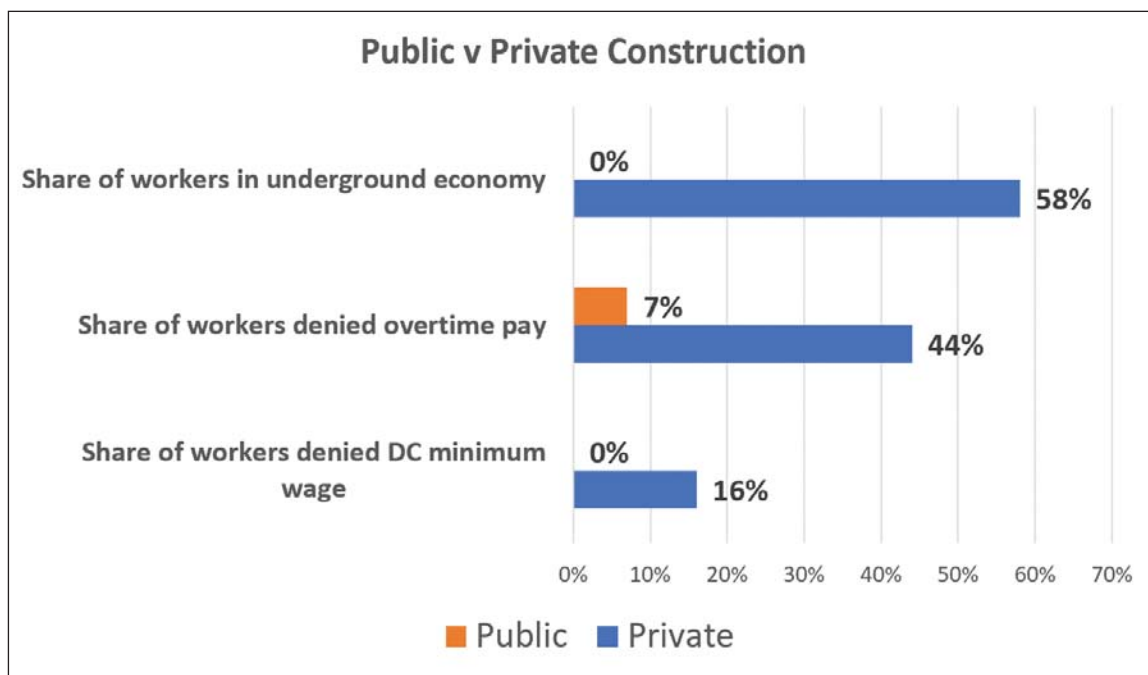
In the sample, the underground economy was concentrated in particular specialty trades, while largely absent in others (Fig. 2). Very few employees of masonry (0%) or concrete (9%) contractors were in the underground economy. On the other hand, nearly half (45%) of the workers employed by electrical contractors were part of the underground economy, as were a majority of workers employed by mechanical contractors (73%) and drywall contractors (85%). Some one-third (33%) of workers employed by other specialty contractors – a category including asphalt pavers, glaziers, roofers, siding installers, painters, elevator constructors, and site cleanup contractors – were part of the underground economy.

Fig. 2: Percent of workers in underground economy, by specialty trade

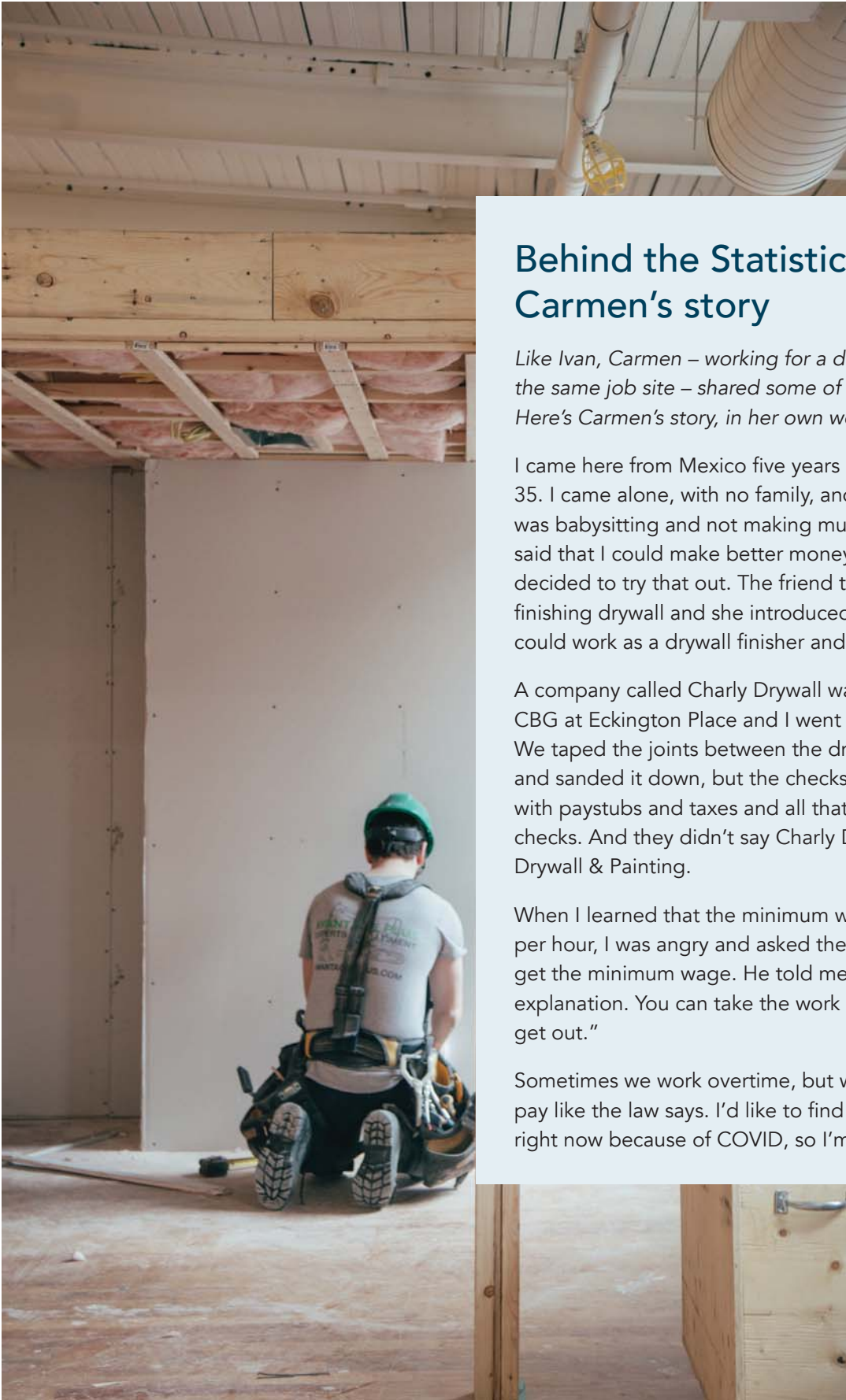


In the sample, the underground economy was a much larger factor in the private commercial construction sector than in public construction (Fig. 3). Some 15 of the interview respondents were employed on public construction projects, while the remaining 64 were employed on large-scale private construction projects. All 15 workers employed on public sector construction projects reported being paid as employees with taxes deducted from their paychecks, and none reported a minimum wage violation; 1 (7%) reported not receiving overtime pay when working more than 40 hours per week. Of the 64 employed on private commercial projects, 37 (58%) belonged to the underground economy, with 10 (16%) reporting that they had not received the minimum wage and 28 (44%) that they had not been paid required overtime rates.

Fig. 3: Public v. Private Construction



Finally, there was a virtual wall of separation between the union sector and the underground economy. Of the 11 union members interviewed, all were properly paid by law and none were victims of wage and hour violations, whether of overtime or minimum wage.



Behind the Statistics: Carmen's story

Like Ivan, Carmen – working for a different subcontractor at the same job site – shared some of her story with us. Here's Carmen's story, in her own words.

I came here from Mexico five years ago for a better life. I'm 35. I came alone, with no family, and live in Centerville VA. I was babysitting and not making much money, and a friend said that I could make better money in construction, so I decided to try that out. The friend told me that I could work finishing drywall and she introduced me to a man who said I could work as a drywall finisher and would get \$12 per hour.

A company called Charly Drywall was doing the drywall for CBG at Eckington Place and I went to work finishing drywall. We taped the joints between the drywall, mudded the joints and sanded it down, but the checks we got weren't paychecks with paystubs and taxes and all that, they were regular checks. And they didn't say Charly Drywall, they said LG Drywall & Painting.

When I learned that the minimum wage in DC was \$15 per hour, I was angry and asked the boss why we don't get the minimum wage. He told me "we don't owe you an explanation. You can take the work at the rate we pay or get out."

Sometimes we work overtime, but we don't get any overtime pay like the law says. I'd like to find a better job but it's hard right now because of COVID, so I'm still here.

Discussion

The findings confirm the picture painted by past researchers of a substantial segment of the construction workforce who are either misreported as independent contractors or not reported at all. They also document the strong association between this underground segment of the construction economy and wage theft. When employers failed to pay required overtime pay or failed to pay the DC minimum wage, the

District's prevailing wage laws may play a role in this; public sector construction projects in the District of Columbia require employers to submit certified payrolls for review in compliance with prevailing wage laws. While independent contractor misclassification and wage theft are not unknown on public construction projects, the requirement to submit certified payrolls for review makes payroll fraud easier to detect, the potential consequences

Likewise, both the underground economy and wage theft appear to be entirely confined to the nonunion sector of the construction industry. This finding is important but unsurprising. Union workers who are denied legally required minimum wage or overtime pay, or who are pressured to work off the books or accept designation as independent contractors, can turn to their union to resolve these issues. Consequently, the authors suspect that union-signatory contractors seldom engage in these practices.

Somewhat less expected was our finding that the underground economy in the DC commercial construction sector was heavily concentrated among the mechanical, electrical and drywall contractor workforce. While independent contractor misclassification of drywall carpenters has been widely documented for decades, for a long time it appears that the mechanical and electrical trades, with their licensing requirements, were relatively immune from these violations. This study found that much of the workforce in each trade had been forced into the underground economy.

The authors note that construction is a complex industry with a large number of distinct market niches, each contested by a limited number of competitors. If a single contractor bidding on large private sector mechanical packages shifts the bulk of its labor force into the underground economy and realizes the 17-48% labor cost savings estimated in *Illegal Worker Misclassification: Payroll Fraud in*



victims were almost always workers in the underground economy.

If this sample is representative of large-scale commercial construction in the District of Columbia, both the underground economy and violations of minimum wage and overtime laws appear to be heavily concentrated in the private sector construction market. The

of violations more severe, and multiplies opportunities for both public agencies and third-party enforcement organizations (such as the Foundation for Fair Contracting) to police labor practices. (The current study did not attempt to assess prevailing wage violations, a form of wage theft common in public construction with no counterpart in the private sector.)



the District's Construction Industry (Office of the Attorney General, 2019), its competitors will rapidly be forced to follow suit or be driven from that market. The result would be a market segment dominated by an underground labor market, which is what this study found.

Indeed, the interviews revealed that these three segments of the market – mechanical/HVAC, electrical and drywall – had evolved a highly developed network of labor brokers as intermediaries between the subcontractor of record (who had been awarded the work by the general contractor) and the worker. These labor brokers

functioned as a temp or labor leasing agency supplying workers to the subcontractor and issuing checks for payment to the workers – checks without tax deductions taken out. The network of labor brokers allows large subcontractors to maintain a measure of deniability for the payroll violations performed for their benefit. Most of the workers interviewed who were recruited into the underground economy in this way were recent immigrants unfamiliar with their rights or fearful of exercising them.

If there is a promising finding from this research, it is that the underground economy in DC's commercial construction market,

though substantial, still appears to be highly concentrated in certain market segments. It is vulnerable to disruption by strategic enforcement actions targeting these market segments: mechanical, electrical and drywall construction on large privately funded building projects in the District. If the relevant enforcement agencies resolve to end this unlawful activity, through site-based audits and other interventions, they may find success. Without action, however, this labor market model may penetrate the remaining segments of the District's commercial construction market.

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The **Catholic**



Labor Network

TESTIMONY REGARDING DOES FY 2022 BUDGET PRIORITIES

Commissioner Trupti J. Patel, ANC 2A03

June 9, 2021

Good Afternoon Chairperson Silverman and fellow Council Members. My name is Trupti Patel and I am testifying as the ANC Commissioner that represents the Historic Foggy Bottom.

I weigh the great responsibility of trying to be eloquent, articulate and succinct on an issue that is intensely emotional and deeply personal for myself and others.

As a result of the coronavirus pandemic, new unemployment insurance (ui) claims in the District of Columbia, as of June 4, 2021, have reached an unprecedented level, with 204,702 new claims.

The Department of Employment Services (DOES) needs to immediately prioritize the back-log of 13,000 unemployment claimants who had their benefits interrupted when DOES adjusted for the America Rescue Plan.

These challenges due to the some of the following reasons

- lack of properly trained DOES staff
- incorrect/conflicting information by DOES staff
- outdated IT structure ;

1 in 5 unemployment insurance claimants have had their benefits interrupted since March 2021 with no resolution as of today.

DOES still has several thousand claimants that still have not received back ui claims when their benefits were interrupted in September of 2020 when claimants were transition to Pandemic Emergency Unemployment Compensation due to having combined wages from working in neighboring states in the tri-state region.

DOES should match in scale their response to the urgency this crisis has inflicted upon claimants in regards to food and housing insecurity.

Even as I testify before you today I am without UI benefits as there is an IT issue against my claim just like workers like John Kilker, William Balantae, and Nevin Mills.

We're traumatized and having DOES agents that can't provide concrete answers adds to the mental anguish. We're not just a statistic, we're residents who contributed to the success of this beloved city.

DOES needs to prioritize getting funds out to claimants and wiping out the backlog. We've been in this crisis now for 16 months and yet no traction from DOES in doing IT upgrades that are not disruptive to claimants.

Funds should be directed to the following:

- Complete IT rehaul
- Outreach with Community Partners and ANC Commissioner
- Staffing for Claims Examiners & Investigators

DOES is an agency that must function properly.

TO: Elissa Silverman, Chair, Committee on Labor and Workforce Development

RE: DOES Budget Priorities in DC. FY22 budget

WHEREAS, in May 2020, ANC 2A voted 7-0-0 in favor of prioritizing FY 21 budget funds to update the antiquated IT infrastructure;

WHEREAS, as a result of the coronavirus pandemic, new unemployment insurance (ui) claims in the District of Columbia, as of May 14, 2021, have reached an unprecedented level, with 201,430 new claims¹;

WHEREAS, the Department of Employment Services (DOES) needs to immediately prioritize the back-log of 13,000² unemployment claimants who had their benefits interrupted when DOES adjusted for the America Rescue Plan;

WHEREAS, these challenges due to the some of the following reasons

- lack of properly trained DOES staff
- incorrect/conflicting information by DOES staff
- outdated IT structure ;

WHEREAS, 1 in 5³ unemployment insurance claimants have had their benefits interrupted since March 2021 with no resolution as of today;

WHEREAS, DOES still has several thousand claimants that still have not received back ui claims when their benefits were interrupted in September of 2020 when claimants were transition to Pandemic Emergency Unemployment Compensation due to having combined wages from working in neighboring states in the tri-state region, and;

WHEREAS, DOES should match in scale their response to the urgency this crisis has inflicted upon claimants in regards to food and housing insecurity.

THEREFORE, BE IT RESOLVED that ANC 2A urgently encourages the DC Council's Committee on Labor and Workforce Development to allocate funding for the modernization of the DOES unemployment insurance system and comprehensive training for all staff.

¹ [DC DOES \(@DOES_DC\) / Twitter](#)

² https://www.washingtonpost.com/local/dc-politics/dc-unemployment-council-morris-hughes/2021/05/12/3dd202de-b337-11eb-9059-d8176b9e3798_story.html

³ Ibid

BE IT FURTHER RESOLVED that ANC 2A urges the DC Council to introduce legislation to cut through the red tape so that thousands of unemployment insurance claimants may receive their direly needed funds.

Commissioners Trupti Patel (2A03@anc.dc.gov) and Jeri Epstien (2A06@anc.dc.gov) are the Commission's representatives in this matter

CC: Dr. Unique Morris-Hughes, Director, Department of Employment Services
Phil Mendelson, Chairman District of Columbia Council
Joe Florio, Mayor's Office of Community Relations and Service

CHAIRPERSON ELISSA SILVERMAN

COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

Committee Public Hearings on the
"Fiscal Year 2022 Local Budget Act of 2021."

James Vollman, Board Member, On-Ramps to Careers

Good afternoon Chairperson Silverman and members of the committee. My name is James Vollman, Board Member with the organization On-Ramps to Careers (On-Ramps). I am providing this testimony on behalf of the entire On-Ramps' Board of Directors representing companies like AT&T, Accenture, Amazon Web Services, and Pepco in addition to the On-Ramps to Careers staff, 30 technology employer partners, and the hundreds of talented technology STEM students who have participated and hope to participate in our impactful employment program.

On-Ramps makes promising technology career paths more attainable for underserved students in Washington DC. We empower future leaders and employers to grow a more diverse, inclusive and prosperous talent pipeline for regional economic development and impact. We do this through:

- Internships that inspire students to hone their STEM skills and create valuable relationships with STEM professionals
- STEM career training, work-based learning and placement
- Crucial partnerships with employers and community, education and training institutions

Since 2013, On-Ramps has provided over 700 technology internships to students across the city - particularly young people in greatest need at 18 DCPS and DC Public Charter schools. The organization has also provided entry level technology training to another 100 youth and adult students in partnership with DCPS, OCTO, and the Department of Employment Services (DOES). In 2013 we trained and placed 25 youth in technology internships. This summer we will place over 300 interns. On-Ramps offers an innovative program model, systems-level expertise, and relationships to help students access our city's abundant potential STEM career opportunities.

On-Ramps has emerged from the challenges of COVID-19 as the leading STEM workforce development program that has built a strong foundation, is technologically agile, fiscally efficient and poised for growth. In the nearly 10 years since our first cohort of interns began, we have proven that On-Ramps is a vital partner for the city in providing technology-based internships that create highly skilled jobs for youth. Our results have also been achieved at an extraordinarily efficient rate with a comparatively lower cost per participant that yields long-term economic benefits for our city's youth and communities.

Several months ago, at the peak of COVID-19, Mayor Muriel Bowser acknowledged On-Ramps and the need for increasing resources for its impact and growth. "Coming into 2020, we already knew how important it is to prepare our young people for careers in tech. Now, with so much of our life going online, it is critical that we connect our young people to

new and existing opportunities,” said Mayor Bowser. “We have exceptionally talented students in DC, and through partnerships like this one, we are thrilled that they will have more opportunities to learn, grow, and change the world.”

We know firsthand, through the hundreds of active alumni and current participants, the challenges that our young professionals and employment partners have been facing this past year. Every student worked with their employers remotely. All of the On-Ramp’s trainings and support were provided virtually. Plus, employers had to adjust resources to support an all-digital infrastructure and had to reimagine what a meaningful technology work experience could look like for our youth.

What we have learned through this period is that our city’s youth are resilient, talented and ready to work. The 30 employer partners that On-Ramps recruits and supports see the value of our students both in-person and virtually and are willing to work with us because it’s good for our students and good for their businesses. Approximately 97% of employer partners from previous years return to host and increase youth from On-Ramps to Careers. But we can’t maintain our organization’s direct service AND systems-level workforce momentum without the necessary resources from the city to recover, re-engage, and reimagine what’s possible when we work together.

On-Ramps to Careers has a clear path to support the city's goals to open back up even better than before the pandemic. This path requires:

1. Recovery of funding for the MBSYEP program – particularly focusing on the Human Care Agreement funding that our organization and others need to make STEM careers accessible to DC youth. On-Ramps and other organizations' funding for this was reduced and does not meet the full youth employment resources and capacity that our organization needs. This gap is compounded by the increase of student placements at 30 STEM employer host sites.
2. For our organization to scale the impact that we have demonstrated, financial support for capacity building to support our youth, employer partners, and alumni is a necessity. Organizations like On-Ramps have had to tighten their belts for the past year and make sacrifices in resources for those we serve AND our staff who ensure that the program is successful. We are requesting capacity building funding to ensure that we, and other organizations with demonstrated job creation results, need to meet and exceed pre-COVID standards of excellence.
3. Similarly, On-Ramps has learned valuable lessons related to virtual student engagement, remote partnership building with employers, and have a larger cohort of alumni seeking ways to leverage their experience for long-term post-secondary and career success. We believe that now is the time to recognize the challenges from the past year as lessons to inform new strategic

scale. We are requesting that funding be considered to support an investment for workforce innovation that will help create more opportunities for our youth, alumni and business partners.

On-Ramps' 5-year goal is to provide 2,000 more underrepresented and low-income Washington DC students with inspiring technology career opportunities. Internship requests from employers in 2021 have doubled since 2019, even during this public health crisis, and we will have 250 young people this summer participating in technology internships. We are also expanding our service to alumni and piloting virtual technology apprenticeships to create more pathways for our students to join employers after their internships and graduation. We plan to quadruple our impact over 5 years (from 200 students in 2020 to 900 in 2024) making a tangible impact on the inclusiveness and diversity of our region's tech economy.

We recognize that our work has never been a singular endeavor and we are fortunate to be a voice for so many other workforce development organizations both joining this hearing today and many more that are not. Our past successes, resiliency during the pandemic, and a shared spirit of hope for the years ahead illuminate the opportunity in front of all of us. We thank Councilmember Silverman for the opportunity to share more about this opportunity.

James Vollman

Board Member, On-Ramps to Careers

CHAIRPERSON ELISSA SILVERMAN

COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

Committee Public Hearings on the "Fiscal Year 2022 Local Budget Act of 2021."

Good afternoon councilmembers, my name is Erik Latimer, I am ward 4 resident and current transfer student at the University of Maryland College Park heading into Senior year majoring in Computer Engineering. Like many youth within our city, college was not an immediate, easy, or clear next step for me upon graduation from Woodrow Wilson Senior High School in 2017. Even with our city's amazing programs like DC CAP and DC TAG, the often \$45,000 - \$60,000+ a year price tags were just not feasible for me or my family. I would spend nearly all of my hours after school and on weekends modifying PC hardware, programming "the next big" application, breadboarding new digital circuit designs, playing around with different Linux distros, modifying drivers, learning new frameworks and languages, and checking out open-source projects. I knew what I wanted to do, I knew what I loved, and I knew what I wanted to study, but even with all of the scholarship money, DC CAP, and DC TAG, college just wasn't an affordable option for me. And unfortunately to work and demonstrate my expertise, you need a degree to show that you have the ability to do so. It looked like I would be working minimum wage in areas and I had no work opportunities to help my family.

However, On-Ramps to Careers changed my life. Junior year of high school, before my graduation dilemma, Ms. Hilary Jones, the Managing Director of On-Ramps to Careers pulled me and another student out of my A.P. Computer Science AB class to offer us an internship *at Microsoft. Microsoft!* She explained that she was a part of an organization called On-Ramps to Careers, an organization that helped youth in the city get connected with technology internships. That day would forever change my life, and the day I was accepted into the Microsoft internship was one of my happiest. I spent the entire summer with like-minded peers throughout the city, and who are my friends today, programming

and developing a video game for mobile platforms under Microsoft. Looking back, the game we produced is lack-luster compared to expertise and knowledge we possess now but it is still present in the Microsoft store available for download for both PC and Windows-based mobile phones to this day as “GSAphaDemo”. I had a blast that summer and I was finally able to utilize many of the skills I had learned on my own to produce a product or a service of value for a technology company like Microsoft. I was even featured on NBC Washington (<https://www.nbcwashington.com/news/local/dc-high-school-students-building-game-app-for-microsoft/59394/>).

After that summer, I was invited to return to On-Ramps and interned at several companies year after year including Samsung, Acquired Data Solutions, Indie Co, and an extended year-round co-op with Microsoft. These internships gave me the experience I was missing in my own skill portfolio, and connections I never thought I would have, and eventually led to an offer at Acquired Data Solutions and my first job and Engineering position! I am still with Acquired Data Solutions today, having worked on major contracts with companies like Raytheon, Boeing, and Ford Motor Company, and in government work with agencies such as the TSA. On-Ramps to Careers led me to Acquired Data Solutions, which finally opened the door for higher-level education for me. Acquired Data Solutions gave me the option to work and save up money for school, affording me the opportunity to attend local college on my new income, and eventually the opportunity transferring to the University of Maryland at College Park last year. I am now proud to say I have one more year left until I complete my Computer Engineering degree.

My story could have been story of a young adolescent burning with passion and eager to work more in his field but with no feasible path forward due to economic circumstances and a lack of opportunities. I could be working at in a low-skilled job in which does not spark my passion, motivation, or mind – which is the case for many of my friends and peers. On-Ramps to Careers took in 80 of my peers my first summer, placing them with companies like Accenture, organizations like Virginia Tech’s own Innovation Lab, and

departments like OCTO, among many others. Then the next summer, they took in 120 of my peers due to increase demand from existing employer partners, and the request of other companies to be employer partners. Then the next 150, then 180. On-Ramps to Careers now serves more than 250 of our city's youth, with stories just like mine. I am so proud to see On-Ramps' growth, and where it is heading. On-Ramps is leading the city in the training and employment of my peers in the technology industry, providing highly technical, passionate, and ready employees to the city's technology companies, and sector as a whole.

From the bottom of my heart, and I speak for many of my friends, thank you to On-Ramps, and everyone that supports this program. It is my deepest hope that I may see this program have the resources it needs to flourish and grow.

Good morning/afternoon Councilmember Silverman, member of the Committee on Labor and Workforce Development and District of Columbia Residents

My name is Reginald Black and I am a native Washingtonian ward 4 resident, the advocacy director of People for fairness Coalition and a Lived Experience Appointee to the Interagency Council on Homelessness.

I am here today to emphasize the District of Columbia's effort to enforce and strengthen the first source and certified business enterprise laws in the District of Columbia. The First source and the Certified business enterprise Laws were intended to make sure district of Columbia residents are gaining the best chance for employment. For the Last two years the interagency council on homelessness through the work of its consumer engagement workgroup has been attempting to produce a proactive model of enforcing the first source law. We in partnership with the DC Department of Behavioral health converted a special program to employ the current residents of the 801 East Men's Shelter to secure capital improvement occupations tied to the project to replace the shelter. It was a process and I would like to emphasize that the project mentioned here was to be a first source project. Currently, I am working with its advisor team as a lived experience representative to make sure those with the skills can gain employment and also create small business as well as ensure those businesses are considered CBE's under the law. While Housing instability is not just a financial issue it is one that we need more collaboration

DC has a long way to go even though there has been great progress, I am curious to know just how deep does the Department of Employment services engage with securing housing placement for residents in terms of making sure that they have substantial increases of income. Please inquire if the director or her team have constant and frequent engagements in our homeless services system. Please ask How much of last year's budget went to assisting residents enter the social assistance sector. While this sector is not in high demand like most of the workforce opportunity investment act occupation, it is the next highest just under those five occupations. Those who have the lived experience of being unhoused should be offered these crucial positions in order to help us accelerate housing placements and connections higher income.

One great example of this kind of work is the tireless work of the late great Waldon Adams. Waldon himself faced housing instability and became a vital and strong voice for the housing first model and the permanent supportive housing program. While housed, Waldon was hired as an advocacy fellow at Miriam's Kitchen, then hired as a fully licensed LCSW case manager and peer specialist under the banner of Pathways to Housing DC. Before his tragic and untimely passing I was honored to serve with him as a full council Lived experience appointee to the interagency council on homelessness. Waldon was a great example of the kinds of employment we can offer to currently and formerly homeless persons advocates and supporters.

Proactive enforcement of first source can take place in the social assistance sector of the labor market, and can produce huge success like the case of Walden Adams. In addition groups like People for Fairness Coalition can benefit from being recognized as a peer Black led certified business enterprise. Programs like Project Empowerment should be looking at and considering having in placement into industry sectors that they have indicated they have experience in. I remember when I indicated I wanted to work in the social service sector, but I was told that I had to take whatever job was available. This notion implies that our training means nothing, our lived experience doesn't count, that the way we want to involve ourselves in life doesn't matter. I can tell you that our expertise and skills even our very lives do matter which is why this point accentuates what I must relay to at this time, the Department of Employment Services refused to participate in an internal racial equity survey produced by the ICJ, we know that racial issues do not just affect consumers but it also affects employees. When the director who is designated by law to be a voting government member does not come or send a designee to committees in this space that are discussing programs like rapid rehousing and permanent supportive housing how can we effectively measure income growth? It was reported that in one quarter DHS and does clients only increase their income to the amount of 4,000 or so total this is not enough growth to afford housing in the District of Columbia this is why we should make sure all of our agencies are committed to racial equity, in lieu of a budget ask I'm requesting this committee in partnership with Council Office on Racial Equity and the Inspector General independently conduct a survey and investigation as to the Department of Employment Services reluctance to participate.. To be a fair and inclusive city we need to do better

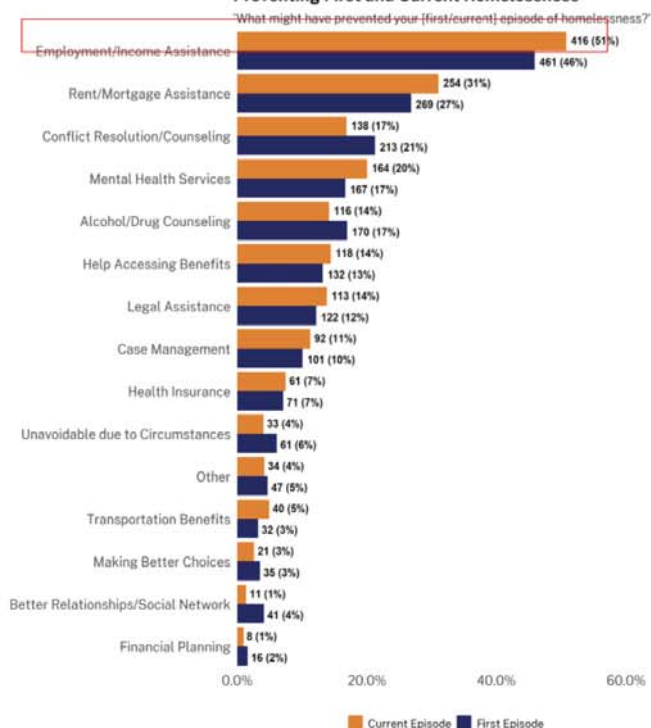
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Thank you for the opportunity to testify and I am happy to answer any question you may have

PIT+ Data: People want a job.



Preventing First and Current Homelessness



First Episode: 1,954 responses from 1,004 respondents
Current Episode: 1,632 responses from 819 respondents

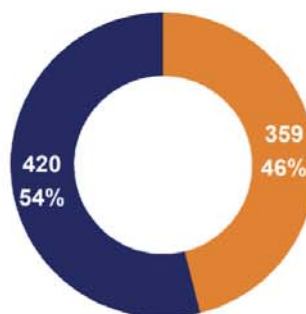
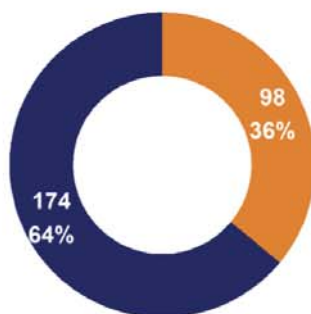
PIT+ Data: People want a job.



Employment/Income Assistance Would Prevent First Homeless Episode

Female

Male



Employment/Income Assistance Would Prevent First Episode of Homelessness
Did not Report Employment/Income Assistance Would Prevent First Episode of Homelessness

n = 1,051, p < 0.01



On average, earning adults in families and single adults earn similar amounts per quarter while in the CoC. In both groups, women earn less than men (about \$1,300 v. \$1,500/month, respectively).

Quarterly Wages

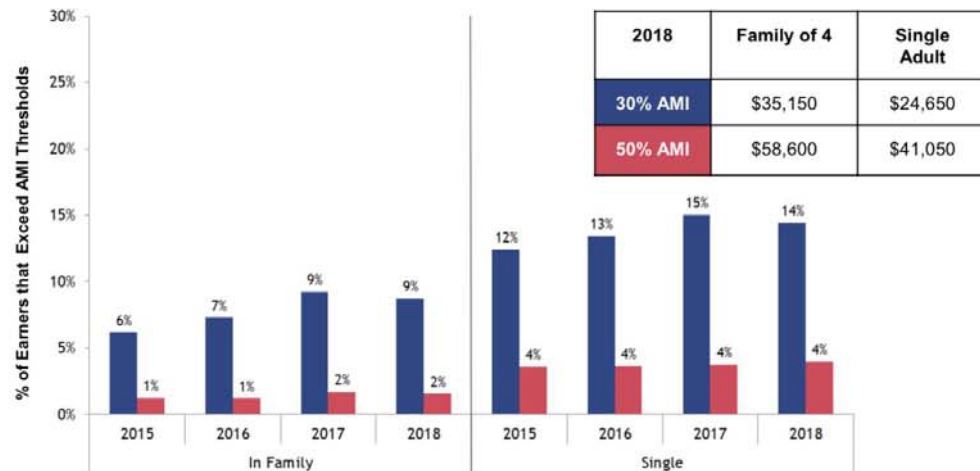
	Men	Women	Difference
In Family	\$4,475	\$3,889	\$586
Single Adult	\$4,225	\$3,815	\$410
Difference	\$250	\$74	

Group Sizes
Men / In Family: 864
Women / In Family: 3,257
Men / Single: 3,089
Women / Single: 1,307

*Please note that these analyses are preliminary and subject to change.
All analyses are descriptive, and not meant to be interpreted as causal.*

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Nine percent of families made at least 30% Area Median Income (AMI). About 2% made 50% AMI. Similarly, 14% of single adults made at least 30% AMI. Only 4% made at least 50% AMI



Group Sizes
'15: 4,329 families
'16: 5,092 families
'17: 4,958 families
'18: 5,093 families
'15: 10,578 adults
'16: 10,759 adults
'17: 11,647 adults
'18: 12,430 adults

*Please note that these analyses are preliminary and subject to change.
All analyses are descriptive, and not meant to be interpreted as causal.*

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PROCESS OVERVIEW: MEMBER AGENCY



15 of the 32 Member Agencies completed the Organizational Assessment Survey.

Advocate

- *DC Coalition Against Domestic Violence*
- *DC Fiscal Policy Institute*
- *Miriam's Kitchen*
- *Sasha Bruce Youthworks*

Continuum of Care

- *The Community Partnership*

Government

- *Child and Family Services Agency*
- *DC Housing Authority*
- *DC Metropolitan Police*
- *Department of Behavioral Health*
- *Department of Corrections*
- *Department of Employment Services*
- *Department of General Services*
- *Department of Health*
- *Department of Housing and Community Development*
- *Department of Human Services*
- *Deputy Mayor for Health and Human Services*
- *Homeland Security and Emergency Management Agency*
- *Office of LGBTQ Affairs*
- *Office of the City Administrator*
- *Office of the State Superintendent of Education*

Private Sector

- *Jaydot LLC*
- *National Community Church*
- *National Health Care for the Homeless*
- *The Community Foundation*

Provider

- *Coalition for the Homeless*
- *Community Connections*
- *Community of Hope*
- *District Alliance for Safe Housing*
- *Friendship Place*
- *N Street Village*
- *Pathways to Housing*
- *Supporting and Mentoring Youth Advocates and Leaders*



PROCESS OVERVIEW



The Department of Employment Services Oversight Hearing Testimony

My name is Mukta Ghorpadey and I am the Advisory Neighborhood Commissioner for Single Member District 1A07, serving Columbia Heights. I am also the Associate Director of Post-Secondary Success at DC Preparatory Academy, a public charter school network that provides ongoing services for alumni through their college experience and beyond. Before that, I was the Director of Alumni Services for Urban Alliance. In all these capacities, I've worked with DC youth once they've graduated high school, connecting them to employment, training, academic opportunities, and social services.

One integral part of my work with youth has been collaborating with the Department of Employment Services' Summer Youth Employment Program to provide meaningful work for over 40 young people every year. Without this partnership, I would not have been able to fund these summer internships for my youth. With that said, each year, I have experienced the same frustrations with SYEP. While the SYEP employees have been helpful to the best of their abilities, these issues were not always resolved and stem from more systemic problems with its overall programmatic structure and logistics.

First and foremost, I want to advocate for an increase of pay for all participants. As of right now, young people under 22 make \$9 an hour or less, significantly below minimum wage. This is unacceptable, especially considering the majority of participants are Black and Brown youth that come from low-income families. I have seen first-hand the power that meaningful paid work can have on the long-term trajectory of a young person's success; in this city, even working at \$15 an hour can make it hard to make ends meet. If this city is serious about violence prevention, youth empowerment, and racial equity, I believe it is absolutely necessary that DC's far-reaching youth employment program pays its participants – above 18, at least – minimum wage.

Second, I have consistently had instances where at least one of my students is unable to prove residency and is, therefore, not able to participate in SYEP. From my work, I know that DC's youth population can be extremely transient and, many times, experiences houselessness or unstable housing. This makes it impossible for many students to gather qualifying documents and, when I bring up specific student stories, I am met with the same regurgitated list of eligibility documents. These documents work for students that are using homelessness services or are in a higher education institution, both of which can verify their residency for DOES. However, those that don't fit these categories are unable to participate despite the fact that they are, many times, the young people most in need of this job opportunity. I recommend an expansion of organizations that can vouch for a young person's housing status – including members of the ANC or trusted CBOs. It is avoidable and unacceptable for housing insecure young people to be turned away from SYEP every year.

Lastly, and I acknowledge that this is a bigger conversation than can be had during this testimony, I am frustrated by the quality of work students engage in through SYEP every year and especially now, with its virtual Career Edge curriculum. I have worked with a number of young people that have shared with me how little they have gained from the SYEP professional development curriculum. This is an opportunity to reach thousands of young people and to help them gain invaluable professional development skills. To not invest in the curriculum and accountability around it does a huge disservice to the young people we all serve. If SYEP is able to make its curriculum more effective, we can help thousands of young DC residents more equitably and preparedly enter the professional world.

Thank you for allowing me to submit this testimony for the official record. I hope that we can see results through these oversight hearings and I look forward to continuing to advocate for DC's youth.

**CHAIRPERSON ELISSA SILVERMAN COMMITTEE ON LABOR AND
WORKFORCE DEVELOPMENT**

ANNOUNCES A BUDGET OVERSIGHT HEARING

DEPARTMENT OF EMPLOYMENT SERVICES

Wednesday, June 9, 2021, 9:00 a.m.

Good morning Councilmember Silverman, my name is

Charlie Whitaker, today I am testifying on behalf of the 54 employees of Career Path DC which 70 percent are returning citizens. Out of the 70 percent of returning citizens that work for CPDC over 50 percent of those individuals came through the Project Empowerment Program. I would first like to thank the Mayor, Councilmembers and the Department of Employment Services for the opportunity to work with DC residents. It is extremely important for a family to be able to become self-sufficient in order to be successful. Also, individuals returning home from being incarcerated need an opportunity to get the support from the workforce to get on their feet to avoid recidivism. The Department of Employment Services has been a wonderful partner with CPDC for the past eleven (11) years.

CPDC is thank full that parts of DOES was open during the pandemic and we were still able to hirer qualify candidates from Project Empowerment. Some of my best employees came through the Project Empowerment Program. As a matter of fact, the director of Clean Team Services came through the Project Empowerment Program. Project Empowerment has been a useful resource for Career Path DC as it relates to training, placement, and retention of CPDC employees. I would like to thank Dr. Unique Morris Hughes and her staff for always having an open-door policy to discuss any ideas or concerns that would assist participants that come through the Project Empowerment Program.

Department of Employment Services budget hearing

C. DeShola Dawkins

June 9, 2021

Good morning/afternoon:

My name is DeShola Dawkins. I have lived in DC since 1967. I appear here today as a grassroots organizer, Chief Executive Director of Next Level Vision (NLV), volunteer leader with Moms Demand Action (Moms) and an Everytown Survivor Fellow which advocates for common sense legislation to combat gun violence in our country. I am representing all three of these organizations in my testimony here today.

I first learned about Moms in 2014, one year after I lost my own son, Timothy D. Dawkins to gun violence on August 21st, 2013. Timothy was also an advocate and mentor for youth in his community and was the best friend of the current councilmember Trayon White in Ward Eight. In an effort to find communities that supported my grief and also fighting for common sense legislation changes to combat gun violence I started to do work with Moms. In fact, I noticed that there were not any organizations with people who looked like myself. However, since this time, that is no longer the circumstance. I later co-founded the Coalition of Concerned Mothers and recently founded NLV. The mission of NLV is to build a networking partnership with our community leaders, to form and inform our families of available resources and programs. We want to inspire and encourage leaders to organize, strategize and mobilize in unity and love. Our vision is to change the culture of our community from gun violence to love and not hate. We are working with all organizations who are willing to work in unity and share the responsibility of taking our generation to the *next level vision*.

In an effort to create the culture change in our community of de-normalizing gun violence, we must provide better opportunities for our at-risk youth, those most at-risk of being victims or perpetrators of violence. We must provide funding to the many small grassroots organizations in the community who are in the best position to connect with youth and provide them with opportunities for growth and engagement. Most of our youth are looking for that opportunity and as a city it is our duty to provide this. We are in support of more training programs, trade school opportunities, and jobs to give people a real alternative to a life of violence.

I am also here today to recommend investment in a Peace Academy. I urge the Department of Employment Services to create a certificate program to create a streamlined job track for the District's street outreach programs, and enable DC to provide much needed violence interruption and prevention. This program would enable participants to gain jobs with OAG's Cure the Streets program, ONSE's violence interrupters, DYRS's Credible Messengers, DPR's Roving Leaders, and other non-government violence interruption and street outreach providers such as NLV. In addition to creating a pipeline for careers as peace-makers and street outreach providers, this Peace Academy could also develop a program to provide education and training

for entry level positions in trauma-informed mental health services. This could be a certificate program with career pathways for individuals who want to pursue further education and training to become licensed mental health professionals. The government can identify partners at Howard University, UDC, Johns Hopkins or other local universities to develop and run this Peace Academy, making it a public-private endeavor. We strongly urge the Department of Employment Services to fully fund a Peace Academy, which has extraordinary promise as a means of preventing any more tragic loss of life AND as a path to much needed career opportunities.

We acknowledge the Mayor's budget proposals, which include \$450,000 for a violence interruption certificate program at UDC and \$200,000 for restorative justice training. But we need to go further and think bolder! We need to give our communities the chance to thrive, not just survive. It is important to invest in much needed life-saving street outreach and mental health support career pathways. I urge the Council to go further, think bolder, and give our communities a real chance for economic mobility.

Thank you for giving me the opportunity to testify here today.

Testimony of Jean-Michel Giraud, President & CEO,
Friendship Place
before the District of Columbia Committee on Labor and Workforce Development
on DOES Budget Oversight
June 9, 2021

Good morning, Chairperson Silverman, and Members of the Committee. Thank you for giving me the opportunity to testify. I am Jean-Michel Giraud, the President & CEO of Friendship Place.

Friendship Place, as you know, is the premier regional homeless-services provider, serving over 3,700 persons experiencing homelessness in the greater DC region. We have a wide range of supportive programs including on-site permanent supportive housing at La Casa (PSH) and scattered-site in our Neighbors First programs, street outreach, family short-term housing at The Brooks, drop-in and hospitality, psychiatric and medical consultations, 24-hour access shelter, rapid rehousing for veterans, youth case management and job placement services at AimHire. We are working to make homelessness rare, brief, and non-recurring.

We are grateful to have had the opportunity to present our Job First model and our success helping formerly homeless individuals find employment at the DOES oversight hearing on March 3rd. We would also like to thank Council Member Silverman for her engagement around how this innovative model could help the Department of Employment Services improve its job outcomes, in both that hearing and the subsequent government witness hearing for DOES with Director Morris-Hughes on March 5.

We were graciously granted the opportunity to meet with Director Morris-Hughes, who has expressed openness to our AimHire Job First model. Based on our conversations, I am here to speak to the committee in favor of supporting grant funding for innovation around this model at DOES in your FY'22 budget mark-up.

Mayor Bowser's current budget proposal recommends a \$75M increase to the DOES budget—acknowledging the importance of expanding employment services as

jobs are created and individuals emerge from the pandemic. This includes an increase of \$7M for statewide activities including “workforce innovation” and a \$30M increase in transitional employment. These investments can be maximized through a Job First employment model.

AimHire has a proven record of efficiency and success working with individuals experiencing homelessness, who face challenges such as those targeted by the Transitional Employment program. Our employment specialists expedite soft-skills training and build relationships with employers to help our clients find jobs quickly— an average of 90 days (about 3 months) to employment. Rather than wait for the results of a training program, we assume employability and foster self-reliance through job acquisition. Our employment specialists build relationships with employers to help our clients find jobs quickly. We believe this model will be especially effective for the many skilled individuals who lost their jobs due to the pandemic, maximizing the number of individuals we can help regain jobs. This approach is solutions-driven, outcomes-oriented, and does not foster dependency by letting people fall to the most supportive layers of the system.

Job First focuses on the outcome: the job. Based upon our past hiring successes and DOES’s FY19 per job cost, we believe we could have significant savings per person employed. At AimHire, we have a growth model that would allow us to expand capacity to as many as 1000 new clients.

The Job First model succeeds by connecting motivated jobseekers and employers who are ready to hire. Our job specialists develop relationships with an array of employers to create opportunities for our clients. We help employers discover the unique assets of potential employees and overcome obstacles to employment including educational background, homelessness, or a past criminal record.

Finally, employers appreciate the service we are offering to them. AimHire brings qualified candidates to employers at no cost to the employer, unlike for-profit recruitment models.

Job First programming provides employers access to motivated candidates and helps get people placed quickly and cost-effectively. This model helps build self-esteem

through timely employment, creating self-sustaining residents who avoid the downward spiral of increasing dependency.

For these reasons, we ask that you retain grant funding at DOES that allows for innovative pilot programming like the Job first approach at AimHire. Please join us in making DC the nation's first "job-first" city, so we can help DC residents find the jobs they deserve. Thank you. (END)

Budget Hearing - Committee on Labor, Department of Employment Services

Committee Chair: Councilmember Elisa Silverman

June 9, 2021

Testimony from Yvette Scorse, communications director, Byte Back

My name is Yvette Scorse, and I'm the communications director of Byte Back, headquartered in Washington, DC. For 24 years, we've provided a pathway of inclusive tech training that leads to living-wage careers. I'm also a proud Ward 6 resident.

DC's unemployed residents need reskilling and upskilling more than ever, and it is so valuable and essential for adult learners to have a digital literacy foundation to build upon.

This year, we were happy to see DOES recognize digital literacy and tech devices as key to employment. Thanks to a \$215,000 grant through DOES, we've taught 107 adults at in-person one-week cohorts since November and distributed 83 laptops to participants. Students have logged 2,418 training hours, learning basic computer functions, practical internet and email use for life and work, and Microsoft Word essentials.

Many returning citizens in the program have shared that really never got the chance to build computer skills, and this is the case for so many DC residents. The fact that this program offers a computer as an incentive for completion is even better because students can continue to practice computer skills at home AND they have a computer readily available for applying for jobs, enrolling in school, online banking, and taking care of all of life's other digital tasks.

87% of students completed the course, and 89% of those students said that "because of this course they are a more competitive job candidate." Participants are referred by DOES from Project Empowerment and DC Career Connections, and this process is working well. We even extended our partnership together, to run until the end of FY21.

Some comments from participants from this course included:

- "This was a great course to take. Please keep it open."
- "I'll be studying on my new laptop. thanks to Byte Back"
- "Great opportunity! I am excited for this fresh start."
- "Just wanted to say how appreciative I am for the program and MR. Andrew"
- "My teacher helped me understand and process the computer knowledge, better

than any computer class I've ever enrolled in."

The funding in the mayor's proposed budget seems to remain stable for Project Empowerment and Career Connections, though it's not marked specifically for digital literacy or computer training. Because of our partnership's success with DOES and the needs of unemployed residents, we're advocating for \$500,000 in the DOES budget to be dedicated for computer foundations training.

We look forward to continuing our collaboration with DOES and are thrilled with DOES's recognition and action to help end the digital divide for unemployed residents.

Testimony on the Department of Employment Services (DOES) to the Committee on Labor & Workforce Development, Chair Elissa Silverman
June 9, 2021
Witness: REGINA WELCH

My name is Regina Welch and I am a recent Byte Back graduate. I completed the Computer Foundations course last year. I'm a DC-native, currently living in Ward 1.

Due to the COVID-19 pandemic, I was laid off from my job. It was really scary to not have an income, and due to the heightened need, I could not rely on unemployment benefits alone. I knew I had to apply for positions remotely, and my daughter had bought me a new laptop to use for this purpose, but I didn't touch the computer for three weeks because I was so intimidated.

I've had some experience with technology over the course of my career in the hospitality industry, but I still found myself stuck at how to get started. Thankfully, I remembered Byte Back, where I had attempted to take courses before, but couldn't make the time due to scheduling conflicts. I knew I had to do something to help bolster my income, which made it the perfect time to enroll in courses again. I'm so glad I did.

My experience in Byte Back's Computer Foundation class was completely awesome. This is the same class that DOES has been supporting this year and should continue funding. Before my course, I never felt qualified for managerial positions because I wasn't tech savvy enough – I didn't have the technical qualifications needed to feel confident while applying. As soon as I started the course, I learned invaluable skills needed in any industry today: How to write my resume, how to attach my resume to emails and applications, how to research companies...the list goes on.

My instructors were so patient with me, providing individualized feedback and assistance along the way. I still reach out to them occasionally to say thank you. Byte Back not only gave me the skills I needed to move forward in my career, but also gave me the confidence I needed to realize what I deserved. I know I can go and should go after the best.

The hospitality industry has drastically changed due to the pandemic, which makes it even more critical for individuals to prepare themselves and be technologically literate. I'm sure many others felt like me, having many years of experience but lacking the qualifications that job descriptions today ask for when it comes to comfort with computers. Byte Back's programming should be expanded so more people are able to learn and grow in the way I did. I never would've been able to afford technology courses on my own or compete in today's industry without having taken this course.

Good morning. My name is Matthew Simon. I am an employee of Octo, a federal IT modernization services provider whom I represent today with my testimony. I come today to share a story about me and my company's involvement with a local program that provides IT training and certification to residents of the District. This program is called H.O.P.E. Project DC. While I will share this story today, I share it as a means of promoting programs like the H.O.P.E. Project. These programs provide significant value to not just the participants, but also provide substantial value to the District overall.

I got introduced to H.O.P.E. Project DC through my company Octo's Corporate Social Responsibility Group that has a relationship with this Organization. Working with Ray Bell and his team I saw that HOPE Project DC had created a platform that allows driven individuals who are eager to get into the IT field, some IT related training that helps them get jobs in this field. The focus of this training has been on helping these participants to get the IT fundamental certifications offered by vendors like CompTIA that allow them to get entry level positions in the IT field like working on Helpdesk or ServiceDesk teams.

In the IT space we are seeing that IT specific certifications are becoming more and more important and that the barrier to entry for many jobs in IT has changed where companies are looking for and prioritizing candidates that have specific certifications regardless of whether or not that candidate has a 4 year degree from college.

So to take advantage of this change Octo is looking to partner with programs like H.O.P.E. Project DC to develop additional learning paths within them that are focused on helping the participants in these program to achieve certifications in specialized areas within IT like Cloud Computing, Machine Learning, Data Analytics, etc..

Within the CTO group at Octo we have a structure set up where we have established Centers of Excellence around the technology areas that Octo focuses on. At Octo I am a Technical Director that over sees one of these Centers of Excellence that focus on Cloud Computing and Infrastructure. The approach we have taken is that we wanted to educate the H.O.P.E Project participants of what kind of jobs there are out there in the different technical spaces and so we run webinars we call "A Day in the Life". In these webinars we get a chance to talk about the job opportunities and some of the skill sets needed during a brief presentation portion of the webinar, and then open up the floor to any questions that those in attendance may have. After these sessions we meet with Ray to talk about what level of interest there is from the H.O.P.E project participants to see if this is a training path that we should look into setting up.

The webinar I did on Cloud engineering had over 90+ attendees and there was a lot of interest from people as to how could they get more involved about learning about the cloud and getting certifications within this field. So we started the process of putting that learning path together.

At Octo we leverage an online learning vendor called Cloud Academy that provides us with a catalog of online self-paced training paths in all areas of IT. So we reached out to them to see about becoming a supporter of the H.O.P.E project initiative we were looking to implement. They were anxious to work with us and provided us with 20 Full Seat License for their service that we could use to help build out the new training paths in the specialized areas of IT. This was an amazing gift for us to have, as it allows resources like myself to focus on providing support and mentoring the H.O.P.E Project participants rather than building out Training Material for the

courses we want to teach. Here I was able to build out a Training Program around 4 different AWS Certifications using their material to develop a training course and develop a schedule around that material that would not overwhelm those going through the training. So with these training path in place, I worked with Ray from the HOPE Project to identify an initial group of students to participate in a Pilot Cohort for these training paths, where the students follow the self-paced course on Cloud Academy in conjunction with a 2 hour weekly check-in with me where the participants can ask questions or get more details on the course material they covered that week.

The training paths we have identified so far last anywhere from 1 – 3 months and so with the 20 License seats that Cloud Academy has provided us we think that on average we can help about 10 participants get a specialized certification per month, That will allow us to get about 120 participants a year which is good, but is well below the goal of 500+ students that both Ray Bell and Octo would like to help get a jump start in getting participants jobs in these more advanced IT fields beyond that of the Helpdesk and Service Desk. Getting funding to allow H.O.P.E Project to secure more Cloud Academy license would mean that we could offer more training paths in parallel, as we have run or plan to run “Day in the Life” webinars on other areas like Data Analytics, Testing, Agile Development, and Project Management to try and gauge what interest there is in these areas to see whether or not we should set up training paths within H.O.P.E Project for certifications in those areas.

It has been a great pleasure to work with these students so far and look forward to continuing to work with Ray to build out additional training paths that will allow these students to see that there is a world of opportunities in IT for them beyond the Help Desk.

As I mentioned at the beginning of my testimony, I come here today and share these stories not to advocate specifically for H.O.P.E. Project DC. While my company has done, and plans to continue do work with H.O.P.E. Project DC, we also know that there are many more programs out there like this one. There is value in these programs not only to the individuals who benefit directly from them, but to their families, neighborhoods, and to the District overall. A rising tide lifts all boats, and programs like H.O.P.E. Project DC and others are helping to raise the tide.

There are many programs like H.O.P.E Project DC and many companies like Octo that want to support them. As an employee of a company committed to supporting the DC community, I cannot underscore the value of these programs in helping our fellow Washingtonians get the skills and certifications they need to secure jobs in these advanced IT fields, as well as continuing to provide the support and mentorship they need to excel in those jobs once they get them.

Thank you again for giving me the time and opportunity to present to you today



National Payroll Reporting Consortium

PO Box 850 ★ Henrietta, NY 14467-0850 ★ www.NPRC-Inc.org

NATIONAL PAYROLL REPORTING CONSORNIUM
TESTIMONY BEFORE THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
FISCAL YEAR 2021 BUDGET HEARING

JUNE 9, 2021

Presented by
Peter Isberg, President

Madam Chair and Members of the Committee, I'm Pete Isberg and serve as President of the National Payroll Reporting Consortium. NPRC members are the leading payroll providers supporting literally tens of thousands of District employers and employees by providing human resources administrative services to employers, including payroll processing and employment tax payment and filing services.

Our concern, which is shared by the Restaurant Association of Metropolitan Washington, is for ensuring that consistent with the letter and intent of Council actions, tipped employees in the District receive the full wages to which they're entitled. I want to thank the Chair and the Committee staff who have been proactive in understanding this issue and engaging to help resolve. I appreciate the opportunity to make this a part of the Committee's official record.

In 2018, as the Council addressed legislation that resolved outstanding Initiative 77 tipped employees issues there was an 11th hour amendment that required District employers to use payroll providers in submitting compensation data to DOES' Office of Wage-Hour Compliance ("DOES"). Payroll providers were not part of that process.

The intent of the amendment was to ensure tipped employees received compensation that was at least equal to DC's minimum wage. While NPRC members could fulfill the specific requirements of the statute, DOES did not publish proposed rules or regulations for public comment, but instead issued "instructions" (specifications) for complying with the new statute. Those instructions would not easily identify if an employee has been underpaid. The instructions require information that isn't needed to meet the statute's intent, would force payroll providers to make extensive and expensive changes to their software programs that aren't required by any other jurisdiction and, rather than make those changes, several payroll providers would likely abandon the DC market leaving those 10,000 District small businesses scrambling to meet the unnecessary DOES instructions.

ADP ★ Alliance Payroll ★ Asure Software ★ ApexHCM ★ BenefitMall ★ Ceridian
CheckWriters ★ Gusto ★ Heartland Payroll Solutions ★ Intuit ★ iSolved HCM ★ Paychex
Paycom ★ Paycor ★ Paylocity ★ PPI Business Services ★ PrimePay ★ UKG



NPRC has communicated their concerns and alternatives to DOES for several years¹ and advise on how to best meet the Council's goals. DOES position was that the 2018 legislation hadn't been fully funded so payroll providers and employers should file what they want and there will be no enforcement now... but when there is funding there will be enforcement. .. and that there were no funds to amend the instructions. NPRC members are not comfortable with being told they can ignore the law for now, but be prepared to have it enforced at some time in the future.

Although more recent conversations with DOES indicates there may be some reconsideration of what will be reported, until this matter is finally resolved its potential for bringing major disruptions to the District's restaurants and other businesses warrants the Committee's close monitoring and engagement.

There are two approaches to achieve the council's goal: One proposed by DOES, but never fully implemented or funded and one proposed by the NPRC.

- DOES initial reporting requirements, which are still under review, ² would:
 - Significantly increase costs for DOES, DC employers and payroll providers
 - Not follow the law and are highly and unnecessarily complex: requiring information that is neither readily available nor necessary
 - Generate ambiguous and misleading reports that will not result in easily identifying employees who have been underpaid without extensive and time consuming follow up by DOES staff
 - Not be transparent, efficient or economical
 - Be a unique approach without precedent in the country
 - Likely result in NPRC members terminating service in the District potentially impacting the >10,000,000 DC employers who use payroll providers and their employees.
 - Most importantly make it more difficult to identify wage underpayment.
- NPRC proposal would:
 - Be at no cost the District
 - Create a new Tip Credit Wage Statement, a written or electronic statement prepared by the payroll provider and made available to the employer and the employee that shows the employee's effective hourly rate of pay, including employer paid cash wages plus all reported tips, for all tip credit hours worked for each workweek in the pay period.
 - Could include links or references to DOES resources so that any employee can ask for DOES assistance when wage underpayments are apparent
 - Make it immediately apparent to all if there's an underpayment
 - Follow the successful approach now used in Maryland

Madam Chair, attached Exhibit A compares the Tipped Employees Statements from the District and Maryland.

NPRC is asking the Committee to review these two approaches and consider appropriate Budget Support Act language to ensure that the Council's concerns and intent that the District's tipped employees are assured they are receiving the proper and full pay in a transparent and easy to understand manner be met by identifying and implementing the most transparent, reliable, efficient and economical path to follow.

Madam Chair, that completes my testimony. Thank you and the members of the Committee for this opportunity.

¹ 3 NPRC letters dated September 1, 2017, October 10, 2019, December 4, 2019, numerous email chains, and 5 meetings (copies are in the "Exhibits" Attachment)

² Source: for public comment. Department of Employment Services (DOES) Tipped Wages Reporting – File Format Documentation (no date or version number provided). No draft regulations issued or public comment nor any other guidance interpreting the law.



Exhibit A

How DC's Tipped Employee Wage Statement Compares to Maryland's

- Tipped employees in **DC** receive a pay statement which includes hours worked, gross and net wages, ***cash tips and credit-card tips***. *It does not show easily and transparently (as Maryland's required reports do) if a tipped employee is entitled to any additional "make-up" wages because received tips did not elevate pay to the minimum wage.*
- It's not clear how separately stating cash tips and credit-card tips helps workers. A DC employee can look at their compliant pay statement and not see whether they were paid the applicable minimum wage. (For example, payment of different rates of pay in the same pay period could mask a minimum wage violation.)
- The DC report is ineffective, requiring the employer to display on pay statements (or separately) an employee's own tip-declaration form delineating cash tips and credit-card tips. This is telling the employees what they already know. The DC report alone won't identify a problem as Maryland's required reports do; to confirm appropriate DC wages were paid requires further analysis of wages, hours and tips to determine whether the employee was paid the required minimum wage.
- Maryland's report requires no additional analysis. If a tipped employee does not receive sufficient tips to meet the regular minimum wage rate, it is immediately apparent to all. The report easily identifies the issue to address, with no additional data, analysis or effort required and employers will be encouraged to make immediate and appropriate adjustments.
- **Maryland's** tipped pay statement (which is generally separate from the pay statement) requires that the employer show that the employee was paid at least the required minimum wage for all hours worked. Tipped employees in Maryland receive a pay statement which includes hours worked by rate of pay, gross and net wages, and any make-up pay if wages plus tips are less than the required minimum wage. There is a separate line for the effective hourly tip rate of pay, the critical goal of the Council's legislation and intent.

Maryland Example:

Tip Credit Hours	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 275.00
Make-up Pay			\$ 19.80
TIP CREDIT HOURS AND TIPS		40.00	\$ 440.00
Effective Hourly Tip Rate of Pay			\$ 11.00

DC would need to add missing elements

- Rate of pay
- Separate line for hours worked at different pay rates
- Separate line for make-up pay (if applicable)
- Optimally a separate line for **Effective Hourly Tip Rate of Pay**

This would need to be a separate statement. Most payroll systems are not able to print extensive pay statements, which could be multiple pages.



Headquarters
40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

DC Office
815 16th Street NW, Suite 4162
Washington, DC 20005

Southern Office
2301 21st Ave. South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

Colorado Office
191 University Blvd., #631
Denver, CO 80206

abetterbalance.org | info@abetterbalance.org

Testimony Regarding the Budget Oversight Hearing

**Submitted to the record of the Committee on Labor & Workforce Development on
June 15, 2021 by Sarah Brafman, Senior Policy Counsel and Cassandra Gomez, Staff
Attorney, A Better Balance**

We are submitting this testimony on behalf of A Better Balance, a national nonprofit advocacy organization with a regional office in Washington, D.C. that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, our expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. When we value the work of providing care, which has been long marginalized due to sexism and racism, our communities and our nation are healthier and stronger. To that end, we have been leaders in the fight for workplace leave laws around the country for over a decade.

A Better Balance has been proud to work with other advocates in the District to enact and implement the paid family and medical leave program. **We urge the Council to reject Mayor Bowser's proposals to reduce employer contributions to the Universal Paid Leave Implementation Fund. Instead, we strongly suggest that the Council use the Universal Paid Leave Fund surplus to temporarily expand the maximum duration of paid family and medical leaves and close several gaps that exclude workers from using this critical program, as detailed below.**

I. The Paid Family and Medical Leave Program Is No Less Important Today Than It Was When the Council Initially Enacted It.

When the Council passed the Paid Leave Act in 2017, it recognized the importance of paid family and medical leave and recognized the positive impact it would have for workers and families in the District. In the four years since this critical law was enacted, employers began contributing to the Universal Paid Leave Fund in July 2019, and workers began using the program beginning less than one year ago in July 2020. While much has changed since the law's original enactment, the need for paid family and medical leave in Washington, D.C. has not.

Nationwide, about 3 in 5 private sector workers lack access to short-term disability insurance through their employers, leaving them vulnerable when they need time off from work to address



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Denver, CO 80206

abetterbalance.org | info@abetterbalance.org

their serious health needs.¹ And in the U.S., only 20% of private sector workers receive paid family leave through their employers to bond with a new child or care for a seriously ill or injured family member; among low-income workers, the number is even lower.² This lack of access has forced far too many workers to sacrifice their savings, or lose their job altogether, when they need time to care for themselves or their families. In particular, paid family and medical leave has been critical for workers as we continue to grapple with the COVID-19 pandemic, and it will be needed to address the lasting health impacts of this crisis.

A robust and growing body of research demonstrates the substantial health benefits of paid family and medical leave for working families. Paid medical leave—which provides workers extended time off to deal with their own serious health needs—allows workers to get the treatment they need, when they need it. And family care leave has significant health benefits for both caregivers and care recipients. Washington, D.C.’s paid family and medical leave program provides crucial rights for workers, and will help the District along the road to recovering from COVID-19.

II. The Council Should Reject Mayor Bowser’s Proposed Reallocation and Budget Cuts To the Universal Paid Leave Fund, and Use the Fund’s Current Surplus To Aid Workers Through *This* Program.

Given the significance of Washington, D.C.’s paid family and medical leave program, the Council should ensure that the law—that the Council successfully enacted and the District implemented—is preserved, and we would encourage you to expand the program so that the funds available in the Universal Paid Leave Fund can be fully utilized for their designated purpose. Mayor Bowser’s proposed budget would debilitate the paid family and medical leave program two-fold. First, it would seriously decrease the employer contribution rate, decreasing the fund’s revenue by a staggering \$168.2 million. Second, it treats the Paid Family and Medical Leave fund as a slush fund, using the surplus to pay for a number of other things, many of which have nothing to do with paid family leave.

Under the Mayor’s proposal, employers would receive what is, in effect, a tax cut at the expense of workers and their families via “a one-time reduction” in contributions to the Universal Paid

¹ U.S. Bureau of Labor Statistics, *Employee Benefits Survey: Mar. 2020*, Table 16 (2020), <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

² *National Compensation Survey: Employee Benefits in the United States, Mar. 2020*, U.S. Bureau of Labor Statistics, Table 31 (2020), <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

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abetterbalance.org | info@abetterbalance.org

Leave Fund from the statutorily required 0.62% to the proposed budget's diminished 0.27% in fiscal year 2022. This cut would be in direct violation of statutory requirements,³ which provide for employer contributions of 0.62% of employee wages, and would cost the program \$168.2 million. The Council must not allow this detrimental proposal to pass—as the program is still in its infancy and we continue to grapple with the COVID-19 pandemic; this change could have very negative ramifications on the District.

According to reports from the Mayor's office, the Universal Paid Leave Fund currently has a \$400 million surplus. Rather than diverting any surplus funds from the Universal Paid Leave Fund, we strongly advise that they be used to provide paid family and medical leave benefits to workers, as required by the statute.⁴ In particular, we recommend expanding the program as follows:

- **Increase the length of paid family and medical leave duration.** Under the current paid family and medical leave program, the maximum length of time for which workers can take leave is 2 weeks for medical leave, 6 weeks to care for a seriously ill family member, and 8 weeks to bond with a new child. We recommend that for a 1-year period, the Council increase the maximum duration for all leaves to 8 weeks to match the maximum amount of time granted to new parents. Not only would this be a great help to workers who need time off to care for themselves and their family members, this temporary change would also bring the District's paid leave program closer to the standard maximum leave durations allowed in similar programs around the country—currently, of the 10 jurisdictions with paid family and medical leave laws on the books, Washington, D.C. provides the fewest number of weeks for medical leave, and falls second to Rhode Island for the fewest number of weeks for family leave to care for a seriously ill family member.⁵
- **Ensure that paid family and medical leave is job protected.** As it stands, workers that take paid family and medical leave pursuant to the District's law are not entitled to their jobs upon return from leave. Without a legal right to get their job back, many workers may be unwilling to put their livelihoods in jeopardy by taking the leave they need because the risk to their long-term economic security is too great. To ensure that no worker feels afraid to use their leave rights for fear of losing their job, we strongly

³ “A covered employer shall contribute an amount equal to 0.62% of the wages of each of its covered employees to the Universal Paid Leave Fund in a manner prescribed by the Mayor.” D.C. Code § 32-541.03(a).

⁴ See D.C. Code § 32-551.01(b).

⁵ A Better Balance, *Comparative Chart of Paid Family and Medical Leave Laws in the United States* (May 17, 2021), <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

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recommend amending the program to include job protection. This will increase workers access to the program, and put Washington, D.C.’s law in line with the new standard for all recently enacted paid family and medical leave laws, including Massachusetts and Connecticut.⁶

- **Allow newly unemployed workers to access benefits.** Presently, workers who have recently lost their job are not eligible for paid family and medical leave benefits. Thus, the many individuals who became unemployed during the COVID-19 pandemic are unable to access the paid family and medical leave benefits that their former employers have already paid for on their behalf. This is an unnecessary barrier to the program that unfairly denies deserving Washingtonians needed relief—workers should not have to be currently employed to receive paid family and medical leave benefits.
- **Increase the base period for benefit determination.** Similar to the previous point, many workers have experienced decreased incomes due to job loss or hour reduction in response to the pandemic. Such workers may therefore receive a smaller benefit amount while receiving paid family and medical leave benefits, which are currently calculated using the worker’s average weekly wage “during the 4 out of the 5 quarters immediately preceding the qualifying event during which the eligible individual’s wages were highest.”⁷ To protect workers who have lost income—or who have had no income—during the pandemic from losing access to paid family and medical leave, we recommend that the look back period on which benefits are based be extended.
- **Reduce the unpaid waiting period.** Currently, workers who qualify for paid leave pursuant to the law must endure a one-week unpaid period prior to receiving the benefits for which they are eligible. This wait period weighs heavily on low-wage workers, and workers who live paycheck to paycheck. To relieve workers of this unnecessary burden, we strongly recommend reducing the unpaid waiting period. Three states, Connecticut, Oregon, and Colorado, are leading the way by ensuring that there is no unpaid waiting period for their respective paid family and medical leave programs.⁸

The paid family and medical leave law that the Council enacted creates a floor, not a ceiling—given the amount of funds identified by Mayor Bowser that workers have been unable to access, it is clear that the program needs to be expanded so that more workers are able to utilize it. Mayor Bowser’s proposed cuts would hurt workers and the District, and we implore you to

⁶ *Id.*

⁷ D.C. Code § 32-541.01(1).

⁸ A Better Balance, *supra* note 5.



Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

DC Office

815 16th Street NW, Suite 4162
Washington, DC 20005

Southern Office

2301 21st Ave. South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

Colorado Office

191 University Blvd., #631
Denver, CO 80206

abetterbalance.org | info@abetterbalance.org

protect this vital program. Thank you for your consideration and the opportunity to submit this written testimony.



American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 234-6506 FAX (202) 234-6531 WEB www.districtcouncil20.org 100 M Street, SE, Suite 250 Washington, DC 20003

District of Columbia City Council Members,

AFSCME District Council 20 advocates in support of Paid Family & Medical Leave. We believe the program will positively impact the image of the District of Columbia as an example of how governance can be foresightful and compassionate. Paid Family & Medical Leave would also place the District in elite company with other countries and jurisdictions who have recognized the importance and benefit of caring for and serving its citizens and workers.

A 2011 study of 141 countries with paid family leave policies found that an increase of fully paid maternal leave was associated with a 10 percent lower neonatal and infant mortality rate. In the Washington DC metropolitan area there are 15 infant deaths per 1,000 births. Low-weight births, are twice as common among African Americans as among (non-Hispanic) Caucasian and Hispanic babies. Eighty-three percent of the child fatalities in the District involved families living in Wards 5, 7, and 8. The Center for Disease Control (CDC) website highlights research by Lindsay Womack, PhD which found that non-Hispanic black infants experience substantially higher rates of infant mortality than any other group.

In 2012 in a study report for 14 countries with GDP per capita over \$20,000 the United States had the highest mortality rate. The comparison group consisted of: Australia, Belgium, Canada, France, Germany, Greece, Italy, Japan, Portugal, The Netherlands, South Korea, Spain, the United Kingdom, and the United States. Research also found that paid maternity leave increased the probability of children receiving DTP1, 2 and 3 vaccines.

Increasing Paid Family & Medical Leave would also help combat health issues for families. Mothers, fathers, children, the elderly and chronically ill. For mothers, the first

year after childbirth is challenging. It in fact carries with it a high risk of depression. A 2014 paper published in the Journal of Health, Politics, Policy and Law found that the more time a new mom takes off from work, the less likely she'll be to suffer from postpartum depression.

After Norway increased its national maternity leave from 12 weeks of unpaid leave to four months of paid leave (and an additional 12 months of unpaid leave). Children who stayed home with their moms as a result of the new leave were less likely to drop out of high school, and earned 5 percent more in wages at age 30. A study of working fathers in the U.S. found that those who took leaves of two weeks or more were much more likely to be actively involved in their child's care nine months after birth—including feeding, changing diapers and getting up in the night. Employees who have access to paid family and medical leave are happier workers. More than 82 percent of companies that offer paid family and medical leave say it has a positive impact on morale.

An Australian study found that even if a parents only takes a few weeks of paid leave, the health benefits pay off for at least seven years! Kids are significantly less likely to develop a range of conditions, including asthma, hearing and vision problems, if a parent is able to care for them with the support of paid leave.

Paid Family & Medical leave helps retain talented female employees. Women who get paid leave are 93 percent more likely to be working a year after they give birth, versus women who don't. When Google, Accenture and Aetna increased their paid leave policies in recent years, the number of female employees who quit after having a child dropped significantly.

In the battle to hire the best and the brightest employees, those that don't offer generous paid leave policies are bound to lose. In a Deloitte survey, 77 percent of respondents said a company's paid family leave offerings could sway their choice of employer. More than 70 percent of companies that offer paid leave say it boosts productivity. Another example? As a result of California's state paid leave, women who took leave and returned to their jobs worked 15 to 20 percent more hours during the second year of their child's life than those who did not take leave.

Opponents of paid leave say it's too expensive to enact, and it's true that small businesses in particular have a hard time shouldering the costs—but not when a worker's leave is paid for by an employee and employer-funded payroll tax. California offers tax-funded paid leave. Nearly 91 percent of small businesses said the law had a "positive effect" or "no noticeable effect" on profitability and performance.

As part of President Joe Biden's American Families Plan, he is calling for a \$225 billion investment to provide 12 weeks of paid parental, family and sick leave to virtually all American workers. The District of Columbia should make the same investment. This is the way the nation is moving. A government that puts its people first indeed serves its citizens. President Biden's proposal would help close a safety net gap that has made the US an outlier among wealthy nations. This can be rectified in the District of Columbia as well. We urge the District of Columbia to increase its Paid Family & Medical Leave program. We thank you for your efforts to make this a reality.

Sincerely,

A handwritten signature in blue ink that reads "Robert Hollingsworth". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Hollingsworth".

Robert Hollingsworth

Executive Director

AFSCME District Council 20

**Testimony of Allana D'Amico
to the Committee of Labor and Workforce Development
June 9, 2021**

Hello Councilmember Silverman and members of the Committee. My name is Allana D'Amico, I am a DC resident living in Ward 2, and I am testifying in strong support of DC's Paid Family Leave Program. I urge the council to reject the Mayor's Office's thinly veiled attempt to torpedo this life-changing policy, to reject the unnecessary reallocations and tax cuts for businesses in her budget, and instead to use any surplus funds to expand the program's family leave benefits and outreach efforts to make sure that everyone who is eligible knows how to access the benefits they are entitled to.

To be honest, I can't believe this critical program still needs people like me to stand up and fight for it. Many other qualified speakers will review the history of this policy, how thoughtfully it was crafted and passed, and the important steps we can still take to improve it. I am here as a constituent, pure and simple, who cares about the well-being of all people in DC. Perhaps it's fair to say that I'm here especially for those who are least likely to have the time and resources to speak up for themselves, whose day-to-day struggles already take up all of their energy and then some, and who would benefit from a universal paid family and medical leave policy the most.

I previously testified before the council in 2017, the last time Mayor Bowser's office tried to strip our city of this essential program. Back then, I explained how the policy would help families like mine and many others by sharing my personal story, which has continued to evolve since then in new ways that I will include here. Back then, I explained how joyfully my husband and I had celebrated with my parents when we told them in 2015 that I was expecting their first grandchild, and how devastated we had all been merely one week later when my mother was diagnosed with cancer. I detailed how exhausting that year had been for all of us, how my father, brothers, and I all took turns accompanying my mom to chemotherapy and other appointments, trying to save her life, while my husband and I also prepared for life with a newborn. When my daughter arrived, it was such a bright moment for everyone, but all our family's resources were required to help my mother, so my husband and I were on our own. Thankfully, his employer offered him 6 weeks of paid parental leave, so he was able to share the burden as I confronted unexpected post-partum medical complications, and together we were able to set up a system of care for me and the baby after he went back to work full-time.

I told the council how it broke all of our hearts when my mom died 4 months after my daughter was born, and how important it had been for all of us, my mother included, to know that we'd been able to care for her the best we could, without worrying that we might be putting our livelihoods at risk. My family had every advantage, but most families at the time were not so lucky. Thankfully the council passed the historic Paid Family Leave Act, granting everyone, regardless of background, the same chance I had to care for my mother and start life with my daughter in health and security.

Since then, I have watched as family leave policies have gained traction in our city, and I want to share how it has affected my family and our community. When my husband took time off to care for me and our daughter in 2015, his law firm offered 6 weeks of paid leave to fathers and 12 weeks to mothers, but only for lawyers, not for secretaries, paralegals, tech support, document processors, or any of the other essential staff that keep the firm running. Based on our experience, my husband became a vocal advocate of paid family leave for everyone at his firm, even though it wasn't a popular view at the time.

However, within my husband's peer group, he started to notice a change. Because he had taken his full time off, despite a culture of discouraging it (this is prevalent in the legal community and most professions nation-wide, particularly when it comes to fathers), two of his male colleagues felt more confident taking the full time they were entitled to when they became parents. They both spoke so highly of it that gradually, over the past 5 years, it has become the expectation in my husband's office that all lawyers will take their full parental leave, not just for the first child but anytime a new baby joins the family. In fact, he took his full leave again when our second daughter arrived in 2018, and later that same year, he was made a partner at the firm. I could not be more proud of my husband and his colleagues for recognizing and committing to this transformative cultural shift. It has set all of their families up for greater success, and also turned into an important recruiting tool to attract top talent to the firm.

Thankfully, DC's Paid Family Leave program allowed my husband's hopes that this benefit would extend to all staff to become a reality when it finally began last summer. But now, before the policy has had a chance to take root and demonstrate its potential to transform the lives of DC residents for the better, the Mayor's Office wants to cut it off at the knees. Cultural shifts like what happened at my husband's firm take time to manifest. They take commitment and proof of value. What my husband did only worked because he was able to show, by his continued employment and value at the firm, that it was possible to take paid time off and still succeed. That it was truly a win-win opportunity, for employees and ultimately for the employer too.

Councilmember Silverman and members of the committee, please protect and defend DC's Paid Family Leave Program at its full capacity, so that all residents have the same opportunity to take care of themselves and their families that my family had. This policy has the power to truly transform our city, to benefit our citizens and attract talent from all across the country. Let's continue to be the leaders on this life-changing culture shift, for everyone's sake. Thank you.



**Comments on the Department of Employment Services’
Fiscal Year 2022 Budget
June 22, 2021**

Community of Hope is a non-profit Federally Qualified Health Center and homeless services provider. We provide medical, dental, and behavioral health services, along with a robust set of maternal and child health care, including evidence-based home visiting and operating the District’s only free-standing birth center. We also provide housing and supportive services to individuals and families experiencing homelessness.

First, we would like to acknowledge the very hard work of the Mayor and her whole team on developing this proposed budget. The FY22 proposed budget makes a lot of great investments that will help advance equity in the areas in which we work.

Our comments on DOES’ proposed FY22 budget focus on workforce concerns and the need to ensure full funding and implementation of the Nonprofit Fair Compensation Act, slated to go into effect October 1, 2021.

Workforce Development Needs

As the District continues to invest in innovative health and mental health programs, the need for credentialed and licensed clinicians will only rise. One such example is an expected expansion of Permanent Supportive Housing (PSH) through the Department of Human Services. In this one program, the District is looking to house an additional 1,100 individuals, families, and youth in PSH in FY22. With current caseload and contract requirements, this may require an expansion of more than 70 available case managers with at least two years’ case management experience and attendant supervisors; however, we will note that the ICH has received comments from the provider community about relaxing its two-year experiential requirement to just one year.

Another example of expanding need for personnel is the crisis response system pilot and changes to procedures with calls to 911 and dispatch of clinicians the Mayor has proposed in her FY22 budget. This includes more than 40 new FTEs between the Department of Behavioral Health’s (DBH) Community Response Teams (CRT) and ACCESS Helpline staff. While not *all* of these positions will need to be licensed to provide clinical support – some roles can likely be performed by Peer Specialists and Community Support Workers who do not have to be credentialed or licensed currently in the District – there will *still* be clinical personnel needed to support this expansion.

Additionally, within DBH's School Behavioral Health expansion program, the Mayor is proposing to fund new school clinicians at 83 schools in FY22/SY 2021-2022. Across just these three programs, nearly 200 new providers will need to be identified and hired in FY22. Supporting the additional FTE needs across health and human service agencies will be incredibly important as these programs ramp up.

As such, we urge the Labor and Workforce Committee to work with both the Health and Human Services Committees as they work jointly with DC Health, the Department of Behavioral Health, and the Department of Human Services, as well as the Health Licensing Boards, to conduct a deep dive into the available health and human services workforce, cross-walked with typical contract and grant requirements related to education, experience, credentials and licensure in our health, mental health, and human services contracts, and develop recommendations to increase the available workforce, reduce barriers for workforce participation, and potential contract requirement adjustments to better support hiring and retention of qualified staff.

We note one provider-led effort to address workforce challenges with the Board of Social Work, where providers seek the Board's approval to allow for undergraduate and graduate social work students to work under supervised practice of licensed clinicians at community-based organizations. This change would allow organizations to provide training, consistent guidance and supervision, and mentorship to new graduates as they use their education and learn new skills working with the community for the benefit for our residents. Providers also view this change as helping to address racial inequality by ensuring that recent graduates are able to work in their chosen field upon graduation; Brandeis University recently noted that twenty years after starting college, the median debt of white borrowing students has been reduced by 94 percent – with almost half holding no student debt – whereas Black borrowers at the median still owe 95 percent of their cumulative borrowing total. Understanding workforce challenges and creating innovative solutions will be incredibly necessary as the District moves beyond the COVID-19 pandemic.

As the Committee considers workforce needs across sectors, we would also like to return to a previous discussion with the Committee regarding First Source requirements for the health and human services sector. Given the expansion considered for these three programs above, the First Source requirements on those contracts will presuppose that many of those to-be hires will be District residents. We, as a government and provider community, must ensure that there are sufficient providers ready and willing to work in new positions, *and* sufficient housing that is both available and affordable to them on their potential salaries, before requiring *where* they must live in order to hold those positions.

Nonprofit Fair Compensation Act of 2020

Finally, we note that, given the passage of the Nonprofit Fair Compensation Act in 2020 and its enactment in 2021, agency directors need to be prepared to implement the law starting October 1. This includes ensuring relevant contract and grant staff are trained in the new requirements related to payment of nonprofits' indirect costs in applicable grants and contracts (up to \$1

million in FY22), and the need for funding in agency budgets to implement the indirect cost requirements of the law without reducing services. We ask the Council, as you review DOES' proposed budget, to please ensure that there is sufficient funding for the Act's implementation in order to support its ongoing partnership of the District's nonprofit sector.

Thank you for the opportunity to provide comments on DOES' proposed FY22 budget.



**Submitted Testimony of the DC Chamber of Commerce
To the Committee on Labor & Workforce Development
On
FY22 Proposed Budget and Financial Plan – Department of Employment Services
Wednesday, June 9, 2021**

Good morning Councilmember Silverman, members, and staff. I am Angela Franco, President & CEO of the DC Chamber of Commerce. Thank you for the opportunity to present written comments on the FY2022 proposed Department of Employment Services (DOES) budget. The DC Chamber of Commerce represents businesses large and small. For over eighty years, the DC Chamber has advocated for business-friendly policies and as the voice of business, we work together with our members and decision-makers to strengthen the local economy and make DC a better place to live, work and do business.

The proposed DOES budget includes critical workforce development investments that we support. These include the **Earn and Learn program** for residents to earn income while gaining on-the-job experience, an **expansion of the MBSYEP program** to support more youth participants, and **additional funding for training in high-demand occupations**. The substantial number of residents out of work due to the pandemic has underscored the urgent need to help workers acquire new competencies and reskill residents to equip them to enter new employment fields. As businesses work to reopen, they will be seeking skilled candidates to help them recover and ultimately grow beyond where they were pre-pandemic. We believe the Executive's proposed DOES investments are well-aligned to meet the real-time hiring needs of DC employers. Also, we support additional funding for workforce training. The DC Chamber has been a long-time supporter of employment and on-the-job training opportunities for District youth and we support additional proposed investments in the MBSYEP program.

Additionally, the proposed budget also seeks to return to employers' overpayments into the paid leave fund (PLF) and would make transfers that would alleviate some of the burdens on job creators. Specifically, the proposal would direct of the current paid family leave surplus, **114.5 million dollars to be invested to fill a pandemic-related shortfall in the Unemployment Insurance Trust Fund (UITF)**, while also providing that **approximately \$168 million would be used to support a one-time reduction in the employer-funded tax to the paid leave fund because of their overpayment into that fund**.

It has been suggested that since not all employers who overpaid into the PLF have suffered from business losses as a result of the pandemic, they should not all be made whole as a result of those overpayments. We disagree. As a matter of equity and fairness, we strongly support the proposal to lower the paid family leave tax from 0.62% to 0.27% for FY22 thus supporting *all* employers who have overpaid into the PFL.

At the beginning of 2021, our Unemployment Insurance Trust Fund balance had dwindled to just \$63.2 million¹, an 87.87% decrease from the previous year's balance. As you know, the pandemic-induced recession has caused employers to curtail their business operations or close shop altogether, resulting in significant furloughs and lay-offs. As a result, the pull on the UITF has increased significantly, and DOES has received over 204,000 unemployment claims since March 2020. Employers are statutorily required to pay higher taxes when the fund drops below certain thresholds, triggering increased employer contributions rates during a critical recovery period when employers are seeking to invest in their businesses and hire additional workers. Bolstering the current UITF will relieve hard-hit employers from the burden of having to pay for yet another pandemic-driven financial obligation. Thus, the proposed \$114 million fund transfer would serve two urgent purposes: it would shore up the underfunded UITF while aiding our businesses and stimulating local economic growth

Because employer contribution rates are directly impacted by the fund balance, returning the fund to solvency by supporting it with overpayments into the PLF should help the District to recover faster and stronger, while helping to ensure the fund has enough resources to withstand another crisis. We urge the committee to support this proposed transfer from the PLF into the UITF as a prudent way to avoid increases in UITF employer contributions or employer experience ratings.

Currently, an employer's Unemployment Insurance experience rating is not impacted by any COVID-19 claims that occur during the Mayoral emergency period. However, we would also ask that the Committee consider incorporating into law **an amendment that would hold harmless COVID-19-related-claims that may occur *after* the public health emergency restrictions are lifted.**

Additionally, it is important that the number of funds paid into the PFL is *sufficient* to meet the statutory fund obligations, but not *excessive*. Before the public health emergency, the size of the PLF was running ahead of projections from District officials. The mounting PFL surplus evidences the need to carefully consider fund collections and claims expenses to ensure that the fund is neither inadequate nor excessive to meet statutory obligations. We continue to support provisions in the Universal Paid Leave law to review the fund's

¹ U.S. Department of Labor. (2021, March). State Unemployment Trust Fund Solvency Report. <https://oui.dola.gov/unemploy/docs/trustFundSolvReport2021.pdf>.

balance against statutory obligations and to make recommendations as warranted to bring the fund's collections and expenditures into harmony with one another². As the Committee continues its review of the FY22 budget and financial plan we ask that you inquire of the agencies under your purview and the OCFO on the feasibility of producing such a report and analysis in tandem with the submittal of the FY23 budget.

We understand that the Committee plans to fund **the Ban on Non-Compete Agreements Amendment Act of 2020 (L23-029)**. However, we respectfully request that the law should not be funded before enacting technical and substantive amendments that are necessary to address serious concerns raised by significant segments of the local employer community, concerns that go well beyond those addressed in B24-256, Non-Compete Conflict of Interest Clarification Amendment Act of 2021. Thus, we would ask the committee to continue to work with the business community in conjunction with any funding initiative and also amend the existing law within the budget support act to address these ongoing substantive employer concerns. Enclosed is a copy of the referenced amendments and proposed language from the business community.

We thank you for the opportunity to present comments and look forward to working with you and the committee throughout the budget deliberations.

² D.C. Official Code §32-551.01

Attachment - Proposed Revisions to L23-209 for Consideration in
Budget Support Act

1 A BILL

2
3 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

4
5 To amend, on an emergency basis, the Ban on Non-Compete Agreements Amendment Act of
6 2020, to allow employers to enter into contracts and institute policies that allow limited
7 prohibitions related to simultaneous employment that implicate protected business
8 information, and to allow post-employment non-compete agreements with key employees
9 consistent with the nature of the position and with a total compensation of at least
10 \$150,000 annually, to protect and key employees by requiring their employers to provide
11 employees notice of non-compete provisions comparable to medical specialists.

12 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
13 act may be cited as the “Limitation on Non-Compete Agreements Emergency Amendment Act
14 of 2021”.

15 Sec. 2. The Ban on Non-Compete Agreements Amendment Act of 2020, effective March
16 16, 2021 (D.C. Law 23-0209; D.C. Official Code § § 32–581.01 *et seq.*), is amended as follows:

17 (a) The title of “TITLE I BAN ON NON-COMPETE AGREEMENTS” is amended by
18 striking the word “Ban” and inserting the word “Limit” in its place.

19 (b) Section 101 (D.C. Official Code § 32–581.01) is amended as follows:

20 (1) Paragraph (2) is amended to read as follows:

21 “(2) “Employee” means a person whose employment or prospective employment is or
22 will be based in the District and who regularly spends or will spend a substantial amount of their

working time in the District and not more than 50% of their working time in any particular state;
except, that this term shall not include:

(A) An individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) A lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;

(C) An individual employed as a casual babysitter, in or about the residence of the employer;

(D) A medical specialist; or

(E) A key employee

(2) A new Paragraph (3A) is added to read as follows:

“(3A) “Key employee” means an individual who performs work in the District on behalf of an employer and who:

(A) Has total compensation of at least \$150,000 per year; and

(B) Has access to or knowledge of the employer’s confidential, proprietary, or sensitive information, client or customer list, research grants, pricing lists, intellectual property, or a trade secret, as that term is defined in section 2(4) of the Uniform Trade Secrets Act of 1988, effective March 16, 1989 (D.C. Law 7-216; D.C. Official Code § 36-401(4)); or

(C) Holds a position such that the employee is reasonably and readily publicly identifiable with the employer or the employer’s branded products or services.”.

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

“ (5) “Non-compete provision” means a provision of a written agreement between an employer and an employee that prohibits the employee from being simultaneously or subsequently employed by another employer, performing work or providing services for pay for another employer, or operating the employee’s own business. The term “non-compete provision” does not include:

“(A) An otherwise lawful provision that:

“(i) Restricts the employee from disclosing, using, selling, or accessing the employer’s confidential, proprietary, or sensitive information, client lists, research grants, pricing lists, intellectual property, customer lists, or a trade secret, as that term is defined in section 2(4) of the Uniform Trade Secrets Act of 1988, effective March 16, 1989 (D.C. Law 7-216; D.C. Official Code§ 36-401(4));

(ii) Restricts the employee’s ability to solicit or provide services to customers, clients, or to solicit employees of the employer;

(iii) Restricts the employee from being simultaneously employed by another employer, performing work or providing services for another employer, or operating the employee’s own business in a manner that is likely to result in the disclosure or use of the employer’s confidential, proprietary, or sensitive information, client lists, customer lists, research grants, pricing lists, intellectual property, or a trade secret, as that term is defined in section 2(4) of the Uniform Trade Secrets Act of 1988, effective March 16, 1989 (D.C. Law 7-216; D.C. Official Code§ 36-401(4);

(iv) Requires compliance with applicable statutory or common law, state and federal sponsored grants or contracts, applicable professional rules of conduct, ethical and regulatory obligations, or collective bargaining agreements; or

(v) Requires compliance with bona fide and written conflict of interest policies which require the disclosure of material competing financial, business and/or legal interests, ethical and regulatory obligations, or collective bargaining agreements.

“(B) An otherwise lawful provision contained within or executed contemporaneously with an agreement between the seller of a business and one or more buyers of that business wherein the seller agrees not to compete with the buyer’s business.”.

(4) Paragraph (6) is amended by striking the phrase “employees or medical specialists” and inserting the phrase “employees, medical specialists, or key employees” in its place.

(c) Section 102(c) (D.C. Official Code § 32–581.02(c)) is amended to read as follows:

“(c) Except as provided in Section 101(5)(A) no employer may have a workplace policy that prohibits an employee from:

“(1) Being employed by another employer;

“(2) Performing work or providing services for another employer; or

“(3) Operating the employee’s own business.”.

(d) Section 103 (D.C. Official Code § 32–581.03) is amended as follows:

(1) The title of section 103 is amended by striking the word “specialists” and inserting the phrase “specialists and key employees”.

(2) Section 103 is amended to read as follows:

88 “(a) An employer that seeks to have a medical specialist or key employee execute a non-
89 compete provision as a condition of employment or otherwise in exchange for additional
90 benefits, compensation, or something of value to which the employee otherwise is not entitled
91 shall provide:

92 “(1) The proposed non-compete provision directly to the medical
93 specialist or key employee at least 14 days before execution of the agreement containing the
94 provision unless the medical specialist or key employee waives in writing the 14-day notice; and

95 “(2) The following written notice at the same time the employer provides
96 the proposed non-compete provision to the medical specialist or key employee:

97 ““The Limitation on Non-Compete Agreements Amendment Act of 2020 allows
98 employers operating in the District of Columbia to request non-compete terms or agreements
99 (also known as “covenants not to compete”) from medical specialists or key employees they plan
100 to employ. The prospective employer must provide the proposed non-compete provision directly
101 to the medical specialist or key employee at least 14 days before execution of the agreement
102 containing the provision. Medical specialists are individuals who: (1) perform work on behalf of
103 an employer engaged primarily in the delivery of medical services; (2) hold a license to practice
104 medicine; (3) have completed a medical residency; and (4) have total compensation of at least
105 \$250,000 per year. Key employees are individuals who (1) have access to or knowledge of the
106 employer’s confidential, proprietary, or sensitive information, client lists, customer lists, research
107 grants, pricing lists, intellectual property, or a trade secret, as that term is defined in section 2(4)
108 of the Uniform Trade Secrets Act of 1988, effective March 16, 1989 (D.C. Law 7-216; D.C.
109 Official Code§ 36-401(4)), and (2) have total compensation of at least \$150,000 per year.”

“(b) No employer may retaliate or threaten to retaliate against a medical specialist or key employee for:

“(1) Asking, informing, or complaining about conduct required or prohibited under this section to:

“(A) An employer, including the medical specialist’s or key employee’s employer;

“(B) A coworker;

“(C) The medical specialist’s or key employee’s lawyer or agent; or

“(D) A governmental entity; or

“(2) Requesting from the employer the information required to be provided to the medical specialist or key employee pursuant to subsection (a) of this section.

“(c) A requirement by an employer that a key employee enter into a non-compete provision as a condition of employment or otherwise in exchange for additional benefits, compensation, or something of value to which the employee otherwise is not entitled shall not constitute retaliation.”.

(e) Section 104(d) (D.C. Official Code § 32–581.04(d)) is amended by striking the phrase “employee or medical specialist” wherever it appears and inserting the phrase “employee, medical specialist, or key employee” in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

132 Sec. 4. Effective date.

133 This act shall take effect following approval by the Mayor (or in the event of veto by the
134 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
135 90 days, as provided for emergency acts of the Council of the District of Columbia in section
136 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
137 D.C. Official Code § 1-204.12(a).