

**Testimony of Brittany Alston, Policy Analyst**  
**At the Performance Oversight Hearing for the Department of Employment Services,**  
**Workforce Investment Council, and Deputy Mayor for Greater Economic Opportunity**  
**DC Council Committee on Workforce**  
**March 7, 2018**

Chairperson Silverman and members of the Committee, I want to thank you for the opportunity to testify today. My name is Brittany Alston and I am the workforce development policy analyst at the DC Fiscal Policy Institute. At DCFPI, we promote budget choices to reduce economic and racial inequality and build widespread prosperity for all residents in the District, through independent research and policy recommendations.

I would like to focus my testimony on strategic enforcement of DC labor laws and implementation of the WIOA State Plan. My written testimony also contains further discussion of unemployment insurance reforms, two DC workforce development programs- MBSYEP and the LEAP Academy as well as an unfunded labor Law passed in 2016- the Procurement Integrity, Transparency, and Accountability Amendment Act.

### **DOES and Office of Wage Hour: Enforcement of Labor Laws**

Over the past few years, the DC Council enacted promising labor laws to improve the wages and benefits of workers in the District- including increases to the minimum wage, paid sick and safe leave, new penalties for “wage theft” when employers fail to pay workers fully, and protections for workers experiencing discrimination in the workplace.

Strategic enforcement policies for these laws not only educate workers on the protections afforded to them, but also encourage higher rates of compliance amongst employers. A complaints-based model has proven to be less effective than a strategic enforcement model. A more strategic enforcement model would include targeted investigations within industries where evidence shows the greatest labor law violations—industries where workers are most likely to be cheated out of their wages, and where they are least likely to speak up and report such violations.<sup>1</sup>

Office of Wage Hour (OWH) has taken steps in the right direction. The policy of investigating an entire employer after receiving one complaint from a single employee seems to be effective. In Fiscal Year (FY) 2016, 26 percent of cases investigated in this way were found to have additional violations and 35 percent of cases in FY 2017. Strategic investigations in FY 2017 unearthed an additional \$265,493 in violations. It would be helpful to see this data for FY 2018 so that we can see the effectiveness this strategy over time.<sup>2</sup>

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<sup>1</sup> Janice Fine. 2017. Presentation to DC Just Pay Implementation Retreat. February 7, 2017.

<sup>2</sup> DOES Performance Oversight Responses, #2. 2017. Totals are the result of summing the number of complaints that remain open, plus those in which an initial determination has been made, plus those closed with an initial determination, and those closed without an initial determination. pp. 53-62.

In FY 2017, DOES also conducted 72 investigations without complaints being filed. When broken down by policy, DOES found 47% of investigated employers were in violation of the Sick and Safe Leave Act, 50% were in violation of the Minimum Wage Act and 100% were in some way in violation of the Wage Payment Act. The rate of success shows promise in strategic enforcement.<sup>3</sup>

While progress has been made, OWH should build on these strengths and pursue additional opportunities for growth.

There does seem to be a very low volume of complaints under all labor laws. For example, as of January of this year, there were just 34 complaints under the Minimum Wage Act, 0 under the Living Wage Act, and just 13 under the Sick and Safe Leave Act. All numbers have decreased since FY 2016.<sup>4</sup> Combined with the data from OWH investigations, this seems to suggest what we note above -- that many workers in low-wage industries fail to even report a violation, and there is room for improvement in bringing these violations to light through strategic enforcement initiatives.

In the oversight responses, the agency stated that strategic enforcement is a vehicle to provide technical assistance. The department should consider additional strategic enforcement strategies, including:<sup>5</sup>

- Increasing the cost of non-compliance by using all enforcement tools, including civil money penalties, liquidated damages, and debarments.
- Identifying the business's supply chains, and alerting businesses to suppliers that are particularly egregious violators of labor laws, so that companies can consider whether to utilize the services of suppliers who skirt the law.
- Publicizing the results of significant cases through various media sources. This is an effective way to educate other employers about their responsibilities and encourage compliance.
- Partnering with workers' organizations and high-road employers to identify bad actors.<sup>6</sup>

## **Workforce Investment Council**

DCFPI wants to acknowledge the important progress made by the Workforce Investment Council (WIC) over the past year to strengthen its foundation.

- The WIC board has maintained its WIOA compliant status.
- The WIC led an extensive effort to develop a WIOA state plan that has been adopted by the U.S. Department of Labor.

The Workforce Innovation and Opportunity Act (WIOA) has opened up opportunities for better integration of workforce development systems within state and local jurisdictions, and across jurisdictional lines. A research report from March 2017 looks at the WIOA State Plans of DC, Maryland, and Virginia to identify promising practices and areas for improvement in each, and points to the strategies and resources that each jurisdiction can borrow from the others. The report—entitled “Maximizing WIOA’s Potential”<sup>7</sup>—was coauthored by the Commonwealth

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<sup>3</sup> [http://dccouncil.us/files/user\\_uploads/budget\\_responses/DOES\\_FY17-18\\_Perf\\_Oversight\\_responses\\_03-06-18.pdf](http://dccouncil.us/files/user_uploads/budget_responses/DOES_FY17-18_Perf_Oversight_responses_03-06-18.pdf)

<sup>4</sup> DOES Performance Oversight Responses, #103, 2018.

<sup>5</sup> Janice Fine. 2013. “Solving the Problem from Hell: Tripartism as a Strategy for Addressing Labour Standards Non-Compliance in the United States.” *Osgoode Hall Law Journal*, Vol. 50, No. 4.

<sup>6</sup> Janice Fine and Jennifer Gordon. 2010. “Strengthening Labor Standards Enforcement through Partnerships with Workers’ Organizations.” *Politics and Society*, Vol. 38, No. 4, pp. 552-558.

<sup>7</sup> [http://www.jotf.org/Portals/0/Summary%20Report\\_final\\_web.pdf](http://www.jotf.org/Portals/0/Summary%20Report_final_web.pdf)

Institute, DC Appleseed, DCFPI, the Job Opportunities Task Force and the Maryland Center for Economic Policy. It was funded by the Greater Washington Workforce Development Collaborative.

DC's promising practices include:

- Recent efforts to expand the Career Pathways Taskforce. The expansion would add three representatives of the DC business community from high demand industry sectors. This would allow for a more comprehensive team to implement the strategic plan and develop career pathways for adult learners.
- The success in providing transit subsidies for adult learners through service providers.

The report makes several recommendations for improvement in the District, including:

- **Barrier remediation:** The report highlighted the need to create a system for providing supports to workers in education and training, including transportation (which has been a success) and child care assistance, especially for adult learners and individuals with disabilities.
- **Sector Partnerships:** The District should continue to support a system of “sector partnerships” in high demand industries with the best job-creating potential for low-income residents. Sector partnerships are efforts to bring together the key institutions needed to connect workers to jobs: training providers, academic institutions, unions, employers, and DC government, among others.
- **Transparent Implementation Plan:** Last year, we highlighted the need to make information on implementation and performance publicly available and include community stakeholders in the process. We would like to recognize the unanimous support of the Council in passing the Workforce Development System Transparency Act. As a data driven organization, we hope the WIC will take the lead in implementing the Transparency act.<sup>8</sup>

We were disappointed that we did not receive performance oversight responses from the WIC. Oversight responses are a strong example of transparency. Good data allows us all to engage in thoughtful conversations around strong policy. We hope to receive responses as soon as possible.

## Unemployment Insurance

We commend the Council and DOES for continued success of Unemployment Insurance (UI) on the maintenance of a robust UI trust fund. Benefit payments are down due to the declining unemployment rate, while UI tax collections are up, leading to a consistently higher fund balance.

We are also thankful that DOES implemented an increase to the maximum weekly benefit. As of January of this year, the maximum benefit increased from \$425 to \$432. Raising benefits to reflect cost of living changes is important to avoid the problem we had over the past decade, when benefits were not adjusted at all.<sup>9</sup>

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<sup>8</sup> <https://thecommunityfoundation.org/wfdevreports/>

<sup>9</sup> DOES Performance Oversight Responses, #98, 2018.

We also want to use this testimony to raise some concerns about the administration of DC's Unemployment Insurance program -- problems raised in more detail in the joint testimony of the Legal Aid Society and the Claimant Advocacy Program.

- **Language Access:** DOES should assess the share of UI claimants who are Amharic speakers, and begin providing materials in Amharic if the number exceeds the level required under the Language Access Act.

DOES launched a Spanish language website, DC Networks, for applying for UI and finding jobs. This is a great step forward. DOES also should continue assess the length of time Spanish speakers have to wait for telephone translation services.

- **Overpayment penalties:** Many claimants do not understand (1) what an overpayment or fraud penalty is and (2) their rights to appeal the decision. Claimants receive multiple notices of overpayment, some in error. DOES has improved the waiver process this year by publishing a standard waiver for on its website, but further clarifications are still needed.

DOES should take steps to thoroughly track waiver requests where OAH is concurrently reviewing the merits of an overpayment, recoupment, or fraud penalty. The department should ensure that fraud penalties have a clear and convincing evidence standard of proof of fraud.

### **Marion S. Barry Summer Youth Employment Program**

The Department of Employment Services has made progress to strengthen the quality and broaden the scope of MBSYEP. Given the large number of youth served, and the substantial cost of the program, the District should take ongoing steps to ensure that it is accomplishing as much as possible through MBSYEP and that the program is driven by rigorous evaluation of outcomes.

- **Improve Services to Prepare Host Sites:** The District should develop a standard curriculum to ensure that all hosts have a clear understanding of their expectations and can communicate program rules to participants.
- **Improve Connection of Older Youth to Long-Term Options:** DOES should ensure that 22-24 year old MBSYEP participants have access to longer-term options if they want them. DOES also should ensure that self-identified out-of-school youth are connected with the Youth ReEngagement Center. We encourage DOES to explore opportunities to more effectively collaborate with DCPS, public charter schools, and OSSE to ensure connectivity between the SYEP program experience to either CTE coursework or year-round employment opportunities.
- **Youth One-Stop:** The development of a youth-specific Virtual One Stop could be highly effective in connecting youth not only to postsecondary educational options, but also employment and training opportunities. This development is referenced in the District's WIOA State Plan and should be a priority.

## **LEAP**

The LEAP Academy targets long-term TANF participants, with the goal of connecting unemployed DC residents to government job opportunities. The Performance Oversight responses state that “LEAP offers wrap around services and supports that align with WIOA. The service model aligns with the District’s focus on work-based occupational skills training.”

DOES’s 2017 Performance Oversight Responses show that since April 2015, there have been 4 cohorts of LEAP academy members, serving a total of 111 participants. Of these, 93 were permanently hired, and 18 were terminated, resigned, or expired. The outcomes were very strong, although the cost of the program is relatively substantial. To better understand the model of success, it would be helpful to have updated program evaluation data and more information on how LEAP ties into the broader workforce system. This would allow us to assess if there is a possibility to use WIOA money to fund the program.<sup>10</sup>

For both workforce programs, we look forward to updated program evaluations being released soon, as mentioned in the oversight responses. It would be helpful to hear, from the agency, exactly when we can expect the audit/report to be released.<sup>11</sup>

## **Procurement Integrity, Transparency, and Accountability Amendment Act of 2016**

The Procurement Integrity, Transparency, and Accountability Amendment Act of 2016 requires that contracts above \$75 million must have a Project Labor Agreement. The FIS states it will cost \$113,000 (as of FY 2017), and that it can increase construction contract costs by \$26.2 million annually (can be paid with capital budget).

Thank you for the opportunity to speak today; I am happy to answer any questions.

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<sup>10</sup> DOES Performance Oversight Responses, #2. 2017.

<sup>11</sup> DOES Performance Oversight Responses, pg. 55-58 2018.