

**STATEMENT OF JOHN SWEENEY
CHIEF, WORKERS' COMPENSATION DIVISION
NEW YORK CITY LAW DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL CIVIL SERVICE AND LABOR
COMMITTEE**

**250 BROADWAY
TUESDAY, DECEMBER 13, 2016**

Good afternoon, Chair Miller and members of the Civil Service and Labor Committee. My name is John Sweeney, and I am the Chief of the Workers' Compensation Division of the New York City Law Department. The Division administers workers' compensation claims of all City employees covered by the New York State Workers' Compensation Law. We also administer claims on behalf of the Department of Education, NYC Health + Hospitals and the City University of New York.

Approximately 200,000 employees are subject to the Workers' Compensation Law. I note that this does not include uniformed members of the Police Department, Fire Department, Sanitation Department, and the pedagogical employees of the Department of Education, who are not covered by the law. By way of further background: the Workers' Compensation law provides benefits for private and public sector employees injured in the course of their work activity. The benefits consist of all necessary medical treatment and partial wage replacement. The New York State Workers' Compensation Board, whose members are appointed by the Governor, is charged with the responsibility of administering the law on a state-wide basis. The Board adjudicates claims, issues decisions, makes awards of compensation and holds hearings when needed. The Board is the ultimate fact finder in workers' compensation claims. The role of my Division of

the Law Department is to ensure that injured City employees receive the benefits to which they are entitled.

Each City agency is responsible for reporting its claims to the Law Department. The Law Department, in turn, creates State-required electronic forms and submits the claims the Board. The Board determines how a claim proceeds (whether or not to hold a hearing or to issue a written decision). The Law Department appears at hearings, reviews medical bills and processes payments for wage replacement and medical treatment.

As required by Administrative Code § 12-127, the Law Department also prepares an annual report of workers' compensation claims in May of each calendar year for the prior calendar year. This Report tracks injuries and payments made in that prior calendar year, and it lists injuries by agency with a description and location of the injury, as well as payments made during that calendar year. In accordance with the statute, the Report contains a snapshot of claims, year by year, rather than a cumulative total. The Report is delivered to the Mayor, Comptroller, Public Advocate and the City Council Speaker, and is posted on website of the Department of Records and Information Services.

In the most recent Fiscal Year ending June 30, 2016, the Division received approximately 16,500 new claims for compensation, appeared at 14,000 hearings and reviewed nearly 300,000 medical bills. The payments listed in the Annual Report (\$22 million in calendar year 2015) represent only a fraction of the overall payments made that year. The Division actually paid out, during this past Fiscal Year, wage replacement payments totaling \$245 million and medical payments totaling \$55 million. These are payments representing all the active cases which the Division administers; that is, payments for injuries incurred in prior years.

Thank you for the opportunity to appear before you today. I would be happy to answer your questions.

Testimony by Nadia Marin-Molina, NYCOSH Associate Director
New York City Council Oversight Hearing:
Examining How the Workers Compensation System Impacts NYC Workers
December 13, 2016

I am here to speak on behalf of the New York Committee for Occupational Safety and Health (NYCOSH). We applaud the Council's oversight on this important issue and thank you for the opportunity to present testimony. NYCOSH has worked to extend and defend every person's right to a safe and healthy workplace, including the protection of the workers' compensation system. The New York State Workers' Compensation System was designed as a simple bargain after one of the worst tragedies for American workers that happened less than a mile away from this hearing—the Triangle Shirtwaist Factory Fire. In 1914, New York State passed legislation to ensure that hurt workers would automatically be granted compensation; and employers would pay in order to fund it. The basic concept of workers' compensation law is that employers should be required to provide benefits to injured workers for medical treatment, lost wages and permanent disability. This system makes employers – not taxpayers or the state – responsible for the consequences of workplace injury.

Today, our system is broken in a fundamental way. Instead of using employers' money to provide benefits for injured workers, insurance companies pay a host of businesses (“independent” medical examiners, “nurse case managers,” phony vocational rehabilitation companies, defense lawyers and more) that profit from the system at the expense of workers – and reap record profits for themselves. At the same time, they argue that costs are skyrocketing.

This cost-cutting argument has driven business and insurance company lobbyists, but also influenced the New York State Workers' Compensation Board itself. The New York State Workers' Compensation Board recently publicly testified that employer costs are too high and that benefits for workers should be reduced. Injured workers cannot expect to get a fair hearing when decisions in their cases are made from solely a cost-cutting argument. Attacks on workers – especially low wage and immigrant workers – must stop.

In 2007, the Legislature and former Governor agreed to raise weekly workers' compensation benefits for the first time in fifteen years, but also to limit payments to permanently disabled workers. Low wage and immigrant workers do not earn enough to benefit from the increased weekly benefit amounts – but they bear the full cost of losing their permanent disability benefits. Much of the estimated \$1 billion that employers saved came at the expense of the most vulnerable workers.

The New York City Council can work to advocate for injured workers and provide meaningful oversight particularly in ensuring that workers are granted a fair hearing in a language that they understand.. Injured workers must be granted fair hearings to explain their rights and benefits, where serving injured workers--and not cutting costs--is the top priority. The Board also must comply with Governor Cuomo's Executive Order on Statewide Language Access Policy. The Board currently issues only limited documents in languages other than English, and the technical legal terms it uses are impossible to understand even for fluent English speakers. The City can support outreach initiatives to educate more workers on the comp system, and to do so in languages that workers can understand.

The Business Council and its insurance allies are still not satisfied with the results of their cost-cutting at the expense of injured workers and are continuing their attack on our communities. They now want to slash benefits for another type of permanent injury known

as schedule loss of use. These benefits are paid to workers who have broken limbs, amputated fingers, joint replacement surgery, and similar injuries. The Business Council claims that awards for schedule loss are skyrocketing because weekly maximum benefits have increased. For low wage and immigrant workers, this claim is simply not true and is another inhumane attack on their benefits.

The amount of benefits an injured worker receives depends on his or her wages. Benefits for middle income injured New Yorkers have not increased since 2012. The only increase since then has been for the top 25% of wage earners, whose benefits have increased about 6%, or about 1.5% per year. For low wage and immigrant workers who do not earn more than \$30,000 per year – more than a third of New York's workforce – compensation benefits have not increased since 1992, nearly a quarter-century ago. This includes the type of schedule loss award under attack by the Business Council. There is simply no truth to the Business Council's claim that the cost of benefits are skyrocketing. The Council is again trying to cut costs on the backs of the State's most vulnerable communities with the assumption that they will not fight back. They are wrong.

The real agenda is clearly to dismantle the state's workers' compensation system and to further impoverish the low wage and immigrant workers who were already devastated by the 2007 "reforms." If the Business Council was truly interested in saving employers money, then it would help build a culture of prevention that values workplace safety and health, which saves the lives and limbs of workers. Various studies have shown that every dollar invested in injury prevention returns between \$2 and \$6. In a perfect world, we could guarantee that every workplace in the public and private sector centered the health and safety of every person.

Defending and protecting the workers' compensation system is an essential community and statewide endeavor. Every New Yorker knows that he or she could be one step away from injury. If they have not been injured at work, they are sure to know a friend, neighbor or loved one that has been injured. Millions have also witnessed the exclusion, anxiety, and stigma that is put upon people that have been injured. It's time for all of our rules and policies to reflect the dignity and human rights of injured workers.

Thank you for the opportunity to testify and we look forward to continuing to work on this critical issue.



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FOR THE RECORD

December 13, 2016

Re: Oversight - Examining how the Workers Compensation System Impacts NYC Workers

Dear Councilmembers,

Thank you for inviting us to contribute to this important hearing, a session which calls attention to issues that have significant impact on the health and wellness of our community. As medical director of the Mount Sinai Selikoff Centers for Occupational Health, I hope that my perspective will be useful to the council.

The Mount Sinai Selikoff Centers for Occupational Health is widely recognized for our leadership in the prevention, diagnosis and treatment of workplace injuries and illnesses. Our multidisciplinary health care team includes physicians, nurse practitioners, industrial hygienists, ergonomists, social workers and benefits specialists, who provide comprehensive patient-centered services. We also partner with unions and employers to assess and reduce risk factors in work environments and to establish comprehensive occupational health and safety programs designed to encourage safe and productive workplaces.

In New York, one significant barrier that workers face is the time required for a work-related injury to be recognized by the New York State Workers' Compensation Board (NYS WCB.) In their 2015 annual report, the NYS WCB stated that 37% of filed cases required between 181 to 360 days to establish, and 19% required more than a year¹. For many workers, this delay necessitates a significant amount of time spent out of work, tremendous loss of income, and insecure medical coverage for their work-related injuries/illnesses. For workers already destabilized by low wages, made vulnerable by job insecurity or exploitative working conditions, choosing to apply for benefits with slow adjudication periods can be detrimental and may further compromise the workers' safety.

In our state, physicians are mandated by the WCB to complete three separate forms, each of which are required at different stages of the adjudication process. An initial C-4 form must be submitted to address the causal relationship between the work-related injury/ illness and the accident or exposure. Next, a C-4.2 must be filed to document future treatment plans, and finally, a C-4.3 must be submitted to capture physicians' opinion as to if an injured worker has or has not achieved maximum medical improvement. With each submission, providers are also required to assess and comment on the

¹ NYS WC Board, "2015 Workers' Compensation Annual Report",
<http://www.wcb.ny.gov/content/main/TheBoard/2015AnnualReport.pdf>, (Jan 2016), A-10



worker's current level of impairment, and to treat the injured patient with reference the medical treatment guidelines, as provided by the WCB.

Some providers have found that the guidelines act more as a hindrance than a benefit. As one physician stated, "...they (the medical treatment guidelines) don't necessarily work. The guidelines are supposed to clarify things and make care more streamlined...but the bottom line is that in practice everybody reads these things differently"². Lack of confidence in the WCB medical treatment guidelines, compounded by slow and stringent administrative hurdles are but two of the reasons why many providers elect to not participate in the system.

As a designated member of the New York State Network of Occupational Health Clinics and as a Clinical Center of Excellence of the World Trade Center Health Program, the Selikoff Center offers care by physicians who are seasoned experts in occupational medicine. We are happy to hear that the council is exploring ways to improve and strengthen processes that pertain to worker safety and the provision of health services to injured workers.

As this discussion evolves, please feel welcome to consult with our clinical center for ongoing support, and to exchange perspectives so that we can work together to improve essential systems that protect all members of our community.

Sincerely,



Michael A. Crane, MD, MPH
Medical Director, World Trade Center Health Program CCE
Medical Director, Selikoff Centers for Occupational Health
Associate Professor, Department of Environmental Medicine and Public Health
Icahn School of Medicine at Mount Sinai

² Joe Maniscalco, "Pain in Neck-Medical Treatment Guidelines aren't Working, Critics Charge", http://www.laborpress.org/index.php?option=com_content&view=article&id=1589:concern-over-clty-island-bridge-construction&catid=34:municipal-labour&Itemid=77 , (Oct 2012)

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

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Testimony of Guille Mejia, MPH CHES

Director of the

Safety and Health Department

District Council 37, AFSCME, AFL-CIO

To

The Civil Service and Labor Committee

December 13, 2016

Hello, my name is Guille Mejia and I am the Director of the District Council 37 Safety and Health Department. District Council 37 represents approximately 121,000 members who work in city and state government agencies as well as in many of the cultural institutions and authorities located throughout the 5 boroughs.

On behalf of Henry Garrido, Executive Director and myself, I thank the Chair of the Committee on Civil Service and Labor, I. Daneek Miller, for holding this hearing and look forward to working with you and your committee on ways to improve a New York City worker's experience if she or he becomes injured on the job and files a claim for benefits through the NYS Workers' Compensation System.

When a worker gets hurt at work, their only recourse is to file a claim for benefits through the NYS Workers' Compensation System. This is the "great bargain" made going back to the early 1900's. The system was based on the premise that if a worker got hurt on the job, their employer would pay for lost wages and medical cost and the employer did not get sue. Payments were supposed to be made quickly, without regard to fault and with minimal obstacles,

Given the variety of civil service titles and jobs of city employees we represent, and the daily tasks they perform, it should not surprise anyone in this room to learn that the risks for workplace injuries and occupational diseases exist and that on any given day, a city employee can get hurt or killed on the job.

Today, I want to raise our concerns with respect to the annual report generated by the NYC Law Department in accordance with Local Law 41 of 2004.

Local Law 41 of 2004 intended to capture comprehensive injury data on New York City's Worker's Compensation claims and costs as a result of injuries experienced by its workforce. However, the current format of the report generated by the Law Department lacks specificity and it does not allow us to take a wide-ranging look what is really happening at worksites. The report does not give us a hint about the civil service titles of injured workers, the causes or circumstances of the injuries, the number of days workers are out as result of their injury and the head count of an agency's workforce. Aside from the format, the report is not readily available. So yes a more comprehensive report is valuable to me at the Director of DC 37's Safety and Health Department.

The NYC Law Department's 2014 report to the City Council, the Mayor, the Comptroller and the Public Advocate shows that in this year, the total amount paid for Worker's Compensation claims was \$18,770,038. In 2015 this number went up to \$22,110,997.00. The difference represents an 8.4% increase in payments.

It is our belief that these numbers may be higher as underreporting of workplace injuries is not atypical. We welcome any effort by city agencies to encourage reporting and documenting of accidents so that we can get a clearer picture of the costs workers incur when hurt on the job and provide a basis for further investigation of worksites with high rates of incidents.

The intent of Local Law 41 of 2004 was to generate data and information to be used as a tool for the City to reduce workplace accidents, injury rates and keep costs down.

With more a more detailed report, DC 37 and the City of NY can work collaboratively to improve working conditions and reduce injury rates while keeping costs in check. Good data will help improve working conditions. We believe that a proactive approach by the City of New York to implement safety and health programs that are comprehensive and assess the risks NYC employees face on the job will not only reduce the payment the city makes toward workplace injury claims but also result in a more productive workforce.

Such a detailed report allows us to engage city managers in dialogue to improve or develop safety and health programs that target specific groups with high rates of incidents or high risks. Together we can work towards creating new initiatives that result in earnings for both the employees of and the City as a whole.

I urge you and your committee to take steps to improve on the way that the City gathers data that is reported to the Law Department and then urge each and every NYC employing agency to analyze the claims submitted to the Law Department with the goals of reducing injury rates and producing programs that provide workers with the knowledge and skills necessary to carry out their duties safely.

Thank you!

Testimony
to the
Committee on Civil Service and Labor of the New York City Council
December 15, 2016
Joel Shufro, PhD.

Too many employees of New York City are injured on the job or contract work-related illnesses. The human cost of the suffering and family disruption from these injuries and illness are incalculable. The real tragedy is that these injuries and illnesses result from identifiable hazards which can be eliminated from the workplace and are therefore preventable. However, to reduce the number and severity of workplace injuries and illnesses requires a proactive program of hazard identification and resources devoted to their abatement.

Unfortunately, New York City, like many employers throughout the country, does not have an adequate proactive program to identify and abate workplace injuries and illnesses. While the City has made strides in some areas by adopting purchasing guidelines to purchase equipment which is correct ergonomically designed and implemented various programs to eliminate workplace hazards required by standards issued by the New York State Department of Labor, Division of Occupational Safety and Health, workers continue to be injured made ill in increasing numbers.

Last year, 2015, the last year for which we have data, 16,524 New York City employees established claims for work related injuries and illnesses. This was a shocking 17.8% increase over the previous year when 15,244 claims were established. The total cost to the City for medical and wage replacement (plus penalties paid by the City) was \$22,110,997 – an 8.4% increase over 2014.

This is the highest number of established cases reported by the City since 2005 when the City began issuing an annual report on its Workers' Compensation experience as required under Local Law 41 of 2004. (It should be noted that established cases represent only a percentage of those who suffer workplace injuries or contract a workplace illness). While the number of established cases has fluctuated over the last 15 years, the amount spent by the City each year to pay the medical and wage costs has increased by 118%, from \$10,132,265 to \$22,110,997.

Just as the cost of newly established workers' compensation claims has increased, so has the annual cost of on-going established workers compensation claims. Last year, the amount spent by the City according the New York City Comptroller's Comprehensive Annual Financial Reports (CAFRs), Schedule G6 – Expenditures and Transfers by Object for 2015 was \$241,979,245 for awards and expenses and \$38,702,717 for other expenses for a total of \$280,681,962. This is a dramatic 101% increase in cost since 2005.

The cost of these injuries and illnesses goes far beyond the direct costs reported by the city. Indirect costs of work related injuries and illnesses increase the cost to the city include items such as:

- Lost production time.
- Productive time lost by an injured employee.
- First Aid Costs
- Productive time lost by employees and supervisors helping the accident victim.
- Overtime and compensatory time.
- Cleanup and startup of operations interrupted by an accident.
- Time to hire or train a worker to replace the injured worker until they return to work.
- Property damage. Time and cost for repair or replacement of damaged equipment, materials or other property.
- Reduced morale among employees, and perhaps lower efficiency.
- Reduced productivity of replacement employee
- Accident reporting, review and analysis, claims processing, and recordkeeping
- Penalties assessed by regulatory agencies (such as NYS DOL PESH)
- Return-to-Work Program Costs

While there is no fixed ratio between direct and indirect costs, many safety experts and economists argue that indirect costs are often 3 to 10 times direct costs. In the case of New York City, this would mean that the direct and indirect cost of workplace injuries and illnesses for 2015 would total between \$66 million and \$221 million. These figures do not include the costs incurred by the injured worker and/or their families for social services, health care not covered by insurance, loss of income of family members who are needed to provide care to the injured worker.

The City would benefit dramatically by reducing the numbers of its employees who are injured or contract an occupational disease. This would require the development of a program designed to target particular types of injuries and illnesses and eliminate the hazards which cause them. To systematically target workplace injuries and illnesses, the City needs to be able to identify the types of injuries occurring to workers in various job titles and agencies. It needs to prioritize by severity, frequency, and type. To develop a program designed to target particular workplace injuries and illnesses, it needs appropriate data. Without appropriate data, the City cannot have a systematic safety and health program. Appropriate data would allow the City to set priorities and work in a disciplined manner to identify the hazards facing its employees.

Currently, the City does not compile data which it currently collects which would allow it to develop such programs. Other government agencies and private companies have instituted programs to collect data based upon workers' compensation claims. New York State, for

example, releases an annual report about the types of claims filed by its employees. The New York State Public Employee Federation has used the report to target workplace hazards and develop training programs designed to teach workers how to identify the hazard and eliminate the hazards. Major corporations have reduced their workers' compensation costs by literally millions of dollars by developing intervention strategies to eliminate the hazards which result in workplace injuries and illnesses.

In 2004, the New York City Council enacted Local Law 41. The law's intent was to develop data which would permit the city and the unions representing city employees to examine patterns of injury and illnesses and use the data to develop proactive programs to reduce workplace injuries and illnesses. It required New York City agencies to transmit to the mayor's office on an annual basis the following:

Section 1. Section 12-127 of the administrative code of the city of New York is amended by adding new subdivision c to read as follows:

c. (1) Each agency shall keep a record of any workers' compensation claim filed by an employee, the subject of which concerns an injury sustained in the course of duty while such employee was employed at such agency. Such record shall include, but not be limited to, the following data:

- (i) the name of the agency where such employee worked;
- (ii) such employee's title;
- (iii) the date such employee or the city filed such claim with the appropriate office of the state of New York, if any;
- (iv) the date the city began to make payment for such claim, or the date such claim was established by the appropriate state office and the date the city began to make payment for such claim pursuant to such establishment, if any;
- (v) the date such injury occurred;
- (vi) the location at which such injury occurred;
- (vii) the nature of such injury, including, but not limited to, the circumstances of such injury, the type or diagnosis of such injury and a description of how such injury occurred;
- viii) the length of time such employee is unable to work due to such injury, if any; and
- (ix) a list of any expenses paid as a result of such claim, including, but not limited to, expenses relating to wage replacement, medical costs, administrative costs and any penalties.

The law then required

(3) The mayor of the city of New York shall ensure that an annual report is prepared utilizing the records received from each city agency pursuant to paragraph (2) of subdivision c of this section. Such report shall be transmitted to the mayor, the comptroller, the public advocate and the speaker of the council of the city of New York by the first day of May, covering the previous calendar year. Such report shall include, but not be limited to:

- (i) an analysis, with respect to each agency included in the report, of expenses paid as a result of workers' compensation claims, including, but not limited to, expenses relating to wage replacement, medical costs, administrative costs and any penalties paid by an agency;
- (ii) a list of the occurrence of specific claims for each agency and for the city as a whole;
- (iii) a list of the specific sites where injuries occurred for each agency and for the city as a whole;

Rather than to interpret the law to include the data provided by the agencies as the basis for the report, the City has decided to interpret the law to mean that the information in the report should ONLY include information required by sub-section (3) (i),(ii) and (iii) and not the information required in sub-section c.. (1).

The consequence is that the City has produced a report which is essentially useless in developing programs designed to identify patterns of workplace injury and illness among its workforce.

At a minimum, Local 41 of 2004 needs to be amended so that the report issued by the mayor should include the information which agencies are already required to provide under the law. This would allow the City, its agencies, unions representing city workers, academic and non-profit organizations and workers themselves the ability to determine whether there are patterns of injuries and illnesses

In addition, the City needs to develop an office responsible for analyzing the data in the annual report issued by the mayor and developing a systematic program to reduce workplace injuries and illnesses. The office should provide the mayor on an annual basis a report developing programmatic targets for injury and illness reduction programs, recommending educational training programs on hazard identification, capital improvements and purchasing guidelines and other initiatives designed to reduce workplace injuries and illnesses. The office should also be responsible for tracking the progress made over the last year,

Developing such programs would be a win-win for the City. By reducing workplace injuries and illnesses among its employees, the City could reap significant savings, increase worker productivity, cut recurring costs dramatically. At the same time, it could reduce unnecessary suffering among its employees, increase worker morale, and provide significant relief to the families of City workers whose lives and livelihoods are interrupted, if not destroyed, by the injuries and illnesses arising out of and in the course of employment.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 12/13/2006

(PLEASE PRINT)

Name: Nadia Marin-Melvan

Address: 61 Broadway, Ste 1710

I represent: NYCOSH

Address: 61 Broadway, Ste 1710

**THE COUNCIL
THE CITY OF NEW YORK**

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Name: Guille Mejia

Address: _____

I represent: DISTRICT COUNCIL 37, AFSCME

Address: 125 Barclay ST., NY 10007

**THE COUNCIL Answer Questions
THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____

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Date: 12/13/10

(PLEASE PRINT)

Name: Andrew Berger

Address: 100 Church St

I represent: NYC Law Dept

Address: 100 Church St

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Answer Questions

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I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 12/13/16

(PLEASE PRINT)

Name: MINDY ROLLER

Address: 350 4th St. 825 E. 17th St.

I represent: NYC Law Dept.

Address: 350 7th St., Bklyn, N.Y.

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: 12/13/16

(PLEASE PRINT)

Name: John Sweeney

Address: 350 5th St Bklyn NY

I represent: NYC Law Dept

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