

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL SERVICE AND LABOR

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HELD AT: 250 Broadway- Committee Rm, 14th Fl.

B E F O R E:

I. DANEEK MILLER
Chairperson

COUNCIL MEMBERS:

ELIZABETH CROWLEY
DANIEL DROMM
COSTA CONSTANTINIDES
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A P P E A R A N C E S (CONTINUED)

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[gavel]

CHAIRPERSON MILLER: Good afternoon and thank you for coming out. I am Council Member I. Daneek Miller, Chair of Committee of Civil Service and Labor. Today we will be holding a hearing on, oversight hearing on the City's Worker's Compensation System. Local Law 41 of 2004 requires that city agencies keep a record of any worker's 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. This is put together in a report called the Annual Report of Worker's Compensation Claim of New York City's Employees for the Calendar Year. Some of the information they must include is the agency which the employee worked at the time and the title of the employee, the location injury of where the accident has taken place. Then, they must send this information to the Mayor's office, the comptroller, public advocate and the speaker of the city council and publish this information each May. But, is that enough? And what if anything can the City do to help our municipal workers get back to work promptly and safely? That is some of the questions that we will be

asking here today. So, far in fiscal year 2-16, the City has spent nearly \$290 million on Worker's Compensation claims. That is already up from \$280 million in fiscal 2-15, 2015. Our municipal employees continue to play a vital role in ensuring that a city runs efficiently, effectively, that business has the opportunity to grow but most importantly that our residents have the quality of life that they deserve. Making it all more important that city takes care of the men and women of those who are performing these important tasks and those who become injured while performing these public service. Whether these claims continue to go up or not, these workers will not stop receiving the emergency call or performing their regular maintenance and duties and we should be making every effort to ensure that they are receiving the care that they need when involved in such accidents and do whatever we can to prevent these accidents from occurring. Today we will be hearing from the City's Law Department, who oversees the Worker's Compensation System, representatives of public employees and organizations who have been working on reforming how compensation system works. I look forward from hearing from this testimony and

working with them to create a system that helps workers perform their duties as well. Let us not forget that there is a nonpublic or private sector workers out there as well that are involved in workplace injuries. We hope that we are able to sign light on these industries and how we better assist workers in being safe as we move forward so with that I would like to call yep, I will call on first panel, John Sweeney, Mindy Roller and, help me, Andrea Berger. Thank you. Start whatever end you like.

JOHN SWEENEY: Good afternoon. Good afternoon, Chair Miller, Members of the Civil Service and Labor Committee. As you know, my name is John Sweeney. I am Chief of the Worker's Compensation Division of the New York City Law Department. The Division administers Worker's Compensation claims of all City employees covered by the New York State Worker's Compensation Law. We also administer claims on behalf of the Department of Education, New York City Health and Hospitals and the City University of New York. Approximately 200,000 employees are subject to the Worker's Compensation Law. I note that this does not include uniform 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 Worker's 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 Worker's Compensation Board, whose members are appointed by the governor, is charged with 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 factfinder in Worker's Compensation claims. The role of my division 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 to 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 Section 12-127, the Law Department also prepares and annual report of Worker's 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 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, the controller, the public advocate and the City Council speaker. It is also posted on the website of the Department of Records and Information Services. In the most recent fiscal year, the one ending June 30, 2016, the Division received approximately 16,500 new claims for compensation. It 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 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 occurred in prior years. Thank you for the opportunity to appear before you today. I'd be happy to answer any of your questions.

CHAIRPERSON MILLER: Thank you so much. Yes, we do have a few questions for you there. We will start with reported self and try to drill down on some of the data and its usages. Do you receive all the data required by Local Law 41 from all City agencies that were previously mentioned?

JOHN SWEENEY: Yes, we do. Every agency submits all the data that is required by the report.

CHAIRPERSON MILLER: Is there a deadline to receive this?

JOHN SWEENEY: Well, the report is due in May of the following calendar year. We get all the information I would so we get it during the calendar year before the end of the calendar year.

CHAIRPERSON MILLER: So, in terms of just basic reporting, all the agencies, the ADCO [sp?] agencies are in compliance you would say?

JOHN SWEENEY: Yes, they are.

CHAIRPERSON MILLER: In terms of how would you rate the agencies in terms of highest number of cases? Do you have that?

JOHN SWEENEY: I can tell you the most recent year of the Department of Correction had something like 3,900 cases and I believe that Health and Hospitals had about 3,500 cases. Those were the two highest.

CHAIRPERSON MILLER: Okay. So, is it easier to receive this information from certain agencies than others and how is this data collected?

JOHN SWEENEY: Well every agency submits all its claims to us. In some cases, it is done through the payroll management system for City employees. With some of the other entities, it is done in a slightly different way. However, once the data comes to my office, we all put it in a format that is uniform. So, once we receive it, it gets placed into our computer systems and it is uniform and that's used to file the claim at the Worker's Compensation Board and to prepare the report as well.

CHAIRPERSON MILLER: And so when it comes to the mayor's office, to the councilmen, to the public advocate, it is uniform as per legal?

JOHN SWEENEY: Absolutely.

CHAIRPERSON MILLER: And we can then identify which agencies without kind of researching, we can such as questions that I just asked about which agencies had the highest number of incidents?

JOHN SWEENEY: Sure. You can look up an agency and see it had so many claims in that year.

CHAIRPERSON MILLER: Do you out is it outlined and do you outline in such a way within the report which agencies have the highest number of incidents?

JOHN SWEENEY: Absolutely. Each agency is listed separately and at the end of the list there is an amount of number of claims.

CHAIRPERSON MILLER: Okay. Do you receive information so you do receive the info you receive it in different ways from different agencies, but once you put it together and you uniform it and send it out to the appropriate folks such as council again and the Mayor and also the only information that you receive is by virtue of the claims?

JOHN SWEENEY: That's right. We receive claims, a separate claim for each injury.

CHAIRPERSON MILLER: So, agencies send you no other relevant information pertaining to Worker's Comp other than that?

JOHN SWEENEY: As the case goes on, they might send us updated information as to whether somebody returned to work or was still out of work, but that goes into the claim itself.

CHAIRPERSON MILLER: Is that because that is the only one only information that is required by Local Law?

JOHN SWEENEY: Well, yeah, all the information that is required, and the statute comes to us, and there is certain other things that is required by the Worker's Compensation Board that we prepare and submit.

CHAIRPERSON MILLER: You just mentioned that the progression of the case may be you may receive that information as it progress?

JOHN SWEENEY: Right. For example, if somebody has an injury in April and is out of work for a month, in May we might get a report indicating that they went back to work.

CHAIRPERSON MILLER: What happens if it goes into the next calendar year? Is it reflected

JOHN SWEENEY: We would get no, we would get that information. It would not be reflected in that report.

CHAIRPERSON MILLER: So, if I were to ask you what the average time what was the average time from injury to returning to work?

JOHN SWEENEY: Right. That is information that we could, we could answer that question but that is not information that is currently in the report. The report does not track lost time.

CHAIRPERSON MILLER: Okay. But do we have do, do

JOHN SWEENEY: Yes.

CHAIRPERSON MILLER: Would you say that we have the data necessary to create such provide such information?

JOHN SWEENEY: Yes.

CHAIRPERSON MILLER: Okay. As well as be, could we do something like would we be able to establish patterns from the data collected as well?

JOHN SWEENEY: I suspect that is something that might happen on the agency level where an agency could take a look at the number of claims and the types of claims. Each agency has its own specific

tasks and challenges and the nature of injuries varies from agency to agency but someone an agency would be able I think to look at the report and then take the information there to review its claims and see if there is certain patterns and then it might be able to take action based on that.

CHAIRPERSON MILLER: So, there is enough specific information here to determine not just how, where but how an injury occurred?

JOHN SWEENEY: Well, yes. And in fact, I think the agencies themselves have more information because not every piece of information they have shows up in the report.

CHAIRPERSON MILLER: So, as we move forward, I think one of the things that we probably would like to do is get some of those agencies such as Department of Corrections and others on the high end to kind of talk about how they are using this data to create a safer work environment, to be more efficient and other things. So, from a legal perspective and ensuring that these benefits get disbursed in a timely fashion, I think that the objective also be that we make sure that folks are treated timely and get back to work as, I don't want

1 to use as soon as possible, but when they are better
2 and I know that in the past there has been situations
3 where services have not gotten delivered in a timely
4 fashion and folks which ultimately caused people to
5 be out longer than they should have and some policies
6 such as requiring physical therapy over MRIs and
7 other thing delayed the services getting delivered
8 and ultimately caused people to be out for some time,
9 extended times that weren't necessary. So, in terms
10 of being able to deliver a quicker service, does that
11 depend on whether or not agencies in this case when
12 the claims are made and obviously...

14 JOHN SWEENEY: Well yeah, certainly we
15 need to know about the claim in order to provide
16 whatever benefit. If somebody didn't tell us about a
17 claim then we'd have a problem.

18 CHAIRPERSON MILLER: Have you seen are
19 there cases where you've seen claims made or claims
20 have been entered, say, a month or two after?

21 JOHN SWEENEY: Sometimes that happens.

22 CHAIRPERSON MILLER: In those cases, can
23 you determine whether or not the person injured
24 required medical attention or whatever?

JOHN SWEENEY: You'd have to look at the individual and I understand that's beyond your control and that your job starts when you receive but again, I think that the information that we are trying to obtain today is to holistically repair the system.

JOHN SWEENEY: Right. The sooner we receive the claim, the better for everyone.

CHAIRPERSON MILLER: And in terms of so those claims get paid when the agency, the employer, which is the agency, the insurer, which in this case is the City's self-insured?

JOHN SWEENEY: That's correct.

CHAIRPERSON MILLER: So, when the agency decides that it's a worthy claim, it moves forward?

JOHN SWEENEY: Well no, they don't decide that. They just report the claim. In fact, most of our employees even if the claim is not reported, most of our employees have salary continuation for at least a period of time and they are not without money in most cases.

CHAIRPERSON MILLER: So, if a case is say a case is controverted, you're saying there's salary or some other mechanism in between...

JOHN SWEENEY: Right. If a person has sick time or annual leave, they are permitted to use that even if the case is in dispute.

CHAIRPERSON MILLER: What if the case is not in dispute?

JOHN SWEENEY: They are permitted to use it too.

CHAIRPERSON MILLER: Is that in every case?

JOHN SWEENEY: Yeah. Most people elect to use their annual sick leave because it is more money than the Worker's Compensation rate.

CHAIRPERSON MILLER: So, within is that does that depend on the agency, the title and the collective bargaining?

JOHN SWEENEY: Generally no, just pretty much everybody is entitled to do that.

CHAIRPERSON MILLER: Is it called an election and waiver?

JOHN SWEENEY: I am not familiar with that term.

CHAIRPERSON MILLER: Can you elect to waive for that period of time...

JOHN SWEENEY: When people fill out a Worker's Compensation claim, they are asked if they want to use their sick time or annual time and 99 percent of people say yes.

CHAIRPERSON MILLER: Really? Interesting. So, once the claim is settled, does that sick time or annual time, is that returned to the worker?

JOHN SWEENEY: If they use their own time, they are entitled to get the value of that time restored.

CHAIRPERSON MILLER: And obviously, they are not getting back the same amount of days?

JOHN SWEENEY: What they are getting is the value of the Worker's Compensation award. If this is...

CHAIRPERSON MILLER: Correct.

JOHN SWEENEY: If it is an award worth \$3,000 they will get \$3,000 of their time restored.

CHAIRPERSON MILLER: Okay. And that is determined by Worker's Comp Board?

JOHN SWEENEY: That's correct.

CHAIRPERSON MILLER: Okay. I guess I would like to acknowledge that we have been joined by Council Members Crowley and Council Member Dromm and

I did yes, I see Council Member Constantinides and Cornegy as well. He just how could you miss him? Yes, so in terms of I want to get back to for a moment to how services get delivered and if agencies are, if agencies are timely then there should be no reason why we can't provide services and get the people the treatment that they need and get them back to work in your opinion?

JOHN SWEENEY: That's correct.

CHAIRPERSON MILLER: In terms of I am going to shift gears for a moment here and may not this may be an agency issue as well. But, when it comes to those Worker's Comp providers, who's responsible for that payment?

JOHN SWEENEY: My office is responsible for those payments.

CHAIRPERSON MILLER: What is the average time how does that work?

JOHN SWEENEY: When doctor renders treatment, the doctor will submit a bill, we will review the bill. There is a Worker's Compensation fee schedule, that's the amount we are required to pay for certain types of treatment, so often times the bill is not in accordance with that so we will review

the bill to make sure that the treatment is for the condition and that the treatment is at the fee schedule and then we will pay the bill. If a doctor were to submit a bill that was say for an unrelated condition, we would object to that or if a doctor submitted a bill that was higher than the fee schedule then we would object to that.

CHAIRPERSON MILLER: So, needless to say, something like that couldn't just be they don't just send a bill and next week they get paid?

JOHN SWEENEY: No, they have

CHAIRPERSON MILLER: There's a little research and...

JOHN SWEENEY: The Worker's Compensation Law gives employers or insurers 45 days to process a medical bill.

CHAIRPERSON MILLER: And what is the average payment how long does it generally take the City to...

JOHN SWEENEY: Oh, we generally the vast majority of them are processed within the 45 days.

CHAIRPERSON MILLER: That's interesting. Is there a let me ask you this. In your experience, and again it may be outside of your scope here but

you're representing the Admin so, have you seen a decline in the number of Worker's Comp practitioners?

JOHN SWEENEY: I honestly haven't looked into that. I really couldn't answer that.

CHAIRPERSON MILLER: So, what we're also trying to obtain here is whether or not there is sufficient folks out there to treat injured workers. I myself know that some years back that it was very difficult in my other in my other life that it was it had become increasing difficult to treat workers because of diminishing because of the schedule fee to low pay.

JOHN SWEENEY: Actually, the fee schedule for many medical treatments was increased a few years ago. I don't know if that makes any difference. But my I haven't seen any lack of treatment. Nobody's actually mentioned to us.

CHAIRPERSON MILLER: And then the lack of and then there was also just that there were people who did not who no longer wanted to go through the bureaucracy and paperwork at Worker's Comp and they just got out of Worker's Comp.

JOHN SWEENEY: It's possible but I...

CHAIRPERSON MILLER: It is very much possible that there are very, very few doctors out there that want to treat injured workers for a lot of reasons.

JOHN SWEENEY: We process bills from thousands of different doctors. I don't know if it has diminished over time.

CHAIRPERSON MILLER: Okay, and so you maintain that generally it is within the 45 day, which is pretty good, that they are getting paid because I have seen had complaints from practitioners that they were waiting almost a year to get paid.

JOHN SWEENEY: There could be reasons for that. If there is an objection to the bill, sometimes the Worker's Compensation Board has to rule on a bill so that could take longer. But a bill that doesn't have any problem, will typically be processed within the correct timeframe.

CHAIRPERSON MILLER: And a bill is a could you give me an example of a typical injury or surgery and what that would cost?

JOHN SWEENEY: I don't think so. The fee schedule is incredibly complex and surgeries can costs from a few thousand to many thousands. An

office visit for a doctor could, you know, be \$100 or could be more if it is a more complicated visit. The fee schedule is very extensive.

CHAIRPERSON MILLER: Where do we find that fee schedule?

JOHN SWEENEY: It is in the Regulations to the Worker's Compensation...

CHAIRPERSON MILLER: Is that like if you lose a finger, that's also in there?

JOHN SWEENEY: No. That is the Schedule Loss of Use. That...

CHAIRPERSON MILLER: Uh-huh.

JOHN SWEENEY: ...statute.

CHAIRPERSON MILLER: No, I'm saying but we could find it in the same document?

JOHN SWEENEY: No, you'd find it in New York the Worker's Compensation Board issues regulations and the fee schedule is part of the regulations.

CHAIRPERSON MILLER: SO is it part of it that New York State, I won't say undervalue, but kind of they are not quite paying up to par when it comes to the Worker's Comp practitioners and including the

workers. Where does New York State lie nationally in terms of benefit, in terms of pay?

JOHN SWEENEY: I don't know the answer to that.

CHAIRPERSON MILLER: What is the maximum payment for New York State?

JOHN SWEENEY: Maximum payment now is just over \$860 per week.

CHAIRPERSON MILLER: And California is about 1,100?

JOHN SWEENEY: I don't know.

CHAIRPERSON MILLER: Wisconsin is like 940. Pennsylvania is a thousand. Washington State is 1,300. Alabama is higher than New York. That might have something to do with it as well, right? So, now that my colleagues are back, I'll let them jump in. I'm sure that they have some questions about the Worker's Comp system that they want to add to the hearing. Council Member Crowley?

COUNCIL MEMBER CROWLEY: Thank you, Chair Miller. Thank you for having this hearing. I'm sorry, I was a little late so if the three who are testifying if you can identify what agency you're from.

JOHN SWEENEY: I'm John Sweeney. I am the Chief of the Worker's Compensation Division at the New York City Law Department. I am joined by Andrea Berger, who is from the Legal Counsel Division and Mindy Roller who is the Deputy Chief of the Worker's Compensation Division.

COUNCIL MEMBER CROWLEY: Okay. So, as far as you are here today, you are just here as employers because I have concern about the Worker's Compensation system but it is usually the people who are on the other side of the table that you are sitting. But, I do understand the Chair's concerns because I have been told that when you look at private employers versus the City as an employer, that if you are an employee and you collect worker's compensation from a private employer, you odds are higher of getting reimbursed fairly and making sure that your medical bills get paid and I think the Chair was alluding to that when he brought up the amounts that other states are paying.

JOHN SWEENEY: The amount that we pay is fixed by state law. We have no control over that.

COUNCIL MEMBER CROWLEY: Right, but what about the amount of claims that are allowed or the

amount of claims that you choose to dispute versus other employers?

JOHN SWEENEY: We dispute a very small number of actually, compared to private employers or insurers, we dispute very few claims. We dispute somewhere less than five percent of claims and many insurers dispute ten to 15 percent.

COUNCIL MEMBER CROWLEY: So, you wouldn't be able to answer questions such as if somebody has a Worker's Compensation claim where they can find out where they are in the process?

JOHN SWEENEY: I think they can contact the Worker's Compensation Board for information like that.

COUNCIL MEMBER CROWLEY: So, the State Department of Labor?

JOHN SWEENEY: The Board, yeah.

COUNCIL MEMBER CROWLEY: The Board? When somebody becomes a New York City employee, are they told of their rights, Worker's Compensation, in case they get injured on the job?

JOHN SWEENEY: I believe they are.

COUNCIL MEMBER CROWLEY: Do you know if when hospitals and/or doctors, health care providers

in this city, when they encounter somebody who comes in for care, are they trained to ask whether this injury happened at work?

JOHN SWEENEY: Yes.

COUNCIL MEMBER CROWLEY: They are? And do you account for that? Do you or is there any city agency that is watching our health care professionals when they are helping people who are hurt by work know what they that they should be filing a complaint because they only have a finite amount of time?

JOHN SWEENEY: Every agency makes available Worker's Compensation claims information to its employees.

COUNCIL MEMBER CROWLEY: Right, but you know sometimes people can be working for a city agency for ten years before they may incur an injury on the job and their first initial reaction is let me get help for this injury and oh I am not going to be able to make it to work because my injuries are keeping me at home and then, you know, time goes by and they don't file the proper paperwork in time, is there any health care is there any agency that is making sure that city health care providers are encouraging those with work case injuries to seek it

could be whether they are working for the City or another employer whether they know what their rights are?

JOHN SWEENEY: You would have to ask the agencies that. I don't know the answer to that question.

COUNCIL MEMBER CROWLEY: Yeah. Just a little disappointed that we don't have both sides here today, Chair. For future, we have to visit it's an important topic. It's not really New York City, it is New York State. However, I don't think that people who get injured on the job in New York City know what their rights are and I think often they go for help and even in hospitals they are turned away because they don't have the means to pay for their health care and in all the while that employer could be held responsible. Thank you. No further questions.

CHAIRPERSON MILLER: Thank you council member and I think you are absolutely right and in how information gets disseminated and whether or not what we also want to drill down is the response from agencies coming back and whether or not agencies are accurately reporting these incidents and accidents and whether or not we know that it happens on the

outside that people are discouraged from filing Worker's Comp claims for whatever reasons, we don't know if that is the case here and we want to make sure that this is absolutely accurate information and so that we can use this to get better and facilitate treatment for workers that is proper and that those practitioners are properly paid and we don't want to listen, and we do understand that the rules governing this system come from the State Worker's Comp Board but each individual employer has responsibilities as well so we want to make sure that this information that we are able to utilize it in the case of those municipal employees that it is going back to the agencies that the agencies are getting better that if there are if we this date tells us that a specific kind of accident at a specific location is occurring that we are addressing that and ultimately I think what we want to ask as well as is there feedback between legal and agencies in terms of these accidents, not just the accidents themselves how they occur and so that we want to create a safer work environment but I know that sometimes there is a lack of control in terms of how the decisions get made in terms of payment but in terms of ensuring that all

paperwork is prompt and these things here if in fact the agencies see that there is a delay between claims and services and ultimately delaying people getting back to work, it is all of our goal to make that happen. Are we collaborating and having conversations?

JOHN SWEENEY: Yes, we work with the agencies. We set up training for agencies pretty much in a regular basis and remind them of their obligations to report the claims timely and give us a complete set of information. We hope, you know, and we think they are doing a reasonably good job of it.

CHAIRPERSON MILLER: Okay. Council Member Dromm?

COUNCIL MEMBER DROMM: Thank you, Mr. Chair. I used to be a UFT chapter leader in my school. I was always confused by the system that the Department of Education used. I noticed in your testimony that you said that they are exempted from the Worker's Compensation Law. Do you know the reason behind that?

JOHN SWEENEY: The Worker's Compensation Law lists certain types of activity which requires Worker's Compensation coverage and teaching in a city

school is not part of it so they have never, never been required to have the coverage. That is something historical that goes back many, many years.

COUNCIL MEMBER DROMM: What do you mean by the type work?

JOHN SWEENEY: There's a Worker's Compensation Board has a section that defines something called hazardous employment and it lists particular job titles and it says this is hazardous employment, this person is covered by the Worker's Compensation Law and the teachers are not listed there.

COUNCIL MEMBER DROMM: Is that the same thinking with the police department and the fire department?

JOHN SWEENEY: Very similar.

COUNCIL MEMBER DROMM: And then each of those, I guess you'd call them agencies although there is a dispute as to whether the DOE is an agency or a separate entity altogether, their system for Workman's Comp, for lack of a better word perhaps, is it internal?

JOHN SWEENEY: Yes. Each of them has a completely different system to provide for line of duty injuries.

COUNCIL MEMBER DROMM: Well line of duty is exactly right, what they call it. So, I do think that is where I hear an awful lot of complaints in terms of how long it takes for people to get compensated. That has been my personal experience. Do you have oversight of that? What is the relationship between you and those other agencies that are excluded?

JOHN SWEENEY: We have no contact with that aspect of it. We handle Department of Education claims from the non-pedagogical employees who are covered. Pedagogical employees and the police and firefighters are outside my office. They are handled by the police department or fire department or Department of Education.

COUNCIL MEMBER DROMM: And that's is king of what I don't really get is you have non-pedagogical employees working in the same building as teachers yet not everybody is covered under the same law.

JOHN SWEENEY: That's correct.

COUNCIL MEMBER DROMM: So, I mean, how the position for teacher's aides is a hazardous job?

JOHN SWEENEY: Yes.

COUNCIL MEMBER DROMM: But a teacher's not?

JOHN SWEENEY: That's correct. That's a state law.

COUNCIL MEMBER DROMM: And that's the way it is?

JOHN SWEENEY: I'm not trying to justify it. That is the state law.

COUNCIL MEMEBR DROMM: That's a state law. I just never really could get to the bottom of what that is and I'm not sure what, you know, we do about it but I I would also, Mr. Chair, love to get some opinions from those departments as well as we move forward in examining this issue. So, thank you.

CHAIRPERSON MILLER: Thank you Council Member. I am sure the City is not obviously, they are not the only employer that is self-insured but is there an inherent conflict of interest there?

JOHN SWEENEY: I'm not sure I understand

CHAIRPERSON MILLER: Why is the City self-employed self-insured?

JOHN SWEENEY: Really, I don't know the answer to that. The City has been self-insured since the inception of the Worker's Compensation Law in 1914.

CHAIRPERSON MILLER: Is it more efficient?

JOHN SWEENEY: I would think it probably is more effective and less costly than purchasing insurance but I am not the person who made that decision.

CHAIRPERSON MILLER: Yeah, you're right. Things have changed. Things have changed tremendously and because of that and could you answer this one? The we've seen about a year to date about a \$10 million increase over last year this time. What would you attribute that to?

JOHN SWEENEY: I'm not sure what number you're referring to.

CHAIRPERSON MILLER: Just overall general costs. Do you think it's...

JOHN SWEENEY: Well I don't that number may or may not be accurate but I

CHAIRPERSON MILLER: I think it was your number.

JOHN SWEENEY: I'm not sure what we were referring to...

CHAIRPERSON MILLER: I will get back to you on that.

JOHN SWEENEY: But, Worker's Compensation costs do go up from year to year. One of the reasons is the Worker's Compensation rate, you were talking about the rate before, the rate has gone up between 2007 and present time, the weekly rate has gone up 115 percent so that would account for a certain amount. And also, the payments for medical payments have increased by 20 to 30 percent.

CHAIRPERSON MILLER: And so actually yeah, but they did pretty well considering that we are in the lower 50 percent nationally in terms of payment and I don't think they have kept up index-wise with the costs of health care or medical insurance nationally outside as Worker's Comp as well. Twenty percent is pretty much the norm. I think it is worth exploring whether or not this method of being self-insured is antiquated, outlived its usefulness or maybe in fact it is, you know, that is something that we should as a body take a look at as well whether or not, you know, is although, how much human capital

you guys have over there in legal? How much staff is legal working on...

JOHN SWEENEY: We have about 85 full-time employees and about 20 to 25 part-times.

CHAIRPERSON MILLER: Is that sufficient?

JOHN SWEENEY: It's difficult to keep up with the work. I mean, we manage to do it but it is a lot of work.

CHAIRPERSON MILLER: It's a lot of work and it is tedious and its difficult work and getting people paid and I've spent a lot of time on this stuff. I know how difficult it can be and how even , you know, you said that less than five percent of the cases are controverted but I've seen cases that even when there were decisions that they weren't paid off, the employee or the provider in a timely fashion so the system can ne a bit dysfunctional and I know that you guys do your very best and this is a very impressive report but I will tell you from a practical day to day standpoint what I've seen which is the reason why we are having this hearing. We know that there are problems and we want to get better but we really appreciate you guys being here, providing this and I have I think tons of questions that we

would like to follow up and members of the committee as well but I want to keep you here as we get started a little late. Let me just digress a little bit and you talked about the waiver and election forms or the ability to waive or the ability to use your others accrues in lieu of and what that process looks like and you said that everyone has that ability to do so. I don't know if that is the case. I have seen in my experience as a labor leader and in this seat seen many different collective bargaining agreements and that's not the case even within a district council that has varying contracts, many titles have different ways that they address that that I've seen folks from where the areas in waiver and election provided a limited 15 days, 30 days, no days that all entitlements, all accrues had to be exhausted before Worker's Comp kicked in. I have just seen a plethora of different agreements usually that don't work to the benefit of the worker in doing so because of the amount of time that it took to restore those sick days, some of the sick days never got restored even upon retirement. You know, I've received letters from workers and I have seen cases that are still outstanding so in theory it is good but is there

anything that Legal or the Admin could do to put I appreciate the fact that you are doing workshops with agencies but are you talking about these specific problems?

JOHN SWEENEY: Well, we are talking about whatever the agency needs to improve on. I think the problem you are suggesting is not something I'm familiar with.

CHAIRPERSON MILLER: So, I would suggest in closing that while you have a conversation with agencies that you also have a conversation with those bargaining units that represent those workers as well because I'm sure they probably have something a little different to say about those matters, the amount of time and resources that go into representing workers is a lot and so I'd like to see everybody at the table. I'd like to see this system work. I really appreciate you coming out and we do have some stuff that we will forward to you in the very near future.

JOHN SWEENEY: Thank you.

CHAIRPERSON MILLER: Thank you so much for coming. Next up we have Nadia Marin-Molina from NYCOSH and from District Council 37 Eileen Mahia.

Okay. Thank you for coming out this afternoon. You can begin.

GIA MAHIA: Hello, my name is Gia Mahia 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 the city and state government agencies as well as in many of the cultural institutions and authorities located throughout the five boroughs. On behalf of Henry Garrido, the Executive Director, myself, I think 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 workers experience if he or she becomes injured on the job and files a claim for benefits through the New York State Worker's Comp System. When a worker gets hurt on the job, their only recourse is to file a claim for benefits through the Worker's Comp System. This is a great bargain made back going to the early 1900s. The system was based on the premise that if a worker got hurt on the job, they employer will pay for lost wages and medical costs and in exchange the employer did not get sued. Payments were supposed to made

quickly without regard to fault and with minimal obstacles. Today, the system is anything but quick and easy and navigating through the New York City Law Department is just a challenging. Given the variety of civil service titles of jobs of City employees we represent and the daily tasks they perform, it should not surprise anyone in this room to learn that the risk for workplace injuries and occupational diseases exist and that on any given day a City employee can get hurt or even killed on the job. Today, I want to raise our concerns with respect to the annual report generated by the New York City Law Department in accordance with Local Law 41 of 2004. I the reason I raise it is because I had to say that District Council 37 is fully frustrated with the way the report is written. It is the access is really we really don't have too much access to it and frankly, the report is really not helpful to us. 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 in that it does not allow us to take a wide-ranging look

at what is really happening at the worksite. 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 that workers are out as a result of their injury and not even the headcount of a City agency. It does even obviously, it doesn't even give us the number of cases that the Law Department actually controverts on a yearly basis. Aside from the format, the report we find is not really accessible. I can tell you that I have Googled for the report and it seems to or and I can never find it or it is buried so deep that I think for me it is easier to find a needle in a haystack than it is to find this report. So, where was I? So, yes, a more comprehensive report is valuable to me as the Director of the DC 37 Safety and Health Department. The New York City Law Department's 2014 report to the City Council, the Mayor, speaker, comptroller and the public advocate shows that in this year the total amount paid by Worker's Comp was \$18.7 million. In 2017, the number went up to \$22.1 million and that difference represents about an 8.4 increase in payments. It is our belief that these numbers may be higher as under-

reporting 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 cost that workers, not the employers, that workers incur when they are hurt on the job and provide a basis for further investigation of worksites with higher rates of incidents. The intent of Local 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 the costs down. With a more detailed report, DC 37 and the City of New York can work collaboratively to improve conditions and reduce injury rates while keeping the 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 of New York City employees that New York City employees face on the job will not only reduce the payments that the City has to make toward workplace injury claims but also will 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. Today, we can together we can work towards creating new initiatives that result in earnings for both the employees off and the City as a whole. And, in fact, you should know that I mean, DC 37 facilitates approximately 27 safety and health committees. These are contractually mandated. Actually, these committees are probably the most excellent forum to not only that not only fosters harmonious labor relations, but it does it would allow the committee as it was intended to look at these reports, to review it, to address conditions without having to go through the grievance process, without having to go through arbitration and eventually to be able to recommend improvements to the worksites so at the end of the day every worker can go home safe and healthy. I urge you and your committee to take steps to improve on the way the City gathers data that is reported to the Law Department and then urge each and every New York City employing agency to analyze the claims, submit it to the Law Department with the goals of reducing injury rates and producing programs that provide workers with the knowledge and the skills necessary to carry

1 out their duties safely. I just want to this is not
2 in my written testimony but in listening to your
3 questions to the Law Department, I just wanted to
4 raise a few points that were made by Mr. Sweeney and
5 his counsel. First of all, I just want to say that
6 one of the biggest problems with the data is that
7 there is no uniform way of collecting the information
8 from all the City agencies. So, DEP may have the data
9 in a certain database and then ACS may come out with
10 a totally different one. So, having a uniform system
11 would allow the Law Department to really capture what
12 is really happening at these facilities as well as to
13 allow the agencies to really go back and review the
14 incidents that do occur that result in injuries to
15 workers. That is number one. Number two, I just want
16 to say that there are some there are major problems
17 with the Law Department. The picture they presented
18 was we get the claim. We process it and then that is
19 the end of it. That's not true. You know, you know,
20 there's a lot our members come to me and they have
21 problems with the fact that there are authorizations
22 that are being withheld for medical care and for
23 examination and they have to jump through hoops just
24 to get that authorization. Access to medication is a
25

problem, right? They say that that they only controvert about five percent of the cases. I certainly would dispute that number and they certainly didn't come back come to you with numbers to back that up at all. So, I would say that they probably controvert 99 percent of the cases. We have major concerns with those cases where there is no time loss and only medical costs that are incurred. These are medical only cases and those are very challenging for both the member and try to deal with it when they may not have representation because most attorneys that practice Worker's Comp do not take medical only cases. Although the Law Department may provide orientation to City agencies, I can tell you that there is no orientation given to any City worker about the system or how to navigate the system. The system is silent until you get hurt and when you get hurt you're like oh my God, now what do I do and certainly there is no advocate for injured workers in the City of New York that could help that injured worker navigate through the Law Department bureaucracy. The State has an advocate for injured workers but that is only to help them with the state, you know, how to navigate through the Worker's Comp

system in the State, not fort the City of New York.

And then, finally, the Workers' Comp packet that the agencies provide to our members only includes those forms that are necessary to that need to be completed and that need to be forwarded to the Law Department.

There is nothing not too many agencies or I would say not any of the agencies provide the C-3 Form that is often required to be submitted to the State by the injured worker so and that is like the fail-safe system here, right, so you tell your employer I got hurt on the job and you fill out your W I think it is a WCD23 Form, the notice to the employer, you fill it out and the employer gives you the DP2000 which is the options one and two to either stay on payroll or not stay on payroll and then that's it. So, the worker hands it back to the timekeeper, the bookkeeper or whoever and then that gets forwarded to the Law Department. What happens is that sometimes those cases are not indexed and those cases are not processed and so the C-3 Form is the only thing that worker has to notify the State that they have been injured on the job and when they file when they send that C-3 Form to the State and they get it and they check their records and they say wow, we didn't get

anything from the City of New York and then that prompts a callback to the City saying where's the paperwork for this case. So, because they're because they City agencies are not required to give out the C-3 Form, a lot of workers think that their cases are being processed and in reality they may not be processed in a timely manner. So, I am going to stop there...

CHAIRPERSON MILLER: Wow, that was a lot.

GIA MAHIA: Yes. I'm sorry.

CHAIRPERSON MILLER: But it also was very necessary because that is obviously a different picture from what we just heard obviously. Ms. Molina?

NADIA MARIN-MOLINA: Good afternoon. I am here on behalf of the New York Committee for Occupational Safety and Health, NYCOSH. We applaud the Council's oversight on this important issue and we thank you for the opportunity to give testimony today. I have to say that the testimony I have is not specific to the City employees and I defer to others who are dealing with the agencies on a day to day basis and can talk to those specifics. I will speak broadly about the situation of Worker's Comp, which

is New York State Law, and if there are specifics around the City issues we can certainly follow up in writing and would be happy to do that. NYCOSH works to extend and defend every person's right to a safe and healthy workplace including the protection of the Worker's Compensation System. The Compensation system was designed as a bargain after one of the worst tragedies for Americans 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. So, employers are required to provide benefits for medical treatments and lost wages and permanent disability. But I realize from the previous discussion that some of these the issues apply regardless of which employees we are talking about. Today, our system is broken in a fundamental way. Instead of using employer's money to provide benefits for injured workers the insurance companies are paying a host of businesses. There are independent medical examiners, supposedly, independent medical examiners, nurse case managers. There are phony vocational rehabilitation companies,

defense lawyers and more so there is a whole cottage industry that has grown around this and they profit from the system at the expense of workers and they are reaping profits for themselves. At the same time, the argument is that the costs of the system that the costs are skyrocketing. So, there is the cost cutting argument and the cost cutting argument is what business and insurance company lobbyist are using and it is influencing the Workers' Compensation Board itself. They recently publically testified that employer costs are too high for employers and that benefits for workers need to be reduced. But, injured workers can't expect to get a fair hearing if decisions are being made just looking at cost, right, and how they can cut costs. We see the attacks on workers especially low wage and immigrant workers and think that they have to stop. In 2007, the legislature and the former governor agreed to raise weekly Worker's Compensation benefits for the first time at that time in 15 years but also to limit payments to permanently disabled workers. So, low wage and immigrant workers don't earn enough to benefit from the increased benefits amount but they bear the cost of losing the disability benefits at

the bottom when it is permanent. So, much of the estimated \$1 billion in savings came at the expense of very vulnerable workers. New York City Council can work to advocate for injured workers and provide meaningful oversight as is this hearing particularly in ensuring that workers are granted a fair hearing and in languages that they understand. Right now, the board is only issuing limited documents in languages other than English and the technical legal terms that they use and the numbers of the forms are impossible to understand even if you do speak English well. The City can support outreach initiatives to educate more workers on the Worker's Comp system and again in languages workers can understand. We mentioned before workers who don't know that they have the right and that they can access it, right, so that is certainly an area that cuts across sectors and workers not knowing that they have the ability to access Workers' Comp. So, going back to the issue of benefits, the amount depends on his or her wages that a worker received but benefits for middle income New Yorkers have not increased since 2012. The only increase has been for the top 25 percent of wage earners and those benefits have increased about six percent over time

but workers who earn less, no more than 30,000 per year, compensation benefits haven't increased since 1992 which is almost 25 years ago. So, this includes their type of schedule loss award which is a New York State Business Council is attacking, right? That's the group that is saying that their costs are too high. Again, they are claiming that the benefits are skyrocketing but they are trying to cut cost by cutting the benefits for injured workers. Our belief is that the agenda is to undermine and dismantle the Worker's Compensation system and impoverished low wage workers. If businesses or insurance companies are really interested in saving employers money then we can build a culture of prevention and value workplace safety and health. We have various studies which have shown that every dollar invested in injury prevention returns between \$2 and \$6. So, we should be working at guarantee that every workplace in the public and private sectors centers on health and safety of every person. I just want to mention something that I didn't put in the testimony but that there was recently a US Department of Labor report which came out and analyzed Worker's Comp systems across the country and I'll just mention one quote

1 which they said they note in their report, "States
2 across the country have enacted new laws, policies
3 and procedures which have limited benefits, reduce
4 the likelihood of successful applications for
5 Worker's Compensation benefits and/or discouraged
6 injured workers from applying for benefits." So,
7 obviously what is happening in different states, each
8 state has its own issues in terms of the Worker's
9 Compensation system but some of these issues in New
10 York State are part of a national trend and a broader
11 campaign to undermine the Worker's Comp system. Every
12 New Yorker knows that he or she could be one step
13 away from injury. If they haven't been injured at
14 work, we know friends, neighbors or loved ones who
15 have been injured so it is time for all of our rules
16 and policies to defect to to reflect the dignity and
17 human rights of all workers. Thank you for the
18 opportunity to testify and again if there are
19 specifics around this issue that we can bring to you,
20 we'd be glad to follow up in writing with more
21 details.
22

23 CHAIRPERSON MILLER: Thank you so much.

24 That was very insightful and I think one of the
25 reasons why we wanted NYCOSH to participate today was

to bring this is not just about public employees. So, obviously we needed that to bring that other voice and talk about some of the things that we see and we know obviously you mentioned some things about the low wage and immigrant worker and we wanted to be able to speak to that and be able to address that as well. We know certainly that this is a, from the testimony, that this is a flawed system as pertaining to workers as an inequitable system as it pertains to workers as well. We kind of just wanted to drill down on some of those things as well. You did mention something that I neglected to bring up to the Admin when they were here. Does the City use IMEs and some of that underground industry of those independent medical examiners and folks that you have to see that determine whether or not you're disabled or what degree of disability you have and

SPEAKER MARK-VIVERITO: Absolutely, yes. They have to undergo many IME examinations.

CHAIRPERSON MILLER: And what and exactly for the rest of the members here, what exactly is a independent medical examiner? What role do they play?

SPEAKER MARK-VIVERITO: Primarily the independent medical examiner is brought in when there

1 is a question about the disability of the individual
2 and the extent of the injuries or when there are
3 disputes between the injured workers doctor and what
4 the City might see as

5
6 CHAIRPERSON MILLER: Let me ask you this.
7 Is there a obviously DC 37 represents a multitude of
8 different titles and agencies. Is there kind of a
9 built-in mechanism whereas each claim, claimant, if
10 you're out x amount of time will ultimately end up
11 seeing an independent medical examiner?

12 SPEAKER MARK-VIVERITO: No. The use of the
13 IMEs really is not dependent on how much time you're
14 out. I think it really depends on the complexity of
15 the case and the issues that are in question
16 especially in those cases where the Law Department
17 controverts the claim. And so, at any given point the
18 employer or carrier can raise a question.

19 CHAIRPERSON MILLER: So, I will say this
20 that back in my days when I was a business agent and
21 the agencies and folks that we dealt with required
22 that you did not go back to work unless an IME
23 cleared you to go back to work and in fact if you
24 were out a substantial amount of time on a monthly
25 basis you had to visit an IME.

SPEAKER MARK-VIVERITO: Yes, that is there has to be updated medical forms that have to be submitted to the Worker's Comp Board when there is a change in the condition of employee. So, yes, I think it is every 30 or every 45 days a new form has to be submitted.

CHAIRPERSON MILLER: As we talk about cost, rising costs and being more cost effectively efficient, is there any data out there to what the costs, what this industry of folks, the independent medical examiner and practitioners that employees and insurance companies are requiring you to participate with any costs. Is that obviously when you see it more and more obviously it is emerging and growing industry and if there was no money in it, it wouldn't.

SPEAKER MARK-VIVERITO: Yeah, I don't think

SPEAKER MARK-VIVERITO: I don't know that we have specifics in terms of the numbers but it is definitely growing and we can look for more information about the costs.

CHAIRPERSON MILLER: Would you say that that is an investment that employees made to either

deter or sway decisions on how benefits are being administered and ultimately a Worker's Comp judge decides but in between the independent medical examiner will determine whether or not someone needs a particular procedure or further medical benefits, services.

SPEAKER MARK-VIVERITO: I think for the most part the use of the IME is really to determine whether the employee can function and return back to work. I don't think I don't know whether they are used to determine whether there is a need for particular treatment or examination but for the most part I think it is to determine function and whether they can return to work.

CHAIRPERSON MILLER: So, on the, Ms. Molina, on the private sector side, are there industries that you see that have a greater number of incidents of Worker's Comp cases, number one, and then two, are there industries where we see that there is a deterrent from employer to employee to either not report to kind of go see our doctor and manage it internally and they are not accessing the Worker's Comp system that they are entitled to?

NADIA MARIN-MOLINA: At least from what we've seen at NYCOSH, there are industries where there are certainly more dangerous and in particular industries where the lowest wage workers are, industries where a lot of immigrant workers are. So, if you look at the construction industry, if you look at, you know, low wage workers in restaurants for example and there are definitely tactics that are used by employers and we've heard the reports repeatedly from workers who say that their employers discourage them from applying. It could be, for example, telling them well if you're undocumented you don't have a right to Worker's Compensation, although you do, telling them you just started. There are many sort of strategies that employers use in order to discourage workers from going to Worker's Comp and the most common is the fear of losing their job and the fear of retaliation. So, workers may even know that the system exists might not be willing to go because they are afraid that if they go to file a case they are going to get fired and that the retaliation is what is going to make them lose their job.

2 CHAIRPERSON MILLER: So, there is no such
3 there are no protections for the worker in a case
4 like that if the person is, through no fault of their
5 own, injured on the job and because of the loss of
6 time they lose their job, what protections if any
7 exist? What in your opinion can be done to protect
8 workers for trying to get themselves better?

9 NADIA MARIN-MOLINA: Legally, you're not
10 supposed to be fired, you're not supposed to be
11 retaliated against in any way for filing a Worker's
12 Compensation claim, right, but in reality it is not
13 an area where anybody, even the Worker's Compensation
14 attorneys themselves, you know, it is not an area
15 they focus on. They focus on the claim itself rather
16 than the retaliation cases. So, it is something where
17 we need to strengthen the law, I guess this would be
18 at the State level, in order to better protect
19 workers by discouraging employers from retaliating
20 against them. It exists, like I said, but it is
21 really at this point mostly theoretical because it is
22 not enforced enough.

23 CHAIRPERSON MILLER: Certainly, I think we
24 all know that it exists on that side but Ms. Mahia,
25 in terms of what you've seen, public safety and so

forth, in my experience I have seen over zealous managers who want to manage their department in a way that impacting their availability and numbers and budget and that they encourage people to get to work by any means necessary and that there is a level of force indirect to have people come to work even when they are legitimately injured. What do we do in a case like that that as you said when paperwork isn't filled out? It is part of the problem because while they are not filling out or submitting proper forms, that claim is not entered and in the meantime they are encouraging people to get back to work and take a couple days sick, get back to work. Meanwhile, that accident never happened if State never received the proper paperwork and if they encouraged those folks, those workers to then come back to work after using eight days of sick time, perhaps they were healed and in most cases they aren't and there are some residual effects of that that you did run into a misinformation of about a timeframe as to when a claim can actually be filed, right, because you say it didn't go in and it's a month later and the ankle is not quite right or a knee is not quite right, what can the worker do at that point?

MAHIA: Well you raised a lot of different issues and I will try to remember them all. But, you know, I mean we our workforces is civil service and so when you become permanent on the job you have a lot more protection in terms of not losing your job if you file for injuries. I think the danger comes in when we have many provisional or those that are hired with just education and requirements that don't have the civil service protection and so because there is a probationary period there is always a fear that if they report an injury during that time they are going to be like you're out the door so there are that's why I talked about it in my testimony about under-reporting and that is probably one category that needs to be looked at. There are other agencies and I have heard this where supervisors basically refuse to take the reports that the workers want to submit for Worker's Comp and they say no, it's not a Worker's Comp injury, not a claim and, you know, you can't submit it. And because the City does not provide the training and orientation to workers, workers can't come back and say no, it's my right, I can do that. They don't know what the system is. So, that also impacts on whether those numbers are captured by the

1 City agencies and they're reported to the Law
2 Department. In terms of notice, you mentioned the
3 whole issue about notice, 30 there is a there are
4 some time lines that have to be met. The bottom line
5 is if there is an accident that has to be noted then
6 it has to be causal relationship. The law says, New
7 York State law says, that the employee has 30 days to
8 notify their employer of an accident. This is typical
9 of those where you involve a back injury where you
10 think you are okay and then a week later you're like
11 I can't get up and then you have those with
12 occupational diseases that there is a latency period
13 involved and you may have an acute exposure to let's
14 say a chemical and it is not going to do anything to
15 you that day that you're exposed to it. You may a
16 sneeze, you may react, you may have a headache but
17 then 30 years down the road you develop some kind of
18 a cancer in your liver, in your stomach, your lungs
19 because of exposure and so there is a two year notice
20 for there is a two year period to file for claims for
21 occupational diseases and also the ones that are
22 really most challenging for City members but the
23 clock starts ticking there are different scenarios
24 under which that clock starts ticking. It is not the
25

1 day you have the exposure. It could be the day that
2 you were told you had a sickness, the day that you
3 knew it was from that exposure or could be the date
4 of disability that has to be established by the
5 Worker's Comp Board and so those are the cases where
6 we find we have a lot of difficulty in that the
7 members have a lot of difficulty in having the Law
8 Department not controvert it and just accept it and
9 pay the, pay the benefits. I hope I answered your
10

11 CHAIRPERSON MILLER: No, that was actually
12 pretty thorough and you did, even though it was a
13 lot, you got to it all and what I was kind of driving
14 to is again we see these things on the private sector
15 and in particular as it pertains to low wages and
16 immigrant workers different strategies and tactics
17 but overall the goals are the same and the under-
18 reporting or not reporting for whatever reason in
19 attempts to save dollars at the expense of the
20 workers and so I think that's what we're trying to
21 get to. But before we wrap, Ms. Molina, there was
22 some obviously there was an interest in those
23 industries, the construction industry, the trucking
24 industry, we've had some workers that came in. We did
25 another hearing on workplace safety and who had

literally lost fingers and were just told to get back to work or see my doctor, here's what's going to happen and the threat of losing their job is there, collectively, is there a resource out there of information, worker's rights around that obviously, you know, as the District Council is concerned, are there annual workshops or whatever that provide information to workers as well. How do we get this information out to let them know that there is a system in place and that potential enforcement of this system and the Worker's Comp Laws exists as a partnership, right, through organized labor, through organizations such as NYCOSH, how do we get this protection that we've really worked really hard not just to achieve but to hold onto that they still exist even within this climate that will probably going to see a lot more of this in the future, diminishing of worker's rights in a very subtle way in a national type of way that we're seeing that we can, you know, it's almost like well it can't happen here in New York State. The fact of the matter is that, number one, it does, but if you look at wages, I'm sorry, the benefits and the fees, the schedules that we are woefully behind the rest of the country

here in New York where, and particularly New York City, and where the cost of living is significantly higher and an injured worker is really in a bad way and if you find if there is a way to prevent the injured worker for not receiving a workers comp check for eight weeks, ten weeks before you get your first check that is, for someone who is living day to day check to check that is a game changer. Certainly something that I have seen and I'm sure you both have experienced but is there something that we are doing or can do to prevent that from happening and protecting those workers?

SPEAKER MARK-VIVERITO: I can start. We do education and training to thousands of workers and always include information about Worker's Compensation in it. You know, I think that we all have to do more at every level and every industry. I think we have to do more. I think I don't remember the statistic offhand but the percentage of workers who don't know and don't file their who would be eligible for Worker's Compensation and don't file it is much, much larger than it should be and then those costs. If a worker is injured and doesn't file for Workers Compensation, that costs ends up being a

1 health care cost, right, it could be depending on
2 their income either they are paying the hospital
3 bills or it is a public cost. It's not that these
4 injuries don't exist. They have to be treated somehow
5 and so I do think that, you know, we do some
6 education. We have to do more and particularly as we
7 said among the workers who are the lowest income and
8 the most vulnerable.
9

10 CHAIRPERSON MILLER: Interesting and Ms.
11 Mahia, it was very interesting that you said that you
12 mentioned about whether or not agencies were trained
13 to specifically or health care practitioners were
14 trained to ask whether or not this was a job related
15 industry. The majority of the time if you say yes
16 then if becomes Worker's Comp and even your regular
17 PC is going to say I can't treat you for this. What
18 does a worker do in that case because there are very
19 few Worker's Comp doctors or people that are willing
20 to accept there is regardless of what we heard today
21 and we know that there's other folks who can testify
22 to the contrary that there are flaws in the system
23 that doctors and other practitioners are not
24 necessarily willing to accept because they can't do a
25 year without getting paid for a surgery or a function

of service that was performed. It is really important but you're right, they're not doing that and if so, is the Law Department or whatever, whomever then is responsible are they capturing that checked box and going back and saying well, you know, in terms of what are they doing if in fact it was a work related injury but not claimed as such.

SPEAKER MARK-VIVERITO: I don't I can't speak for the Law Department but I certainly don't see them having think that they have a role in doing anything other than processing claims, the paperwork, paper pushers basically. I don't think that they feel they have a responsibility to go back to the agencies to try to deal with the rates of incidents that those agencies have. I don't see that as a role. But, you know, the whole issue of whether a doctor when a doctor asks whether this is work related or not, it really doesn't even start there. It starts at that registration desk when people had to fill out that form and there is a box that you have to check off is this work related or not and that is a trap. That is a trap for many people because if the worker says yes, they are caught in a system that they may eventually try to get out of but that leads to other

1 problems. If they say no and they get treated using
2 their health insurance then we are cost shifting
3 here. If they get reinjured for the same thing, the
4 C-3 form that they had to fill out also is a trap for
5 workers because they can be charged with fraud if
6 they say no they didn't have an injury to that same
7 body part years ago and then they get the medical
8 records and show. So, there is a there's things there
9 that really deter the worker from really taking
10 advantage of what is available to them and without
11 fear of being retaliated against or being, you know,
12 charged with fraud.
13

14 CHAIRPERSON MILLER: Wow, you guys are
15 really thorough. I thought I was one of the few
16 persons that was familiar with those type incidents
17 and situations when it comes to injured workers but
18 the goal here today was how do we get better in
19 providing these services, how we can be more
20 efficient in terms of providing services as a
21 municipality but also oversight in making sure that
22 workers are receiving all that they are entitled in
23 terms of Worker's Compensation there and what that
24 looks like in our limited scope as a City agency here
25 but certainly those agencies without our purview and

those working within the City of New York we want to make sure they know what their rights and entitlements are and that they are taking advantage of it. One question before so I know that by State law, Worker's Comp bulletins are required to be posted at the workplace in how many languages? Do you know? Anyone know? Is it only in English?

SPEAKER MARK-VIVERITO: I don't know specifically about Worker's Comp bulletin. I can say that New York State has a language access policy and Worker's Comp, if you look, there is a specific language access policy that Worker's Comp has and so if the worker because it is all they're required to so if there's if there is something specific to those bulletins, it should be a part of that policy.

SPEAKER MARK-VIVERITO: I would imagine it's covered. Is that the Executive Order 26 from the governor's office? Yeah, so it should be in the language that the worker can read and understand.

CHAIRPERSON MILLER: IF you go to the site but on to the website. If you go to a work site it is generally in English, right, sometimes in Spanish?

SPEAKER MARK-VIVERITO: Yeah, it should be in the language that workers will understand whatever they have.

CHAIRPERSON MILLER: Okay. And before we talked about do you find that in both cases ladies that health care providers not being paid in a timely fashion is a deterrent from people utilizing the system or what impact do you think that may have, may or may not have on a system? Do you know, the Admin testified that generally for the most part they pay up within the 45 days required. In your experience is that the case that people are out there because doctors sometimes won't treat you if they are not getting paid.

SPEAKER MARK-VIVERITO: They may say they pay in 45 days but I think that is a major deterrent in having adequate number of health care providers that will take Worker's Comp claims and because one of the things that didn't come up here and I think it is important to raise is that there are these medical treatment guidelines that sort of like provide the course that a doctor has to take to treat an injury and there's if that if that if those procedures aren't adequate or the doctor feels that additional

exams have to be done, they have to submit papers of variance to the State and those variances take a long time to be processed, in fact, there are hundreds of thousands of these every year because the treatment guidelines are so restrictive sometimes. So, take that plus the low cost of the schedule fees that are using, I think they are equal to like Medicare or something like that, you know, it is a major deterrent to have for doctors to participate in the system and survive. The bureaucracy is too much for them.

CHAIRPERSON MILLER: Do you see the same on the private sector side or is there

SPEAKER MARK-VIVERITO: Yeah, we've heard the same thing that it is yeah, that is pervasive across the board and that is a deterrent for doctors to be able to participate.

CHAIRPERSON MILLER: Is there anything else that before we wrap up that you've seen and not in any industry where tactics that are used or something that we can kind of keep an eye on moving forward and prevent people from taking advantage of these benefits?

SPEAKER MARK-VIVERITO: The one thing that I would mention that which she hadn't mentioned already is the issue of misclassification so that if an employer says well you're an independent contractor, you're not really an employee then if the worker believes that then they are not going to have the right to Worker's Compensation and there and obviously that happens a lot in different employers in different industries. The issue of misclassifying their workers in order to evade all kinds of costs and all kinds of laws and then in addition there are entire new industries, right, where the whole question of the economy and those kind of employers where they are classifying their workers in such a way so that that whole field...

CHAIRPERSON MILLER: No accountability.

SPEAKER MARK-VIVERITO: Exactly, wouldn't be counted under this.

CHAIRPERSON MILLER: Thank you so much. I know it has been very extensive. I will say that it has been very informative. I think that we have a lot of information from all sides that we can kind of put together and hopefully in the very near future be able to put together a package that we can put out

and be able to assist workers whether they are in the public sector or private sector side and really drill down on what we've learned today as to how we better serve injured workers in the future and look forward to working with continue to with each of your organizations or organizations that have valued workers demonstrated that they have valued workers injured or otherwise and the services that they deliver but I think our goal here as a City is to make sure that we can keep workers safe first of all. If an injury occurs, how do we prevent that from happening again and so thus we have the report and the data and we don't know how useful that is and how flawed that is and that was the topic of conversation here today but we want to take this two hours of testimony and make sure that we use it as fruitfully as possible and making sure that we provide best services. It is possible to get workers prevent them number one from being injured and when they are that we give them the services and treatment that they need and deserve and get them back to work so they can continue to provide the services for the City that they do on a daily basis. So, with your help I am sure that we will be able to do that. I look

forward to working with each of your organizations in the future as well as the Administration on addressing that report and all of those practitioners involved in making sure that we keep our workers healthy and safe in the future. Thank you to everyone. With that I would like to recognize again and thank Council Member Cornegy, the Chair of Small Business, for participating today as well and for also a member of this Committee and thank everyone for coming out and with that this hearing is adjourned.

[gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date December 30, 2016