

# MAKING GOVERNMENT WORK BY EXPANDING CAPACITY

PUBLIC ENFORCEMENT OF WORKERS' RIGHTS WITH  
OUTSIDE COUNSEL

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## NYC employers are getting away with violating workers' rights.

New York City has some of the strongest workers' rights laws in the nation—an expansive paid sick leave law, an ordinance requiring fair and predictable scheduling for certain workers, just cause protections for fast food workers, and wage and other rights for platform (or “gig”) drivers and delivery workers, among other things. Yet enforcement of those laws, as well as other statutes like the state minimum wage, is in crisis. The City's primary labor enforcement agency, the NYC Department of Consumer and Worker Protection (DCWP), has faced chronic resource constraints that leave a vast gap between the violations workers experience and the accountability employers face. But even if funding were significantly increased, DCWP still could not possibly address all workplace violations. The state labor department has similarly long been insufficiently resourced relative to the scale of violations.

That gap falls hardest on low-wage workers—disproportionately Black, Latino, and immigrant New Yorkers—in industries including restaurants, retail, construction, domestic work, and app-based delivery, where wage theft and other violations are most pervasive. Employers nationwide steal an estimated \$15 billion in wages annually through minimum wage violations alone,<sup>1</sup> and the vast majority of those stolen wages are never recovered. A worker who is wrongfully terminated for taking sick leave to which they are entitled may become housing insecure. A worker who is underpaid \$100 or \$200 per week because of overtime or other wage violations is deprived of income for daily survival needs. When workplace rights are violated, people can't afford rent, groceries, or medical care, making the enforcement gap inseparable from the City's affordability crisis.

Expanded protections for delivery and fast-food workers in New York City have recently taken effect, but DCWP already faced a backlog in enforcing existing law.<sup>2</sup> The recent collapse of federal enforcement has dramatically worsened the situation: wage and hour cases brought by the U.S. Department of Labor declined 97 percent in the first year of the second Trump administration.<sup>3</sup> Meanwhile, widespread forced arbitration provisions—covering an estimated 80 percent of private sector non-union workers<sup>4</sup>—block many workers from bringing their own lawsuits in court, leaving government enforcement as the only realistic avenue of redress. The convergence of these factors makes this a compelling moment for New York City to expand its enforcement capacity.

The most important way of doing so is straightforward: adequately fund enforcement agencies such as DCWP so that they are staffed sufficiently to perform their critical function. Enforcement of workplace laws is a

public function that requires a strong public sector with experienced and skilled public employees. Even if adequately funded and staffed, though, capacity will always pose a challenge. Our proposal—contracting with mission-aligned outside counsel to bring enforcement cases—can further strengthen enforcement. If properly implemented, it would be an impactful force-multiplier. If successful with DCWP, it could be implemented more broadly throughout the City to facilitate the enforcement of protections for New Yorkers in a range of aspects of their lives.

## **Facilitating the use of outside counsel on a contingency basis would be a force multiplier in enforcement of workers' rights laws at very low cost to the City.**

The Mayor of New York City should direct DCWP and the NYC Law Department to establish a program under which values-aligned outside counsel are hired on a contingency basis to litigate select appropriate enforcement actions on DCWP's behalf. Within this model of enforcement, the government does not pay anything out of pocket. Instead, outside counsel is paid only if they prevail in a lawsuit or reach a successful negotiated resolution—generally as a percentage of the money recovered. This is executive action the Mayor and his team can take under existing authority, without legislation or new budget appropriation.

### **Rationale**

The contingency-fee outside counsel model offers a concrete and immediately available way to help address the current enforcement crisis. Contingency-fee outside counsel act as a force multiplier. In the cases best suited for this model, the alternative is often no enforcement at all. Facing chronic resource constraints, DCWP cannot bring every strong case on its own. The contingency-fee outside counsel model draws on the resources and expertise of the private bar to bring public enforcement actions the agency could not otherwise sustain.

Corporations have succeeded in getting the Supreme Court to green-light forced arbitration and class action waivers for workers—making non-governmental enforcement by private and public interest law offices difficult—while their allies in the conservative anti-tax, anti-government movement have succeeded in starving government budgets, making public enforcement harder.<sup>5</sup> The result, too often, is impunity by low-road employers that exploit their workers. Our proposal is an attempt to help address this challenge and shift power back to workers.

It is a sound approach that has long been utilized by government enforcement agencies, most notably state attorneys general throughout the country, in cases involving the tobacco industry, opioids, environmental hazards, consumer fraud, antitrust violations, and more.<sup>6</sup> Given its widespread adoption in other areas, it is appropriate also to deploy this model to enforce essential workplace rights.

### **Executive Authority and Legal Basis**

NYC Charter § 394 vests the Corporation Counsel with broad authority over all law business of the city, and that authority has been used to engage outside legal services.<sup>7</sup> DCWP has independent civil enforcement

authority under the NYC Administrative Code over city labor standards laws.<sup>8</sup> These existing authorities provide the legal foundation for this proposal. Indeed, the City is already using outside counsel in a consumer fraud action,<sup>9</sup> and contracts out debt collection work to outside firms and debt collection agencies. Further, legal challenges to contingency-fee outside counsel arrangements have been almost uniformly unsuccessful in other jurisdictions.<sup>10</sup>

Though new legal authority is not needed, a mayoral executive order could help codify and expand the program over time. An executive order could direct Corporation Counsel and DCWP to develop joint protocols—for case referral, outside counsel selection, litigation oversight, and transparency—within a defined timeframe. The administration should consult with the current enforcement attorneys, including relevant union leadership, before proceeding.

This model has been used successfully in several workers' rights contexts in other cities (Washington, D.C. and Philadelphia) and states (New Jersey and California).<sup>11</sup> As noted above, scores of state and local agencies have hired outside counsel on a contingency-fee basis in a wide range of civil enforcement contexts. This is a well-established approach to government civil enforcement. As in many localities nationwide, New York City's involvement in workers' rights is relatively new, which is one possible reason the City is not currently using this model for enforcing its workplace laws.

## How The Program Would Work

DCWP would serve as the entry point for case identification. The agency could draw on its existing intake process, worker complaints, and enforcement data to flag cases that are strong candidates for this model. The agency would then work with the Law Department to hire outside counsel.

Good candidates are cases that are unlikely to be resolved through administrative action alone, involve systematic violations across a workforce, and are of a scope and complexity where outside counsel would add meaningful value. Philadelphia's Law Department, for example, hired outside counsel to help enforce its new Fair Workweek law, where employer violations were rampant and private counsel had considerable expertise.<sup>12</sup> Cases where workers are blocked from going to court by forced arbitration provisions should receive particular attention, since government enforcement is often the only realistic avenue of redress for these workers.

Consistent with factors articulated by courts reviewing these arrangements,<sup>13</sup> the retainer agreement between the City and outside counsel should specify that the City will retain complete control over the course

and conduct of the litigation. It is critical to have meaningful, ongoing, and non-perfunctory government involvement in and oversight of a case through all stages, from initial filing, to discovery, motion practice, any negotiated resolution, and through distribution of restitution to workers.

## Budgetary Considerations

Because outside counsel is compensated only from the proceeds of successful cases, the program requires no new appropriation to launch. The primary City cost is the Law Department and agency staff time required to maintain active litigation oversight—a manageable investment given that outside counsel will bear the burden of the litigation itself. Importantly, the model has the potential to generate resources for the City in additional civil penalties paid by employers, but it is no substitute for the additional funding DCWP needs for additional staff.

## Measuring Success

The program's success should be assessed through clear metrics, publicly reported on an annual basis:

- the number of contingency-fee enforcement cases filed;
- total dollars recovered for workers;
- the number of workers receiving restitution;
- industries and employers brought into compliance;
- civil penalties recovered and reinvested in public enforcement capacity; and
- the proportion of cases involving workers who were otherwise blocked from court by forced arbitration.

The deterrence effect of the program—a reduction in violation rates among employers who know the city has a more powerful enforcement tool—may ultimately prove to be the most significant measure of impact, even if the hardest to quantify.

## Addressing Concerns

There are legitimate concerns about this model. One is about whether the financial motives of private lawyers will skew the results; for example, favoring monetary recovery over injunctive relief ensuring

future compliance. This concern can be addressed through appropriate discussion prior to entering into a relationship, and through careful drafting of the retainer to require injunctive relief. Another concern is the amount of workers' recovery: because outside counsel receives a contingency fee, affected workers receive a portion of the money recovered rather than the whole amount. This tradeoff is real but must be weighed carefully against the realistic alternative. In the cases best suited for this model, the question is typically not whether workers will receive everything they are owed or merely a portion—it is whether they will receive anything at all. Moreover, some private law firms charge a reduced "government rate," significantly lower than the typical 33 percent in other cases, when they handle these cases.

Another concern is about privatization: whether engaging private lawyers to enforce public rights is an inappropriate outsourcing of government functions, and whether it may lead to further depletion of agency resources over time. This concern deserves serious consideration. But properly structured with genuine and ongoing government control and oversight, contingency-fee outside counsel is a targeted use of private resources to achieve public ends that can also increase public resources through collection of penalties.

This model should be understood as one part of a broader effort to strengthen public enforcement. New York City should pursue increased DCWP appropriations, expanded partnerships with worker organizations, and faster administrative adjudication alongside this initiative—not instead of it.<sup>14</sup>

## Conclusion

New York City stands at a defining moment for workers' rights enforcement, where the tools available to DCWP are not equal to the scale of the problem they face. The contingency-fee outside counsel model offers a tested and immediately available force multiplier: one resource among many for combating a multidimensional enforcement crisis, enabling public enforcement in a subset of cases that otherwise simply would not be brought, thereby providing remedies for more workers than could be served by the agencies alone.

## Endnotes

- 1 David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, Economic Policy Institute (May 10, 2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.
- 2 Testimony of Miriam Clark, National Employment Lawyers Association/NY, New York City City Council Budget Hearing (Mar. 19, 2026) (citing DCWP's 2025 Preliminary Mayor's Management Report), [https://www.nelany.com/docs/Testimony\\_of\\_Clark\\_NELA\\_NY\\_for\\_Budget\\_Hearing\\_DCWP\\_3.19.26.pdf](https://www.nelany.com/docs/Testimony_of_Clark_NELA_NY_for_Budget_Hearing_DCWP_3.19.26.pdf).
- 3 Siabhan Standaert, *Worker Protections In Freefall*, Good Jobs First at 4 (Dec. 2025), <https://goodjobsfirst.org/wp-content/uploads/2025/12/Worker-Protections-in-Freefall-The-Collapse-of-Federal-Labor-Enforcement-under-the-Second-Trump-Administration.pdf>.
- 4 Alexander J.S. Colvin, *The Growing Use of Mandatory Arbitration: Access to the Courts Is Now Barred for More Than 60 Million American Workers*, Economic Policy Institute (Apr. 6, 2018), <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration/>.
- 5 Kate Hamaji, Rachel Deutsch, Elizabeth Nicolas, Celine McNicholas, Heidi Shierholz, and Margaret Poydock, *Unchecked Corporate Power: Forced Arbitration, the Enforcement Crisis, and How Workers Are Fighting Back*, Center for Popular Democracy, Economic Policy Institute & National Employment Law Project (May 20, 2019), <https://www.epi.org/publication/unchecked-corporate-power/>.
- 6 Terri Gerstein, Asher Morse & Jason Solomon, "Public Enforcement of Workers' Rights With Contingency-Fee Outside Counsel," National Institute for Workers' Rights & NYU Wagner Labor Initiative 10 (April 2026), <https://niwr.org/wp-content/uploads/2026/04/NIWR-NYU-Contingency-Fee-Apr2026.pdf>.
- 7 New York City Charter § 394.
- 8 See, e.g., N.Y.C. Admin. Code §§ 20-912 et seq. (Earned Safe and Sick Time Act); id. §§ 20-1201 et seq. (Fair Workweek Law); id. § 20-a (DCWP authority generally).

9 See *City of New York v. Exxon Mobil Corp.*, No. 24-1568-CV (2d Cir. Oct. 3, 2025) (listing the firm Sher Edling as counsel for the plaintiff, along with New York City Corporation Counsel).

10 Gerstein, Morse & Solomon (2026), *supra* note 6, at 13.

11 *Id.* at 11-12.

12 *Id.* at 11.

13 *County of Santa Clara v. Superior Court*, 50 Cal. 4th 35 (2010). The California Supreme Court identified three requirements for a valid government contingency-fee retainer: (1) the government retains complete control over the litigation; (2) government attorneys retain veto power over all decisions; and (3) a government attorney with supervisory authority is personally involved in overseeing the matter throughout.

14 The EmPIRE Worker Protection Act, currently pending in the New York State legislature, is another model aimed at building public enforcement capacity to fight wage theft and other labor standards violations. NY Assembly Bill 4278; Senate Bill 448.