



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

**Testimony of Jonathan Levy
Director of the Barbara McDowell Appellate Advocacy Project
Legal Aid Society of the District of Columbia**

**Before the Committee on Government Operations
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0874

“Public Sector Injured Workers Equality Amendment Act of 2020”

October 16, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony in support of Bill 23-0874, the Public Sector Injured Workers’ Equality Amendment Act of 2020. By more closely aligning public sector workers’ compensation processes and protections with those of the private sector, the bill will make it more likely that public sector workers receive amounts owed to them in a timely fashion, and provide more options to these workers when they do not.

Legal Aid is the largest general legal services organization in the District of Columbia. We assist tens of thousands of law-income District residents every year with a variety of legal problems including housing, family issues, public benefits, and consumer issues. While Legal Aid does not generally handle workers’ compensation matters, we have litigated a handful of appeals, starting over the last five years, through our Barbara McDowell Appellate Advocacy Project. This came about not because Legal Aid expanded its practice to encompass workers’ compensation, but because the Court of Appeals asked Legal Aid to participate as an *amicus curiae* or “friend of the court” in a public-sector workers’ compensation case. In that particular case, the Compensation Review Board had failed to follow its own precedent placing the burden

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

of proof with respect to the cessation of disability on the employer. The Court of Appeals agreed with our position and remanded for further consideration.

Since that time, although lacking the capacity to handle routine workers' compensation claims at the administrative level, we have taken several cases at the Court of Appeals level to attempt to ensure fair and proper application of the workers' compensation laws. While our experience is not broad enough to comment on every aspect of the bill currently before the Committee, it has provided us with enough experience to comment on two aspects of the bill, and we do so favorably.

First, the current system is broken with respect to enforcement, and this bill should go a long way towards fixing that problem. Under the current workers' compensation scheme, awards in both the public and private sector are made through "compensation orders" issued by Administrative Law Judges. Either party can seek review of a compensation order through administrative appeal to the Compensation Review Board and then, if necessary, a petition for judicial review by the D.C. Court of Appeals. If the compensation order requires the employer to pay benefits and the employer does not appeal, the employer must pay. Effective enforcement mechanisms – including a stiff penalty for late payments and an easy enforcement – mean that employers pay as ordered; it is very rare for a private employer to fail to appeal a compensation order and then refuse to comply with that order.²

But the public-sector statute either lacks adequate enforcement or is not properly applied. Legal Aid is currently involved in a case in which a former employee of the District unquestionably became disabled due to a workplace injury. After five years of litigation in which the District denied responsibility on technical grounds, an Administrative Law Judge finally issued a Compensation Order in 2017, requiring the District to pay several years of benefits. The District did not appeal from that compensation order, and if it had been a private employer, would have paid long ago. But three years later, the District still has not paid. Although it did not appeal, it now claims that the Compensation Order is wrong and is simply refusing to pay. The existing statute has provided no viable enforcement mechanism for this individual, who served the District loyally for many years, was rendered disabled by that work, and is now owed, but has no good way to collect, a large sum from the District. This situation is unfair and fundamentally wrong.

Under the bill, such fundamentally unfair conduct by a small portion of the District government would likely cease. It adds penalties for this type of governmental misconduct, including "bad faith" conduct, actions "without reasonable cause," and late payments. It also provides those entitled to payment with a lien against the District government and, more importantly, with the ability to get an automatic Superior Court judgment.

These are fair results for both claimants and the District government. They mirror the current rules for private employers and simply ensure that when the process for deciding workers'

² See *Hard Rock Cafe v. DOES*, 911 A.2d 1217 (D.C. 2006) (upholding 20% penalty where employer sent payment to the wrong address, causing a short delay in worker's receipt of payment).

compensation claims makes decisions, employers follow those decisions when the employer happens to be the District government just the same as when the employer is a private entity. That is fair and should be the law.

Although Legal Aid has handled relatively few workers' compensation claims, we have observed a greater number because we routinely review civil cases filed in the Court of Appeals and we receive and review all decisions of the Compensation Review Board. We have also spoken with many workers' compensation claimants who come to Legal Aid looking for advice or representation. As a result of these experiences, we have noticed an absence of attorneys – whether with legal services organizations, law firms, solo practitioners, or others – who are qualified and willing to represent current or former District employees in these matters. When individuals come to Legal Aid with such cases, we frequently cannot even refer such individuals to another attorney because we are not aware of any attorney who is likely to take their cases. While it is not always easy for private-sector workers' compensation claimants to obtain representation; it is much easier for them to do so and they are represented at much higher rates than their counterparts who were injured while working for the District government.

While we do not know all of the causes of this public-sector workers' compensation attorney shortage, any efforts to make the public-sector workers' compensation scheme more like its private-sector counterpart, which we understand to be the primary purpose of this bill, is likely to increase the representation available to public-sector workers' compensation claimants by providing incentives similar to (if not exactly equal to) the current incentives which result in greater attorney representation of private-sector claimants. We favor such efforts both as a matter of systemic fairness – so that individuals who work for the District have the same protections as those who work for other employers – and as a matter of individual fairness – so that more claimants injured while working for the District government obtain the benefits to which they are entitled.

Thank you for the opportunity to testify regarding this important bill. We are happy to try to answer any questions you may have.