



NEW YORK CITY COMPTROLLER
BRAD LANDER

Maura Hayes-Chaffe
Deputy Comptroller for Audit

**Follow-up Audit Report on the
Department of Consumer and
Worker Protection's
Enforcement of the New York
City Earned Sick Time Act**

MG22-060F | October 21, 2022





THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

October 21, 2022

To the Residents of the City of New York,

My office conducted a follow-up audit to assess the implementation of recommendations made in an earlier audit titled, *Audit Report on the Department of Consumer and Worker Protection's Enforcement of the New York City Earned Sick Time Act* (Audit # ME18-070A), issued on June 28, 2019.

The 2019 audit found significant weaknesses in DCWP's monitoring and oversight employees' obligations to workers contained in the Earned Safe and Sick Time Act, and this office made 21 recommendations intended to strengthen DCWP's oversight and to protect the rights of workers.

I am pleased to report that DCWP has implemented 19 of the 21 recommendations issued in the prior audit report (2 recommendations are no longer applicable), and as a result, has improved its monitoring of restitution and fine payments, and related intake, investigative, and litigation processes. These improvements are expected to strengthen enforcement of the City's Paid Sick Leave Law, also known as the Earned Safe and Sick Time Act, and thereby the rights of workers in New York City.

The results of this audit have been discussed with DCWP officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander
New York City Comptroller

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AUDIT IMPACT

Summary of Findings

The purpose of this audit was to assess the implementation status of recommendations issued to the Department of Consumer and Worker Protection (DCWP) in the *Audit Report on the Department of Consumer and Worker Protection's Enforcement of the New York City Earned Sick Time Act* (Audit # ME18-070A), issued on June 28, 2019. The auditors determined that DCWP improved its monitoring of restitution and fine payments and intake, investigative, and litigation processes related to its enforcement of the City's Paid Sick Leave Law.

DCWP enforces key consumer protection licensing, workplace laws, and other related business laws. In that role, DCWP implements, administers, and enforces the Paid Sick Leave Law, also known as the Earned Safe and Sick Time Act (ESSTA),¹ which is intended to enable employees to use safe and sick leave to care for themselves or ailing family members.

Of the 21 recommendations made in the initial audit, this follow-up audit found that 19 have been implemented and two are no longer applicable. This follow-up audit makes no new recommendations to DCWP.

Intended Benefits

The audit is intended to identify areas in which DCWP can improve its enforcement of ESSTA so that eligible employees can utilize their right to access their safe and sick leave when needed.

¹ ESSTA is set forth in Title 20, Chapter 8, of the New York City Administrative Code and went into effect on April 1, 2014.

INTRODUCTION

Background

This follow-up audit assesses the implementation of recommendations made in the 2019 audit. That audit was conducted to determine whether DCWP had adequate controls in place to effectively enforce ESSTA. The audit found weaknesses in DCWP's monitoring of restitution and fine payments and in its intake, investigative, and litigation processes, and that DCWP lacked a process for obtaining complainant feedback. The audit made 21 recommendations intended to strengthen DCWP's oversight. DCWP generally agreed with the audit's findings and agreed with 18 of the 21 recommendations, partially agreed with one (#6), disagreed with one (#7), and did not address one (#5). In this report, we discuss the implementation status of each of the 21 recommendations.

DCWP enforces key consumer protection licensing, and workplace laws and other related business laws. In that role, DCWP implements, administers, and enforces ESSTA. The goal of ESSTA is to enable all eligible employees to use safe and sick leave to care for themselves or ailing family members (including spouses, children, grandchildren, grandparents, and siblings) without threatening their economic security. Employers with five or more employees who work more than 80 hours in a calendar year must provide paid safe and sick leave, while employers with one to four employees who work that many hours must provide unpaid safe and sick leave. ESSTA also includes provisions prohibiting employer retaliation for employees' use of safe and sick leave or for filing a DCWP complaint alleging ESSTA Violations.

If DCWP's Office of Labor Policy and Standards (OLPS) determines that an employer violated the law, it first attempts to negotiate a mutually acceptable settlement with the employer. If a settlement is reached, DCWP executes a consent order, which is a formal agreement that sets forth the findings and remedies, including the amounts of restitution owed to the employee(s) and fines owed to the City, and the dates by which the restitution and fines are to be paid. If the negotiation does not result in a settlement, OLPS' Litigation Unit files a petition for the matter to be heard before an administrative law judge of the Office of Administrative Trials and Hearings (OATH).

As recorded in a dataset provided by DCWP, the agency received a total of 291 ESSTA complaints during Fiscal Year 2020 (July 1, 2019 through June 30, 2020) and 178 complaints during Fiscal Year 2021 (July 1, 2020 through June 30, 2021). According to DCWP datasets for those same periods, a total of 4,854 employees were reportedly awarded a total of \$2,684,569 in restitution, and employers were reportedly charged a total of \$432,986 in fines.²

Objective

The objective of this audit was to determine the extent to which the 21 recommendations issued in the 2019 audit report have been implemented.

² For Fiscal Year 2020, DCWP awarded \$1,760,558 in restitution to 3,768 employees and assessed \$240,034 in fines. For Fiscal Year 2021, 1,086 employees were awarded \$924,011 in restitution, and fines assessed totaled \$192,952.

Discussion of Audit Results with DCWP

The matters covered in this report were discussed with DCWP officials during and at the conclusion of this audit. An Exit Conference Summary was sent to DCWP on August 15, 2022, and discussed with DCWP officials at an exit conference held on September 13, 2022. On September 23, 2022, we submitted a Draft Report to DCWP with a request for written comments. We received a written response from DCWP, dated October 3, 2022. In its response, DCWP stated that the agency agreed with the audit's findings and that it appreciated the Comptroller's Office's acknowledgement of its efforts to improve enforcement of ESSTA.

The full text of DCWP's response is included as an addendum to this report.

RESULTS OF FOLLOW-UP AUDIT

The audit found that 19 of the recommendations have been implemented and two are no longer applicable. The initial audit's recommendations and the current audit's findings pertaining to their implementation status are summarized below.

Recommendation #1

DCWP should enhance its tracking abilities by developing a capacity to readily generate lists of restitution amounts ordered, paid, and past-due.

This recommendation has been IMPLEMENTED.

From May 2020 through January 2021, DCWP worked on developing a revised restitution protocol. In August 2021, DCWP's OLPS division began generating a Compliance Monitoring Report (CMR) from information contained in the Agency Licensing Business Automation (ALBA) system and the Master Electronic Tracking System (METS) to track outstanding restitutions.³ The CMR shows that DCWP is able to generate lists and reconcile and combine information about different parts of the restitution process to report on restitution amounts ordered, paid, and past-due.

Auditors selected a sample of 25 cases, 11 of which called for restitution payments totaling \$2,058,228. A review of the files for the 11 cases found that \$720 (relating to one case) remained unpaid. For this case, DCWP has sent payment due notices, made phone calls to follow up, and assigned the case to Enforcement Support Associates (ESA) for further action.

Recommendation #2

DCWP should both in cases with consent orders and those with OATH decisions and orders, consistently take additional steps (such as sending dunning letters to employers and filing petitions with OATH) when there is evidence that fines have not been paid or that employees have not received the restitution payments to which they are entitled.

This recommendation has been IMPLEMENTED.

DCWP automatically generates dunning letters if civil penalties are not paid and has added a field in METS to capture the final date at which the restitution payment is due.

Of the 25 sampled cases, restitution payments had not been made in one of the 11 cases that required restitution payments. However, DCWP followed up with the respondent. In addition, civil penalties totaling \$8,160 were assessed in nine cases, seven of which have been paid. DCWP sent payment due notices for the remaining two cases, totaling \$2,500.

³ DCWP uses ALBA to track the restitution of payments for individual cases. Prior to April 2, 2018, ESSTA complaints were recorded in DCWP's Case Management Database (CMD), a computerized database that was exclusively dedicated to ESSTA complaints and related matters. However, as of April 2, 2018, DCWP replaced CMD with METS.

Recommendation #3

DCWP should consider all available legal remedies, including, but not limited to, referring matters to the City Law Department for legal action in the event employers default or delay in honoring their stipulated payment obligations. DCWP should further consider whether changes can be made to the language and form of its ESSTA consent orders to provide for additional legal remedies, such as confessions of judgment, in appropriate cases.

This recommendation has been IMPLEMENTED.

The auditor's review of the 25 sampled cases found that DCWP had referred four cases to OATH for failure to comply with the terms of the consent order. After the referral, employers paid the restitution in three of those cases, and as of July 1, 2022, a trial for the fourth case was still ongoing.

In addition, DCWP updated its Consent Order to include a Confession of Judgment⁴, and refers cases to the City Law Department for further action, once its collection efforts are exhausted. DCWP is following up on two outstanding cases in the auditors' sample.

Recommendation #4

DCWP should develop mechanisms to more effectively review employers' submissions of proofs of restitution payments to ensure that employers comply with their consent orders and employees receive the full restitution payments to which they are entitled.

This recommendation has been IMPLEMENTED.

To more effectively monitor restitution payments, OLPS has a Compliance Monitoring Protocol outlining the responsibilities regarding receiving proof of payments for restitution. OLPS' CMR shows cases where proof of payment is past due. In addition, as of October 2021, OLPS uses outside Settlement Administrators (SA) to distribute payments to groups of workers in workplace-wide cases.

DCWP enters proof of restitution payments into ALBA and assigns an ESA from OLPS once the ALBA adjudication record is closed.⁵ In the event of non-payment, the staff member follows up with the respondent.

Eleven of the 25 cases sampled required restitution payments, and employees received the restitution in ten of those cases. DCWP was still in communication with the respondent regarding the remaining case.

Recommendation #5

DCWP should enforce the stipulations in its Consent Orders that impose late fees on those employers who fail to pay the agreed-upon restitution and fines in a timely manner.

DCWP did not address this recommendation in its response to the initial audit. However, the current audit found that this recommendation has been IMPLEMENTED.

⁴ A Confession of Judgment is a legal instrument DCWP can file in state court to docket a judgment against a respondent who does not comply with the payment terms of the Consent Order.

⁵ ALBA adjudication records are closed once all deadlines for restitution are entered into ALBA.

Beginning in October 2019, DCWP changed its protocols to no longer include a default provision in Consent Orders allowing for a \$500 late fee if a respondent did not pay the agreed-upon restitution or fine. Instead, DCWP now includes an enhanced civil penalty provision in the Confession of Judgment for failure to pay restitution and fines in a timely manner.

This audit found that DCWP did enforce these stipulations in several of the sampled cases. DCWP imposed civil penalties, totaling \$8,160, in nine of the 25 sampled cases. For seven of the nine cases, DCWP received payments totaling \$5,660. For the remaining two cases totaling \$2,500, DCWP provided evidence that it followed up by sending payment due notices to the respondents.

Recommendation #6

DCWP should consider revising its procedures to ensure that late fees are consistently included in consent orders and that the late fees are commensurate with the size of the restitution or fine amounts.

DCWP had partially agreed with this recommendation, disagreeing with the part that called for the agency to consistently include late fee provisions in its consent orders. The current audit, however, found that the recommendation has been fully IMPLEMENTED.

DCWP has revised its procedure and has revised the language in the Consent Order. According to DCWP, the default provision for a \$500 late fee has been eliminated and replaced with a 20% fee, based on the outstanding restitution amount that is past due. According to DCWP, the use of a percentage in lieu of a flat fee is more proportional to the case, and more practical to collect.

Recommendation #7

DCWP should consider supplementing the restitution performance indicators in the MMR⁶ with new performance indicators that show the number of employees who actually received restitution and the total amount of restitution they received.

DCWP disagreed with this recommendation in its response to the initial audit and did not implement it. However, based on DCWP's response below, the recommendation is NO LONGER APPLICABLE.

After the prior audit, DCWP modified the indicators in the MMR to clarify what the figures represent. A review of the current performance indicators in the MMR show that the prior indicator titled "Employees Receiving Restitution" has been replaced with the indicator titled "Number of Employees *Entitled* to Restitution" (emphasis added). DCWP officials stated that they are comfortable with the current performance indicators and have no plans to change them, contending that a new MMR indicator would not be effective or meaningful. DCWP officials explained that using the actual amount of restitution received would not reconcile with the amount ordered, as some employers have payment plans that allow payments to be made over a period of time.

⁶ The Mayor's Management Report (MMR) is mandated by the City Charter and serves as a public account of the performance of City agencies, intended to measure whether agencies are delivering services efficiently, effectively, and expeditiously.

Recommendation #8

DCWP should ensure that sufficient quality assurance reviews of its supporting data on restitution and fines are conducted prior to the submission of its performance indicator results to the Mayor's Office of Operations for inclusion in the MMR.

This recommendation has been IMPLEMENTED.

Presently, data from METS and ALBA are consolidated in METS, and the information for the MMR is pulled directly from METS. To ensure consistency, the same query is used to pull the MMR data from the activities section in METS, and the query is established based on the indicators' specific criteria. According to DCWP, at the time of the 2019 audit, data pertaining to restitution and fines were recorded in multiple places, which resulted in the discrepancies described in the prior audit report.

Recommendation #9

DCWP should collect and maintain sufficient supporting data and documentation to fully support the performance indicator results regarding restitution and fines that it submits for inclusion in the MMR.

This recommendation has been IMPLEMENTED.

DCWP provided the auditors with supporting information for the Paid Safe and Sick Leave (PSSL) complaints for Fiscal Years 2020 and 2021. The data for Fiscal Year 2021 supported what DCWP reported in the MMR. For Fiscal Year 2020, DCWP reported 263 complaints in the MMR while the supporting data provided by DCWP indicated that there were 291 complaints for the year—a difference of 28 complaints. DCWP officials explained that the difference in the numbers was due to a change in how they select the data and that the change will be added to the “Noteworthy Changes” section in the Fiscal Year 2022 MMR.⁷

Recommendation #10

DCWP should revise its written procedures to ensure that they include all of the key time frames governing intake and investigative processes, including time frames to docket a complaint and to complete an investigation.

This recommendation has been IMPLEMENTED.

DCWP has updated the procedures in its Investigations Manual to reflect a target of 180 days to complete investigations. DCWP officials explained that case assignments depend on staffing levels and that they generally do not assign a case until an investigator is available to begin working on it. This is acceptable so long as DCWP can address complainants' concerns promptly. DCWP currently sends the complainant a template acknowledging receipt of the complaint and notifying them that because of current case volumes their complaint will be processed in 10 to 12 weeks.

⁷ In July of 2021 the agency updated the “PSSL Complaints Received” indicator to reflect the number of **intake** records associated with an **enforcement** matter **instead** of the total number of enforcement matters after FY20. The agency made this change because many enforcement matters include multiple complaints consolidated into a single investigation. As a result, the FY20 numbers reported in the MMR still reflect the number of enforcement matter records (not associated intake records) while the supporting data reflects the updated metric that will be reported going forward.

Recommendation #11

DCWP should develop mechanisms to more effectively track and manage its handling of complaints to ensure that key intake and investigative steps are taken in a timely manner based on established time frames.

This recommendation has been IMPLEMENTED.

DCWP's Investigations Manual outlines the investigative steps and the length of time each step or timeline of the investigation should take. In addition, as of October 18, 2021, investigators and supervisors receive individualized weekly reports of their cases that indicate (1) all active cases; (2) all cases more than 360 days old; and (3) all cases with no activity in over three weeks. The Supervising Investigators receive the same case list for each staff member, and they review the lists to ensure procedures in the Investigations Manual are followed.

Recommendation #12

DCWP should date stamp its receipt of walk-in complaint documentation.

This recommendation is NO LONGER APPLICABLE.

DCWP informed us that, due to COVID-19 protocols, it is not accepting walk-in complainants at this time. DCWP stated that it will "assess its current practices and ensure that a consistent and adequate system is in place to receive and maintain such information."

Recommendation #13

DCWP should enhance its monitoring of the recording of investigative activities to ensure that significant time gaps and key investigative decisions are adequately identified and explained.

This recommendation has been IMPLEMENTED.

According to DCWP's updated procedures, each week investigators must record activities that have occurred in the preceding three weeks or record the reason there has not been movement in a case. According to DCWP, to help monitor time gaps in activities, on a weekly basis, each investigator receives from the research team a "No Activity in Over Three Weeks Report." In turn, the Supervisor and the Investigator are required to develop a plan to move the case forward for the next step. The 25 case files sampled had regular updates and there were no significant time gaps.

The Investigations Manual also lists the activities that should be documented (e.g., conversations with the complainants and respondents; investigative steps taken and information learned; documents sent and received, including emails). The auditors reviewed the electronic case files for six of the 25 sampled cases that were active after October 18, 2021, the date that the policy was implemented, and verified that they all contained regular updates pertaining to the case activities.

Recommendation #14

DCWP should specify in its written procedures the documents that need to be maintained in the case files to demonstrate that all key intake, investigative, and litigation steps have been taken.

This recommendation has been IMPLEMENTED.

DCWP has updated its Intake, Investigation, and OATH Litigation manuals to include procedures regarding the key documents to be maintained in the case files, such as Consent Order, Confession of Judgment, and documents provided by the complainant and the respondent.

Recommendation #15

DCWP should enhance its supervisory oversight to ensure that all key documentation is maintained in its electronic case files.

This recommendation has been IMPLEMENTED.

The Investigations Manual has been updated to list specific documents such as employer research, investigative reports, and key emails that must be saved in the relevant case folders in the electronic case files. Based on a review of 25 sampled case files, the auditors determined that key documents were maintained in the electronic case files.

Recommendation #16

DCWP should revise its written procedures to ensure that they include guidelines regarding the compliance review process. These guidelines should include the need for staff to record all key events in the Activity Summary, the time frames for the completion of key steps, the key documents to be maintained, and any necessary approvals.

This recommendation has been IMPLEMENTED.

DCWP has updated the procedures in its Investigations Manual. As of October 2021, according to the new process, investigators receive an individualized weekly report of their cases, which can be used to identify METS updates for which they are responsible. The procedures also call for the list to be sent to Supervising Investigators, who are responsible for reviewing the lists to ensure that their teams follow the procedures. Regarding timeframes/timelines, the Investigations Manual had been updated to show the general overview of OLPS' typical investigation steps and the amount of time each step should take. The protocol outlines the intake staff's responsibilities (e.g., taking phone calls, responding to complainants, entering information into METS) when receiving proof of payments for restitution made to employees.

The auditors reviewed 25 case files to determine whether the key documents were maintained and found that all key events were included in the Activity Summary, that key documents were maintained, and that necessary approvals were obtained and documented.

Recommendation #17

DCWP should enhance its monitoring efforts over the recording of key activities in the Activity Summary and the maintenance of key documentation during compliance reviews to ensure that all key steps performed are adequately supported and that the initiation and the outcomes of the reviews are clearly justified.

This recommendation has been IMPLEMENTED.

DCWP updated its Investigations Manual which lists the documents to be recorded in the Activities tab in METS and the Investigation timeline for the completion of key steps. According to the

updated manual, the Supervising Investigator is responsible for monitoring if documents are in the Activities tab. A review of the Activities and the Record History tabs for the 25 sampled case files revealed that activities such as conversations with employer/complainant, steps taken, etc., were recorded and that key documents were maintained in the electronic case files. The electronic case files also contained proof of restitution payments for all cases for which payments were made.

Recommendation #18

DCWP should more closely monitor the accuracy and completeness of information contained in its systems.

This recommendation has been IMPLEMENTED.

OLPS officials provided us with specific procedures for entering METS and ALBA data. DCWP has also created a new supervisory structure for the investigation teams, which supports its efforts to perform quality control reviews. Additionally, DCWP created new reporting functions that allow supervisors additional insight into the case loads of their direct reports and that ensure that quality assurance reviews continue to be integrated into the roles of supervisors.

DCWP officials explained that to ensure complaints do not get lost, a staff member is required to create an INT record for each complaint filed, and in each INT record the staff member is required to check a box denoting “for enforcement review.” Reports are generated for both types of complaints with checked boxes and those with unchecked boxes. When a staff member fails to check a specific box for enforcement review, a report is generated. All complaints/cases that have the box unchecked must be reviewed. In addition, a report is generated to show what boxes were checked, and those that are inappropriately marked off are remedied and sent to the investigators for review. The investigators and supervisors also receive a list with their caseloads, which they use to monitor case progress.

Recommendation #19

DCWP should ensure that sufficient data quality reviews are conducted on an ongoing basis throughout the fiscal year to ensure the availability of reliable data.

This recommendation has been IMPLEMENTED.

According to DCWP’s revised guidelines, intake staff complete the intake information within METS and assign the complaint to another OLPS staff member for enforcement review. Supervising Investigators receive the same weekly case list for each supervisee, and subsequently review these lists each week to ensure the investigators are following procedures. Overall, the auditors found that sufficient quality reviews of data were conducted on an on-going basis.

Recommendation #20

DCWP should consider the inclusion of a feature in METS whereby intake records of an erroneous nature can be voided, provided there is appropriate approval.

This recommendation has been IMPLEMENTED.

DCWP has updated its protocol regarding the treatment of erroneous records. Instead of reusing records entered erroneously in METS, a new feature has been added which requires users to

“deactivate” the record. In addition, there is a report from DCWP’s vendor-provided management reporting software, known as Cognos, that can be pulled to identify enforcement of cases that were not assigned to determine whether they should be deactivated.

Recommendation #21

DCWP should periodically survey a sample of employees who have made paid sick leave complaints and consider the ways in which the concerns expressed by the complainants could be addressed.

This recommendation has been IMPLEMENTED.

OLPS began issuing surveys on January 28, 2020, by making phone calls to complainants whose cases had been completed. On September 18, 2020, OLPS transitioned to sending the surveys via email and text message.

On October 27, 2021, auditors requested five of the most recent surveys, covering the period of August through October 2021, and found that the responses to the surveys were mostly positive, with one complainant remarking that the resolution of the case took too long. DCWP officials explained that while the complainant measures the time from when they file the complaint, DCWP measures the time from when it is assigned to an investigator. Based on the responses to the surveys sampled, no follow up was warranted on the part of DCWP.

SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was July 1, 2020 through June 30, 2022.

To gain an understanding of relevant policies, procedures, and regulations related to PSSL complaints, to assess controls in place, and to determine whether DCWP implemented the recommendations made in the prior audit report, especially those pertaining to the revision of DCWP's procedures, the auditors reviewed the following: (1) DCWP's Intake and Investigations manuals; (2) OLPS' compliance monitoring protocol; (3) Consent Orders and Confession of Judgment templates; and (4) the prior audit report issued by the Office of the New York City Comptroller, titled *Audit Report on the Department of Consumer and Worker Protection's Enforcement of the New York City Earned Sick Time Act*, (Audit # ME18-070A), issued on June 28, 2019, as well as DCWP's implementation plans for the 21 recommendations issued in the prior audit report.

To obtain an understanding of DCWP's enforcement of NYC's Paid Safe and Sick Leave Law, auditors reviewed the Earned Safe and Sick Time Act – Title 20, Chapter 8 of the NYC Administrative Code; and the Office of Labor Policy and Standards – Title 6, Chapter 7 of the Rules of the City of New York. To obtain an understanding of DCWP's management structure and the employees in charge of handling PSSL complaints, auditors reviewed DCWP's organization chart and met with the following DCWP officials within OLPS: Deputy Commissioner, Director of Investigations, Director of Programs, and Research Analyst.

To gain an understanding of the information received from DCWP and the capabilities of the computer systems used in recording, tracking, processing, and reporting of information related to DCWP's enforcement of PSSL complaints, auditors reviewed a description of the computer systems used in the process and user manuals. OLPS provided a population of 263 complaints for the period July 1, 2020 through November 17, 2021; however, four of the complaints had duplicate Intake Record IDs (INT), leaving a total of 259 complaints. DCWP explained that the duplication occurred because in each case, two INT records were associated with one Enforcement record. This was verified by the auditors. In addition, the auditors performed a consistency test of the 259 PSSL complaints and found that all of the fields were filled with reasonable and consistent data. For accuracy, auditors compared the "Completed On" and "Start Date" to ensure that the "Start Date" occurred before the "Completed On" date and were reasonably assured that they can rely on the data from METS provided by OLPS.⁸

To assess whether recommendations related to timelines, supervisory oversight and monitoring, enforcement, documentation and data reliability concerns were implemented, the auditors extracted 202 complaints that were docketed during Fiscal Year 2021, selected 25 out of 202

⁸ To test whether DCWP was adhering to its own policies and procedures, auditors initially planned to select a sample of complaints received and verify the information in METS to the hardcopy files. However, auditors were informed that filling out an intake form is not a requirement. Complaints are mostly received through phone calls, voicemail, emails and walk-ins and information received from the complainant is keyed-in in METS.

docketed cases, and reviewed supporting data and documentation contained within the METS and OLPS' electronic case files. The 25 cases were selected based on the following criteria: four OATH cases, 11 cases for which there was restitution, and for the remaining 10 the auditors included five closed cases and five open cases. To assess whether the recommendation related to surveying complaints was implemented, and whether DCWP surveyed a sample of employees who made paid sick leave complaints, auditors reviewed five of the most recent surveys, covering the period of August through October 2021.

The results of the above tests, while not projected to their respective populations, provide a reasonable basis for the auditors to determine whether DCWP implemented the recommendations outlined in the Comptroller's Office's prior audit report: *Audit Report on the Department of Consumer and Worker Protection's Enforcement of the New York Earned Sick Time Act* (Audit # ME18-070A).



Vilda Vera Mayuga
Commissioner

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October 3, 2022

Maura Hayes-Chaffe
Deputy Comptroller for Audit
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RE: Follow-up Audit Report on the Department of Consumer and Worker Protection's Enforcement of the New York City Earned Safe and Sick Time Act (MG22-060F)

Dear Deputy Comptroller Hayes-Chaffe:

Thank you for the opportunity to respond to your follow-up audit report regarding the Department of Consumer and Worker Protection's (DCWP) enforcement of the Earned Safe and Sick Time Act (ESSTA). DCWP is committed to ensuring that paid safe and sick leave is a tangible benefit New Yorkers can rely on and use, especially in the wake of the Covid-19 pandemic. We appreciate your office's acknowledgement of our efforts to improve our enforcement of ESSTA by implementing each of the recommendations from the initial audit report.

If you require further information, please contact Nick Rozza, Deputy Commissioner, at (212) 436-0192.

Sincerely,

A handwritten signature in black ink, appearing to read "Vilda Vera Mayuga". The signature is fluid and cursive, written over a light gray background.

Vilda Vera Mayuga
Commissioner



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