TO: Department of Consumer and Worker Protection ("DCWP," the "Department")
FROM: Workplace Justice Project, Make the Road New York
DATE: July 9, 2026
RE: Proposed Rule on Establishment of Unclaimed Restitution Fund ("Rule")

Via Electronic Submission

I. Introduction

Make the Road New York welcomes DCWP's proposed Rule on the establishment of an unclaimed restitution fund for workers aggrieved by abusive employers. Far too often, workers secure judgments, settlements, or adjudications in their favor, only to find it impossible to collect. Employers disappear, declare bankruptcy, hide their assets, or refuse to pay. Workers, most of whom are low-wage, must then engage in lengthy and expensive legal proceedings just to recover what they should have been paid in the first place. In many cases, workers give up, leaving delinquent employers undeterred from stealing from future employees.

A restitution fund like the one proposed here would go a long way towards ensuring that workers can recover what they are owed. In our experience, workers claiming unpaid sick and safe leave, fair workweek violations, or unjust termination generally hope to recover the financial compensation to which they are entitled. This fund would make that possible. More than that, it would provide a much-needed insurance against the many employers who make recovery impossible.

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We especially appreciate the Rule's broad application to any worker with an enforceable claim under DCWP's jurisdiction.[1] Many workers negotiate settlements with employers through counsel, or secure default judgments in court, only to be met by a nonresponsive or elusive employer. By ensuring that the fund is available to any worker with an enforceable claim, DCWP equalizes the playing field to all those who benefit from the laws under its jurisdiction.

We feel that the Rule may be strengthened in two ways. First, workers and advocates may benefit from greater clarity around how disbursements to workers will be calculated if full restitution is not available, and on the ways the Department may exercise its discretion on disbursement. Second, to avoid incentivizing employers to skirt the law by providing an alternative collection mechanism, DCWP should continue to enforce judgments against employers on behalf of workers using its relevant enforcement authority under the New York City Administrative Code ("N.Y.C. Admin. Code"). By this model, workers may collect claims from the restitution fund and assign their judgments to DCWP. DCWP then pursues delinquent employers where workers cannot and, if they recover, return any collected monies to the restitution fund.

The proposed Rule fills a critical gap for workers seeking to vindicate their rights. Even after receiving a judgment or a settlement in their favor, abusive employers find ways not to pay what workers are owed. Make the Road New York strongly supports DCWP's proposal to redress the problem. We suggest two changes to the Rule to improve outcomes for workers who choose to take advantage of the restitution fund.

II. <u>Suggested Changes to the Rule</u>

a. <u>Clarify disbursement criteria</u>

Under the proposed Rule, the Department determines whether and how much to disburse to an eligible worker.[2] The Rule identifies several factors that the Department may take into account in its determination, most of which involve whether the worker has submitted a complaint to DCWP or participated in its investigation.[3] The Rule also establishes that any disbursement is entirely up to the discretion of the Department.[4]

To fully take advantage of the restitution fund, workers with valid claims should understand how disbursement amounts are calculated. If the fund cannot guarantee full restitution, workers and advocates should be able to make informed decisions about whether to collect from the fund, attempt only to collect from the employer, or both. As it stands, the proposed Rule has no criteria by which workers can estimate disbursement amounts.

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[1] Proposed Rule § 14-04(a).
[2] Proposed Rule § 14-04(b).
[3] Proposed Rule § 14-04(b)(1)(i-v) .
[4] Proposed Rule § 14-04(b)(4).

Furthermore, discretionary disbursement criteria may result in unequal restitution amounts for the same violations. Under the current text of the proposed Rule, two workers with identical claims may collect two different amounts from the fund.[5] This creates clear equity concerns for workers with substantially similar claims.

To avoid inequitable disbursement, and to communicate effectively to workers, the Rule should, at a minimum, direct the Department to publish clearer decisionmaking criteria and factors in calculating disbursement amounts.

b. Seed the fund using enforcement actions against elusive employers

The Rule seeds the restitution fund out of unclaimed money from other DCWP enforcement actions.[6] Workers seeking to recover from elusive employers may choose to forgo the complex and costly process of collecting, and use the fund exclusively, leaving those employers unchecked.[7] Further, employers may see the fund as a way to get out of paying workers: by simply being difficult to reach, or hiding assets, or closing and reopening a business under a different name, employers may force the worker to collect from the fund and get away with violating the law without financial penalties.

The Rule could instead contain language that seeds the fund with money collected from subsequent enforcement of judgments from elusive employers. If an aggrieved worker collects from the fund, they can then assign their judgment to the Department. The Department then uses its extensive authority to collect on those judgments where possible, and reseed the fund with the proceeds from collection. California already does this in its industry-specific wage theft recovery funds.[8] This model helps hold abusive employers accountable and prevents the fund from becoming a free pass for employers to skirt the law. It also has the added benefit of providing an additional revenue source for the fund.

We encourage the Department to add additional language to the text of the Rule that prompts workers who collect from the fund to assign any judgments to DCWP so that the Department can subsequently recover funds against elusive employers. The Department can model this language after existing language in California's statutes, cited above.

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[5] The Rule's criteria listing participation in an ongoing investigation as a factor in determining disbursement further suggests that the Department may prioritize those claimants over others with equally valid (and equally enforceable) claims.
[6] Proposed Rule § 14-03(a)(1-2).
[7] Proposed Rule § 14-02(d) emphasizes that the obligation to pay the Department remains outstanding even if the worker collects from the fund. It seems unlikely, given limited Department resources and financially satisfied workers, that the Department will dedicate time and energy to collecting on those obligations without additional language in the Proposed Rule.
[8] Cal. Lab. Code § 2675.5(a)(3) (for garment workers); Cal. Lab. Code § 2065(a)(2)(C) (for carwash workers).

III. Conclusion

The proposed Rule would be a very welcome addition to DCWP's already excellent policy and enforcement work. Make the Road New York wholeheartedly supports the establishment of a fund for workers to recover the financial compensation they are owed in the face of elusive, intractable, or uncollectible employers. We hope the Department will modify the Rule to include our suggestions, and we welcome the opportunity to continue to collaborate on its development.