



**Workers United NY-NJ Joint Board & The New York Nail Salon Workers Association
Testimony for NY State Senate Gig Economy Hearing
October 16, 2019**

Senator Savino and members of the committee, thank you for allowing us to testify at this hearing today. We are here from the New York Nail Salon Workers Association, which is part of the union Workers United. My name is Clara Wheatley-Schaller and I am here with nail salon workers Glenda Sefla and Sonia Morales, along with our union's Director of Organizing Luis Gomez. Our nail salon workers association has over 800 members and works to improve conditions in the nail salon industry. There are over 40,000 nail salon workers in New York State, most of whom are immigrant women of color. Census data show the number of nail salons in New York surged through the 2000s, far outstripping the rest of the country,¹ and the Bureau of Labor Statistics projects that employment of nail salon workers will grow 20 percent over the next ten years in the state, far outpacing the average of other industries.²

The nail salon industry is plagued by labor and health and safety violations like wage theft, exposure to toxic chemicals, and long hours without legally mandated breaks. Employee misclassification is a driving force of these widespread labor violations, both due to the rise of app-based beauty companies and because regular, brick and mortar nail salons are misclassifying their workers as independent contractors. These widespread labor violations, while they exist regardless of employee status, are worsened when workers are misclassified as independent contractors because misclassification strips workers of their basic labor rights, absolving employers of their responsibility to uphold labor standards, like wage and hour laws, health and safety protections, workers compensation, and unemployment insurance. Many workers report to us that they are paid only by commission, often making well under the minimum wage.

To illustrate these issues, we will be sharing the testimony of two members of our association, Sonia Morales and Maria Hernandez. Maria unfortunately could not be here in person today because she is working, but Glenda Sefla will now first read her testimony. Both testimonies will be in Spanish, followed by English interpretation:

Maria Hernandez (Spanish):

Mi nombre es Maria Hernandez y soy parte de la Asociación de Trabajadores de Uñas de Nueva York. Hoy estoy aquí para testificar porque me gustaría compartir mi experiencia trabajando en una compañía de manicura y pedicura basada en la web. La compañía también ofrece manicuras y pedicuras en fiestas, hogares y oficinas. La compañía tuvo mucho control de la relación laboral - fijaron los precios, programaron y asignaron citas, y recaudaron y distribuyeron pagos - pero me clasificaron como una trabajadora independiente solo porque era trabajo por parte del web.

¹ Maslin Nir, Sarah. 2015. "The Price of Nice Nails." *The New York Times*.

² "Long Term Occupational Projections (2016-2026)." *The Projections Management Partnership*.
<https://projectionscentral.com/Projections/LongTerm>



Al principio, pensé que este modelo de negocio sería un cambio positivo de tener que sentarse dentro de un salón de manicura por turnos de 10 horas. Durante estos largos turnos, yo y otras trabajadoras estamos expuestos a muchos riesgos a nuestra salud y malas condiciones de trabajo y muchos salones no nos dan el equipo de protección adecuado. Durante mi tiempo en la industria, yo, como muchos de mis compañeras de salones de uñas, también he sufrido el robo de salario. Después de todas estas malas experiencias, pensé que cambiar a este nuevo tipo de empresa beneficiaría a mi familia y mi salud.

Sin embargo, una vez que comencé a trabajar para esta compañía, rápidamente me di cuenta de que los beneficios de este nuevo tipo de negocio no eran lo que había pensado. Los salarios iniciales más altos fueron atractivos, pero tuvieron un costo. Rápidamente descubrí que había riesgos imprevistos para la salud de hacer manicuras y pedicuras en los hogares y oficinas de los clientes. Tener que hacer manicuras y pedicuras móviles sin tener el equipo adecuado, como sillas elevadas para protegerme de los dolores de espalda o la luz adecuada que proteja de tener que forzar mi visión, inmediatamente comenzó a afectar mi salud física. Pero debido a que la compañía me clasificó como un contratista independiente, no tenía derecho a ningún beneficio de los empleados, en particular la compensación de los trabajadores, y la compañía no asumió ninguna responsabilidad por mi salud o la salud de sus otras trabajadoras.

No solo mi salud sufrió debido a este modelo de negocio, sino que también hubo otros costos para este tipo de estructura de programación y pago. Debido a que la compañía me asignó citas, me sentí presionada para ponerme a disposición de todas las solicitudes de la compañía. Temía que si no aceptaba trabajos, ya no sería considerado por los trabajos mejor pagados. En esta compañía, me pagaban bajo dos estructuras de pago diferentes, ya sea por comisión o por hora. En ambas estructuras se esperaba que yo hiciera un número específico de servicios por hora, sin embargo, los clientes no siempre daban propinas porque no estaba claro si las propinas estaban incluidas en el costo del servicio, que se pagaba en internet. La estructura de pago era confusa y el desglose de salarios y propinas no era transparente, dejándome con un ingreso impredecible.

Aunque ya no trabajo para esta empresa, hoy estoy aquí porque me preocupa que este tipo de modelo de negocio no sea sostenible para las trabajadoras de salones de uñas. Conozco a otras compañeras que renunciaron y volvieron a trabajar en salones. Hoy les comparto mi historia porque espero que aborden este problema de clasificación errónea que pone la carga de los riesgos laborales únicamente en los trabajadores como yo. Gracias.

Maria Hernandez (English):

My name is Maria Hernandez and I am a member of the New York Nail Salon Workers Association. I am here to testify today because I would like to share my experience working at a web-based manicure and pedicure company. The company offers manicures and pedicures at parties, homes and offices. Even though the company significantly controlled the work relationship by setting prices, scheduling and assigning appointments, and collecting and distributing payments, they classified me as an independent contractor because the job was web based.



At first, I thought that this business model would be a positive change from having to sit inside a nail salon for 10-hour shifts. During these long shifts, I and other workers are exposed to many health risks and bad working conditions and are often not provided with the proper protective equipment. Throughout my time in the industry, I, like many of my fellow nail salon workers, also experienced wage theft. After all of these bad experiences, I thought that switching to this new type of company would benefit my family and my health.

However, once I started working for this company, I quickly realized that I had miscalculated the benefits of this new type of business model. The upfront higher wages were attractive, but came at a cost. I quickly found that there were unforeseen health risks of doing manicures and pedicures in the homes and offices of clients. Having to do mobile manicures and pedicures without having the proper equipment, such as elevated chairs to protect from back pains or the proper lighting that protects from having to strain my vision, immediately began affecting my physical health. But because the company classified me as an independent contractor, I was not entitled to any benefits afforded to employees, in particular workers' compensation, and the company took no responsibility for my health or the health of its other workers.

Not only did my health suffer due to this business model, but there were other costs to this type of scheduling and payment structure. Because the company assigned me to appointments, I felt pressured to make myself available to all the company's requests. I was afraid that if I did not accept jobs, I would no longer be considered for the better paying gigs. At this company, I was paid under two different pay structures, either by commission or hourly. Under both structures I was expected to do a specific number of services per hour, yet customers didn't always tip because it was unclear whether tips were included in the cost of the service, which was paid online. The payment structure was confusing and the breakdown of wages and tips was not transparent, leaving me with a volatile income.

Although I no longer work for this company, I am here today because I am worried that this type of business model is not a sustainable one for workers in the nail salon industry. I know other coworkers who quit and returned to working in salons. I am sharing my story with you today because I hope you will address this issue of misclassification that puts the burden of employment risks solely on workers like me. Thank you.

We will now hear from Sonia Morales.

Sonia Morales (Spanish):

Mi nombre es Sonia Morales y soy parte de la Asociación de trabajadores de uñas de Nueva York. Tengo 20 años trabajando en varios salones de uñas y en muchos de los salones en los que trabajaba, me dijeron que era una trabajadora independiente y que solo pagaba por comisión. Los dueños dijeron que yo era una trabajadora independiente, pero controlaron los precios de los servicios, mi horario, y finalmente deciden cuanto yo gano de sueldo.



Porque me dijeron que era una trabajadora independiente, los dueños no respetan mis derechos. Por ejemplo, no se respetan nuestros días de enfermedad. Por estar enferma y no trabajar ese día, me despidieron. Como madre, nuestros hijos se enferman y nos tenemos que quedar en casa y resulta en que nos botan del trabajo. Trabajamos de 10-12 horas continuas sin tener tiempo de descanso, ni tiempo de comer. Trabajamos 50-60 horas semanales donde no tenemos un pago justo. Me pagan por comisión y la forma en que funciona en nuestra industria es que dividimos el costo total del servicio con el dueño, pero el costo de una manicura aquí en la ciudad de Nueva York es el más bajo en todos los Estados Unidos. Además, si no hay clientes, entonces no me pagan nada, y si al final de la semana no alcanzamos el umbral del salario mínimo, solo tenemos que vivir con los salarios que ganamos. Durante mi tiempo en diferentes salones, no nos pagan horas extras y los dueños nos pagan menos del salario mínimo según porque ganamos propina y estamos mal clasificados como trabajadoras independientes. Cuando me pagaban por comisión, este sistema era aún peor porque dependía aún más de las propinas y nunca sabía cuánto ganaría al final de la semana. Este tipo de sistema de pago me causó mucho estrés y me obligó a trabajar aún más horas solo para ganar lo suficiente para pagar mis cuentas.

En yo exigir mis derechos como una empleada ha resultado en despedidos. En mi experiencia el mensaje es que mis derechos no importan. Me siento que no soy valorada como ser humana. Me gustaría darles a mis hijos una calidad de vida de cómo se debe ambos en lo económico y de poder estar presente con ellos. Pero dado a las largas horas y horario y por el sueldo bajo me impide hacerlo.

Estamos aquí hoy porque le pedimos a usted, el Senado del Estado, que se asegure de que cualquier nueva ley sobre trabajadores independientes cubra y proteja a todos los trabajadores de salones de uñas. Necesitamos un sistema claro que no separe solo a ciertos tipos de trabajadores de salones de uñas y garantice que los trabajadores de salones de uñas como yo se clasifiquen adecuadamente como empleados con derechos laborales básicos como protección de salarios y horarios, normas de salud y seguridad, compensación de trabajadores y desempleo seguro. Gracias.

Sonia Morales (English):

My name is Sonia Morales and I am a member of the New York Nail Salon Workers Association. I have been working in several nail salons for 20 years. In many of the salons where I worked, I was told that I was an independent contractor and I was paid only by commission. While the salon owners said that I was an independent contractor, they controlled the prices of the services, my schedule, and how much money I earned.

Because they told me I was an independent contractor, the owners didn't respect my rights. For example, we were not allowed sick days. If I was sick and did not go to work, I was fired. As a mother, sometimes my children get sick and I have to stay at home - this would result in me getting fired. As nail salon workers, we work for 10-12 continuous hours without having time to rest, or time to eat. We work 50-60 hours a week but we don't have a fair wage. The way getting paid by commission in our industry works is that we split the total cost of the service with the



owner, but the cost of a manicure here in New York City is the lowest in all of the United States. If there are no customers then I do not get paid anything at all, and if at the end of the week, even if we don't reach the minimum wage threshold, we just have to live with whatever wages we make. Throughout my time at different salons, I have seen that owners often do not pay overtime and do not pay minimum wage because we are tipped workers and are mis-classified as independent contractors. When I was paid on commission, this system was even worse because my wage depended even more on tips and I never knew how much I would earn at the end of the week. This type of payment system caused me a lot of stress and forced me to work even more hours just to earn enough to pay my bills.

Demanding my rights as an employee has resulted in me getting fired. In my experience, the message is that my rights do not matter. I feel that I am not valued as a human being. I would like to both be able to support my family financially and be able to spend time with my children, but the long hours and low wages prevent me from being able to give my children this type of life.

We are here today because we are asking you, the New York State Senate, to ensure that any new law on employee classification covers and protects all nail salon workers. We need a clear system that does not separate out only certain types of nail salon workers and ensures that nail salon workers like me are properly classified as employees with basic labor rights like wage and hour protections, health and safety standards, workers compensation, and unemployment insurance. Thank you.

As you have heard from these testimonies, nail salons across the industry have developed practices to undermine workplace protections. One of the most common ways we see this play out is by salons misclassifying workers as independent contractors. These testimonies are not unusual - we hear from many of our association members that their employers are classifying them as independent contractors and paying them only by commission or by day, rather than by hour.

Because we see this misclassification issue for both app-dispatched workers and workers in traditional salons, we believe that it would be a mistake to separate out "gig economy" workers from other employees, which is what the Dependent Worker Act would have done. Not only because this separation would leave out some nail salon workers, but also because we believe that the most effective way to tackle this issue is legislation that would affect workers across the board.

Right now, it is our understanding that most nail salons that are classifying workers as independent contractors and sending them to offsite locations for jobs are in violation of the NYS Appearance Enhancement Law, which states that a nail salon worker may only practice at remote locations if they hold an appearance enhancement business license or are employed by the holder of this type of business license. Our association members that work as independent contractors at remote locations do not have business licenses, and therefore we believe this



practice violates this industry licensing regulation. However, we have not seen enforcement of this law and have heard that employers are unaware of it, and therefore believe that the most effective type of law would not just apply to nail salon workers, or app-based workers, but to all workers.

As we've heard today, these issues are not unique to nail salon workers. Our current employee classification system is broken. The current test of employee status is convoluted and not clearly defined – asserting your rights if your employment resembles anything other than a steady inside 9 to 5 job means time-consuming, extended litigation. Attempting to tackle the issue of employee misclassification in the nail salon industry through case-by-case litigation is particularly unrealistic, as these problems are so wide spread.

Workers and employers would be better served by having a direct, straightforward approach that lets everyone know their rights and responsibilities up-front. We believe that the best way to do this is to clarify employee status for all workers in New York State with one simple test -- what is known as the ABC test.

New York has already passed the ABC test for the trucking and construction industries. Those bills passed by wide margins in the Senate and Assembly with bipartisan support. There is no reason why nail salon workers and all other workers shouldn't share in the protections enjoyed by workers in those two sectors.

Workers found to be employees under such a test would be entitled to all protections for private employees under New York State Labor Law, from minimum wage, overtime, unlawful deductions, workers compensation, paid time off, etc. We believe that this an ABC test is the best approach for New York. Thank you.