



Joint Legislative Hearing Testimony Submission – Economic Development/Labor

S.8306/A.8806 (ELFA – Parts K, L and M)

S.8308/A.8808 (TEDE – Part JJ)

January 30, 2024

The Food Industry Alliance of New York State, Inc., the premier trade association representing the full spectrum of the retail food industry in New York, appreciates the opportunity to express our position on several proposals within the Governor’s proposed Executive Budget. We also wish to express our strong advocacy for sensible state action to help our industry and employers throughout the economic spectrum in reducing unemployment insurance costs.

First, and starting with S.8306/A.8806, we wish to focus on the following three specific parts.

Part K - Limit Liquid Damages in Certain Frequency of Pay Violations –

We express our strong support for this proposal aimed at resolving the pressing issue surrounding Labor Law §191 and §198, specifically pertaining to the frequency of pay for manual workers and the penalties for violations.

Currently, employers are obligated to pay manual workers on a weekly basis. Related, a manual worker according to §190(4) of the Labor Law is defined as “a mechanic, workingman or laborer”. More specifically, “physical labor” has broad applicability to include workers who complete “countless physical tasks”. In short, the Labor Law is vague and subject to interpretation.

In 2019, the Appellate Division, First Department in *Vega v. CM & Associates Construction Management, LLC* held that payment of wages to “manual” workers other than on a weekly basis is subject to a private right of action and liquidated damages under Labor Law §198. Labor Law §198 provides a robust framework for enforcement, ensuring that employers are held accountable for wage theft through penalties administered by the State Department of Labor. Among these penalties which could be levied against an employer is the allowance of 100% of liquidated damages with a six-year statute of limitations. However, Labor Law §198 was never intended nor has historically applied to frequency of pay cases until the *Vega* decision.

This proposal by Governor Hochul does not undermine the current enforcement of wage violations, rather provides essential clarity to existing law, which has recently been subject to a varied interpretation by the judicial system, and simply states that plaintiffs are not entitled to 100% of liquidated damages if they received payment accurately and at least semi-monthly.

It is imperative to underscore that in these instances, employees are not deprived of the wages owed to them. Instead, the issue revolves around the frequency of payment, with employers paying bi-weekly or semi-monthly instead of weekly. In most instances this is due to the vague and interpretive nature of the definitions surrounding what constitutes a manual worker in New York.

Also of importance, this proposal by the Governor does not eliminate the current private right of action or any additional wage violation/wage theft violations that may occur.

The Food Industry Alliance of New York State, Inc. is supportive of this proposal.

Part L – Expands Recovery Tools for Stolen Wages –

While the Food Industry Alliance supports and commends the state on its laudable goals of protecting employees from wage theft, empowering the State Department of Labor to have powers conferred upon sheriffs is excessive and the seizure of personal or company assets as proposed in this legislation, is unreasonable and will disincentivize business in New York.

Additionally, this legislation allows for a concerningly broad definition of “employer” whereby, an employer’s agents, supervisors, and other managers, who have no responsibility for or control over a business’ pay practices, would be subject to personal liens.

There are already numerous state and federal laws in place to protect employees and prevent bad employers from ignoring wage and hour laws. New York’s wage theft law provides both civil and criminal penalties on employers and individuals. Further, the state’s Labor Law requires the state Department of Labor to pursue wage theft claims and recovery unpaid wages on behalf of impacted employees.

The Food Industry Alliance of New York State, Inc. is opposed to this measure.

Part M - COVID Sick Leave Sunset –

FIA is in support of the New York State Budget Proposal to sunset the state's COVID Sick Leave law as of July 31, 2024. The landscape of COVID-19 has significantly evolved since its onset in March 2020. We have witnessed substantial advancements in the treatment and containment of the virus, and this transition from an emergency to a more manageable health concern warrants a reevaluation of our response strategies.

While the COVID Sick Leave law was a necessary response to the pandemic, it is important to note that we currently lack specific leave policies for other illnesses such as the flu, chickenpox, etc. With vaccine leave having expired at the conclusion of 2023, it is a timely opportunity to reconsider the necessity of special COVID-19 leave policies.

FIA believes the budget proposal to sunset New York State's COVID Sick Leave law by July 31, 2024, is a well-reasoned and practical step forward.

Additionally, as part of our submission, we wish to highlight our opposition to a measure included in S.8308/A.8808 (TEDE – Part JJ) which seeks to expand New York’s general

business law. Specifically, by adding “unfair or abusive practices” to the deceptive acts and practices section.

Much of the language within this proposal is interpretive at best and will subject businesses to a plethora of litigation, which in most cases, will be deemed meritless.

FIA fully supports the concept of protecting consumers from unfair business practices, but this legislation is unworkable. Enacting this proposal will not only hurt business and fail to protect consumers, but it will also cause an explosion of unnecessary litigation in a state where the costs of our tort system already rank among the costliest in the nation. The sole result would be higher costs for business and consumers.

Unemployment Insurance –

We also wish to express our disappointment that the Governor’s Executive Budget proposal does not include funding to address the state’s \$7 billion Unemployment Insurance (UI) debt, which has businesses paying exorbitant high taxes and adversely impacting our economy.

While most state’s borrowed federal funds to meet the high demand of unemployment benefits during the pandemic, only New York, California and Connecticut have thus far failed to repay the federal government, as most who received federal loans used COVID relief money to pay off their UI advances. As a result, New York employers are paying the highest possible state UI taxes, have seen increases in their federal UI tax rate and have been hit with an annual Interest Assessment Surcharge.

We strongly urge a final budget agreement to include, at a minimum, an allocation of approximately \$150 million to pay the interest on the debt for calendar year 2024, which would provide modest relief for businesses, while also acknowledging that the state has a responsibility to assist in this crisis. We urge your support in this effort.

The Food Industry Alliance of New York State appreciates your consideration of the above referenced proposals and is a willing partner in discussing ways to make New York more affordable for business and consumers alike.

Respectfully submitted,



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