2025 Joint Legislative Budget Hearing
Labor/Workforce Development and Economic Development
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Written Testimony of Alaina Varvaloucas, Executive Director
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My name is Alaina Varvaloucas. I am the Executive Director of the Worker Justice Center of New York. We are a non-profit legal services and advocacy organization that serves low-wage workers throughout a large portion of New York State, from Westchester up to the North Country and all the way out to Western NY. WJCNY's mission is to pursue justice for those denied human rights with a focus on agricultural and other low-wage workers, through legal representation, community empowerment, and advocacy for institutional change. Before I joined WJCNY in July 2024, for several years I represented farmworkers and other low-wage workers experiencing New York Labor Law abuses as the Managing Attorney of the Farmworker Law Project at the Legal Aid Society of Mid-New York.

Each year, our organization serves thousands of our state's most vulnerable workers—people whose essential labor sustains our local economies, but who are too often left unprotected from exploitation and abuse. Every day, we encounter workers who are struggling to make ends meet, often working multiple jobs, with limited access to safety net resources and little recourse to address widespread labor law violations.

I would like to address four critical measures that would aid these workers:

1. The EmPIRE Worker Protection Act (Hoylman-Sigal S-448/Simon A-4278)

Passage of the EmPIRE Worker Protection Act is perhaps the most crucial labor endeavor this year given the new presidential administration's broad attacks on workers and his efforts to diminish the federal workforce, which will no doubt lead to a lack of enforcement of federal labor laws. In New York, outside of federal agencies, effective enforcement of labor law has historically depended on a combination of public enforcement by the New York Department of Labor and private enforcement by individuals bringing private lawsuits. Private litigation supplements public enforcement, penalizing violations that public regulators are unable to prosecute due to issues such as resource constraints.

However, a crisis of enforcement has emerged over recent decades. On the public side, capacity constraints have exacerbated as caseloads have risen and staffing levels declined. Limits on government resources mean that labor violations subject to enforcement inevitably outstrip public enforcement capacity. Meanwhile, on the private litigation side, fear of retaliation and the logistical commitments needed to fight a case in state or federal court have posed obstacles to workers trying to address violations of their rights.

As a result, the workers represented by myself, my colleagues, and my staff experience significant delays in vindicating their claims. It can take years to resolve a court case, and it is no faster to go through the New York Department of Labor (NY DOL), where some cases languish for 3-5 years. Of those, we have had multiple clients then become unable to collect even thousands of dollars per person because NY DOL's enforcement unit is grossly understaffed. And our clients are not alone—a recent ProPublica report found that between 2017-2021, 63% of back wages went uncollected, for a total of $79 million—and that is just those cases that were actually filed with NY DOL. New York has some of the nation's best labor laws, but is unable to fully enforce them.

NY DOL employees are passionate about their mission and believe in the full enforcement of New York's labor laws. But despite their best efforts and their hard and dedicated work, labor violations far outstrip labor enforcement in New York because NY DOL is not given the resources to match the problem. Employers can readily bet that malfeasance with respect to the New York Labor Law will go unpunished. Through our work, we see that employers bet on the state having inadequate enforcement capacity. They steal wages from their workers and allow toxic workplaces to fester with the expectation that it is unlikely they will be caught. Our labor laws are rendered meaningless when workers do not have a reasonable expectation that employers who violate the law will be held accountable.

The EmPIRE Act expands the state's enforcement power and grows revenue, without burdening public servants. The Act creates a public enforcement action that enhances the reach of the NY DOL and Attorney General, and following a notification process to the state, allows affected workers and labor unions to sue employers to enforce state labor law at individual workplaces—action which either the Attorney General or the New York Department of Labor can take instead, or claw back at any point in the legal process, if they choose to do so.

The action, when victorious, allows for the recovery of penalties—60% of the total—that the NY DOL would receive even when it does not bring the case, allowing it to further worker protection enforcement. **The Act is expected to create an extra $103 million per year for the New York Department of Labor,** as well as expand the ability of workers to bring claims to rectify abuses in the workplace, further strengthening the reach of the New York Attorney General and Department of Labor. Prevailing relators would also be able to win injunctive and declaratory relief that would bring lawbreaking employers into compliance with the Labor Law.

This legislation would significantly increase the state's capacity to enforce labor standards and critical workers' rights protections. By passing EmPIRE, New York could reaffirm its position as a leader in workers' rights protection. Workers are under attack from a new federal administration and will turn to state agencies for protection where federal agencies will no longer protect them. Now is the time New York needs to adequately increase the capacity of its already underfunded agencies—as well as shore up the ability of workers, who make up the foundation of New York's economy, to enforce labor laws through a structured process. New York is better than what the federal government is doing what right now, and the EmPIRE act can help us prove it.

2. The Importance of Liquidated Damages in New York Labor Law Section 191

I also would like to address a major concern about a provision contained within the Governor's budget proposal which aims to limit liquidated damages for violations of the labor law relating to the required frequency of pay for manual laborers.

The frequency of pay provision of the Labor Law (Section 191) requires manual workers to be paid weekly, with some exceptions. Section 198 of the Labor Law entitles employees to liquidated damages in the amount of 100% of any untimely payment of wages, in recognition that many low-wage workers live paycheck to paycheck. In our practice, it is unusual to see a violation of Section 191 without also finding other issues with wage theft, including sub-minimum wages or lack of overtime pay. This hits especially close to home because virtually all of the clients represented by WJCNY are manual laborers. For a worker living paycheck-to-paycheck, having pay be delayed by even a day or two can mean a meal is skipped, rent is late, credit card bills are late, the penalties and fees stack up, and the house of cards tumbles. The Governor's proposal disregards the real harm that infrequent or unpredictable pay visits on the most vulnerable workers.

Eliminating liquidated damages for pay frequency violations means that employers would face no penalty for failures to comply. Without an enforceable requirement to pay weekly, employers can pay when they choose, leaving payment unpredictable for low-wage workers who live paycheck-to-paycheck. We have countless examples of workers getting strung along by employers, being paid piecemeal at random intervals. Further, this would affect the ability of workers to determine deficient overtime pay, which is calculated on a weekly basis. A non-exempt employee should be able to determine whether or not she was paid overtime properly by examining the wage statement accompanying her pay—a major goal of the Wage Theft Prevention Act. But if she is paid semi-monthly (or even bi-weekly), she would need to cross-reference multiple wage statements and time records. This would enable more instances of wage theft to go unnoticed.

Even long-standing employees in low-wage industries, particularly in construction and landscaping, fall victim to wage theft through employers' use of piecemeal payments. We often hear reports in the following vein: Employer started off paying an agreed-upon daily rate, then missed a week, then paid $500 a few days later when workers complained, then missed two weeks, then paid $650 when workers threatened to quit, and so on, stringing workers along in the hope (often futile) of eventual full payment. While the Governor's proposed amendment would not disturb a worker's right to recover wages that remain unpaid at the bitter end of this scenario, it would significantly undercut the value of the "underpayments" the worker suffered by being strung along in this manner. As currently written, the Labor Law appropriately recognizes that a worker is not fully compensated for the havoc that late payment wreaks in her life, even when her employer belatedly catches up with promised wages. Liquidated damages are a crucial rough measure of this real harm.

While the Governor's stated goal is to reduce litigation, the amendment would almost certainly have the opposite effect. The amendment would replace a bright-line, easy-to-follow proscription to pay manual laborers weekly, with a far murkier standard about the "agreed terms

of employment". This proposal betrays a lack of understanding about how low-wage work is contracted, performed, and compensated (or not). Day laborers often commence work without knowing the name of their employer, let alone their regular and overtime rates of pay, frequency of pay, or regular payday. Under these circumstances, what are the "agreed terms of employment?" What if a contractor informs a day laborer that he will pay when the project is completed, or when the homeowner pays him? If the "agreed terms of employment" violate the Labor Law, including Section 191, those terms would presumably be unenforceable as a matter of public policy. Yet the Governor's proposed amendment would make a worker's private right of action contingent on such unenforceable terms—to the extent agreed-upon terms exist. Litigation would almost certainly be required even to determine whether an employee has the right to bring a frequency of pay claim, defeating the purpose of the amendment while undermining worker protections.

A desire to decrease litigation is not a sufficiently compelling reason to ignore these harms. The extent to which courts are allegedly overwhelmed with wage and hour litigation is not the problem, but rather a symptom of the problem of rampant wage theft and workplace exploitation; unfortunately, this proposal alleviates the symptom by ignoring the problem rather than trying to solve it. There is a very simple way to reduce litigation around frequency of pay issues in New York: Employers can follow the existing law, which has been on the books for decades, is straightforward in its application, and hurts no one. Businesses can very easily apply for a waiver of Labor Law Section 191 by filling out a one-page form with the Department of Labor. Nearly all waiver applications are granted.

If the legislature believes there has been a surge of litigation around Section 191 that contravenes the public interest, it should narrowly tailor any legislative changes to address the precise circumstances it finds objectionable, or more clearly define what constitutes a "manual worker". Independent contractors receive this right via the Freelance Isn't Free Act, and there is no justifiable reason not to continue that right for New York's lowest paid employees as well.

3. The Upstate Parity & Minimum Wage Protection Act (Ramos S8154)

This crucial legislation would establish a statewide minimum wage of $17 by 2026 and nullify off-ramp loopholes that deny workers a raise when the cost of living goes up. Recently, New York State leadership approved a disappointingly small increase to the minimum wage—$17 downstate and $16 upstate by 2026—and adopted annual cost-of-living adjustments thereafter. These increases fail to catch up with even half of the minimum wage's lost value as measured by the Consumer Price Index (CPI). As a result, New York's minimum wage will be lower in inflation-adjusted dollars in 2026 than it was in 2019. New York continues to lag behind more than 20 state and local jurisdictions that have adopted minimum wages of $17 or higher. The 2023 package was well below what the vast majority of New Yorkers wanted—more than two-thirds of New Yorkers in a 2023 public opinion poll said workers need to earn at least $20 an hour to live at a decent level. And even worse, the 2023 package included a harmful loophole in the form of an "off-ramp" provision that suspends inflation adjustments any year that unemployment ticks up. With this provision, workers' wages will fall further behind the cost of living and deny working families a living wage.

Under the 2023 package, starting in 2027, New York's minimum wage would automatically freeze if unemployment inches up or employment drops even slightly. These conditions occur with enough frequency to have been observed 25% of the time over the last 23 years, and we should be wary of these circumstances re-occurring soon. The United States currently has a historically tight labor market, where there are more job openings than unemployed workers. A modest increase in the unemployment rate could still reflect an otherwise healthy economy; in fact, the unemployment rate can sometimes rise for good reasons if strong job opportunities encourage previously discouraged or disinterested workers into the labor market. Yet the enacted off-ramp would still automatically stop any increases in the minimum wage even in such circumstances.

The practical implications of an off-ramp would be devastating for New Yorkers at the bottom of the wage distribution. According to estimates from the Economic Policy Institute (EPI) and the National Employment Law Project (NELP), if the off-ramp provision were triggered in 2027, 1.45 million low-wage New York workers would lose out on a wage increase. In total, the off-ramp would cost these workers $609 million (in 2022 dollars) in earnings. In addition, there is no economic evidence supporting the claim that continuing to raise the minimum wage during economic downturns would hurt hiring—the purported rationale for this loophole. Instead, all of the economic evidence, including multiple studies of New York's $15 minimum wage, shows that raising the minimum wage does not hurt hiring or employment levels, including during economic downturns. Raising the minimum wage is actually an excellent way to boost the economy because it increases consumer spending. Minimum wage raises go into the pockets of people who are most likely to need to spend it.

In addition to being economically unsound, this off-ramp loophole is unique among the 19 states and scores of localities that index their minimum wages to rise with the cost of living. The few states that proposed off-ramp language have either repealed it completely or are in the process, making New York a conservative outlier. Beyond the loophole and the insufficient raise to $17 downstate, the 2023 minimum wage package fails to increase the wage to $17 statewide, raising the upstate minimum wage to just $16 an hour by 2026. This disparity ignores the reality that many upstate regions, such as the Hudson Valley, have experienced skyrocketing housing and living costs that are comparable to those in parts of downstate. The living wage in Governor Hochul's hometown of Buffalo is already more than $16; statewide, it is already over $21. By 2026, a $16 minimum wage will be even more inadequate.

We cannot leave upstate behind. New York should therefore eliminate the lower upstate wage and instead ensure that New York has, at minimum, a statewide minimum wage of $17 by 2026. While the passage of the 2023 minimum wage law was an important milestone, much more needs to be done to restore the wage floor for New Yorkers, including raising the minimum wage higher than $17 per hour. But as a first step, these poorly designed provisions in the 2023 minimum wage package that do not provide upstate parity and may block increases in future years must be fixed.

4. The Unemployment Bridge Program (UBP) (S00173/A03582)

This program would provide unemployment protections to an estimated 750,000 workers who are currently excluded from traditional unemployment insurance (UI). The program covers freelancers, self-employed workers, undocumented workers, and certain cash economy workers who earn under $56K annually. UBP would also cover people released from prison or immigrant detention who often struggle to find a job post-release. The estimated cost for UBP is $500 million (a capped appropriation), of which $75 million will go toward the Department of Labor for administrative purposes and labor.

The current UI system does not reflect today's economic realities, where freelance workers make up an ever-greater part of the workforce, and it disproportionately locks out the most vulnerable workers in our economy. While UBP legislation does not directly aim to reform the unemployment insurance system, its passage is a critical component of broader UI reform efforts.

There are numerous reasons why the legislature should push for UBP's inclusion in the budget.

- The UBP is a lifeline for the self-employed. Freelancers are often denied or exempt from critical labor protections, but UBP would cover 180,000 self-employed workers from the likes of street vendors to digital media artists, business consultants, farm owners, and more.

- This is an immigrant justice issue. Immigrant workers pay over $100 million per year into the Unemployment Insurance system in New York—but cannot access a cent. Undocumented workers pay $1.1 billion every year in New York state and local sales, property, and income taxes.

- It protects workers in the informal sector. Domestic workers, nannies, and day laborers are often exploited in informal industries, and because they are paid in cash, there is no record of their wages to collect UI. This program would provide critical support during joblessness for these workers.

- This is a racial and economic justice issue. The Immigration Research Initiative has found that 73% of the New Yorkers who would benefit from the Unemployment Bridge Program are non-white, compared to 27% who are white.

- It raises the overall working standards for all workers. Investing in the safety net is not just good for the workers who are directly impacted, but for all workers. With a safety net to fall back on, workers are more likely to stand up against abusive employers, making workplace conditions safer and better for everyone.

- It is a good return on investment. Investing in excluded workers also reaps benefits for New York's economy. The Immigration Research Initiative estimates upwards of millions to be re-invested right back into New York.

- This is a public safety issue. With this program, 20,000 workers re-entering the labor force after prison or detention would be covered during their first year post-release. Providing recently incarcerated people access to UI is cost-effective. Recidivism can cost the state upwards of $50,000 per person per incident; this fund would provide a maximum of $7,200 per year in benefits (6 months times $1,200) and would give everyone the security of knowing they could be covered if they needed it.

- The bill is revenue-neutral. WJCNY is aware of the concerns about the massive deficit in the Unemployment Insurance Trust Fund that pays for NYS unemployment insurance, and we have often heard from legislators that the deficit needs to be restored before any action can be taken on expanding future UI programs. However, UBP has its own revenue stream through the Digital Ad Tax, which is expected to raise up to $750 million for NYS. This is a palatable tax that would collect a small portion of annual revenues of digital advertising services from companies with gross annual revenues of $100 million from these services, leaving no burden on the state, small businesses, or individual taxpayers.

We urge the state legislature to invest in this critical social safety net program that prepares us for future crises, safeguards our communities, and sustains our economy. New York's excluded workers' ability to survive and put food on the table depends on it.

Thank you for your time and attention. If you have any further questions, please feel free to contact me at 585-559-8769 or at avarvaloucas@wjcny.org.

Sincerely,

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Executive Director
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