Testimony of Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection

Before the Committees on
Consumer and Worker Protection and Civil Service and Labor

Hearing on Safe and Sick Time and Introductions 78, 563, and 617

June 20, 2023

Introduction

Good afternoon, Chair De La Rosa, and members of the Committee on Civil Service and Labor. I am Vilda Vera Mayuga, Commissioner of the Department of Consumer and Worker Protection (DCWP), and I am joined by Elizabeth Wagoner, Deputy Commissioner of our Office of Labor Policy & Standards, and Carlos Ortiz, Assistant Commissioner of External Affairs. It is my pleasure to be here today to testify on a topic that is central to our efforts to protect New Yorkers and their families—Paid Safe and Sick Leave.

DCWP and Paid Safe and Sick Leave

New Yorkers should never have to make a choice between their health, or the health of their loved ones, and their livelihood. As a working parent myself, I rest easier knowing that if I need to take care of my children or my mother when they have to stay home sick, I will not face any repercussions when I go back to work. And, we all are more comfortable at work knowing our colleagues have the right to take time off when they are sick, or when their loved ones are sick.

New York City's Paid Safe and Sick Leave law ensures New Yorkers have the right to take time off work to care for themselves or loved ones when they're sick, need preventive care, or access services or take safety measures related to domestic violence, sexual violence, stalking or human trafficking. Currently, most eligible workers have the right to up to 40 or 56 hours of paid leave per year, depending on the size of their employer.[1] As we saw throughout the pandemic, Paid Safe and Sick Leave was an essential right for our City's workers. And, as we continue our recovery, it remains a crucial workplace right for working families and individuals.

Our team at DCWP works tirelessly to ensure that New Yorkers know about and can exercise their rights under the Paid Safe and Sick Leave law and are not penalized for taking care of themselves and their loved ones. Our education and outreach efforts inform workers through presentations, informational gatherings, and high visibility events partnering with key community-based organizations. We have also used citywide paid advertising campaigns, social media platforms and more to bring the word to New Yorkers that Paid Safe and Sick Leave protections are here for them. Last year, we conducted a multilingual marketing campaign on Paid Safe and Sick Leave to raise awareness of employee rights, with a focus on workers in industries and neighborhoods with high incidence of sick leave complaints. Overall, since the start of the Adams Administration, we have held close to 1,000 outreach events connecting with more than 76,000 New Yorkers.

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[1] https://www.nyc.gov/site/dca/businesses/paid-sick-leave-law-for-employers.page

And when workers report violations of their rights to us, we take action. Since the Paid Safe and Sick Leave Law went into effect in April 2014, DCWP has received more than 3,450 complaints about potential Paid Safe and Sick Leave violations, closed more than 2,500 investigations, and obtained resolutions requiring approximately $21 million in combined fines and restitution for 60,000 workers. Last year, we reached New York City's largest-ever worker protection settlement with Chipotle following violations of the Paid Safe and Sick Leave and Fair Workweek Laws. That settlement provides $20 million in compensation to approximately 13,000 workers, millions of which is attributable to Chipotle's Safe and Sick Leave violations. Just last month, we reached a settlement with Con Edison over violations of Paid Safe and Sick Leave, securing more than $200,000 in restitution for 480 workers who were denied their right to safe and sick leave and $40,000 in civil penalties.[2] And we are not stopping there; we remain committed to our efforts to protect workers and keep businesses and employers in compliance with the law.

Introduction 78

Turning to today's bills, Introduction 78 would require DCWP to hold a public education campaign informing employers and employees of their responsibilities and rights to Paid Safe and Sick Leave. DCWP would be required to coordinate with the Department of Health and Mental Hygiene to distribute posters, flyers and other written materials to pharmacies, doctors' offices, and hospitals, as well as invite NYC Health and Hospitals to participate in the posting and distribution of these materials.

DCWP supports the intent of this legislation; we currently engage in extensive outreach efforts to educate New Yorkers about their rights in the workplace, as I described earlier in my testimony.

Introduction 563

Introduction 563 would allow New Yorkers the right to file a civil action in court if their right to Paid Safe and Sick Leave is violated. At the municipal level, workers can file a complaint with DCWP, but not in court, for violations of the City's Paid Safe and Sick Leave law. Under current state law, employees can sue in court for violations of state sick leave protections.

Many labor laws have private rights of action that assist in promoting compliance, as well as providing workers an important additional option if their rights are violated. DCWP supports Introduction 563 and believes that a private right of action for Paid Safe and Sick Leave will promote deterrence and help to ensure more workers are made whole when their rights are violated. The laws and rules of our city, in particular those that advance dignity for workers, must be followed, and bad actors should be held accountable for violations of the law.

Introduction 617

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[2] https://www.nyc.gov/office-of-the-mayor/news/581-22/mayor-adams-department-consumer-worker-protection-settlement-chipotle-mexican#/0

Introduction 617 would amend the definition of "employee" under the Paid Safe and Sick Leave Law to include workers who would be deemed an employee under a new standard included in this bill.

DCWP supports the intent of Introduction 617. We appreciate and share the goal of expanding worker protections. That said, we have concerns about expanding the definition of "employee" at the municipal level alone. Any changes to the definition of employee under City law should be consistent with laws at the state and federal levels, to ensure that workers and employers understand how workers should be classified and workers are able to access all benefits available to them as employees. The Law Department is currently reviewing the bill and we welcome further discussions on how this can be accomplished.

Conclusion

Thank you for the opportunity to testify before your committees on our essential work uplifting New Yorkers, and today's legislation. DCWP and the Administration share your commitment to protecting New York City's workers. I welcome any questions you may have for further discussion.

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

Testimony on Behalf of New York City Comptroller Brad Lander Before the Committee on Civil Service and Labor on the Earned Safe and Sick Time Act
June 20, 2023

Good afternoon Chair De La Rosa and members of the Committee on Civil Service and Labor and thank you for the opportunity to testify before you today. My name is Claudia Henriquez, Director of Workers' Rights at the Office of the New York City Comptroller Brad Lander. On behalf Comptroller Lander, I am proud to share his support, as the former prime sponsor of the bills now numbered Ints. 563 and 617, for all the legislation before the committees today and the robust enforcement of the Earned Safe and Sick Time Act (ESSTA).

I want to applaud the Department of Consumer and Worker Protection (DCWP)'s enforcement of this regime, especially during these past few tumultuous years of COVID-19, and the $202,000 in restitution they secured just this past month for nearly 500 workers at Consolidated Edison (Con Ed). In October 2022, the Comptroller's Office released a follow-up audit report on DCWP's enforcement of ESSTA and assessed the implementation status of recommendations issued to DCWP in a prior 2019 audit. The Comptroller's office determined that DCWP improved its monitoring of restitution and fine payments and intake, investigative, and litigation processes related to its enforcement of ESSTA. Of the 21 recommendations made in the initial audit in 2019, this follow-up audit found that 19 had been implemented and two are no longer applicable.

Despite DCWP's strong enforcement of ESSTA, unfortunately many low-income workers are still unaware of their existing rights and protections under this law. Seven years after the law took effect, data from the Community Service Society's 2021 Unheard Third survey showed that half of low-income workers weren't aware of their rights and 42 percent said that they still don't receive paid leave from their employer, more than double the share of those with moderate to higher incomes. Int. 78 introduced by Council Member Brewer and Manhattan Borough President Levine to create an informational campaign concerning workers' rights under ESSTA is an essential step to closing this awareness gap and ensuring that all workers can access

their allotted leave. This law is a necessary complement to this Council's passage of Local Law 83 of 2022 which required a mayorally-designated agency in collaboration with DCWP and other city entities to administer a public education program regarding reproductive health care and the rights of pregnant or recently pregnant persons under ESSTA and other worker rights laws.

In March 2022, Comptroller Lander was honored to release The Path Forward to a Feminist Recovery: Twelve steps NYC must take to advance gender equity in the wake of the pandemic, alongside Council Members Tiffany Cabán and Shahana Hanif. In the report, they called for the passage of Int. 617 to expand ESSTA to cover app-based gig workers and other workers misclassified as independent contractors. This bill would ensure that more than 140,000 contingent workers in New York City are able to take a paid sick day to take care of themselves or family members when needed. I am so glad Council Member Hanif is continuing that important fight.

To make the existing and necessary new rights under ESSTA real for the workers entitled to its protections, we must provide workers with the ability to sue when they are illegally denied paid time off by adding a private right of action like found in many companion worker protections. Council Member Brewer so valiantly led the fight to pass the original law, and we are so glad she will now shepherd this through the Council.

At the same time the Council boldly moves forward with this legislation to cover more workers and empower them to assert their rights under ESSTA, DCWP needs to update its rules to implement the reforms the Council passed back in 2020. Comptroller Lander testified before DCWP in the fall regarding the proposed rules and submitted his comments to the rules at that time. It has been 6 months since those rules received a public hearing and with them not appearing on DCWP's regulatory agenda for FY24, it is integral they come out promptly and without further delay.

Our office is incredibly honored to organize alongside you all for the passage of these integral worker rights bills and to continue to protect and innovative for the dignity and economic security of all New Yorkers.

JUMAANE D. WILLIAMS

TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS TO THE NEW YORK CITY COUNCIL COMMITTEE ON CIVIL SERVICE AND LABOR JUNE 20, 2023

Good afternoon,

My name is Jumaane D. Williams and I am the Public Advocate for the City of New York. I would like to thank Chair De La Rosa and members of the Committee on Civil Service and Labor for holding this hearing.

Over the past decade, New York City has seen significant changes and expansions to its Paid Safe and Sick Leave Law (PSSL). Currently, the Law allows for covered employees to use sick leave for the care of themselves or family members, and safe leave for themselves or family members under threat or action of domestic violence and other unwanted contact. The Law also outlines employers' responsibilities including the provision of certain hours of paid and unpaid leave each calendar year proportional to the number of employees and net income.

While the city has made strides in protecting private and nonprofit sector employees with the PSSL, such protections remain to be seen for many independent contractors and those in the gigwork economy. In 2022, my office released a report titled "*Disrupting the Exploitation Economy: A White Paper on Protecting Workers Classified as Independent Contractors*." One of the recommendations was to extend current paid safe and sick leave protections to all workers regardless of work classification. Independent contractors are often more likely to be subject to exploitation and wage theft as they are not classified as employees and thus have few options for recourse.[1] With the proliferation of app-based work in recent years, these workers remain classified as independent contractors and have to cover their own health insurance costs and business expenses and face potential exploitation, loss of work, and wage theft.[2] New York City must ensure their protections as well.

Furthermore, it is crucial for all covered workers under the PSSL to fully understand their rights. Such a law bears no weight if employees do not know their rights under the law. Employers should take on the responsibility of informing and educating their employees on the PSSL, and the city should ensure employees know of their rights as workers whether through campaigns,

[1] https://www.epi.org/publication/cost-of-misclassification/
[2] https://www.nytimes.com/2023/06/12/nyregion/nyc-delivery-workers-minimum-wage.html

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social media, community-based events, and more. Our city is stronger when its workers are empowered, informed, and protected, and we owe this to the millions that keep our economy, communities, and city running.

Thank you.

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Testimony before the New York City Council Committee on Civil Service and Labor
Consumer Affairs and Business Licensing
In support of Intro 0563-2022 and Intro 0078-2022
June 21, 2023
Submitted by Sherry Leiwant, Co-President
A Better Balance: The Work and Family Legal Center

My name is Sherry Leiwant. I am the Co-President and Co-Founder of A Better Balance, a national legal non-profit based in New York whose mission is to support workers so that they can take care of themselves and their families without risking their economic security. Over the 17 years since our founding we have helped pass dozens of paid sick time laws as well as paid family and medical leave laws and pregnancy protection laws around the country. However, there is nothing we are prouder of than our role in helping to draft and negotiate the Earned Sick Time Act (ESSTA) that was passed in 2013 and went into effect in April 2014 giving millions of New Yorkers the right to paid sick time. We all owe a debt of gratitude on this 10 year anniversary to the City Council that passed the law and most especially to the sponsor of the legislation, Gale Brewer, who fought so hard to make sure that paid sick time was a right for all New Yorkers. Your actions passing a paid sick time in New York City law gave impetus to the passage of 16 statewide laws (including the one passed here in New York) as well as laws in every major city in our nation, a tremendous achievement for the health and welfare for all workers in this country.

Showing recognition that there are always improvements to be made in a law after it goes into effect, the City Council has amended the paid sick time law several times, expanding the definition of family, adding domestic violence purposes and increasing the time available for workers at larger employers. We are here today to urge you to further improve the law and testify in support of two improvements sponsored by Council member Brewer: addition of a private right of action and improvements in outreach and education around ESTA.

(1) Critical Need for a Private Right of Action in ESTA.

Nearly two-thirds of the paid sick time laws across the United States include a private right of action, which allows workers to go to court to enforce their rights and seek remedies for violations, in addition to an administrative enforcement mechanism through the state or local government. ESSTA has a strong administrative remedy which is essential and an excellent enforcement agency that is dedicated to enforcing ESSTA. We want to emphasize that administrative enforcement is the mechanism that most workers will feel most comfortable—and less intimidated—using. Going to DCWP to file a claim rather than to court particularly for what is often a relatively small amount of money will always be the usual means of enforcement of rights. **However, there are a number of important reasons why we need to add a private right of action to ESSTA in addition to the administrative remedies in place:**

- There are important remedies that may be the best way to make a worker whole that the agency may have difficulty providing. Particularly when workers lose their jobs because they took protected sick time, restoration to that job will be more likely as a court remedy. Equitable relief is much more readily available in court as indicated by the worker story we have included below.

- A private right of action can be a critical backstop to administrative enforcement for cases that may be difficult and take a great deal of agency time or in times when the agency may face a particularly large caseload or cuts in budget.

- DCWP has broad discretion on what claims to investigate or take, and a private right of action provides another method of enforcement for *all* aggrieved workers. By combining administrative enforcement with a private right of action, you can ensure that all workers have an avenue to enforce their rights.

- Aggrieved workers have very little role and no control after DCWP takes the case. A private right of action ensures that the claimant has a forum for participating and making his or her case on equal footing with the employer.

- Unfortunately, workers who experience paid sick time violations often have other claims, including wage and hour violations. It is often easier to seek remedies for multiple types of violations at the same time in a court action.

- Often, a paid leave class action—a lawsuit involving numerous workers facing similar violations—is only an option in court. The ability to seek a class action administratively is particularly limited at the local level.

- Just knowing a private right of action is available can lead to more opportunities for workers and employers to settle their claims without actual litigation, since employers who violate the law may be more inclined to enter into a settlement when the worker has the option to go to court.

- The state paid sick time law passed in 2020 contains a private right of action to enforce state rights t sick time. Having an equivalent right under city law will make enforcement of the city law consistent with the state law and ensure there is no confusion with respect to enforcement of sick time rights in New York City.

These are all strong arguments for a private right of action but what this Committee should really focus on is what happens in the case of a worker who is not able to get the relief he or she should be entitled to because a court action is not possible. ABB runs a free legal helpline that receives many questions about earned sick time. We are usually able to help workers by helping them file a complaint with DCWP when their rights have been violated. However, there are occasions where justice is denied a worker when there

is no access to the courts. I want to share the story of one of our clients, Anthony Lynah, who was unable to get the relief he should have gotten. We feel confident Anthony would have gotten that relief if he had been able to go to court.

Anthony submitted written testimony and very much wanted to be here today but could not because he has a job where he only gets a half hour lunch break and couldn't miss more work than that. Here is an abridged version of Anthony's testimony:

My name is Tony Lynah, and in 2011, I began working for JetBlue Airlines at JFK Airport in Queens. In 2013, I became my mother's primary caregiver after she suffered a stroke that left her bed-bound and in need of round-the-clock care.

On the few occasions that I needed to miss work because of my mother's unexpected medical needs—such as when she was hospitalized—I was penalized under JetBlue's disciplinary policies. In June of 2014, I was advised by JetBlue that I could not request any time off, be late, or fail to punch in or out for any reason for at least six months, or I could be fired. Unfortunately, five months later, something unavoidable happened: I was late to work by nine minutes because my mother's relief aide was tardy in arriving. JetBlue first suspended me and ultimately fired me for this infraction.

I later found out that the New York City Earned Sick Time Act had taken effect months prior giving paid sick time that could be used to care for a family member. I brought this to the attention of my employer. However, JetBlue was unmoved, and I had no choice but to file a complaint with the City to try to get my job back.

That was my main goal from the beginning, and it remained my goal for the next eight years that my complaint was pending. Even though the City found that JetBlue had fired me illegally, my complaint was stalled for years due to litigation involving another airline. Ultimately, I received back pay as part of the City's settlement with JetBlue, but I was not able to get my job back.

One of the reasons I was so firm in wanting to be reinstated, even after eight years, was because I really loved my job and also I wanted to impress upon the company that it was wrong for them to fire me and to hopefully make them take the law more seriously in the future. Unfortunately, the City was not able to achieve that result, and if I could have filed my claims in court, where a judge had the power to order JetBlue to reinstate me, I would have availed myself of that option.

The only way to fully ensure that the earned sick time act will protect workers in the way we intended when the law was passed in 2013 is to add a private right of action to protect workers like Anthony.

2. Importance of education and outreach

We also wish to testify in support of the proposals that would increase the authority of DCWP to do education and outreach on ESSTA. Laws are only as good as people's ability to use them, which means that there must be a focus on outreach and education in order to empower workers to take the sick time they are entitled to. A recent report that ABB published with the Community Service Society (CSS), "Women in the Workforce: Advancing a Just Recovery in New York City," found that awareness of ESSTA remains extremely low. For instance, 55 percent of low-income women in New York City's paid workforce had not heard about their right to paid sick time. This is alarming given the importance of ESSTA for working families. For this reason, we support Councilmember Brewer's Int. 0078, which would require the Department of Consumer and Worker Protection to coordinate with the Department of Health and Mental Hygiene to coordinate on a public education campaign, including distributing fliers on ESSTA at pharmacies and hospitals or any legislation by this Council that will improve knowledge by workers of their rights under this law.

Testimony on Strengthening the Earned Safe and Sick Time Act

Organized by Committee on Civil Service and Labor

Tuesday, June 20th, 2023

Presented by

Debipriya Chatterjee, Ph.D., CSS Senior Economist

Thank you, Chairperson Carmen de La Rosa and to the members of the Committee on Civil Service and Labor for the opportunity to testify today. My name is Debipriya Chatterjee, and I am a Senior Economist at the Community Service Society of New York (CSS), a long-time nonprofit organization dedicated to advancing economic opportunity for working New Yorkers. We use research, advocacy, and direct services to champion a more equitable city and state. We have been especially instrumental in securing paid time off for workers in New York City and State, by working with our collaborators and coalition partners, from some of whom you have already heard today.

Today my testimony will focus on strengthening the city's Earned Safe and Sick Time Act (ESSTA) by – (a) improving the coverage to include independent contractors (Intro 617), (b) improving the awareness of the law (Intro 0078), and (c) improving the enforcement of the law (Intro 563).

Based on our latest Unheard Third Survey, we know that approximately two-thirds of all covered employees receive paid sick time from their employers. But this statistic masks crucial differences by race and income. For working New Yorkers who are in poverty, only 40 percent reported receiving paid sick time. Among workers who earned slightly more—between 100 to 300 percent of Federal Poverty Level (FPL)—almost 54 percent reported receiving paid sick time. High income workers, i.e., those who earned above 400 percent of the FPL, had a much higher share who reported receiving earned sick time, almost 80 percent.

In other words, our lowest income workers, those who need access to paid sick time the most, are the ones who are being denied this workplace right on a regular basis.

Women workers reported slightly higher rates of receiving paid sick time—68 percent—than their male counterparts. White and Black workers received paid sick time at higher rates—almost 70 percent—than Asian workers (61 percent) and Hispanic/Latinx workers (55 percent).

These low rates of coverage can be traced to a lack of awareness of their workplace rights. Our 2021 Unheard Third Survey showed that over almost half of low-income workers had little to no awareness of New York City's paid sick time law. What was more concerning was that 51 percent of low-income working mothers had hardly any knowledge of the law at all.

Thus, it is imperative that we undertake a proactive campaign to spread information about this vital law by passing Intro 78.

In the aftermath of the massive scale of public health crisis that the COVID-19 pandemic had brought to the city, it makes little sense to exclude independent contractors from ESSTA. Many, perhaps most, of these workers in the so-called 'gig economy' are denied basic employee rights and workplace protections because they are misclassified as independent contractors. We know that these workers provided essential services during the pandemic, when many of us could afford to seek shelter in the safety of lockdown. As a result, the rates of coronavirus infection and, in many instances, deaths, were higher among gig workers.

With the proliferation of app-based hiring companies, the city's independent contractor workforce has grown in leaps over the last few years, and it is largely made up of workers of color, often immigrants. In the foreseeable future, the size of this workforce is only expected to grow. There is no justifiable rationale to deny these workers access to paid sick time and passing Intro 617 is an urgent imperative.

Even if we improve awareness about the law and reform it to expand the coverage to those who are currently excluded, a law is only as good as the extent to which it can be enforced. At this time, the only agency responsible for overseeing the enforcement of the law is the Department of Consumer and Worker Protection (DCWP), where an aggrieved worker must file a complaint against their employer. Passing Intro 563 would make enforcement significantly easier by allowing workers to file such a complaint with any court. We believe that the mere possibility that an employee might bring a complaint to any court of competent jurisdiction would deter most employers from denying any employee their right to Earned Safe and Sick Time in the first place. It would also help share the load of the officers at DCWP and expedite the resolution of cases.

In conclusion, I would like to recommend that the Committee and the Council pass these bills to improve access, awareness, and enforcement of the ESSTA and thereby make the city's workforce healthier, less stressed, and more productive.

Thank you again for the opportunity to present my remarks. If we can be of any further assistance, please do not hesitate to reach out to me, Debipriya Chatterjee, over email dchatterjee@cssny.org.

NATIONAL EMPLOYMENT LAW PROJECT

TESTIMONY | JUNE 2023

Testimony of Daniel Ocampo

National Employment Law Project

In Support of Int. No. 617: Expanding Worker Coverage Under the Earned Safe and Sick Time Act

Hearing before the New York City Council

Committee on Civil Service and Labor
City Hall
New York, NY

June 20, 2023

Daniel Ocampo
Legal Fellow

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My name is Daniel Ocampo, and I am a Legal Fellow with the National Employment Law Project (NELP), a national nonprofit with more than fifty years of experience advocating for the labor and employment rights of low-wage workers. NELP works across the country with organized groups of app-based workers and other workers in industries with high rates of misclassification, supporting campaigns at the local, state, and federal level.

We are delighted to testify today in strong support of Int. No. 617. By creating a presumption of employee status under New York City's Earned Safe and Sick Time Act for workers in most industries, this new law will combat misclassification, clarifying and extending urgently needed coverage for ridehail drivers, delivery workers, nail salon technicians, and many others, building momentum for similar clarification under state labor law.

Rampant misclassification in New York denies many workers access to basic labor protections.

Paid safe and sick leave are basic but indispensable protections for working people. For many low-wage workers, household budgets are already stretched so thin that having to take a day off without pay risks financial catastrophe.

Yet too many workers are left out of the city's paid safe and sick leave coverage. Because unscrupulous employers mislabel their workers as independent contractors rather than as employees, many businesses escape providing paid sick leave to workers who should be eligible, putting their health at risk—and undermining public health.

Misclassification is rampant in New York, affecting virtually every industry—app-based or not—in the state. According to a recent report by the New School's Center for New York City Affairs, an estimated 850,000 low-paid workers in the state may be improperly classified as "independent contractors, and thereby not protected by labor and employment laws."[1] Working full-time, they earn a median annual income of $20,000. One in four are on Medicaid, while one in five have no health insurance whatsoever.[2] This is not flexibility—it is economic insecurity.[3]

Among the misclassified workers who would be impacted by this legislation are the city's ridehail drivers and delivery workers—essential workers that have been fighting for basic labor standards and the right to a minimum wage in recent years. But passage of this bill would also be a huge victory for other misclassified workers in the city shut out of paid sick leave and other employment protections, like janitors, home care workers, nail salon technicians, landscapers, truckers, and more.

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[1] Lina Moe, James A. Parrott, & Jason Rochford, *The Magnitude of Low-Paid Gig and Independent Contractors in New York State*, New School Center for New York City Affairs (Feb. 2020), *available at* http://www.centernyc.org/s/Feb112020_GigReport.pdf.
[2] Id.
[3] Catherine Ruckelshaus, *Independent Contractor v. Employee: Why Misclassification Matters and What We Can Do to Stop It*, Nat'l Emp. L. Project (May 2016), https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf.

These workers—disproportionately Black, brown, and immigrant workers—are critical to the city's infrastructure, work in hazardous conditions for long hours, and need better labor protections, including the paid leave provided for by City law.[4]

NELP strongly supports expanded coverage under the Earned Safe and Sick Time Act.

By applying a presumption of employment to most workers,[5] which can be overcome only by meeting the three prongs of the "ABC test," Int. No. 617 addresses this problem directly and straightforwardly. Hiring entities can overcome the presumption of employment—and therefore are not required to provide their workers with paid sick and safe leave—only if they can show that their workers: A) are free from control and direction in performing their job, both under contract and in fact; B) perform service outside the usual course of business for which the service is performed; and C) are customarily engaged in an independently established trade similar to the service at issue.

To be clear, section 190 of the New York Labor Law, as written, already covers a broad array of workers, including many workers labeled independent contractors by their employers.[6] But the adoption of the ABC test makes this clear to workers and undeniable to employers, ensuring that those entitled to earned sick and safe leave can actually access these benefits in practice.

Right now, these rights are under-enforced, and many workers legally entitled to paid leave never access it—or even know they can access it.[7] Establishing a presumption of employment shifts the burden from workers to employers, meaning that employers who wish to deny their labor force paid leave must affirmatively prove the contractor status of their workforce. Because this test is clear and easy to enforce, it will mean fewer workers are shut out of basic workplace protections.

The proposed private right of action and public education campaign are key to better enforcement of the expanded coverage under the Act.

NELP also strongly supports the related bills before the committee. Int No. 563 creates a private right of action, giving workers the power to seek judicial resolution when their employers are wrongfully classifying them as independent contractors and unlawfully denying them paid sick leave. And Int. No. 78 provides funding for a public education campaign to ensure workers across the city are properly informed

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[4] James Parrott & L.K. Moe, *For One in 10 New York Workers, 'Independent Contractor' Means Underpaid and Unprotected*, New School Center for New York City Affairs (Jun. 2022), *available at* http://www.centernyc.org/urban-matters-2/the-low-wages-of-misclassification-what-one-in-10-new-york-workers-face.

[5] The employment presumption and ABC test do *not* apply to professional service workers who are true independent contractors. The status of those workers is determined by a different legal test, laid out in the proposed legislation.

[6] N.Y. Lab. Law § 190(2)-(3). The statutory definitions of "employer" and "employee" in those sections are broad enough to cover many of the workers supporting Int. No. 617. But because of conflicting judicial decisions and chronic underenforcement, many of those workers are seeking a legislative clarification to definitively establish their right to paid sick and safe leave.

[7] Parrott & Moe, *supra* note 3, at 42-47.

about their rights under the Earned Sick and Safe Leave Act. Both bills are key in combatting chronic underenforcement of rights under the Act, and ensuring that expanded coverage as written materializes in practice for the workers in the city who need it most.

Expanding the city's paid safe and sick leave coverage, and bolstering enforcement, is a simple way to ensure more people have economic security when they need it most. NELP urges the City Council to pass Int. No's. 617, 563, and 78.

June 20, 2023

Testimony of Nelson Eusebio

National Supermarket Association (NSA)

Before the

New York City Council Committee on Civil Service and Labor

Regarding

Int. 0563-2022

Thank you, Chairperson De La Rosa, and the rest of the committee, for the opportunity to submit testimony.

My name is Nelson Eusebio and I am the Director of Government Relations for the National Supermarket Association (NSA) which represents supermarkets across New York City, many of which are located in underserved communities abandoned by larger chains. Our members prioritize the health of their employees, but if finalized, this bill would create endless legal battles for small businesses.

This legislation provides employees with a right to private action in circumstances where they believe they have been unlawfully denied paid sick time from their employers and grants the court the power to afford relief, including the cost of the employee's legal fines. Many of our family-owned grocery store owners may not be able to afford an attorney, take time off from work to appear in court, and pay the ordered remedies.

Plaintiffs would have the option to forgo filing a complaint with the Department of Consumer Affairs, but there are no restrictions to prevent an employee from filing a lawsuit and DCA complaint; combined these two actions would put tremendous financial strain on a business. The passage of this bill would entangle community businesses in legal conflicts, prompting economic struggles and even business closures in a vital industry.

We thank the committee for allowing the National Supermarket Association the opportunity to submit testimony of our concerns.

Thank you.

NYC | HOSPITALITY ALLIANCE

June 20, 2023

Comments of the NYC Hospitality Alliance to the NYC Council's Committee on Civil Service and Labor jointly with the Committee on Consumer and Worker Protection on Int.563-2022 - in relation to the provision of sick time earned by employees

The NYC Hospitality Alliance, a not-for-profit organization representing restaurants, bars, and nightclubs throughout the five boroughs submit these comments on Int. 563.

- Int.563-2022 (Brewer) -in relation to the provision of sick time earned by employees

As some members of the City Council will recall, when the original sick leave bill was passed there was an agreement to a have a properly resourced and aggressive agency like the Department of Consumer and Worker Protection ("DCWP"), (formerly the Department of Consumer Affairs) be the enforcement agency of the law, in lieu of including a private right of action. The reason was to ensure the law was enforced and if there were violations the agency would recover the owed sick leave payments and penalties for the employees, and so small businesses would not have to pay hefty unnecessary legal fees associated a private right of action. To be blunt, the goal was to ensure workers' rights are protected and small businesses get a fair process, not create a law that will just make lawyers money. We prefer fair administrative tribunals over costly litigation. So, why is adding a private right of action now being proposed? Is DCWP having difficulty enforcing the law?

Regardless, if this law is being amended to allow for a private right of action, in addition to filing a claim with the Department of Consumer Affairs and Worker Protection, an employee must select which venue to file their complaint and not be able to file in both simultaneously. Therefore, we urge this proposal is amended to add the following provision:

An employee need not file a complaint with the Department of Consumer and Worker Protection ("Department") before bringing a civil action for violation of section [PAID SICK LEAVE LAW]; however, no person shall file a civil action after filing a complaint with the Department unless such complaint has been withdrawn or dismissed without prejudice to further action. Similarly, if an employee files a civil action for a violation of section [PAID SICK LEAVE LAW], they cannot file a complaint with the department.

Thank you for your consideration of our testimony. If you have questions, please contact our executive director arigie@thenycalliance.org.

Respectfully submitted,

NYC Hospitality Alliance

New York City Hospitality Alliance
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Testimony by the New York Legal Assistance Group in Support of

Int. No. 78-2022 and Int. No. 563-2022[1]

Before the New York City Council Committee on Civil Service and Labor

Jointly with the Committee on Consumer and Worker Protection

June 20, 2023

Council Members and staff, thank you for the opportunity to submit testimony to the Committee on Civil Service and Labor on legislation that would impact individuals in their workplace. My name is Geno Nettle, and I am a temporary staff attorney with the Employment Law Project with New York Legal Assistance Group (NYLAG).

NYLAG uses the power of the law to help New Yorkers experiencing poverty or in crisis combat economic, racial, and social injustices. We address emerging and urgent needs with comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. We aim to disrupt systemic racism by serving clients, whose legal and financial crises are often rooted in racial inequality.

The Employment Law Project (ELP) at NYLAG provides legal services and advocacy to individuals working in the New York City area experiencing workplace issues, including but not limited to: underpayment and unpaid wages under the Fair Labor Standards Act (FLSA)

[1] Because our clients usually do not fall under independent contractor status, this testimony does not discuss Int. No. 617-2022.

and New York Labor Law (NYLL) and their regulations, discrimination under Federal, State and New York City laws including on the basis of: race, gender identity, color, disability, sex, national origin, etc., and violations of other protections provided to NYC area workers including the Earned Safe and Sick Time Act (ESSTA). We work to ensure that every New Yorker is protected in their workplace, that their voices are heard, and that they receive zealous representation against some of the most unlawful conduct. Based on our experiences serving workers across New York City, we appreciate the opportunity to offer the following comments.

1. Int. No. 78-2022 is an important effort to inform vulnerable workers of their rights in the workplace

Clients that seek representation from NYLAG's ELP are often low-wage workers earning subminimum wages. Many of our clients are immigrants and are vulnerable to exploitation because employers fail to inform workers of their rights.

The ESSTA provides for one of the many notice requirements that employers are obligated to communicate to their workers. There are many intersecting factors that impact workers remaining uninformed about their rights under ESSTA. For low-wage workers, the hiring process can be short and informal, with little information provided, including statutorily-required wage notices; see New York Labor Law ("NYLL") § 195(1); or, upon hire, of notices as required under the ESSTA. See N.Y.C.R.R. Tit. 6, § 7-211. Further, low-wage workers are often paid in cash. Without providing the statutorily-required wage statements, workers are unable to review inaccuracies in their hours recorded or pay, and sick time accrued under the ESSTA. See NYLL § 195 (3); N.Y.C.R.R. Tit. 6, § 7-211

At NYLAG, we know that despite the ESSTA requirements, our clients are going unpaid for time to take care of themselves, whether for a temporary illness or to go to appointments for medical treatment. In a recent case that we settled, the worker, suffering from a chronic illness that required surgeries and recovery time, was never paid for sick time, required under the ESSTA, and was terminated for taking sick time to go to doctor's appointments. Drawing from the proof required to show the employer's failure to provide paid sick time, we were able to support the client's claims of disability discrimination. Notably, this is not the only instance that this employer was sued for violating the ESSTA. This exemplifies the need to provide access to worker's rights information directly to workers, without relying only on employers.

Through engagement with our clients, we learn how, at stages in the hiring process, they may not even know the wage rate to be paid and will start working, hoping to receive some remuneration for their work. It often follows that throughout the course of employment, employers maintain a policy and practice of keeping workers uninformed of their rights. It is only after seeking representation do clients learn of all the laws protecting them in the workplace and their employer's obligations. It should not necessitate the intervention of lawyers and the courts for workers to first learn of the laws. This continues to specifically impact low-wage workers. See Committee Report and Briefing Paper of the Legislative Division, p. 10. When informed, workers are diligent in asserting their rights. This brings meaning to the laws and policies New York City has passed to protect workers' rights.

We believe that an information campaign targeted at reaching workers within the community at locations where they may be getting health services or medications is essential

to ensure workers understand their rights under the ESSTA. NYLAG supports the passage of Int. No. 78-2022.

2. Int. No. 563-2022 will allow courts to analyze the importance of paid sick time, both under wage violations and disability discrimination which supports and enhances worker protection

Allowing workers to enforce their rights under the ESSTA through private civil actions will expand access to protection and redress to workers. In wage claims filed under the Fair Labor Standards Act (FLSA), settlements require court approval. Under this bill, if a private action filed in federal court alleging ESSTA violations with wage violations is settled, the matter becomes public record on a broader scale than only through the Department of Consumer and Worker Protection action. Federal courts do not permit confidentiality for FLSA settlements because they "run afoul of the purposes of the FLSA and the public's independent interest in assuring that workers' wages are fair." Lopez v Nights of Cabiria, LLC, 96 F Supp 3d 170, 178 (S.D.N.Y. 2015). A private right of action, leading to public awareness, supports the legislative purposes of workplace protections, under wage laws and all other laws that protect workers. Additionally, as exemplified in our recently settled case, discussed *supra*, because unpaid sick time often occurs alongside disability discrimination, a private right of action would allow courts to review the totality of the circumstances and further legislative purposes of all workplace-related laws.

When enforced, the ESSTA supports vulnerable workers, leads to positive health outcomes for our communities, and incentivizes employers to comply with the law. Enabling workers to file private civil actions expands that forums through which they can seek relief, and thereby expands the opportunities of workers to enforce their rights under the law. NYLAG supports the passage of Int. No. 563-2022.

Together, Int. No. 78-2022 and Int. No. 563-2022 aim to broaden protections of workers through information and engagement with the worker where they can be met, and expansion of public awareness through outcomes of the litigation process. Workers reached will understand their rights to information and protection beyond just their wages; employers will understand that they have an obligation to workers, more than just wages. NYLAG supports the passage of Int. No. 78-2022 and Int. No. 563-2022.

Respectfully submitted,

New York Legal Assistance Group

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June 23, 2023

THE LEGAL AID SOCIETY'S EMPLOYMENT LAW UNIT'S TESTIMONY IN SUPPORT OF INT. NO. 617: CLARIFYING AND EXPANDING WORKER COVERAGE UNDER THE CITY'S EARNED SAFE AND SICK TIME ACT

Submitted by Richard Blum

The Legal Aid Society is the oldest and largest not-for-profit public interest law firm in the United States, working on more than 300,000 individual legal matters annually for low-income New Yorkers with civil, criminal, and juvenile rights problems. The Society also brings law reform cases that benefit all two million low-income children and adults in New York City. The Society delivers a full range of comprehensive legal services to low-income families and individuals in the City. Our Civil Practice has local neighborhood offices in all five boroughs, along with centralized citywide law reform, employment law, immigration law, health law, and homeless rights practices.

The Society's Employment Law Unit represents low-wage workers in employment-related matters such as claims for violations of leave laws, unpaid wages, claims of discrimination, and unemployment insurance hearings. The Unit conducts litigation, outreach, and advocacy designed to assist the most vulnerable workers in New York City, among them, low-wage workers who face wage theft and other forms of exploitation.

The pandemic displayed the life-and-death importance of laws granting workers paid sick leave. Workers who had paid sick leave knew they could stay home from work, even essential work, giving themselves time to recover and protecting their co-workers, and often the public, from the spread of COVID-19. At the same time, we saw the terrible cost of the unlawful practice of misclassifying workers as independent contractors to deprive them of their labor rights. Misclassified workers could not afford to take time off even when they were sick, making it harder to recover successfully and exposing co-workers or the public to that deadly virus.

By creating a presumption of employee status under New York City's Earned Safe and Sick Time Act for workers in most industries, Intro. No. 617 would make this sort of dangerous misclassification far more difficult. It would clarify and extend urgently needed coverage for workers in a range of industries, including, for example, ridehail drivers, delivery workers, nail salon technicians, and many others. This bill would also serve as a model for the state in combatting worker misclassification.

Misclassification in New York denies many workers access to basic labor protections.

Paid safe and sick leave provide critical protections for workers. Many low-wage workers cannot afford to take a day off from work. Losing even a day of pay can lead to missing meals, falling short on rent, or other disastrous results. Taking a day off without the protection of leave laws can result in termination and ensuing catastrophe. Yet, if sick workers do not take time off, they risk their own health, and in the case of infections like COVID-19, they place their co-workers and the public at risk of contagion.

Too many employees do not get to take advantage of the City's existing paid sick leave law. Employers that seek to evade worker protections mislabel their workers as independent contractors rather than as employees. In doing so, they disclaim any obligation to grant time off to workers for their own illnesses or those of family members they are caring for.

Misclassification is rampant in New York, affecting virtually every industry—app-based or not—in the state. According to a recent report by the New School's Center for New York City Affairs, an estimated 850,000 low-paid workers in the state may be improperly classified as "independent contractors, and thereby not protected by labor and employment laws."[1] Working full-time, they earn a median annual income of $20,000. One in four are on Medicaid, while one in five have no health insurance whatsoever.[2] This is not flexibility—it is economic insecurity.[3]

Among the misclassified workers who would be impacted by this legislation are the city's ridehail drivers and delivery workers—essential workers who have been fighting for basic labor standards and the right to a minimum wage in recent years. But passage of this bill would also be a huge victory for other misclassified workers in the city shut out of paid sick leave and other employment protections, like janitors, home care workers, nail salon technicians, landscapers, truckers, and more. These workers—disproportionately Black, brown, and immigrant workers—are critical to the City's infrastructure, work in hazardous conditions for long hours, and need better labor protections, including the paid leave provided for by City law.[4]

[1] Lina Moe, James A. Parrott, & Jason Rochford, *The Magnitude of Low-Paid Gig and Independent Contractors in New York State*, New School Center for New York City Affairs (Feb. 2020), *available at* http://www.centernyc.org/s/Feb112020_GigReport.pdf.
[2] *Id*.
[3] Catherine Ruckelshaus, *Independent Contractor v. Employee: Why Misclassification Matters and What We Can Do to Stop It*, Nat'l Emp. L. Project (May 2016), https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf.
[4] James Parrott & L.K. Moe, *For One in 10 New York Workers, 'Independent Contractor' Means Underpaid and Unprotected*, New School Center for New York City Affairs (Jun. 2022), *available at* http://www.centernyc.org/urban-matters-2/the-low-wages-of-misclassification-what-one-in-10-new-york-workers-face.

The Legal Aid Society strongly supports clarifying and expanding coverage under the Earned Safe and Sick Time Act.

Int. No. 617 addresses the problem of misclassification directly and straightforwardly by applying a presumption of employment to most workers, which can be overcome only by meeting the three prongs of the "ABC test." Hiring entities can overcome the presumption of employment—and therefore are not required to provide their workers with paid sick and safe leave—only if they can show that their workers: (A) are free from control and direction in performing their job, both under contract and in fact; (B) perform service outside the usual course of business for which the service is performed; and (C) are customarily engaged in an independently established trade similar to the service at issue.[5]

Section 190 of the New York Labor Law, as written, already covers a broad array of workers, including many workers labeled independent contractors by their employers.[6] But the adoption of the ABC test makes this clear to workers and undeniable to employers, ensuring that those entitled to earned sick and safe leave can actually access these benefits in practice. This test also makes it much easier for workers and the City to enforce the Earned Safe and Sick Time Act. Workers and the City will not have to expend enormous resources to establish the applicability of the law.

Right now, rights under the Earned Safe and Sick Time Act are under-enforced and many workers legally entitled to paid leave never access it—or even know they can access it.[7] Establishing a presumption of employment shifts the burden from workers to employers, meaning that employers who wish to deny their labor force paid leave must affirmatively prove the contractor status of their workforce. Because this test is clear and easy to enforce, it will mean fewer workers are shut out of basic workplace protections.

The proposed private right of action and public education campaign also aid in better enforcement of the expanded coverage under the Act.

The Legal Aid Society also strongly supports the related bills before the committee. Int No. 563 creates a private right of action, giving workers the power to seek judicial resolution when their employers are wrongfully classifying them as independent contractors and unlawfully denying them paid sick leave. And Int. No. 78 provides funding for a public education campaign to ensure workers across the city are properly informed about their rights under the Earned Sick and Safe Leave Act. Both bills would aid in combatting chronic underenforcement of rights under the Act, and ensuring

[5] The employment presumption and ABC test does *not* apply to professional service workers who are true independent contractors. The status of those workers is determined by a different legal test, laid out in the proposed legislation.
[6] N.Y. Lab. Law § 190(2)-(3). The statutory definitions of "employer" and "employee" in those sections are broad enough to cover many of the workers supporting Int. No. 617. But because of conflicting judicial decisions and chronic underenforcement, many of those workers are seeking a legislative clarification to definitively establish their right to paid sick and safe leave.
[7] Parrott & Moe, *supra* note 4, at 42-47.

that expanded coverage as written materializes in practice for the workers in the city who need it most.

We thank the Council for its consideration of this testimony. For more information or to address concerns, please feel free to contact me at rblum@legal-aid.org or (332) 400-7956.

PARTNERSHIP for New York City

Testimony of the Partnership for New York City

New York City Council
Committee on Civil Service and Labor

Legislation Expanding the Earned Safe and Sick Time Act – Ints. 78, 563, 617

June 20, 2023

Thank you, Chairs De La Rosa and Velazquez and members of the committees, for the opportunity to testify on legislation expanding the Earned Safe and Sick Time Act (ESTA). The Partnership for New York City represents private sector employers of more than one million New Yorkers. We work together with government, labor, and the nonprofit sector to maintain the city's position as the preeminent global center of commerce, innovation, and economic opportunity.

The Partnership was involved in crafting the original sick leave law and supports efforts to ensure that workers can access sick leave that they are entitled to under ESTA. A 2021 report by the Community Service Society found that half of low-income workers had heard little or nothing about their right to paid sick leave. That report recommended passage of the provisions of Int. 78 as well as additional outreach to ensure employers are aware of the law. We agree and enthusiastically support Int. 78.

The Partnership is deeply concerned, however, about the Council's continuing imposition of additional burdens on employers that make operating a business or nonprofit in New York City increasingly difficult, particularly for small entities. Int. 563 and Int. 617 would do just that. We urge the Council not to pass these bills.

Int. 563 would allow workers to sue in court for claimed violations of ESTA. Aggrieved individuals already could seek relief under ESTA by filing a complaint with the NYC Department of Consumer and Worker Protection. The private right of action, which was purposely excluded from the original ESTA, would encourage expensive lawsuits. This provision will do nothing to improve workers' awareness of their rights or employers' knowledge about their responsibilities but would expose employers to litigation even when claims are spurious. The costs outweigh any benefit.

Int. 617 would expand eligibility for ESTA to workers who are independent contractors. It is often hard to distinguish an independent contractor from a business vendor, resulting in confusion over who is eligible for ESTA and imposing an additional burden on employers. This law would be complicated to interpret or enforce, in addition to increasing costs for employers at a time when many are struggling to stay in business in this high-cost city.

The City Council has passed more than 40 new laws in recent years that have added to the expenses of employers, including the legal and insurance costs associated with increased

litigation. This has contributed to New York being tied with Singapore in 2022 as the most expensive city in the world. Yet the Council has established no process for analyzing the cumulative impact of its legislation on the affordability challenges associated with living or running a business or nonprofit in the city. We would urge such an analysis of every bill the Council considers. The Partnership would be happy to identify experts to help develop and carry out such analyses and hope you will take this proposal seriously. The costs you impose on employers are passed along to consumers and customers, including government.

Thank you.

TRUCKING ASSOCIATION OF NEW YORK
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Chair De La Rosa and members of the Civil Service and Labor Committee. My name is Zach Miller, I am the Director of Metro Region Operations for the Trucking Association of New York. Since 1932, TANY has advocated on behalf of the trucking industry at all levels of government, providing compliance assistance, safety programs, and educational opportunities to our members, and in the process, creating jobs, supporting the economy, driving safety, and delivering a sustainable future.

I testify regarding INT-617 which would amend the definition of "employee" in the Earned Safe and Sick Time Act (the Act) to extend the Act's benefits to independent contractors who meet certain conditions.

As we mentioned in 2020 regarding Int-1926 we have concerns over any criteria which would change the presumption of employment to what is often referred to as the "A, B, C" test. In the trucking industry, that is heavily dependent on the use of independent contractors, it is impossible to meet the "B" prong of the test which requires "the person performs labor or services that are outside the usual course of the hiring entity's business". It was for this very reason that the trucking industry worked closely with labor to pass the New York State Commercial Goods Transportation Industry Fair Play Act. The Act went into effect in 2014 and created a new standard for determining whether a driver of commercial vehicles who transports goods is an employee or independent contractor. The Fair Play Act created a Separate Business Entity Test which has 11 prongs:

1. Be free from direction or control by the contractor over the means and manner of providing the service. The contractor may only specify the desired result of the work or provide direction required by federal rule or regulation.
2. Not be subject to cancellation or destruction when its work with the contractor ends.
3. Have invested substantial capital in its business entity beyond ordinary tools and equipment.
4. Own or lease the capital goods, gain the profits and bear the losses of the business entity.
5. Make its services available to the general public or others in the business community not a party to the business entity's written contract on a continuing basis.
6. If required by law, provide services reported on a federal income tax form 1099.
7. Perform services for the contractor under a written contract and under the business entity's name. The contract must state that the relationship between the contractor and the business entity is that of independent contractors or separate business entities.
8. Obtain and pay for any required license or permit in the entity's own name or, if allowed by law, pay for the use of the contractor's license or permit.
9. Hire its own employees without contractor approval and pay those employees without reimbursement from the contractor.
10. The contractor must not represent the business entity or employees of the business entity as its own employees to the contractor's customers.

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11. Have the right to perform similar services for others on whatever basis and whenever it chooses.

The entity must meet all 11 criteria to be considered a separate business entity.

This Act has served the entire industry in New York well from large fleets to owner-operators, to unionized employees.

We would ask that the Council ensure the proposed legislation to honor the definition of a "separate business entity" included in the Fair Play Act to ensure that true independent contractors are not unduly classified as employees.

As always, the Trucking Association of New York looks forward to ongoing collaboration and dialogue with the City Council and the City of New York. Thank you for your time.

BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CIVIL SERVICE AND LABOR

Oversight hearing on Safe and Sick Time	Public Hearing: June 20, 2023

COMMENTS OF UBER TECHNOLOGIES, INC.

Hayley Prim
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Email: prim@uber.com

Dear Members of the New York City Council,

I write to you on behalf of Uber Technologies, Inc., a platform that provides services for rideshare (FHV) drivers and third party delivery workers in New York City. We have reviewed the amendment proposed by Int. 617-2022 to the definition of an employee for paid sick time and have serious concerns about its potential implications for our platform and the independent contractors who use it.

Our primary concern is the proposed use of the so-called ABC test to determine employment classification. This test, which has been implemented in California, has proven to be unworkable and has resulted in widespread confusion for both companies and individual contractors about their status. While the test has spurred innumerable lawsuits in California, imposing significant costs on both companies and workers, there is little evidence to suggest that the test has resulted in any material improvement in workers' rights or benefits. Instead, it has created a legal quagmire that benefits no one and harms many. And in the case of drivers and delivery workers using the Uber platform, the application of that test was specifically rejected by nearly 10 million voters, including tens of thousands of platform workers, when Proposing 22 passed. Rather than subject that work to the vagaries of the ABC test, the voters instead agreed to apply alternate analyses which more clearly allowed the workers to maintain the thing that is of greatest value to them–the ability to work flexibly and independently.

Additionally, to the extent the ordinance would apply to workers using the Uber platform–which itself is unclear–it could potentially require duplicative payment for sick time. As you may be aware, the Taxi and Limousine Commission (TLC) earnings regulations already include an amount for paid time off, including sick leave, in their calculation of the per minute rate for drivers. Specifically, the TLC rules state that "the per minute rate was calculated to result in an average net income of $17.22 per hour, the independent contractor equivalent of a $15.00

minimum wage, adding 90 cents for paid time off, which can include sick leave, and $1.32 for the employer share of the payroll tax."[1]

Similarly, the minimum payment standard for app-based delivery workers in NYC, as outlined in the study "A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC", includes compensation in lieu of paid time off. The study states that "the $19.86 minimum payment standard for app for-hire service drivers includes compensation in lieu of paid time off derived from the U.S. Bureau of Labor Statistics' published estimate of average paid leave received by production, transportation and material moving employees."[2] This pay standard, which has since been finalized at $19.96 when fully phased in, is currently set to go into effect on July 12, 2023.

Both of these regulations are designed to ensure that independent contractors such as rideshare drivers and third party delivery workers are compensated for their time, including time off for rest and recuperation and sick leave. If the proposed amendment to the definition of an employee for paid sick time is finalized without accounting for the existence of these earnings standards, it could potentially result in a form of double payment for these workers.

We respectfully request that the City Council consider these existing regulations when finalizing the proposed amendment. Specifically, we ask for recognition that platforms like ours, which are required to comply with the TLC and delivery minimum compensation standards and provide compensation for paid sick time, be specifically excluded from the application of the law, irrespective of the application of the ABC test.

We are committed to the well-being of the independent contractors who use our platform and believe that they should be fairly compensated for their work, including time off for rest and recuperation. However, we also believe that it is important to avoid duplicative regulations that could create unnecessary burdens for platforms and workers alike.

Thank you for your attention to this matter. We look forward to working with the City Council to ensure that the rights and interests of independent contractors are protected.

Sincerely,

Hayley Prim
Senior Policy Manager, Uber

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[1] New York Taxi and Limousine Commission, Statement of Substantial Need 310, effective March 8, 2023, at Page 2 (available at https://www.nyc.gov/assets/tlc/downloads/pdf/Statment_of_Substantial_Need_310_signed.pdf).
[2] New York Department of Consumer and Worker Protection, A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC, November 2022, at page 34 (available at https://www.nyc.gov/assets/dca/downloads/pdf/workers/Delivery-Worker-Study-November-2022.pdf).

Subject: Formal Testimony on Legislation Expanding the Earned Safe and Sick Time Act

Thank you for providing me with the opportunity to testify on the proposed legislation that aims to expand the Earned Safe and Sick Time Act. As principal partner of Adams Buckner Advisors (ABA), a Minority and Women-Owned Business Enterprise (MWBE) certified boutique consulting firm, I appreciate the chance to share my insights and concerns regarding this legislation.

Firstly, I would like to express my gratitude to Chair De La Rosa and the bill sponsors for allowing me this time to address this crucial hearing. My name is Amelia Adams, and I am a co-founder and partner of ABA. As an MWBE certified business, we pride ourselves on our commitment to diversity and inclusion. Adams Buckner Advisors has been in operation since 2018, and we have concerns regarding the proposed changes in Int 617, particularly the redefinition of independent contractors as employees.

It is essential to acknowledge that not all businesses are created equal. As a consulting firm, we engage independent contractors for several reasons. This flexibility allows us to tap into the expertise of individuals who possess specialized knowledge and work on a project-by-project basis. This is usually not a business to business agreement. Consulting work may not be suitable for everyone, and we have offered 1099 contracts along with additional bonuses to cover healthcare costs. For example, the woman who assisted us with our certification process was an independent contractor and also pursuing her graduate studies.

Moreover, I am an active member of various Black and Ethnic Chambers of Commerce across the state. Through these engagements, I have had the opportunity to speak with numerous small business owners who share concerns regarding the perception that they are all categorized as bad employers who intend to harm their employees. It is crucial to address this misconception and ensure that the legislation accounts for the diverse needs and realities of small businesses. Black business owners also face the reality of being denied access to loans and grants to help them stabilize and scale up.

In addition to perception issues, I would like to highlight the challenges faced by businesses when scaling up their operations. During our initial year, we relied on the

services of independent contractors, along with two interns, to support our work. It was helpful in order to scale up and stabilize. However, there is a significant administrative burden that comes with running a business, often involving excessive paperwork. In my personal experience, I have spent an average of three hours per week solely on tasks such as invoicing, renewing professional liability insurance, and managing health and dental benefits.

To address these concerns, I propose the following solutions:

1. Allocate more time and resources to reach a broader spectrum of business owners. This can be achieved by implementing canvassing initiatives in various business districts, allowing for direct engagement with small business owners.

2. Emphasize the importance of being an inclusive city by automatically listing all registered MWBEs. This step will promote visibility and encourage collaboration among MWBEs and the wider business community.

3. Recognize that grant money alone may not adequately support businesses in overcoming the challenges associated with compliance and administrative burden. Consider providing additional assistance and resources specifically targeted at addressing these issues.

In conclusion, I urge the committees to carefully consider the implications of the proposed legislation and its potential impact on businesses operating with independent contractors. It is vital to strike a balance between protecting workers' rights and ensuring the sustainability and growth of small businesses. By taking into account the concerns raised, exploring innovative outreach strategies, and providing adequate support, we can foster an environment that encourages entrepreneurship and inclusivity in New York City.

Thank you for your time and consideration.

Sincerely,

Amelia Adams

My name is Tony Lynah, and I've been employed full-time by the City of New York as a civil engineer since 2012. The year before that, in 2011, I began working for JetBlue Airlines as a grounds operation crew member at JFK Airport in Queens. This was also originally a full-time position. I worked both jobs simultaneously on a full-time basis until 2013, when I became my mother's primary caregiver.

That year, my mother suffered a stroke, which left her bed-bound and in need of round-the-clock care, as well as dialysis treatment three times per week. I switched to part-time status at JetBlue in order to care for her. Luckily, I was able to use FMLA leave as needed to care for my mother and maintain my full-time employment with the City. But I no longer qualified for FMLA leave at JetBlue due to my part-time status.

So when my mother was hospitalized, for example, or when I was late to work on one occasion because I needed to transport my mother from her wheelchair to her bed and ensure that she was properly fed after being transported home from dialysis, I was penalized under JetBlue's disciplinary policies. In June of 2014, I was advised by JetBlue's Human Resources Department that I could not request any time off, be late, or fail to punch in or out for any reason for at least six months, or I would be subject to suspension or termination. I needed to keep my job, so I undertook my best efforts to comply with these conditions, even in the face of extraordinary difficulties. Unfortunately, five months later, in December 2014, something happened that was unavoidable on my part: I was late to work by nine minutes because my mother's relief aide was tardy in arriving, and I could not leave my mother alone. If I had known that I had the right to use sick leave without being penalized, I would have called work immediately and asked to use a

sick day to care for my mom, but I was never informed that this was an option. JetBlue first suspended me and ultimately fired me for this infraction.

After I was suspended, I began researching my rights and learned that New York City had recently passed the Earned Sick Time Act (ESTA). This new law had taken effect on July 30, 2014— months before the infraction that led to my termination—but JetBlue had failed to provide employees with penalty-free sick time as required by the Act, or notify employees of their new rights. I brought the law to the attention of my employer, hoping it would convince them to reinstate me to my job. I had checked their employee manual, and it stated that JetBlue followed state and local sick leave laws. However, JetBlue was unmoved by this information, and I had no choice but to file a complaint with the Department of Consumer Affairs (now the Department of Consumer & Worker Protection) to try to get my job back.

That was my main goal from the beginning—to get my job back—and it remained my goal for the next eight years that my complaint was pending. Even though the City completed an investigation and found that JetBlue had fired me illegally, in violation of ESTA, my complaint was stalled for years due to litigation involving another airline that was also refusing to comply with the City's sick leave law. My attorneys at A Better Balance explained to me that because the law does not have a "private right of action," I could not sue JetBlue in court on my own to try to get my job back and had to wait out the City's complaint process. Ultimately, the City was able to negotiate a settlement with JetBlue in which JetBlue had to compensate me for my lost wages, but I was not able to get my job back, and I was not able to receive any additional compensation for the ordeal that JetBlue put me through.

Unexpectedly losing my job made me ineligible for the apartments I had been looking to apply for and endangered my ability to make my student loan payments. Because of the particular hours that I worked at JetBlue, it was very challenging to find similar employment that would not conflict with my caregiving obligations or my job with the City. There was also the fact that I loved working at JetBlue. I never expected that I would like working at an airline, but the people I worked with were great, and I still keep in contact with some of them. It was very unfortunate to lose my job there over something that happened outside my control.

I believe that the City Council should give people the ability to prosecute their own claims in court for violations of the sick leave law so that they don't have to depend on the City's complaint process and potentially wait years for relief like I did. I also believe that companies like JetBlue would take the law more seriously if this were an option for employees whose rights were violated. I worry that the amount of money JetBlue ultimately had to pay me as part of their settlement with the City was not nearly enough to deter them from future violations, considering their size and resources, and they will continue to not follow the law because they think they don't have to.

Understandably, a lot of people don't want to go back to a job where they were mistreated, but one of the reasons I was so firm in wanting to get my job back, even after eight years, was to impress upon JetBlue that it was wrong for them to fire me in the first place and to hopefully make them take the law more seriously in the future. Unfortunately, the City was not able to achieve that result, and if I had had the option to pursue my own claims in court where a judge had the power to order JetBlue to reinstate me, I would have availed myself of that option.

Hearing: Tue, Jun 20 @ 1:00 PM - Committee on Civil Service and Labor

Subject of testimony: My Name is Chenoa Giles and I am Case Manager for Homebase II, a non-profit which provides homelessness prevention to New Yorkers in Bronx of New York City. Thank you, Deputy Speaker Ayala and Chair Hanif and members of the Council, for allowing me to submit written testimony. Thank you for holding this hearing today and for your leadership uplifting and protecting services for unhoused New Yorkers. The impact of your heroic efforts to strengthen the homeless services safety net will be diluted by the Mayor's 2.5% "Provider Flexible Funding" Budget Cut to all DHS and HRA contracted non-profit programs, including shelters, street outreach, safe havens, drop-in centers, and Homebase eviction prevention programs. Please join us in the fight to protect our programs, and hold strong against the Mayor's proposed budget cut to homeless services! We need the Mayor to understand that the City budget shouldn't be balanced on the backs of poorest New Yorkers! The Mayor's 2.5% DSS Budget Cut will hurt services, as DHS is already telling non-profit providers to plan to eliminate vacancies and non-core services such as on-site mental health services and clinical services, and collapse several job roles into one position to be able to meet this cost-savings for the City.

I work at Homebase II helping people stay In their . HomeBase II r currently has vacancies for housing specialists and case managers. If my organization must eliminate those positions, our caseloads will double. We are passionate and committed to helping our clients but no one can handle that many cases.

We applaud the Council's unwavering commitment to protecting all New Yorkers experiencing the trauma of homelessness and are extremely grateful for the landmark legislation you passed which will revolutionize access to rental assistance. Please stand strong against the Mayor's 2.5% cut. We stand ready and want to join you on the work ahead rehousing our neighbors.

Letter to Mayor Adams regarding Retiree Health Insurance

Your Honorable Mayor Adams,
I realize the City may be having a financial crisis with the influx of needy refugees, the homeless and more, while at the same time big businesses are leaving and the tax base decreasing. However you should NOT and can NOT afford to put the cost on the retired teachers who gave the best part of their lives to nurture and educate the youth of our city.

When we devoted our lives to teaching in New York, many of us left higher paying jobs for the emotional benefit of helping others. I for one left the lucrative field of electronic engineering to become a shop teacher. For decades, I devoted my life to a labor of love, grooming the children of our city for their future.

I was in turn promised that the City of NY would take care of me with a pension and premier level of healthcare for the rest of my life. I forfeited the big salary for a promise of a better future, a future of health the city is now seeking to deprive me of.
I've done my research and know all too well that Medicare Advantage, better known by those who suffer under its regulations as a DISADVANTAGE PLAN.

The Aetna plan is a disaster in every way and will cause undue hardships on all who are forced to beg for care under its rules. I have spoken with my doctors and not one of them will accept the "Aetna Dis-Advantage Plan". They currently accept my REAL Medicare combined with the Senior Care program. This will leave me with enormous out of pocket expenses.
When I confronted the billing department of my local hospitals they were not even aware that the city was making these changes and know nothing about the then proposed NYC Retiree Exclusive Aetna Advantage Insurance Plan. To me, this would be like getting on board a rocketship to the moon not knowing how much oxygen, fuel or food was onboard.

I have heart problems which have forced me to receive FOUR HEART STENTS.
The last one was only inserted three weeks ago. Like many retired NYC Educators, I can not wait for a medical insurance group, who makes profits over my suffering, to decide whether or not a procedure is necessary.
To top it off, Aetna hasn't even made a life time commitment to their own offering. They clearly stated the plan will be reviewed in two years and my be totally changed. I would never have joined the ranks of NYC Educators had I known the city could not be trusted to keep its word.

Looking down the road, meaning what will happen to me in the future when I may not be able to live on my own after a surgery and may require a temporary but months long move to living in a Continuing Care Retirement Community, where MAP is NOT

accepted. After having to sell my home to pay medical bills not covered by a depraved "advantage plan, I could be another one of the city's homeless and on the streets of NY.

While I'm writing, I feel it my duty to remind you that Aetna is presently under investigation by DOJ for Medicare Fraud.
I, along with my fellow retirees will hold YOU and the City personally responsible for any harm inflicted by a healthcare program that is forced down our throats.

Please also note that we were promised the exact same medical insurance as In-Service Educators. Please read the last page of this letter.

Steven Spandorf
BOE File # 448647

United Federation of Teachers

Local 2, American Federation of Teachers, AFL-CIO
260 Park Avenue South
New York, N.Y. 10010
(212) 777-7500

UFT RETIREE HEALTH BENEFITS

1. **Basic health benefits remain the same for retirees as for in-service members.** As a retiree presently receiving a pension, he/she is entitled to a basic health plan the same as when he/she was working.

2. **Choose "yes" for the optional benefit rider in order to continue receiving prescription drug benefits.** At retirement, it is your optional rider that provides the retiree with a drug benefit. Regardless of which health insurance carrier used – whether it be GHI, HIP or any other provider – the retiree will receive prescription drug coverage under the optional rider. It supplements the basic health plan offered to retirees, whether they are eligible for Medicare or not. For Medicare-eligible retirees, it provides such necessities as prescription drug coverage and extended hospital coverage.

3. **Prescription drug benefits.** Plans do not operate the same way. Health maintenance organizations require a co-pay and allow enrollees to purchase drugs at participating pharmacies or – in some cases – thorough mail order. GHI has two distinct plans. Their long-term prescriptions for maintenance drugs must be mail ordered; short –term prescriptions require a $150 dollar annual deductible at the pharmacy.

   A. **Long Term (maintenance drugs)** To get a prescription filled for a 60 day supply of medication, plus refills, retirees should mail their prescriptions with the order forms to Express Scripts, Inc., 3684 Marshall Lane, Bensalem, PA 19020-5997 ($8 for generic, $20 for name brand on the formulary, $30 for a brand name not on the formulary)

   B. **Short Term.** A retiree should take his/her GHI card to a participating pharmacy. After the $150 for the deductible per person has been met, the cost is 20 percent for the cost of the prescription for a generic, 40 percent, a brand name on the formulary, and 50% a brand name not on the formulary

4. **UFT Welfare Fund benefits.** The UFT Welfare Fund provides a package of supplemental benefits for retirees and beneficiaries that includes the continuation of dental care, optical care and hearing aides. The retiree also receives reimbursement toward the cost of his/her optional rider (increased this year of up to $564), free basic legal services, social services and a learning centers program.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Commissioner Vilda Vera Mayuga

Address: _____

I represent: DCWP

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Assistant Commissioner Carlos Ortiz

Address: _____

I represent: DCWP

Address: _____

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Appearance Card

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Elizabeth Wagner Deputy Comm DCWP

Address: 42 Broadway

I represent: DCWP

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
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Appearance Card

I intend to appear and speak on Int. No. 411 Res. No. _____

☒ in favor ☐ in opposition

Date: June 20, 2023

(PLEASE PRINT)

Name: Claudia Henriquez

Address: 1 Centre Street, Room 1050

I represent: Comptroller Brad Lander

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Bhairavi Desai

Address: [redacted] Bronx 10475

I represent: New York Taxi Workers Alliance

Address: 31-10 37th Ave. LIC, NY 11101

THE COUNCIL
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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

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Date: _____

(PLEASE PRINT)

Name: Ibrahim Soure

Address: _____

I represent: New York Taxi Workers Alliance

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Alpha Barry

Address: [redacted] E 27 St [redacted]

I represent: NYTWA

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 6/20/23

(PLEASE PRINT)

Name: Zubin Soleimanx

Address: 31-10 37th Ave. Ste. 300

I represent: LIC, NY 11101 New York Taxi Workers Alliance 31-10 37th Ave. LIC.

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

6/20

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 6/20/2023

(PLEASE PRINT)

Name: Antonio Solis

Address: _____

I represent: Workers Justice Project

Address: _____

Please complete this card and return to the Sergeant-at-Arms