

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS

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February 29, 2016

Start: 1:14 p.m.

Recess: 4:05 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E: RAFAEL L. ESPINAL, JR.  
Chairperson

COUNCIL MEMBERS: Vincent J. Gentile  
Julissa Ferreras-Copeland  
Karen Koslowitz  
Rory I. Lancman

## A P P E A R A N C E S (CONTINUED)

Latifa Harmon

Freelance Professional Development Consultant

Just Ramona

Freelance Pattern and Sample Maker

Chris Malley

Freelance Video Editor & Motion Picture Animator

Amit Bagga, Deputy Commissioner

Department of Cultural Affairs, DCA

Nick Smithberg, Executive Director

Paid Sick Leave Division

Department of Cultural Affairs, DCA

Alba Pico, Acting Commissioner

Department of Cultural Affairs, DCA

Steven Kelly, Legal Director

Department of Cultural Affairs, DCA

Jill Maxwell, Deputy Director

Legal and Investigations

Paid Sick Leave Division

Department of Cultural Affairs, DCA

Sarah Horowitz, Founder and Executive Director

Freelancers Union

Mary Rosario, Member of 32BJ

Appearing for: Shirley Aldebol

Vice President of 32BJ SIEU

Deborah Axt, Co-Executive Director

Make the Road new York

Haeyoung Yoon, Executive Director

Strategic Partnership

National Employment Law Project, NELP

Andrew Rasiej, Chairman  
New York Tech Meetup

Adriana Scotti, Vice President  
Economic Development  
Appearing for: Carlos Scissura, President & CEO  
Brooklyn Chamber of Commerce

David Levine, CEO & Co-Founder  
American Sustainable Business Council

Jeff Wald, Founder & President  
Work Market

Morisha Mebla  
Freelance Writer

Kati Sipp, Director  
National Guest Workers Alliance

Dr. Ruth Milkman, Professor of Sociology  
CUNY Graduate Center

Lucy Reading  
Freelance Designer and Illustrator

Jessica Perez  
Freelance Fashion Model and Founder and CEO  
Tycoon App

Deborah Cowell  
Freelance Book Editor & Writer

Ellen Sandles  
Freelance Court Reporter

Steven Lowell  
Freelance Voice Actor

Tatiana Potts  
Professional Linguist

Randy Jenner  
Freelance Writer/Editor

Haroon Simbaragan (sp?), Economist/Professor  
New York University

Alex Abelin, CEO  
Liquid Talent

Paul Kombolka (sp?)

Jessie Strauss, Lawyer and Founder  
IndePayment.com

Saraf Sadap Lagiwadi, Musician & Founder  
Musicians for Musicians

2 [background comments, sound check, pause]

3 [gavel]

4 CHAIRPERSON ESPINAL: Good morning. My  
5 name is Rafael Espinal. I am the Chair of the  
6 Consumer Affairs Committee. I am joined by Brad  
7 Lander who is not a member of the committee, but a  
8 sponsor--one of the--the main sponsor of this bill.  
9 Today, we will be conducting a hearing on a bill,  
10 Intro 1017-A, which will establish protections for  
11 freelance workers. The nature of employment in  
12 America has been undergoing significant changes in  
13 recent decades. One of these changes is an increase  
14 in the number of freelance workers, workers who  
15 perform work on a contractual basis rather than  
16 within the traditional and typical employer/employee  
17 context. According to the Freelancers Union, there  
18 are almost 53 million freelances across the nation  
19 and 1.3 million freelances in New York City. For  
20 many workers self-employment is a choice while for  
21 others it is a matter of economic reality.  
22 Regardless of whether freelancing is a choice or a  
23 necessity, freelance workers do not have the same  
24 protections as regular employees, and this is a  
25 problem. A Freelancers Union Survey of its 22--

2 280,000 members found that over 70% of their members  
3 had lost money due to delinquent clients, averaging  
4 nearly \$6,000 in 2014. I'm sure we all know someone  
5 who has been in this situation. I know a graphic  
6 designer who lost \$3,000 in unpaid earnings.  
7 Government protections exist to enforce wage theft  
8 for traditional employees. The New York State  
9 Department of Labor recovered \$30 million for 27,000  
10 employees in 2014, but freelancers must take their  
11 case to Small Claims or Civil Court. Some clients  
12 resist giving freelancers a contract further  
13 complicating collection of payment for self-employed  
14 workers. Intro No. 1017-A seeks to normalize and  
15 standardize contract procedures for--for freelancers  
16 by requiring a written contract written in a language  
17 understood by both parties for work valued at more  
18 \$200. The contract must include an itemization of  
19 services, the rate of pay and the date of which  
20 payment will be made. The bill will make it a  
21 violation of City law to fail to pay your freelancer  
22 within 30 days of the date agreed to in the contract,  
23 and it would prohibit retaliation against a  
24 freelancer for exercising these rights. The bill  
25 provides for agency enforcement empowering the

2 Department of Consumer Affairs to receive complaints  
3 for violations of the requirement to contract in  
4 writing and to pay compensation within 30 days. When  
5 DCA receives a complaint, the agency may attempt to  
6 mediate a mutually agree--the agency may attempt to  
7 mediate a mutually agreeable resolution. The agency  
8 is also empowered to investigate complaints--to  
9 investigate complaints, and upon a finding of  
10 violation, it may impose penalties including  
11 equitable relief, double damages and attorney fees.  
12 The agency may all--may also impose a civil penalty  
13 of up to \$5,000 for violation of this law. Agency  
14 enforcement will shift to the Office of Labor  
15 Standards once that office is established by the  
16 Mayor. The bill also creates a private right of  
17 action to allow freelancers to bring action in court  
18 for violation of its provisions and provides for  
19 double damages and attorney's fees. As a freelance,  
20 you can already bring an action into court for breach  
21 of contract, but most freelancers fail to take this  
22 course of action because it is time consuming and  
23 expensive. According to the Freelancers Union  
24 Survey, only 5% of freelancers who were not paid for  
25 their work actually pursue their rights in court.

2 This is important because it will make it much easier  
3 for freelancers to hire an attorney, and sue in court  
4 to recover against companies that hire freelancers,  
5 and think they can get away with later payment or  
6 non-payment. According to the Freelancers Union, 34%  
7 of America's workers have done some freelance work.  
8 By all indications, this is a sector of work that  
9 will continue to grow, and that is in need of  
10 regulation. The self-employed are important economic  
11 contributors. They need and deserve protections to  
12 ensure that they are treated fairly in our  
13 marketplace. All workers are entitled to a fair and  
14 just workplace, and as the nature of work continues  
15 to change, it is our job as legislators to think  
16 creatively about how to broaden our laws to ensure  
17 all people are protected. I'd like to invite the  
18 bill's sponsor, Council Member Brad Lander to say a  
19 few words.

20 COUNCIL MEMBER LANDER: Thank you very  
21 much, Chair Espinal for moving this hearing along so  
22 quickly and for a co-sponsor in support of this bill.  
23 I want to thank the 27 members of the Council that  
24 have already signed on in support of this bill as  
25 well as the Public Advocate. I want to thank the

2 staff who have worked so hard on it Katelyn Caruso  
3 and Lami(sp?) Rafman for their work getting us here  
4 today, and I do want to give a special shout out to  
5 the Freelancers Union who have really brought  
6 freelancers together to help us see what's going on  
7 in the new economy and write new rules for the new  
8 economy to make sure that all workers are protected  
9 and can thrive in New York City. The principle here  
10 is very simple. Everybody deserves to get paid for  
11 the work they do on time and in full, and even as our  
12 economy evolves and there's more freelance work, and  
13 more independent work, those workers deserve to get  
14 paid on time and in full for the work they do. And  
15 while we have protections for traditional W-2  
16 workers, not always perfect, but protections in place  
17 where government works to make sure that if your  
18 wages are stolen you have recourse. We have to add  
19 that kind of recourse, those kinds of protections for  
20 independent workers, for freelancers, for a growing  
21 sector of our economy. The Chair did a good job of--  
22 of saying that for some people freelance work is a  
23 choice. People are choosing flexibility. For some  
24 people there's really--and it's not a choice. That's  
25 the way that their work is organized, and they have

2 to do it if they want to do it, but it doesn't matter  
3 whether you're choosing it or whether you're--whether  
4 you come to it, and how you get there, you've got to  
5 have recourse. We want this sector of the economy in  
6 New York City, what independent workers mean here,  
7 what freelancing means here is extremely valuable to  
8 New York's creativity, to our economy. For those  
9 people that are traditional W-2 workers, we want to  
10 make sure they're properly classified. But for those  
11 people who are doing independent work and  
12 freelancing, we want you to thrive here in New York  
13 City, and we want the relationships you build, the  
14 contracts you sign, the work you do to be recognized,  
15 to be protected, to be valued. So, that's what we're  
16 doing here today. Now, we've got our work cut out  
17 for us because this isn't being done yet anywhere in  
18 the country. So we're blazing a new trail. We're  
19 the ones trying to write new rules for the new  
20 economy. I'm thrilled with the bill as it is 1017-A,  
21 and I appreciate all the work that has gone in, and  
22 the feedback we've gotten to develop it here. But we  
23 are having a genuine hearing today in the real sense  
24 of the word hearing. We are listening, and I'm  
25 excited. We're first going to listen to some

2 freelancers who have been stiffed to make sure that  
3 experience is what's front and center, and I  
4 appreciate the Department of Cultural Affairs being  
5 willing to listen first to--to those experiences.  
6 That's appreciated by all of us, but then we're going  
7 to listen to what everybody has got to say about how  
8 this bill is drafted, about the protections we're  
9 trying to provide, about amendments that might make  
10 it better or more effective and stronger. And then,  
11 we're going to work together to gather additional co-  
12 sponsors to bring this forward and to implement real  
13 worker protections in New York City. So thank you  
14 very much, Mr. Chair and to all my colleagues.

15 CHAIRPERSON ESPINAL: Thank you, Brad. I  
16 just want to make note that we've been joined by one  
17 of the bill's sponsors Margaret Chin, and we also  
18 have a committee member Karen Koslowitz from Queens.  
19 This is again an important piece of legislation that  
20 seeks to respond to the changing nature of work. To  
21 frame the issue and set the stage, the Committee will  
22 first hear from a panel of freelancers about their  
23 experience in today's big economy. We will then hear  
24 testimony from the Administration, advocates and the  
25 public. With that, I'd like to invite the first

2 panel, and please excuse me if I mis--mispronounce  
3 your name. We have Justice Raymond, Ramona or  
4 Raymond. We have Latifa Harmon and Chris Malley.  
5 [pause] Just come up and take a seat. [background  
6 noise, pause] When you're ready to testify, just  
7 press the button and then state your name.

8 LATIFA HARMON: I'll go first. My name  
9 is Latifa Harmon. Thank you for the opportunity to  
10 speak with you today. I work with businesses as  
11 professional development consultant. I've been  
12 working as a freelancer since 2008 and full time  
13 since 2010. I live and work in Brooklyn, New York.  
14 Since--since I began freelance, I have consistently  
15 had a variety of different issues with non-payment.  
16 I routinely work with clients who provide only  
17 partial payments on work delivered months after the  
18 agreed upon date. [coughs] Last year, I was stiffed  
19 5,000 hours by a client who has yet to pay me. This  
20 particular client hired me for a package of training  
21 and development services to improve their business  
22 performance. I prepared a scope of work with all the  
23 details about my costs, services, and how their  
24 business would benefit. In order to secure the job,  
25 I even offered them a discounted flat rate of 10,000

2 hours for the whole project. We signed a contract,  
3 which stipulated a retainer and deposit of \$2,700 to  
4 be paid up front. The client did pay that. They  
5 also paid a subsequent installment of \$2,300 just  
6 before the completion of the project, but despite the  
7 fact that my work was approved at every milestone,  
8 they refused to pay the balance of 5,000 hours at the  
9 end of the project after three months of work  
10 completed. I invoiced this client many times follow  
11 up on countless emails and phone calls with no  
12 response. To this day I am reaching out, and haven't  
13 really gotten any response as far as when the payment  
14 will be received or if it's actually in the mail or  
15 anything. Meanwhile, they have implemented my  
16 services and their business is actually profiting  
17 from my work. On too many other occasions, I have  
18 worked with clients who lagged in payment, and  
19 frequently accept a lower amount in order to be paid  
20 at all. I currently have another client at a very  
21 large corporation who after two months of work is  
22 just paying off her initial retainer. The amount I  
23 am typically able to collect often represents a steep  
24 difference from the agreed upon rate. However, I  
25 often take the reduced amount because I know this

2 will be my best chance of getting paid at all. I  
3 only pursue projects with larger clients and  
4 companies who can easily afford to pay me as their  
5 contractor, but even with larger corporations they  
6 can sometimes take up to six months to produce a  
7 check, which has--which is con--really consistent  
8 honestly with larger corporations. In my opinion,  
9 companies will play hardball with freelancers because  
10 they are aware that there aren't any real legal  
11 protections for us. Currently, the penalties for  
12 being non-compliant only lie within the realm of an  
13 actual lawsuit, which many of us don't pursue because  
14 if we aren't getting paid, and can barely pay our  
15 bills, how can we afford to take someone to court?  
16 This makes it easier for clients who refuse to pay a  
17 contract off. We are now--we are the new cheap labor  
18 because we aren't legally protected. For us--for many  
19 of us freelancers this is our livelihood, and it  
20 makes it difficult for us to make ends meet. As a  
21 freelancing woman of color I have to sell my services  
22 for half as much and pitch twice as hard to gain a  
23 contract sometimes. In many cases, I have to  
24 drastically reduce prices for a company to even  
25 consider my services, and then I have to endure many

2 challenges on a company's behalf to nurture a  
3 revolving ongoing relationship. This is a lot in  
4 intellectual costs, and if ever calculated properly  
5 could result in millions if not billions of unpaid  
6 services for free--freelancers as a whole. In my  
7 opinion, the Freelance Isn't Free will allow us the  
8 immediate protections for our work. Freelances are  
9 becoming more of the norm in a modernized workforce.  
10 We bring value to companies of all sizes, and many of  
11 us provide one-of-a-kind services. It's important  
12 for us to step up to created needed payment  
13 protections for freelancers now before this becomes a  
14 never ending battle in the future. There are  
15 currently 1.3 freelances in New York City and the  
16 numbers are increasing daily. We should be paid for  
17 our work. We deserve the right to a decent living  
18 just as any other industry. Thank you.

19 CHAIRPERSON ESPINAL: [off mic] Thank  
20 you. [applause]

21 JUST RAMONA: I'm Just Ramona. Good  
22 afternoon, honorable council members, guests and  
23 other freelancers. I first want to thank you for  
24 your time and opportunity to speak with you today.  
25 For the past 20 years I've been working as a

2 freelancer in the fashion industry as a pattern maker  
3 and sample maker. As a freelancer it's always tough  
4 actually trying to make ends meet, and make a living.  
5 As a pattern maker, I'm paid more for my time and  
6 expertise as well. So it gets a little tricky when  
7 it comes to being paid actually because it's not a  
8 tangible item that you can just pick up and walk out  
9 with. I've encountered non-payment at many points  
10 throughout my career, and late payments even more  
11 often. Just recently, New York Fashion Week 2015, I  
12 was asked to make patterns and samples for a  
13 collection, a 14-piece collection showing September  
14 21st. On August 24, 2015, my client and I signed off  
15 on a contract. Normally, I'm paid half up front and  
16 then half on delivery. [laughs] Unfortunately, she  
17 shows up with a quarter of that first payment. And so  
18 during Fashion Week, which is the busiest time of the  
19 year, freelancers like myself are under tons of  
20 pressure trying to kind deal with--juggle five or six  
21 clients. It's crazy when you're trying to get paid  
22 what you should be getting paid, and they're coming  
23 back and forth at you. By September 10th, which was  
24 11 days before her show, I--actually she only  
25 submitted another quarter of the balance, the actual

2 first payment. This partial payment totally sent me  
3 in the red. As a result, I was unable to pay my  
4 sample maker, and my pattern tech that worked with  
5 me, and as a freelance business, I count on accounts  
6 receivable every week to make my ends meet. Because  
7 of this, I ended up having to do most of the work  
8 myself because I couldn't pay my people that were  
9 helping me.

10 COUNCIL MEMBER LANDER: [off mic] Right.

11 JUST RAMONA: Finally, after staying  
12 awake for quite a few 18-hour days, I completed the  
13 last pieces the morning of the fashion show. The  
14 next day after her showing, my client was supposed to  
15 pay me the balance, she hands me a check for \$355  
16 [laughs] which left a balance of about \$2,300. Now,  
17 honestly, as angry as I was, what could I really do?  
18 I paid some of the people that I--that worked with me  
19 out of my own pocket. So, therefore, it kind of left  
20 me holding the bag with my rent, my rent on the  
21 studio space and my own personal bills. Over that  
22 time, believe it or not, I did get paid, but it took  
23 her until January 11th of 2016 because she was  
24 sending me payments of \$120 one week, two weeks later  
25 \$250. This was a four-month process. It is totally

2 unacceptable to treat freelancers like we are a bank.  
3 We do not have excess funds to cover for clients'  
4 poor management of business finances. The Freelance  
5 Isn't Free Bill would have made this client aware  
6 that she was obligated by law to pay me in full  
7 within 30 days, and there will be--will be a  
8 consequence that she would have had to face. Passing  
9 this bill will give freelancers a leg to sand on when  
10 just trying to make an honest living doing what we  
11 love. We are here asking for a fair shake. That's  
12 all. I thank you very much for your time, and the  
13 opportunity again to tell my story. [applause]

14 CHAIRPERSON ESPINAL: We usually don't  
15 allow applause, but [laughter] I--I think I'm cool  
16 with that. So you can clap there. [laughter]

17 CHRIS MALLEY: Hi. My name is Chris  
18 Malley. Thanks for the opportunity to speak with you  
19 today. I've worked in the film and video industry as  
20 a video editor and motion graphics animator for eight  
21 years. I moved to New York five years ago because  
22 this is the center of my industry. In the time I've  
23 been working here every year I've had to face non-  
24 payment of some significant amount of money. In  
25 2016, I started with over \$10,000 of outstanding

2 payments from my clients. Most of this was from a  
3 client who hadn't paid me since November of last  
4 year, but over \$2,000 was from a client who hadn't--  
5 who I hadn't worked with since 2014. In both cases,  
6 the contract was never signed. In my field, asking  
7 for a contract is usually a way to get over for a  
8 gig. So you're conditioned not to ask for them.  
9 Additionally, in both instances, I was one of over a  
10 dozen contractors who had to chase down payments from  
11 unresponsive clients. I'm here today with another  
12 colleague of mine who can attest to non-payment and  
13 with both of these clients. In the case of the  
14 larger sum, almost \$8,000, my client hired me on  
15 retainer and agreed a traditional 15 pay--15-day  
16 payment terms. I worked with them under these terms  
17 for four months, and at the end of November I didn't  
18 receive payment. I began asking questions, and my  
19 client offered various reasons to avoid paying me  
20 what was due. In December, they told me to stop  
21 coming into their office indefinitely. In January, I  
22 finally managed to get some payment, less than a  
23 third of what was owed to me. My client presented  
24 this partial payment as doing me a favor. I was then  
25 asked along with some of the other contractors to

2 return to finish old projects and to begin new ones  
3 with no timelines or terms set for repaying me--for  
4 payment of the remaining amount. In my case, this  
5 was over \$5,000. After three months, I was finally  
6 paid in full, but this only came after repeatedly  
7 refusing to come--come in to complete further work  
8 until repayment was made. Going three months without  
9 receiving expected in that much money put me in a  
10 terrible financial position especially since it was  
11 over the holidays. I wish I could say these were out  
12 of the ordinary experiences, but my colleagues and I  
13 routinely spend days if not weeks in hours along  
14 chasing down unresponsive and deadbeat clients.  
15 We're often told that we have to settle for less, and  
16 in some extreme cases, this ends up being--failing to  
17 meet the minimum wage in terms of hours put in for  
18 the work alone. In mandating contracts, the  
19 Freelance Isn't Free Act has the potential to enact a  
20 major change from freelancers in the city--video and  
21 film industry. By getting payments and timelines in  
22 writing before beginning a project, clients will be  
23 able to treat--they will not be able to treat those  
24 terms as negotiable after the work has been  
25 completed. For the multiple instances of late, short

2 and non-payment they can be reported to an  
3 appropriate authority. The potential penalties  
4 deadbeat clients may face mean that it will be more  
5 worthwhile to actually pursue that action. I hope  
6 that these rules in place--agreements in writing can  
7 become a common business practice before works starts  
8 in my industry. As it is, I have yet to work a  
9 freelance day in this city where that's been the  
10 case.

11 CHAIRPERSON ESPINAL: Thank you. Before  
12 we continue, I'd like to just add that we've been  
13 joined by Julissa Ferreras from Queens. So, thanks  
14 for your testimony. Just a few questions. In your  
15 cases, how often have you asked for a contract.

16 CHRIS MALLEY: In my case, I generally  
17 ask for a contract with any client that I'm  
18 approaching, and usually it's deflected and sort of  
19 we're all--we all trust each other kind of way. I've  
20 had people that I've never met before that I've been  
21 put in touch with through colleagues who on the first  
22 time contacting me when I asked for a contract say oh  
23 we trust each other, which obviously you don't trust  
24 complete strangers as a matter of course, but it's--  
25 that's the attitude that oh, well, now we'll all--

2 we're all friends here, and it gets dismissed.

3 Pursuing that in the past simply ended conversations  
4 about upcoming projects that I've been part of.

5 CHAIRPERSON ESPINAL: So in a day do you--  
6 --so you--by practice you always ask for a contract?

7 CHRIS MALLEY: Yes.

8 CHAIRPERSON ESPINAL: Have--have you done  
9 work without a contract?

10 CHRIS MALLEY: Oh, it always ends up  
11 being without a contract. It's--I can think of one  
12 time in the entirety of my career in New York that a  
13 contract was actually signed.

14 CHAIRPERSON ESPINAL: Have you ever taken  
15 anyone to court?

16 CHRIS MALLEY: No.

17 CHAIRPERSON ESPINAL: All right.

18 CHRIS MALLEY: It generally would--would  
19 cost more to do that than the amount of money they  
20 owe me.

21 CHAIRPERSON ESPINAL: Uh-huh. Anyone who  
22 want to say anything?

23 JUST RAMONA: I always use contracts.  
24 The problem is you get the beginning of it, but then  
25 sometimes along the way it's either well, I don't

2 have money to finish, or I can't pay you the balance.  
3 That type of thing. So the work that you've actually  
4 put into it then that I'm draping and physically  
5 making patterns. You know, if as well, it's doing  
6 the sample, it's a bit different, you know, because  
7 they--you're not being paid actually according to the  
8 contractual terms. So then it's kind of like well,  
9 what do you do?

10 CHAIRPERSON ESPINAL: And in your case I  
11 know, you--you pay vendors--

12 JUST RAMONA: [interposing] Yes.

13 CHAIRPERSON ESPINAL: --right?

14 JUST RAMONA: Yes.

15 CHAIRPERSON ESPINAL: Has that ever  
16 impeded you from doing other work?

17 JUST RAMONA: Well, but--

18 CHAIRPERSON ESPINAL: [interposing] That  
19 fact that someone wasn't paying you when you had to  
20 go do other work for them?

21 JUST RAMONA: All the time--

22 CHAIRPERSON ESPINAL: [interposing] Yeah,

23 JUST RAMONA: --but see what has  
24 happened, thank God over the years, I tend to try to  
25 make sure I can cover because the biggest thing I'm

2 sure with any business is your reputation. That's  
3 pretty much all you have, and to make sure that I can  
4 pay the people that are actually doing the work for  
5 me. I make sure I kind of have a backup whether it  
6 comes from me or not from my own personal. I take  
7 from myself in order to do that to just keep because  
8 I need them to know that they will get paid if they  
9 work with me. So, yeah, definitely.

10 LATIFA HARMON: Just wanted to briefly  
11 add that freelancers are like the new free help for a  
12 lot of corporations. We're in high demand. A lot of  
13 us are pursuing our passions as freelancers because  
14 of lifestyle or because we choose to as mentioned  
15 earlier, but corporations have caught onto this.  
16 They understand that they can let go a whole  
17 department and hire a set of freelancers, and then  
18 stiff us on payment and save money on their budget.  
19 And so I think that this goes really deep into a kind  
20 of corporate monopoly as far as how they're treating  
21 us, and--and using our services to benefit their  
22 business because they make money off of what we  
23 provide for them. But in many cases if not most they  
24 will not finish paying a contract. And these are  
25 large corporations, which I can't personally name

2 because I signed non-disclosure forms with my client,  
3 and I do that for--to protect themselves and myself  
4 as well because of the type of work I do. But these  
5 are large. These are not small corporations. We're  
6 not talking about little mom and pop shops. We're  
7 talking about people with very big budgets and  
8 they're bringing really good revenue yearly that  
9 stiff us on work that they are not even paying full  
10 price for from the beginning.

11 CHAIRPERSON ESPINAL: Uh-huh. Have you  
12 seen a pattern on the type of gigs that are not--that  
13 are not being paid?

14 LATIFA HARMON: Oh, definitely. All of  
15 them.

16 CHAIRPERSON ESPINAL: Is that because  
17 they collect for the work or.

18 JUST RAMON: They hid it.

19 LATIFA HARMON: [interposing] It--it  
20 becomes--I'm sorry. It's become common. When I  
21 first started doing freelancing, it was around 2008,  
22 the economic crisis. It wasn't really popular as  
23 much as it is now. I mean as it trickled down more  
24 people are doing it.

2 JUST ROMAN: [interposing] Which is  
3 prompting more companies --

4 LATIFA HARMON: More corporations have  
5 caught onto it.

6 JUST RAMONA: --have started to doing  
7 that.

8 LATIFA HARMON: They start--caught--they  
9 caught onto the fact that this type--

10 JUST RAMONA: [interposing] When the  
11 economy was--

12 LATIFA HARMON: --of work is out there.  
13 So they've used us since then, and they've built  
14 their companies up since then, and yet many of us--I--  
15 -I can even name payments that I haven't received  
16 since 2008.

17 JUST RAMONA: A lot of times they get  
18 around because usually, especially in the fashion  
19 industry if you're with major corporations they'll  
20 usually hire you through headhunters.

21 LATIFA HARMON: Uh-huh.

22 JUST RAMONA: And so it's usually the  
23 headhunter that you are actually going after to get  
24 your money and, therefore, and they have the  
25 attorneys. If you don't have an attorney to go after

2 them with their attorneys, which can drag on, it's a  
3 mess. Because that's usually the way that most of  
4 them get around in the fashion industry. The major  
5 corporations they usually hire you through  
6 headhunters.

7 CHAIRPERSON ESPINAL: Have any of you  
8 ever gone to court or take client to court.

9 JUST RAMONA: I haven't.

10 LATIFA HARMON: It's pointless--it's  
11 point--I haven't. It's pointless, a lot of the  
12 contracts--I'm sorry to interrupt--a lot of the  
13 contracts that I deal with they'll have the payment  
14 on--or--or I mean if they were collective then maybe  
15 it would be worth it, but individually it's  
16 pointless, and who has that type--rent in New York  
17 City? Hello. Who has that type of money to spend on  
18 court fees? You really don't.

19 CHAIRPERSON ESPINAL: I hear you. All  
20 right. We have a question from Brad.

21 COUNCIL MEMBER LANDER: Thank you Mr.  
22 Chair. First, thanks to all three of you for being  
23 here, for being willing to come forward and tell your  
24 stories, and working together with others to help us  
25 fix this. And the Chair actually asked most of the

2 questions that I wanted to hear about why people  
3 don't go to court, the challenges in getting a  
4 contract, and the pervasiveness. I guess I want to  
5 just draw a little more out on late payment because  
6 they're in addition to non-payment, and this was  
7 especially in Ms. Ramona in your testimony. Will you  
8 just say a little more about that. You know, even if  
9 you're--even if that handshake that we're all friends  
10 here trust implied there was supposed to be payment  
11 at a point in time that it gets pushed back that  
12 there's a n offer to pay less if you want it sooner?  
13 I assume your landlords don't say well, we'll take a  
14 little if you want to pay sooner. So just talk a  
15 little more about your experience being--having--  
16 having payments pushed out into the future and--and  
17 pressure to reduce them if you want them in a more  
18 timely way.

19 JUST RAMONA: Well, see that's--that's  
20 the biggest thing for me I mean because it's kind of  
21 like you do get paid, but unfortunately when you have  
22 people to pay and bills that are due \$120 this week  
23 really does nothing for me. [laughs] And--but then  
24 it's kind of like what do you do? Say, I'm not going  
25 to accept the payment? Because that's kind of what

2 happens. You know, I mean I got payments as small as  
3 \$125, which doesn't even pay for patching, but what  
4 did--what did I--I mean I just took the payments as  
5 she gave them to me . I still had her patterns, but  
6 a lot of good it did me, you know, because like I  
7 said this went on for four months.

8 LATIFA HARMON: Uh-huh.

9 JUST RAMONA: And I mean it's a--\$2,300  
10 is a lot of money, but in the broad scheme of things  
11 not really. So--but what do you do? So you kind of  
12 just take it even though it kind of means nothing  
13 really in that sense because you owe almost three  
14 times, you know, what they've give--you know, gave  
15 you in that payment. So, but that's--that's been my  
16 biggest problem more so than anything else.

17 LATIFA HARMON: Well, late payments for  
18 me are getting a little bit easier because I have now  
19 a late payment fee. [laughs] And I started doing  
20 milestones on the work as far as if you don't pay,  
21 you don't get your work, and that's kind of been  
22 helping. But, at the end of the day because there's  
23 really no compliance regulations for a lot of my  
24 companies, it--it can pay or they don't, and--and--

2 and I just have to figure out a way to be innovative  
3 and try to make that happen.

4 JUST RAMONA: But I think this bill will  
5 do it.

6 LATIFA HARMON: This bill will definitely  
7 do it. [laughs]

8 COUNCIL MEMBER LANDER: Thank you for--  
9 for being here to help us make it happen.

10 JUST RAMONA: Thank you.

11 LATIFA HARMON: Thank you.

12 COUNCIL MEMBER LANDER: Thank you, Mr.  
13 Chair. [applause]

14 CHAIRPERSON ESPINAL: All right, right,  
15 thank you, thank you.

16 LATIFA HARMON: Okay, thank you.  
17 [laughter] Oh.

18 CHAIRPERSON ESPINAL: I like the  
19 clapping. Okay. [laughter] I want to also note  
20 we've been joined by Vinny Gentile from Brooklyn.  
21 He's also a member of the committee. Next up I'd  
22 like to call the DCA the Department of Cultural  
23 Affairs. We have Amit Bagga, who's a Deputy  
24 Commissioner; Nick Smithberg, who's the head of the  
25 Paid Sick Leave Division; Alba Pico, our Acting

2 Commissioner; Steven Kelly our legal Director and  
3 Jill Maxwell, Deputy Director on Paid Sick Leave.

4 [background noise, pause] Okay, before we begin, can  
5 you please raise your right hand. Do you affirm to  
6 tell the truth, the whole truth and nothing but the  
7 truth in your testimony before this committee, and to  
8 respond honestly to council member's questions?

9 PANEL MEMBER: Yes, we do.

10 PANEL MEMBER: Yes.

11 CHAIRPERSON ESPINAL: Thank you. Please  
12 state your name before your testimony.

13 DEPUTY COMMISSIONER BAGGA: I'm Amit  
14 Bagga, Deputy Commissioner of the Department of  
15 Cultural Affairs. Good afternoon, Chairman Espinal,  
16 Council Member Lander, and members of the Committee  
17 on Consumer Affairs. I'm Amit Bagga, Deputy  
18 Commissioner at the New York City Department of  
19 Consumer Affairs or DCA, and I'm joined today, as you  
20 noted by Alba Pico, our Acting Commissioner as well  
21 as well as our colleagues from DCA's Paid Leave and  
22 Commuter Benefits Commissioner, Nick Smithberg,  
23 Executive Director, and Jill Maxwell, Deputy Director  
24 of Legal and Investigations. We are pleased to be  
25 representing Mayor Bill de Blasio's Administration

2 here today. Thank you for inviting us to testify on  
3 Introduction 1017-A or Intro 1017-A, which seeks to  
4 expand certain protections for freelance workers in  
5 New York City. Mayor de Blasio and the Department of  
6 Cultural Affairs share the Council--Council's deep  
7 commitment to ensuring that all vulnerable workers in  
8 New York City including freelance workers are  
9 protected from exploitation. As such, we are very--  
10 we very much welcome the opportunity to discuss with  
11 you how such protections can be enacted into law in a  
12 manner that is both effective and efficient as well  
13 as well as fair to all involved parties. We are  
14 thrilled to be a part of the dialogue with you, and  
15 one that also includes so many important partners  
16 including the Freelancers Union, Freelancers Union,  
17 the UFT, Make the Road New York and, of course,  
18 individual freelancers. DCA is proud to be the  
19 agency that leading the city's implementation of key  
20 labor laws enacted in recent years as the result of  
21 the joint leadership of the Mayor and Council Speaker  
22 Melissa Mark-Viverito. We are particularly pleased  
23 to report that in the approximately two years since  
24 we began enforcing New York City's Earned Sick Time  
25 Act or Paid Sick Leave Law, we have conducted or

2 participated in more than 1,000 events regarding paid  
3 sick leave, distributed more than two million  
4 brochures, and most importantly, we have closed more  
5 than 650 cases securing more than \$1.6 million in  
6 fines and restitution for nearly 9,500 New Yorkers.  
7 Additionally, through settlement agreements, DCA has  
8 ensured that thousands more are receiving the sick  
9 time to which they are entitled under the law. As of  
10 the end of 2015, we had secured 13 times the amount  
11 in restitution for New Yorkers as compared to San  
12 Francisco though we are only 10 times as large and 27  
13 times the amount of Seattle though we are only 13  
14 times as large. Considering that both of these  
15 jurisdictions enacted their paid sick leave laws well  
16 before we had, we take great pride in our success in  
17 ensuring that the rights of New Yorkers are being  
18 well protected, and that they have access to the time  
19 they need to take care of themselves and their loved  
20 ones. Our outreach, education and enforcement of  
21 both the Paid Sick Leave and Commuter Benefits Laws  
22 hopefully demonstrates our eager embrace of the  
23 expansion of our labor related authority, and we look  
24 forward to continued close collaboration with the  
25 Council to ensure that vulnerable workers in New York

2 City are afforded the protections to which they are  
3 entitled or should be entitled. We agree with the  
4 Council that freelance workers in New York City are  
5 our classic workers in need of protection, and it is  
6 on the basis of this agreement that we offer our  
7 testimony today.

8           There is little doubt that the  
9 marketplace for freelancers of all types can be a  
10 challenging one. Issues faced by freelancers include  
11 contracts negotiation, the settlement of contract  
12 disputes and most significantly the late or non-  
13 payment of fees. As a 2015 Report by the Freelancers  
14 Union has noted, of the more than 5,300 freelance  
15 workers they surveyed, 71% reported late or non-  
16 payment issues, and 50% reported being refused  
17 payment for services altogether. The reported  
18 average amount of lost payments annually amounted to  
19 nearly \$6,000, a sum that could significantly  
20 constrain a freelancer's ability to pay for rent and  
21 other living expenses in New York City, which I think  
22 as we all know, is a very expensive place to live.  
23 Freelancers who were paid late or not paid at all  
24 reported having to deplete their savings, take on  
25 credit card debt or in many cases simply forego their

2 own financial obligations to address issues stemming  
3 from lost income. We at DCA are particularly  
4 sensitive to the dangerous cycle of indebtedness that  
5 freelancers might find themselves in. Such  
6 indebtedness can negatively impact an individual's  
7 credit score, for example leading future lender--  
8 lenders or landlords to assess or to impose very high  
9 interest rates on loans, deny access to credit or  
10 even to housing. Through our Office of Financial  
11 Empowerment, which was the first municipal entity in  
12 the country to be focused on empowering lower income  
13 residents through financial counseling and by  
14 providing access to innovative tools to promote  
15 financial wellbeing, we have served tens of thousands  
16 of New Yorkers who need to reduce and consolidate  
17 their debt, improve the credit and obtain access to  
18 as many tax credits and refunds for which they might  
19 qualify. Ensuring the financial stability of New  
20 Yorkers is, therefore, not an ancillary bi-product of  
21 worker protection for our agency. But rather, it is  
22 fundamentally embedded into our mission. DCA seeks  
23 to work closely with the Council on crafting  
24 legislation that effectively and efficiently address  
25 relevant challenges faced by the freelancer

2 community. In addition to establishing a requirement  
3 in Local Law that a written contract must exist when  
4 a freelancer takes on work resulting in more than  
5 \$200 change, Intro 1017-A would require DCA to take  
6 complaints from freelancers regarding the non-payment  
7 of agreed upon fees, investigate such complaints, and  
8 would give us authority to resolve complaints through  
9 mediation or conciliation. The bill also gives DCA  
10 the authority to issue violations to hiring parties.  
11 These violations would ultimately be adjudicated by  
12 the Office of Administrative Trials and Hearings or  
13 OATH. The bill also contains provisions for civil  
14 and criminal penalties, provides for payment within  
15 30 days unless otherwise specified, and also enhances  
16 a freelancer's existing breach of contract action  
17 related to the non-payment of fees available through  
18 the state courts to include coverage of reasonable  
19 attorney's fees, double damages and injunctive  
20 relief. We are very supportive of the Council's  
21 enhancements to the existing breach of contract  
22 action, and we believe that such enhancements  
23 establish a key incentive for hiring parties to  
24 ensure that they are complying with any agreements  
25 they've entered into with freelancers. Such actors--

2 [coughs] excuse me--such enhancements might also  
3 incentivize the pursuit of larger cases against the  
4 most egregious actors, which is beneficial not only  
5 to individual freelancers, but also to the  
6 marketplace as such actors would in theory be  
7 prevented from conducting business or be--or would be  
8 deterred from future malfeasance. Considering the  
9 nature of the challenges faced by freelancers in the  
10 pursuit of owed fees, such as excessive time and  
11 money, DCA agrees with the Council that even the path  
12 for freelancers to capture owed fees is absolutely a  
13 laudable goal. We are committed to ensuring that we  
14 can find common ground with the Council on how best  
15 to achieve this shared goal in a way that ensures  
16 that any proposed process is both effective and  
17 efficient, and is fair to all parties. We believe  
18 that several aspects of this bill will aid in  
19 achieving its intended purpose. Specifically, the  
20 bill's provision for a default term that in the  
21 absence of express written terms stating otherwise,  
22 requires payment to be due within 30 days of  
23 completing work, will assist in the adjudication of  
24 breach of contract claims. The Council might also  
25 consider adding additional rebuttable presumptions

2 regarding any unwritten contracts between parties.

3 Additionally, the provision of an award of attorney's  
4 fees to a prevailing freelancer will shift the cost  
5 burden of bringing these claims in court away from  
6 the freelancer and incentivize the private bar to  
7 represented aggrieved freelancers.

8           While laudable in its intent and  
9 containing provisions that help level the playing  
10 field for freelancers, 1017-A does raise several  
11 questions and concerns for DCA, which we would now  
12 like to respectfully explore with you. First, DCA  
13 has concerns regarding the bill's expectation that we  
14 would be able to enforce written or verbal  
15 agreements. Next, the bill's requirement of a  
16 written contract in nearly all cases needs to be  
17 further explored as does the proposed duplication of  
18 the legal court process through an administrative  
19 tribunal process. Additionally, the expectation that  
20 DCA would be able to investigate and mediate disputes  
21 is one that we feel cannot likely be met. And  
22 finally, shifting the resource burden from the courts  
23 to the city will not in our view ultimately result in  
24 positive results for freelancers in most instances.  
25 Following a discussion of these concerns, we will

2 propose that the Council consider leveraging DCA's  
3 copious experience working with employers and  
4 employees of all types to provide appropriate  
5 guidance when needed, and by developing tangible  
6 usable tools that will enable both freelancers and  
7 hiring parties to enter into clear, fair and  
8 hopefully more equitable agreements. The first  
9 challenging element for us is the expectation  
10 inherent in the bill that the agency can or even  
11 should be in the position of assessing the veracity  
12 or validity of any contract claims of freelancers  
13 whether or there is a written agreement. We have  
14 concerns that the agency would be in the position of  
15 attempting to enforce the terms of a contract  
16 presented to us. Even when a written contract is  
17 present, there are likely to be factual disputes  
18 regarding multiple issues including whether, if any,  
19 services were rendered, the quality of any rendered  
20 services, and whether any rendered services were  
21 completed, and if so, when they were completed. the  
22 seemingly straightforward requirement that payment be  
23 rendered no later than 30 days after the completion  
24 quote "of the work" or the agreed upon date in the  
25 contract presents disputed issues of fact. Whether

2 or not work is quote, "complete" might be difficult  
3 to ascertain in some cases such as when a hiring  
4 party disputes that the work was satisfactory or in  
5 the case of a partial performance. Additionally, the  
6 near universal contract requirement in the bill  
7 assumes that having a written contract is always a  
8 protection for the freelancer. While we absolutely  
9 agree with the notion that in general written  
10 contracts are preferable to oral agreements in the  
11 context of legal claims brought by freelancers,  
12 depending on technical industry specific  
13 requirements, the capacity and knowledge of the  
14 freelancer, the nature of the work, and the broad  
15 range of workers this bill encompasses, we are not  
16 yet wholly convinced that a written contract is  
17 always beneficial to a freelancer. Although the bill  
18 does require that both the freelancer and the hiring  
19 party execute a written contract, the hiring party is  
20 ultimately liable for failing to do so. Accordingly,  
21 the onus for preparing such a written contract  
22 therefore falls on the hiring party. This is  
23 potentially problematic as freelancers are less  
24 likely to have a chance to control the terms of the  
25 contract because they are not the initial drafter.

2 Though the bill requires the contracts must be in  
3 quote "plain language" and in a language understood  
4 by both parties, such requirements would be extremely  
5 challenging to enforce by any entity including the  
6 courts. And English speaking freelancer isn't  
7 prohibited from signing a contract that isn't in  
8 plain English, and even if a contract is written in a  
9 language understood by both parties, assessing how  
10 quote "plain" it is would be a nearly impossible  
11 task. As we share the Council's beliefs that  
12 freelancers are typically more vulnerable as compared  
13 to hiring parties in contract negotiations, even  
14 these well intentioned requirements could be  
15 manipulated by hiring parties for their benefit.  
16 These concerns highlight for us some potential  
17 challenges requiring freelancers and hiring parties  
18 to enter into contracts by law. Again, we do  
19 recognize that in many instances having a written  
20 contract could potentially be beneficial to a  
21 freelancer, and we eager look--eagerly look forward  
22 to working with the Council and the Freelancers Union  
23 to explore this issue further. Of chief concern to  
24 us is the bill's duplication of the pre-existing  
25 ability freelancers have to bring actions against

2 hiring parties in Small Claims, Civil or State  
3 Supreme Courts. While DCA acknowledges that  
4 freelancers can face difficult challenges in bringing  
5 claims in court, including the burden of attorney's  
6 fees and the length of time it might require a court  
7 to hear and decide on a case, courts are the most  
8 appropriate forum in which to adjudicate these types  
9 of disputes as they not only have the force of law.  
10 But also the expertise in resolving commercial  
11 disputes such as contract claims the existing  
12 infrastructure for doing so including advanced  
13 discovery procedures and trained judges and  
14 settlement officers. The court system is also set up  
15 to be able to cultivate and leverage technical and  
16 legal expertise about differences in the nature of  
17 work for different industries, which the City is  
18 unfortunately not set up to do. In light of the fact  
19 intensive nature breach of contract claims, discovery  
20 procedures are particularly important as these cases  
21 will ultimately require hearing evidence and  
22 testimony about the offer, acceptance and performance  
23 of a contract. Duplicating this process within any  
24 city entity raises a host of legal and resource  
25 concerns particularly if DCA is required to both

2 adjudicate and enforce judgments against non-prevailing  
3 parties. As we would have no practical way to  
4 determine which claims or counterclaims are true or  
5 false without engaging in intensive fact finding and  
6 mitigation for which we are not equipped. No City  
7 entity would really be unable--would be able to make  
8 recommendations to a tribunal regarding if or how a  
9 hiring party might be in violation of the law.  
10 Establishing such a process does not unfortunately  
11 alleviate some of the complexity of the existing  
12 legal process, and could even result in further  
13 delays for freelancers. Based on the bill's  
14 provisions, DCA could attempt to achieve positive  
15 results for freelancers through mediation or  
16 conciliation if not adjudication. Unfortunately,  
17 while it might seem an attractive alternative to  
18 adjudication, mediation of disputes between  
19 freelancers and hiring parties is equally challenging  
20 for DCA. Irrespective of whether or not a written  
21 contract exists, it can be assumed that there is a  
22 dispute regarding the terms or nature of an agreement  
23 if a complaint is brought to DCA. Absent an  
24 independent ability to assess the veracity of any  
25 such claims, a DCA mediator would be unable to

2 establish a clear framework for the mediation  
3 process, and would where a contract might exist once  
4 again be in--and be in the position of being  
5 perceived as enforcing such a contract, which he or  
6 she would not be able to do as only the courts are in  
7 a position to make such determinations. The  
8 insertion of DCA into a freelancer's potential  
9 process of pursuing a claim against a hiring party is  
10 also likely to create an expectation among the  
11 freelancer community that DCA has the clear ability  
12 to assist aggrieved freelancers in securing owed  
13 fees. Because we are so deeply committed to ensuring  
14 that all vulnerable workers have access to recourse,  
15 and justice that is swift and effective, we are  
16 concerned that requiring a city agency to attempt  
17 adjudication or medication when the agency is not  
18 necessarily situated to even establish basic facts  
19 pertaining to a claim is unfortunately ultimately  
20 beneficial to freelancers. Lastly, the notion of  
21 shifting the resource burden from the courts to the  
22 city raises significant concerns. DCA's Paid Sick  
23 Leave and Commuter Benefits Division, which primarily  
24 investigates complaints received from the public, has  
25 17 staff members, including five attorneys and five

2 investigators, and was budgeted close to \$2 million  
3 in Fiscal Year 2016. Forcing the city to play a  
4 mediation role as well would increase the need for  
5 additional resources. An instructive example of  
6 DCA's current mediation process is our handling of  
7 complaints received against licensed home improvement  
8 contractors, which are--which is an industry that DCA  
9 licenses. Currently, DCA mediates such complaints  
10 before litigating unresolved cases. The mediation  
11 and litigation process crosses over two different  
12 divisions at DCA, the Consumer Services and Legal  
13 Divisions, involves a number of attorneys, mediators  
14 and administrative staff, and is successful in large  
15 part because home improvement contractors are, in  
16 fact, licensed by DCA. The total cost to the City  
17 for the mediation of these cases and staff time,  
18 resources and case processing is into the millions  
19 annually. Mediation is further facilitated by the  
20 fact that licensed home improvement contractors  
21 participate in the Home Improvement Trust Fund, which  
22 is required of them by law, which provides payment to  
23 aggrieved consumers when the contractor fails to  
24 provide damages. As such a fund isn't likely to be  
25 practical to create and manage in a way that captures

2 every single hiring party in the city, mediation is  
3 rendered all the more unlikely as a suitable function  
4 for DCA to fulfill. DCA and the Administration are  
5 deeply committed to achieving the Council's goal of  
6 ensuring that freelancers, who are suffering from  
7 late or non-payment of owed fees, have the ability to  
8 recuperate these fees as quickly and effectively as  
9 possible. And we would like to take this opportunity  
10 to respectfully offer to the Council some suggestions  
11 for how our shared goal of protecting freelancers  
12 might be realized. Building on the strength of the  
13 enhanced breach of contract action in Intro 1017-A as  
14 well as DCA's extensive history developing and  
15 disseminating useful tools for businesses and  
16 employees alike, we seek to work with the Council,  
17 the Freelancers Union and various industries to  
18 create an online hub for freelancers and hiring  
19 parties that would allow them to access contents,  
20 such as model contracts, plain language information  
21 about rights and responsibilities, an overview of the  
22 different areas of potential negotiations between  
23 freelancers and hiring parties as well as access to  
24 information about the legal process that already  
25 exists for resolving contract disputes. As I

2 mentioned earlier in my testimony, we have taken  
3 complex information about laws such as paid sick  
4 leave and commuter benefits and made it available not  
5 in pleading--plain language, but in as many as 26  
6 different languages. We've conducted hundreds legal  
7 and otherwise on both these laws as well and many  
8 others in our licensing and consumer protection laws.  
9 Under Mayor de Blasio's Administration, we have put  
10 our licensing checklists directly into the hands of  
11 business owners and operators, who can't--who now  
12 exactly what to inspect--expect--excuse--when our  
13 inspector walks into their business because they can  
14 now read the law translated for them into plain Eng--  
15 plain English or into one dozen other languages.  
16 Recognizing that different industries have different  
17 needs, we would work with freelancers and hiring  
18 parties in several different industries to understand  
19 what the primary areas of negotiation might be for  
20 such contracts. And we would work with all relevant  
21 stakeholders to ensure that this information is  
22 widely shared. Making these resources widely  
23 available would ensure that both freelancers and  
24 hiring parties in New York City have a way to  
25 understand legal and best practices guidelines, which

2 are the types of information so often perceived to be  
3 inaccessible. As our experience with implementing  
4 paid sick and commuter benefits has shown, there are  
5 many potential opportunities to strengthen worker  
6 protections while ensuring that a city agency's  
7 function is effective and efficient. And we look  
8 forward to working very closely with the Council, the  
9 Freelancers Union and all relevant stakeholders to  
10 explore as many options as possible with respect to  
11 expanding and implementing protections for freelancer  
12 workers. Thank you for the opportunity to testify  
13 today. My colleagues and I will be happy to answer  
14 any questions you might have.

15 CHAIRPERSON ESPINAL: Thank you, Amit.  
16 thank you for your testimony. I just want to start  
17 off by saying that DCA has done a stellar job either  
18 with expansion of the agency in covering paid sick  
19 leave, and most recently the Community Benefits Law.  
20 So thank you for all your hard work.

21 DEPUTY COMMISSIONER BAGGA: Thank you.

22 CHAIRPERSON ESPINAL: I'm going to--I  
23 have one questions that I'm going to throw you, and  
24 it's actually from Rory Lancman who was here with us  
25 earlier, but had to leave for some other meeting or

2 hearing. Why would DCA be less able to adjudicate a  
3 freelance claim than the New York City Human Rights  
4 Commission is to adjudicate an employment  
5 discrimination claim?

6 DEPUTY COMMISSIONER BAGGA: I would not  
7 be able to speak to the comparison between the Human  
8 Rights Commission and DCA's work--

9 CHAIRPERSON ESPINAL: [interposing] Uh-  
10 huh.

11 DEPUTY COMMISSIONER BAGGA: --  
12 unfortunately. We can, if it is helpful to you, draw  
13 a distinction between the adjudication of such a--a  
14 contract claim and the way that we enforce our paid  
15 sick leave law, and for that, I will turn it over to  
16 Nick Smithberg.

17 NICK SMITHBERG: Yeah, the--the principal  
18 distinction there would be that as opposed to the  
19 Paid Sick Leave Law under the freelancer context  
20 there's an independent claim. There's a contract  
21 claim that already exists. So it functions almost as  
22 a--as like a three-way dispute, if you will. When we  
23 enforce paid sick leave, it's all in the statute. So  
24 I--I think that there's an added complication that  
25 would be present here that wouldn't be present in the

2 paid sick leave context. And I--I guess I would also  
3 say that to some extent, what we've learned with paid  
4 sick leave informs us as to some of what the  
5 difficulties would be on these kind of fact-intensive  
6 cases that Amit was just testifying about. So a lot  
7 of work goes into resolving those cases that we know  
8 need to be done here as well.

9 CHAIRPERSON ESPINAL: Okay. Now, over  
10 the past year has DCA received any complaints or--or  
11 calls from freelancers or from clients regarding any  
12 issues, or has DCA jumped in any sort of fights (sic)  
13 over the past year.

14 DEPUTY COMMISSIONER BAGGA: Not to my  
15 knowledge.

16 CHAIRPERSON ESPINAL: No, okay, Brad, do  
17 you have any questions?

18 COUNCIL MEMBER LANDER: Yeah, thank you,  
19 Mr. Chairman. Thank you to all of you for your--for  
20 this extensive testimony and the time you spend in  
21 advance of the--the hearing for the broad support of  
22 working together to find ways to do something about  
23 theft of payment against freelancers. And we'll  
24 definitely take you up on the offer for the online  
25 hub, which I think is a--is a great start. So I--I

2 think all of that is good, and we're starting in a--  
3 in a strong place of shared goals. I guess I--I will  
4 drill down a little on the--the two places where it  
5 sounds like we have-- you have some disagreements  
6 with the bill. First with the Department of Cultural  
7 Affairs, and let me say I--I understand, and I think  
8 you did a good job of explaining the challenge DCA  
9 would have in mediating contract disputes. So  
10 obviously some percentage of the time what is, you  
11 know, there's--there is a contract between two  
12 parties. Yes, we want it written. We'll come back to  
13 that in a minute. You know, and there's a dispute  
14 about whether the work was performed. I think what  
15 we're hearing is an awful lot of the time there's no  
16 such dispute, there's simply non-payment. So we're  
17 trying to figure out a way obviously to enable--  
18 Well, let me ask a different question because I was--  
19 I was taking a look at the--at your work under paid  
20 sic enforcement. So there can you just maybe walk me  
21 through what happens if someone brings a complaint,  
22 and how you enforce the paid sick leave? I know  
23 you've had whole hearings on that. I don't want to  
24 go into it in-depth, but I just, you know, it--when

2 someone brings a complaint, you know, what does that  
3 mean and what do you do?

4           NICK SMITHBERG: Sure. It--it's  
5 typically is a complaint initiated enforcement regime  
6 and when we get a complaint we'll send out a notice  
7 of investigation, which alerts the employer to the  
8 fact that that complaint has been filed. We will  
9 collect documents and information both from the  
10 employer, the employee and sometimes third parties.  
11 One of our more successful enforcement strategies has  
12 been to in many, if not most cases expand out our  
13 investigations to include the--the entire company  
14 because typically if one worker is complaining about  
15 a paid sick leave issue, they're not--they're maybe  
16 not in compliance across the board. The next step in  
17 the process is a fairly intensive negotiation. We--  
18 we attempt to resolve all of our cases consensually  
19 before going to a hearing, and that can involve a  
20 very protracted back and forth process of getting  
21 additional information and having discussions with  
22 the parties, and ultimately agreeing to a consent  
23 order. So, you know, and--and these cases do involve  
24 obviously gathering the facts and hearing the sides  
25 from all interested parties.

2 COUNCIL MEMBER LANDER: So how many of  
3 your--what percent of cases have you been able to  
4 resolve through mediation.

5 NICK SMITHBERG: Well, I say the  
6 terminology here is--is important. We--with paid  
7 sick leave there's no independent cause of action.  
8 So, it's more a process of settling the cases without  
9 going to a hearing than it is brokering a deal  
10 between the complainant and the company, which, you  
11 know, as I alluded to also there's an added  
12 complication which is that we're--we're working on a  
13 global settlement in most of these cases for the  
14 entire company.

15 COUNCIL MEMBER LANDER: So is it true  
16 that your annual report says that you've successfully  
17 resolved 70% of closed cases through mediation.

18 NICK SMITHBERG: Yeah, it is. It's just  
19 a question of the terminology. You know, it's--it's--  
20 -it's without going through a hearing.

21 COUNCIL MEMBER LANDER: Okay. But so in  
22 70% of the cases where there's a complaint where you  
23 do something, you--you commence some kind of  
24 investigation. In most of the cases you are able to  
25

2 resolve it with the company agreeing to follow the  
3 law and grant people the sick days that they're due.

4 NICK SMITHBERG: That's correct.

5 COUNCIL MEMBER LANDER: Okay. So I would  
6 just submit I think there's a good likelihood that a  
7 very high percent of cases here would be the same  
8 that when an administrative agency reaches out and  
9 says your freelancer says you haven't paid, we don't  
10 know what percent. I'm not going to say to you today  
11 it will be 70%. But a very high percentage of them I  
12 think we could bring to pay without--I'm not saying  
13 some small percent wouldn't counterclaim contract  
14 violations and have to go to court. But, you know,  
15 if some large percent of them could agree to pay or  
16 mediate up front. I guess one question I have even  
17 before that, how many people don't respond--what  
18 percent of people don't respond at all? I'm guessing  
19 that quite a lot of people you give them a notice and  
20 they don't even bother responding at all.

21 NICK SMITHBERG: That--that is a problem  
22 for us. I--I don't have the percentage off hand, but  
23 it's--it's--it's a material number.

24 COUNCIL MEMBER LANDER: And I think we'll  
25 have to figure that out here as well. I can imagine

2 places where someone gets a note of violation, and  
3 you might let someone know that there was a  
4 violation, and you might not get a response at all.  
5 We'll have to figure out what to do. Maybe that--a  
6 court would take that as evidence that the law had  
7 violated, and a judge would order--would order the  
8 settlement based on the fact that there was no  
9 response. So it sounds like we--I mean I don't want  
10 to go too deep into this here. I think it will be  
11 useful for us to follow up afterwards and figure out,  
12 and I--I really appreciate your bring the work you've  
13 already done with home improvement contractors, with  
14 paid sick days. And, I think if we could sit down  
15 together and really try to dig in and figure out what  
16 kinds of violation notices, what kinds of  
17 administrative remedy and adjudi--adjudication can  
18 help do as much as we possibly can to enable  
19 freelancers to recover payment that they're due while  
20 leaving room for the challenge that you identified.  
21 But in--well, my guess is, you know, in relatively  
22 small number of cases there's going to be a serious  
23 contract dispute, which would ultimately have to get  
24 resolved in court if that's a dispute over a contract  
25 between two--two parties. But let's leave that. I

2 think we can come back to that. I guess I just--so  
3 the--the--my second--the second area where you  
4 articulated some concerns is about the written  
5 contract, and where that could be used to the  
6 detriment of a freelancer. And I mean it's easy to  
7 imagine because we all fail to read the fine print on  
8 our credit card contracts, but there are contracts  
9 where the drafting party can slip language in. On  
10 the flip side, I think it's almost never better to be  
11 totally unprotected. You heard the folks on the  
12 first panel talk about how--what they're left exposed  
13 to in the absence of a contract. So, can you give me  
14 a little--a little more detail on what--some examples  
15 of what you think people might slip into those  
16 contracts. Because the goal here is to--I mean the  
17 goal of the contract is to make sure both parties  
18 know what work is being contracted work. The goal of  
19 provisions like 30-day payment is then to make sure  
20 that there are in any and all cases basic protections  
21 for--for workers. So, I--I'm just curious if you  
22 have some thoughts about what the kinds of things  
23 would be trying to protect people from that might get  
24 snuck into the fine print of a contract?

2 DEPUTY COMMISSIONER BAGGA: Sure. So as  
3 we--as I mentioned in my testimony, I think in  
4 general terms we agree that a written contract is  
5 preferable to an oral one or--or any other type of  
6 contract. I think our concern with respect to how  
7 contracts would be manipulated has to do with a  
8 couple of different things. One is that as I think  
9 we can all agree, freelancers operate in many, many  
10 different types of industries. Depending on the  
11 nature of the industry, it is certainly possible and  
12 the nature of the work that payment terms of the  
13 definition of what it means for work to be completed,  
14 could mean very different things. And, those  
15 definitions could be manipulated to the advantage of  
16 the hiring party without the freelancer necessarily  
17 understanding what that means even if he or she  
18 thinks that they do. Additionally, we have concerns  
19 that in cases, for example, and I think the bill is  
20 very well-intentioned for--for example in its desire  
21 that it contemplates for--for contracts to be written  
22 in a language that both parties understand. That--  
23 that can present a challenge unto itself in that if a  
24 contract is written in a mutually intelligible  
25 language, but it is a complicated contract, that does

2 not necessarily mean that the freelancer is going to  
3 fully understand the terms. We want to ensure that  
4 whatever the final version of the bill is preserves  
5 the agency for the freelancer as opposed to placing  
6 the onus on the hiring party. And so, we seek to  
7 work very closely with you to determine and--and  
8 explore what type of additional requirements,  
9 contract requirements we might be able to contemplate  
10 and consider that would ultimately be more beneficial  
11 to the freelancers, and that--that is our goal.

12 COUNCIL MEMBER LANDER: Okay. I  
13 appreciate that and I appreciate the--the idea of a  
14 hub that would provide a lot of that information.  
15 I'll give one example of something that I've since  
16 heard from employers who hire freelances, non-profits  
17 in particular who may be getting public funding or  
18 foundation funding and even invoiced to show  
19 obviously. So a--a contract could provide that you  
20 have to submit an invoice for your work to get paid,  
21 and that even if you've done the work. Now, any  
22 freelancer in this room how many of you would be glad  
23 to submit an invoice to make sure you got paid. So  
24 obviously, they'll be glad to submit the invoice.  
25 That one seems like one that we would say okay to.

2 That's a reasonable contract provision. Now, there  
3 might be other things that we have to work together  
4 to find that would get snuck in that, you know. So I  
5 mean I think the--the value of doing that together  
6 is--is a good one I think working together to figure  
7 that out in a way that works would be good. Let me  
8 leave it there. I may have additional questions  
9 after Council Member Chin or--or the Chair has some  
10 questions.

11 CHAIRPERSON ESPINAL: Council Member  
12 Chin.

13 COUNCIL MEMBER CHIN: Thank you, Chair.  
14 Thank you for your testimony. Especially from  
15 hearing your testimony. I really think you guys are  
16 the best agency to really implement this law because  
17 of the success that you have made through the paid  
18 sick leave. You can help get the information out so  
19 the freelancers know how to protect themselves, how  
20 to do a contract and how to, you know, ask for  
21 payment, a place to file their complaint. I think  
22 this is really a great opportunity for your  
23 department to really help us shape the information--  
24 the implementation of this law, and to protect--you  
25 know, and protect thousands and thousands of

2 freelance workers, and make sure that they get paid.  
3 And you've heard from the earlier panel people really  
4 don't want to go to court to chase out--there are  
5 couple of thousand dollars that are here and there.  
6 But city agencies that they can go to, to get  
7 information and get support, and it's really the best  
8 way to do it. So please work with us. I mean if  
9 there are parts that you think that we can  
10 strengthen, work with us so that we can implement  
11 this law, and build upon the successes you have done  
12 with paid sick leave, with all the other efforts.  
13 Thank you.

14 DEPUTY COMMISSIONER BAGGA: But, if I  
15 may, I just--I just would like to say we are very  
16 committed to working very closely with the Council  
17 on--on--on this--on this bill, and we do very much  
18 believe that we have the opportunity to play a key  
19 role in providing information to freelancers and to  
20 hiring parties that really will empower them to  
21 ensure that they are entering into clearer, fairer  
22 and more equitable agreements. And that is a role  
23 that we eagerly look forward to playing.

24 CHAIRPERSON ESPINAL: Thank you, Margaret  
25 and Brad.

2 COUNCIL MEMBER LANDER: I guess just one  
3 more question about the--about costs. So I also  
4 appreciate that if you have to stand up a new unit  
5 that would cost money and obviously you spoke to the  
6 costs of sick days enforcement. Have you had a  
7 chance yet to do--and this is the first preliminary  
8 hearing--any estimates on what it would cost to--to  
9 stand up a unit that could implement the--this bill?

10 DEPUTY COMMISSIONER BAGGA: I  
11 unfortunately don't have a cost estimate for you at  
12 this time. I would point back to some of the issues  
13 that I raised in my testimony, which is that for the  
14 type of mediation that this bill contemplates that  
15 type of mediation already costs our agencies into the  
16 millions annually, and covers different divisions. I  
17 should also note that the court system is currently  
18 built to absorb many of these costs between the  
19 settlement officers, between trained judges, et  
20 cetera. And so we would certainly be shifting some  
21 of those costs to the city, which is a--a  
22 conversation we seek to have.

23 COUNCIL MEMBER LANDER: But you heard--  
24 you heard the couple of freelancers on the first  
25

2 panel talk about the barriers for them in going to  
3 court at all. So I think a lot of--

4 DEPUTY COMMISSIONER BAGGA: [interposing]  
5 Uh-huh.

6 COUNCIL MEMBER LANDER: --these things  
7 are going to-- And I guess I would just say, you  
8 know, the Paid Sick Days Division you said is costing  
9 about \$2 million a year. I appreciate that.  
10 Depending on how many complaints you got, this could  
11 cost even more than that. We don't have good numb--  
12 numbers for sure in a comprehensive way on payment  
13 theft, but if the Freelancers Union Survey is  
14 anywhere close, they found on average people being  
15 stiffed in about \$6,000 a year. There's over a  
16 million freelancers in New York City. So we have  
17 billions of dollars literally being stolen from New  
18 York City freelancers. So, if a couple of million--  
19 and look, we have to allocate it. You can't do it  
20 without getting it, but I would hope the Council  
21 could work with the Mayor, and if what's necessary to  
22 stop billions of dollars being cheated out of  
23 freelancers is for us to work together to allocate a  
24 few million for you to stand up a new unit, I hope  
25 we'll be able to work to find a way to do that.

2 DEPUTY COMMISSIONER BAGGA: Absolutely.  
3 I--I do think it's also worth noting that one very  
4 laudable provision in the bill that we are very much  
5 in support of is that the bill would provide that  
6 prevailing freelancers are awarded attorney's fees  
7 and double damages. And we do think that this will  
8 incentivize the private bar to take on probably the  
9 toughest cases. So that--that--we seek to have that  
10 provision be a part of the cost conversation.

11 COUNCIL MEMBER LANDER: Very good.

12 CHAIRPERSON ESPINAL: Thank you.

13 DEPUTY COMMISSIONER BAGGA: Thank you.

14 COUNCIL MEMBER LANDER: Thank you.

15 CHAIRPERSON ESPINAL: Thank you, Brad. A  
16 great point.

17 DEPUTY COMMISSIONER BAGGA: Thank you  
18 very much.

19 CHAIRPERSON ESPINAL: Thank you.

20 [background noise, pause] I'd like to call up the  
21 next panel. We have Sarah Horowitz from the  
22 Freelancers Union. We have Mary Rosario from 32BJ,  
23 Deborah Axt from Make the Road and Haeyoung Yoon from  
24 the National Employment Law Project. [background  
25 comments and noise, pause] Whenever you're ready,

2 just state your name before your testimony.

3 [background noise, pause]

4 SARAH HOROWOTIZ: [off mic] Good after--  
5 good afternoon, [on mic] and there we go. Good  
6 afternoon. Thank you so much, Chair Espinal, Brad  
7 Lander and other council members, and to the entire  
8 committee for the opportunity to speak here today in  
9 support of Freelance Isn't Free, Intro 1017. I am  
10 Sarah Horowitz, the founder and Executive Director of  
11 the Freelancers Union representing 300,000  
12 freelancers nationwide, 130,000 of whom live in New  
13 York City. There are 1.3 million independent workers  
14 in New York City representing a workforce as diverse  
15 as New York itself. Freelancers are service  
16 providers, micro business owners and contractors  
17 working as accountants, healthcare workers, writers  
18 and adjuncts. These workers offer valuable skills,  
19 efficiency and on-demand labor to large and small  
20 businesses. They're truly one of the most important  
21 backbones of New York City's economy. But too many  
22 freelancers aren't getting paid for the work they do.  
23 Over 70% of freelancers struggle to get paid, and the  
24 average unpaid freelancer loses nearly \$6,000 per  
25 year, as you've heard from freelancers here and from

2 the studies that we've done. And for our members,  
3 this represents 13% of their annual income. With  
4 such great income instability, it become hard to  
5 cover basic expenses like rent, health insurance, and  
6 quarterly tax payments. But loss of income doesn't  
7 just stop there. It stifles business growth, incurs  
8 debt and makes surviving in New York City nearly  
9 impossible. Finally, it violates a basic agreement  
10 we have in this country, which is work deserves pay.  
11 Today, you'll hear from independent workers in  
12 diverse industries battling the same problem for a  
13 variety of reasons. Our members in film and  
14 television tell us about the barriers to getting a  
15 contract in a field where contracts are the  
16 exception, not the rule. We hear from magazine  
17 writers and journalists who have to take on the role  
18 of debt correct--collector in a field where the 60,  
19 90, 120-day payment terms are the norm. We witness  
20 predatory practices from too many businesses that  
21 essentially run on free freelance labor, and face few  
22 repercussions. It's time we put an end to this  
23 together. The Freelance Isn't Free Act is the first  
24 bill in the nation that will help freelancers get  
25 paid what they're owed on time and in full. The

2 legislation will provide badly needed worker  
3 protections, and stronger business practices for  
4 companies who utilize freelance labor. By mandating  
5 written contracts we help both parties set clear  
6 expectations from the outset to mitigate future  
7 conflicts. Thirty-day payment terms ensure that  
8 workers aren't forced to borrow to cover the distance  
9 between the day the work is completed, and the day  
10 the check arrives. By formalizing and increasing  
11 penalties for non-payment, we dissuade unethical  
12 business practices. Instituting double damages, and  
13 attorney fees will make it more financially viable  
14 for freelancers to invest the time and money needed  
15 to take deadbeat clients to court. We believe that  
16 being able to offer freelancers the additional  
17 support of the Department of Consumer Affairs  
18 involvement in non-payment claims will prove  
19 invaluable. We're looking forward to working with  
20 Council Member Lander and the Department of Cultural  
21 Affairs to further define their role in implementing  
22 this legislation. The freelance workforce is not  
23 going anywhere. In fact, we are growing. As a hub  
24 for the freelance economy, New York City has the  
25 opportunity to be a leader in instituting

2 groundbreaking legislation to protect the working  
3 people of New York City. Thank you so much for your  
4 time and consideration, and I'd also like to thank  
5 our allies and all of the freelancers who have come  
6 here today to testify. [background noise, pause]

7 MARY ROSARIO: Mary Rosario, Member of  
8 32BJ. Um, good--good afternoon, Chairperson Espinal  
9 and members of the committee on the Consumers  
10 Affairs. Thank you for the opportunity to testify  
11 here today on behalf of Shirley Aldebol the Vice  
12 President of 32BJ SIEU. I'm here to testify in  
13 support of the Intro 1017, the Freelance Isn't Free  
14 Act. 32BJ represents over 145,000 men and women in  
15 11 states on the East Coast and the Washington D.C.  
16 We have over 70,000 members here in New York. Our  
17 members are the backbone of the property service  
18 industry. Building workers, security officers--and  
19 office, schools, theaters, stadiums, and window  
20 cleaners. Our members are not freelancers, but we  
21 are--we stand in solidarity with the diverse--diverse  
22 range of men and women who earn their living through  
23 freelance work. Regardless of whether you are  
24 considered an employee or a freelancer, the truth is  
25 that if you are someone who works for a living, you

2 are really counting on getting that paycheck. Wage  
3 theft is an issue with which we are all too familiar.  
4 For example, we continue to fight to ensure that  
5 workers at non--building--in non-union buildings are  
6 receiving 421(a) a subsidized pay the wage--pay the  
7 wage they are due. We have seen the real life  
8 consequence of workers being able to hold their  
9 employers accountable to pay what--pay them what they  
10 are owed. We understand the non-payment to  
11 freelancers is a major and persay--pervasive problem  
12 in that the vast majority of freelance workers face  
13 non-payment or late payments during their career. I  
14 am here representing our members to say that working  
15 people must stand up together for the prop--  
16 proposition that our labor is not free. Even if a  
17 worker is not considered an employee, they should be  
18 protected against wage theft. By passing this--by  
19 passing this needed leg--legislation, the Council  
20 will provide freelance workers with right to a  
21 written contract, stronger remedies to pursue clients  
22 who violate the agreement and the ability to pursue  
23 their claims through the Department of Cultural  
24 Affairs, or by filing an action in court. These are  
25 important rights and avenues for relief that have

2 been unavailable for freelance workers for too long.  
3 We encourage the passage of this important  
4 legislation and thank you.

5 DEBORAH AXT: Good afternoon. Thank you  
6 so much Chairperson Espinal, and members of the  
7 committee. My name is Deborah Axt. I'm the Co-  
8 Executive Director of Make the Road new York, a  
9 membership organization of about 19,000 low-income  
10 folks and folks of color in New York City and Long  
11 Island. I'm really happy to be able to speak here  
12 today to support the Freelance Isn't Free Act. Make  
13 the Road New York has worked since the mid-1990s to  
14 tackle this scourge of wage theft through worker  
15 organizing, small business organizing, litigation,  
16 partnership with government agencies and policy  
17 design. Our Legal Department of 50 attorneys and  
18 advocates have developed a deep expertise in wage an  
19 hour law, with a specialization in low wage and  
20 immigrant work places. This is legislation designed  
21 to tackle wage theft. In general, our analysis is  
22 that wage theft is rampant in many sectors in New  
23 York City and beyond, and that eradicating wage theft  
24 requires the following key things: First an increase  
25 in the likelihood that employers who steal worker's

2 wages will be caught in that practice. This requires  
3 excellent worker education and outreach, the real  
4 use of pay stubs, and notices that make clear what  
5 payment workers can expect or in this case, written  
6 contracts that make clear what workers can expect,  
7 and robust, and well publicized retaliation  
8 protections that encourage workers to blow the  
9 whistle on wage theft whether they're independent  
10 contractors, freelancers or W-2 employees. The  
11 second big piece of tackling and eradicating wage  
12 theft is that we need meaningful penalties for  
13 employers who are caught stealing wages. High enough  
14 to make stealing wages or delaying payment  
15 unconscionably a risky business model finally.  
16 Currently, there's a perverse incentive in place  
17 because it is often less expensive to steal workers'  
18 wages and run the minor risk of being caught. And  
19 the low penalties and difficulty in collecting wages  
20 means that even if an employer does get caught, they  
21 often wriggle out from under the force of the law,  
22 and end up paying back less in the back wages or the  
23 unpaid freelancer contract than it would have cost  
24 them to pay properly in the first place. One of the  
25 key dynamics of that is currently undermining the

2 ability of working families to count on actually  
3 receiving pay for work they have completed is that  
4 freelancers and independent contractors lack even the  
5 basic and somewhat pathetic protections that the law  
6 already requires for workers who are categorized as  
7 employees, and receive a W-2 for their work. The  
8 legislation under consideration today is designed  
9 just to close that massive loophole. There are  
10 currently approximately 1.3 million independent  
11 workers in New York City. And independent workers  
12 often thought of as simply creative workers are  
13 actually an extremely diverse group including members  
14 of Make the Road New York extending across a wide  
15 range of industries, income levels and backgrounds  
16 ranging from software developers to healthcare  
17 workers to accountants and IT folks and small  
18 business owners themselves. Seventy-one percent of  
19 independent workers face non-payment or late payment  
20 through--during their career, and on average unpaid  
21 freelancers are cheated out of \$6,000 in annual  
22 income due to wage theft. Both federal and state  
23 laws protect traditional employees, and it is Make  
24 the Road New York's stance that there is no  
25 difference between an employee getting a W-2, and

2 independent contractor of a freelance worker. We  
3 cannot allow the law's giant loopholes to create  
4 perverse incentives for employers to mis-categorize  
5 employees only to avoid the payment protections that  
6 W-2 employees do have. The legislation the--before  
7 us will help to address the two key priorities that I  
8 articulated above in a few ways. First, by mandating  
9 that clients working with freelancers use a written  
10 contract where requiring transparency and making it  
11 possible for freelancers to speak up if their rights  
12 to be paid in a timely manner are violated. In our  
13 experience the requirement that employees receive a  
14 pre-hire notice of their wages as well as pay stubs  
15 also helps employers by creating a record of the pay  
16 agreement and surfacing any concerns or disputes  
17 before they escalate to become a longer term problem.  
18 It only makes sense to have a comparable requirement  
19 covering freelancers. Second, this legislation  
20 basically closes the loophole that leaves independent  
21 workers and freelancers uncovered by the normal  
22 protections against wage theft, giving them an  
23 ability to file a claim with the Department of  
24 Cultural Affairs or go--or go to court and pursue the  
25 double damages and attorney's fees that are available

2 to traditional workers. This like all anti-wage  
3 theft retal--legislation will be of benefit to  
4 responsible employers who simply cannot afford to  
5 compete when wage thieving competitors are gaining an  
6 advantage through their wage theft. And as our  
7 economy changes we simply cannot continue to allow  
8 worker protections to vary based on whether a working  
9 person and a working family is categorized as W-2 or  
10 1099 or a freelance or other sort of technical  
11 categorizations that create a perverse shift--I'm  
12 sorry. A perverse split in the protection that  
13 workers are--are provided with. Thank you so much,  
14 and we look forward to working together on this  
15 legislation.

16           HAEYOUNG YOON: Good afternoon. Thank  
17 you to Chair Espinal and Council Member Lander and  
18 the members of the Consumer Affairs Committee for the  
19 opportunity to provide testimony today in support of  
20 Intro 1017-A. My name is Haeyoung Yoon. I'm  
21 Director of Strategic Partnership at the National  
22 Employment Law Project. The National Employment Law  
23 Project is a non-profit research and advocacy  
24 organization specializing in employment policy. From  
25 our main officer here in New York City and throughout

2 the country we promote and shape employment policies  
3 for a wide range of labor market issues at the local,  
4 state and national levels through empirical research,  
5 legal and policy advocacy and in partnership with  
6 lawmakers and community allies. Across the country  
7 our staff are recognized as policy experts in areas  
8 such as unemployment insurance, the minimum wage, and  
9 as is relevant in today's hearing, the rights of  
10 contracted workers and wage enforcement. NELP has  
11 been a leader in raising and enforcing labor  
12 standards for low wage labor markets. Through our  
13 work, we have seen how strong legal protections for  
14 workers combined with robust and strategic  
15 enforcement can go a long way towards ensuring that  
16 workers get paid what they're owed while  
17 simultaneously promoting greater compliance through  
18 the affected industries returning millions of tax  
19 dollars to state coffers, and bolstering the local  
20 and state economy. Approximately 42% of workers in  
21 the United States earn under \$15 per hour, and as the  
22 real value of wages generally continue to decline and  
23 income inequality worsens, ensuring that our nation's  
24 workers are compensated with fair wages and on a  
25 timely basis must be a priority. Pay violations also

2 commonly known as wage theft are widespread across  
3 the country and span industries costing workers and  
4 local economies billions of dollars each year. A  
5 national study by NELP and other academic partners,  
6 who are actually here today testifying, surveyed over  
7 4,000 workers in New York, Chicago and Los Angeles,  
8 and found that 26% were paid less than the required  
9 minimum wage in the previous work week. And nearly  
10 two-thirds that experienced at least one pay  
11 violation in previous week such as failure to pay  
12 overtime, not being paid for all hours worked and  
13 stolen tips. In New York City, 21% of sur--surveyed  
14 workers suffered from minimum wage violations in the  
15 previous work week, and more than [pause] half  
16 experienced at least one pay violation in the  
17 previous work week. The report estimates that  
18 workers surveyed in New York City lost an average of  
19 15% or \$3,016 of their annual wages due to pay  
20 violations. Dozens of other studies have similarly  
21 uncovered severe pay violations in our economy.  
22 Freelancers Union survey of over 5,000 workers in  
23 2015 found alarming high rates of late payment or  
24 non-payment across all industries and types of work  
25 in the independent workforce. Seventy-one percent of

2 surveyed workers reported that they had trouble  
3 getting paid at some point in their career and of  
4 those who trouble getting paid in 2014, 81% were paid  
5 late, and 34% were not paid at all for some portion  
6 of their work. The study estimated--estimated that  
7 workers surveyed, on average were cheated out of 13%  
8 or \$5,668 of their annual income due to non-payment  
9 of their wages. In short, wage theft has become an  
10 epidemic both nationally and in New York City. Intro  
11 1017-A referred as Freelance Isn't Free is a  
12 necessary and good policy to combat severe pay  
13 violations in the independent workforce. More  
14 workers in our economy, both employees and those  
15 illegally misclassified as independent contractors  
16 enjoy the protections of federal and state wage an  
17 hour laws and can pursue pay violations by filing a  
18 complaint with a federal or state public enforcement  
19 agency like the Department of Labor, or by filing a  
20 private lawsuit in court. Even though there are many  
21 factors that make it extremely challenging for them  
22 to come forward to enforce their rights and collect  
23 wages. But, for those who are legitimately working  
24 as independent contractors running their own  
25 businesses, they're excluded from federal and state

2 fair pay laws, making it more difficult for them to  
3 pursue late payment or non-payment of wages. A  
4 national survey of freelance workers found that when  
5 business failed to pay, 92% of surveyed workers made  
6 repeated phone calls, tried to get--collect--try to  
7 collect their unpaid wages, and only 5% pursued it by  
8 going to Small Claims Court. Intro 1017-A creates an  
9 enforcement scheme that allows freelance workers to  
10 file a complaint with the City's Department of  
11 Cultural Affairs or pursue a lawsuit under the  
12 proposed bill in court to recover owed wages, double  
13 damages, and reasonable attorney's fees. The  
14 inclusion of both public and private tools in the  
15 enforcement scheme is important because wage theft is  
16 severe and pervasive, and government agencies with  
17 limited public resources cannot tackle enforcement  
18 alone. Additionally, public enforcement--public  
19 agencies funding and priorities for enforcement  
20 change over time, and giving workers access to courts  
21 ensure they have a way to protect their rights.  
22 Intro 1017-A would also importantly provide anti-  
23 retaliation protection, a protection crucial for  
24 effective wage enforcement. Freelancers need strong  
25 protection so they are not vulnerable to harassment

2 or retaliation when they report a violation. This is  
3 especially important because enforcement relies  
4 heavily on workers coming forward and filing  
5 complaints. Retaliation is too common. A survey of  
6 low wage workers in New York City found that 42% of  
7 workers who complain to their employer about their  
8 wages or working conditions experience retaliation,  
9 and 23% of workers never made a complaint because  
10 they fear retaliation or thought it would not make a  
11 difference. Under the proposed bill, retaliating  
12 companies should be subject to strong penalties,  
13 which is key in deterring violations. Combating pay  
14 violations in the freelance workforce will benefit  
15 workers, and law abiding businesses, and will provide  
16 a boost to the local economy. When business cheat  
17 workers out of their pay, workers are forced to  
18 borrow money and increase their debt to pay bills and  
19 cover living expenses. Law abiding business often  
20 cannot compete with firms that illegally depress  
21 labor costs. In addition to benefitting workers and  
22 law abiding businesses, when workers are able to take  
23 home, take home their pay on time, they're able to  
24 spend money as consumer contributing to the growth of  
25 the local economy. Intro 1017-A currently provides

2 that it takes effect one year after it become law.  
3 Indeed, the city and relevant agencies will need time  
4 to hire and train relevant staff, develop outreach  
5 and education materials, and create new processes and  
6 systems to ensure effective implementation and  
7 enforcement of the law. However, one year is unduly  
8 long for freelance workers to wait to enforce their  
9 newly won rights. We urge the committee to adopt a  
10 shorter time period such 180 days for the bill to  
11 take effect once it becomes law. Thank you for this  
12 opportunity to testify today, and I'll be happy to  
13 answer any questions that you may have.

14 CHAIRPERSON ESPINAL: Thank you so much.  
15 I just have one question. In your experience  
16 representing these workers, how often are written  
17 contracts used in the cases you've seen.

18 HAEYOUNG YOON: [pause] I mean I can say  
19 certainly when--when folks are members and with those  
20 memberships it is extremely rare to have actual  
21 written contracts in place.

22 CHAIRPERSON ESPINAL: Okay.

23 SARAH HOROWITZ: I would agree and I  
24 would just underscore what the first panel said,  
25 which is for so many people if they even request a

2 contract, they're passed over, and I think that  
3 people are so frightened, it really says something on  
4 all of New York City in 2016.

5 CHAIRPERSON ESPINAL: Okay. Now, Yoon,  
6 my--my next question is how frequently does non--does  
7 non-payment because just because the client is just  
8 unwilling to pay or is it--or more often than not do  
9 you see that maybe the client just isn't able to pay?  
10 Like what's--what's usually the case.

11 HAEYOUNG YOON: So in our experience of  
12 doing work in low wage labor markets, unfortunately  
13 wage theft has been the one, right? So I mean I  
14 think that studies after studies have shown that wage  
15 theft and pay violations are--it's the norm. It's  
16 rampant. It's an epidemic, and so I think trying to--  
17 -having protections to ensure that workers are paid  
18 on a timely basis is going to be critical.

19 SARAH HOROWITZ: I would say also that  
20 employers make a calculation about who to pay when  
21 and, you know, I--I often give this example: If  
22 you're an employer, as many people are here, and you  
23 have an employee that has the flu, and isn't feeling  
24 well and is kind of making it through the day, you  
25 don't say I'm going to pay you half for half the day

2 because you didn't really do a good job. And for  
3 freelancers, that's often the case that if you have a  
4 job that you believe completes the task, it's as if  
5 the employer has the unilateral right to decide, and  
6 without any kind of protection that's, in fact true.  
7 And they think that what we're looking for is just  
8 fairness to be able to level the playing field to  
9 have the conversation about that work. So I think  
10 that's really it, and I think in the Recession we  
11 really saw that it was related to cash flow, and  
12 decisions about who to pay when, and when you  
13 freelance it's easy not to--to pay you.

14 DEBORAH AXT: Yeah, I would add from  
15 putting on my hat as an Executive Director of a not  
16 for profit, I mean from the employer's perspective I  
17 think we're good guy employers perspective I think  
18 we're good guy employers. Like we just put it in a  
19 different category of expenses. So I think it's  
20 actually important that we just remind by force,  
21 right, good guy employers that that these are not  
22 just expenses that can be delayed over time. These  
23 are actually the equivalent of workers' salaries, and  
24 so just make sure that it gets in that column,

2 instead of the column of can pay whenever for the  
3 good guy employers.

4 CHAIRPERSON ESPINAL: Okay, thank you.  
5 Brad, do you have a question?

6 COUNCIL MEMBER LANDER: Well, I think  
7 that point is--is a--is a really good one. I think  
8 too often companies have this in the category of like  
9 buying supplies. You know, I've got to pay Staples  
10 for the water, and that's where your freelances go as  
11 opposed to in the category of labor, and I really  
12 think I just want to give credit to this panel for  
13 helping us, you know, think that, you know, all the  
14 work that people are doing whether they're getting a  
15 W-2 or getting a 1099 that work has got to be  
16 recognized, and it has to be--it has to be paid for.  
17 So, I wonder if any of you want to respond to just  
18 the--the two issues where the Department of Cultural  
19 Affairs well, again, broadly agreeing we need to move  
20 forward with this legislation raised concerns of the  
21 contract question in particular. And I think  
22 especially now from Make the Road might be able to be  
23 helpful here. On the one hand, it makes sense to me  
24 that there are employers who would sneak bad language  
25 into contracts. On the other hand, I'm pretty sure we

2 need to have written contracts to protect people. So  
3 I wonder if you have any insights there. And then  
4 again to this issue of administrative enforcement. I  
5 know you've both done a lot of work with the State  
6 Department of Labor, you know, which has ups and  
7 downs versus going to court, if you can go to court.  
8 But my sense is valuable as an administrative and  
9 front door. So I just wonder if you can give some  
10 perspective on that.

11           HAEYOUNG YOON: So, first I want to say  
12 that NELP would love to work with both City Council  
13 and the Department of Cultural Affairs to work  
14 through these--both issues. So our experience one,  
15 on the contract. So we've given a lot of thought of  
16 this at both at the federal and the state level  
17 because in low wage labor markets I often call them  
18 the paperless jobs. There's few documents that are  
19 given--exchanged between workers and employers, and  
20 we've worked in--in collaboration with Make the Road  
21 and supported the efforts at the State level and we  
22 do support across the country. What our experience  
23 shows that--that it would be--understanding the--the  
24 challenges that the previous panel presented in terms  
25 of the--there may be certain things that gets

2 included in the contract that is maybe now people are  
3 not seeing is that DCA creates a form. The  
4 Department of Labor at the New York State has done a-  
5 -a form for wage statements and annual. So create a  
6 template that could be used by businesses in the city  
7 I think is one way to address it, and create a  
8 template that is very straightforward. And I think  
9 we can all figure out what those components could be.  
10 So that's one suggestion, and I think that in New  
11 York State the wage statement has worked really well.  
12 We even at NELP use that form to distribute to our  
13 employees every like annually. And in terms of the  
14 administrative enforcement, again I completely  
15 understand the challenge in terms of the feeling of  
16 trying to mediate between two parties, but from our  
17 perspective late payment or no payment for a  
18 freelance is not that much different than trying to  
19 enforce and investigate a minimum wage violation,  
20 right? There are certain obligations imposed on the  
21 employers in this country at the federal and state  
22 level, and in some places now across the country  
23 where the local minimum wage has been passed, certain  
24 records that needs to be maintained. That's a basis  
25 on which to pursue investigation, and I think the

2 Department of Labor both here in New York State and  
3 across the country at the federal level talking to  
4 workers that it doesn't have be he says or she says  
5 approach. I think there's a way to think through how  
6 do you train your staff to investigate these  
7 violations, and reach conclusion in a timely manner.  
8 Again, so we're happy to work with the agency and the  
9 City Council to work through this process, but I do  
10 think that there's a way to achieve this process in a  
11 timely way.

12 DEBORAH AXT: Yeah, I--I would absolutely  
13 agree about the form contract idea. I don't think  
14 this is a situation where we need to have businesses,  
15 you know, throwing in the full array of language that  
16 you might find in a more complex contract dispute.  
17 It's just not necessary for this kind of scenario,  
18 and so having a form contract would certainly make  
19 DCA's life easier. And I think the fact that DCA has  
20 articulated the concerns that they did, demonstrates  
21 that they are, in fact, the right agency for--to--to  
22 enforce this. I think they have a really thoughtful  
23 enforcement effort in place. They certainly are  
24 just, you know, coming off of the--the tail end of  
25 ramping up paid sick days enforcement. It is

2 certainly true that they and all of our wage theft  
3 enforcement agencies are drastically under-resources.  
4 So I would, of course, urge the Council to help make  
5 sure that they do get the support that they need to  
6 make this real, and we're also happy to--to think  
7 through the--the logistics.

8 SARAH HOROWITZ: You know, I--I would  
9 just add that I completely agree and really am  
10 pleased that we have so much help and eagerness to  
11 work with DCA and really figuring this out. I think  
12 one of the most important things is that the contract  
13 is contract is almost like the--the foundation upon  
14 which everything is built because if they're isn't a  
15 contract it's hard to get the double damages. It's  
16 hard to get an attorney who wants to take on the  
17 case. So I really do think that that is really  
18 critical, and really agree that we have to be  
19 thinking about workers across the economic spectrum  
20 and making sure that we have avenues that really are  
21 going to be the easiest for whichever worker is  
22 having the--the problem at the time.

23 CHAIRPERSON ESPINAL: [pause] Thank you  
24 so much.

25 SARAH HOROWITZ: Thank you.

2 HAEYOUNG YOON: Thank you.

3 [background comments]

4 CHAIRPERSON ESPINAL: We have about 20  
5 other--about 30 other individuals who are going to  
6 testify on the bill, but for the sake of time, we're  
7 going to put the clock at two minutes only because  
8 we're being pushed out of the chambers around 4  
9 o'clock, 3:30--3:30. So it's more like an eviction  
10 to being pushed out I guess. [laughter]

11 COUNCIL MEMBER LANDER: And I'll  
12 voluntarily limit my questions of the future  
13 testimony.

14 CHAIRPERSON ESPINAL: [laughs] So the  
15 next panel we have Andrew Rasiej, Adrianna Scotti,  
16 David Levine and Jeff Wall. Is the clock set?  
17 [background comments, pause] When you're ready, just  
18 state your name.

19 ANDREW RASIEJ: Sure. Andrew Rasiej,  
20 Chairman of New York Tech Meetup.

21 CHAIRPERSON ESPINAL: And you can go--go  
22 right ahead.

23 ANDREW RASIEJ: Thank you, Chair Espinal  
24 and the Consumer Affairs Committee for the  
25 opportunity to speak today in support of the

2 Freelance Isn't Free Act. My name is Andrew Rasiej,  
3 and I am testifying today in my capacity as Chairman  
4 of the New York Tech Meetup, a community of almost  
5 50,000 web developers, software engineers and start-  
6 up entrepreneurs and professionals from the New York-  
7 -from New York's core industries who are building  
8 careers in the 21st Century. Technology can no  
9 longer be classified as an industry sector. Every  
10 major industry in New York is rushing to convert  
11 itself into a digital enterprise in order to  
12 successfully compete in the hyper-connected new  
13 global economy. To make this conversion possible,  
14 New York will need to be--need to rely heavily on  
15 freelance professional workers. Freelances allow  
16 startups to stay--and established firms to accelerate  
17 their conversion to digital enterprises by  
18 incorporating professional and technically skilled  
19 labor into their operations faster than the  
20 traditional methods of hiring full-time employees.  
21 Freelancers account for between 10 to 25% of the IT  
22 workforce of any given tech company, and up to 50%  
23 for smaller new tech businesses getting off the  
24 ground. They are also becoming an important resource  
25 for non-tech businesses who need technology trained

2 professionals to help them retool their products,  
3 services and distribution to compete in the  
4 marketplace, much of which is becoming digital  
5 itself. In order to succeed, startups and other  
6 firms, tech and non-tech related must attract top  
7 talent and, therefore, so does the City. To remain  
8 competitive in the technological internet--in  
9 technological innovation in business, the City of New  
10 York must grow and cultivate its pool of computer  
11 science, engineering and entrepreneurial talent, and  
12 that means protecting the rights of its independent  
13 workers. The Freelance Isn't Free Act isn't a needed  
14 first step for the City to support a skilled  
15 professional workforce in the 21st Century. This  
16 bill and its legislation will ensure that their work  
17 is paid on time and in full. The Freelance Isn't  
18 Free Act strengthens freelance work by demanding  
19 written contracts and providing better remedies for  
20 freelancers having payment issues. I guess that bell  
21 means my two minutes is up.

22 CHAIRPERSON ESPINAL: You can--you can  
23 wrap it up.

24 ANDREW RASIEJ: [coughs] So this is an  
25 opportunity for New York City to take the lead in

2 embracing the freelance economy because New York is  
3 the hub for emerging tech companies. This  
4 legislation will likely cause a ripple effect, which  
5 is beyond the bounds of the city's five boroughs.  
6 Thank you very much.

7 CHAIRPERSON ESPINAL: Thank you.

8 ANDREW RASIEJ: I hope that New York can  
9 comply with that. (sic)

10 CHAIRPERSON ESPINAL: Yeah, just--just  
11 so--just so you know, your--your testimony will--will  
12 be submitted into our record.

13 ANDREW RASIEJ: [off mic] Yes. Thank  
14 you. I'm not worried. Thank you.

15 CHAIRPERSON ESPINAL: I appreciate that.  
16 Thank you.

17 ADRIANA SCOTTI: Okay. Good afternoon  
18 Chair Espinal and members of the Council's Committee  
19 on Consumer Affairs and guests. Council Member Brad  
20 Lander, of course. Adriana Scotti, and I serve as  
21 the Vice President for Economic Development at the  
22 Brooklyn Chamber of Commerce. I'm delivery testimony  
23 on behalf Carlos Scissura, our President and CEO.  
24 The Brooklyn Chamber is a membership based business  
25 assistance organization, which represents the

2 interest of over 2,100 members across the borough,  
3 and works to address the needs of Brooklyn's  
4 neighborhood through the direct business services.

5 We thank the Committee on Consumer Affairs for  
6 convening this hearing and in particular Council  
7 Member Brad Lander for your efforts in seeking to  
8 protect the city's dynamic workforce and put in place  
9 [coughing] regulations to protect our independent  
10 workforce. The Brooklyn Chamber through its  
11 advocacy, economic development and promotional  
12 efforts works closely with freelancers, independent  
13 workers in all of Brooklyn's industry sectors. I'm  
14 very pleased to be able to speak here today to support  
15 the Freelance Isn't Free Act. As we know, 1.3  
16 million independent workers call New York City home  
17 and these independent workers are often thought as  
18 creatives are actually an extremely diverse group  
19 extending across a wide range of industries, income  
20 levels and backgrounds. We're aware of this  
21 diversity because many of them have joined the  
22 Chamber under a freelancer membership level. We  
23 believe the on-demand and/or project based workforce  
24 is the future of work as many New Yorkers strive to  
25 build their own entrepreneurial endeavors, and apply

2 their skills across--within disciplines. As we  
3 continue to transition into a more independent  
4 workforce, there needs to be adequate regulatory  
5 structures to define and protect both the independent  
6 worker and their clients. Non-payment is a rampant  
7 issue in New York City, and we found one study out of  
8 Rutgers University that stated that it's a problem  
9 for New Yorkers who lost approximately \$4.7 billion  
10 to client non-payments. Federal and state laws  
11 currently in place protect traditional employees from  
12 this issue, and comparable laws needs to be  
13 instituted for independent workers. The mandate is  
14 that clients work with freelancers and use a written  
15 contract would increase transparency in the  
16 transactions and help mitigate the chance of future  
17 conflicts. As such, we support the Freelancers  
18 Union, Freelancers and Free Campaign, and the  
19 proposed legislation establishing protections for  
20 freelancers in New York City. The long--I'll wrap  
21 up. The long-term effects of this will be a more  
22 productive and sustainable business environment in  
23 New York City. Thank you again to the commit to the  
24 Committee Chair Espinal for facilitating today's  
25 hearing.

2                   DAVID LEVINE: Great. Well done. Good  
3 afternoon. My name is David Levine, and I'm the CEO  
4 and Co-Founder of the American Sustainable Business  
5 Council, and we're a growing network of business  
6 organizations and companies, and now represent over a  
7 quarter of a million businesses across sectors, many  
8 of whom are here in New York City. And we believe  
9 that's it the time to sort of create an economy that  
10 is both just, that provides for both social, economic  
11 and environmental benefits. So I'm here today to  
12 testify in support of why Freelance Isn't Free Act  
13 makes good business sense. Businesses are  
14 increasingly relying on--on freelance labor, which  
15 we've heard multiple times today, which enables them  
16 to be more efficient, effective and profitable. So  
17 there are 26 million small businesses in the United  
18 States and many of them are self-employed. The self-  
19 employment market, you know, the trend is--is just  
20 growing tremendously with 50% of our workforce will  
21 be, or have been self-employed. So research on the  
22 independent workforce is also showing its young  
23 millennials and those over 55 that are--that are a  
24 major part of this market, and we need to pay  
25 attention to those sectors. As the freelance economy

2 grows, you know, we must take steps to ensure that  
3 this works for both freelancers and for businesses.  
4 So from our perspective, the bill works in a number  
5 of ways, you know, for business and provides those  
6 benefits. By mandating the written contracts between  
7 the New York City businesses and the freelancers we  
8 protect both of their interests. A written contract  
9 ensures that the terms of the agreement are clearly  
10 laid out in--including itemizations of services,  
11 goods, payment amount and payment due date, clarity  
12 and transparency and key. Businesses who pay the  
13 independent workers on time will not be penalized by  
14 this legislation, and the bill doesn't interfere at  
15 all with businesses entering freely into these  
16 contracts with independent contractors. The bill  
17 will also increase trust among independent  
18 contractors, and employees leading to a more positive  
19 business environment. So from our perspective, you  
20 know, driving on transparency, a clear and level  
21 playing field for all businesses and freelancers is  
22 key. Working together we can create the economy of  
23 tomorrow today, an economy which protects  
24 freelancers, but also spurs innovation and business

2 growth, and creates more opportunity for a more just  
3 and sustainable economy. Thank you.

4 [background noise, pause]

5 JEFF WALD: Thank you to Chair Espinal  
6 and to the members of the Consumer Affairs Committee  
7 for the opportunity to provide testimony today in  
8 support of the Freelance Isn't Free Act. My name is  
9 Jeff Wald, and I'm the Founder and President of Work  
10 Market. We're an Enterprise software platform that  
11 connects thousands of businesses with a marketplace  
12 that includes tens of thousands of New York City  
13 freelancers, contractors and consultants. I'm very  
14 pleased to be able to speak here today. Since I  
15 founded Work Market in 2010, we've seen incredible  
16 growth, and that is partly due to the meteoric rise  
17 of the freelance economy. This is one of the biggest  
18 workforce revolutions in decades, and it's time that  
19 the labor laws and regulations caught up with that.  
20 The Freelance Isn't Free Act would simply formalize  
21 the payment practices that we already employ on the  
22 Work Market platform to ensure that freelance workers  
23 are paid on time and paid in full. Payment for work  
24 is a simple exchange, but if that agreement is  
25 broken, the system begins to crumble. Ninety-two

2 percent of corporations work with freelance labor.  
3 It's flexible, efficient and cost-effective. But if  
4 freelancers cannot be expect to be paid on time and  
5 in full for the work that they complete, then this  
6 workforce is cut off at the knees. New York City  
7 companies are increasingly seeking talented,  
8 experienced and specialized laborers in order to  
9 cultivate those kind of workers we need, and we need  
10 to treat them fairly. Empowering workers with the  
11 city agencies to whom they can report deadbeat  
12 clients, the City of New York sends a clear message  
13 of support to this growing workforce. The freelance  
14 economy isn't going anywhere. In fact, it's growing.  
15 Top companies like Walgreens, AT&T, and Yahoo use  
16 Work Market because they rely on freelance talent.  
17 It's time to update antiquated labor laws and support  
18 the new workforce. The Freelance Isn't Free Act is  
19 an opportunity to position New York City as a leader  
20 in the freelance economy. [background comments]

21 CHAIRPERSON ESPINAL: Thank you.

22 [laughter] Thank you for your testimony, and I'm  
23 sorry about the clock. I'm really sorry about the  
24 clock. I know how annoying it is when you're--

2 JEFF WALD: [interposing] It's okay.

3 It's okay.

4 CHAIRPERSON ESPINAL: But, Brad, do you  
5 have any questions?

6 COUNCIL MEMBER LANDER: Just that it  
7 means a lot to have folks from the business community  
8 here recognizing that--that you know, run it--that  
9 paying your workers is part of good business practice  
10 that we want to grow in strengthen the sectors of the  
11 economy that are thriving as a result, and that--so  
12 it means a lot to have your support.

13 JEFF WALD: [interposing] If I could just  
14 quickly add one thing, just for your thought is that  
15 this particular bill is just a litmus test for the  
16 conversion of the entire New York City economy, so I  
17 commend the Council for picking up this bill because  
18 there are many other places besides just this  
19 particular area where the city has this--its  
20 regulation in the 21st Century. So thank you and  
21 good luck.

22 CHAIRPERSON ESPINAL: Appreciate it.  
23 Thank you. [background noise, comments] Up next we  
24 have Allison Julien from the National Domestic  
25 Workers Alliance; Morisio from-Mariso--Marisio--I'm

2 sorry Meber--Mebla; Kati Sipp from National Guest  
3 Workers; Dr. Ruth Milkman from the CUNY Graduate  
4 Center, and Achmed Tijani from the Borough  
5 President's Office. [background comments, pause]  
6 Thank you. You may begin. State your name. [pause]

7 ALLISON JULIEN: [off mic] Good  
8 afternoon, everyone my name Allison Julien. I am an  
9 organizer in New York City with the National Domestic  
10 Worker Alliance representing over 200,000 domestic  
11 workers--

12 FEMALE SPEAKER: Yeah, start over.

13 ALLISON JULIE: [on mic] Okay. Good  
14 afternoon everyone. My name is Allison Julien. I am  
15 an organizer in New York City with the National  
16 Domestic Worker Alliance representing over 200,000  
17 domestic workers. As a domestic worker organizing  
18 for over 13 years and a former nanny for over 20  
19 years, I'm very pleased to be able to speak today  
20 from my experiences, and the need to support the  
21 Freelance Isn't Fair Act. Today in New York City  
22 there are more than 1.3 million independent workers,  
23 freelancers, who like domestic workers provide vital  
24 labor across the city that is often treated as  
25 invisible. Domestic workers and independent workers

2 share common challenges that arise from the structure  
3 of the employment relationship. Both workforces  
4 commonly work in decentralized one-on-one  
5 relationships with employers that are under-regulated  
6 and where employers have more power to dictate the  
7 terms of the work. Many of these workers fear the  
8 threats of retaliation, which includes their jobs and  
9 blacklisting. In many instances, both domestic  
10 workers and independent workers are subject to  
11 unclear and constantly changing expectations on the  
12 whim of their employers. In my own experience, and  
13 that of many domestic workers this looks like sudden  
14 changes in hours and scheduling and/or drastic  
15 changes in job responsibilities. This almost happens  
16 without a formal wrecking--renegotiation process to  
17 determine how this may impact the workers and to make  
18 appropriate pay adjustments. Many workers from both  
19 sectors face the random issues of wage theft.

20 Drawing from several workers, and employer surveys,  
21 we believe that more than 65% of domestic workers in  
22 New York City experience wage theft due to minimum  
23 wage and overtime violations. Meanwhile, 71% of  
24 independent workers face non-payment or late pay--  
25 non-payment or late payment during their career on an

2 average. All workers deserve to have respect,  
3 dignity and full compensation for their labor  
4 regardless of the type of work they conduct. By  
5 passing this Freelance Isn't Fair Act, which would  
6 mandate written contracts, we would not only help  
7 independent workers have stronger remedies to pursue  
8 clients who violate their agreement, but also  
9 strengthen poor labor protections across New York  
10 City by requiring transparency and making it more  
11 financially feasible to pursue deadbeat clients.

12 MORISHA MELBA: Thank you for the  
13 opportunity to speak to day about my experience as a  
14 freelancers. My name is Morisha Melba(sic) and I am  
15 a writer, and just a writer. I'm a freelancer.  
16 Currently living in Jersey City, but working  
17 primarily with New York City clients. I have been a  
18 freelancer my entire professional life for almost 30  
19 years. I have been unpaid for jobs many times, but  
20 the most painful, dramatic and unfair treatment  
21 happened seven years ago in 2009. At the time I  
22 worked for a publisher call it Inkwell Publishing  
23 Solutions in New York City. I had been working with  
24 that company for two years at that time creating many  
25 educational programs. In every project that I worked

2 with them I always had a contract except for the last  
3 project. In 2009, we were working in the Texas  
4 Elementary School Reading Program Harper Miller (sic)  
5 edition. In addition to me, there were more than 40  
6 freelancers, and the project with different--in this  
7 project with different--with different specialties,  
8 writers, translators, editors, graphic designers,  
9 programmers, et cetera. The largest number of  
10 workers I have ever seen in this company. Every two  
11 weeks we present our invoices to the general leader,  
12 editor, and our payments took about a month to  
13 arrive. After the first month of working in this  
14 project, some payments arrived but only half. This  
15 was not so strange. It happened before in the--in  
16 the--in this company, but in the end they always pay  
17 us. Two weeks later, the check didn't arrive at all.  
18 Instead, the editor called a meeting to discuss the  
19 problem and explain that Harper Miller was behind on  
20 payment. He asked us [bell] to keep working and told  
21 us that as soon as they received the funds they--we  
22 will be paid all that--all that are due. Another two  
23 weeks passed, and once again, the payment did not  
24 arrive. Some people began to despair and stopped  
25 coming to work. Two weeks later, we stopped

2 receiving messages from the owners. People begun to  
3 try to talk to them, but they did not answer any of  
4 the emails or phone calls. I tried to contact the  
5 owners myself. I write saying that I was confident  
6 that my payments will come because in the time I have  
7 worked with them--if I have worked with them, I  
8 always get paid eventually. I asked them to have  
9 consideration for the me because I just received the  
10 news that my wife was pregnant, and the lack of  
11 payment was especially critical at the time. I never  
12 heard back from them. More people started leaving,  
13 and some decided to go to small court--small claims  
14 courts. Along with a few others, I decided to stay  
15 and work. We thought that if we left the job, we  
16 will not be paid at all, but as the time passed more  
17 people left and after a month, there were only two of  
18 us left to finish the work and deliver the final  
19 product. Only days after, the company closed. They  
20 owners take the furniture, and the equipment--the  
21 equipment out of the office and disappeared. There  
22 was no bankruptcy. They were no notification. They  
23 simply closed. We knew that our commissions for the  
24 work we had done, but once the money enters the  
25 account of Inkwell, it vanished. Freelancers got

2 nothing. The total we lost for 40 workers ex--  
3 exceeds \$300,000. I was owed \$20,000 for this.

4 CHAIRPERSON ESPINAL: \$20,000?

5 MARISHA MEBLA: Yes.

6 CHAIRPERSON ESPINAL: Thank you.

7 MARISHA MEBLA: Thanks very much. I have  
8 nervous.

9 CHAIRPERSON ESPINAL: So we--we can speak  
10 so after the testimonies.

11 MARISHA MEBLA: Thank you.

12 KATI SIPP: My name is Kati Sipp and I'm  
13 with the National Guest Workers Alliance. I want to  
14 thank Councilman Lander for introducing the bill, and  
15 Councilman Espinal for holding the hearing today.  
16 Obviously, you have a copy of my written testimony.  
17 I'm going to dispense with that just in the interest  
18 of time. I really want to hit one particular point,  
19 though, which is that National Guest Workers Alliance  
20 is really extremely in support of the elements of  
21 this bill that protect against retaliation. We  
22 represent through our Affiliated Workers Centers,  
23 guest workers who work in a variety of industries  
24 across the country from seafood packers in New  
25 Bedford, Massachusetts to ship builders on

2 Louisiana's Gulf Coast to restaurant workers in San  
3 Francisco. And guest workers work in a variety of  
4 employment statuses. Some of them might be W-2  
5 employees, but a lot of them are independent  
6 contractors. Typically, guest workers are people who  
7 come to the U.S. from their home country and then go  
8 back to it usually in the course of the year. They  
9 work in seasonal industries, and they're reliant on  
10 having good relationships with the labor brokers who  
11 bring them here in order to, you know, maintain their  
12 income and feedback in the U.S. in order to secure  
13 the income that they need for their families at home.  
14 And typically, there are--or in--in bad situations  
15 there are a lot of bad actors who in addition to  
16 committing wage theft against independent contractors  
17 are also doing things like sexually harassing women  
18 workers in order to, you know, saying you have to  
19 sleep with me in order to come back if you want to  
20 keep coming back from year to year. And so to us the  
21 protection against retaliation for workers who stand  
22 up is incredibly important. Labor brokers typically  
23 use the--the threat of the retaliation that you're  
24 not going to be able to come back to the U.S. if you  
25 don't do thing X, whether that's have, you know, in

2 appropriate relationships or be willing to work under  
3 somebody else's name, or work off the clock. And we  
4 think that the retaliation--anti-retaliation elements  
5 of this bill are incredibly important for the 1.3  
6 million independent workers in New York City. So  
7 urge the City Council to pass this bill and we thank  
8 you for holding this hearing today.

9 [pause]

10 RUTH MILKMAN: Good afternoon everybody.  
11 My name Ruth Milkman. I have a PhD in Sociology from  
12 UC Berkeley. I taught at UCLA from--for 21 years  
13 where I served as the Director of the Institute for  
14 Research on Labor and Employment, and then six years  
15 ago I moved to my current position at the CUNY  
16 Graduate Center. I specialize in labor issues, and  
17 I'm also the current President of the American  
18 Sociological Association. I'm very happy to speak  
19 her today in support of the Freelance Isn't Free Act.  
20 I've done extensive research on labor and employment  
21 issues, and spent several years researching the  
22 problem of wage theft. I co-authored the 2009 Study:  
23 Broken Laws, Unprotected Workers, which Haeyoung Yoon  
24 referred to earlier in her testimony here this  
25 afternoon. That was an analysis of a survey that we

2 conducted of about 4,400 workers in New York City,  
3 Chicago and Los Angeles using a rigorous methodology  
4 that generated a statistically representative sample.  
5 That study was limited to low wage workers, and I  
6 want to emphasize that, but it did find as other  
7 speakers here have emphasized that employment and  
8 labor laws are regularly and systematically violated.  
9 Our research team was aware that these violations  
10 exist, and which is why we did the study, but even we  
11 were shocked by the high prevalence rates that we  
12 found in this survey. Some of the results were  
13 already shared, but I'll just mention a couple  
14 highlights. We found a shocking 26% of the workers  
15 in our sample had been paid less than the weekly  
16 required minimum wage during the work week  
17 immediately before the survey. Twenty-five percent  
18 have been paid late at least once during the year  
19 preceding the survey, and 6% had not been paid at all  
20 for their work at least once during that year. So  
21 I'd like to add our study was focused on low-wage  
22 workers, but I vividly recall that once our results  
23 were reported in the news media, we received many,  
24 many communications from professionals and white  
25 color workers eager to let us know that they, too,

2 had experienced these problems. [bell] The  
3 Freelancers Union owns--the Freelancers Union's own  
4 recent survey documents the fact that late payment  
5 are serious challenges in the so-called gig economy.  
6 And as everyone knows, that part of the labor market  
7 is already substantial here in New York and is  
8 growing rapidly. For traditional employees, wage  
9 theft and late payment are already against the law,  
10 but as our research and others have demonstrated  
11 those existing laws are not enforced adequately and  
12 often do not cover independent workers. Moreover, as  
13 our study found, many of those who have experienced  
14 violations are reluctant to complain because they  
15 fear retaliation. You heard the data on this earlier  
16 today. Indeed, many of our respondents who did  
17 complain reported that they had experienced  
18 retaliation. This proposed legislation that you're  
19 considering today would be extremely useful in  
20 helping to address these problems allowing for double  
21 damages and attorney's fees to a private right of  
22 action and the anti--and the anti-retaliation clause  
23 are especially important. I also not that law  
24 abiding businesses will not be penalized in any way  
25 if this legislation is enacted, and finally, it would

2 be great if New York City took the lead on this,  
3 which has not always been the case in other areas of  
4 employment and labor law. So thank you so much for  
5 your attention.

6 CHAIRPERSON ESPINAL: Thank you and  
7 Morisha, you were saying you were--you were ripped  
8 off about \$20,000?

9 MORISHA MEBLA: Yes.

10 CHAIRPERSON ESPINAL: Did you go to  
11 court?

12 MORISHA MELBA: We went to court, but--  
13 but--well, the problem the company disappeared, and  
14 the--the owners of the company took the money they  
15 were paid, and they left.

16 CHAIRPERSON ESPINAL: So you never  
17 received any of that money back?

18 MORISHA MBELA: No, we were more than 40  
19 people, 40 freelancers that we don't have nothing  
20 really, and yeah, we have a settlement that we can be  
21 paid eventually some day if they--if one of the--one  
22 of the--the owners receives some money, we know that  
23 he's living in Texas right now, but there's not too  
24 much that we can do.

2 CHAIRPERSON ESPINAL: Sorry to hear.

3 Well, thank you, thank you for your testimony. We

4 appreciate it. I'm going to call up the next panel.

5 I'd like to invite up our Manhattan Borough President

6 Gale Brewer. [pause, background comments]

7 GALE BREWER: Thank you very much.

8 CHAIRPERSON ESPINAL: Thank you, Madam

9 Borough President.

10 GALE BREWER: Chair Espinal, it's really-

11 -it's an honor to be here although I just came from

12 testifying with your colleague in Brooklyn, so I am--

13 Mitchell Lamas and Freelancers.

14 CHAIRPERSON ESPINAL: Nice. [laughs]

15 GALE BREWER: Anyway, thank you very

16 much. I also want to thank Council Member Lander and

17 I'm here with Ahmed Broni (sic) who is with our

18 officer and knows much more about this topic than I

19 do, but just like many others, I'm here to provide my

20 support for Intro 1017, and I think I heard from

21 Ahmed a little bit about what the Administration

22 stated, and I think it's important some of their

23 offerings. But to me this is one of the most

24 important industries growing in our entire city not

25 to mention our country, and I really appreciate you

2 having this hear because to best of best of my  
3 knowledge--I've probably been to 30,000 hearings in  
4 my life--I haven't heard this as a s topic. So  
5 congratulations. It's really important, and I think  
6 your bill makes a lot of sense, Council Member  
7 Lander. So, the production--the protections being  
8 proposed are thoughtful responses to the large  
9 discussion of how we grapple with the changing  
10 economy, as you know. It couldn't be timelier given  
11 that the increasing percentage of Americans prefer  
12 this model of employment and some economists expect  
13 the sector to grow by 50% by 2020. I think we heard  
14 the number 1.3 million in the five boroughs, and it's  
15 4.5 million in the NYC Metro area, and in Manhattan  
16 along 70,000 Manhattanites are freelancers or more.  
17 So, my own lengthy experience in collaboration with  
18 independent contractors and other freelancers  
19 especially those who work with--in the big data and  
20 civic technology communities has taught me how  
21 difficult it is for these entrepreneurs to find  
22 stability and thrive. When I was in the Council and  
23 chaired the Technology Committee, I supported  
24 legislation and regulations that made possible a new  
25 kind of economy whose workers can have more

2 flexibility and be creative. But as I envision it,  
3 this economy should also have laws to ensure that  
4 workers are not exploited, and enjoy the same  
5 protections as traditional employees and that  
6 government agencies create new mechanisms to make  
7 sure employers live up to their obligations to the  
8 freelancers whom they hire. Thanks to the  
9 Freelancers Union, and I want to give them a lot of  
10 credit as I'm sure others do. We now have the  
11 numbers to show how significant this issue undermines  
12 small business entrepreneurs. According to their  
13 data, between 2010 and 2014 nearly 8 in 10  
14 freelancers have experienced client non-payment, and  
15 on average they are losing \$6,000 annually due to  
16 unpaid invoices for completed work. In 2015, I met  
17 with the Freelancers Union and we worked together on  
18 a Day of Action where we reached out to contractors  
19 at co-working spaces in Manhattan about the contract  
20 payment issue and new plans for how to tackle it due  
21 to the introduction of this bill. That same day  
22 during a brown bag lunch with the Freelances at a co-  
23 working space in Lower Manhattan, contractors spoke  
24 to me frankly about the inadequate tools currently  
25 available to them for handling non-payment cases.

2 The stories were horrible. Many rely on repeated  
3 calls and emails as their only affordable address,  
4 but their experience shows that this approach seldom  
5 compel--compels bad actors to honor their  
6 contractors. The worse case were models who get  
7 totally screwed over and over again by their  
8 agencies. Time spent pressing on unresponsive--  
9 unresponsive clients creates an additional burden on  
10 finances and morale. In 2009, a study suggests that  
11 freelancers in New York State spent approximate 7,900  
12 hours that year in pursuit of payment. Trying to  
13 recoup that cost through late fees or other  
14 penalties, create new conflicts. It also risks  
15 losing clients and referrals in a highly competitive  
16 environment and getting on a list if you don't want  
17 to be on. So you end up not pursuing it. Not fair.  
18 Freelancers are driven to take legal action when all  
19 other options fail, but it's high cost and the  
20 difficulty of proving claims, makes just compensation  
21 elusive. I've written to the State Court of Appeals  
22 on this topic to explore how we can make jurists more  
23 familiar with the special nature of such torts, and  
24 lessen the burden of proof for freelancers seeking  
25 relief through the courts, and very courts are very

2 interested in working on this issue. But in the  
3 meantime, this act is the right approach to expanding  
4 the scope of worker rights protected by local  
5 government. It promises to make entrepreneurship  
6 less risky and a more predictable avenue for building  
7 the company. In addition to this bill, we need to be  
8 working with traditional small and large businesses  
9 on this issue, educating them on the benefits with  
10 the gig economy and the need to respect their  
11 contractual obligations. With this collaboration we  
12 can demonstrate that on-time payment is not only  
13 vital to retaining great talent, but also to lowering  
14 costs through innovation and building strong local  
15 economies. We certainly need that in New York City.  
16 So thank you to you, Mr. Chair, to Brad Lander, to  
17 the other co-sponsors for your commitment to the best  
18 labor standards. Thank you very much to the  
19 Freelancers Union. I look forward to working with  
20 you to support the 1.3 million freelance New Yorkers,  
21 but particularly the ones in Manhattan. Thank you  
22 very much.

23 CHAIRPERSON ESPINAL: [laughs] Thank  
24 you, Madam Borough President, for your testimony and

2 for your strong support. Brad, do you have any  
3 questions?

4 COUNCIL MEMBER LANDER: Well, I'll just  
5 add I know that you were here, but obviously a lot of  
6 why we have confidence in the belief that the  
7 Department of Cultural Affairs can make a difference  
8 in implementing this bill is because they're doing a  
9 good strong job implementing the Paid Sick Leave  
10 Bill. So thank you for leading the way--

11 GALE BREWER: [interposing] If they put  
12 as much effort into this as they put into paid sick  
13 days, yes, Brad Lander, but I--I didn't hear that.

14 COUNCIL MEMBER LANDER: Well, I'm just  
15 saying it's the right platform for them--

16 GALE BREWER: [interposing] Yes.

17 COUNCIL MEMBER LANDER: --for them to  
18 building on. So thank you so much.

19 GALE BREWER: I'm just saying that I'm  
20 not as optimistic as you are. Other--I really  
21 appreciate the bill. I think your bill is an  
22 excellent way to go. Thank you very much.

23 COUNCIL MEMBER LANDER: As I recall, it  
24 took a little pushing to get paid sick days to the  
25 place where today--

2 GALE BREWER: Yes, I remember that I took  
3 the--

4 COUNCIL MEMBER LANDER: --it's not  
5 impacting it.

6 GALE BREWER: --heat and the Mayor got the  
7 credit. That's what I remember.

8 COUNCIL MEMBER LANDER: [laughs]

9 GALE BREWER: Thank you very much.

10 COUNCIL MEMBER LANDER: That's Brooklyn  
11 for you. [applause]

12 CHAIRPERSON ESPINAL: Up next we'd like  
13 to call up Ellen Sandles, Jonathan Harper, Jessica  
14 Perez, Lucy Reading, and Deborah Cowell. [background  
15 comments, pause] You may begin in any order. Just  
16 state your name before your testimony.

17 LUCY READING: Hello. My name is Lucy.  
18 Thank you for the opportunity to speak with you  
19 today. I'm a freelance designer and illustrator, and  
20 I've been freelancing in New York City for 12 years.  
21 I live in Riverdale in the Bronx. In November 2013,  
22 I was hired by a client to work for a magazine for  
23 many months. I was covering an extended maternity  
24 leave. We signed a contract that stated a 30-day  
25 payment cycle. After submitting my first invoice, I

2 was informed that the Accounts Department had a 75-  
3 day payment cycle. I waited the 75 days, and still  
4 not receive payment, but I was continually assured  
5 that the Accounting Department was processing my  
6 invoices, and the check would be in the post very  
7 soon. Many months later after the maternity leave  
8 cover was completed, I had yet to receive any payment  
9 at all. At this point, the total of my invoices was  
10 \$17,500. In the meantime, my rent was due, my tax  
11 was due, and my health insurance was due, and I had  
12 turned down all over work because I had booked this  
13 full-time gig. It was not until April 2014, six  
14 months after I submitted my invoice and after many  
15 hours of emails and calls, that I did finally receive  
16 a check in the post. I found it incredibly  
17 frustrating and draining chasing down this payment.  
18 I would like to also add that while this particular  
19 client disregarded the contract, I have had successes  
20 in contracts, and think they are very helpful. After  
21 a recent illustration project was completed, I  
22 submitted an invoice as was agreed in our contract.  
23 The client turned to me and said I would need to wait  
24 on submitting this invoice until the illustration was  
25 published, which was 90 days in the future. But I

2 was able to point to our pre-agreed contract and the  
3 conflict was avoided and I was paid on time. Thank  
4 you so much.

5 JESSICA PEREZ: Good afternoon. My name  
6 is Jessica Perez. I'm a fashion model as well as the  
7 CEO and Founder of Tycoon App, an app that helps  
8 freelancers keep track of their jobs and payments. I  
9 have worked as a freelance fashion model for almost  
10 15 years. When I talk about the people I work with  
11 in the fashion industry, most people assume I'm  
12 referring to other models. In fact, there is a large  
13 range of different freelancing professions that are  
14 represented in a single photo shoot. From the  
15 photographers, makeup artists, hair stylists, fashion  
16 stylists, fashion stylists, visual technicians,  
17 graphic designers, art directors, creative directors,  
18 prop stylists, caterers, to their assistances we are  
19 all in the same boat. We are all freelancers who  
20 need your help. In the fashion industry getting paid  
21 on time commonly refers to getting paid three months  
22 after your work is completed. Although this is a  
23 standard that has been adopted in our industry, the  
24 reality is that payments often arrive much later than  
25 that. The longest I have waited for payment from a

2 major magazine client is 2-1/2 years. Recently, I  
3 had a photographer friend tell me he just received  
4 payment for a job he did back in 2013. I have model  
5 friend who is currently owed \$100,000 in account  
6 receivables from one of the biggest fashion retailers  
7 in the U.S. She is borrowing money from her  
8 boyfriend to pay her rent. We are not alone. There  
9 are countless freelancers who have been forced into  
10 credit card debt or had to borrow money from their  
11 friends and family while they wait to get paid for  
12 their jobs. Eighty percent of freelancers in fashion  
13 have had an issue with payment at some point in their  
14 careers. In addition to waiting extension lengths of  
15 time for payment, I know many people who have been  
16 stiffed entirely by their clients. I know  
17 photographers and fashion stylists who have been  
18 asked by clients to advance thousands of dollars for  
19 photo shoots to later find out their clients had  
20 previously just filed for bankruptcy. When my  
21 friends had to be reimbursed for their photo shoot  
22 costs they have met with the following response:  
23 What are you going to do about it? Needless to say,  
24 it's hard to fight against a deadbeat client when  
25 they have emptied your bank account. [bell] Forty

2 percent of the U.S. economy will be freelancing by  
3 2020. How many Americans are going to have to resort  
4 amounting crippling credit card to offset their cash  
5 flow issues? How many people will be working  
6 tirelessly, yet still have to wonder if they can pay  
7 their rent at the beginning of every month? How many  
8 Americans are going to have to worry about not having  
9 the resources to fight against a client who has  
10 wronged them. My question to you today is: What are  
11 you going to do about it?

12 DEBORAH COWELL: Hello. My name is  
13 Deborah Cowell. Thank you for the opportunity to  
14 speak with you today. I grew up in the Fort Greene  
15 section of Brooklyn, and currently live in  
16 Bensonhurst. I was born and raised in New York City.  
17 My background is in publishing as a formerly trained  
18 book editor, and as a freelancer I am a writer. I've  
19 been freelancing for well over 10 years. The  
20 foundation of my industry is the book contract.  
21 Freelancers are involved in every stage of the  
22 publishing process. It is simply the culture of the  
23 industry. In 2015, I agreed to do some editorial  
24 work for a client. The agreement--the agreement was  
25 verbal and because I trusted her to some extent, we

2 did not have a contract. Shortly after I completed  
3 the agreed upon work she slightly altered the work I  
4 produced, claimed everything as her own intellectual  
5 property and failed to pay the \$500 she owes over.  
6 Over three months I tried to collect payment via  
7 multiple phone conversations and emails. Eventually,  
8 she handed \$50 in cash after an in-person exchange  
9 and essentially said take it or leave it. Although  
10 \$500 may not sound like much, I put together many  
11 small deals for less than \$1,000. If all my clients  
12 would have behaved this way, my life would be a  
13 constant nightmare of living in fear being short-  
14 changed. Though it may seem disadvantageous to go  
15 through the stress of chasing down a couple hundred  
16 dollars, that couple hundred dollars could cover my  
17 electricity bill or even groceries for a couple  
18 weeks. Almost all freelancers are familiar with the  
19 phase, "Feast of famine." Sadly, too many of us come  
20 to know the famine as a result of clients who take  
21 unfair advantage. Freelancing is by no stretch of  
22 the imagination free. We are who we are because we  
23 love what we do, but we still have to eat, we still  
24 need health insurance, and we still are a part of the  
25 workforce. In mandating contracts, the Freelance

2 Isn't Free Act will protect the many freelancers who  
3 are making a living in the publishing industry, and  
4 the 30-day payment terms those contracts must have  
5 will have will have a real tangible effect on this  
6 industry where 120 past due payments are par for the  
7 course. There are best selling authors who can tell  
8 you stories on having checks take--take months to  
9 process. [bell] The gears of the machine in  
10 publishing are enormous. We're talking books,  
11 magazines, journals, the Internet. Most of it based  
12 here in New York. The Freelance Isn't Free Act will  
13 help the gears oiled properly. In my particular  
14 case, I am certain that had I had the law on my side  
15 at the time, the mere knowledge of that fact would  
16 have created a safety net of the confidence for me to  
17 be able to demand payment. It is clear to me that we  
18 are in a unique and perhaps enviable position yet  
19 again of blazing the trail into an amazing future  
20 that includes pretty much all industries. To ensure  
21 New York City remains a leader in workforce  
22 development, protecting our citizens who freelance is  
23 a the logical next step.

24 ELLEN SANDLES: My name is Ellen Sandles.

25 I live in Manhattan and have been working as

2 freelance court reporter for ten years. Our industry  
3 includes videography. IN 2015, June of 2015, Esquire  
4 Reporting created a new website for reporters to  
5 submit their jobs. It was then that payment problems  
6 started. Reporters across the system began to report  
7 missed payments. In July of 2015, almost two months  
8 for a payment owed to me from May, I contacted the  
9 President of Esquire Reporting directly. In a letter  
10 I explained that I was being forced to dip into  
11 savings account to cover my living expenses.

12 Although he had his corporate counsel bring me up to  
13 date to my payments, this did not rectify the  
14 situation for the other court reporters. Further, I  
15 discover that Esquire Reporting changed their payment  
16 terms from three weeks out to six to seven weeks  
17 without notifying or negotiating with New York court  
18 reporters. I suggested to other reporters that we  
19 organize and start to collect information as to when  
20 we were submitting jobs, and were getting paid in  
21 order to bring our displeasure to management.

22 Shortly afterwards, I was suddenly cut off of all  
23 work from Esquire Reporting. In October, a regular  
24 client of mine for ten years, the New York City  
25 Department of Health, HIV Prevention Meeting

2 contacted Esquire requesting me to be [bell] on their  
3 job. Esquire ignored the client's request. My phone  
4 call and email to the New York manager to find out  
5 why I was no longer getting this job that I had done  
6 for ten years, was not returned. My email was not  
7 responded to. In October of 2015, a final payment  
8 was deposited into my bank account with no  
9 explanation. I tried o hire a lawyer to help me.  
10 Despite putting together a well organized case with  
11 copies of emails and text messages, I was turned down  
12 by four different lawyers, one of whom was referred  
13 to me by Freelancers Union. Each one told me there  
14 was no law in place for them to bring an action, and  
15 so they couldn't help me. The Freelance Isn't Free  
16 Act is critical to shift the balance of power from  
17 agencies, which are forcing court reporters to sign  
18 independent contractor agreements written totally in  
19 their favor if we want work. We need mutually agreed  
20 upon payment terms, a legal recourse for non-payment,  
21 an anti-retaliation clause should we try to stand up  
22 for our rights, and the ability to find a lawyer to  
23 help us because there actually is a law in place for  
24 them to bring an action against this widespread  
25 industry abuse. Thank you.

2 CHAIRPERSON ESPINAL: Thank you. Brad,  
3 do you have a question? No questions. No?  
4 [background comments] Oh, there's someone, okay  
5 great. [background noise, pause]

6 DAN HARPER: Hello, my name is Dan  
7 Harper. Thanks for the opportunity to speak with you  
8 today to speak with you today. I work in the  
9 entertainment industries specifically in theater,  
10 dance and performance art. I've been freelancing in  
11 this industry for nine years and in New York for  
12 seven of those years. I live in Long Island City but  
13 work mostly in Manhattan. I'm here to share my non-  
14 payment story along with all these other folks, and  
15 ask you to support Freelance Isn't Free Act Bill. I  
16 freelance as a lighting designer, a production  
17 manager, a technical director. I wear a lot of  
18 different hats back stage for different shows. In  
19 October of 2015, a somewhat famous puppet company  
20 came into the space where I worked most of the time  
21 to produce the show. In the course of doing this, as  
22 his opening night was coming closer and closer, he  
23 realized that show was not going to be finished in  
24 time. So, they asked me if I would step in to help  
25 push the process forward and get the show done before

2 opening night. I agreed. We negotiated a rate, but  
3 in this case did not use a contract as we were on  
4 very friendly terms. I spent every bit of free time  
5 I had with them until opening night about a week  
6 later. Right around opening night, I invoiced them  
7 for my time, a little over \$1,000. No problem they  
8 said. The show ran for over a month, and at the end  
9 I still had not received a check. They replied that  
10 they needed another two weeks. Since we were on  
11 friendly terms I said I would waive the late fee, and  
12 expect the check in two weeks. No problem. The show  
13 closed and shortly thereafter I learned that none of  
14 the nine puppeteers had been paid the second half of  
15 their money, and some of the checks for the first  
16 half of their pay had also bounced. The performers  
17 already get paid practically a pittance for the  
18 amount of time and effort that they put into the  
19 show, several months of all day, every day calls. So  
20 not even paying them at all for their work was just  
21 insulting. The sad part is that they were not  
22 surprised in the least that this particular company  
23 wasn't living up to its promises. I think they like  
24 the art that they are creating, but have become  
25 accustomed to getting the short end of the stick when

2 it comes to money. It's sad and disheartening for  
3 everyone. It sends a very clear message that the  
4 company will use the people for their talent and  
5 their labor, but when it comes to doing right by them  
6 they have no interest in following through. So here  
7 we are over four months past due, three broken  
8 promises is in the mail and I still haven't been  
9 paid. We'll see what happens moving forward, but in  
10 the future this bill would me tremendously in dealing  
11 with clients like this. I have a one-year-old son,  
12 and can't afford the time or money necessary to go to  
13 the court with what the company owes. (sic) [coughs]  
14 Have a city agency like the DCA set up to help  
15 freelances with non-payment would be an incredibly  
16 valuable resource. I love working in this industry  
17 in New York, but in order to continued to do so, we  
18 desperately need a system that better protects  
19 independent workers. Thank you.

20 CHAIRPERSON ESPINAL: Thank you. Any  
21 questions? All right, thank you for your testimony.  
22 We appreciate it. So we have 20 minutes left in  
23 this room, and I just want to get a--kind of like a  
24 feeling. By a show of hands, who strongly would like  
25 to testify? Or--and who feels like their story has

2 been told and would just like to submit their  
3 testimony for the record? [background comments,  
4 pause] And so whoever raised your hands can take a--  
5 take a seat in the front row. [background comments,  
6 pause]

7 COUNCIL MEMBER LANDER: We--we really  
8 value your--your time in general, which the whole  
9 point of which is not free. So we appreciate your  
10 coming, but we also are going to get kicked out of  
11 the room.

12 CHAIRPERSON ESPINAL: Thank you. We  
13 could--we could--we can start from right to left.  
14 Yeah, from your--from your left. The first floor can  
15 sit up and testify. And, of course, if you submit--  
16 if you submit your testimony it will be on the  
17 record.

18 STEVEN LOWELL: Okay. Hello, my name is  
19 Steven Lowell. I work--I'd first like to thank you  
20 for the opportunity to speak to you today in support  
21 of the Freelance Isn't Free Act. I speak on behalf  
22 of the voiceover industry, of voice actors much like  
23 the entertainment industry, an industry I've worked  
24 in for 20 years. Since 2004, I've been both  
25 freelancing as a voice actor while also working

2 behind the scenes for voice actor websites offering  
3 freelance work. There are approximately 250,000  
4 voice actors in the United States along with the most  
5 abundance workforce comprised of working mothers from  
6 home. Myself, I grew up in Staten Island, New York  
7 and for the last 20 years I've been a resident of St.  
8 George. I've deal with more than 300 non-payment  
9 issues but the works was in October 2009 when an  
10 agency that finds voiceover actors sought my services  
11 as a community manager, quality assurance manager and  
12 customer manager. One of their clients was using  
13 their services to find people to read newspapers for  
14 the blind at a non-profit organization. In my  
15 position as the community manager, I helped voice  
16 actors get paid when clients tried to stiff them.  
17 One freelancer came to me after 30 days of completing  
18 a project for this non-profit and not receiving  
19 payment. As I tried to help him, in discovery there  
20 were at least 30 cases of this organization stiffing  
21 freelancers. In February 2010, it was learned that  
22 the client started looking around from new voice  
23 actors and websites and using the recordings in ways  
24 not originally agreed upon. Using work for public  
25 radio broadcasts by industry standards requiring an

2 increase of pay. And around the time everyone got  
3 pushy about getting paid, he would state that he no  
4 longer needed their services and tried to hire new  
5 voices. In the end, more than 30 voice actors lost  
6 than the between \$500 to \$2,000 each. Even worse,  
7 the clients began to threaten with legal action.  
8 This client who did not pay 30 voice actors then  
9 turned around afterwards and threatened to blacklist  
10 within their own industry. Not only did this affect  
11 the income of more than two dozen [bell] voice  
12 actors, but also cause them future industry problems.  
13 As it stands right now, less than 5% of voice actors  
14 are able to work full time in the industry and  
15 working is extremely difficult. What I believe this  
16 Freelance Act will assist is providing them with a  
17 legally defined method of public recourse and client  
18 accountability. A legally defined method for  
19 freelancers to be able to plan out a monthly  
20 financial schedule based on the contract, not based  
21 on the way that a business decides to pay. A way for  
22 people like myself who suffer from a medical  
23 condition to rely on monthly prescribed medication  
24 that is paid for every 30 days to be able to count on  
25 assistance if non-payment takes place. More than

2 anything, this effectively addresses the need of  
3 today's most abundant workforce preparing for the  
4 future of the United States, and that still includes  
5 taking care of family health insurances, but now  
6 includes the cost of running from home. Thank you.

7 TATIANA POTTS: Hello and gentlemen.

8 First and foremost it's an honor to be speaking to  
9 you and in favor of this groundbreaking piece of  
10 legislation. To paraphrase Neil Armstrong, that's  
11 one small step, yet one great leap for the whole  
12 industry, and so that's really relevant particularly  
13 of the CPL (sic). My name is Tatiana Potts of Kings  
14 County. I'm a naturalized citizen and a professional  
15 linguist with an MA from Moscow State Linguistics  
16 University. I worked there for the U.S. Embassy when  
17 delegations of Al Gore and Ron Brown visited Russia.  
18 I designed and taught experimental course in American  
19 phonics when it was not yet trendy. As with Martin  
20 Luther King, I have a dream in classrooms. My circle  
21 of friends, close friends included Michael Brook who  
22 worked with Arnold (sic) Hammer. My mentor back in  
23 the day Zoya Zarubina who started U.N. Simultaneous  
24 Interpreting programs, and until her final days  
25 worked on the bridging a non-proliferation gap to

2 restore post Cold War relations between our countries  
3 including translations of Manhattan Project  
4 Documentation. I would like to take this opportunity  
5 to speak on behalf of all native speakers, bearers  
6 who provide professional freelance language services  
7 across the United States in spite of certain Albany  
8 legislators suggesting one needs to take care of  
9 their own business, and let their attorney general  
10 worry about the rest. By endorsing this milestone  
11 bill, New York is setting an example for the whole  
12 country ensuring there is n o more embarrassing  
13 undignified guessing game at the end of your  
14 professional day as to whether a Freelance Isn't Free  
15 Act. Unlike the uniform court system relying on a  
16 data base of available linguists and providing clear  
17 cut pay structure, all other sectors in need of  
18 language facilitation enter murky waters of  
19 contracting, go between language service providing  
20 agencies distributing a work load to the lowest  
21 bidder. As a result, there's quite a number of  
22 behind the scenes issues from nepotism and bias in  
23 the most lucrative gigs on the one hand to hiring an  
24 under-qualified workforce to be able to maximize  
25 their profits form the other. All of which

2 artificially lowers the entire tone of the industry.  
3 This clearly is material for third-party watch dogs  
4 to eventually hold the current status quo.  
5 Professional language specialists are an integral  
6 part of any healthy functioning multi or national  
7 community. So labor quality standards should  
8 adequately protect this vulnerable to abuse and  
9 harassment category against questionable practices  
10 ranging from unregulated simultaneous format of  
11 immigration court's proceeding to daily  
12 administrative work in the field. To give you a  
13 rather grotesque example of the absurdity of issues  
14 at hand affecting over 250 languages, there was a  
15 recently spotlighted expose in 611 News by the Emmy  
16 Award winning investigator/journalist Arnold Diaz,  
17 available online under the headline Interpreting  
18 Agency Caught Skimping on Payment to Interpreters. I  
19 happened to have worked for the interpreting agency  
20 in question in 2014 and 2015, and I am to put it  
21 mildly flabbergasted at the extent of inaccuracies  
22 Accurate Communication Inc. has gotten away with.

23 CHAIRPERSON ESPINAL: [interposing] I'm  
24 going to have to ask you---

25 TATIANA POTTS: Some of the issues--

2 CHAIRPERSON ESPINAL: [interposing] --to  
3 wrap up the matter.

4 TATIANA POTTS: Sure.

5 CHAIRPERSON ESPINAL: Okay.

6 TATIANA POTTS: Some of the--some of the  
7 issues included incorrect 1099s, extended delays  
8 and/or non-payments including checks lost in the mail  
9 that are void after 60 days later surfacing in 1099s,  
10 incomplete payments omitted to our minimum core  
11 assignments, omitted overtime, bundling of back-to-  
12 back to assignments higher scale rate of legal and  
13 medical assignments processed at lower social rates  
14 to name just a few. Needless to say, Accurate  
15 Communication, Inc. ignored a request to demystify  
16 their lost in translation vanishing shenanigans. As  
17 of 2016, there are still missing in action funds for  
18 work completed in 2015 and 2014. It's now up to you  
19 the legislators to introduce this vital bill so there  
20 no more room left for the unprotected to be taken--  
21 taken advantage of, and most importantly to restore  
22 respect and dignity to professional freelancers'  
23 universe while unburdening this humiliated community  
24 snowed under with chaotic up-for-grabs large scale  
25 predatory practices.

2 CHAIRPERSON ESPINAL: Thank you.

3 TATIANA POTTS: Thank you for your time.

4 CHAIRPERSON ESPINAL: Appreciate it.

5 RANDY JENNER: Good afternoon. My name  
6 is Randy Jenner. I mostly would like to ask for you  
7 to see me as a small business person right here.  
8 What I write is what I say as a writer, editor or  
9 whatever. It really in many ways that's just what I  
10 offer. So I'm a mid-career professional, and what it  
11 is that--the things that I do have a greater impact  
12 beyond the business for whom I work. One, I offer as  
13 a freelancer value for alternative publication called  
14 the *Village Place* that owes me \$600 for an article I  
15 had written about Tom Stocker. (sic) I had a  
16 contract. My name--my name appears in the masthead,  
17 but the voice article--well the voice article was--is  
18 seen as worthwhile by academics and stock board (sic)  
19 enthusiasts and that sort of--those crowds. But on  
20 the other hand, I had to stand by and not accept any  
21 money because if I--if I complained about it, I would  
22 never get the quota or articles that I needed for my  
23 name to remain on the masthead. So, and that--and  
24 that also works in non-profit industries. So Theater  
25 Communications recently asked me to write an essay

2 about the state of the national theater, and it was  
3 good for their business because they're a non-profit  
4 service organization. Also, they double as the U.S.  
5 Center of International Theater Institute. So it's  
6 good because I actually presented an essay for World  
7 of Theater in an international book survey, but I  
8 didn't get paid for it. So the loss of income  
9 actually affected by ability to give greater good in  
10 the social sense, because I was--it affected my  
11 ability to produce a U.S. National exhibition of  
12 stage design a visual art context. Now, I'm in a  
13 state of uncertainty [bell] because I was attacked on  
14 Broadway, and---so any--any non-payment of any  
15 article that I might agree to write from now on,  
16 means that I would not be able to pay for surgeries  
17 that I went through, long hospital stays,  
18 prescription, ambulance, that sort of thing. So  
19 while on the other hand I'm a small business, I also  
20 have a personal dimension. And whatever it is that  
21 you would like to do here, would give a more  
22 equitable relationship and level the playing field  
23 between a small business person and non-profit and  
24 for-profit companies.

25 CHAIRPERSON ESPINAL: Thank you.

2 HAROON SIMBARAGAN: Hi. My name Haroon  
3 Simbaragan (sp?). I'm an Economist and a Professor  
4 at New York University. I have more testimony than  
5 time. So I won't read at all. I'll give it in. So  
6 I'll give you like the clip notes version of it. So  
7 I do research on the trend session of work away from  
8 full-time work, and into freelance work. In summary,  
9 this will like, you know, the number of freelance  
10 we're going to have in the United States and in New  
11 York is going to increase dramatically in the next 20  
12 years, and if we cut across industries that we don't  
13 normally associate with freelance, financial  
14 services, you know, management consulting, digital  
15 technologies, law, accounting, healthcare and  
16 marketing, there's--it's across the board. So that's  
17 one point. President Obama highlighted it in his  
18 State of the Union, and two challenges that sort of  
19 permeate freelance markets are quality uncertainty  
20 and transaction uncertainty. Economists know well  
21 that either of these kinds of uncertainty can lead to  
22 market failure, can sort of make work not happen when  
23 it otherwise would have been able to. And so, you  
24 know, we've got a number of market based solutions  
25 for quality uncertainty, but you need regulatory

2 intervention to sort of deal with the kinds of  
3 transaction uncertainty that freelancers face today.  
4 Like the lack of clarity about the way a potential  
5 worker will be paid and payment uncertainty. And my  
6 message is that billions of dollars of business will  
7 be lost. Additional new business will be lost if  
8 there is this kind of uncertainty, and this kind of  
9 intervention where you're sort of giving freelancers  
10 guarantees about like, you know, sort of a  
11 transparent wage rate, and about like, you know, sort  
12 of a guarantee of payment will create more freelance  
13 work. And so I see this sort of intervention as  
14 being akin to the kind of legislation that creates  
15 jobs. Thank you. [bell]

16 CHAIRPERSON ESPINAL: Thank you. Right on  
17 time. [laughter] Appreciate it.

18 HAROON SIMBARAGAN: Thanks.

19 [background comments, pause]

20 ALEX ABELIN: Good afternoon.

21 CHAIRPERSON ESPINAL: Begin and just  
22 state your name before your testimony.

23 ALEX ABELIN: My name Alex Abelin. I'm  
24 CEO of Liquid Talent, and I run one of the  
25 marketplaces that Professor Haroon was just speaking

2 of. So it's good timing right after he spoke. The  
3 two major stats I want to share with you today is by  
4 2020, 75% of this country's workforce will be  
5 millennial professionals, and by 2020, 50% will want  
6 to be free agents. This is a very big moment in our  
7 economy's history, and this legislation is very  
8 important not just for New York, but for our entire  
9 country. As CEO I have the opportunity to speak with  
10 our members everyday. We have two types of members:  
11 developers and designers that are seeking a freelance  
12 lifestyle, and you'd be surprised to hear how many  
13 stories there are about being cheated out of non-  
14 payment. Seventy-one percent of independent workers  
15 face non-payment or late payment during their career.  
16 This is absolutely outrageous, and this needs to end.  
17 I stand with Freelancers Union. I stand with my  
18 Liquid Talent members with 2,000 developers and  
19 designers in New York City. The businesses that use  
20 our workforce everyday in the City of New York to do  
21 right thing and support this piece of legislation.  
22 Thank you very much.

23 SANDY STEIN-FISHER: Hi, my name Sandy  
24 Stein-Fisher. (sic) I own a book shop. I sell rare  
25 books, first editions, books signed by authors. I'm

2 a small business owner, but I freelance and then I'm  
3 hired by private individuals, libraries and estates  
4 to provide appraisals of books and manuscripts. Long  
5 story short, I was owed \$3,000 and it took me four  
6 months to get paid. In another instance, I was owed  
7 \$15,000, and it took me 14 months to get paid. The  
8 loss of income was awful, but the worst part was the  
9 amount of time it took to call, email and track down  
10 the client. I believe the situation could be avoided  
11 if the client knew it was against the law not to pay  
12 a freelancer or a small business owner. In addition  
13 to my book company, I write a blog about small  
14 business ownership for Forbes. Three years ago, I  
15 wrote a post called *What To Do When A Client Doesn't*  
16 *Pay*. I've been contacted by dozens of people, 55, in  
17 fact, who were owed anywhere from \$50 to \$50,000.  
18 Their stories of horrifying and varied, but they all  
19 have the same theme: They have not been paid, and  
20 they feel helpless. I've kept in touch with them  
21 over the years, and though many do not live in New  
22 York City, they're excited by the idea that landmark  
23 legislation here could have a ripple effect and could  
24 sometime soon affect the law where they live. As a  
25 small business owner with W-2 status with one

2 employee, this doesn't protect me personally, but I'm  
3 still firmly in favor of it. I hope one day it will  
4 be more broadly applied, and it can protect any  
5 worker from any situation of non-payment.

6 CHAIRPERSON ESPINAL: Thank you.

7 SAUL KOMBOLKA: Thank you. My name is  
8 Paul Kombolka (sp?) and my background is in  
9 linguistics, speech and neuroscience, and I only have  
10 three quick points I wanted to make. First, the  
11 testimony here today is not only about small  
12 companies or district people or individuals and the  
13 non-payment of individuals is pervasive flood our  
14 economy. And to give you one example, I taught at  
15 St. John's University in Queens, which I assume you  
16 have heard of. And at one point when I was teaching  
17 at St. John's I had gone a month without being paid.  
18 So I decided that I will--that I would draw on the  
19 blackboard for the students if I am not paid by  
20 Friday, I will not be coming in on Monday. That's  
21 how I got paid, but this does not endear me to St.  
22 John's, which is fine. But this not really the way  
23 you would want to go about earning an income. And  
24 again, St. John's is not some rinky dink shop, you  
25 know, off limits, off Novack. (sic) The second

2 point [coughs] I wanted to make closely related to  
3 first on the staff (sic), as far as legal factions  
4 (sic) are concerned, they're generally big. I have  
5 only sued once, and I won on default because the  
6 individual did not show up, but when it came to  
7 collecting it, it was impossible. And the other  
8 problem was that the individual didn't like that  
9 subpoenaed his bank records. So he called me up and  
10 told that he was going to mail a bomb to my house.  
11 This kind of behavior could perhaps be litigated by  
12 having a data base as part of the bill that people  
13 could check to see that there--these are people that  
14 you have a complaint against. And with regards to  
15 third thing, I'd like to mention very quickly is that  
16 there was a mention about how this could become a  
17 contractual issue. In all the years that I have done  
18 any freelance work, only one person has ever said  
19 that they're not paid because [bell] because they're  
20 not satisfied, and the only time--reason that person  
21 said it was I sent a friend of mine a retired police  
22 captain to his house to remind him that theft of  
23 services was a crime in New York State. At which  
24 point he informed me that he didn't like my work.  
25 And so amending the bill to require that if have any

2 such a challenge--such objections you have to let it  
3 be known in writing within a reasonable time after  
4 receiving the work could eliminate this problem  
5 because to say and that you actively that you don't  
6 like it is just too easy to have this.

7 CHAIRPERSON ESPINAL: Thank you.

8 JESSIE STRAUSS: Thank you Chairman  
9 Espinal and the entire committee and--and thank you,  
10 Councilman Lander for your leadership in this issue.  
11 My name is Jessie Strauss. I'm a lawyer and the  
12 founder of IndePayment.com. Indepayment is the  
13 leading debt collection service for freelancers and  
14 independent workers. We're based right here in New  
15 York City. There was some speech--talk earlier from  
16 the Department of Cultural Affairs about the ability  
17 of the Private Bar to handle these cases, and I speak  
18 I guess as a representative of the Private Bar that  
19 attempts to handle these cases. The problem of wage  
20 theft is rampant. Each day more and more independent  
21 workers from software developers to writers to  
22 marketing consultants who can't get paid comes to  
23 Indepayments, and we provide legal services for them.  
24 If we need to use the court systems in New York State  
25 collect, and we work nationally, we have two options

2 in--in New York City. We can file in the civil court  
3 or we can file in the Supreme Court or we can  
4 advocate for the use of the small claims part. While  
5 Indepayment works hard to make the process of  
6 collecting debts owed to freelancers as simple as  
7 possible, we're hampered because the Supreme Court  
8 and Civil Court processes in New York City are  
9 cumbersome and they're expensive. They have a lot of  
10 filing fees, service fees, and also require numerous  
11 appearances on the part of the freelancer. If your  
12 debts are under \$5,000 you're in the New York City  
13 Smalls Claims court. Very often you're in front an  
14 arbitrator in those parts. The arbitrator will treat  
15 this as a contract dispute and not a wage theft  
16 matter. And it's--it's very difficult for an  
17 arbitrator to understand the difference. There are  
18 models, by the way, when lawyers are not paid.  
19 Lawyers are actually in a special part, a special  
20 arbitration process that was set up particularly for  
21 them. Maybe we can think about trying to create a  
22 similar process for freelance independent workers.  
23 The--the inability for freelancers to enjoy the same  
24 protections that employees have under the New York  
25 Labor Law and the Federal Fair Standards Labor Act

2 [bell] Is--is a huge difference, and that's been  
3 addressed. Attorney fee shifting, treble damages and  
4 personal liability on the part of the owner of the  
5 company. It would all make a real difference, and  
6 really help us not only win these cases--not only  
7 prevent this from happening, win the cases, but also  
8 attract the legal talent we need to tackle these  
9 issues. So I--I firmly support 1017 and I hope that  
10 we can work with the Department of Cultural Affairs  
11 to create a model that works.

12 CHAIRPERSON ESPINAL: Thank you.

13 SARAF SADAP LAGIWADI: Finally, the  
14 musicians are on board. That's the reason why I  
15 wanted to make this testimony. I'm Saraf Sadap  
16 Lagiwadi (sic) a 24/7 musician activist and founder  
17 of the Musicians for Musicians a non-profit  
18 organization. At MFM we believe that a musical  
19 career is a respected profession. Our membership is  
20 composed of musicians from all genres, backgrounds  
21 and skill levels, from all persons to composers to  
22 recording artists. We come together as a group to  
23 encourage musicians everywhere to stop working for  
24 free. And musicians are frequently treated as  
25 expendable commodity while others profit from their

2 work. This is a huge systematic problem in this--in  
3 the music industry. This is unacceptable and must  
4 top. Enough is enough. [coughs] According to a  
5 2015 Freelancers Union Study on Nonpayment, 79% of  
6 musicians face non-payment, and I think this is  
7 really--it's ridiculous. All too often the band is  
8 the last contractor to get paid. After a big event,  
9 the singer finds that the hours she spent learning  
10 and practicing a piece aren't billable. Or someone  
11 assumes that musicians will just work free, and  
12 finally it should be noted that almost all of MFM's  
13 members also take side gigs to support their music  
14 careers. This makes the freelance industry doubly  
15 important to musicians who may also face non--payment  
16 in what may be perceived to be a more steady pursuit.  
17 All this said, MFM seeks to empower musicians to  
18 relate--to realize the true value of their work, to  
19 raised the standard of living and provide adequate  
20 working conditions in collaboration with other labor  
21 organizations such as Freelancers Union. In working  
22 together in solidarity, we can improve conditions for  
23 musicians as well as other freelance workers.

24 [sings] [bell] [laughter]

2 CHAIRPERSON ESPINAL: Thank you, sir.  
3 Thank you. Appreciate it. Anyone else left to  
4 testify? No? Okay, well thank you. Thank you so  
5 much and I appreciate the understanding--

6 COUNCIL MEMBER LANDER: First of all, Mr.  
7 Chairman, thank you for your time in sticking around.  
8 Thanks to everybody who came out. Whether you got to  
9 give your testimony or not, it made a big difference.  
10 And I really like this idea on the last panel, the  
11 part of what should be required in the contract is if  
12 you want to grieve--if the hiring party wants to  
13 grieve that the work wasn't performed they should  
14 have a time in which to do so and not just be able to  
15 not pay, and then later when challenged when for  
16 payment. So it was worth sticking around 'til the  
17 end. We got a good idea to look at for--framing sic)  
18 the bill. Thank you again, Mr. Chairman.

19 CHAIRPERSON ESPINAL: Well, thank you and  
20 I want to thank all the freelancers who came in and  
21 took their time to testify. I think we've heard you  
22 loud and clear, and I look forward to continue  
23 working with my colleague Brad in making sure we have  
24 a--a bill to protect you all. So with that said,  
25 this meeting is adjourned. [gavel]

1 COMMITTEE ON CONSUMER AFFAIRS

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date March 15, 2016