

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CIVIL SERVICE AND LABOR

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HELD AT: Council Chambers - City Hall

B E F O R E:

I. DANEEK MILLER
Chairperson

COUNCIL MEMBERS:

Elizabeth S. Crowley
Daniel Dromm
Costa G. Constantinides
Robert E. Cornegy, Jr.
Julissa Ferreras-Copeland
Brad S. Lander
Ydanis A. Rodriguez

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

Lorelei Salas
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NYC Department of Consumer Affairs

Liz Vladeck
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Communications Workers of America,
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Kyle Bragg
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A P P E A R A N C E S (CONTINUED)

Stuart Appelbaum
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Retail, Wholesale and Department Store
Union

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Jay Peltz
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Janika Reyes
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Harmony Higgins
Fast Food Worker at Chipotle

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

Jose Juarez
Fast Food Worker at Domino's

Shantel Walker
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Harold Stolper
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A P P E A R A N C E S (CONTINUED)

Melvyn Jones
Manager
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Denee Brown
Fast Food Worker
Wendy's

Jackie Martincic
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Sherry Leiwant
Co-President
A Better Balance

Barbara Allen
Member
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Women's City Club of New York

[sound check]

[pause]

CHAIRPERSON MILLER: Good morning. Okay.

I'm Council Member I. Daneek Miller; I'm the Chair of the Committee on Civil Service and Labor; I'd like to thank everyone for coming out this morning. Today we'll be holding a hearing on a very important package of bills that seeks to reform the scheduling of fast food industry within the City as well as create a voice of support for a network which will allow workers to navigate through the City's landscape and provide the quality of life that they so richly deserve.

The first bill will be Intro 1384, Council Member Julissa Ferreras-Copeland. This bill will give fast food employees the ability to make voluntary contributions to a not-for-profit organization of their choice through payroll deductions.

Intro 1387, from Member Corey Johnson, will prohibit retail businesses from conducting on-call scheduling practices.

Intro 1388, also from Corey Johnson, would prohibit consecutive work shifts in fast food

1
2 restaurants involving closing and opening of
3 businesses.

4 Intro 1395, from Council Member Brad
5 Lander, requires fast food managers to offer
6 available shifts to their current employees before
7 hiring additional ones to fill those shifts.

8 Intro 1396, also from Council Member Brad
9 Lander, would create provisions as to when certain
10 managers of fast food establishments would have to
11 let employees know when their shifts would change
12 within 14 days in advance and pay premiums if
13 workers' times change after this notice.

14 And Intro 1399, from Council Member
15 Deborah Rose, would ensure employees in fast food
16 industries are able to seek flexible work
17 arrangements in certain emergency situations.

18 So before this hearing I had the
19 opportunity to meet with advocates from fast food
20 workers as well as representatives from the fast food
21 industry. There is obviously a lot of concern about
22 this legislation, but because of its impact, there's
23 a lot of work that was put into it and potentially a
24 lot of work and negotiation that will be done.

1
2 I am very proud to be part of a City
3 Council that has established such things as paid sick
4 leave/paid parental sick leave for residents, along
5 with protecting those who are caregiving for the most
6 vulnerable of the City's residents. I strongly
7 believe that the City will be stronger and better by
8 allowing these pieces of legislation to empower and
9 improve the quality of life of the workers and
10 thereby improving the quality of life of their
11 families and the communities that they serve; this is
12 the intent of this legislation and which is why I am
13 proud to co-sponsor this legislation.

14 The point of privilege in my other life
15 as a president business agent of a local union, I had
16 one of the responsibilities and that was within the
17 transportation industry and one of those
18 responsibilities was managing not just the workforce
19 from a labor standpoint, but the operations and
20 planning and scheduling, recognizing how important it
21 is to move hundreds of thousands of New Yorkers.
22 This industry is no different and the services that
23 they provide, so we are here to recognize the
24 importance of fast food workers and services that
25 they provide and what needs to be done in order for

2 us to ensure that these services are provided; that
3 workers are treated with dignity and respect and
4 business does not suffer but it continues to move
5 forward and profit.

6 I'd like to thank my counsel here, who is
7 working very diligently on this, Matt Carlin, Kendall
8 Stephenson, Garfor Zoloff of the Finance Committee;
9 in addition, Annie Decker, Alice Wanzenberg [sp?] of
10 the Legislative Committee for drafting this
11 legislation.

12 I'd like to thank members of the
13 Committee for being here, of the Committee of Civil
14 Service and Labor, Council Member Dromm; we're also
15 joined by bill sponsors Council Member Brad Lander
16 and Julissa Ferreras-Copeland and Council Member
17 Ydanis Rodriguez.

18 So with that, I would like to kick this
19 off and pass it over to Council Member Lander for his
20 statement.

21 COUNCIL MEMBER LANDER: Thank you so much
22 Chair Miller for convening this hearing today --
23 obviously we've got a great full room -- and for all
24 your work in general to support working people in New
25 York City.

1 Without a stable schedule, who could
2
3 build a stable life without knowledge of when you're
4 going to be working; how is it possible to schedule
5 child care; to arrange to go to school to get an
6 additional degree, and without access to enough
7 hours, even if you're making \$15 an hour, how is it
8 possible in this city to pay rent and utilities, much
9 less save up for new clothes for the kids or even the
10 occasional vacation. Unfortunately, unpredictable
11 schedules are all too common, especially for poor New
12 Yorkers. A recent report by Community Service
13 Society highlighted some really just stunning
14 statistics: more than 1 out of 3 employed New Yorkers
15 are given their work schedules less than two weeks in
16 advance and that's more than half of poor New
17 Yorkers, and those low-income New Yorkers with
18 unpredictable schedules and less than advance notice
19 are more than twice as likely to fall behind on rent,
20 face eviction or foreclosure, wind up skipping meals
21 due to lack of money, or even be unable to fill a
22 prescription.

23 Schedules that change from week to week
24 are of course an especially serious problem for
25 parents and for women and low-income workers with

1 fluctuating schedules and less than a week's notice
2 are three times more likely to have lost their jobs
3 than those with stable hours. New York working
4 families should not be subject to on-call scheduling,
5 to lack of notice and to being forced to remain as
6 involuntary part-time workers, workers who would like
7 to get enough hours to be able to be full-time
8 employees but are prevented from doing so by the
9 scheduling practices of their employers, and that's
10 why we're here today as a result of great organizing
11 by workers in New York City and organizations that
12 support them; we've got the chance, a great package
13 of six bills, to move New York toward having a fair
14 workweek and I'm so pleased to be here along with co-
15 sponsors Julissa Ferreras and our other co-sponsors,
16 Corey Johnson; Debi Rose and pre-intro co-sponsors
17 like Danny Dromm and Laurie Cumbo to make this
18 happen.
19

20 I'm pleased to be the prime sponsor of
21 two of the bills in today's package, Intro 1396,
22 which establishes advanced scheduling for fast food
23 workers which would require fast food employers to
24 provide 14 days advance notice of work schedules to
25 employees and to pay a premium if after that time

1
2 your shifts are changed or canceled in a way that
3 obviously does great harm to workers' abilities to
4 know their schedules and earn a living.

5 That bill also provides some of the
6 general provisions for the other bills in the
7 package, including definitions of key terms, giving
8 the authority to Department of Consumer Affairs to
9 conduct investigations, giving a private right of
10 action and complaint procedure for workers.

11 I will note; if you've looked at that
12 bill, it also does some work creating space in the
13 code, but don't worry; there is no actual shipboard
14 gambling being discussed in today's hearing, despite
15 the fact that we moved around some pieces of the
16 Administrative Code to make this work.

17 The other bill that I am the lead sponsor
18 on is Intro 1395, which would establish access to
19 hours for fast food workers and that bill would
20 require fast food employers to offer any additional
21 hours or shifts to existing employees before moving
22 to hire new employees so that those folks who want to
23 become full-time are not kept as involuntary part-
24 time workers; something that we know affects hundreds
25 of thousands of New Yorkers, unfortunately.

1
2 A few thank yous; there's a great set of
3 advocates who have helped us get here -- SEIU 32BJ, A
4 Better Balance, Center for Popular Democracy, RWDSU,
5 Make the Road; Community Service Society. A lot of
6 work has gone into thinking about and drafting these
7 bills, so thanks to the Council's legislative team --
8 Matt Gewolb, Annie Decker, Wes Jones, Matt Carlin,
9 Alexis Wanzenberg, and Terzah Nasser.

10 I want to give a big shout-out to my
11 Policy Director Annie Levers, who has put an enormous
12 amount of work into this package, and I want to thank
13 the Administration, the Mayor for taking leadership
14 especially on several of these bills, but also to
15 Commissioner Salas and OLPS Deputy Commissioner Liz
16 Vladeck and Joni Kletter and Amit and the whole team
17 here; we've done a lot of work together as we are
18 trying to figure out how we take these shared goals
19 of a fair workweek and make them practical and
20 effective legislation.

21 In that vein I'll say; I look forward to
22 hearing testimony today from workers, employers,
23 franchise owners, policy experts, and the
24 Administration. This is a critical set of goals and
25 we want to have a really thoughtful and collaborative

2 legislative process and that includes hearing from
3 franchise owners and employers as well; we want to
4 achieve the goals of this legislation and we want to
5 do it in a practical, effective way that's easy to
6 comply with, that's easy to enforce and make sure
7 everyone has the opportunity to achieve those goals
8 of a fair workweek and a stable life. Thank you very
9 much Mr. Chair.

10 CHAIRPERSON MILLER: Thank you Council
11 Member Lander. Now we'll hear from the sponsor of
12 Intro 1384, Julissa Ferreras-Copeland.

13 COUNCIL MEMBER FERRERAS-COPELAND: Thank
14 you Chair Miller. I am proud to sponsor Intro 1384,
15 the Fast Food Worker Empowerment Bill. This first of
16 its kind legislation will enable fast food workers to
17 form their own nonprofit, to educate their coworkers
18 about their rights on the job and advocate for
19 changes they need in their community. This bill is
20 especially important for fast food workers who have
21 no bank accounts or are underbanked, and who
22 otherwise could not support an organization like
23 this. This bill also establishes penalties and
24 remedies for violations by employers who break the

1 rules and helps protect workers against retaliation
2 should they come forward with complaints.

3
4 Today I'm also co-sponsoring legislation
5 that will help bring hardworking New Yorkers reliable
6 schedules that will enable them to take care of their
7 children and continue their education, as was
8 mentioned earlier.

9 Most of the jobs created since the Great
10 Recession have been in low-wage work; this obviously
11 includes the fast food workers, which is something
12 that was highlighted by the Comptroller, by Director
13 Dean Fuleihan and myself. With more and more workers
14 entering this industry, there is more and more of a
15 need to give them a voice. Under this new
16 administration on the federal level, whoever the new
17 Labor Secretary ends up being isn't likely going to
18 be someone who stands for workers' rights in the
19 slightest; most Americans, and certainly most New
20 Yorkers, support efforts to raise the minimum wage,
21 ensure safe working places and protect workers; that
22 is why it is crucial that the City step in and give
23 these workers a voice, which is what this package of
24 bills aims to do today and why it is so important.

2 The newly created Office of the Labor
3 Standards will largely fill the gap created because
4 the Federal Department of Labor isn't doing enough.

5 I too have a long list of thank yous, but
6 I'm just going to ditto what Brad Lander said,
7 because I think most importantly we want to hear from
8 the Administration, the advocates and everyone that's
9 here today, so thank you all for being here today,
10 and Chair Miller, thank you for holding this very
11 important hearing.

12 CHAIRPERSON MILLER: Thank you so much,
13 Council Member Ferreras-Copeland and with that we
14 will call the first panel, who is already seated, and
15 that is Deputy Commissioner Liz Vladeck from
16 Department of Consumer Affairs; also from the
17 Department of Consumer Affairs, Amit Bagga, Associate
18 Commissioner; also, Steven Kelly... [background
19 comment] and of course, Commissioner Lorelei Salas.
20 [background comments] Okay; did I miss anyone?
21 [background comments] Okay.

22 LORELEI SALAS: Good morning Chairman
23 Miller and members of the Committee... [interpose]

24 CHAIRPERSON MILLER: Excuse me; before
25 we...

LORELEI SALAS: Sure.

CHAIRPERSON MILLER: get started... Do you affirm to answer all questions truthfully to the best of your ability?

LORELEI SALAS: Yes.

[collective affirmation]

CHAIRPERSON MILLER: Okay.

LORELEI SALAS: Good morning, Chairman Miller and members of the Committee. I am Lorelei Salas, Commissioner of the Department of Consumer Affairs. On behalf of Mayor de Blasio, it's my pleasure to represent the Administration at today's hearing, which will address the Mayor's signature proposal to introduce fair scheduling practices or a fair workweek into the fast food industry. I am joined by my colleagues from DCA; to my left is Liz Vladeck, Deputy Commissioner for the Office of Labor Policy and Standards and to my right, her Associate Commissioner, Steven Kelly, and to the left side of the table is Amit Bagga, Deputy Commissioner for External Affairs.

Around the country, workers in low-wage industries face immense challenges in trying to make ends meet and support their families. By passing and

1 implementing the Paid Sick Leave, Commuter Benefits,
2 Paid Care, and Freelance Isn't Free Laws, as well as
3 additional laws that protect workers and job seekers
4 from discrimination, Mayor de Blasio, Speaker Mark-
5 Viverito, and the Council have demonstrated great
6 leadership in making our city a better, safer place
7 for workers. In the fast food industry, in which
8 low-wage jobs are the norm, the problems created by
9 low wages can be exacerbated by unpredictable
10 scheduling practices that leave workers not knowing
11 when they're going to work, how many hours they're
12 going to work, or how much money they're going to
13 earn in a given week. This uncertainty makes it
14 difficult for workers to plan their lives and their
15 budgets. It prevents workers from planning for child
16 care or elder care, taking classes to further their
17 education, or sometimes holding a necessary second
18 job. It also means that they do not know how much
19 money they will take home at the end of the week,
20 making it challenging to budget and plan for the
21 future.
22

23 At DCA, it is our mission to protect and
24 enhance the daily economic lives of New Yorkers;
25 central to this mission is bolstering financial

1 health of New Yorkers and expanding protections to
2 cover the most vulnerable worker populations in our
3 city. Addressing pernicious scheduling practices in
4 an industry that already pays low wages, leaving New
5 Yorkers financially unstable, is a top priority for
6 our agency. We are particularly concerned about
7 these issues now, as the new presidential
8 administration has not indicated any interest in
9 continuing the previous administration's deep
10 commitment to aggressive, meaningful enforcement of
11 labor and employment laws. It is critical that we in
12 local governments across the country step in to fill
13 the anticipated gaps. We have seen a jump in Paid
14 Sick Leave complaints since the beginning of this
15 calendar year, which coincides with the transfer of
16 power in Washington. This underscores the importance
17 of our work, especially since many low-wage or
18 vulnerable workers in our city are immigrants, who
19 are the lifeblood of our communities and our economy.

21 I moved to the US at the age of 19 and I
22 held various jobs while raising two young boys. If I
23 didn't know my scheduled in advance when I was
24 working and putting myself through school, I would
25 not be here today holding this position. Let's work

1
2 together to ensure that our city's fast food workers
3 -- so many of whom are immigrants, just like me --
4 have the same opportunities so many of us have been
5 afforded, and that beginning with the fast food
6 industry, we establish access to a predictable,
7 transparent schedule as a right, not a privilege.

8 I am now going to ask my colleague Liz
9 Vladeck to provide you with updates about the
10 expansion of our work and specific comments on the
11 bills being heard today. Following her comments, my
12 team and I will be pleased to answer any questions
13 you might have.

14 LIZ VLADECK: Thank you Commissioner
15 Salas.

16 Our Mayor, the Speaker, all of you in the
17 Committee and the Council have shown great leadership
18 in pursuing policies and laws that ensure our city's
19 workers, particularly the most vulnerable among them,
20 have the support they need to take care of themselves
21 and their families. Through the collaborative
22 efforts of the Administration and the Council, DCA's
23 Office of Labor Policy and Standards (OLPS) has been
24 established as the dedicated voice of workers in City
25 government, and the City has demonstrated its

1 commitment to building on its historic role of
2 serving as a laboratory for new, progressive
3 policies; again, especially important, given our new
4 political reality. Our office's staff of attorneys,
5 investigators, outreach and education specialists, as
6 well as research and policy analysts, take very
7 seriously our mandate: to work in deep collaboration
8 with the stakeholders of our office, including work
9 organizations, labor unions, employers, and the
10 public about workplace protection; conduct original
11 research and use it to advance new policy initiatives
12 that can raise the floor for workers; and, of course,
13 to enforce key workplace laws and rules.

15 I'd like to offer some comments on the
16 package of bills being heard today and I'd like to
17 start with the four bills that apply to workers in
18 the fast food industry; I'll then talk about a fifth
19 bill that applies to retail workers, and the last,
20 which, as drafted, would apply to all private-sector
21 employers in our city.

22 Intros. 1388 and 1396, which together
23 constitute the Mayor's "Fair Workweek" proposal that
24 he announced back in September, are a critical next
25 step for cities like ours that are leading the way in

1 establishing important new minimum labor standards.

2 Our testimony today is supported by critical research
3 that has been conducted over the last five-six years
4 that makes clear the scope and the scale of the
5 negative impact unpredictable scheduling practices
6 have on our communities.
7

8 This research has shown us that not
9 having sufficient advance notice of work schedules
10 makes it hard to budget, go to school part-time, and
11 arrange for child and elder care. When we look in
12 particular at fast food workers, the Community
13 Service Society recently conducted a study of low-
14 income workers in New York City and found that more
15 than 80% of workers who identify as restaurant
16 workers -- a category that includes fast food workers
17 -- get less than two weeks' notice of their schedule,
18 and 40% experience significant fluctuation in their
19 hours from week to week. These practices lead to
20 serious hardships that Council Member Lander had
21 referred to, including falling behind on rent and
22 mortgage payments, being unable to afford subway and
23 bus fare, skipping meals because there's not enough
24 money to buy food, and having trouble purchasing
25 prescription medication or paying utility bills. A

1
2 2015 study by the Economic Policy Institute that
3 looked at a certain set of low-wage workers found
4 that unpredictable or nonstandard schedules were
5 actually linked to negative behaviors and mental
6 health in the children of workers with such
7 schedules. The impact on these children and their
8 families include depression, anxiety, withdrawal, and
9 aggression. So these unpredictable schedules really
10 strain family life and negatively impact our public
11 health. Parents need to know well in advance when
12 they have to work so they can provide predictability
13 and stability for their children. We know too that
14 in New York City, the nature of the fast food
15 industry is such that these scheduling practices
16 disproportionately impact workers who are people of
17 color and immigrants and women, and we know that
18 there is a clear correlation between folks who are
19 lower on the income scale and folks who have
20 unpredictable schedules; this is unacceptable.

21 It is worth noting that despite the ever-
22 increasing profits that fast food chains are
23 experiencing, profits in the billions of dollars,
24 real wages for New York State fast food workers
25 declined by 3.6% in the period from 2010 to 2014, the

1 same period when profits increased by close to 15%.

2 So the Mayor's proposal to ensure that fast food
3 workers have predictable, transparent schedules in
4 advance is clearly an imperative.
5

6 I'd like to give some detail about what
7 these bills would do.

8 Taken together, Intros. 1388 and 1396
9 would ensure a number of critical protections for
10 fast food workers, including the following:

11 First, fast food employers would have to
12 post schedules for all of their non-salaried
13 employees 14 days in advance of the workdays on that
14 schedule. Schedules would have to include at least
15 half of the anticipated shifts for the work period --
16 and those are regular shifts that must be included,
17 not on-call shifts -- for each worker for that work
18 period.

19 Changes to that schedule following its
20 posting would incur premium pay to create incentives
21 for employers to commit to the posted schedules,
22 stick to those schedules once posted, and compensate
23 workers for the unexpected.

24 When workers are first hired, they would
25 receive an individual good faith estimate in writing

1 of their schedules so that they could have a baseline
2 expectation for when and how much they are likely to
3 work from week to week; with their exact schedule for
4 any given week to be posted along with everyone
5 else's two weeks in advance, as I've described. That
6 good faith estimate would also have to be updated
7 anytime the employer decided to make a long-term or
8 indefinite change. So an example of how this would
9 work is; if a worker has always worked Mondays
10 through Fridays, they would have to receive an
11 updated written good faith estimate if their employer
12 decides they'll now be working Tuesdays through
13 Saturdays instead.

14
15 These bills would protect employees under
16 a broad definition of retaliation. The bill defines
17 retaliation to include actions based on perceived
18 immigration status, as we know that immigrant workers
19 are often targeted when they try to assert their
20 rights at work.

21 There are various provisions in the bill
22 that I'm happy to talk about at greater length that
23 ensure that workers who want more work, or more
24 flexibility in their schedule, can have it.

1
2 Finally, our legislation addresses the
3 issue of "clopenings": shifts where workers are
4 required to both close the shop and be back within a
5 few short hours to reopen. Defined in Intro 1388 as
6 two consecutive shifts spanning two calendar days
7 with less than 11 hours in-between the shifts, this
8 practice would be limited to circumstances where
9 employees either request or consent in writing to
10 working the clopening shift, for which they would
11 receive a \$100 premium for doing so.

12 Taken together, we think this package of
13 initiatives would significantly reduce harmful
14 scheduling practices and strengthen fast food
15 workers' opportunities for sustainable and sustaining
16 employment.

17 I'd like to also offer brief comments on
18 the four other bills that are the subject of today's
19 hearing, beginning with Intro 1395, which we are
20 describing as the "Access to Hours" bill.

21 The Administration largely agrees with
22 the goal of this bill, which is that those fast food
23 workers who are employed part-time and desire the
24 opportunity for full-time employment can pursue it
25 when those additional hours exist. We believe the

1 bill as drafted would benefit from further thought
2 and specificity to ensure that final legislation
3 would set clear and manageable expectations for
4 employers, as well as creating a reasonable and
5 effective enforcement scheme.
6

7 The fourth bill, Intro 1384, relates to
8 provide fast food employees the ability to make
9 voluntary contributions to not-for-profit
10 organizations of their choice through payroll
11 deductions. And I apologize, but I need a sip of
12 water. Intro 1384 would require DCA to certify
13 nonprofits that seek such contributions and also
14 require that we pursue enforcement actions against
15 employers that refuse to make those deductions once
16 500 employees of a given chain fast food restaurant
17 have signed authorizations for the deductions.
18 First, we'd like to note that this deduction
19 mechanism to make voluntary contributions via payroll
20 deductions to nonprofits does already exist under
21 Section 193 of the New York State Labor Law. For
22 example, the United Way, a large and well-known
23 nonprofit organization, often conducts workplace
24 campaigns where workers sign up to make regular
25 voluntary contributions via payroll deduction. The

1 new element in this bill is the establishment of
2 local enforcement authority, which would become
3 effective if employers refuse to abide by workers'
4 requests voluntarily to make those contributions. A
5 mechanism like the one in this bill would make it
6 much easier for workers to support nonprofit
7 organizations of their choice, particularly those
8 that might be best suited to provide them with
9 important services or support or to work toward
10 shared goals.
11

12 The Administration largely agrees with
13 the goals of this bill. Fast food workers have been
14 engaging in powerful collective efforts to drive
15 change in their industry and beyond for several
16 years, and they have achieved critical victories that
17 have helped to improve working conditions, raise
18 wages, and put the treatment of low-wage and
19 vulnerable workers front and center in our national
20 conversation about labor issues. Recognizing that
21 they have often engage in these efforts by building
22 relationships with nonprofit organizations that
23 support their goals, we believe it is sensible to
24 acknowledge this reality by codifying workers'
25 ability to financially support such organizations or

1 any other organizations they collective might deem
2 relevant, useful or deserving.

3
4 The bill as currently drafted raises some
5 important concerns. From DCA's perspective, as a
6 civil law enforcement agency, our primary interest is
7 in ensuring that the law that is ultimately adopted
8 realizes the stated goal of the bill while also
9 safeguarding workers from bad actors who might with
10 to take advantage of this new tool. For this reason,
11 we believe that in order to be effective, the bill
12 needs some key revisions. First, requiring an agency
13 such as ours to certify a nonprofit we would propose
14 to change, as we do not believe we are an appropriate
15 entity to act as a gatekeeper or to bestow upon any
16 given organization approval to do what they may
17 already do under the law. Instead, we advise that
18 the certification requirement be substituted by a
19 registration function, which would be pro forma and
20 not content based. Second, we would offer that the
21 bill require disclosures to workers including certain
22 basic information about any nonprofit seeking
23 workers' contributions before workers actually sign
24 their authorizations to have deductions made.
25 Additionally, we believe it appropriate for DCA to be

1 empowered to take action if we discover that workers'
2 requests to revoke an authorization for deductions
3 are not being honored. Provisions to ensure workers
4 have due notice of their rights under the law,
5 including their right to revoke an authorization, are
6 also important. In general, we believe that the bill
7 would also benefit from further revision to ensure
8 sufficient enforcement tools are available if DCA
9 were to encounter unscrupulous nonprofits in the
10 course of implementing this law. With that said, we
11 are optimistic about the benefits legislation such as
12 this could bring to workers' lives and look forward
13 to working on it further.

15 Let me now speak about Intro 1387, which
16 would ban on-call scheduling for retail workers,
17 establish minimum hours for retail workers and
18 establish certain requirements for retail workers to
19 receive notice of their schedules. As the Mayor said
20 in September when he announced the Fair Workweek
21 proposal, we recognize that the fast food industry is
22 only one of several in which unpredictable schedules
23 are a serious problem. We know that retail employees
24 quite often face the same challenges as those that
25 fast food employees face, and we agree that

1 addressing those challenges is an important and
2 shared goal. We believe that the provisions of this
3 bill in particular require further analysis but look
4 forward to working on the legislation and working
5 with stakeholders to ensure there is legislation that
6 creates a scheme that is both effective and
7 reasonable towards solving these problems on behalf
8 of retail workers.
9

10 Finally, we'd like to offer comments on
11 Intro 1399, which would establish a right for
12 employees to seek or receive flexible work
13 arrangements, both in general and in certain
14 emergency situations. As written, to be clear, this
15 bill would apply to all or nearly all private-sector
16 employees.

17 A key provision of this bill would
18 require employers to allow for employees to receive a
19 temporary adjustment to their work schedule when they
20 have a caregiver emergency -- a term defined in the
21 legislation -- such as a sick child or parent or
22 unexpectedly requires the caretaker to provide
23 assistance and support. Given that there are
24 estimates that make clear that a large majority of us
25 of the workforce include those who are caregivers,

1 parents; children taking care of elderly parents, the
2 Administration very much recognizes the challenges
3 that face so many of our country's and our city's
4 workforces. Unsurprisingly, these challenges are
5 particularly acute for women, people of color and
6 low-wage workers in general, so we support the goal
7 of emergency caregiver leave, and we also agree that
8 workers should be allowed to ask for flexible working
9 arrangements outside of emergency situations. A
10 separate section of this bill creates the right for
11 workers to request a change in their schedule and
12 ensures that they should not face retaliation when
13 they make such a request. Now that said, we have
14 some concerns about how this right to request
15 provision would work, as we think it is important to
16 be careful not to create a misimpression that workers
17 would have a new right under a right to request
18 provision, since the right to request a schedule
19 change is not the same as the right to receive that
20 change. As such, the bill as currently structured,
21 which would require for an interactive process with
22 respect to schedule changes would be, in our view,
23 unduly burdensome on employers and enforcement
24 resources without providing a countervailing benefit
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2 to workers. We also think other elements of this
3 legislation, including Section 1252, which sets forth
4 a universal notice of schedule to all private-sector
5 workers, could interact with other elements of other
6 bills in this package in ways that require a fuller
7 examination. Notwithstanding these points, we are
8 eager to hear from and work with all stakeholders
9 about the important value that legislation like this
10 could bring to workers and businesses, and we are
11 optimistic and look forward to working further on
12 this bill.

13 We'd like to thank the Council for your
14 partnership with the Administration on so many issues
15 -- especially that of unpredictable scheduling in the
16 fast food industry -- as it negatively impacts so
17 many New Yorkers. At DCA, our Office of Labor Policy
18 and Standards is very committed to helping to raise
19 the floor for workers and we look forward to
20 supporting and working on implementation of final
21 legislation.

22 Thank you very much, and we are happy to
23 take any questions that you may have.

24 [background comment]
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CHAIRPERSON MILLER: Yeah, I was waiting to see if anyone else was going to testify there.

So thank you very much to the Administration for your very thoughtful and insightful testimony, obviously it demonstrates the depth of the understanding of the issues here and because of that, I am very hopeful that at the end of this process that we will achieve our goals here today, and so I'm going to kind of get rid of this here, because you've demonstrated that type of depth of understanding of what we are trying to accomplish and talk more about what the Administration and what the role of your agencies would be around implementation and what impediments that you may foresee in doing so; what can we do differently to make sure that enforcement occurs upon passage?

LIZ VLADECK: Certainly. Yes, if the question is about what steps we would envision taking following passage, you know our experience in implementing the Paid Sick Leave Law provides us with a very powerful roadmap, and by that I mean, you know obviously we have done extensive due diligence in ensuring that there is a great deal of information available in as many possible formats to help

1 employers, employees and the public understand what
2 the new scheme is and how it works. As part of that,
3 when we launched Paid Sick Leave, we actually spent
4 the first six months after the effective date
5 conducting a highly visible public education and
6 awareness campaign before we issued any fines. We
7 understand that these are new minimum labor standards
8 and we want to make sure that everyone understands
9 their rights and obligations before we move to
10 enforcement. That said, I am very proud of the work
11 our office has done enforcing the Paid Sick Leave Law
12 to date; we have recovered over \$4.5 million in fines
13 and restitution to workers on behalf of upwards of
14 15,000 workers in two years of enforcement. So I
15 think, you know, particularly now that we have the
16 Office of Labor Policy and Standards set up where we
17 have, because of the bill you passed and the law that
18 structures our office, we have not only terrific
19 enforcement resources, attorneys and investigators,
20 but we have policy and research and outreach and
21 education mandates, and expertise as well. I think
22 we would bring all of these resources to bear in
23 making sure that implementation of new scheduling
24 legislation was effective and efficient.
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2 CHAIRPERSON MILLER: That again was
3 pretty thorough because you kind of rolled it all up,
4 and so you are convinced that you have the necessary
5 workforce between agencies that could enforce this
6 legislation; give it the type of enforcement that it
7 deserves, uhm...

8 LIZ VLADECK: So I would say, you know we
9 certainly have tremendous expertise and experience,
10 now of course we are always in conversations with OMB
11 about appropriate staff levels for our agency; we
12 would need to see what a final package of legislation
13 looks like, but we're confident that pending that
14 final package, should additional staff be required
15 for this legislation, we're confident there would be
16 sufficient resources provided to us.

17 CHAIRPERSON MILLER: Okay. I know that
18 some of the legislation that we've passed involving
19 many in this room and then others, as we advocate for
20 working people, have had a cost associated with that
21 and you've come back to us and we've kind of budgeted
22 or some way figured out how we were going to address
23 that. Is that something fair to say that we may see
24 that in the future, as well as... you mentioned Paid
25 Sick and some of the other legislation that has come

2 out of this Committee, and as we look at its rollout
3 and its implementation, is that the template that
4 we'd be looking at in terms of education in terms of
5 the period that we'd actually implement maybe six
6 months going out after the education industry-wide?

7 LIZ VLADECK: Yeah, so I think --
8 [clearing throat] excuse me -- I think, you know we
9 very much look forward to a robust dialogue with all
10 the stakeholders to help us be clear on what the best
11 way to do a rollout is, but yes, we're definitely
12 open to discussing an initial education period.

13 CHAIRPERSON MILLER: Okay, so thank you;
14 with that, I'm going to... [interpose, background
15 comments] Okay, I will now take -- you'll hear
16 questions from the council members and sponsors of
17 the legislation, beginning with Council Member
18 Lander.

19 COUNCIL MEMBER LANDER: Thanks very much,
20 Mr. Chair. Thanks for the thoughtful and detailed
21 testimony and I think the spirit and clarity that
22 there's -- we have common vision on the goals here
23 and there's some work to do and that's why we have a
24 thorough hearing. We've got some examples from San
25 Francisco and Seattle about how to design and

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2 implement fair workweek legislation, but we also are
3 learning and we want to make it work well, achieve
4 those goals, make it simple for employers to comply,
5 make it simple for workers to know their rights, and
6 make it as straightforward as we can for OLPS and DCA
7 to enforce the law, so you know for me, that's a
8 great starting place and we'll be better to continue
9 the conversation about the details actually after
10 we've heard today's testimony. So I don't want to go
11 too far into the weeds with you guys here, but I'll
12 just ask one question on each of the bills for which
13 I'm lead sponsor.

14 You hinted at this, Deputy Commissioner
15 Vladeck, in your comments on the scheduling;
16 obviously one thing we want to achieve is giving
17 predictable schedules while still leaving some room
18 so that if there needs to be a switch or a swop
19 between workers, you know and we want it obviously to
20 be... we want employers... you know adding a schedule on
21 occasion is a whole lot better than taking away a
22 scheduled and certainly than taking away a schedule
23 at the last minute, which can really be devastating
24 in the same way that on-call scheduling can. So can
25 you just speak a little more to how the bill is

1 structured to achieve that balance of advance notice
2 and predictability and consequences if that's
3 violated with that set of goals to make sure that
4 workers can achieve what they need?
5

6 LIZ VLADECK: Certainly. So in
7 Intro 1396, Subsection 1221 sets forth the advance
8 scheduling requirements and Section 1222 sets forth
9 the premiums that would be required when schedules
10 are changed after the 14-day notice. And the premium
11 payments are structured, as you've said, Council
12 Member, to recognize that adding hours is a better
13 outcome for workers than taking them away. If
14 schedules are changed with less than 14 days' notice,
15 first of all, workers may be offered the hours; they
16 are entitled to turn those additional hours down. As
17 I said in my testimony, flexibility for workers is
18 important and so workers may say yes, I'd like those
19 extra hours, but they may also say, I don't have
20 someone to cover my child care or I have a class at
21 that time. If they do consent to taking those
22 additional hours, that is a schedule change that
23 would trigger a \$15 premium payment -- just to be
24 clear, that's one payment; it's not for each hour
25 worked, it's only \$15. In cases where hours are

1 subtracted from their schedule as it had been posted,
2 either specific hours or if whole shifts are removed,
3 there's a \$45 premium payment -- again, just that one
4 lump sum -- in recognition of the fact that they've
5 lost those wages from those hours that they've lost.

6
7 One modification to that is that if
8 changes are made within 24 hours, specifically
9 changes that cause a loss in income, either the
10 subtraction of a shift or of hours, then the premium
11 payment that's required is \$75, which in most cases
12 will likely still be less than the worker would have
13 earned if they had kept those hours that had been on
14 their schedule. As you referred to, there are
15 exceptions to when premium payments would be required
16 pursuant to 1222, and those exceptions include when
17 employees trade shifts; when they want to have that
18 flexibility, they're entering into those arrangements
19 and we're not seeking to have employers, you know,
20 put money into the pot. But we do think the way
21 we've structured premium payments -- or the way that
22 you have -- is important, because we think it creates
23 the right incentive in terms both of predictability,
24 reliable income and also flexibility.

2 COUNCIL MEMBER LANDER: Thanks. And I
3 think the clarification on shift swapping is
4 important; I've actually heard a little bit, the
5 concern about that, and you know if that weren't the
6 case, of course, and you and I were both workers at
7 the same branch, we could swap shifts and then go to
8 the employer and say, alright, now you owe [sic] us
9 both more money; that was not the goal of this
10 legislation and it's not what this legislation
11 accomplishes; it's a long bill, so it's hard to find
12 all the pieces of it, but I appreciate your pointing
13 out the section that makes clear that employee
14 initiated swaps don't trigger the predictability
15 payments.

16 LIZ VLADECK: Yes indeed. And if you
17 would permit me, I would just like to add that the
18 same provision that permits swaps without the
19 incurring of premium pay also exempts premium pay in
20 such case that an employee requests in writing a
21 change to their schedule.

22 COUNCIL MEMBER LANDER: Okay. And then
23 I'll just ask one question about the access to hours
24 bill as well, and I appreciate your testimony there
25 as well, and the goal -- and I think it's useful in

1 that once things get put into legislative language it
2 can be harder to focus on what they're about, the
3 goal there. We all know that there are some
4 employers who essentially keep a workforce of
5 involuntary part-time employees who would like more
6 hours but who are denied them and even if an
7 employees leaves and those hours are available,
8 rather than offering it to existing workers so that
9 they could have more hours and fill up their
10 schedule, a new part-time employee is hired and you
11 have a whole set... Now there are plenty of people who
12 also want to be part-time workers because they're
13 going to school or have a second job and, of course,
14 that's perfectly fine, but where we have people who
15 want full-time hours, we don't want a work model that
16 has employers continuing to hire additional part-time
17 rather than keeping a whole set of people who can't
18 get full-time hours even though they need them;
19 that's the goal of this bill, which I appreciate in
20 your testimony that you clarified that you support.
21 Getting that right; making sure we implement it
22 effectively, I'm looking forward to hearing about how
23 we do that today and I guess I'll just -- you know,
24 the way the bill works, it requires employers to show
25

1 that they've offered those hours to existing workers,
2 if they have them, before they bring on a new
3 employee. So it essentially is a kind of notice
4 requirement that you have to show that you gave those
5 notices out. Now it seems to me there will be some
6 real differences in what might be behind that; you
7 could imagine an employer who actually has mostly
8 full-time employees and is doing what we would want
9 and one time forgets to send out the notice; you
10 could imagine a different employer that actually has
11 mostly involuntary part-time workers, and I actually
12 think one change I'm looking at post-hearing is that
13 the bill as drafted doesn't really distinguish
14 between those two things and I think one thing I'd
15 like to do is make sure that DCA and enforcement has
16 the power to distinguish between, you know violation
17 of a small notice provision and a business model
18 which is keeping a whole set of involuntary part-time
19 workers. So I mean does that make sense; is that
20 something we could look at together after the
21 hearing?
22

23 LIZ VLADECK: Absolutely, and I would say
24 that -- you know within our office we have a
25 tremendous investigators team and they know -- as

2 soon as they start looking at what evidence we're
3 receiving, if this is a small one-time omission or if
4 we're looking at systematic failure to comply, even
5 with ministerial obligations like posting the notice,
6 keeping the records at all, and so we proceed
7 accordingly on enforcement and I can't imagine we'd
8 do any differently here.

9 COUNCIL MEMBER LANDER: I'll stop there;
10 there are obviously a lot of details in these bills
11 and we look forward to working with you to get them
12 right after this hearing and move forward to passage
13 and then implementation, but I want to make sure
14 there's time for colleagues and to hear from this big
15 crowd. Thank you... [crosstalk]

16 CHAIRPERSON MILLER: Thank you, Council
17 Member. We've been joined by Council Member Robert
18 Cornegy and will now hear from the Finance Chair,
19 Julissa Ferreras-Copeland.

20 COUNCIL MEMBER FERRERAS-COPELAND: Thank
21 you, Chair. Good morning... [interpose]

22 LIZ VLADECK: Morning.

23 COUNCIL MEMBER FERRERAS-COPELAND: and
24 thank you for testifying today. I just have a few
25 questions, but given that fast food workers

2 experience wage theft and dangerous working
3 conditions and other workplace challenges, does it
4 make sense for them to create a self-sustaining
5 organization that can be a vehicle to change? I know
6 you have it in your testimony, but I want to make
7 sure that we codify it and make sure that we have it
8 in the record, so if you can just repeat.

9 LIZ VLADECK: I think part of why our
10 office and our agency believes minimum labor
11 standards are so important is because ultimately we
12 want workers to be able to make their own decisions
13 about what they need and what they want and what's
14 important, and so where there's a movement of workers
15 that have identified that a nonprofit organization is
16 a useful vehicle for them to further those interests,
17 you know, how can we argue with that.

18 COUNCIL MEMBER FERRERAS-COPELAND: Right.
19 And I just was talking about this useful vehicle,
20 given the Trump agenda has laid out on immigration;
21 do you think that there is a role for the nonprofits
22 to sustain through workers' payroll deductions to
23 organize communities to fight for what is essentially
24 what we feel is a racist and very nationalist agenda,
25 that this nonprofit can help organize -- do you know

1
2 your rights -- and just be able to educate this group
3 of workers?

4 LIZ VLADECK: So I think if there's any
5 silver lining from the last six, seven weeks in this
6 country it's that we have seen people mobilizing and
7 organizing around such a large range of issues; I
8 think we've seen that happening at local levels,
9 which is especially encouraging, and so yes, I mean
10 short answer to your question is yes, of course.

11 COUNCIL MEMBER FERRERAS-COPELAND: I just
12 want to... any opportunity that we prove and show the
13 contributions that immigrants have in our nation, and
14 in particular, in our city, I think it's a great
15 opportunity to showcase that and I believe that the
16 nonprofit is a vehicle to help do that.

17 Would you agree that voluntary payroll
18 deductions are a more feasible and efficient means of
19 supporting an organization for workers who lack bank
20 accounts or credit cards or debit cards? And we also
21 assume -- look, it's challenging, as you've
22 mentioned; they may have credit cards; they also may
23 be maxed out credit cards, because they're trying to
24 make ends meet; I've seen... you know, I go to my local
25 supermarket; I see more and more families putting

2 their groceries on credit cards, so to be able to
3 have an opportunity to have these deductions made
4 prior to them getting their check I think is the most
5 feasible vehicle to do that, but can you speak to
6 that?

7 LIZ VLADECK: Sure. I mean I think
8 that's right and I think even beyond that, you know,
9 the notion that... the bill is... of course you know, the
10 mechanism for DCA to get involved is triggered when
11 500 workers have signed the kinds of authorizations
12 that are envisioned here and so if we think purely
13 about the administrative effort involved in 500
14 workers, every week taking the amount they want to
15 contribute from their paycheck to the nonprofit,
16 that's a much more challenging mechanism and so I
17 agree with you that I think both for folks who are
18 unbanked or underbanked, and as a general practice in
19 terms of the ease of making those contributions that
20 workers want to make, I think this mechanism makes a
21 lot of sense.

22 COUNCIL MEMBER FERRERAS-COPELAND: Right.
23 And now to also speak, if you use other mechanisms,
24 such as credit cards or debit cards, those have
25 additional bank fees, potentially... [crosstalk]

1 LIZ VLADECK: That's right.

2 COUNCIL MEMBER FERRERAS-COPELAND: like
3 there will be bank fees for the contribution that
4 they're making to the nonprofit, which is exactly
5 what, you know, our families can't afford and
6 shouldn't be doing. Doesn't this suggest that
7 payroll deductions are not unduly burdensome,
8 especially in the example that you gave in your
9 opening statement -- we make contributions to
10 organizations such as the United Way or organizations
11 -- there's tons of organizations that we can do
12 payroll deductions on, so I would think this proves
13 that it's not unduly burdensome on the employer.

14 LIZ VLADECK: We agree. Clearly
15 deductions are already being made for taxes, social
16 security, and depending on the employee, any number
17 of other items; this is just one more line on the
18 list, and frankly, you know again, the bill itself
19 clearly states that employers would have to be
20 compensated by nonprofits for the reasonable costs
21 associated, if to the extent there are any with such
22 deductions. So we don't view this as burdensome.

23 COUNCIL MEMBER FERRERAS-COPELAND: Great.
24 And you know, in your opening testimony you
25

2 highlighted that you'd like to see that there is a
3 right to revoke an authorization and sufficient
4 enforcement tools to the right to revoke and I get
5 that, right, like you're identifying this for
6 unscrupulous nonprofits; however, what would the
7 mechanism be on the reverse if we have unscrupulous
8 owners or employers that are harassing workers and
9 pushing them to not take on these deductions or to
10 de-incentivize them from making these contributions;
11 what's the mechanism that you have in place for that?

12 LIZ VLADECK: Yeah. So we think and hope
13 that the anti-retaliation provision in the bill is
14 strong and it's broad and it enables us to take
15 strong enforcement action if workers are facing
16 adverse consequences for attempting to take advantage
17 of this tool, but there's also a strong scheme of
18 fines and penalties and we are empowered to take
19 enforcement action if an employer is simply refusing
20 to comply with their obligations under this bill.

21 COUNCIL MEMBER FERRERAS-COPELAND: So if
22 we see, for example, that a particular business had
23 let's say 15 workers that decided that they want the
24 payroll deduction and all of a sudden a month later

1
2 you see that 10 of them are saying we want to revoke,
3 will that be a flag in your agency?

4 LIZ VLADECK: Absolutely.

5 COUNCIL MEMBER FERRERAS-COPELAND: Okay.
6 Thank you, and we're eager, obviously, to hear the
7 testimony of all the people that are here today, so
8 thank you for coming today.

9 LIZ VLADECK: Thank you.

10 CHAIRPERSON MILLER: Thank you, Chair
11 Ferreras. Man, these members are really prepared
12 today; normally when we do this... [interpose,
13 background comment] yeah, well we... yes, we've done
14 our homework and normally, as the Labor Chair, that I
15 sit up and really have to highlight the hearing and
16 that is not the case and I'm really glad to see that
17 we are so thoughtful on this legislation that had
18 been put forth. We have been joined, again, by
19 Council Member Cornegy; we are going to now hear from
20 Council Member Rodriguez.

21 COUNCIL MEMBER RODRIGUEZ: Thank you.

22 Thank you Chair and Commissioner and the rest, again
23 [sic] thank you for your work and you know especially
24 Mayor de Blasio for his leadership to be able that we
25 create opportunity for the business community to do

1 well in the city; at the same time, to protect the
2 workers' rights. You know New York City can be the
3 model for our nation; we can be the nation that's
4 different from what the President and whoever he
5 brings to the Labor Department, understanding [sic]
6 that here in the City business owners have a lot of
7 opportunity; this is the place where last year we
8 received 55 million tourists and we have 8.5 million
9 residents, so anyone can do good in this city.
10 However, as someone that when I came here, I used to
11 work in a cafeteria of fast food workers, a
12 restaurant at 1 Battery Plaza; I know that behind any
13 student who enter working as fast food workers [sic],
14 they can be the next council member; they can be the
15 next president. However, we have seen a culture, you
16 know in many of the fast food workers and I think
17 that you know what happens with fast food workers are
18 happening everywhere -- in government, in the
19 business community -- we have a lot of good actors,
20 but also we have bad apples and I think that
21 sometimes it is time for us to say, what is the city
22 that we are building for the future and in that
23 direction I hope that the fast food community,
24 especially in the city, takes the leadership when it
25

1 comes, how can we continue serving the City but also
2 protecting the workers' rights. I used to be a
3 teacher for 13 years and I know that many students,
4 they were relying working at McDonald's the Domino
5 Pizza, but there was times you know that they have
6 issue with scheduling and this is what I believe, I
7 hope, that those representatives of the business
8 community get it from this hearing today -- we are
9 not here to hurt the business community, we are here
10 to say you can keep doing well, but at the same time,
11 let's fix what isn't working; let's be sure that we
12 have the best scheduling system in place so that the
13 worker knows in advance what their schedule is going
14 to be a week; two weeks from now.

16 First of all, I apologize to my friends
17 in the Fast Food Worker Coalition; I couldn't be at
18 the rally because I was taking my daughter to school.

19 I had a question or a concern, which is;
20 how many fast food workers are teenagers having
21 temporary jobs versus adults supporting themselves
22 and their family?

23 LIZ VLADECK: Thank you. While I don't
24 have the exact answer to your question, I would refer
25 you to -- and all of us -- to an excellent study done

1 by Susan Lambert, Peter Fugiel and Julia Henly; the
2 title of the study is: "Precarious Work Schedules
3 Among Early-Career Employees in the US," as well as
4 the Fast Food Wage Board report; I think these two
5 reports together do give us a good demographic
6 picture and also help us to understand the different
7 but similar strains experienced both by young adults
8 for whom this may be a first job; maybe a student, as
9 well as families and parents with children.
10

11 COUNCIL MEMBER RODRIGUEZ: And can you
12 name other industries where on-call scheduling is a
13 common practice?

14 LIZ VLADECK: I think we've... Well so I
15 think we've seen this as a problem in fast food and
16 retail and in other low-wage industries in general.
17 So the Economic Policy Institute's recent report
18 shows that the lower workers' wages are, as a rule,
19 the more likely it is that they experience both
20 unpredictable and volatile scheduling, meaning that
21 they don't know their schedules ahead of time and
22 their schedules are more subject to change from week
23 to week and that study, particularly EPI's study,
24 gives a good picture of how those issues cut across
25 different industries.

1
2 COUNCIL MEMBER RODRIGUEZ: When you look
3 at the data that the Department is able to collect,
4 have you seen a change on workers having their hours
5 being reduced after their salary was increased?

6 LIZ VLADECK: That's not data that we
7 collect per se, but I believe that -- please correct
8 me if I'm misunderstanding your question -- I think
9 that there is strong research that shows that
10 increases in the minimum wage do not lead to loss of
11 employment.

12 COUNCIL MEMBER RODRIGUEZ: But what I
13 heard, again, at the local level, is that some
14 workers came to me saying that they saw a reduction
15 of hours, especially after the whole [sic] coalition
16 were able to get an increase in the salary.

17 LIZ VLADECK: After an increase in the
18 wage in particular...? [crosstalk]

19 COUNCIL MEMBER RODRIGUEZ: Yes. Yes.

20 LIZ VLADECK: Yeah, so you know I'm not
21 familiar with those particular reports; what I can
22 say is, there is a reason that the Administration's
23 legislation is looking at the fast food industry as
24 the first case. If you look at the way that the
25 legislation defines employers, we're looking at fast

2 food chains with at least 30 establishments
3 nationwide. So in other words, large global
4 corporations that we are confident have the
5 wherewithal to more than sustain the legislation as
6 it's proposed.

7 COUNCIL MEMBER RODRIGUEZ: And another
8 concern that I have is that, you know, first of all,
9 thank you, Hector Figueroa and the whole coalition,
10 you know, 32BJ for, one more time, standing for the
11 workers' rights and we will win [applause, background
12 comments]. I always say that... [background comments]
13 I always say that the Occupy Movement is **[inaudible]**,
14 but now it's much better because now it has spread
15 throughout the five boroughs fighting for workers'
16 rights.

17 So you know in our community we had the
18 Domino's Pizza and one thing that happened at the
19 local level, and I would like to know if that's
20 happening also -- this is something that also you've
21 been able to identify; that some owners of the
22 franchise at the local level don't represent the
23 whole franchise industry, they've been going after
24 those workers who are leading the effort fighting for
25 their rights and of course we will stand with the

2 Domino's workers at 181st, and we have done in the
3 past, we will stand today and we will go to any
4 community saying to workers you represent, you are
5 the voice of the voiceless, because I know that when
6 we're there at the Domino's Pizza at the beginning
7 was like a few; most of them they were afraid, most
8 of them they thought they would have a lot of fear;
9 when we tried to enter to the McDonald's on 181st,
10 the same thing; the manager, they were throwing the
11 door **[inaudible]**, they didn't want us to get inside.
12 But have you been able to identify some behavior from
13 some of those managers and local franchise owners
14 trying to go after some of those workers' leaders,
15 that they were leading the movement fighting for
16 their brothers and sisters?

17 LIZ VLADECK: So let me say a couple
18 things about that. The first is that, as you know,
19 our office enforces the Paid Sick Leave Law here in
20 the City and we have used the anti-retaliation
21 provisions in that law to their full extent because
22 we know that when workers are trying to make changes
23 in their workplace; whatever the issue is, if they
24 face retaliation, that becomes the first order
25 problem, and so we take pushing back against

1 retaliation in enforcement cases very seriously in
2 our own enforcement effort. Second, I very much
3 appreciate that our statute that creates the Office
4 of Labor Policy and Standards requires us to educate
5 workers, employers and the public about their rights
6 not only under our City laws, but under state and
7 federal law as well, and I know that fast food
8 workers who have been organizing have brought
9 significant litigation at the National Labor
10 Relations Board because under the National Labor
11 Relations Act workers are explicitly prevented from
12 being retaliated against because they are trying to
13 make changes in their workplace. And so we are more
14 than happy to help spread the message about those
15 protections.
16

17 COUNCIL MEMBER RODRIGUEZ: I would like
18 end saying that, you know, four years ago the City
19 gave a mandate to the leadership that we have, which
20 is, we want to build a city for all and that city for
21 all means supporting the business community but also
22 supporting our workers' rights, so as Cesar Chavez
23 said, "Si se puede." Thank you.

24 [background comments]
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CHAIRPERSON MILLER: Thank you, Council Member Rodriguez. We'll now here from Council Member Cornegy.

COUNCIL MEMBER CORNEGY: Thank you, Chair Miller. Good af... well, it's still good morning. Good morning. [background comments] So I've gotten in a lot of trouble for saying that I believe as the City and the Administration we can walk and chew gum at the same time, so I believe that we can... while there was no place I guess in this suite of bills to really separate between large multinational retail and small mom and pops, but I chair the Committee on Small Business and I'm always acutely aware that sometimes these laws will disproportionately negatively impact our small mom and pops, right, and I don't think that it's mutually exclusive to think that we can protect workers' rights while building capacity within small businesses to do more. There is a statistic that says if every small business in the City of New York was able to hire one more employee we'd reduce the rate of unemployment by 50%, so I'm tasked with trying to build capacity while simultaneously protecting workers' rights. So I want

1
2 to know what language do you use to differentiate
3 between large multinational retail and mom and pops?

4 LIZ VLADECK: Sure. So I think, you
5 know, first, in terms of the package of legislation,
6 four of the bills would apply to fast food only and
7 that fast food as defined in the legislation is the
8 large national chains. It is -- 1387, the on-call
9 bill for retail workers, does not make a similar
10 distinction; does not contain a cap that would, you
11 know, a minimum number of employees for an employer
12 to be covered. And so, you know part of what... I
13 think we really want to explore and we are eager to
14 hear from all those who are going to testify about
15 how this bill and all of the bills may impact the
16 business community, but I would offer a couple
17 things. You know there was also a lot of concern
18 when Paid Sick Leave was introduced; Paid Sick Leave,
19 of course, exempts businesses only with fewer than
20 five employees, and there's a very valuable and
21 helpful study that came out last September; part of
22 why it's valuable and helpful is because it
23 specifically surveys employers, they want to know
24 what employers think. And what the survey found, the
25 study, which is called "No Big Deal," right, like

1 great name for a study, issued by the Murphy
2 Institute and the Center for Economic Policy and
3 Research; the study found that upwards of 85% of
4 employers surveyed had not experienced paid sick
5 leave implementation as imposing any greater costs on
6 their business. And part of the reason I believe for
7 that is that you know the reality is that providing
8 paid sick leave, being responsive to workers who have
9 schedule needs and emergencies, these are practices
10 that frankly many businesses are already doing in
11 some form or another, and so you know to that degree
12 I think what we're trying to do is create greater
13 transparency while not taking away the ability of
14 employers to run their business.

16 COUNCIL MEMBER CORNEGY: So I hear from
17 small business regularly and there's no small
18 businesses I've heard from that doesn't agree that
19 the recent policies and initiatives implemented over
20 the last legislative cycle don't in and of themselves
21 individually disproportionately affect their
22 business, but in culmination. So I want to be
23 careful as we implement things layered that they
24 don't have the unintended consequence, right. So in
25 and of themselves, paid sick is terrific, obviously;

1 increasing minimum wage is terrific, obviously, but
2 when it culminates, it culminates in the reduction in
3 some small mom and pops in their ability to hire. So
4 I just want to be careful that as we individually are
5 looking at these things and understanding that
6 they're great policies and that they protect workers,
7 we all agree that that should be the City's policy; I
8 don't want to be at the end looking at how we didn't
9 stagger them and how they all kind of stacked up and
10 then there's a business who normally hires 20 people
11 who can now only hire 14 because of the
12 implementation of policy and initiatives over a very
13 truncated period of time.

15 LIZ VLADECK: We agree and I think we're
16 very hopeful to hear from small businesses as part of
17 the legislative process; we very much want to know
18 their perspective on how the legislation is drafted
19 might impact, obviously, in conjunction with the
20 other laws that they're currently complying with.
21 And I think in that sense it makes so much sense that
22 the Office of Labor Policy and Standards is part of
23 the Department of Consumer Affairs because of the
24 extensive day in and day out contact that we have
25 with small and medium-sized businesses in the City,

1 so that served as my assurance that in addition to
2 studying the legislative record very closely, we're
3 also going to be very actively engaging with our own
4 stakeholder businesses to make sure we're hearing
5 from them on this as well.

7 AMIT BAGGA: And Council Member Cornegy,
8 if I could just add -- this is Amit Bagga, also from
9 DCA. You know where a small business exemption does
10 not exist we are very interested in hearing from
11 small businesses in particular about the nature of
12 the impact that they think that, you know, any
13 legislative package, this and others, might have and
14 that is very much something we consider as part of
15 the legislative process. The Administration also
16 very much shares your notion that we can walk and
17 chew gum at the same time, which is why we've done a
18 couple of things since the Mayor has come in in 2013
19 to ensure that we are also relieving some of the
20 burdens on small businesses. At DCA, we have reduced
21 our small business fines by more than 50%, which is a
22 sum that is more than \$15 million annually,
23 [background comment] since 2013, which is a major
24 reduction from where we were with the Bloomberg
25 Administration. We have also committed very strongly

1 to doing as much business education as we possibly
2 can. We regularly conduct one to two business
3 education days every month where we go door to door
4 with our sister agencies specifically along small
5 business strips all across the city, handing out
6 information to businesses about how to comply with
7 the law and this is -- you know, we do this in a way
8 where our inspectors will be with us and instead of
9 issuing fines and violations the inspectors will
10 point out, for example, what could potentially be a
11 violation of the law and in that way we are very
12 committed to educating businesses as opposed to
13 fining them without ensuring that they have the tools
14 that they need. And one final point on that, and I
15 know you and I have talked about this before, but
16 we're also incredibly committed to ensuring that we
17 are educating small businesses in the languages that
18 they speak. Language access is a top priority not
19 only for this administration, but very specifically
20 for DCA, as we know that two-thirds of our city's
21 small businesses are owned or operated by immigrants,
22 and so any publication that we put out there, we do
23 it in no fewer than a dozen languages -- I use a
24 dozen loosely, but you know everything from our paid
25

1
2 sick leave information to our commuter benefits
3 information to our general inspection checklists that
4 businesses can easily access on our website are in
5 multiple languages and we really want to ensure that
6 business owners have all the tools that they need to
7 understand how to comply with the law before
8 enforcement comes down.

9 COUNCIL MEMBER CORNEGY: So I just want
10 to say, you know, I've been very close to the
11 tremendous work DCA has done, so that was certainly
12 not a shot at DCA, but what I would encourage DCA to
13 do though is to partner with the Chamber On-the-Go
14 initiative to be able to get the information out
15 simultaneously. We've had long talks about DCA
16 changing its brand so that it wasn't, you know, only
17 there punitively and you've done a great job with
18 education as opposed to enforcement -- not as opposed
19 to, but you know, a lot more education than
20 enforcement, and so I and small businesses across the
21 city certainly appreciate that. So I'm just going to
22 end my comments the same way I started them, that we
23 can walk and chew gum at the same time and I am a co-
24 sponsor on five of the six bills, so I'm not against
25 it, but I do have a keen and acute eye out for the

1 disproportionate effect over long-term that it could
2 have on small mom and pops. So let's hope we don't
3 have to revisit that in terms of what it does to
4 small mom and pops in the City of New York, and I'm
5 concerned because 84... you said that 84% of employment
6 is in small businesses in New York City, so we don't
7 want to in any way damper the ability for small
8 businesses to build capacity to hire more. So thank
9 you.
10

11 LIZ VLADECK: Thank you.

12 CHAIRPERSON MILLER: Thank you, Council
13 Member Cornegy. Once again we've demonstrated really
14 thoughtfulness and preparedness, but also
15 demonstrates that, as I said in my opening testimony,
16 that this package of legislation we have worked on
17 together and met with advocates and industry folks
18 and we will continue to do that to make sure that we
19 come up with a package that [sic] ultimately will
20 serve working families and communities that they
21 serve and that businesses certainly will not suffer
22 in any shape, form or fashion. I'm sure that the
23 Chair of Small Business will lend his expertise to
24 ensure that does not happen. But once again, this
25

1 Council has really demonstrated their preparedness on
2 this issue.
3

4 Before the Administration... we call the
5 next panel, in terms of 1384, you mentioned United
6 Way and certainly other not-for-profits that are
7 engaged in the check-off, and you talked about... there
8 was some conversation about some potentially
9 unscrupulous not-for-profits that may be involved,
10 but at the same time this has been occurring for a
11 number of years; you mentioned that there is
12 currently legislation that permits that to happen;
13 what would be the differences in 1384 and the current
14 legislation that allows for payroll deductions?

15 LIZ VLADECK: Sure. So under long-
16 standing New York State Labor Law Section 193,
17 employers may agree -- if a worker requests -- the
18 employer may agree to make these deductions and remit
19 them directly to a nonprofit and this is the United
20 Way model. United Way conducts workplace campaigns,
21 for example, because an employer has said sure, come
22 on in and talk to the workers here, and anyone who
23 wants to make these deductions, we'll go ahead and
24 process them when we do our payroll. What this bill
25 adds, it supplements that scheme, our 1384, by making

1
2 it mandatory, not voluntary, for an employer to agree
3 to make those deductions once 500 workers have signed
4 up and asked to do so. And to be clear, that's 500
5 workers across a chain, not in any one given fast
6 food restaurant location. And the way that that
7 mechanism of requiring the deductions is enforceable
8 is that DCA will take action against an employer who
9 improperly refuses to make those deductions once the
10 request has been made. So it expands on an existing
11 mechanism by making what is now voluntary for
12 employers mandatory.

13 CHAIRPERSON MILLER: Doe this limit the
14 not-for-profits available for this deduction?

15 LIZ VLADECK: So only to the extent that,
16 you know a not-for-profit would really need a
17 significant base of support in order to trigger the
18 law's requirement. You know, signing up 500 people
19 to support and make these contributions is not some..
20 you know, for anyone who's collected signatures to
21 run a campaign or for any other purpose, it takes
22 some time, you have to talk to people; that's really
23 the only barrier.

24 CHAIRPERSON MILLER: Okay, thank you.
25 And does... [interpose]

1 AMIT BAGGA: Chairman Miller, if I may..

2 CHAIRPERSON MILLER: Uhm-hm.

3 AMIT BAGGA: provide some additional
4 thoughts. I'd like to clarify and bolster some of
5 the comments that I made earlier in response to one
6 of Council Member Cornegy's questions. You know the
7 Administration, as I said earlier, does very much
8 agree with the Council Member that we can in fact
9 walk and chew gum at the same time and in an effort
10 to demonstrate our continued support for concerns
11 that small businesses have, we want to make clear
12 that we do want to explore a small business exemption
13 in one of the bills and we do have concerns with the
14 fact that it's not currently included, and that is
15 something we look forward to working very closely
16 with the Council and all stakeholders on.

17 COUNCIL MEMBER CORNEGY: Thank you.

18 CHAIRPERSON MILLER: And thank you, and
19 thank you to the panel. Commissioner, thank you so
20 much for giving us your time and really for your
21 preparedness and readiness and thoughtfulness that
22 you've put into this process and we look forward to
23 continuing to work with you as this process goes.
24 We've been joined by Council Member Costa
25

1 Constantinides. Do you have any questions, Costa?

2 Okay and so we -- thank you, sir -- we look forward
3 to working with you in the future and so with that we
4 will call the next panel. Thank you.

5 LIZ VLADECK: Thank you.

6 LORELEI SALAS: Thank you.

7 [background comments]

8 CHAIRPERSON MILLER: Okay. The next
9 panel, from -- that will be Mr. Kyle Bragg of 32BJ;
10 Mr. Hector Figueroa from 32BJ; Mr. Arthur Cheliotas,
11 CWA Local 1180; and [background comments] from RWDSU,
12 [background comments] Stuart Appelbaum. [background
13 comments] And also from RWDSU, Jedidiah... [background
14 comment] ah-ha. [background comment] Okay.

15 [background comments] No, that's okay. [background
16 comments] Rachel. Uhm-hm. [background comments]
17 No, no, it's five, but the workers are not gonna be
18 on here [sic]. [background comments]

19 Okay, we could begin, and how 'bout we
20 begin on this end here, **[inaudible]**. Identify..

21 RACHEL LAFOREST: Yeah. Good morning,
22 Chairman Miller and members of the civil Service and
23 labor Committee. My name is Rachelle Laforest and
24 I'm the Director of the Retail Action Project. I am
25

1 here to testify on Intro 1387, a bill that bans the
2 practice of on-call scheduling in retail.
3

4 The Retail Action Project (RAP) is a
5 workers center initiative of the Retail, Wholesale
6 and Department Store Union (RWDSU). With the power
7 and voices of a growing network of over 1,200 workers
8 in New York City, we are improving workplace
9 standards in the retail industry and in the
10 communities our members call home.

11 In 2011, RAP and our partners at the
12 Murphy Institute at CUNY embarked on a study in order
13 to begin tracking the wages and working conditions of
14 frontline, non-managerial workers in New York's
15 retail industry. Our study and many others have
16 found that the uncertainty of on-call scheduling is a
17 problematic practice for retail workers, causing high
18 levels of stress, not to mention financial
19 insecurity. On-call schedules make it difficult for
20 workers to attend to other aspects of their lives,
21 thinks like enrolling in school or taking another
22 part-time job, scheduling medical appointments,
23 caring for sick family members or arranging for child
24 care. And a 2015 study by the Economic Policy
25 Institute -- referenced earlier -- also shows that it

1 is the lowest income workers who face the most
2 irregular schedules and that retail is one of the
3 industries where on-call is used most prevalently.
4

5 On average, just over 50% of the retail
6 workers who come through our doors are dealing with
7 the pressures and problems of on-call. We hear
8 outrageous stories of workers having to skip rent
9 payments, forego meals, rely on a complicated network
10 of neighbors to care for their children and give up
11 on the possibility of ever going to school because of
12 the uncertainty of their schedule and inability to
13 get consistent hours.

14 And the practice of on-call is not only
15 affecting workers. While the advancement of
16 scheduling software, a key tool used for more precise
17 on-call scheduling, was originally held as a cure-all
18 for employers and employees alike, many retailers are
19 finding that the practice hurts their businesses in
20 the long run because of high turnover and low morale,
21 but most continue to employ it nonetheless.

22 At RAP and the RWDSU we've been [bell]
23 organizing around the ban of on-call for years. We
24 both pushed for and took advantage of the Attorney
25 General's intervention with some of the worse

2 perpetrators and while our organizing and education
3 work has had some impact on a store-by-store basis,
4 it is often temporary and based on individual
5 management reactions. We need the on-call ban to be
6 legislated, to be applied to all retail workers
7 throughout the industry in New York, over 2 million
8 people.

9 It is imperative that government act to
10 protect those who are most vulnerable to abuse and
11 that Intro 1387 be passed so that more New York
12 families can thrive.

13 Thank you for the opportunity to testify
14 today.

15 COUNCIL MEMBER DROMM: Thank you. Do you
16 have written testimony?

17 RACHEL LAFOREST: It was submitted.

18 [background comment]

19 COUNCIL MEMBER DROMM: Okay, thank you.

20 Arthur.

21 ARTHUR CHELIOTES: Good morning. My name
22 is Arthur Cheliotas, I am President of CWA Local 1180
23 and thank you for the opportunity to speak before you
24 on this important legislation.

1
2 CWA 1180 represents 8,900 hardworking
3 administrative workers in New York City government
4 and the nonprofit sector.

5 The union has continued New York City's
6 proud history of being at the forefront of labor
7 rights and joined in the Fight for \$15. We are here
8 before you today to support Fast Food Workers
9 Empowerment and a Fair Work Week.

10 The bills before the Committee uphold the
11 basic human rights and address fundamental needs that
12 all workers share; the ability to plan their lives
13 based on a fair expectation of work; the need to
14 balance work with family life and other commitments;
15 it is essential that a fair work schedule allow them
16 to honor these commitments.

17 The struggle of these workers is not new,
18 the fight for the eight-hour day dates back to the
19 1880s. The slogan back then was eight hours of work,
20 eight hours of rest, and eight hours of what you
21 will.

22 In Chicago's old Haymarket produce
23 district there is a monument commemorating the
24 Haymarket Riot of 1886, a tragedy with international
25 significance. Workers gathered in support of a

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strike demanding an eight-hour day when a bomb exploded, killing seven police officers and four bystanders.

In the aftermath, those who organized and spoke at that meeting were arrested, unfairly tried, and in some cases, sentenced to death even though none could be tied to the bombing itself.

The fight for the eight-hour day, for justice, and the right of every human being to pursue an equitable and prosperous life continues today in the work that is being done with the fast food workers.

History may not repeat itself, but it sure does rhyme and each of these six bills are important elements that will make a real difference in the lives of workers as they struggle for a just, equitable and prosperous life.

Thank you very much.

KYLE BRAGG: Good morning Chairperson Miller and Committee members, I am Kyle Bragg, Secretary-Treasurer of SEIU 32BJ and I thank you for the opportunity to testify here today. 32BJ's 80,000 plus New York City members stand shoulder-to-shoulder

1
2 with fast food workers in their fight for better jobs
3 and economic justice.

4 Our members know what it means to have a
5 job that allows workers to support a family and
6 contribute to their community. It means getting paid
7 a fair hourly wage and having enough hours to earn a
8 decent income. It means knowing your schedule in
9 advance so that you can care for your loved ones and
10 yourself. As a young lady indicated on the steps
11 earlier today, that because of her challenging
12 schedule she could not be there to care for her
13 terminally ill mother or to schedule the most
14 important prenatal business that she needed for
15 herself. It means having the stability and time to
16 pursue higher education and to advance your skills.
17 It also means being able to give back locally by
18 shopping in neighborhoods and stores and trusting
19 that you'll have the time to volunteer for needy
20 causes.

21 That is why we are here today. A fair
22 work week means the same thing for fast food workers
23 as it does for cleaners, janitors and building
24 service workers in our union.

1 The largest three fast food chains in the
2 city -- McDonald's, Wendy's and Burger King -- have
3 over 300 stores and employ almost 15,000 workers
4 between them. If these bills are passed, it will
5 mean workers in neighborhoods in every borough of
6 this city -- including my own home borough of Queens
7 that has more than 50 McDonald's restaurants -- will
8 for the first time have a right to access additional
9 hours as they become available in stores. Instead of
10 being stuck on part-time poverty wage jobs, workers
11 will be able to earn a full-time income and inject
12 their spending back into the local businesses, our
13 communities.
14

15 If these bills are passed, workers in the
16 fast food industry will for the first time have a
17 right to know their schedule two weeks in advance and
18 will be protected from retaliation if they refuse to
19 work shift changes or family unfriendly clopening
20 shifts -- which you heard earlier means closing a
21 store at night and then a few hours later having to
22 open it in the morning. In an industry in which
23 almost 90% of the workers are people of color and 64%
24 are foreign born, this will provide the kind of vital
25

1 stability that is so often denied and is essential
2 for families and communities to thrive on.

3
4 The Fast Food Worker Empowerment bill
5 will make it easier for workers to form their own
6 not-for-profit that can bring about the changes that
7 they need in their communities. This organization
8 will be able to advocate for affordable housing,
9 better schools and other issues that these workers
10 face in their neighborhoods and communities. This
11 bill is especially important for workers who have no
12 bank account -- as you heard earlier -- and wouldn't
13 be able to support an organization like this
14 otherwise.

15 On behalf of our membership I urge you to
16 pass these bills and help fast food workers build the
17 kind of lives that enrich all of our communities.

18 Thank you.

19 STUART APPELBAUM: Good morning Chair
20 Miller and the members of the Committee. I am Stuart
21 Appelbaum; I am President of the Retail, Wholesale
22 and Department Store Union (RWDSU) and I'm testifying
23 today in support of legislation that would ban the
24 exploitive practice of on-call scheduling in the
25 retail industry.

1 The RWDSU represents 100,000 workers in
2 the United States, with 45,000 residing in New York.
3 RWDSU members work in retail, food processing, and
4 many low-wage sectors. Our union is deeply involved
5 in progressive activism and movements for economic
6 and social justice. The RWDSU is committed to
7 raising job standards across industries and
8 occupations.
9

10 On-call scheduling is a pervasive and
11 exploitive employment practice where workers do not
12 find out until just before a scheduled shift if they
13 will be required to work or not. It is a form of
14 precarious employment that has spread throughout low-
15 wage industries and is harmful to workers and their
16 families. It shifts the costs of doing business from
17 the employer to low-wage employees, those who can
18 afford it least. Research has even shown that it has
19 a negative impact on businesses in the form of higher
20 turnover and reduced morale, leading to lower
21 customer satisfaction.

22 The ability to join a union is one of the
23 cornerstones of America's economic prosperity. The
24 most effective way to bring about good and stable
25 jobs has historically been through collective

1 bargaining. Exercising this right helps workers win
2 time off to spend with family and friends, decent
3 pay, health care, retirement security, and
4 protections against dangerous or discriminatory
5 working conditions. In retail, not everyone has the
6 protections of the union; I wish they did. Workplace
7 regulation is required to stamp out the harmful
8 practice of on-call scheduling and to protect workers
9 who need it the most. Regulation raises the bar so
10 employers are not forced to compete in a low-road
11 fashion, driving standards down and exploiting
12 workers.
13

14 Workers whose shifts change drastically
15 week to week or day to day and hour to hour cannot
16 plan for child care or college classes or to take a
17 second necessary job to earn the income they need and
18 which they don't get from a part-time job. This ban
19 will bring about predictable scheduling and stabilize
20 workers' lives and have a positive impact on
21 businesses also. It is time now for New York City,
22 the retail capital of the world, to pass predictive
23 scheduling and set the standard for good retail
24 business practice.
25

1 Thank you for your time and allowing me
2
3 to testify today. Thank you.

4 HECTOR FIGUEROA: Good morning,
5 Chairperson Miller, Committee members. Buenos dias
6 New Yorkers of all perspectives here today. We want
7 to provide testimony in favor of the measures that
8 are before this Committee that will, in our view, go
9 a great length to benefit both fast food workers and
10 retail workers. And you heard from my brother Kyle
11 Bragg earlier about who 32BJ is and how many members
12 we represent, so I'm going to go straight to the
13 issue that we are proud to stand with fast food
14 workers and retail workers, and very specifically,
15 fast food workers that we have seen taking action on
16 behalf of workers since 2012, including going on
17 strike, rallying and winning a \$15 minimum wage here
18 in New York State and winning wage increases for over
19 22 million workers around the country. We are here
20 speaking for them because we believe that this is a
21 workforce, alongside the retail workers and many
22 other low-wage workers in New York that deserve that
23 this City of New York stand with them and make their
24 lives and their working conditions a little easier.

1 Fast food workers are majority people of
2 color, there are about 60,000 fast food workers in
3 the City of New York, over 160,000 in New York State;
4 close to 88% are people of color. And the question
5 that Council Member Rodriguez raised earlier, 90% are
6 25 years or older. These are working people that are
7 working to save themselves and quite often their
8 families.

9 Fast food workers have been fighting for
10 \$15 and a union here in the City and throughout the
11 country -- they are still fighting for a union and
12 they will continue to fight for the union, and Local
13 32BJ will help them win a union. However, in the
14 meantime, the City Council can be a **[inaudible]** of
15 promoting workers' rights, ensuring fair schedules
16 for fast food workers and retail workers and
17 protecting vulnerable communities.

18 The Fast Food Workers Empowerment bill
19 specifically would be the first of its kind and
20 present a new model for workers to pool resources
21 together and build collective power to be able to
22 learn and educate themselves and other coworkers of
23 their rights under the law to be able to support
24 issues that affect them, from affordable housing to
25

1 discrimination to criminal justice system reform to
2 immigration justice and other issues. We see this
3 bill being a complement to the enforcement mechanisms
4 already in place and also contemplated by DCA and
5 other agencies.
6

7 Fast food workers should have the ability
8 to contribute to their own organization,
9 organizations that they deem worthy of their support,
10 to create a permanent infrastructure that can enforce
11 the gains that we have recently obtained through the
12 Wage Board, through City legislation and State
13 legislation and to enforce the kind of corrections to
14 the work schedules that we are seeking here today.

15 When you pass the scheduling bill, the
16 organization that the workers can create through the
17 Fast Food Workers Empowerment bill will ensure that
18 workers quickly know about the law and quickly
19 understand their rights under the law.

20 Many workers in the industry, as
21 Secretary Kyle Bragg mentioned, do not have bank
22 accounts; allowing them to make deductions from the
23 payroll is the only way they can aggregate their
24 contributions and create a sustainable and
25 independent organization and support those

1 organizations that stand with them. In the absence
2 of fair labor standards and effective enforcement in
3 the fast food industry, we have seen very often a
4 race to the bottom to keep wages low and to extract
5 profits at the expense of workers, keeping the
6 workers in poverty. We know that there are many good
7 actors out there, but there are also considerably
8 many that are not. The organization that workers
9 could create with this bill would go a way [sic] to
10 ensure that workers know their rights and help them
11 solve problems on the job and give them the
12 confidence that they will not be subject to employer
13 retaliation and [inaudible] they do, that there will
14 be remedies to protect them in exercising the new
15 rights.
16

17 When families are at risk of being torn
18 apart through immigration raids and deportations, as
19 we have seen under the new administration, when we
20 have seen a complete change of focus on the rise of
21 working people, New York should be out there setting
22 the pace for a category of workers to be able to
23 stand by themselves proud and be able to build the
24 kind of future that they deserve. The organization
25 that fast food workers can build will also set the

1
2 possibility for them to engage in broader fights for
3 justice at the moment that they need it the most.

4 I strongly encourage you to hear from the
5 workers today in addition to us labor leaders so you
6 can really hear their voices and understand their
7 concerns, but also realize the hope that they have
8 placed on this City Council and on this package of
9 bills, and of course, I urge you to pass this set of
10 bills; you will make a big difference in their lives,
11 it will change forever the dynamic in this industry
12 and you will do it without hurting the employers that
13 provide them with the jobs. We believe that the
14 package of bills today expand the flexibility in the
15 workplace, so flexibility is not only a consideration
16 for managers and employers, but also the flexibility
17 that comes for the workers so they can really plan
18 their life and be able to meet the needs for those
19 who they work for.

20 So Council Members, I hope that you will
21 pass this legislation and that you will be able to
22 hear the voices of the workers themselves. Thank
23 you.

24 CHAIRPERSON MILLER: We've been joined by
25 Council Member Crowley, thank you, and I know there

1
2 are a few questions as well, so. First of all, I
3 want to say thank you to the members of this panel
4 for lending your expertise and your voice and
5 resources to these industries of folks who have often
6 not had a voice, and having kind of sat there, I
7 understand what that experience is like and I know
8 that often it is very easy for you to focus on those
9 dues-paying members that you have, but the conscience
10 of America has always been the labor movement and I'm
11 glad that you are stepping up, proud to be a part of
12 that movement as well.

13 So given that experience, having
14 organized and representing workers in various
15 industries, like industries such as fast food and
16 other portions of retail, around the concept of
17 scheduling, what have you seen in terms of improving
18 quality of life and has there been any adverse
19 affects on those businesses involved as well?

20 HECTOR FIGUEROA: We are in the process
21 of experiencing the increases on the minimum wage
22 here in New York, we are now on year two; for the
23 fast food workers will be year three, but the
24 experience so far has been a positive one in that the
25 workers are seeing raises being mandated and a number

1 of them enjoying those raises. However, not every
2 employer out there is complying with increases and it
3 is often a challenge for us to give the workers the
4 education they need; the workers themselves are the
5 best ones capable in the workplace itself to educate
6 each other; we're hoping that the empowerment bill
7 will provide another level of support for them to do
8 that. We have seen that unfortunately a number of
9 employers have been cutting the hours and taking
10 advantage of the irregular schedules that are
11 overwhelmingly prevalent in this industry, depriving
12 workers from the regular stream of income that they
13 need. So we think that this bill will help to an
14 extent by requiring workers who want to work more
15 hours, for example, to be given the first choice to
16 do so and by providing advance notice requirements
17 that that will bring a level of stability upon which
18 the wage increases will be more meaningful for the
19 workers and their families.

21 We also have seen in other places that
22 are further along the curve of raising the minimum
23 wage that the impact on the industry has been really
24 minimal, if at all. Seattle, Los Angeles, Chicago;
25 other cities around the country that were earlier

1 than New York City have not experienced the kind of
2 calamities that some analysts and commentators and
3 people from the industry argued for. So we think
4 that we are on a solid and strong path, but we need
5 to create more stability in the workplace for the
6 workers to benefit and it will not come at the
7 expense of the employers. The set of bills
8 themselves have considered significantly the needs of
9 business; we believe that they don't impose any
10 additional burdens that would prevent them from doing
11 their work, but they will take burdens away from
12 working people who need support the most.

14 STUART APPELBAUM: If I could focus on
15 retail. When we negotiate contracts with retailers
16 in the city, scheduling is always near the top, if
17 not the top of the list of our demands and we have
18 negotiated bans on on-call scheduling in contracts
19 throughout the city and those employers have been
20 able to operate successfully and even more
21 successfully as employee morale is increased and
22 turnover is decreased, so it can be done without
23 hurting businesses. For workers it is often the
24 number one concern they have. If they have a part-
25 time job they can't earn enough to support

1
2 themselves; they don't have a part-time family and
3 they need another job and if you don't know what your
4 schedule is going to be, you can't arrange for the
5 second job. If you're a mother, a single mother and
6 you want to arrange for child care, how do you do it
7 if you don't know if you're going to be working that
8 day or not until the last moment? If you want to go
9 to school to advance yourself, you can't do it when
10 you don't know if you're available to take classes.
11 So I think this is something that has been done
12 successfully in retail employers across the city and
13 it is one of the greatest concerns that retail
14 employees in this city have.

15 CHAIRPERSON MILLER: Thank you. Council
16 Member Lander.

17 COUNCIL MEMBER LANDER: Thank you very
18 much, Mr. Chair. First I want to offer you the
19 opportunity; I know that you were here for the test..
20 first of all, let me say thank you all for being here
21 and for the work that you and your institutions have
22 done to advance not just the interests, as the Chair
23 said, of your own members, but of working people more
24 broadly; the organizations and unions that are up
25 here I think have distinguished themselves in trying

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to push for a more fair economy and as I think the Chair has said and as we all believe, that doesn't have to be a zero sum game, businesses can treat their workers well, give them full-time jobs, give them decent pay; give them fair hours and there's lots of examples of that as well. You know there's a great book called *The Good Job Strategy*, by Zeynep Ton that shows that retail and service and businesses that are even in relatively low-wage markets, there are some employers that treat their workers well with respect and stability, there are some employers who don't; those that do of course get economic benefits as well as doing the right thing; their employees stick around, they have less turnover. So you guys have shown that that's possible and obviously unions only succeed where employers succeed; workers have to be working for successful employers to have their jobs, so I appreciate that you've shown that time and again.

Commissioner Salas and OLPS Director

Vladeck went through the bills that in several cases spoke to some concerns in them, while sort of giving general support, so I just wonder if you want the opportunity, I guess in particular on the on-call

1 scheduling bill or the Empowerment Act bill, to
2 respond to anything that they said? You know I think
3 the goal here it so to work with them and with all
4 the stakeholders to achieve the most effective bills
5 possible, but I just thought I'd offer you that
6 opportunity if there's anything that you want to say
7 in response.

9 HECTOR FIGUEROA: Well we are really in
10 support of many of the ways that the Administration
11 described the bills, and particularly on the
12 empowerment bill, I think that they presented a
13 picture that we agree with; that this is a mechanism
14 for the workers to be able to make contributions and
15 it carries no burden on the employers; in fact,
16 employers would be compensated by the nonprofits who
17 are the recipients of contributions from workers, and
18 you know, they certainly described, in our opinion,
19 very well the way in which the workweek bills will
20 work. We understand that there are some issues that
21 obviously still need to be developed further; we look
22 forward to hearing from the industry too, just like
23 you are, to understand exactly what the concerns are.
24 These are not anti-industry bills; these are bills
25 that are trying to create a better environment for

1 the workers that are employed by the industry to be
2 able to go along with their life in a fruitful way.
3 That being said, the cornerstone, the foundation of
4 these bills is a basic proposition, that workers
5 should be able to have a measure of control in their
6 lives, and without that control in their lives,
7 whatever we do, whether it is increasing the minimum
8 wage or passing **[inaudible]** or passing other
9 measures, really are not going to be experienced the
10 way that we intend to by the workers, either because
11 they don't have a voice or ether because the hours
12 are taken away from them and their life is in chaos
13 and they cannot really benefit from the thing that
14 this Council of the City has tried to do.

16 RACHEL LAFOREST: Is this on? Okay,
17 thanks. With regard to on-call scheduling, I think
18 you, Councilperson Lander and Ms. Vladeck answered it
19 as eloquently as I could. When the Attorney
20 General's office issued a battery of letters to some
21 of the worse perpetrators of on-call scheduling in
22 the city, we saw something of a turnaround in some of
23 those spaces; it didn't affect their bottom line; in
24 fact, what we hear from our members who don't have
25 the benefit of union protection yet but who come

1 through our doors, is that if they feel that they
2 have that greater control, there's more loyalty to
3 the brand and to the employer itself, they're more
4 eager to help sell the product and actually be
5 connected to the employer's own interest in building
6 the business over time, and there is very little, if
7 nothing, that comes out of the employer pockets in
8 order to ensure that that's done.

10 STUART APPELBAUM: And I would just add
11 that we would be willing to work with the Council, of
12 course, and the Administration, of course, on any
13 questions or concerns they may have about the bills.

14 COUNCIL MEMBER LANDER: Super. And just
15 one more... Oh, I'm sorry, yeah, [background comment].

16 ARTHUR CHELIOTES: **[inaudible]** to take a
17 moment and say thank you to the City Council, this
18 progressive City Council that understands how
19 important this is. Economists have identified a
20 class of workers called the precariat; people who
21 live in precarious situations where their income;
22 their job schedules are all at the whim of the boss
23 and we know that's wrong as human beings; we know how
24 that is a core issue for all of us, certainly in the
25 labor movement [sic], but in society generally. And

1 I'd like to thank the City Council for the work that
2 you have done and the understanding that you have of
3 these issues in making life better for working people
4 in the city, for the precariat, so that they are not
5 as precarious in their lives, and this legislation
6 speaks to that issue, and on behalf of my members,
7 none of whom are in the precariat, but who understand
8 that they have sisters and brothers and children who
9 might be, how important this is for all New Yorkers,
10 and really on a national scale. So I'd just like to
11 take this moment to thank you for them.
12

13 HECTOR FIGUEROA: Thank you.

14 COUNCIL MEMBER LANDER: I just have one
15 more question for this panel, and it really relates
16 to the Fast Food Empowerment Act bill and you know,
17 the sort of new models of work organizing, because I
18 think it's easy for people to be suspicious, you
19 know, on the one hand saying, isn't this just like a
20 money grab or on the other hand, aren't traditional
21 labor protections and traditional models doing
22 everything we need them to do; I have seen --
23 obviously we have the Retail Action Project up there,
24 so we have one on this panel, but I think you've all
25 also had the opportunity to work with organizations

1 that are trying some new things and it's clearly a
2 moment when we need them, so I guess I want to invite
3 a little more reflection on the value of some new
4 models of work organizing that don't in any way erode
5 existing labor protections, but how people work
6 together on a broader range of issues, as I think you
7 said, President Figueroa, so just to, you know, to
8 allay the suspicions people have -- you know why this
9 is a valuable thing to do that will help make it a
10 better city for, obviously in this case, fast food
11 workers, but as model more broadly as well.

13 HECTOR FIGUEROA: Yeah, thank you for the
14 interest and think about the labor market as an
15 ecosystem, right; think of it as an ecosystem which
16 has different ways in which workers can advance their
17 interests and address their concerns and do well for
18 themselves. We have labor unions, such as ourselves
19 -- 32BJ, UFCW, RWDSU, and CWA here at the table; we
20 represent a number of workers in our industries and
21 we negotiate collective bargaining with employers
22 that go beyond the system common ground of laws and
23 mandates that affect all the workers; that continues,
24 and in fact, fast food workers, I have no doubt one
25 day will be sitting, and sooner rather than later,

1 across the table with their elected representative
2 bargaining with their employers for such a contract
3 and conditions like we all have the benefit of
4 negotiating in our sectors; I have no doubt about
5 that. But again, looking at the image of an
6 ecosystem, an ecosystem that is dominated by one
7 species, by one reality is not a healthy one. There
8 are too many workers that need to be educated about
9 the rights; about their conditions. And I would say
10 even more now than ever, side by side with a union
11 movement you need to have other mechanisms, other
12 vehicles for workers to advocate for themselves. We
13 have organizations in our communities, we have
14 advocacy groups; we have the enforcement that is
15 created by the City and by the State and what we are
16 proposing is that for fast food workers the workers
17 themselves should have an opportunity to be part of
18 that, that the workers themselves can choose to
19 contribute to an advocacy organization of their own
20 on whatever issues they have interest. We suspect,
21 based on the conversations with the workers, that
22 this entity can be helpful for them to be educated
23 about the new **[inaudible]** rights. Very few workers
24 know about the raises in the minimum wage; very few
25

1 workers know about paid sick days, and probably, when
2 we pass the Fair Work Week, many workers will have
3 the need to be educated about these new rights and
4 while the City Council, the City of New York does a
5 great job of putting information out; making sure
6 that workers know, it is impossible to get to every
7 worker, so this is one way of giving the workers an
8 opportunity, if they so choose, they will not be
9 forced to do it, to ask an employer that they want to
10 have an amount out of their paycheck to be deducted
11 and want to do it that way because otherwise, with
12 the wages that they earn; the conditions in which
13 they work, it is very difficult for them to sustain
14 any effort if it's not facilitated through paycheck,
15 check-off deductions. So it's an experiment in
16 building a level of civic participation and civic
17 responsibility and a fraternity and strength among
18 the workers in this sector who already, without that
19 benefit, have taken incredible risk to fight for
20 their rights, incredible efforts, you know from
21 Missouri, fast food workers in Ferguson; been there
22 with the Black Lives Matter movement asking for
23 racial justice, to workers here in the City of New
24 York who have joined the fight for immigrant justice
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2 and for getting people to be concerned about the
3 increasing issues around affordable housing. Fast
4 food workers are already engaged; what we want to do
5 is for them to be able to sustain their engagement
6 alongside their efforts to build a union and
7 alongside other concerns they may have.

8 CHAIRPERSON MILLER: Thank you Council
9 Member Lander. We'll now hear from Council Member
10 Crowley.

11 COUNCIL MEMBER CROWLEY: Thank you, Chair
12 Miller, thank you for having this important hearing
13 today, for your work on this package of bills, for
14 all the sponsors and advocates for their work, and
15 especially for this panel for being here today. I
16 know so many of you have done advocacy work that has
17 helped tens of thousands of New Yorkers, many of whom
18 aren't even your members. So my question is; if
19 you're a member of a union, does it preclude you from
20 the benefits of this package of bills? With your
21 collective bargaining agreement, if you're a retail
22 employee, do you already have the right to an
23 opportunity at more hours right now in the retail
24 workforce if you're represented by RWDSU? Let's say
25 you're just about working 30 hours a week -- and a

2 lot of my constituents have a situation -- I know a
3 lot of New Yorkers like this -- are working two
4 somewhat part-time jobs, working like 35 hours a
5 week, wanting to work 40 or more, but employers are
6 not giving them that option because they're afraid
7 they may have to pay overtime, god forbid if their
8 employee works that many hours, but unfortunately, I
9 have a constituent that has almost two full-time
10 minimum wage jobs -- and I know I'm not alone, many
11 of my colleagues have that same experience -- but if
12 more hours open up and you're already represented by
13 a union, is that part of the contract, Mr. Appelbaum?

14 STUART APPELBAUM: The example you
15 provide of the person with two full-time jobs and
16 wants to work more hours; when they don't know their
17 schedule, they're not able to arrange for more hours
18 which they need. In our contracts, we provide that
19 people are able to get more hours, we protect
20 scheduling; we have extensive and lengthy discussions
21 in negotiations on how to deal with scheduling, but
22 where employers don't provide fair scheduling and
23 still use on-call scheduling, that creates penalties
24 for good employers; they have to compete with low-
25 road employers, and I think that is bad for the City.

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2 Because not everyone is covered by a union contract,
3 that's why we're looking for regulation so that good
4 employers are not put at a disadvantage for what they
5 do and so that standards throughout the industry
6 rise; we all rise when we do that. But our contracts
7 do provide for fair scheduling.

8 COUNCIL MEMBER CROWLEY: Right. Right
9 now if you're a good employer you're getting
10 penalized and that's not right; we don't want to
11 create an atmosphere like in New York City.

12 And Mr. Figueroa, you know you really led
13 a fight on the \$15 an hour minimum wage here in New
14 York City and helped so many airport workers who were
15 experiencing similar type situations. How have
16 things changed; would your airport employees benefit
17 from these bills, or are they already protected in
18 their new contracts?

19 HECTOR FIGUEROA: Well we are glad to say
20 that the 8,000 workers that have been part of the
21 airport campaign in LaGuardia, Newark and Kennedy
22 just negotiated a collective bargaining agreement
23 this past December that actually has language that
24 provides this set of protections on workweek
25 schedules and seniority rights, which are not

1 contemplated on these bills, but were part of the
2 negotiation process, and you know, that is an example
3 of how collective bargaining provides for a
4 mechanism. But in the airport system, which is not
5 part of this bill, but as an example of what I'm
6 saying about an ecosystem of labor conditions that
7 need to be out there, there are 41,000 workers, still
8 contracted workers, that are not necessarily having
9 those benefits, right, because they don't have
10 collective bargaining; that group is having its own
11 set of demands and is having its own campaign. With
12 the fast food workers, what makes it very specific,
13 our mind, for these kinds of protections and the
14 empowerment bill, is that we have a whole movement in
15 the country behind them that resulted in New York in
16 the calling for the Wage Board by the Governor that
17 set wages to increase, and that was really what
18 turned a corner for winning the minimum wage in New
19 York State of \$15 an hour. But our experience is
20 that after it happened, the workers have not been
21 seeing the \$15 an hour resulting in the income that
22 many of them expected; hours have been cut, schedules
23 have been changed; many workers are not aware of that
24 and the passage of the paid sick leave, so we know
25

1 that even workers are cheated of what they have to
2 earn under the law. So what the workers are asking
3 for is an opportunity to be given to them; if 500 of
4 them come together and 500 of them say we want our
5 employer to honor a deduction into an organization or
6 more than one that they feel will advance the
7 education and knowledge of their rights, the
8 understanding of their conditions while they continue
9 to advocate, organize to win eventually the union,
10 that they feel that that will go a long way for
11 fixing the problems and for them to enjoy the
12 benefits of what they fought for. So that's really
13 what we're looking for. The empowerment bill is not
14 a substitute for a union; it is not a **[inaudible]**
15 union; it is a way for the workers to, right now, who
16 are incredibly glad of the victory they accomplished,
17 to have the ability to band together and use their
18 very, very modest resources to create efforts that
19 advance their interests, but they're not going to
20 create the fight for the union, and when the union
21 happens and the union comes, workers who may not have
22 that benefit will still have a voice to advance
23 issues that concern them.

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COUNCIL MEMBER CROWLEY: No further questions. Thank you.

CHAIRPERSON MILLER: Thank you, Council Member Crowley. I just have one more question on, I think it's 1395, about the hours, and when you talk to industry folks they will tell you that the amount of the hours in the industry is a product of the environment, part-time workers and the flexibility and not related to, as Council Member Crowley just alluded to, two full-time jobs and the opportunity to earn at that one location, 'cause obviously there are struggles that come with transportation, and others, in-between two full-time jobs. Have we seen where employers have intentionally disallowed individuals from either becoming full-time employees or picking up those hours which may change their status, and what would that mean aside from premium pays?

HECTOR FIGUEROA: Let me see if I understand the question. You mean in terms of the premium that is added when the workers are called to perform work or... [crosstalk]

CHAIRPERSON MILLER: No, not according to this bill... [crosstalk]

HECTOR FIGUEROA: Oh okay.

2 CHAIRPERSON MILLER: under the current
3 situation. Under the current situation, if they were
4 a full-time employee, what would change in terms of
5 what would then become available to them **[inaudible]**...
6 [crosstalk]

7 HECTOR FIGUEROA: If they're already
8 full-time employees with this, they will still have
9 the advance notice **[inaudible]** will benefit from it,
10 because their schedules will have to be changed with
11 two weeks' advance notice; right now they don't have
12 that.

13 CHAIRPERSON MILLER: If they were a part-
14 time employee seeking additional hours.

15 HECTOR FIGUEROA: If they were a part-
16 time employee seeking additional hours, this creates
17 now the possibility for them to have it if they want
18 it and the employer would be required to offer the
19 workers first the extra hours and if the workers
20 don't want it they don't need to have it, but if the
21 workers are seeking full-time employment, it opens
22 the door; it creates a possibility for them to get
23 those extra hours.

24 CHAIRPERSON MILLER: Are there additional
25 benefits that come to full-time employment or that

2 are associated with the hours **[inaudible]**...

3 [crosstalk]

4 HECTOR FIGUEROA: There are...

5 CHAIRPERSON MILLER: premium paid for
6 healthcare?

7 HECTOR FIGUEROA: If the ACA keeps -- you
8 know, which right now we don't know, Council Member,
9 what's going to happen with the ACA mandates, but
10 under the ACA mandates, if workers pass a threshold
11 of hours, they are eligible for health care; the
12 employer, under the current ACA, needs to provide for
13 health insurance; whether that will remain in place
14 or not, we don't know. However, many workers are
15 working... we're talking about really minimal, minimal
16 hours, we're talking about many workers that are
17 working 15 hours a week, 20 hours a week; some
18 workers we know are working even 12 hours a week, and
19 these workers have a long way to go in terms of hours
20 offered by the employer to even trigger the mandate
21 under the ACA. So it's quite possible that an
22 employer could increase the hours of fast food
23 workers without triggering the health care and the
24 workers will be getting the benefit of extra hours;
25 extra income before they employ additional workers.

1 For example, during the holiday season, during
2 moments in which the demand for fast food is greater,
3 all too often employers bring new people, new people
4 to be there in the stores when the existing employees
5 will very much benefit during those peak periods from
6 working full-time or working more hours than the very
7 few hours they regularly get.
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9 CHAIRPERSON MILLER: And I know that --
10 and in the industry, one of the costs that an
11 employer would incur would be training of new
12 employees, but if you balance that with having to pay
13 premium pays for over 40 hours, for additional hours
14 or health care; are we seeing that as a motivation to
15 limit the hours of employees...? [crosstalk]

16 HECTOR FIGUEROA: Well we would argue... we
17 would argue and we would love to be in a conversation
18 with the industry; we're interested, that when you
19 offer more hours to workers, the cost of having to
20 find new workers to fill the shift and having them
21 know what they're doing obviously would be reduced;
22 the loyalty of the workers, like brother Appelbaum
23 was saying -- and that is true of retail; it's true
24 of cleaning; it's true of fast food -- increases the
25 commitment that workers have to the job. I am more

2 likely to be absent from a job that is 12 hours, 15
3 hours and I have to have three or four more jobs to
4 provide my income during the week than if I have a
5 job that is predictable scheduling, provides enough
6 hours -- I want to keep that job because that's a
7 better job. So the cost of having to replace
8 workers, we don't measure that; that is a cost
9 carried through the city taxpayers; through the
10 employer in their operations for having such a
11 revolving door of employees, and you know the
12 industry very often doesn't talk about that.

13 CHAIRPERSON MILLER: Thank you.

14 HECTOR FIGUEROA: What this bill creates
15 is a disincentive for employers to capriciously
16 change scheduling, right; they can still do it, but
17 they have to pause and think, because there is now a
18 cost that has been revealed that the worker was
19 before wholeheartedly carrying; now it's a shared
20 responsibility; the employer will make a decision
21 about last-minute changes in scheduling; it carries a
22 price, but that's a responsible way to do it because
23 right now the only ones who are paying for those
24 changes at the last minute are the workers, and

1 nobody is taking note of that except the workers
2 themselves who are suffering from it.

3
4 CHAIRPERSON MILLER: Thank you. Council
5 Member Lander.

6 COUNCIL MEMBER LANDER: Thanks, Chair; I
7 just want to offer one reflection on your question as
8 well, if I might. I've been talking with some
9 franchise owner and operators and fast food business
10 folks and one thing I've heard is, you know we have a
11 model where about half our employees are full-time
12 employees who want full-time jobs and about half are
13 employees who want to be part-time; they're students,
14 they have other obligations; if you had that model,
15 the access to hours bill would be perfectly
16 compatible with your business, you know, and if
17 someone left, full-time worker left; maybe if a part-
18 time worker did want the additional hours or the
19 full-time position they could get it, but you could
20 keep going with half full-timers and half part-
21 timers; this would prevent you from having only
22 involuntary part-time workers, and it is true -- I
23 just want to own what you said -- if you are looking
24 to save some money, you know, as an employer and kind
25 of go that low road route and say, I don't want to

1 meet my health care obligations under the Affordable
2 Care Act, so I'm going to keep all my workers below
3 -- I think it's 30 hours that's the threshold -- and
4 we'll just keep everyone at 29 and we won't have to
5 pay in for health care and that way we'll save some
6 costs; you wouldn't be able to continue to do that
7 under this law because those workers would the
8 opportunity to get those additional hours, but -- or
9 I'll say just for me; I don't mind having a law in
10 New York City; that means that you can't duck all
11 those ACA health care obligations, and let's
12 remember, every other fast food employer in New York
13 City will also have to do this, so you'll still be in
14 a level playing field, competing with other
15 employers; everyone will be meeting their ACA
16 obligations; the workers, the businesses, the City,
17 and the country would be better off as a result, so.

19 CHAIRPERSON MILLER: Thank you for your
20 insight. And before this panel steps down, I just
21 want to say, as we are... as labor standards get
22 diminished and the attempt to get diminished, coming
23 out of Washington and other things that we're seeing
24 throughout states -- fortunately, it's not happening
25 here in New York City -- that it is important that we

2 stand up and that we create laws and not just policy
3 and get away from the handshake agreements that we
4 have; we have to go beyond handshake agreements
5 because they may not stand the test of time, and we
6 didn't believe that when we were doing that. The
7 fact of the matter now, what we see is really
8 indicative of the fact that what we are doing here
9 today is really, really important, because we don't
10 know what's going to happen tomorrow, whether you are
11 sitting there, I am sitting here or the opportunity
12 pass thoughtful, progressive legislation that
13 protects workers will exist and so it is very
14 important that we work on this, we get it right and
15 that we protect all throughout the city. So thank
16 you so much for all your time and being on the panel;
17 we'll call our next panel now. [background comments]
18 Jessica Walker... [background comments] Manhattan
19 Chamber; [background comment] Varun Sanyal, the
20 Brooklyn Chamber; Jay Peltz, [background comment]
21 Food Industry Alliance; and Kevin Dugan, Restaurant
22 Association. [background comments]

23 [pause]

24 CHAIRPERSON MILLER: You can begin.

25 Please identify yourself.

JESSICA WALKER: Thank you, Councilman.

My name is Jessica Walker; I am the President and CEO of the Manhattan Chamber of Commerce. We are a business organization, but our heart is certainly with small business and helping them survive and thrive here in the city.

I think that -- I have a few notes here in my phone, so bear with me. Overall I think that we all agree with the concept and the goals of the legislation; I think that obviously stability in the workplace is fantastic and that is certainly an aim that we all want to move towards. But we do have some concerns with the legislation as written.

First, I think that there are... we do have some real... [interpose]

[gavel]

CHAIRPERSON MILLER: Could we keep it down, please?

[background comment]

JESSICA WALKER: Thank you.

CHAIRPERSON MILLER: I apologize; you can pick up.

JESSICA WALKER: So I think we have some general concerns around the bills that are targeted

1 towards fast food restaurants, and that's mostly
2 because they're franchises here in the city, so many
3 of them really are small businesses with thin profit
4 margins, so I just want to sort of make sure that we
5 highlight that.
6

7 But I really want to focus my remarks on
8 two bills, which really target and capture businesses
9 beyond just fast food establishments; that's
10 Intro 1396 and 1399. So the concerns are broad, but
11 I'll just outline sort of three overarching issues
12 that we see here.

13 One is that I think that the legislation
14 is a little too rigid in terms of not allowing
15 flexibility where it's needed in some areas; two
16 weeks is certainly a long time; I think we want to
17 look at how many days we need to focus in that
18 regard. Certainly, as we've heard, many workers do
19 want some last-minute changes, and I think that there
20 are some improvements that could be made there, so
21 that's the first issue.

22 The second is; I think that in many areas
23 of these bills the enforcement seems to be overly
24 punitive. I think that we all remember the bad old
25 days between 2002 and 2012; in that 10-year period

1 the fines on small businesses nearly doubled and it
2 was just a huge source of revenue for the City and I
3 think small businesses particularly felt nickel-and-
4 dimed, so we don't want to go back to that; I think
5 that the fines and the premiums in this legislation
6 could potentially open that door, so that's very
7 concerning to us. There's also a private right of
8 action I believe in Intro 1396, which is concerning,
9 that sort of opens the doors for lawsuits, so want to
10 look at that.

12 And then thirdly, the concern has to do
13 with a lot of notice requirements in 1396 and 1399.
14 Our fear here is that we're starting to create an
15 environment where small businesses are almost forced
16 to have to have a human resources department, which
17 they cannot afford. I think some of the bills are
18 targeted towards small businesses that have five or
19 more employees, so that really is a very small
20 business, and so this is just sort of concerning in
21 that regard. And I'm happy that the Administration
22 sort of singled out 1399 as one area that could be
23 potentially burdensome on small business.

24 But in general, I just want to sort of
25 put myself out there; I think that, as I said, we do

2 understand the goals of the legislation; I'm happy to
3 sit with each and every one of you to sort of go
4 through the bills line by line to, you know, see
5 where we can make improvements and really try to get
6 something that's not so burdensome for small
7 businesses. So thank you.

8 VARUN SANYAL: Good afternoon, Chair
9 Miller; Committee members. I am Varun Sanyal,
10 Director of Economic Development Policy at the
11 Brooklyn Chamber of Commerce and today I'm delivering
12 testimony on behalf of our President and CEO, Andrew
13 Hoan.

14 The Brooklyn Chamber of Commerce is a
15 membership business organization that represents the
16 needs of over 2,100 member businesses across the
17 borough of Brooklyn. The Brooklyn Alliance is our
18 economic development arm that addresses the needs of
19 businesses through direct business services.

20 I would like to commend the Committee for
21 a broad ranging set of legislative measures meant to
22 improve the labor conditions in New York City. While
23 many of the proposed pieces of legislation are good
24 and well-intended, we do have some concerns on issues
25 that may overly impact the ability of businesses to

1
2 comply and remain successful. Also, with the
3 addition of so many pieces of legislation at the same
4 time, we are concerned for the cumulative impacts.
5 The following are our observations and some
6 recommendations for ways to move forward.

7 Intro 1384: We believe that this needs
8 further consideration and study as well as
9 conversation between business owners and the not-for-
10 profits concerning the feasibility of this benefit to
11 all parties involved.

12 Intro 1388: There are many employees who
13 are seeking additional hours and overtime
14 opportunities; this would hamper their ability to
15 earn those hours. We encourage amendments to the
16 proposed legislation that would allow for the option
17 for employees seeking the hours to clopen while
18 protecting those who do not.

19 Intro 1395: The flexibility of part-time
20 work is an attractive feature for many employees. We
21 believe that hearing from both employers and
22 employees on this matter will be critical because it
23 could limit workers ability to keep minimal hours
24 that they may need to pursue education or other
25 training, or to attend to personal matters.

1
2 Intro 1396: We support good protections
3 for scheduling changes and think this is a worthy
4 bill. We believe that 14 days maybe too much. We
5 recommend that when this takes effect there should be
6 a review process to determine the impacts on small
7 businesses after a year and reconsideration for the
8 duration depending upon the results.

9 Intro 1399: Calls for employees to have
10 flexible work schedules, yet this bill may contradict
11 1396.

12 For the past five years, government
13 regulations, fines and violations has been one of the
14 top ten obstacles to doing business in Brooklyn,
15 based on responses gathered from the Brooklyn
16 Chamber's Annual Member Issues Survey.

17 We encourage a serious dialogue with the
18 business community as well as consideration for the
19 phasing of these measures so that they don't take
20 effect all at once, so as to allow businesses to
21 adapt better.

22 We also would suggest an associated
23 campaign of awareness so that businesses are not
24 caught unaware or fined unnecessarily.

1
2 We support all policies that are
3 conducive to a thriving and beneficial climate for
4 small businesses. We respectfully ask that the City
5 Council reexamine the proposed bills and consider
6 amendments to those bills.

7 Thank you for providing us the
8 opportunity to testify on this matter.

9 KEVIN DUGAN: Good afternoon, Chairman
10 Miller and good afternoon to the rest of the Council
11 Members who are joining us today. I want to first
12 say thank you for the opportunity address all of you
13 this afternoon.

14 My name is Kevin Dugan; I am the Regional
15 Director for the New York State Restaurant
16 Association; the Association is the largest
17 hospitality trade association in the State,
18 representing hundreds of thousands of businesses
19 across the State; the largest constituencies
20 regulated by the City are a key... more than 20,000
21 eating and drinking establishes in the five boroughs.
22 Our members represent one of the largest
23 constituencies and are a key economic engine of New
24 York City.

1
2 New York City is one of the pillars of
3 the culinary world. Our restaurants employ hundreds
4 and thousands of New Yorkers; in the quick-service
5 industry along employs more than 65,000 individuals
6 across the city. Our members support millions of
7 residents and tourists that visit our city each year.
8 As one of the most important industries in New York
9 City, its growth and survival should be supported by
10 all levels of the New York City government.

11 Although this package is well-intended, I
12 do fear that it will hurt those that it is intended
13 to help. Flexibility is a key selling point to many
14 of those who work in this quick-service industry.
15 This package takes away that flexibility in many
16 ways. These bills would mandate that restaurants
17 rigidly schedule their employees with the schedules
18 scheduled out to 14 days. At first glance this might
19 seem beneficial to the employee, however countless
20 employees rely on their ability to pick up extra
21 shifts when needed. This flexibility often results
22 in greater take-home pay. While this legislation
23 doesn't exclusively prohibit this, it does impose
24 onerous fines on restaurant owners who are looking to
25 accommodate this employee's request.

1 While we don't believe a scheduling
2
3 mandate is necessary or beneficial to the industry,
4 if the Council does pass a mandate, a schedule
5 timeline of seven days would make much more sense for
6 all parties involved. This would help employees
7 looking for certainty in their schedules, which also
8 allowing other employees to seek flexibility and
9 would protect the small business owner against
10 situations where an employee is suddenly forced to
11 deal with someone leaving the business or not being
12 able to schedule a change for up to two weeks. While
13 an owner may be able to survive a few days of being
14 short staffed, going two weeks without calling in a
15 replacement is simply untenable.

16 It's important to remember that many of
17 these franchise owners are small businesses, and
18 that's the one point I would really like to make
19 clear today. It is easy to lump these restaurants in
20 with the big corporations they're associated with,
21 but these owners are almost always local business men
22 and women who employ individuals who live in their
23 community. The restaurant industry at every level
24 survives on super razor thin profit margins -- most
25 restaurants operate between 4-6%. Every dollar

1 becomes extremely important and has a large impact on
2 the bottom line. Costs in the restaurant industry
3 are on the rise, making it tougher for restaurant
4 owners to make ends meet. Food costs, labor and rent
5 are just a few examples of the major increases that
6 the industry has been dealing with in New York City
7 and these higher costs have led to several
8 restaurants to reduce staff or turn towards
9 automation, hurting the very employees that
10 legislators were hoping to help. As an industry we
11 fully understand that the targets of some bills are
12 things that should be addressed. For example, we do
13 not endorse business practices such as clopening,
14 although as was said before, we would support a
15 measure that would allow employees to opt into such a
16 situation. We do ask that if certain employees would
17 like the opportunity to earn overtime and volunteer
18 to take on some additional shifts that may conflict
19 with the clopening legislation that they be able to
20 do so.

22 We respectively acknowledge that members
23 of the New York City Council have the best interests
24 of the restaurant industry employers and employees in
25 mind; however, we are disappointed that groups such

2 as ours that represent employers were not invited to
3 participate in the discussions related to the Fair
4 Work Week package before introduction. We ask that
5 you listen to some of the concerns that the industry
6 has with the hope that we can find workable solutions
7 to some of the issues that we have addressed today.

8 I thank you again for the opportunity to
9 testify today; I look forward to future discussions
10 that will protect the owners who help create
11 thousands of jobs and help keep the local economy
12 strong. Thank you again.

13 JAY PELTZ: Good afternoon Chairman
14 Miller and members of the Committee. Thank you for
15 the opportunity to testify today on behalf of the
16 Food Industry Alliance of New York State (FIA). FIA
17 promotes the interests statewide of New York's
18 grocery, drug and convenience stores. We are putting
19 testimony in opposition to 1399 and 1387; I will
20 summarize both testimonies.

21 FIA opposes 1399, which provides the
22 right to request a flexible work arrangement at any
23 time, among other things. While well-intended, we
24 believe this bill will be disruptive to the point
25

1 where struggling food retailers may not be able to
2 keep their doors open.

3
4 One problem is that the legislation does
5 not expressly state that the good faith denial of an
6 employee's request because it is inconsistent with
7 business operations is an affirmative defense that
8 completely shields a food retailer from liability.

9 We respectfully request that proposed section 20-
10 1253(c) be revised to provide such a shield. In
11 addition, the right itself -- authorizing most
12 workers in a grocery store to make a request for
13 changes to work arrangements at any time -- is by
14 definition inconsistent with business operations and
15 will therefore threaten the viability of NYC grocery
16 stores.

17 This is mainly because jobs in a
18 supermarket are not interchangeable. A person hired
19 to stock shelves is not trained to work in baker or
20 produce and does not have the requisite skills to cut
21 meat. It takes considerable time and effort to train
22 workers for these positions and training/transferring
23 workers on a regular basis would indeed be
24 disruptive. In addition, food retailers try to honor
25 seniority wherever possible. Allowing junior workers

1
2 to leapfrog senior staff with respect to desirable
3 shifts and/or better paying jobs will demoralize
4 employees as a whole. Accordingly, we respectfully
5 request that this legislation be held in committee so
6 that stakeholders can discuss a more productive
7 approach to these issues.

8 In addition, this bill does not contain
9 an exemption for workers subject to a CBA (collective
10 bargaining agreement). Employees represented by
11 attorneys and bargaining agents, have a full and fair
12 opportunity to address these issues covered under the
13 legislation through the collective bargaining
14 process. CBAs negotiated through that process
15 reflect a delicate balance designed to protect
16 workers' rights while allowing the business to
17 maximize profitability. The failure to exempt such
18 workers under this bill threatens that delicate
19 balance while disrupting the business through the
20 obligations and costs imposed on grocers.
21 Accordingly, we respectfully request that workers
22 subject to a CBA be exempt from the provisions of
23 this legislation if those provisions are expressly
24 waived in a CBA.

1
2 FIA also opposes Intro 1387, which
3 prohibits on-call scheduling; it's not the concept
4 that we oppose, it's certain provisions in the bill
5 that are problematic for us.

6 Under the legislation, for example,
7 grocers cannot cancel any scheduled hours of work for
8 a retail employee within 72 hours of the start of
9 such hours. It also prohibits food retailers from
10 requiring an employee to work with fewer than 72
11 hours' notice. This does not allow, for example,
12 schedule adjustments due to severe weather.
13 Typically, before a major weather event such as a
14 blizzard or a nor'easter, sales increase
15 significantly as people stock up before the storm
16 arrives. Grocers need the flexibility to schedule
17 additional personnel on less than 72 hours' notice in
18 such a circumstance. Business then slows as the
19 storm begins, thus creating the need for less staff
20 and to send workers home safely. However, under the
21 legislation, sending workers home in that
22 circumstance would cause food retailers to violate
23 the law by canceling scheduled hours of work even
24 though the cancellation would be due to a dangerous
25 circumstance beyond an employer's control.

1
2 Accordingly, we respectfully request that proposed
3 sections 20-1261(a)(2) and 20-1261(a)(2)(3) be
4 revised to exempt cancellations or a requirement to
5 work on less than 72 hours' notice due to severe
6 weather.

7 Finally, with regard to both bills, we
8 believe that the penalties for violating the
9 provisions of the proposed local laws are excessive.
10 We therefore respectfully request that enforcement of
11 the provisions of both bills be limited to standard
12 enforcement actions by the Department of Consumer
13 Affairs.

14 Thank you for your time; we look forward
15 to working with government stakeholder to address our
16 concerns regarding both bills. There's a lot more
17 detail about our objections to both bills in both
18 testimonies, but I didn't want to take up too much of
19 your time, so thank you.

20 CHAIRPERSON MILLER: Thank you.

21 [background comments] So I am thankful for your
22 participation here today as well. We have a few
23 questions, but I'm also encouraged that there was not
24 an outright dismissal of the legislation beforehand
25 and I think that you recognize that it does have a

2 value, and part of, I think what we said earlier, and
3 what we've seen from other panels and the membership
4 here, is that we said whatever work that was required
5 to move forward on this legislation that we're
6 willing to do, and certainly this committee is
7 willing to hear what you have to say and take into
8 account your input, and so I do have a few questions
9 and certainly I'll start with who just left the mic
10 there, and the supermarket industry and those -- and
11 I think you said retail drug stores as well?

12 JAY PELTZ: Yes.

13 CHAIRPERSON MILLER: Yeah. So how many
14 of those workers within those industries that you
15 represent are organized or represented by CBAs?

16 JAY PELTZ: On the grocery side it's
17 probably most, I would say.

18 CHAIRPERSON MILLER: Okay. And on the
19 drug stores?

20 JAY PELTZ: We represent one drug store
21 chain, Walgreens-Duane Reade; I don't think they're
22 organized in New York, I don't believe so.

23 CHAIRPERSON MILLER: Okay.

24 [background comment]

1
2 JAY PELTZ: Oh, Duane Reade is, sorry.
3 Yeah; good to know [sic].

4 CHAIRPERSON MILLER: And... and... and was it
5 your contention that this legislation will supersede
6 those collective bargaining agreements?

7 JAY PELTZ: Well that's an issue that
8 concerns our members; they're worried about conflicts
9 between CBAs, provisions in CBAs and provisions in
10 the law, which is why in one bill we're looking for..
11 we want a standardized exemption in both, which is
12 that, if the provisions are expressly waived under
13 the CBA; then the provisions of the law would not
14 apply to those employers which would create any
15 conflicts, and it could be handled through a private
16 negotiating process.

17 CHAIRPERSON MILLER: That is not
18 something that generally occurs; that new legislation
19 supersedes the collective bargaining agreements, and
20 as you said, I would think that unless somewhere
21 along the line those representatives would be willing
22 to waive that, but certainly that wouldn't be a part
23 of this here, but that's certainly something that we
24 would be willing to explore and talk about in the
25 future.

1 For the restaurant association...

2 KEVIN DUGAN: Yes, sir.

3 CHAIRPERSON MILLER: Do you represent
4 catering halls as well?

5 KEVIN DUGAN: Yes, sir.

6 CHAIRPERSON MILLER: In terms of
7 scheduling, how is that a little less traditional as
8 opposed to what we're seeing here in terms of full-
9 time; part-time employees?

10 KEVIN DUGAN: Yeah, catering kind of
11 represents a special instance; very different than
12 kind of what we're here to talk about today in terms
13 of scheduling for quick-service establishments.
14 Catering is very much traditionally based on when and
15 where you have events and parties and so currently
16 caterers would call in staff and schedule staff,
17 depending on how often they have events and parties
18 to cater, for lack of a better term. So it is a bit
19 of a challenge for that industry to have any kind of
20 predictive scheduling, just because it's almost
21 solely based on outside forces.

22 CHAIRPERSON MILLER: So do you have
23 particular objections based on that portion of the
24 industry?
25

1
2 KEVIN DUGAN: Not on that portion of the
3 industry as pertains to these bills here. I think
4 that industry would be able to kind of work around
5 certain aspects, or not work around; work with
6 certain aspects of this legislation to accommodate,
7 especially those who are looking to go full-time;
8 part-time. Many of the catering halls in New York
9 City, especially and mainly the ones that we
10 represent, tend to be frequently busy and have events
11 almost daily, I would say, whether it's weddings on
12 the weekends and dinners during the week; most
13 catering halls are always looking for new employees
14 and additional employees; always looking for people
15 to fill hours, including their current employees. I
16 would say that's true for the full-service industry
17 of New York State as a whole, statewide and in the
18 city, restaurants are always looking for new
19 employees to fill needed shifts 'cause their current
20 staff can't meet those.

21 CHAIRPERSON MILLER: So in general the
22 panel, I think the one thing that the panel has in
23 common here is the objection to the amount of time,
24 the 14 days, in that we thought that was too much
25

1
2 time. Did you offer a suitable amount of time for
3 those adjustments?

4 KEVIN DUGAN: Talking to some schedulers
5 that I have, especially in these quick-service
6 establishments, scheduling for a week is generally
7 the accepted practice they have now; the changes that
8 occur in that week for the employees looking to
9 switch shifts and change shifts and needing to call
10 out to go to the doctor here and there or if somebody
11 gets sick are already a lot and I guess the fear that
12 we have is moving to a two-week or a 14-day schedule
13 would just kind of exacerbate that problem and make
14 scheduling that much more difficult, and then with
15 the penalties of changing these shifts, especially --
16 14 days is kind of a long period of time -- if
17 someone does get sick during that time period and
18 needs to miss a number of shifts during that two-week
19 stand; the penalties associated with calling somebody
20 else in you know are a bit excessive for --
21 especially considering that issue is outside of the
22 restaurant's control, so a week is generally what
23 we're hoping for here; we think that gives enough
24 scheduling certainty to the workers and also it
25 protects the employer if something were to happen

2 where an employee had to miss a number of days in a
3 row.

4 CHAIRPERSON MILLER: Any other ideas on
5 -- this is for the panel in general -- on what would
6 be a suitable amount of time or if there's any just
7 dissent that portion of the legislation at all?

8 JESSICA WALKER: I want to agree; I think
9 that that's right and I think that it's also very
10 concerning the two weeks, particularly with the
11 current enforcement mechanisms in place; I think that
12 that really goes to the heart of the concerns around
13 that.

14 The issue here is; the problem we're
15 coming up against is the one-size-fits-all approach
16 is always problematic no matter what, so 14 days
17 could be perfectly fine for some, but not for others,
18 and so it's trying to find that middle ground, so I
19 think that one week probably is best. And also,
20 again, I think we would alleviate a lot of concerns
21 if we were to play with the enforcement a little bit
22 as well.

23 CHAIRPERSON MILLER: Okay, Council Member
24 Lander.

1
2 COUNCIL MEMBER LANDER: I'll back up and
3 kind of thank you guys for being... well first, thanks
4 for being here and we know it's, you know, whatever
5 [sic]; it's a room with a lot of people who are
6 pushing hard to adopt this legislation and we do want
7 to hear from you and I think a lot of the things that
8 you have said on this panel you know are things we
9 want to look at; as we said, we want to listen; the
10 idea of looking at emergency conditions and severe
11 weather I think are things we can certainly do here
12 afterwards, so I appreciate your being here, and that
13 you're broadly, at least in some ways, supportive of
14 the concepts and the goals of the legislation, so
15 that's helpful.

16 I will start by saying though that I do
17 think it strains credulity to talk about corporate
18 fast food as though it's an industry of small
19 businesses. It is true that the franchise owners
20 themselves are, but we're talking about an industry
21 in which many of the terms and conditions are
22 essentially set through the franchising arrangements
23 and you know the top ten publicly traded fast food
24 chains in New York City had profits of nearly \$10
25 billion last year, so there may be thin margins at

1 certain places through the system, but if you've got
2 you know \$10 billion in profit, the idea that the
3 workers could have stable schedules just -- you know,
4 it's something we can achieve, and I guess I'll start
5 there. I don't think anyone's looking to require the
6 franchise owners to have human resource departments;
7 just the scheduling software, that in most cases, at
8 least as I understand, that the franchises provide
9 and encourage the franchisees to use, which makes
10 complying with most of this legislation really quite
11 simple, so help me understand that, you know, why the
12 scheduling software that's provided -- and look, what
13 we want is for the chains to change their practices,
14 provide the software in a way that -- look, we'd like
15 to see this just be true what's in fast food all
16 across the country; we didn't start here, they got
17 ahead of us in Seattle and San Francisco, but we want
18 to be part of that effort.

20 JESSICA WALKER: Yeah, so -- no, I
21 appreciate that. I think dealing with the fast food
22 establishment and talking about sort of that they're
23 associated with the big guys, I totally understand
24 that, but I think you are aware that the conditions
25 in New York City, in terms of the minimum wage being

2 higher here than in other places; the paid sick
3 leave, I mean there's certain -- it's this cumulative
4 effect of different legislation that does really go
5 to the bottom line, so the franchises here are facing
6 sort of -- it's a unique environment, so I just want
7 to put it in that context.

8 And sorry, the second part; I had...

9 COUNCIL MEMBER LANDER: Well I think you
10 said, you know they might need a whole human
11 resources department... [interpose]

12 JESSICA WALKER: Yeah.

13 COUNCIL MEMBER LANDER: it's my
14 understanding what they need is good scheduling
15 software, which in fact they're provided; it's a --
16 you know, whatever size they are; whether they own...
17 [crosstalk]

18 JESSICA WALKER: So...

19 COUNCIL MEMBER LANDER: one or ten or
20 twenty franchises.

21 JESSICA WALKER: Sure. Again, that
22 really is the cumulative impact, so there's been
23 legislation that's passed around sick leave, which
24 you know, has quite a bit of reporting requirements
25 and the TransitChek benefits... [crosstalk]

1
2 COUNCIL MEMBER LANDER: Any evidence that
3 it impacted profits within the fast food sector?

4 JESSICA WALKER: Well I think that this
5 is sort of playing out now; as employees have sort of
6 been starting to accrue paid sick leave; I think it's
7 going to be... we're going to see; it's sort of a wait
8 and see period to see how that's going to play out.

9 But you know, there's sort of other
10 things as well -- TransitChek benefits -- there's
11 actually a whole industry that's popped up around the
12 country in terms of just selling the posters of all
13 the notice requirements that you have to have for
14 employees, you know these big posters which are thin
15 type, that nobody looks at, but that you know by law
16 you have to provide. And so that's sort of where
17 we're headed and I think that it is concerning, small
18 businesses who have five employees, this is a big
19 deal, there's a lot of time spent on this.

20 COUNCIL MEMBER LANDER: But again, I mean
21 for fast food we don't have small... for the four bills
22 that are related to fast food, we are just not
23 talking about anyone who's a small business with five
24 employees at all.

2 JESSICA WALKER: Isn't 1396... that would
3 apply to businesses with five or more?

4 COUNCIL MEMBER LANDER: There are six
5 bills in this package... [interpose]

6 JESSICA WALKER: Sure.

7 COUNCIL MEMBER LANDER: two of them are
8 not fast food bills and I think there are some issues
9 to talk about the small businesses there, but all of
10 the advance notice of scheduling, the two-week
11 advance notice, clopenings; access to hours...

12 JESSICA WALKER: Sure.

13 COUNCIL MEMBER LANDER: those are
14 exclusively for fast food chain businesses as defined
15 in the State, you know by the same definition that
16 was used by the Labor Board in their fast food work.

17 JESSICA WALKER: Sure. Yeah, I mean I
18 think that -- others can speak to it as well -- I
19 mean my chief concerns though, as I mentioned, were
20 with 1396, which really does capture businesses
21 beyond fast food and 1399, which captures pretty much
22 all businesses. And again, that really -- the notice
23 requirements particularly in 1399 are very stringent.

24 KEVIN DUGAN: Just to touch on a point
25 about the scheduling and software that a lot of these

1
2 companies provide their franchisees with, I think
3 we'll hear from a number of them later today or some
4 of them later today, and a lot of them do use these
5 software programs, which do allow employees to view
6 their schedules, you know as most of our folks here
7 schedule well over a week out, and I think the
8 concern is these penalties that are associated with
9 changing of the schedules when it comes to things
10 that are outside of the employer's control; I think
11 that's the issue with the longevity of the two weeks,
12 so if schedules needed to change for issues that
13 would come up, that would arise from the employee
14 themselves, I think if there were no penalties
15 involved in that I think we would be sort of open to
16 **[inaudible]**... [crosstalk]

17 COUNCIL MEMBER LANDER: So let's talk
18 about these onerous penalties for a minute too...
19 [crosstalk]

20 KEVIN DUGAN: Yeah.

21 COUNCIL MEMBER LANDER: I just want to
22 make sure I really understand what you're talking
23 about. So let's pretend that Chair Miller and I both
24 work at a fast food franchise and yeah, so he gets
25 sick and he can't make his scheduled hours; now you

1 know, if he's a shift employee, he's not going to get
2 paid for that shift that he wasn't, you know. So
3 first thing he could do is call me and say, hey, I'm
4 sick; can you cover for me tomorrow and then I'll
5 cover for you, you know, the next day, when I'm well,
6 and now we're in each in good shape; he didn't miss
7 his hours; we each got paid, and there was no
8 penalty. But let's say that he can't do that, he's
9 sick, and you need to find someone to replace that
10 shift and you call me and it's, you know, two days
11 from now, let's just say; the big penalty is what?

13 KEVIN DUGAN: I'd have to have the
14 language in front of me; I know it's not all that
15 high...

16 COUNCIL MEMBER LANDER: \$15... [crosstalk]

17 KEVIN DUGAN: Right.

18 COUNCIL MEMBER LANDER: what you have to
19 do is pay me -- so in addition to the shift I was
20 gonna make, \$15 bucks. Now I'll grant you that
21 Daneek's illness was not in your control, but it
22 wasn't in my control either and I might need child
23 care to cover for that shift or I might have to pay
24 for transportation to get there or to arrange
25 something else, so is it really a onerous penalty to

2 have to pay me \$15 extra for a late scheduled shift
3 to cover for something that -- obviously as the
4 worker was out of my control? I don't get what's
5 onerous about that... [crosstalk]

6 KEVIN DUGAN: I guess onerous maybe is
7 the wrong word, but I mean are we penalizing
8 restaurants for things that are outside of their
9 control? I mean I guess that's the slip... it seems to
10 be... maybe it's not the \$15 but just the fact that --
11 again and the flexibility is key here; we're trying
12 to maintain flexibility with employees, but I guess
13 the question is; are we really, you know, is it... I
14 know \$15 is \$15, but at the same time, it's still
15 \$15.

16 COUNCIL MEMBER LANDER: Well all I will
17 say is; I'm pretty sure in this situation we're
18 talking about it matters a lot more to that employee...
19 [crosstalk]

20 KEVIN DUGAN: No, and I'm not saying it...
21 and I'm not...

22 COUNCIL MEMBER LANDER: than it does to
23 the company and the difference is this; like, it's
24 not a penalty, it's not onerous; it's that \$15
25 premium for a late-scheduled shift that yes, is gonna

1
2 disrupt my life in all likelihood more than the
3 store's and what it really functions as is a
4 disincentive to do it massively, right? If you are
5 running a business where for the most part you're
6 scheduling your employees in advance with god-stable
7 [sic] schedules and yes, occasionally someone gets
8 sick; then the \$15 bucks to the worker who has to
9 cover it extra is really not gonna add up to much for
10 the employer. If you make that a practice where you
11 under-schedule on your advance notice and add tons of
12 shifts later; now yeah, sure, those \$15 bucks will
13 add up if you do it tons of times, week after week
14 after week, but that's sort of the point; if you're
15 following the rules here, using your scheduling
16 software; this is just not going to cost you very
17 much and I just don't think it's accurate to say that
18 it's onerous.

19 JESSICA WALKER: The fines are quite
20 significant, and I think as we know, if folks are not
21 aware of the law or not in full compliance, and part
22 of it is the notice and you know, being able to
23 follow through on the posting and the notice
24 requirements; you know, being able to -- the HR
25

1 functions, essentially, if you fall down on those
2 things; that can potentially be very onerous.

3
4 COUNCIL MEMBER LANDER: So first I guess
5 then, I would just ask that we could make some
6 distinctions between the predictability pay and the
7 fines, 'cause you've lumped them all together. The
8 predictability pay is what gives the workers
9 themselves a little boost if their schedules are
10 shifted or adjusted late; there are fines if there
11 are violations of the rules, which is different from
12 predictability pay, and at least in my experience,
13 the Office of Labor Policy and Standards and DCA --
14 and I do think this is true on paid sick days, and if
15 it's not, I'd love to hear from your members -- it is
16 my sense that they have been pretty thoughtful about
17 where an employer wasn't aware, first-time violation,
18 small procedural violation, and given quite small
19 penalties versus where there was really a systematic
20 violation by an employer who was aware of and chose
21 to ignore the rules, in which case there should be
22 significant penalties, and I made clear then in
23 access to ours, I'm open to working with you to amend
24 that legislation, because today it doesn't really
25 distinguish between somebody who forgot to give a

2 notice one time and somebody whose whole business
3 practice is premised on having everybody be
4 involuntary part-timers... [interpose]

5 JESSICA WALKER: Right.

6 COUNCIL MEMBER LANDER: So we're glad to
7 work with you to try to make some distinctions that
8 the maximum penalties are for people that are really
9 engaged in systemic violations, you know, so that
10 what can range from -- it's just that \$15 bucks up to
11 something more severe where there really is a severe
12 and persistent problem.

13 KEVIN DUGAN: Yeah and I guess that was
14 my mistake too; not making clear the fines versus
15 the, I guess the premium pay; I think, again, the \$15
16 is not necessarily something [sic] that we were
17 objecting to on grounds, but I think the fines is --
18 if we can get some clarification from the Department
19 of Consumer Affairs, like you mentioned, about
20 exactly -- like as long as they're not -- and look,
21 we're... if there are restaurants out there committing
22 systematic failures, I think was the word you used; I
23 think they deserve to, of course, be held responsible
24 for that, and I think we're here not representing the
25 bad apples as it were, or the bad actors, as it were;

2 we're here representing the folks that are trying to
3 do right by their employees as well, and be good
4 employers and treat their employees like family. So
5 I think if there are some discussions we had with DCA
6 in terms of what would constitute a fine; what would
7 constitute a systematic failure just so there's some
8 clarity on that and I think that would be important.

9 COUNCIL MEMBER LANDER: So we would
10 welcome that. I'm going to ask you guys to go back
11 and talk to your members about sick days, because I
12 do think some of this has to be done with some
13 discretion to the agency; it's difficult to figure
14 out in legislation how to ban the bad acting
15 provisions and leave a little room for good actors to
16 make a little mistake every now and then; that's hard
17 to do in law; my sense is that OLPS and DCA are
18 enforcing sick days in a way that is pretty
19 thoughtful and honestly, I've heard more complaints
20 from the employee side than the employer side; if
21 that's because you just haven't had them get to me --
22 we want to get this right, so... [interpose]

23 KEVIN DUGAN: And I've talked to our
24 membership about the sick days thing as well and
25 that's come up and I would -- if they were still

2 here, I would like to applaud DCA for the way they're
3 handling that, in terms of treating... [crosstalk]

4 COUNCIL MEMBER LANDER: We will make sure
5 they are aware of that, so that's great to hear.

6 KEVIN DUGAN: treating the **[inaudible]**
7 with enough notice... [crosstalk]

8 COUNCIL MEMBER LANDER: And that's the
9 goal, right; I mean the goal is thoughtful
10 enforcement that helps people comply with the law,
11 so.

12 My last question is just on this picking
13 up of extra shifts, and I guess -- my concern there
14 is... my sense is people are desperate to pick up extra
15 shifts because they can't get enough shift schedules
16 and that if the law were working so that people were
17 able to get additional hours and move into more
18 stable and more full-time work; they wouldn't be
19 saying to the employer, please, any extra shift you
20 could possibly throw me; when Daneek gets sick we
21 wouldn't have that problem, so I don't want to build
22 a system that's premised on people needing, you know,
23 begging for an extra shift at the last minute..

24 [crosstalk]

25

1
2 KEVIN DUGAN: I... I think some of that was
3 addressed, at least from our end, from the Consumer
4 Affairs testimony before, in terms of like extra
5 shifts wouldn't necessarily count towards the
6 changing of the schedule; I think that's just part of
7 the clarification with the fines; again, you know the
8 fines are just a scary amount for the changing of the
9 schedule on short notice and if somebody wanted to
10 pick up an extra shift, would that **[inaudible]** for
11 this change of schedule; I think their answer earlier
12 was saying if they picked up more hours, obviously
13 that would be to the benefit of the employee and they
14 wouldn't classify that in the same classification as
15 certain other shift changes. So I think they did
16 provide some clarity, and again, that would be
17 something that we would like to just get more
18 information on.

19 COUNCIL MEMBER LANDER: Thank you all.
20 Thank you, Mr. Chair.

21 CHAIRPERSON MILLER: Thank you, Council
22 Member Lander.

23 So there was some... I think that the
24 Administration, particularly DCA, testified on what
25 the rollout would look like, and I know there was

1 some concern about implementation; what the costs
2 associated with that would be, whether or not there
3 would be ignorance or noncompliance based on
4 ignorance of some of the business owners, and I think
5 that there were two things that were included; it was
6 the time between passage of the legislation and
7 implementation of the legislation, which I think
8 would be used for education; we have seen that with
9 paid sick and other laws that were passed here and as
10 a result, there have been very, very little fines
11 around paid sick and other legislation, and I think
12 that those agencies had done more than an admirable
13 job in getting out into the communities and providing
14 resources and education to business owners. Also,
15 Council Member Cornegy, who chairs Small Business,
16 spoke to that as well and the mobile Chamber and I
17 know they were in my district and others, and we
18 worked diligently around implementation of Paid Sick;
19 I would suspect that the same would occur here, so
20 I'm pretty confident, but I also asked the
21 Administration, did they have the workforce that was
22 necessary for the rollout and to be able to sustain
23 this as well, and certainly your concerns are more
24 than relevant concerns about the intricacies of
25

1 implementation of this, whether or not there are
2 conflicts or things that we did not see the
3 unintended consequences, and certainly that's why
4 you're here and why we have hearings so that we can
5 address those, and I think that, as you have spoken
6 to the Administration and will continue to have
7 conversations, that we'll get there. In terms of the
8 scheduling piece again and the software, you know, in
9 my other life I came from an agency that managed
10 thousands of workers, scheduling that moved millions
11 of people, hundreds of thousands of trips every day,
12 and it happened because of technology and software
13 and that included and that included every provision
14 of the collective bargaining agreement and at the end
15 of the day, not only were the employees able to
16 figure that out, but they were also able to utilize
17 those resources to kind of undermine provisions of
18 the collective bargaining agreement, and because they
19 account for every person, every minute, every work
20 role and they were able to often push the limit, and
21 just to the point that they did not have to pay
22 premium penalty, and certainly the technology exists
23 and the major corporations that we are dealing with
24 here today certainly have the resources to invest and
25

2 they probably already have it there and it only
3 takes, you know, enhancing software that currently
4 exists, but to say in this day and time that we don't
5 have the capacity to do that, I dismiss that and if
6 anyone has seen *Hidden Figures* and seen the great
7 minds that we have and now the computers and the
8 software that can do that, we know that anything is
9 possible and certainly that we can figure out
10 scheduling around a minimal amount of workers. But
11 we will continue to work with you and work with each
12 side to ensure that when this is rolled out that it
13 will be rolled out in the best interests of New York
14 City. So I thank you for coming out and sharing your
15 time and your testimony and we're going to call the
16 next panel.

17 KEVIN DUGAN: Thank you.

18 JESSICA WALKER: Thanks.

19 CHAIRPERSON MILLER: [background comment]

20 Harmony Higgins; Rosa Rivera; Wilton Major, Mayor...

21 COMMITTEE COUNSEL: Major, yeah.

22 CHAIRPERSON MILLER: and Janika Reyes.

23 COMMITTEE COUNSEL: They all here?

24 [background comments] **[inaudible]** call a couple more

25 **[inaudible]**

2 CHAIRPERSON MILLER: Okay. And then
3 there's uh...

4 COMMITTEE COUNSEL: Are the other people
5 not here?

6 [background comments]

7 CHAIRPERSON MILLER: Wilton Major?

8 COMMITTEE COUNSEL: The other three
9 aren't here? Then we'll call three more.

10 [background comment] Call three more.

11 CHAIRPERSON MILLER: Oh, I didn't call
12 that one.

13 COMMITTEE COUNSEL: Oh. Jedidiah

14 [background comment] Labing... [crosstalk]

15 CHAIRPERSON MILLER: bingo [sic].

16 COMMITTEE COUNSEL: uh Labinjo [sic]...

17 [crosstalk]

18 CHAIRPERSON MILLER: Okay. Okay and...

19 COMMITTEE COUNSEL: And call two more.

20 CHAIRPERSON MILLER: Yeah. Edica Reese;

21 [background comment] Shantel Walker.

22 COMMITTEE COUNSEL: No, neither?

23 CHAIRPERSON MILLER: Okay. Jose Juarez.

24 COMMITTEE COUNSEL: No?

25 CHAIRPERSON MILLER: Yeah.

2 COMMITTEE COUNSEL: Yeah; he's here? No?

3 CHAIRPERSON MILLER: Here he comes.

4 Okay; you can begin from either end; whoever's
5 prepared to go.

6 JEDIDIAH LABINJO: Hello? Yeah. Good
7 afternoon, Chairman Miller and the members of the
8 Civil Service and Labor Committee. My name is
9 Jedidiah Labinjo and I am the Campaign Organizer for
10 the Retail Action Project. I am here to testify on
11 Intro 1387, a bill that bans the practice of on-call
12 scheduling in retail.

13 The Retail Action Project (RAP) is a
14 member-based organization with the mission of
15 building worker power, elevating industry standards,
16 and promoting family-sustaining jobs.

17 I'm here today to offer my own experience
18 with on-call and let people know that as a young
19 person of color in New York City, the inability to
20 prioritize and manage our day-to-day activities is
21 not only an inconvenience but a major barrier to
22 becoming a productive, self-sustaining member of my
23 community.

24 Before being an organizer I was also a
25 retail worker and I dealt with the grunt work on the

1 shop floor and felt undervalued, just like many of my
2 coworkers. I remember the first time I noticed on my
3 schedule that I had two shifts highlighted in yellow.
4 I asked my manager what that indicated and I got an
5 explanation of how an on-call shift works. It was
6 bad enough that I needed to find other means to
7 produce income when I was not scheduled and also
8 being told to wait and see if my "off" days would be
9 productive ones or a bust.
10

11 And I heard grumblings from coworkers
12 about on-call before; it seemed the company put the
13 coworkers through hell, preventing them from getting
14 other jobs and having to scramble to find last-minute
15 child care, or even canceling doctor's appointments
16 that had taken weeks to schedule in the first place.
17 And if you don't accept the on-call shifts, there's
18 usually a threat that you would maybe lose your job
19 altogether.

20 I was also a full-time student then and
21 several of the shifts that I was being asked to stay
22 on-call for conflicted with my class schedule. There
23 were times when I had to push back and say no and
24 then there would be a threat of like losing my job if
25 I didn't make myself more available. But the company

2 was asking me to be more available for uncertainty
3 and less available for ensuring the stability of my
4 own life, and that's wrong and unacceptable, right?

5 I ultimately became a lead in organizing
6 that store and while the demand for on-call didn't
7 stop, it slowed a bit and there were a few of us who
8 were able to get a small increase in regular hours.
9 I'm proud of the organizing that I did to improve
10 conditions there, but I know it's not enough. I see
11 how organizing helped to build a demand to completely
12 ban the on-call practice but I know the passage of
13 Intro 1387 will make that real and help secure more
14 stable schedules and incomes for all retail workers.

15 Thank you for your time and the
16 opportunity to testify.

17 CHAIRPERSON MILLER: Okay, thank you.
18 And there is a three-minute time clock, so try to
19 stay within that.

20 JANIKA REYES: Good morning members of
21 the Civil Service and Labor Committee and of course,
22 Chairman Miller, thank you. My name is Janika Lee
23 Reyes and I am a member of the Retail Action Project.
24 I am here to testify on Intro 1387, a bill that bans
25 the practice of on-call scheduling in retail.

1 As a caregiver, I have firsthand
2
3 experience with the challenges of on-call. Before
4 having to make the hard choice to step away from
5 formal employment to care for my ailing mother, I
6 worked at a retailer called Camper, a high-end
7 footwear company from Spain. Like most retailers,
8 they ask a great deal of their workers. When I began
9 working with them, I was given 15 hour a week with
10 the promise of being "called in" during busy times to
11 make hours, but I didn't realize at the time what
12 they meant was my having to accept on-call shifts.

13 My mother is battling cancer. While I
14 worked at Camper I often found myself torn between
15 answering an on-call phone call from my manager or
16 staying by my mother's side while she underwent
17 chemotherapy. It's a horrible choice to have to
18 force any worker to make between family or food, but
19 it's one that thousands of retail workers are having
20 to make each and every single day. I so desperately
21 needed the hours to bring money into the house but my
22 mother relied on me and quite frankly, I wanted to be
23 there to support her. A stable schedule of minimum
24 guaranteed hours would have allowed us to work her

1 care around my availability and know what my paycheck
2 would look like each week.

3
4 In my experience, the on-call requests at
5 Camper were also very ageist and gendered. It seemed
6 to always be the young, college-aged women who were
7 pushed to agree to on-call, without any regard to our
8 lives. There is an assumption that we're not the
9 breadwinners for our household, not parents ourselves
10 or caregivers of our own elderly or sick parents.

11 Sorry; just speaking about my own issues just gets me
12 crazy. There is an assumption that retail workers in
13 general are frivolous, that we rely on our families
14 for support and are at our jobs for extra weekend
15 money. This is simply not true. So many of us are
16 struggling to feed our families off of retail work
17 and we need these jobs to be stable and sustainable.

18 I've left the retail world for now and am
19 babysitting in my community. I am not able to
20 contribute taxes or build toward my own social
21 security, but it allows me to be close by to my
22 mother each day and have more control over my
23 schedule and how much I make each week. I don't feel
24 I should have had to make this choice, however.

1 While I have an organization like RAP to
2
3 work through and with, we can't do it alone, so
4 that's why we're here. We rely on the government, on
5 you all, to help protect those of us who are
6 regularly exploited. With seven seconds, I would
7 like to say a quote by Margaret Thatcher, right.
8 "Sometimes you have to keep fighting the same battle
9 [bell] before you win it," so we'll be here.

10 CHAIRPERSON MILLER: Thank you.

11 HARMONY HIGGINS: Hello, my name is
12 Harmony [sp?] Higgins and I work at Chipotle; I'm a
13 Chipotle worker.

14 I would like to first start off by saying
15 thank you to Chair Miller and committee members for
16 holding this hearing.

17 The fast food industry can make workers
18 feel like their lives matter less than stores and
19 making money.

20 Restaurants over-hire and under-schedule
21 workers without worrying if anyone or worker has
22 enough hours to make ends meet, let alone save for
23 the future. I am currently pregnant and expecting my
24 child in July. I work 12 to 18 hours a week but need
25 to work more. However, my store continually hires

1
2 new people so they have a larger pool of workers to
3 call in. With so few hours for each worker, morale
4 in the store is low and turnover high. It is hard
5 for workers to develop loyalty to companies and
6 stores or retail when they can't imagine it
7 supporting them long-term.

8 My current location requires that workers
9 submit the dates of days they can't work two weeks in
10 advance. Unfortunately, workers only find out about
11 their schedule each other Sunday for the next week.
12 Our requests for days off are routinely ignored and
13 late changes always happen. This makes it impossible
14 for me to plan my budget as I never know how much I
15 will actually earn. I try to support my grandmother
16 and my mother, but without a steady income, it is
17 hard to know how much I can give and how much I can
18 save or how much I can contribute to anything or how
19 much I could even put aside for rent and bills.

20 These bills will help workers by
21 requiring stores to set scheduled two weeks in
22 advance and it will deter stores from making late
23 changes by mandating shift change premiums. The
24 bills will also help workers earn better incomes by
25 ensuring that existing workers are offered few [sic]

2 hours when they are scheduled; instead of offering it
3 to new-hires you can offer it to the existing hires
4 that have certain things going on in their lives that
5 would actually be able to take upon those hours.

6 To keep strengthening the voice of fast
7 food workers we need to be able to form our own
8 organization that can educate people about their
9 rights, deal with problems in the industry and helps
10 to address issues that affect our lives outside of
11 work. We need justice on the job and we need justice
12 for our kids and our community. The Fast Food Worker
13 Empowerment Bill would help make it easier for
14 workers to pull their resources by contributions to
15 nonprofit that is fighting for them.

16 I urge you to pass this bill to help fast
17 food workers build lives filled with dignity and
18 respect. [bell] Thank you.

19 JOSE JUAREZ: **Spanish [03:05:16]**

20 [background comments]

21 TRANSLATOR: My name is Jose Juarez and I
22 work in Domino's Pizza in Washington Heights for 4
23 hours and 8 months.

24

25

1
2 In my store, the manager cut hours in the
3 last minute. Sometimes when you come to work they
4 just send you back home; they say I don't need you,
5 it's not too busy; you can go back home and come back
6 your next shift.

7 Today we are here because we want to ask
8 you guys, the Council to approve the legislation for
9 our hours and we also need an organization so we can
10 help our coworkers and educate ourselves on how to
11 fight and improve situations of work. We, all the
12 workers at my store suffering the same issue and
13 that's why we're asking to approve and pass this
14 legislations.

15 Thank you.

16 SHANTEL WALKER: Hello, my name is
17 Shantel Walker; I work at Papa John's in Brooklyn.
18 Excuse my voice.

19 I want to thank Chair Miller and the
20 committee members for holding this hearing today.

21 I've worked in the industry for more than
22 a decade and held positions all the way up as being a
23 manager in the stores.

24 Based on my experience, I believe these
25 bills will make an immediate difference for workers

2 and also help to address long-term running issues
3 within the industry.

4 Fast food workers are committed to their
5 jobs, but without protection they cannot be taken a...
6 excuse me... they can't be taken advantage of by
7 employers. I've seen delivery drivers come from New
8 Jersey to start a shift paying their own tolls on the
9 way, only to be told to wait in the parking lot
10 without getting paid until the store decides they can
11 start. I've seen workers have their shifts cut when
12 they arrive on the job, but help out anyway because
13 they want to work and they like doing things and they
14 want to see the work continue going on.

15 And I know workers who don't see their
16 kids for days on end because they are asleep when
17 they get home from one shift and still in bed for a
18 few hours later when they are starting their next
19 shift.

20 The scheduling bill before the Committee
21 will help address these problems and give workers the
22 protection they need to fight for their rights when
23 they are not respected.

24 There are problems though that can be too
25 big for individual workers to take on. Off-the-books

1
2 employment, underpayment of minimum wages, nonpayment
3 of overtime, and unsafe working conditions need to be
4 solved for entire stores and ultimately, across the
5 entire industry.

6 The Fast Food Workers Empowerment bill
7 will make it easier for workers to build an
8 organization that will have the capacity to shine a
9 light on these major problems and power... make the
10 restaurants meet fair standards and what they're
11 expected to do.

12 Fast food workers have fought hard to
13 come this far. I urge you to pass this bill so that
14 we are protected as we continue our struggle and have
15 our own organization that can fight for our rights on
16 an industry-wide scale.

17 Thank you. Si, se puede.

18 [background comments]

19 CHAIRPERSON MILLER: Thank you for your
20 testimony everyone.

21 And anyone can answer this; there's no
22 specific order or questions for anyone in particular.

23 Has anyone had the experience of
24 reporting to work and being sent home without a day's
25 pay reporting for scheduled work?

2 HARMONY HIGGINS: Yes. I have showed up
3 to work one day, which was recently, which was
4 Monday; I had shown up for work really early and I
5 couldn't find a hat, so we usually have a go-around
6 hat in our store and randomly that day, they did not
7 have a go-around hat, so they told me that I couldn't
8 work unless I find a hat to work with. And they also
9 -- we have a beanie that says Chipotle on it; they
10 gave it to us as a gift for Christmas; we usually
11 would use that hat as a substitute, but they told me
12 I couldn't use that either. So I had to spend.. I was
13 really early and I didn't start till 11:30, so I was
14 there like at 11:00, so I had to call maybe a
15 coworker that's not working to use a hat for me to be
16 able to work. When I finally found a hat, which was
17 at another store, I didn't get back until 11:53.
18 When I approached her and told her I got a hat and I
19 got it from another store, she called me aside, let
20 the other coworker work and called me aside and told
21 me that she's gonna send me home because I did not
22 inform her that I was going to get a hat from another
23 store.

24 CHAIRPERSON MILLER: And what time were
25 you scheduled to work that day?

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COMMITTEE ON CIVIL SERVICE AND LABOR

HARMONY HIGGINS: 11:30.

CHAIRPERSON MILLER: 11:30 and you were there well in advance and they knew that you were trying to find a hat... [crosstalk]

HARMONY HIGGINS: Find a hat. Yes.

CHAIRPERSON MILLER: a hat. Has anyone else had that experience?

SHANTEL WALKER: I've experienced that; it's been a couple of years ago for me, but at this time, to be honest with you, right now I have a case with the National Labor Relations Board, so it started from a discrimination -- I was actually fired for being a part of the Fight for \$15 movement; I was fired and the judge found that my coworker and myself were retaliated upon for participating in these strikes and you know, discriminated upon. I used to go to work and they would say, oh, it's slow; they don't need me. I told them, why can't you call me, call me; tell me something; I came all the way to the job and now they're saying they don't need me; I think is dead wrong and I think it's disgusting and I think they should be held accountable for that, because you're taking money out of my pocket now;

2 you're costing me and now I'm gonna make you pay for
3 it. [background comments]

4 CHAIRPERSON MILLER: So under... and these
5 are... this is the schedule that you had been given
6 prior, for the week prior or... what is the... you get
7 your schedule a week in advance? When do you receive
8 your schedule for the work week?

9 JANIKA REYES: I usually receive my
10 schedule the Sunday right before Monday, so yeah.
11 And I never know, right, like what I'm gonna do for
12 the week; I can't plan anything, right; it's usually...
13 sometimes my organizers are like, can you, you know,
14 come here and I'm like, yeah I can, but you know
15 what; let me check my schedule, and I have to wait
16 until the end of Sunday and the next thing I know,
17 I'm working that day and I can't say anything because
18 I need those days, you know... [crosstalk]

19 CHAIRPERSON MILLER: Yeah.

20 JANIKA REYES: And then sometimes I might
21 be scheduled working five days and then the next
22 thing I know I'm only working one or two. So you
23 know you can't really calculate how much you're gonna
24 make for the week, let alone for the month, you know.
25 And again, like, they think that because we're young

2 we don't have any responsibilities; we don't have any
3 dependants on us and you don't need to have children
4 to have dependants, you know, like, it's just crazy.
5 Sorry.

6 CHAIRPERSON MILLER: And has anyone been
7 denied additional work when they ask and that
8 additional work had been given to a second part-time
9 worker?

10 HARMONY HIGGINS: I have asked one day if
11 they had needed anybody to stay longer, 'cause I
12 overheard their conversation that somebody had called
13 out and they needed somebody, but instead of offering
14 it to me when I asked, they offered it to a newer
15 person.

16 CHAIRPERSON MILLER: They offered it to
17 whom?

18 HARMONY HIGGINS: They offered it to
19 another employee that they just hired..

20 [background comment]

21 CHAIRPERSON MILLER: Okay.

22 HARMONY HIGGINS: like probably three
23 weeks old.

24 CHAIRPERSON MILLER: Okay.

25

2 JANIKA REYES: I had requested two
3 specific days off, right; in retail, people normally
4 don't like to work weekends; I welcome it, right, but
5 I requested two days out of the week so that I can be
6 able to be with my mom and you know they were like
7 fine with it; when I received my schedule, I went
8 from 35 hours to straight 15 hours, when I only
9 requested two days off, which is my usual two days
10 anyway, you know, and when I emailed my boss about
11 it -- and I wish I still had the emails, 'cause this
12 was two years ago -- she had responded, well you know
13 the days that you needed off, you know, like it just,
14 it didn't mix well with our schedule and what we had
15 for hours. That's retaliation in its most brightest
16 form; right, but I didn't have Retail Action Project
17 and if I had that, I'm pretty sure things would've
18 been a lot different. So... but yeah.

19 CHAIRPERSON MILLER: Okay, thank you.
20 Council Member Lander, you have...

21 COUNCIL MEMBER LANDER: First, just thank
22 you guys very much; I know it takes courage to get up
23 here and say this, especially if you've faced
24 retaliation before, so... but change doesn't happen if
25 people don't get the courage to do that and

2 especially when people get the courage to do it
3 together, so thanks to all of you for being willing
4 to do it and helping push the ball forward.

5 I want to ask about this question of how
6 many people in your workplaces you've seen that are
7 involuntarily part-time; would like to get either all
8 the way to full-time work or at least just more
9 hours, you know, you're at 15; you want to get to 20.
10 There's not great data on that, right, you don't put
11 it on your census form you're an involuntary part-
12 time worker, so could you give us a sense in your
13 workplace -- either for yourselves individually, but
14 also just in your workplaces whether that's something
15 that you see?

16 SHANTEL WALKER: I'd say predominantly
17 more than half the workers in the workplace are not
18 receiving -- they're receiving from a range of 25
19 hours to 35 hours and the rest who are on salary,
20 they're doing 60 hours plus in my store, and I see it
21 every day, they're doing these clopenings, openings,
22 closings, openings and it's taking the time away from
23 their family and it's hurting the community and it's
24 hurting the industry; it's hurting the other workers
25 that are affected from these workers and also these

2 workers -- we've got workers out here that are
3 driving over 12 hours a day, day in, day out, opening
4 driver, closing driver, opening driver, closing
5 driver. When do we draw the line here? It's not
6 safe.

7 HARMONY HIGGINS: In my store,
8 specifically, nobody has a full-time or part-time;
9 they give you what they want to give you. If they
10 feel like giving you eight hours one day; they'll
11 probably schedule you to have eight hours one day; if
12 they feel to give you four hours for the rest of the
13 week and maybe one day of eight hours, they'll give
14 you that. I volunteered for full-time; when I first
15 got there, I said I wanted full-time, which is what I
16 was applying for; they said they don't have full-
17 time, but with everybody else, the full-time, they'll
18 give full-time to you one week and part-time the next
19 week, so they give you what they want to give you
20 that's accurate [sic] for them and everyone else, and
21 that's with everybody there; not just me.

22 JOSE JUAREZ: [03:18:32] Spanish

23 TRANSLATOR: In my store, it's obvious
24 that the manager needs more workers and most of the
25 workers in the store are making five hours a day; 25

2 hours a week, but when the season necessity is of
3 more work, they hire on more workers or calling more
4 workers to come in instead of give the workers that
5 are already in the store more hours, so they're
6 trying to keep everybody 25 or even less, even though
7 the people that are in there are actually asking and
8 willing to stay more hours.

9 COUNCIL MEMBER LANDER: And then I'll
10 just make this final observation so we can move on to
11 the next panel, but I think what a lot of you have
12 said, in addition to speaking to the need for all
13 this legislation, including the access to hours bill;
14 I want to -- and Commissioner Salas or Director
15 Vladeck spoke about this good faith estimate, which I
16 think actually, as I'm hearing you, is really going
17 to make a difference that when they hire you they
18 have to say what hours you're generally going to work
19 and that if there wind up being very large deviations
20 from that and have to change that expectation so that
21 your schedule also will match some reasonable
22 expectation and not have such erratic schedule shifts
23 as the ones that you're describing as being quite
24 frequent.

2 SHANTEL WALKER: I just want to say this;
3 a lot of times like workers like us, when we get
4 these jobs, the first thing they tell us -- oh, we
5 have flexible hours; we have this, that. When do you
6 see the flexibility when we're not home half the
7 time; we come home -- hi, bye, hi, bye -- we don't
8 even spend time with our families; we just don't have
9 the time to do it and it's really crazy. I don't see
10 the flexibility -- tell them to show us the
11 flexibility.

12 JANIKA REYES: No, she's right; I
13 remember... I went on a job interview just recently and
14 just because I had put one day that I wasn't
15 available, which was Sunday, I wasn't hired, which is
16 insane, right, like I put my availability is open
17 Monday through Saturday, 7 a.m., 10 p.m.; 11, if you
18 need it, but I just needed that one Sunday to be with
19 my parents and I couldn't even get that. So you know
20 they preach flexibility, they... you know I think the
21 problem here is just that they really don't want an
22 open relationship with their employees, you know it
23 feels more like a dictatorship, you know, they don't
24 really care about our needs and it really sucks you
25 know, because it trickles down onto the managers and

2 we **[inaudible]** our managers because of it and I'm
3 pretty sure it's not their faults, it's corporate,
4 you know and I just want to put that out there, you
5 know. Yeah.

6 COUNCIL MEMBER LANDER: Alright, we're
7 going to brand this "The Better Relationship Between
8 Managers and Their Employees" package. Alright.
9 Thank you for your time. Thank you, Mr. Chair.

10 SHANTEL WALKER: Thank you.

11 CHAIRPERSON MILLER: Thank you. Thanks
12 for your testimony. Call the next panel.

13 Harold Stolper, Community Service
14 Society; Lonnie Golden, Economic Policy Institute;
15 James Parrott, Fiscal Policy Institute; [background
16 comment] Ariane Hegewisch, Institute for Women's
17 Policy Research; and Andrea Johnson, National Women's
18 Law Center. [background comments] Thank you for
19 coming out; you could begin at either end. Uhm-hm.

20 HAROLD STOLPER: Thank you very much for
21 the opportunity to testify. My name is Harold
22 Stolper; I am the Senior Labor Economist at the
23 Community Service Society, so we work to promote
24 upward mobility for low-income New Yorkers. I'm here
25 just to briefly summarize our findings, our own

1 research on the extent of some of these unpredictable
2 scheduling practices and the impacts on families. So
3 we do an annual survey, about 1,800 New Yorkers, and
4 we ask them how far in advance they know their
5 schedules and the extent of the fluctuation in hours
6 they face from week to week -- somewhat or a great
7 deal -- and we can correlate that to the economic
8 hardships they face, and we found that low-wage
9 workers are disproportionately facing this very short
10 notice of less than two weeks and even less than 24
11 hours, much more likely than their higher wage
12 counterparts. We also find that these problems are
13 most significant in the restaurant and retail
14 sectors, so low-wage restaurant and retail workers
15 are the ones that get hit hardest. And when we look
16 at economic hardships and we compare low-wage workers
17 with unpredictable schedules to other low-wage
18 workers with more stable schedules, they're more
19 likely to say they are unable to afford subway or bus
20 fare, more likely to fall behind on the rent, skip
21 meals; three times as likely to have lost their jobs.
22 So there's a clear impact on their lives; obviously,
23 if you need to pay steady bills you need steady
24 hours.
25

1
2 And finally, perhaps the most distressing
3 finding is that this isn't a problem unique to young
4 workers or teenagers say they have more flexibility,
5 as we've just heard; low-income parents in particular
6 are also hit harder, both in terms of the prevalence
7 and the impact, so you know, falling behind on rent
8 and prescriptions, these are things which can spill
9 over and affect children as well, so that's why it's
10 particularly distressing.

11 Thank you for the opportunity to testify.

12 ARIANE HEGEWISCH: Thank you also from me
13 for the opportunity to testify. I would like to
14 particularly speak about Intro 1399 and the right to
15 request.

16 My name is Ariane Hegewisch; I am the
17 Program Director for Employment and Earnings at the
18 Institute for Women's Policy Research. The
19 Institute, since its inception, has worked on the
20 analysis of the mismatch between the world of work
21 and the world of caregiving and the implications for
22 the economic security of women and their families.
23 Lack of access to workplace flexibility is an
24 important contributor to gender inequality, of
25 course.

1 While many workers have access to
2
3 informal flexibility such arrangements are not
4 reliability and depend on the goodwill of individual
5 supervisors and managers; when those supervisors
6 change the arrangements frequently fall apart,
7 leading to lower motivation and productivity if not
8 forced exit from the workplace altogether.

9 For the last two decades a growing number
10 of countries have introduced law to improve workers'
11 access to workplace flexibility and I have closely
12 followed the implementation and impact of those laws.

13 Intro 1399 follows the UK Right to
14 Request law, which was first introduced in 2002 and
15 was subsequently expanded several times, each time
16 with the support of unions and employer organizations
17 and human resource managers.

18 While there was considerable skepticism
19 towards the soft law approach in the law, the law has
20 arguable proved as effective as more conventionally
21 framed laws elsewhere.

22 The UK experience provides useful insight
23 in what such a law can or cannot do. What it can do
24 is that requests for flexible work arrangements
25 increased and in eight in ten cases were accepted and

1 requests were particularly common and as successful
2 from part-time workers as full-time workers. And
3 while the impact has been greatest on workers with
4 caregiving responsibilities, access to flexibility
5 that workers want has increased also for workers
6 beyond the scope of the legislation.
7

8 Progress however has not been made across
9 the board. The law has had little impact on sectors
10 and workplaces with little prior flexibility, and
11 while men's access to alternative work arrangements
12 has increased, workplaces which mainly employ men
13 have seen much less change than others.

14 The law has had the strongest positive
15 impact in organizations which mainly employ women and
16 already provided some flexibility, but often in an ad
17 hoc manner. There it has helped these organizations
18 by giving authority to HR managers and to workers to
19 enforce uniform standards across their organizations
20 and particularly to improve consistency between line
21 managers and supervisors. [bell]

22 In summary, the best and the worst
23 employers have not changed much, but the mess middle,
24 where many women work, has improved.
25

1
2 And finally, what was really important to
3 the impact of the law was publicity and resources for
4 both employers and employees.

5 Thank you very much.

6 SUSAN LAMBERT: Hello, my name is Susan
7 Lambert and I am an academic researcher from the
8 University of Chicago and I've actually been studying
9 scheduling practices for almost 20 years and often
10 what I've -- part of my research is that I go into
11 firms and I look at what actually happens, why
12 employers do what they do, and I often partner with
13 businesses, in terms of finding more positive ways to
14 do scheduling.

15 I mostly study retail, but what we see
16 from the national data and what we've heard today is
17 that the stories from the fast food workers sounded a
18 lot like the stories from the retail workers, and
19 overall what national data shows us is that both are
20 at high risk of working unpredictable, unstable hours
21 over which people have very little control. Some
22 national data indicates that -- both groups -- that
23 over 90% of them experience fluctuations in work
24 hours from week to week and those fluctuations and
25 work hours for over 50% of these workers average

1
2 eight hours from week to week and that's a full day
3 of pay. And for the overwhelming majority of these
4 workers, those variations are not being driven by
5 them or by calling off from work; they're being
6 driven by employer changes. Central to New York's
7 initiatives, 54% of food service workers only receive
8 a schedule a week or less in advance, and as we've
9 heard from the last panel, you know, a week would be
10 a lot, compared to what people are actually getting.

11 One of the things I'd really like to
12 focus on is what I've learned from doing some
13 experiments in retailers who are trying to improve
14 their scheduling practices, and the same kinds of
15 arguments that we hear today from the panel, from
16 employer groups are the same ones that you hear all
17 the time for retailers as well -- we can't
18 anticipate; we don't know what's happening; our
19 employees want flexibility and we can't do this --
20 and what we found in our experiments is that it just
21 takes time for both the managers and the employees to
22 get used to a new way of scheduling; that employees
23 have to get their requests in further in advance and
24 what we find is they do, for the overwhelming
25 majority of them, it's not a problem to the managers.

1
2 Managers have to figure out how to forecast better
3 and they do. What we've also learned overall from
4 more operations research is that when you look at
5 variations in consumer demand over time, there's a
6 lot more stability in those demands than there is
7 stability in workers' schedules; that's there's a lot
8 more predictability and stability that's already in
9 these businesses that could be passed on to workers
10 through better scheduling practices.

11 Another thing I think that's relevant
12 here today is that people are talking about how much
13 predictability is enough [bell] and from our
14 research, what we find is that seven days doesn't do
15 it; it has to be more than that in order to make a
16 difference in terms of people being able to balance
17 their work and families' lives in order to reduce the
18 kind of stress the workers talked about, and so I
19 encourage you not to follow the path away from 14-
20 day.

21 Finally, I'm just going to end with one
22 little data point; is that in October 2015, the Gap
23 eliminated the use of on-call shifts and moved to
24 posting schedules two weeks in advance and as part of
25 a survey we asked hourly employees what they thought

1 of that and fully 93% said overall eliminating formal
2 on-call shifts has been good for me; 95% agreed that
3 the elimination of formal on-call shifts has improved
4 my ability to balance work and personal
5 responsibilities, and we find this similar positive
6 responses for posting schedules two weeks in advance.
7 And I can tell you, as an organizational researcher,
8 these are very high numbers in terms of such a
9 positive response, because most people will oppose
10 any kind of organizational change.
11

12 LONNIE GOLDEN: Thank you Chair and
13 committee members. My name is Lonnie Golden; I the
14 Labor Economist, an associate of the Economic Policy
15 Institute in Washington, and with the Project for
16 Middle Class Renewal at the University of Illinois.

17 Having analyzed data from three large
18 nationally represented surveys, I come to support all
19 five aspects of the Fair Workweek legislation and
20 admire your courage and taking the lead on this.
21 That is for four main reasons:

22 1. Our analysis of the data suggests when
23 workers report that their shift is either on-call or
24 irregular or split shifts, they experience
25 significantly more conflict with work and family

1
2 responsibilities and work stress than those with more
3 regular schedules.

4 2. Evidence shows that nationally from
5 10-16% of the employed, particularly those making
6 less than \$23,000 a year, are more prone to these
7 irregular on-call shifts and such variable and short
8 notice scheduling is found to be more pervasive
9 indeed in food services and production industry,
10 affecting 21% of employees and among retail trade,
11 which is 29%. In addition, those who report that
12 their usual work week is to variable to even specify
13 is higher in the food services industry than any
14 other industry, except for agriculture.

15 3. Not unrelatedly, the rate of
16 involuntary part-time employment -- that Member
17 Lander is speaking to -- remains stubbornly high in
18 the US and in New York in an otherwise solid economy,
19 particularly for the reason that people settle for a
20 part-time job when they're looking for full-time;
21 this is especially the case, data show, in the two
22 industries we've been talking about -- eating and
23 drinking establishments and retail trade. Yet even
24 this far underestimates the prevalence of the
25 phenomenon of underemployment, that workers are

1
2 hungry for more hours so they can bring in more
3 income. This is at 33% nationally and in New York
4 it's 38% at the state level and among part-timers
5 it's almost half.

6 Finally, the evidence suggests that the
7 adverse effects of irregular on-call scheduling could
8 be mitigated by employees having or gaining true
9 flexibility that is measured by having or gaining
10 true flexibility that is measured by having an
11 ability to take out time during the workday or to
12 adjust their starting or ending times.

13 In sum, these challenges can all be
14 addressed with the bills at hand, in particular, the
15 right to request at the individualized level and a
16 process that instates that; that has proven workable
17 in the English-speaking countries abroad. The
18 underemployment could be addressed straightforwardly
19 with this access to hours and that those with
20 caregiving responsibilities have a right to receive
21 it, so the frequent work family conflict can be
22 addressed with that and whatever length minimum we
23 have for minimum advance notice is certainly going to
24 be helpful. And with the [bell] pay premium, I think
25 that would create the right incentive for that and it

2 would eventually level the playing field between
3 employers in both these industries of retail and fast
4 food. Thank you.

5 ANDREA JOHNSON: Good afternoon. My name
6 is Andrea Johnson, I am with the National Women's Law
7 Center in D.C.; we are helping lead the national
8 movement to secure fair scheduling practices for
9 working people because women are disproportionately
10 affected by unpredictable scheduling practices, and
11 particularly as we've heard today, women with
12 caregiving responsibilities, so this is why the Fair
13 Workweek legislation is critical.

14 Bill 1399 provides a simple but crucial
15 protection that all workers need; ensures that an
16 employee who asks if she can have Tuesday nights off
17 to attend classes or a schedule that lets her see
18 her children in the evening does not risk having her
19 hours cut for making that request, as too often
20 happens; I just want to give my support to that
21 provision.

22 Also, the requirement of 14 days' notice
23 and not less for fast food workers is essential. The
24 consensus from workers across the country that we've
25 spoken with and other advocates here today have

1 spoken with, is that workers need at least two weeks'
2 notice of their schedules in order to be able to plan
3 their caregiving responsibilities, schooling or a
4 second job. And there's a recent study of 3,000
5 workers; we found that workers who receive their
6 schedule less than two weeks ahead of time report
7 significantly higher rates of psychological distress
8 than workers who receive at least two weeks' notice.
9 There is hard evidence to support the need for 14
10 days.
11

12 Moreover, almost every bill that has been
13 introduced across the country in recent years to
14 promote fair scheduling practices has provided for at
15 least two weeks' notice and the ordinances that have
16 passed recently in Seattle and Emeryville and a few
17 years ago in San Francisco also provide at least two
18 weeks' notice.

19 It's crucial -- and I want to drive this
20 point home -- it's crucial that employers be required
21 to compensate employees for changes made at any point
22 within that 14-day period; not just for changes in
23 the last few days. This ensures that employers will
24 actually stick to the two-week schedule and that
25 employees are compensated for costs that they are not

1
2 in a position to absorb but the businesses are;
3 anything less would be a step back for the fair
4 scheduling movement and New York City would not want
5 to do that.

6 I also want to make clear that the idea
7 that this bill will limit employee flexibility to
8 attend to personal and family needs is misleading --
9 we've heard this today from the worker panels very
10 clearly -- when employers give more predictable and
11 stable schedules, employees can actually plan their
12 lives so they can meet both their work and personal
13 obligations. So in that instance, employees will
14 call out of work less often.

15 I'll end by saying that, as I said,
16 Seattle, Emeryville, San Jose, and San Francisco have
17 responded to this dire need for scheduling
18 protections and passed robust fair scheduling
19 legislations similar to the legislation before you.
20 This year over a dozen states have introduced such
21 legislation, including Massachusetts, New Jersey,
22 Connecticut, and Maryland, so some of your neighbors;
23 it's time for New York City to step up like its peer
24 cities and become a leader in this national movement

2 to create workplace policies that truly work for
3 workers and their families.

4 Thank you so much for this opportunity to
5 lend our support.

6 JAMES PARROTT: Good afternoon Council
7 Member Lander; thanks for sticking through this.
8 James Parrott is my name; I am the Deputy Director
9 and Chief Economist of the Fiscal Policy Institute.

10 As was mentioned earlier, the fast food
11 minimum wage in New York State was first raised at
12 the end of 2015, so we now have a full year of
13 experience to see what the effect has been; we don't
14 have a lot of research on that, but one thing we do
15 know is what happened to the aggregate level of
16 employment in New York City in the fast food sector;
17 the number of jobs grew by 4.3% in 2016 following the
18 increase in the minimum wage; nearly three times as
19 fast as total private sector job growth of 1.5%. In
20 fact, fast food job growth was faster during 2016
21 than 2015, when jobs increased by 3.5% and the
22 minimum wage rose by 25 cents instead of the \$1.50 an
23 hour increase that was in effect in 2016. As of
24 December 2016, there are approximately 95,000 fast
25 food workers in New York City, the level has been

1
2 growing rapidly, so that's a higher number than what
3 some of the earlier witnesses have indicated.

4 The importance of the proposed bills is
5 underscored when you consider the demographic and
6 social characteristics of the city's fast food
7 workers. Eighty-six percent of the workers are age
8 20 or older -- relatively fewer teenagers. Women
9 comprise 49% of the overall workforce in the city,
10 but are nearly two-thirds of the fast food workforce.
11 Fifty-six percent of all fast food workers have one
12 or more children, and one-fourth are students. We
13 don't have the data on how many are caring for
14 elderly parents, but we heard from earlier witnesses
15 that that's often the case and we certainly heard
16 that a lot during the fast food Wage Board hearings
17 that were held in 2015. In two-thirds of the cases,
18 the families of fast food workers live below 200% of
19 the federal poverty line and two out of five families
20 of a fast food worker depend on food stamps, making
21 them more than three times as likely to receive food
22 stamps as the citywide average for all industries.

23 We wouldn't be here today discussing
24 these measures if there wasn't a compelling need to
25 curb abusive scheduling practices that have become

2 all too common in retail and in fast food. These
3 bills put in place commonsense provisions to curb
4 practices that needlessly harm workers who are paid
5 too little in the first place. These requirements
6 [bell] will not unduly impinge on effective business
7 management or profitability. In fact, as in the case
8 of raising the minimum wage floor, these bills likely
9 will improve worker morale, reduce turnover and
10 result in enhanced overall business performance.
11 Thank you.

12 CHAIRPERSON MILLER: Thank you. I just
13 have a few questions. It appears to me, based on the
14 testimony, and I think that the data that was
15 presented is pretty similar, data leading in the same
16 direction -- unless I interpret it totally wrong --
17 and that is that the shift in the industry that we
18 have seen is less towards the worker and the worker
19 flexibility, because I think that -- I've walked into
20 this, to a certain degree -- as was mentioned
21 earlier, that from an industry perspective, they will
22 tell you that the stores are half part-time; half
23 full-time; data would suggest that it's not
24 necessarily by choice and as we look at diminishing
25 hours and opportunities, it appears that they have

2 created an environment that is most profitable, and
3 so there is a degree of exploitation of workers and
4 there is a diminishing of workers' opportunities in
5 many ways, and if we could kind of just touch on that
6 and then the impact that this current work
7 environment has had on those workers and those
8 communities and families that they support.

9 ARIANE HEGEWISCH: Can I start with one
10 comment? When you said that the companies highlight
11 profits over worker welfare; in fact, they may think
12 they highlight profits, but we know that good
13 scheduling practices are a. cost-effective and
14 b. lead to both longer and short-term higher
15 profitability. So in a way this intervention pushes
16 industry into the right direction; there isn't much
17 evidence -- I don't know; you may know -- but there
18 isn't evidence that fairer scheduling undermines
19 profitability.

20 CHAIRPERSON MILLER: That is a good
21 answer; not necessarily what I was expecting, but
22 that's good to hear and... but... [crosstalk]

23 SUSAN LAMBERT: I could provide an
24 example of that.

1
2 CHAIRPERSON MILLER: but that is
3 potentially what can happen; the reality of what has
4 happened over the past years with the present
5 construct of the industry, what has been the impact
6 on those workers and the communities that they serve
7 and families.

8 SUSAN LAMBERT: I was just going to
9 provide an example of how it can be profitable to
10 businesses and one of the experiments that we have
11 done comparing -- what retailers will tend to do is
12 to over-hire and so you get a lot of part-time
13 workers, as you're describing, but even within the
14 same firm, not all managers will do that; some of
15 them will concentrate the hours that they have on a
16 smaller workforce and the difference between those
17 two stores, the turnover was 19% lower in the stores
18 where managers chose to concentrate hours on a
19 smaller workforce.

20 LONNIE GOLDEN: I can address that more
21 directly. We do know that people that voluntarily
22 take part-time jobs do better at balancing work and
23 family. We find surprisingly -- just analyzing big
24 national datasets -- that workers who are
25 underemployed that are working these few hours --

1
2 maybe because it's a business practice to over-hire
3 part-timers -- they don't better balance their work
4 and family responsibilities and that might be because
5 their scheduling is all over the week or that they're
6 uncertain what they're going to be working in a very
7 short-term period of time. So to create these
8 incentives in addition to receiving additional
9 compensation of one hour's pay would probably go a
10 long way to relieving this chronic underemployment
11 that we find among those who are being pushed in and
12 kept in jobs that are in fewer hours than they'd
13 prefer.

14 ANDREA JOHNSON: And I'll just add; at
15 the National Women's Law Center we talk about fair
16 scheduling as an issue very important to closing the
17 wage gap, the equal pay issue, and these
18 unpredictable schedules make it very hard for women
19 and women with caregiving responsibilities to go to
20 work, get the hours they need because they need to
21 tend to their caregiving responsibilities as well and
22 women still shoulder the majority of caregiving
23 responsibilities, so it makes it difficult for them
24 to be as active participants in the workforce as they
25 want and make the money that they need and that plays

2 a roll in the wage gap being stagnant for the last
3 decade and still being large. And women are
4 increasingly primary breadwinners or co-breadwinners
5 and if you think also about, you know, they're
6 bringing home money for their families, so their
7 families are directly impacted if they can't get
8 enough hours. And if you think about single mothers
9 who have nobody to share their caregiving
10 responsibilities with and they are the primary
11 breadwinner for their family, these practices are
12 incredibly detrimental. So yeah, direct impact on
13 the woman, direct impact on the family and their
14 economic security, which hurts communities' economy
15 more broadly.

16 CHAIRPERSON MILLER: Council Member.

17 COUNCIL MEMBER LANDER: Thank you,
18 Mr. Chair. Really good to have this panel and hear
19 some sort of like voices from the other side, you
20 know I think in any kind of transition it's sort of
21 stressful, people don't have confidence it'll work
22 and it's very useful to hear that it does and you can
23 see some of that in like the anxiety about workers
24 who are like desperate for additional hours and what
25 will happen to them and the answer is; well they'll

1
2 have more predictable schedules and they won't be so
3 desperate for the additional hours, but so there's
4 two questions about sort of what you've seen. One, I
5 want to drill a little bit down more on the seven
6 versus 14 days, because you heard that and I think
7 we'll hear it again, and I find it a little confusing
8 because the example that was given is; what if
9 someone calls out sick, which is not going to happen
10 seven days in advance or 14 days in advance; that's
11 about what happens one or two or three days in
12 advance and again, the only consequence here for that
13 additional shift as we've structured is the \$15
14 additional pay per shift. So to me, I'm not really
15 clear entirely that I understand the harm, but if you
16 could just elaborate a little more on why you think
17 14 is important.

18 SUSAN LAMBERT: I think one of the
19 reasons is that in fact, 14 days is kind of a
20 compromise; I think when a lot of this effort got
21 started across the United States it was three or four
22 weeks and in fact we did an experiment where we'd
23 tell managers we're posting schedules for a month at
24 a time and if you look at practices in Europe, for
25 example, you know you get your work schedule for

1 months at a time. And so from workers' points of
2 view, in terms of being able to set up child care and
3 very practical aspects of life, 14 days is kind of
4 the minimum to be able to do those things and our
5 research has -- you know when we are able to look at
6 a range of where it takes effect, where is the kind
7 of, almost -- you know you see that people can plan a
8 little bit better, stress reduced; it's more than a
9 week you know and you pick it up a little over a
10 week, but the more predictability -- and I think
11 there's a real difference, I mean the way that it
12 happened in retail, for example, if you put schedules
13 up for two weeks, of course some of those changes are
14 going to be made, but people have a foundation on
15 which to know when their days off are going to be,
16 that they can plan their lives around it and that's
17 to the benefit of both themselves, their families,
18 but also to the employer because they know who's
19 coming in when, you know, it's a foundation of
20 stability on both sides.

22 LONNIE GOLDEN: But just to add real
23 quickly, I think that one of the earlier panelists
24 said that they wait around, like I did when I was a
25 supermarket worker in a previous life, you wait

2 around on Friday afternoon and find out if you're
3 working the next day; that's not really one week's
4 notice, but they will post a schedule for the
5 upcoming week, so you have to build in some sort of
6 buffer to get these positive effects of being able to
7 plan.

8 COUNCIL MEMBER LANDER: Right. I'll just
9 be clear; I hope we're -- I have assumed we're
10 talking that a week would be seven days from the
11 first schedule, so I mean I see the argument, but
12 whatever, I support the bill; the bill I'm sponsoring
13 has two weeks from the very first shift, but
14 obviously one day from the next shift is no notice..
15 [crosstalk]

16 LONNIE GOLDEN: Right. That has to be
17 made clear, because some people regard the next week
18 as the next seven days.

19 ANDREA JOHNSON: I can add, and I think
20 we've seen this movement more so in retail, but there
21 has been increasing movement towards two to three
22 weeks of notice for schedules and there's been some
23 good employers in that regards, and Starbucks, though
24 their track record recently has been mixed, is itself
25 trying to move towards two weeks. So to set seven

1 weeks as a standard lowers the standard and I think
2 that's a bad precedent for New York to set and when
3 we have all these other jurisdictions setting two
4 weeks as a standard, anything less is -- yeah, it
5 gives employers an out to set a lower standard than
6 they actually might be moving towards already as an
7 industry.
8

9 COUNCIL MEMBER LANDER: Thank you.

10 CHAIRPERSON MILLER: Thank you so much
11 for your testimony. We'd like to call the next
12 panel. Richard Heckler, Jacqueline Martinez [sic,
13 Melvyn Jones, and Denee Brown. [background comments]

14 COUNCIL MEMBER LANDER: Mr. Chair, before
15 we... for people who aren't able to stick around, I
16 just want to let you know that we really appreciate
17 your being here and staying this long; we do read the
18 testimony that's submitted for the record and we
19 appreciate everyone who's been here and for this part
20 of the day. [background comment]

21 CHAIRPERSON MILLER: Very good
22 Councilman. [background comments] Yes, please be
23 sure to leave your testimony and be assured that
24 we'll be reading it and we'll also be in constant
25 communication. [background comment] Okay, you can

1 begin. [pause] [background comment] You may begin;
2
3 either end you want to start there.

4 RICHARD HECKLER: Thank you, Chairman and
5 council members. My name is Richard Heckler; I work
6 with a Briad franchise that has Wendy's here in the
7 city and restaurants in Brooklyn, Queens and Bronx
8 and here in Manhattan. I wanted to speak about 1396,
9 about the restrictive scheduling. The very first
10 group that was up here, first panel and the last
11 panel, both mentioned of a lot of people that come to
12 the industry for part-time jobs, whether it be for
13 child care, parent care, school, and all that, and we
14 see that same thing too; we do have about -- half of
15 our employees are on set weekly schedules that they
16 know every week they're working the same week; the
17 other half is people that have requested initially
18 individual schedules; I have hundreds of employees
19 that have worked their way up now through this and
20 they're shift supervisors, assistant managers and
21 store managers and have done well. Some of the
22 things that were mentioned earlier that we had
23 concerns about were things like on February 9th when
24 we had the large snowstorm and Council Member, you
25 mentioned it earlier, we were here meeting with some

1 people when all of a sudden the weather was getting
2 worse and worse and worse; the next day the whole
3 city closed down; we were making lots of phone calls
4 to people saying please don't come to work, because
5 you're so far away it's too dangerous to travel;
6 we'll try to contact somebody close by within walking
7 distance of the store, 'cause sometimes in the city
8 we have employees that only live a block or two away;
9 we're gonna still try to open the restaurant and
10 still try to give some hours to our employees and
11 take care of the people that are out on the streets.
12 I was reading through the bills and you start to be
13 hesitant whether you would call in anybody if you
14 just closed that day; it worries your. When we do
15 the schedules now, we do them about a week early and
16 one of the reasons we wait till a week before is
17 because of the fact that we have so many requests for
18 special things, with daycare and parents with medical
19 appointments and things like that and things with
20 school, so we wait to make sure we get all those
21 requests in to adjust the schedule for those, and
22 what really struck me while I was reading the bill
23 was I get a text from my son's band director who says
24 next Tuesday's weekly practice is going to be held on
25

1 Wednesday and my son says to me, oh I've gotta call
2 the boss and say I wanna work on Tuesday now, but
3 I've gotta have off on Wednesday and I'm reading the
4 bill and saying well if it's \$15 for this and \$15 for
5 that; how soon does that add up? So I asked one of
6 my managers last week, in this store that's open from
7 6 in the morning until 3 in the morning, how many
8 times was the schedule changed and they said nine
9 times and I said, oh okay. Well, we've heard
10 comments about these multibillion dollar
11 corporations; we're just a little franchise [bell]
12 and -- I'll finish up quickly -- nine times, when I
13 have a 4% profit margin, I make 4 cents on a chicken
14 nugget, I have to sell 3,375 more chicken nuggets to
15 come up with those \$15 nine times and so I'm thinking
16 how much this restrictive scheduling is going to
17 punish people that are really trying to do it right,
18 trying to give the people the ability to come in and
19 put in schedules early and adjust the schedules for
20 them. But I will let the rest of the panel speak
21 since my time is gone. Thank you very much.

23 MELVYN JONES: Good afternoon Chairman
24 and Councilman. I am here to give testimony of my
25 personal experience. I started as an employee crew

1 member and worked my way up and I believe that one of
2 the things that was beneficial to me is that in this
3 industry, working for Wendy's, going to college,
4 helping my aunt, you know, babysit while she had a
5 very complex job; it was very important for me to be
6 able to have the accommodation of being able to do,
7 you know, change my schedule around and that was
8 provided to me. And knowing that that was fixed and
9 accommodated to me, now that I became a manager and a
10 district manager, I see the importance of being
11 flexible and accommodating employees on what they
12 need, so what my problem today is -- what I see when
13 I hear the bill is that, I don't know when we went
14 away from accountability; I believe that most of the
15 hours that were provided to me and the flexibility is
16 because I worked hard; I believe that they gave me
17 those rights because I wanted those hours; there were
18 some people that did not want those hours and now I
19 see that -- I mean we start equally; I hire you, I'm
20 gonna provide you with the 40 hours, if that's what
21 it is, but then there's gotta be something that I
22 need to look at you, your performance, your
23 attendance. If I'm gonna just say okay, you have the
24 right to get this hours and he has the right to get
25

1 those hours; where is the equality to say okay, this
2 person deserves to get the full-time versus the other
3 person that don't want to be accountable, don't want
4 to come to work, keep calling out; not performing the
5 way they're supposed to perform, you know. So I
6 can't comprehend where -- I agree with the
7 flexibility of 14 days; I could say that you know
8 what, we should provide X amount of -- I mean a heads
9 up, they need to work, but the consequences behind
10 that is -- and this is me making a schedule, I see so
11 many call-outs and the call-outs happen just like
12 that. It's like something like you're not even
13 expecting to happen, but then okay fine, if it do
14 happen, why get penalized if you're trying to fix a
15 business to accommodate the customers, the employee
16 **[inaudible]** burden **[inaudible]**. I don't know about
17 you guys, but if I'm short-staffed, I'm working very
18 hard. I have to work twice, I have to work twice as
19 hard to make up the other person's job and if you put
20 a penalty for me to be able to fix that, then it's
21 like, how do we work that out, you know? [bell] And
22 one of my goals was to seeing that in fast food, I
23 would like to become an owner in the future, [bell]
24 but what I'm seeing right now scares to even think...

2 have that as a goal because I think that the goal was
3 to be profitable, you know to have your own
4 organization, to build something and have some kind
5 of way of, you know creating a great life for
6 yourself, but hey, I just can't relate to certain
7 things.

8 DENEE BROWN: Good afternoon Councilman,
9 Chair Member, thank you for having me. I would first
10 and foremost like to say I'm here because of a
11 flexible schedule; I was supposed to work, but I
12 don't have to go 'cause I'm here. I would like to
13 say; in my 14 plus years of management I've never
14 experienced those conditions. I've worked for the
15 same company for about eight years already and the
16 flexibility is what allowed me to continue. I am a
17 full-time student; I also work full-time and I'm a
18 parent of two and the flexibility I feel like is
19 necessary. As a college student sometimes you know
20 you have holidays and those days off they change your
21 classes to the next day and flexibility allows me to
22 do so; family emergencies, children emergencies; the
23 flexibility is what helps. But me personally, I
24 don't want a set schedule because it there are
25 certain things you could get done in a certain time

1 of the day that it won't be done if you have a set
2 schedule. And with my experience, like the crowd
3 that I've worked with, they don't want the set
4 schedule either and as far as 14 days, I think it's a
5 bit much because sometimes -- tomorrow you have an
6 agenda and it can be changed just as quick, so you
7 want to have those too to be able to say okay, I can
8 help you out here and without it, it just... it hinders
9 a lot, it hinders growth, it hinders people
10 personally and it technically hinders people when it
11 comes to their job because if they can't do it
12 they'll be forced to quit the job, which is a loss of
13 income. So the group that I usually work with, they
14 know how the business goes; if it's not busy, can I
15 go home early; they volunteer, but they're not binded
16 to the fact that they can have a set schedule -- if
17 they want it they can have it, but a lot of them
18 don't and the ones that do want it, they do have it,
19 or if they're called to come in -- oh, can you work
20 this day -- they're not penalized if they say no;
21 they're not obligated to say yes; if they can come in
22 they could come in; if not, they don't have to, but
23 we usually gear it toward the people that want the
24 extra hours, so hey, you wanna come in; this person
25

1 called out. So I've actually seen that it works for
2 them and as I said, in my 14 plus years' experience,
3 when it comes to working in the fast food industry I
4 haven't had set schedules and the request for the set
5 schedule is there; they can have it if they want; the
6 option is not off the table. So you know, I feel
7 like you know when it comes to this bill it's like
8 you know, these people are being forced, but when it
9 comes to, once again, my experience, they're not
10 forced, they actually can have what they want; out
11 motto is "yes we can," and if they ask, can we do it,
12 of course we can. So can I have this off tomorrow?
13 Okay, let me just see who can switch, just make the
14 switch and it can happen; we don't tell them no,
15 because I feel like to make things happen the
16 flexibility is necessary and if it's taken away it
17 hinders a lot of things and it's really detrimental
18 to like somebody's livelihood; it can really be
19 detrimental to that because they will be forced to
20 quit if they cannot stick to one thing or they can't
21 work around a schedule.

22
23 JACKIE MARTINCIC: My name is Jackie and
24 I work for a fast food, Wendy's, Briad Corp. I agree

2 with some of the laws that are trying to be proposed...

3 [crosstalk]

4 CHAIRPERSON MILLER: I'm sorry, Jackie,
5 what's your last name?

6 JACKIE MARTINCIC: Martincic, I'm sorry.
7 I agree with some of the laws that are being proposed
8 here; the only thing I don't agree with is the on-
9 call scheduling. I'm now a manager there at Wendy's
10 and we do have a lot of call-offs, almost every day
11 and if we don't have enough people to cover their
12 shifts, that means I'm working double hard for that
13 person that called off and to penalize the company
14 for that, I don't think that's right. Eventually
15 that's gonna bring the company down which in turn is
16 gonna bring the economy down. The whole restaurant
17 business is gonna come down over this and I don't
18 think that's fair to anybody. I don't think we
19 should be able to -- a restaurant owner should not
20 pay a premium for people that call off to have to
21 schedule somebody else to come in. I don't think
22 it's fair; I don't think it's fair to anybody. We
23 cannot predict an emergency when something happens,
24 like today I got the news that my father was
25 diagnosed with cancer; now I have to take a day off

2 to go see my father because he's in a different
3 state. My boss allows me to do that and I like that
4 and I love to work where I'm working at because of
5 that. So we do have flexible schedules, so where all
6 this is coming from I don't know. And thank you for
7 having me.

8 CHAIRPERSON MILLER: Thank you for your
9 testimony; I think certainly what you're saying is
10 it's not **[inaudible]**; we all want what you guys have
11 had, but what we have seen, and not just based on
12 this testimony today, is that that flexibility is not
13 necessarily what we see on the norm, but what I would
14 like to speak to, if I understand what you guys were
15 saying correctly about the culture of the employees
16 and whether or not... the amount of call-outs that you
17 get on a regular basis, whether or not people, if
18 they would not allow instant flexibility what the
19 repercussions would be. What kind of training do you
20 have for your employees going in and what are the
21 expectations of your particular stores? Are you
22 saying that the culture of being able to call out,
23 not necessarily every day or the ultra flexible
24 schedules are allowable and is that a sustainable
25 business model?

1
2 MELVYN JONES: Well if I could speak on
3 that. I'll give you an example. I have a restaurant
4 that is in the middle of a commercial area, it is not
5 residential; most of the employees come from either
6 the Bronx, Queens or Brooklyn, so the call-outs are
7 not intended; the call-outs mostly likely come from
8 those -- because of the city, most of its employees
9 are either students or college students and things
10 just happen to come up. So the situation with the
11 trains, the situation with, you know, inconvenience
12 with the scheduling, either not because we didn't
13 schedule it correctly, because they planned to be
14 able to work that specific hour, but because
15 something happened now they have to swap or change.
16 So to answer your question when it comes to our
17 training, we have a **[inaudible]** system where
18 employees, they are given a package, we go with an
19 orientation, they fully understand, because they get
20 to read the entire package **[inaudible]** we have the...
21 our company policies, our regulations, so they get to
22 read all these things and that's what's important and
23 what's recommended and what should happen. So the
24 system is in place, the communication is there, but
25 again, these things are not something that happened

1 because they are planned or because they want it; it
2 just happens; I think this is something about New
3 York City, and when I was talking about the fear of
4 scheduling, I believe... what I'm trying to say about
5 that is that, yeah, we could make a schedule, but the
6 schedule is so way in advance that most of the call-
7 outs are not happening the day before; it's not
8 happening two days before; it's happening at the
9 moment, it's not, you know...

11 CHAIRPERSON MILLER: No, I think
12 legislation and certainly this accounts for people
13 being sick... [crosstalk]

14 MELVYN JONES: Right.

15 CHAIRPERSON MILLER: certainly there is a
16 conflict and in normal work situations, paid family
17 leave would be applicable... [crosstalk]

18 MELVYN JONES: Right.

19 CHAIRPERSON MILLER: but there's a
20 certain amount of hours that you have to work in
21 order to qualify and obviously the majority of the
22 folks within the fast food industry would not
23 qualify, but there has to be a mechanism to address
24 that as well. But I just want to get to what I'm
25 speaking, because quite frankly, what I was hearing

1
2 was there was a degree of irresponsibility of a
3 workforce and that you were working around that
4 irresponsibility as opposed to saying that these are
5 our expectations and that you have to do the best you
6 can to meet those expectations.

7 MELVYN JONES: Clearly we have the
8 expectation and the employee know the expectation,
9 but again, the reality is that it's happening.

10 CHAIRPERSON MILLER: Okay. Brad.. Council
11 Member.

12 COUNCIL MEMBER LANDER: Just two quick
13 things. One, I do just want to clarify, and I think
14 we said this earlier, but there's been a lot said
15 today, that employees can still swap shifts without a
16 cost to the employer, so under this bill that could
17 still happen without a cost to the employer, which is
18 one of the things that you mentioned is a kind of
19 flexibility that you utilize, so I just want to be
20 clear, that's not something that would require
21 predictability pay under the proposal we have here.
22 And I guess just, you know the... you may not agree,
23 but it sounds to me like from the last panel in the
24 places they've done these, you know retention goes up
25 and absenteeism goes down; I think it sounds to me

1
2 like one of the reasons why you wind up with so many
3 call-outs is that when people have unpredictable and
4 unstable lives it's a lot harder to figure out --
5 like if you knew your schedule two weeks in advance
6 you could schedule your doctor's appointment around
7 it instead of winding up in a situation where you had
8 to do everything day to day, so I guess I hope you'll
9 just at least keep some openness to the possibility
10 that the policies we're talking about putting in
11 place here actually will wind up in ways that make it
12 productive for employers as well as employees, of
13 course.

14 DENEEN BROWN: It's not about having like
15 maybe an upset schedule; it's like -- of course it
16 goes with the economy, but when you have somebody
17 who's just doing more than one thing -- and I can put
18 myself into place. Like I said, I work at the same
19 company for eight years and I also worked it with a
20 second job before I got promoted to assistant
21 manager, so it's so much, like you said, unforeseen
22 circumstances, like when you have children anything
23 could happen; when it comes to school it's like,
24 okay, studying and then sometimes where... there came a
25 point where I was out of work for three months and it

1 was something day to day -- okay, I have to wait till
2 the doctor calls me to see this test and this test;
3 we have -- even in our company here we have young
4 people, then we have the older people, so the older
5 people, you know, they deal with... it's a certain... you
6 know. Those are the ones that really want the set
7 schedule and it's not saying that, you know, okay,
8 you guys are completely wrong, it's just that you
9 know it's just so far ahead; we already do it... we do
10 it about seven to ten days in advance, so it's just
11 like, you know, sometimes some things, like it... like
12 possibly the endless in what you see, you can't
13 imagine the things that you see and it's not like,
14 you know, people are not being unstable, it's that
15 like realistically things happen and the reason why
16 we are so flexible is because we're more
17 understanding rather than no, you're making an excuse
18 and you don't want to come in, which they're held
19 accountable for, but when it's something that we can
20 relate to as humans, it's like okay yeah, we can help
21 you out, 'cause we're human; we're not, you know...

23 COUNCIL MEMBER LANDER: And I hear that
24 and I'll be honest; if all employers and managers
25 were like this panel maybe we wouldn't need these

2 laws, you know, part of the challenges,
3 unfortunately... [crosstalk]

4 DENEEN BROWN: Tell 'em to come work for
5 us, we'll take 'em.

6 COUNCIL MEMBER LANDER: we've got a big
7 industry and it's not surprising the ones that would
8 come here and testify would be ones who worked well
9 with their employees; I don't think it's a secret
10 that there are unfortunately a meaningful number of
11 businesses out there where that's not true and we're
12 stuck with laws to try to do the best we can and
13 protect those employees. I also just want to say I'm
14 so sorry to hear about the family news that you got
15 and of course we all -- our prayers are with you and
16 with your family, so thank you. Thank you,
17 Mr. Chair.

18 CHAIRPERSON MILLER: Thank you so much
19 for your testimony; it's been really helpful. Thank
20 you for coming out. Next panel -- Anna Haley-Lock
21 from Rutgers University; [background comment] I've
22 got Phoebe

23 Taubman, A Better Balance; [background
24 comments] Elianne Farhat, Center for Popular
25 Democracy; [background comments] Barbara Allen,

2 Women's City Club of New York; Kevin Woodside, We
3 Serve New Yorkers Coalition. [background comments]
4 You may begin.

5 [background comments]

6 SHERRY LEIWANT: Okay, thank you so much
7 for extending the panel day. My name is Sherry
8 Leiwant; I'm not... Phoebe had to leave, so I'm
9 testifying in her place. I am Co-President and co-
10 founded of A Better Balance, which is a legal
11 advocacy organization that's dedicated to helping
12 workers balance the demands of work and family and
13 we've worked on a lot of legislation such as Paid
14 Sick Days and Caregiver and Pregnancy Discrimination
15 that I think has helped a lot for workers in the
16 city.

17 We helped to craft and we strongly
18 support the entire Fair Workweek package and we think
19 that they will really help workers care for their
20 loved ones while maintaining their economic security.
21 But I wanted to focus primarily on 1399, which is the
22 Right to Request bill, because there seemed to be a
23 lot of questions about it and I just wanted to
24 clarify exactly what it's going to do:

1 Number one; it allows workers to request
2 flexible work arrangements and receive a response to
3 that request. I want to emphasize, there's no
4 requirement that that request be granted, except in
5 one specific situation where there's an emergency,
6 but otherwise, it's completely up to the employer
7 whether or not to grant the request under the law;
8 it's just hoped and I think the testimony by Ariane
9 Hegewisch earlier shows that it will get the employer
10 to think about and possibly be more inclined to grant
11 such a request, but he or she doesn't have to. And
12 the main purpose -- the second part of it -- the main
13 purpose is that it prohibits retaliation against an
14 employee for asking for a flexible work arrangement
15 or a different work arrangement. Data shows that
16 there's real fear about that; a report we did with
17 Scott Stringer last year showed that about 50% of
18 workers are actually afraid to ask, and for good
19 reason; there's really evidence of promotions that
20 don't get granted when those requests are made;
21 negative performance reviews; we heard from a worker
22 earlier who said that she was cut hours because she
23 asked for a Sunday off that she needed to take care
24 of her family. So that's really the crux of this
25

2 bill and it's really important to a lot of workers,
3 including the last panel we heard about the
4 importance of flexibility. And then finally, there's
5 a limited right to receive a temporary brief change
6 in schedule for certain specified, very carefully
7 specified emergencies in the bill.

8 So that's the bill and I just wanted to
9 explain it a little more; I'm happy to answer
10 questions. We are working with the Administration to
11 make this an even better bill and one that's even
12 friendlier to business and to address any concerns
13 that were raised today, but we hope to see it pass
14 along with the rest of the Fair Workweek package.
15 Thank you.

16 BARBARA ALLEN: Good afternoon. My name
17 is Barbara Allen; I am a member of the Public Policy
18 Committee of the Women's City Club and Chair of the
19 Task Force on Fair Work Flexibility and
20 Predictability, and thank you; we've been working
21 with you on all this.

22 Today I'm speaking on behalf of the
23 Women's City Club, a nonprofit, nonpartisan, multi-
24 issue activist organization, and I want to thank you
25 for the opportunity to testify on these proposals,

1 they represent a clear path forward to protecting the
2 rights of many members of this city's vital
3 workforce.
4

5 For more than a century, our organization
6 has dedicated to dismantling economic, racial and
7 gender inequalities through education, issues
8 analysis, advocacy, and civic participation.

9 Since our founding days, we have been
10 committed to reducing income inequality in our city
11 and ensuring equal opportunity across all five
12 boroughs to improve the quality of life for all New
13 Yorkers.

14 While the Fight for \$15 minimum wage was
15 rightly focused on higher wages for millions of
16 people across the United States, a similar effort has
17 focused on workplace practices that are unreliable
18 and inflexible. Most American workers are paid by
19 the hour, and the job sectors facing most of the
20 largest growth are the fast food and retail
21 industries, yet those involve jobs that feature
22 precarious schedules and unpredictable hours.

23 These measures offer remedies to systemic
24 problems that the Women's City Club strongly believes
25 must be addressed. They are necessary to ensure a

2 balance between family and work life, and recognize
3 the struggle that many parents face in providing
4 proper child care or caring for elderly relatives or
5 family members. These measures afford a level of
6 predictability in their work schedules and are
7 extremely important for workers, especially at the
8 lower end of the wage scale.

9 And I've outlined why we support each of
10 the particular bills, but I won't go into that now.

11 The stark reality is clear; workers in
12 occupations across the labor market are at
13 considerable risk of unpredictable and unstable work
14 hours over which they have little control.

15 The ability to find stable work with
16 predictable income has become a luxury in the 20th
17 century. As a city, we have made considerable
18 strides in wage increases, universal pre-K, and paid
19 sick leave.

20 Yet many part-time workers are not able
21 to take advantage of these benefits when work
22 schedules are erratic and last-minute changes can
23 cost them their job. The measures before you today
24 are a good first step and we encourage you to
25

1
2 consider similar challenges faced by workers in other
3 sectors in the future.

4 The Women's City Club strongly urges the
5 City Council to pass this Fair Workweek legislation.
6 As a city, state and nation, we can only be stronger
7 when we adopt measures that level the playing field
8 and improve the quality of life for all.

9 [bell]

10 CHAIRPERSON MILLER: Thank you so much
11 and how timely that was. Thank you for your advocacy
12 there. You know what; I'm going to pass it to the
13 Council Member here, because I think that you've
14 articulated a lot of viewpoints that we're very much
15 concerned about and the level of expertise kind of
16 just adds to what we've seen, but I'm sure that Brad
17 wants to drill down on it a little bit more.

18 COUNCIL MEMBER LANDER: Well I mostly
19 want to say thank you to Sherry for lifting up the
20 Right to Request bill; I think for good reason we are
21 here focus... you know, we've got the fast food
22 employees here and obviously those conditions demand
23 change, but I have come to see through some of your
24 work the power that Right to Request can have for
25 workers across the income scale; the ability -- you

1 know and there is some tension here; you want more
2 predictability than involuntary part-time fast food
3 workers have; you also want people to be able to be
4 in some dialogue with their employers to achieve
5 mutual goals and the Right to Request legislation I
6 think can really help us do that, so thank you for
7 lifting it up; we will have to work a little on this
8 kind of interactive process and finding a way to
9 balance making it work, but I do want to assure it's
10 a piece of the package. I know Council Member Rose,
11 who's had her own work life balance to achieve and
12 luckily they had an employer that made it more
13 possible. But we will be working with you to get
14 this bill in good shape and definitely, I'm certainly
15 committed to making sure it lands in a strong place
16 and a good part of the package.

18 SHERRY LEIWANT: Thank you, Brad and
19 thank you for your leadership and I want to thank the
20 Committee as well. And yes, I mean there are
21 definitely the process issues that we heard today;
22 want to work on it, but I think as part of the whole
23 package, and we're totally committed as well to the
24 other pieces that really help the fast food industry
25 and retail, where there's been so many problems, but

2 I think it's two sides of the coin to a certain
3 extent, so the fact that it's all in one package I
4 think is one thing that makes it extremely good for
5 workers here in the city and really recognizes all
6 the problems that they face. So thank you so much.

7 COUNCIL MEMBER LANDER: Thank you.

8 SHERRY LEIWANT: Thank you.

9 CHAIRPERSON MILLER: Thank you so much.

10 Next -- Pamela Majors, Jose Carillo, Jorel Ware, Jose
11 Sanchez, Vianny Vargas; is that it? [background
12 comment] That's it for our testimony? I want to
13 thank everyone... [crosstalk, background comment] I'm
14 sorry? [background comment] There's more?
15 [background comments] Hold on -- Edwin Cabrera, Rose
16 Rivera, Wilton Major, Edica Reese, Mercedes Ramirez,
17 Michael DeFreitas, Flavia Cabral; Vance Brooks. That
18 is it. Okay. I'd like to thank everyone for coming
19 out; it has been a long and productive day; we
20 discussed many matters on both sides of this issue;
21 we look forward to working with advocates and
22 industry folks as we further this legislation and
23 most importantly, we look forward to the passage and
24 signing of this legislation and to continue to uplift
25 working families throughout this city. With that I'd

2 like to thank Council Member -- he made a quick exit
3 -- Lander for hanging in there with me and all those
4 who have stayed to testify and hear the testimony on
5 these very important issues I'd like to thank you
6 again and with that... thank you, Gregory Rose, my
7 legislative director, for all the work that he has
8 done and all those who have testified; with that, we
9 will adjourn the hearing.

10 [gavel]

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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 April 2, 2017