

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING

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HELD AT: 250 Broadway - Committee Rm.
16th Fl.

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

COUNCIL MEMBERS: Margaret S. Chin
Peter A. Koo
Karen Koslowitz
Brad S. Lander

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

Casey Adams, Director of City Legislative Affairs,
New York City Department of Consumer Affairs

Zach Steinberg, Real Estate Board of New York, REBNY

Samara Karasik, Chief Policy Officer, Brooklyn
Chamber of Commerce

Brian Lozano, Tech NYC

Catherine Wylde, Partnership for NYC

Jenny Ying, National Mobilization of Gun Sweatshops

Oren Hyme, Bryant Park Corporation the 34th Street
Partnership

2 [sound check] [pause] [background
3 comments/pause] [gavel]

4 CHAIRPERSON ESPINAL: Good morning. My
5 name is Rafael Espinal. I am the Chair of the
6 Committee on Consumer Affairs and Business Licensing.
7 I am joined today by my colleagues on the committee
8 with Peter Koo from Queens. We have Margaret Chin
9 from Manhattan. We have Karen Koslowitz from Queens
10 as well. Today, the Committee will be hearing
11 testimony on a timely piece of legislation. Intro
12 Bill No. 7–No. 726 in relation to private employees
13 disconnecting from electronic communications during
14 non-work hours. This bill, which I introduced early
15 last year, aims to tackle a crucial catalyst of
16 workforce burnout. Endless work hours spurred by the
17 digitization of work. Over the past few decades,
18 technology–technological advancements have brought
19 incredible benefits to society. Information is more
20 accessible than ever, and it seems as if most needs
21 and wants can be fulfilled at the touch of a button.
22 We can connect and communicate instantly with people
23 from virtually anywhere in the world making the
24 geographical distances that used to be keep us apart
25 seem smaller than ever. But these advancements have

2 also brought new challenges, and this ability to
3 connect and stay connected has blurred the line
4 between work and leisure. When were accessible by
5 phone and email 24 hours a day, 7 days a week, there
6 is no longer a clear delineation between when our
7 work day ends and our non-work life begins. The 40-
8 hour work week, the bastion of long thought labor
9 policy for the past century has been slowly decimated
10 over the past few decades. Americans typically work
11 some of the longest hours in the industrialized
12 world, and for workers in New York City, their work
13 week is the long-one of the longest in the country.
14 The-the ubiquity of technology over the past few
15 years has only amplified the expectations to stay
16 connected to work throughout the day and night. One
17 survey of the American workers reported that 59% of
18 respondents used mobile devices to continue work
19 after normal working hours, with more than half of
20 those reporting that they do so far-they do so for at
21 least two or more hours per day. Similarly, a 2012
22 study showed that employees with access to Smart
23 phone technology spent 13.5 hours a day keeping in
24 contact with their work and another 5 hours on the
25 weekend managing work emails. This meant that in

2 total these workers spent 72.5 hours a week engaging
3 in job related tasks. Without receiving wages for
4 this work, these employees are akin to victims of
5 wage theft. My bill Intro 726 would provide New
6 Yorkers with the right to disconnect from work—from
7 work during non-work hours. Under the bill, it will
8 be unlawful for businesses that employ 10 or more
9 workers to require their workers to respond to
10 electronic communications such as emails and text
11 messages outside of business hours. The bill also
12 requires these companies to establish a clear policy
13 on the use of electronic communications, which
14 includes a clear delin-delineation of non-work hours
15 and to provide workers with notice of their rights to
16 disconnect. Intro 726 also prohibits employers from
17 retaliating against workers who exercised their right
18 to disconnect, and empowers the Department of
19 Consumer Affairs to investigate complaints. Most
20 good employers already have these practices in place
21 so for them this bill will simply formalize the
22 policy and alert their workers to their employment
23 rights. We look forward to hearing today from the
24 Administration, worker and business groups, advocates
25 and other interested-interesting stakeholders on this

2 bill today. Before I call on the Administration to
3 testify, I just want to add, you know, there's a lot
4 of confusion around this bill on the idea that
5 employers are able to—that this bill will somehow
6 make it illegal for employers to reach out to
7 employees. That does not change that conversation.
8 The employer can still reach out to the employee.
9 What this means is if the employee decides at that
10 moment not to answer that phone call, then you cannot
11 retaliate against that employee because they decide
12 to exercise their right at that moment. Again, I do
13 believe that there's a lot of hard workers, a lot of
14 New Yorkers love their jobs, and I do believe that
15 there will be times where they'll answer that call,
16 they'll do the work necessary. So, but this is just
17 simply giving them that right to be able to decrease
18 that anxiety that they will not have a job the next
19 day. So with that said, I will now call the
20 Administration—the Administration to testify.

21 [background comments] Do you swear to tell the truth
22 and answer questions honestly?

23 CASEY ADAMS: I do.

24 CHAIRPERSON ESPINAL: Thank you.

2 CASEY ADAMS: Good morning Chairman

3 Espinal, Council Member Koo, Council Member Koslowitz
4 and Council Member Chin. My name is Casey Adams, and
5 I am the Director of City Legislative Affairs for the
6 New York City Department of Consumer Affairs. I
7 would like to thank the Committee for the opportunity
8 to testify today on behalf of DCA Commissioner
9 Lorelei Salas about a right for private employees to
10 disconnect from work communications during off work
11 hours. DCA's mission is to protect and enhance the
12 daily economic lives of New Yorkers to create
13 thriving communities. As part of this mission DCA
14 houses the Office of Labor Policy and Standards,
15 which serves a New York City's focal point for labor
16 issues and workers giving a dedicated voice in local
17 government to the issues facing workers. OPS enforces
18 key municipal workplace laws, conducts original
19 research, and develops policies that are responsive
20 to an evolving economy and issues affecting New York
21 City workers particularly communities of color, women
22 and immigrants. The Internet and other
23 communications technologies have transformed the
24 working world in a few short decades. Today, more
25 than at any other point in history workers can

2 connect to their work at a moment's notice and
3 respond quickly when they are needed no matter where
4 they are when the call comes. However, when work is
5 just a click or swipe away, job related stress
6 travels with it. The pressure to constantly monitor
7 electronic communications outside of work time can be
8 both intense and pervasive. In some industries,
9 these pressures and expectations are deeply engrained
10 in workplace culture. DCA appreciates and shares
11 Council's concern about the affects that the advent
12 of so-called always on communications have on the
13 health and wellbeing of employees who are expected or
14 eve required to constantly be on alert for work
15 related communications. According to the New York
16 Times, a 2017 report found that on average workers
17 spend an extra eight hours a week sending email after
18 work. In addition, recent research suggests that
19 workers who respond to the work communications late
20 at night, have lower sleep quality that may impact
21 their quality of life, and their productivity at
22 work. Other studies have warned about the health
23 impacts that infobesity and tele-pressure associated
24 with always on communications may have on workers.
25 Government workers and unions and employers would

1 benefit from a deeper understanding of the effects
2 that evolving technology and workplace cultures have
3 on worker health, wellbeing and productivity. New
4 York City prides itself on being the city that never
5 sleeps, but even New Yorkers need a break now and
6 then. That's why Mayor de Blasio recently announced
7 that New York City will become the first city in the
8 nation to mandate paid personal time for workers.
9 More than 500,000 full and part-time private sector
10 employees in the city currently have no paid personal
11 time off. The de Blasio Administration is committed
12 to making New York City the fairest big city in
13 America, and this proposal would guarantee that
14 approximately 3.4 million New Yorkers who first
15 receive the legal right to Paid Safe and Sick Leave
16 Law under Mayor de Blasio will not be able to take
17 paid time off for any other purpose including
18 vacation, religious observances, bereavement and just
19 time with family. The push for paid personal time
20 follows the Mayor's landmark establishment of OLPS,
21 the nation's largest municipal labor standards
22 Office, which enforces NYC's Paid Safe and Sick Leave
23 Law, the Fair Work Week Scheduling Law that
24 guarantees fast food and retail workers the right to
25

1 a predictable and stable schedule and implementation
2 of the ground breaking Freelance Isn't Free Law,
3 which helps ensure that freelancers are paid on time
4 and in full for the work that have completed. Since
5 its inception, OLPS has obtained almost \$10 million
6 in restitution and civil penalties, more than \$7.5
7 million of which came in the form of restitution for
8 workers. Mayor de Blasio also announced that DCA's
9 mission will expand as the agency is renamed The
10 Department of Consumer and Worker Protection with a
11 powerful mandate to defend consumers and workers. As
12 part of this expansion, DCWP will develop a free
13 uniquely tailored alternative dispute resolution
14 program to help domestic workers and employees
15 resolve issues and provide both parties an employment
16 relationship with institutional support and tools for
17 ensuring optimal employment conditions. We believe
18 that these core worker issues, access to paid
19 personal time, the challenges and unpredictable
20 schedules, realization of core workplace rights and
21 provision of reliable benefits and ensuring rights
22 are real even in complicated employment
23 relationships, the structure of which pose unique
24 challenges to enforcement should be New York City's
25

1 focus. The initiatives I have outlined are designed
2 to help protect low-wage and vulnerable workers many
3 of whom are immigrants, women or people of color.
4 Because of this renewed focus on ground breaking
5 initiatives to protect low-wage and vulnerable
6 workers and other concerns, DCA does not support
7 legislating a right to disconnect at this time. As I
8 mentioned earlier, DCA believes that all parties
9 would—would benefit from a greater understanding of
10 the effects always on communications has on
11 employees. In other countries where similar
12 legislation has been considered or adopted like
13 Germany and France, the proposals followed in-depth
14 government commission studies into the effects of
15 always on communications on workers in those
16 countries, the array of potential legislative
17 solutions and the cost and benefits each approach
18 would have for workers and employers. In some cases,
19 further studies may actually motivate employers to
20 adopt changes on their own because of potential
21 benefits to worker productivity. Following the
22 German government's report, for example, several
23 larger large employers in that country voluntarily
24 created policies restricting off-work communication
25

2 obligations for their employees. Countries that have
3 adopted right to disconnect laws have generally
4 recognized that a one-size-fits-all legislative
5 mandate is not the best way to change workplace
6 cultures and help workers log off. In France, which
7 has one of the first and broadest such laws it simply
8 requires businesses that employ 50 or more workers to
9 include the right to disconnect in mandatory annual
10 negotiations with their workforces. Companies are
11 not required to come to an agreement, and cannot be
12 penalized for failing to do so. The French approach
13 recognizes that changing workplace communications
14 norms and rules will be a gradual process that should
15 be responsive to the needs and expertise of workers,
16 unions and employers. Other considerations also
17 weight toward a careful, deliberative and
18 collaborative approach. DCA has serious concerns
19 about our ability to effectively enforce a law that
20 requires the agency to closely regulate the
21 development and implementation of workplace
22 communication policies by thousands of employers
23 across of hundreds of industries. Because the
24 regulation of off-work in communications is a new and
25 novel area, a broad law that requires DCA to insert

1 itself into the complex daily communications between
2 many, and our estimate suggests most of New York's
3 workers and employers could have wide-ranging
4 implications that disrupt existing business models
5 and employment relationships. The emerging
6 relationship of this type of regulation means that
7 DCA would not have a robust body of research
8 experience and best practices to build upon when
9 implementing. A vague legal requirement for the
10 right to disconnect would be difficult to enforce and
11 could prove confusing and burdensome for workers to
12 understand and employers to implement. Finally, the
13 city would need to understand clearly how a right to
14 disconnect would interact with the complex framework
15 of state and federal laws already regulating wages
16 and hours. DCA welcomes a frank, thorough discussion
17 about the effects of always on communication on New
18 Yorkers and their jobs. We believe that both workers
19 and employers stand to benefit from a dialogue about
20 communication expectations in light of rapidly
21 evolving technology and new and changing work
22 arrangements. New Yorkers deserve a break, and
23 employers should recognize the benefits a happy, well
24 rested workforce for both their businesses and our
25

1 city as a whole. We also believe that New Yorkers
2 are best served by DCA's focus on protecting low-wage
3 and vulnerable workers, and the changing workplace
4 communications calls for a detailed process of study
5 and dialogue between workers, unions, employers and
6 experts. For the reasons I have outlined, DCA does
7 not support legislating a right to disconnect at this
8 time. Thank you for the opportunity to testify
9 today, and I'm now happy to answer any questions you
10 may have.
11

12 CHAIRPERSON ESPINAL: Well, thank you.

13 Thank you for your testimony and thank you for
14 outlining I mean the thoughts of the Administration
15 and also the issues you've seen with-wit the bill.
16 So, you-you did mention that Germany and France has
17 done, you know, in-depth studies and commission
18 studies to kind of see the effects that always on
19 cultures having on-on their citizens and also what
20 sort of policies they can implement in order to make
21 the right to disconnect within their countries.

22 CASEY ADAMS: Uh-hm.

23 CHAIRPERSON ESPINAL: Is the city-would
24 the city be willing, would DCA be willing to conduct
25

2 a similar study if the Council was to pass a similar
3 law?

4 CASEY ADAMS: Certainly--

5 CHAIRPERSON ESPINAL: [interposing]

6 Otherwise they do with the Commission? (sic)

7 CASEY ADAMS: Certainly we support a
8 robust dialogue and an additional study. I can't
9 commit here today that DCA is the right agency to do
10 that, or that the city thinks that we're in the right
11 place, the correct place to start that process now,
12 but yes, I think that study is very important here
13 because as both of the governments in those countries
14 recognize, the workplace culture and the background
15 labor law of each country is very different, and very
16 particular. And the--and any policies really need to
17 be examined against that background and against a--a
18 thorough study.

19 CHAIRPERSON ESPINAL: Okay, so that will
20 lead into my other question. I mean the City Council
21 is no stranger to passing laws--

22 CASEY ADAMS: Uh-hm.

23 CHAIRPERSON ESPINAL: --or that have
24 mirrored, you know, what other cities have done
25

2 within the country and also what other cities have
3 done in Europe as well.

4 CASEY ADAMS: Uh-hm.

5 CHAIRPERSON ESPINAL: So, do you believe—
6 so you believe that that this—because of the
7 intricate labor laws that Europe has, it somehow will
8 be a lot more difficult to have this conversation the
9 way—way those—those were into—they're here. (sic)

10 CASEY ADAMS: What I'm saying is that we
11 need to understand whether that's the case, and the—
12 and Germany and France they—they conducted studies
13 partially to understand how would both federal and
14 sub-federal laws impact a right to disconnect. So,
15 I'm not—certainly we--New York both looks to success
16 models from other cities but also leads other cities,
17 in terms of these types of initiatives. I think—I'm
18 not aware at this point of a municipality that have
19 taken the approach that's proposed here. France and
20 the Philippines and Italy are really the—the
21 countries that have proceeded and France is really
22 the only one that's farthest along to have understood
23 the—the-the issues that they run into with
24 implementation, but I think in each of the cases that
25 we have seen, the people who are—the countries that

1
2 are farthest out front, have done—gotten there by
3 first really studying the particular issues of
4 working communication and how any policy solution
5 should be weighed against background labor law,
6 workplace expectations in that particular
7 jurisdiction.

8 CHAIRPERSON ESPINAL: So, you also
9 mentioned in your testimony that, you know, and we
10 all think the public does know that the Mayor is
11 looking to expand pizza police (sic) right because
12 the Mayor and the Administration recognizes that
13 people need more time off.

14 CASEY ADAMS: Uh-hm.

15 CHAIRPERSON ESPINAL: So, I guess my—so
16 when it come to those complaints, how does—how does
17 the agency currently go out and investigate, you
18 know, any employee who does not receive the proper
19 time off from their jobs that is required by the law?

20 CASEY ADAMS: So, we have, as I
21 mentioned, a whole office OLPS that is dedicated to
22 the enforcement of among other things paid sick—safe
23 and sick leave. So there are a number of different
24 ways that we have gone about enforcing that law. We
25 take complaints and—and investigate individual worker

1 situations, but we also will use those as jumping off
2 points to look at other workers within a workplace if
3 we find that one individual's work has been denied
4 their rights because we found that when one worker is
5 denied their rights, it's often a sign or can be a
6 sign of a more pervasive culture of not giving the
7 time that is required by the law. We also have done
8 sector wide investigations. So, we've looked at
9 particular professions that we think are high risk
10 for not being recorded at the time that the law
11 requires, and we have been able—we have been very
12 successful in that space as well. So, we—we—we do
13 both proactive investigations and complaint driven,
14 and often the two overlap because the complaint can
15 be the beginning of a broader proactive
16 investigation.

18 CHAIRPERSON ESPINAL: So, your concern
19 with the right to disconnect is that because there's
20 a flexibility for different employers to have
21 different policies around disconnecting, that somehow
22 it's going to be overly burdensome for the agency to
23 be able to understand how every—every company is
24 going to mandate or is going to create the policies
25 and--?

2 CASEY ADAMS: That is one of our concerns
3 yes is that there is going to be a great variability
4 about the policy—in the policies adopted across all
5 of the different industries. The Paid Safe and Sick
6 Leave and we expect to pay personal time builds upon
7 exist—a large body of existing law in terms of—of
8 leave that employers are required to help to track
9 employees' accrual and provide to them. So, the
10 right to disconnect is—is a—is different both in type
11 and kind because it—it—it doesn't really—it builds
12 upon an existing regulatory framework, and it's
13 establishing a new—a new right that will have high
14 variability across different industries. I want to
15 emphasize again that we—we think that there needs to
16 be a discussion and a dialogue about this issue.
17 There needs to be greater appreciation for how the
18 right to disconnect impacts employees across
19 different sectors because it is our assumption at
20 this point that some workers are just like the Paid
21 Safe and Sick Leave, some workers are at higher risk
22 for being asked or required to access their
23 communications over long periods of time outside of
24 work, but we don't have enough data to tell you what
25 those are definitively now. It would be anecdotal.

2 CHAIRPERSON ESPINAL: So, back to paid
3 sick leave. Are there protections for workers who
4 decide to disconnect while they take the day off?
5 I've heard a lot of stories from constituents and
6 from New Yorkers--

7 CASEY ADAMS: [interposing] Uh-hm.

8 CHAIRPERSON ESPINAL: --who go on
9 vacation and while they're on vacation, they're being
10 pressured to answer their correspondence or to answer
11 their phone calls, and because they haven't, they
12 have--there have been instances where they have lost
13 their jobs. Are there protections within Labor Law
14 regarding disconnecting while you're actually taking
15 some of your personal time off?

16 CASEY ADAMS: I'd like to consult with
17 the Office of Labor Policy Standards on that, and get
18 back to you because I want to make sure that I'm
19 giving you the correct information because this is a--
20 a complex area not just in terms of Paid Safe and
21 Sick Leave, but exists--as I mentioned, existing wage
22 an hour laws at the state level, and the Fair Labor
23 Standards Act at the federal level, the interaction
24 for--of laws that require compensation for time worked
25 with this new age of always on communication where

2 your employer can expect or require you to be
3 responding to inquiries that may constitute work at
4 any given time. And so, I'm not in a position to give
5 that answer right now, but we'll consult with OLPS
6 and get back to you.

7 CHAIRPERSON ESPINAL: Okay. So, it's
8 been—it's been about a year since I introduced this
9 bill.

10 CASEY ADAMS: Uh-hm.

11 CHAIRPERSON ESPINAL: I think 'til—it
12 will be a year next month.

13 CASEY ADAMS: Uh-hm.

14 CHAIRPERSON ESPINAL: You know, we haven't
15 had any real robust conversations around the bill.
16 Is the Administration willing to continue this
17 conversation to figure out what is the best way to
18 move forward, and I think this is a real conversation
19 that we as New Yorkers should be having.

20 CASEY ADAMS: Uh-hm.

21 CHAIRPERSON ESPINAL: Technology has
22 advanced. The labor laws have not caught up with
23 these advancements. New Yorkers are feeling the
24 pressure from always being on, and there's currently
25 no protection for them at this point. I just feel

2 like we need to do more. Yes, this is probably a
3 starting point of that conversation, but I'm—I'm
4 hoping we can continue with this dialogue, and move
5 forward and hopefully get a real study being done by
6 the Administration of New York.

7 CASEY ADAMS: Absolutely. We—we look
8 forward to having a dialogue with the Council and
9 with other stakeholders. Many of them are here today
10 about how we have this conversation about the
11 changing nature of work in light of technology that
12 has advanced by leaps and bounds just within the
13 lifetime of many of the people in the room.

14 CHAIRPERSON ESPINAL: Okay, and I would
15 love to follow up on the—on the paid sick time and
16 the vacation time--

17 CASEY ADAMS: [interposing] We're happy
18 to do that.

19 CHAIRPERSON ESPINAL: --and what sort of
20 protections are—are there for workers who are taking
21 their personal time off, but are still required to
22 be, you know, connected to their cell phones as well.

23 CASEY ADAMS: We'll be sure to follow up
24 with you.

2 CHAIRPERSON ESPINAL: Great. Any
3 questions from my colleagues? Yeah.

4 COUNCIL MEMBER KOO: Thank you, Chair for
5 bringing up this—introducing of this bill. I think
6 this bill the intent is very good, but it's too
7 overreaching and too Draconius to my understanding of
8 the bill because technology works both ways. The
9 employee go home. Even there's no law, there's no
10 law. They still do—their own stuff all the time, you
11 know, when they stretch and even when they talk to
12 their fans, and they're not just there to watch
13 emails just from the company. They read—reading
14 emails from their friends and everyone. So, are you
15 going to say we have a disconnect law, you know.
16 They cannot look at any emails, and we cannot—it ends
17 on the phone. There's too much for-for small
18 employers especially. I think we haven't gotten into
19 the details of these. Like I did some research on
20 different scenarios, different companies and most
21 companies they have a policy already. It was big
22 companies they have policies whether they issue and
23 send email after work or answer a phone. For a small
24 business it's very important to get in touch.
25 Suppose you have a storm coming, and everybody say

2 let—I'll just message you whether you're coming to
3 work or not. If you say oh, I don't get my message
4 after work or before work, then all the company is in
5 trouble. How are they going to—how they getting
6 their content to employees. There's another little
7 lease (sic) no matter what our—for these all to—to
8 pass. So, this is the beginning. I agree this is—
9 this is a group, a game, but we have a lot of
10 dialogue to—to carry on before we finalize a better
11 version of this bill. Thank you.

12 CHAIRPERSON ESPINAL: Yeah, thank you,
13 Peter. Just to answer some of your questions, I
14 guess also to clear some of the misconceptions of
15 this bill, the employer can still reach out to the
16 employee. What this says is that if the employee
17 decides not to respond at that moment, that they
18 don't have to have the anxiety and fear they are
19 going to lose their job the next day. Also, it's
20 also what—what—what it also does is allows the
21 employee can respond and work if they decide to at
22 that moment as well. So, that doesn't change, right.
23 It's more about lowering the pressure. Also the bill
24 does mention that if it is an emergency that is
25 somehow going to hinder the company's ability to do

2 their work or somehow going to have a negative impact
3 on the company, or on the employer, then the employee
4 is expected to--expected to--to respond. So there
5 are--there are--there are ways there where we--we ensure
6 that this is somehow not disruptive or disturbing
7 the--the flow of business if it is an emergency for--
8 for the business as well. And yes, it's a--more that
9 the Council needs to have, and I'm looking forward to
10 having a conversation with you as well.

11 COUNCIL MEMBER KOO: So, so, I want to
12 ask you another thing, too, then. Does this bill
13 cover the on-call? I mean right now people they're
14 signing, they're saying, you are home? Or they need
15 you, you know, you have to answer the phone. The
16 same like doctors and nurses right or some of the
17 technicians--

18 CHAIRPERSON ESPINAL: Right.

19 COUNCIL MEMBER KOO: --with the computes
20 right or some company. The computer break down, you
21 need to go there to fix it right away. So, those
22 people they get paid.

23 CHAIRPERSON ESPINAL: Yes.

24 COUNCIL MEMBER KOO: Yeah.

2 CHAIRPERSON ESPINAL: Yeah, there—there
3 is also an exemption for 24-hour. All the tours
4 (sic) have to be around all in 24 hours as well,
5 yeah.

6 COUNCIL MEMBER KOO: Okay. Thank you.

7 CHAIRPERSON ESPINAL: Okay, thank you.
8 Thank you, thank you, Peter.

9 COUNCIL MEMBER KOO: Thanks.

10 CHAIRPERSON ESPINAL: Our next panel.
11 There's a lot of people who are going to agree with
12 you, Peter.

13 COUNCIL MEMBER KOO: Yeah. [laughter]

14 CHAIRPERSON ESPINAL: Who are going to
15 speak up today? [laughs] We have the Real Estate
16 Board of New York, Zach Steinberg. We have Samarak
17 Karasik. I'm sorry if I mispronounced your name.
18 You can correct me once you're up there—from the
19 Brooklyn Chamber of Commerce and we have Brian Lozano
20 from Tech NYC. [pause] And we have Cath—Catherine
21 Wylde from the Partnership for NYC. [pause] You may
22 begin whenever you're ready anyone.

23 Alright. Good morning, Chairman Espinal,
24 Council Member Koo, Koslowitz and Chin. The Real
25 Estate Board of New York is a broadly based trade

2 association representing owners, developers, brokers,
3 managers and real estate professionals active
4 throughout New York City. Thank you again for the
5 chance to participate. REBNY appreciates the
6 Council's interest in taking steps to improve the
7 work/life balance in New York City's prime sector
8 workforce. However, REBNY is opposed to Intro 726,
9 which would place untested and vague regulatory
10 requirements on New York City employers while failing
11 to accomplish the goal of helping workers make full
12 use of their time outside the office. If enacted,
13 the bill would impose a regulatory system that has
14 never been used in the United States. It would do so
15 in a city whose employers include some the nation's
16 largest multi-national companies in sectors including
17 real estate, finance, law, accounting, technology,
18 media and more. These firms make up the significant
19 share of the city's tax and employer base and rely on
20 their employees to be accessible to provide services
21 to their clients and run their businesses across the
22 globe. It is unwise to use New York City as a testing
23 ground for such a novel approach. The only
24 flexibility provided by the bill is the stipulation
25 that employees may be required to respond to employer

1 communication in cases of emergency. However,
2 emergency is defined incredibly narrowly. For
3 instance an overflowing at 7:00 p.m. or a broken
4 refrigerator at 6:00 a.m. sufficient? Perhaps, but
5 unfortunately the legislation does not specify
6 whether those scenarios would be emergencies that
7 could provide employers with confidence they would
8 get a response from their employee. Furthermore, the
9 requirements of the bill appear to conflict with
10 federal and state overtime provisions. Under both
11 federal and state law employees who are classified as
12 executive, managerial, or administrative are granted
13 an exemption from overtime pay, and that is premised
14 on the idea that these workers earn salaries well
15 above the minimum wage, and that according to DOL,
16 the type of work exempt employees perform is
17 difficult to standardize to any timeframe and it
18 could not be easily spread to other workers after 40
19 hours a week. Consequently, the bill's requirement
20 that employers define usual work hours for all
21 employees without regard to whether they are exempt
22 from overtime pay would undermine the purpose of the
23 exemption. Should the Council move forward with this
24 legislation at a minimum it ought to carve our
25

1 employees who are exempt from overtime requirements
2 from the bill. Finally, REBNY is troubled by the
3 fact that the proposed legislation applies only to
4 private sector workers. If improving work/life
5 balance of all New Yorkers is truly the goal of the
6 legislation, then it ought to apply to public sector
7 workers as well. Far too often the Council proposed
8 regulatory schemes that were well intentioned, are
9 approved without understanding the full feasibility
10 or consequences. We would recommend that the City
11 Council first adopt this legislation to apply to all
12 Council offices, and following one year after its
13 enactment write a report to the public sharing how
14 effective program has been for its role as an
15 employer and for its employees. This would also allow
16 for strengthening public discourse on the
17 practicalities of extending the policy to all private
18 employers. We also encourage the Council to consider
19 other ways of helping workers better enjoy their time
20 out of the office. For example, the City
21 Comptroller's Office documented that commuting times
22 for New York City workers averaged six hours and 18
23 minutes a week far greater than commuting times in
24 other large U.S. cities. Indeed it's these commuting
25

2 times and not normal work hours that account for why
3 New York City workers have the longest work and
4 commuting times in the nation. Consequently, we
5 continue to encourage you to work to improve the
6 city's public transit system, reduce congestion as a
7 way to lessen the city's high commuting times, and
8 increase the amount of time New Yorkers can spend out
9 of the office. Thank you again for the opportunity
10 to testify.

11 CHAIRPERSON ESPINAL: Thank you for your—
12 for your recommendations.

13 SAMARA KARASIK: [background comment]
14 Okay. Good morning, Chair Espinal and members of the
15 Committee on Consumer Affairs and Business Licensing.
16 I am Samara Karasik, Chief Policy Officer at the
17 Brooklyn Chamber of Commerce. The Brooklyn Chamber
18 of Commerce is the borough's leading voice for
19 Brooklyn's business community. We promote economic
20 development and support businesses across the borough
21 of Brooklyn. Through our programs and direct
22 services, we help small businesses thrive and adapted
23 to an ever-changing business environment. The
24 Brooklyn Chamber supports a healthy work/life balance
25 and appreciates the efforts of New York City Council

2 to promote this. We do not support the right to
3 disconnect, though. Due to concerns, that this would
4 negatively impact our member businesses particularly
5 those that are small business. The proposed
6 legislation carves out an exception for businesses
7 with 10 or fewer employees, but New York State
8 classifies small businesses as having fewer than 100
9 employees. Nearly 90% of all businesses in New York
10 City have fewer than 20 employees. This bill is not
11 realistic for them in terms of how they run their
12 businesses. Many do not have in-house legal counsel,
13 and understanding the nuances of workplace regulatory
14 changes require them to pay for legal assistance. In
15 addition, they would require legal help to
16 restructure contracts to comply with these new
17 regulations. Most importantly, our small businesses
18 are already struggling to survive in an extremely
19 complex regulatory environment with rising costs of
20 businesses on many fronts, including, but not limited
21 to wages, benefits, insurance and real estate. Our
22 member businesses range in size and many rely on
23 electronic communications to help their businesses
24 grow and thrive. The landscape of conducting
25 business has changed greatly in the last decade. It

2 is important that business owners and employees
3 navigate mutually acceptable terms for how they will
4 be contacted when they are not in the office.

5 However, many new businesses do not have traditional
6 office environments, and employees may have multi-
7 faceted roles with flexible hours needed to establish
8 a company's digital presence. Schedules have become
9 more flexible over the years, and it is not unusual
10 for employees to be based from a remote worksite
11 either in a shared workspace or in their own homes.

12 This bill does not take into account the diverse work
13 environments and schedules that exist today in
14 businesses in different stages of growth and cannot
15 approach this work balance shift with a one-size-
16 fits-all law. Thank you for the opportunity to
17 comment on Introduction 726.

18 BRIAN LOZANO: My name is Brian Lozano
19 and I'm with Tech NYC. Thank you to Chair Espinal
20 and the committee for the opportunity to testify
21 today. Tech NYC is a non-profit coalition with the
22 mission of supporting the technology industry in New
23 York to increase engagement between our 700 member
24 companies, New York government and the community at
25 large. We work everyday to foster a dynamic, diverse

2 and creative ecosystem ensuring New York is the best
3 place to start and grow a technology company, and New
4 York City has proven itself a welcoming place for
5 tech and a leader in the sector. There are now more
6 than 330,000 tech workers in the city. Over the past
7 decade new technology, many of which our members have
8 pion-helped pioneer, have fundamentally altered
9 people's everyday lives in the nature of modern work.
10 Many of the changes resulting from new technologies
11 have been for the better leading to increased
12 productivity, improved communication and increase
13 access information. These new technologies have also
14 resulted in the blurring of the boundary between
15 people's work and personal time. When people are at
16 work, they can use their personal devices and
17 constantly communicate with friends and family, and
18 if people are at home or out of work, they have
19 access to professional accounts. Initially, the
20 division between work and personal time become less
21 explicit. There's a--there's bound to be tension, and
22 exactly the shift in this tension that Introduction
23 726 attempts to address. We applaud Council Member
24 Espinal and the Council for looking to address the
25 shift in people's everyday lives. However, that

2 being said, we feel this legislation is infeasible
3 and burdensome for both employers and employees. We
4 are specifically concerned with the provision that
5 would require an employer to establish usual work
6 hours for each class of employees. Many technology
7 companies pride themselves on offering their
8 employees flexible work schedules, allowing them to
9 work at the preferred times. This type of
10 flexibility provides benefits to a number of tech
11 employees, many at different stages of their careers
12 and lives. For example, flexible work schedules
13 allow mothers and fathers to balance successful
14 careers in childcare. However, a requirement like the
15 one proposed here to establish usual work hours would
16 likely prevent this type of flexibility and the
17 benefits it offers. Further, the tech industry is
18 inherently global and the New York City—and New York
19 City uniquely stands as a global capital for
20 technology. Many of our members have offices and
21 partners throughout the world, across time zones.
22 While company often try to avoid off-work
23 communications, it is occasionally a necessity in a
24 global connected industry. Penalizing New York City
25 based companies for off-hour communications would put

2 our city's tech ecosystem in a disadvantage and would
3 likely dissuade international companies from coming
4 go New York. While it is important to have a serious
5 conversation about employee-employer communications,
6 it is not an area that we should—that should be
7 legislated in such a manner. Just as we are
8 discouraging the City Council from legislating a ban
9 on work communications during off hours, we also
10 discourage legislation—we would also discourage
11 legislation banning personal communications during
12 work hours. Instead, when it comes to electronic
13 communications, professional and personal employers
14 and employers must communicate with one another to
15 develop solutions that work for all. This is
16 especially important as technologies evolve, and as
17 our society continues to adapt to using new
18 technology. Thank you.

19 CATHY WYLDE: Thank you. Nice to see
20 you all. Cathy Wylde, President of Partnership for
21 New York City. The partnership is a complement to
22 the organizations that already testified. We are
23 representative of the city's largest employers and
24 investment community, and we share the concerns that
25 are raised here, and particularly I would say that

2 Intro 726 is both unnecessary and unenforceable, and
3 basically for the same reasons that have already been
4 noted. I won't repeat them. I would say that also we
5 represent global companies that operate across many
6 time zones, have operations all over the world and,
7 therefore, they're—the scheduling and the
8 availability of employees is very important. Most
9 employees who have responsibilities that would want
10 to be in touch with their workplace if there's a
11 problem, if there's an issue, if there's a question
12 they can answer. Those relationships I think—I think
13 in general New York City employers are competing for
14 talent. They are good employers and they are—because
15 they need to attract and retain their people, and I
16 believe that these conversations about work/life
17 balance go on within organizations who are
18 desperately trying to make sure that their people are
19 happy and working in—and working in an environment
20 that is—is solid and supported and, therefore,
21 retained. So, I do think that with a full employment
22 economy and with the use of technology making
23 everybody's life easier both employees and employers.
24 Employees usually have devices to find out scheduling
25 to get other information, to check on what's going on

2 and as has been pointed out, exempt employees are
3 salaried and compensated on the basis of a 24/7
4 availability to their workplace and it's just not
5 going to be possible to make the distinction between
6 who's exempt, who isn't, who's available, who isn't
7 It's not a practical piece of legislation. So, we
8 appreciate the concern about work/life balance. We
9 think employers share that concern and that this
10 would be an unnecessary and unenforceable law.

11 CHAIRPERSON ESPINAL: Well, thank you all
12 for your testimony. I just want to bring us some
13 science especially that came out of a junior tech
14 recently. So the study shows that if you give your
15 employees the time to disconnect, they will have the
16 time to recharge and they will be a lot more
17 productive to the workplace. Do--do you believe that
18 any of your companies would--would not like to have
19 more productive workers?

20 CATHY WYLDE: I think that that's one
21 academic study, which may or may not have anything to
22 do with the reality of the new--New York City has the
23 most productive workplace of any city in the world.
24 We're known for that productivity, and that's because
25 employers and employees generally have a mutual

2 respect and understanding of what their positives and
3 limitations are. This is part of that general
4 relationship. This is not a basic right safety
5 security. This is the relationship of employers and
6 employees that you're interfering with, and that has
7 to be developed company by company depending on the
8 size, the needs, job by job. You just can't pass a
9 law that applies across the board to this kind of
10 thing. That has to be worked out in the environment,
11 and those employers that are not responsive to this
12 need or to the right to disconnect for their
13 employees, they're going to lose their employees.

14 CHAIRPERSON ESPINAL: Right. So, I think
15 you brought up—you brought up an important point.
16 What if we—what if—what if we required for businesses
17 to create a policy for the workers, which could be
18 negotiated between the employer and the employee of
19 what's to be expected from their job? To reduce the
20 anxiety of the workers?

21 CATHY WYLDE: How—how would you—I mean
22 the city has 200,000 businesses. How would you
23 possibly monitor that?

24 CHAIRPERSON ESPINAL: Well, I think the
25 same way when you sign a contract with an employee

2 and what they're expected to be compensated or what
3 they're expected from the daily jobs. There would be
4 a similar policy or what's to be expected when it
5 comes to technology and the communication between the
6 employer and the employee.

7 CATHY WYLDE: I think most large
8 employers have applicable policies in terms of the
9 use of personal devices, and those expectations. So
10 I mean again, I don't see how you enforce it. I don't
11 see a harm in a recommendation to employers. I don't
12 know. Anyone else?

13 SAMARA KARASIK: So, I think—I think
14 that's an interesting idea sort of more along the
15 mode that DCA described for France. We'd—we'd want to
16 talk to you further about that. I think our concern
17 is just for small businesses. Again, the regulatory
18 environment is like constantly changing. There's so
19 much come—stuff coming down their way. So we would
20 just want to make sure that it's not something
21 that's going to be really onerous for them to try and
22 implement and—but it makes sense the way that they
23 run their business, but we'd be happy to talk to you
24 about it further.

2 CHAIRPERSON ESPINAL: Then also—also for
3 a point of clarification, in the bill it does not say
4 that, you know, it doesn't—it doesn't—it doesn't
5 suggest that every worker is an identified worker.
6 It does suggest that, you know, the—the employee does
7 not have to answer the phone outside of their usual
8 work hours. I think every worker's usual work hours
9 is—was totally different from business to business.

10 CATHY WYLDE: But when else would they be
11 answering the phone except for outside their usual
12 work hours? They're not at work.

13 CHAIRPERSON ESPINAL: So, I'm saying—what
14 I'm trying to say as you brought up the point around
15 different time zones and what is expected, we made
16 sure that the language was usual work hours because
17 if we do, it's on top of the workforce, different
18 hours just the same. (sic)

19 CATHY WYLDE: [interposing] But—but for—
20 but for professional employees they typically don't
21 have usual work hours. They're available as needed.
22 They're responsible for managing operations. They're
23 there when they have to be there, and it's not—I mean
24 this is different with every job. An hourly employee
25 often will use their device for their own purposes

1 for scheduling and for checking and what's their
2 situation? I mean is that problematic? It's--this
3 stuff is just not--doesn't lend itself to legislation
4 or to one regimented approach. It's the
5 relationships.
6

7 CHAIRPERSON ESPINAL: So, what do you--
8 what do you think of corporations like Volkswagen who
9 have implemented policies like this within their own
10 company?

11 CATHY WYLDE: I think voluntary
12 implementation of these policies is perfectly fine.
13 I just don't think that you can turn it into a law.

14 CHAIRPERSON ESPINAL: Okay

15 ZACH STEINBERG: Per--one of the checks on
16 that is that, of course, employees who are paid
17 hourly if they work more than 40 hours a week they're
18 required to be paid time and a half for their--for
19 their labor. So, if they are employer contacts as
20 salaried work--or a person who is paid by the hour,
21 but it is out of their normal hours and it is the
22 42nd hour of their work week, they're required to be
23 paid time and a half. Many employers actively would
24 try to avoid doing that. So, there's already a
25 limitation built in based on how the existing wage

2 and hour laws are structured to try to address some
3 of the concerns that you're talking about.

4 CHAIRPERSON ESPINAL: Yeah. So going
5 back, we—we—we as New Yorkers grow and retire right,
6 and we—we all take vacation. I think we're all
7 guilty of checking our work or answering our work
8 calls while we're on vacation. There are employees
9 out there who probably would rather be able to turn
10 their phones off, and truly disconnect while they're
11 on vacation. I've heard of instances where people
12 have been fired from their job and reprimanded
13 because of the fact that they were unavailable while
14 they were on vacation. Is there any thought to that
15 about creating for the protections around this idea
16 of not having to, you know, be responsible for
17 checking your work email while you take that—your
18 personal time off that you've earned?

19 CATHY WYLDE: I just—first of all, I know
20 lots of small business owners that haven't taken
21 vacation for five years. There are lot of people
22 that don't take vacation that have very demanding
23 jobs. If you taken time off and you tell your
24 employee you're disconnected, they respect that. I—I
25 have—I just—I'm not aware of any--

2 CHAIRPERSON ESPINAL: [interposing] Yeah,
3 I mean I'm not—I'm not blaming every single employer
4 in the—in the country about, you know, now they treat
5 workers, but there are—there---

6 CATHY WYLDE: [interposing] But you
7 can't trust laws for the exception.

8 CHAIRPERSON ESPINAL: --but there are bad
9 actors out there, and we do have this conversation
10 around bad actors around every—in every conversation
11 here in the City Council---

12 CATHY WYLDE: [interposing] I--

13 CHAIRPERSON ESPINAL: [interposing] --but
14 I'm speaking more for the bad actors than anyone
15 else.

16 CATHY WYLDE: And that's right and the
17 City Council I think is far too focused on the bad
18 actors when the vast majority are not bad actors, and
19 you can't legislate for the exception.

20 CHAIRPERSON ESPINAL: Okay. Thank you,
21 Cathy.

22 CHAIRPERSON ESPINAL: Brad.

23 COUNCIL MEMBER LANDER: Thank you, Mr.
24 Chair for convening the hearing and to the panel for
25 the topic. I just was—so two things. First I—I

2 appreciate the point about public and private sector
3 workers. It does seem to me that if this were
4 something we were to move forward with, we wouldn't
5 need to be willing to do it. I think this is an area
6 where we do think it's employers as well, and I, you
7 know, I'll be honest. I communicate with my staff
8 substantially outside of the work hours, and-[and
9 sometimes I feel bad about it. So I do think it's-
10 it's instructive

11 CHAIRPERSON ESPINAL: But what is the
12 bill, though that-that complements for public
13 workers?

14 COUNCIL MEMBER LANDER: You know, I'm
15 just saying we--

16 CHAIRPERSON ESPINAL: [interposing] I
17 don't know. We just have it. (sic)

18 COUNCIL MEMBER LANDER: --if we're going
19 to move it forward, we should--my opinion is shouldn't
20 do it unless we're willing to do it, too, and I think
21 it's instructive. This is an area--there's a lot of
22 areas where we don't think--we don't have bottom line
23 issues in the same way as private sector employers,
24 but we do have good employee issues the same way as
25 private sector employers, and it's instructive. I

1 want to push a little more on just exempt and non-
2 exempt because it does seem to me that that's
3 probably where it's worth thinking about. They're
4 salaried employees who are exempt, you know, or are
5 paid to work in that salaried way, and that certainly
6 is true in our office and I know in the private
7 sector, but-but for non-exempt employees for hourly
8 employees. Like I-I wonder-I mean it's true that if
9 they are working, they're supposed to be getting
10 paid, but I bet in most cases where they are being
11 contacted off hours by email, I wonder if anybody is
12 recording that time and even paying them for it. The
13 law says they should, but I wonder whether they are.
14 So, I guess I'd just like to-you guys to answer that
15 question. For-for non-exempt employees for hourly
16 employees would you support either a bill of this
17 type that says you can't contact them outside their
18 scheduled hours when they're getting paid or at least
19 something says to do something that makes sure if
20 they are expected to be on their-on their devices,
21 that there's a system in place that makes sure
22 they're actually getting paid for that work, which I
23 mean I don't have a lot of data on this, but I just
24 think speaking honestly, the odds that people are
25

2 getting paid for responding to email off hours when
3 they're hourly employees is pretty low to me. So, I--
4 I just wonder what experience you guys have thinking
5 about it and--and whether you'd be open to be open to
6 something narrower that spoke specifically to hourly
7 non-exempt employees.

8 CATHY WYLDE: Certainly, there's much
9 less of an issue because as you pointed out, it's
10 already a legal requirement that if you're asking
11 somebody to do work beyond their hours for an hourly
12 employee, they're supposed to pay them. So, I--I think
13 that most employers would, in fact, track that. I
14 think the instances you're talking about and this
15 would take some research, which hasn't been done to
16 find out what's the level, but I think--I think that
17 the--the fact is that most of those contacts are
18 probably more at the convenience of the employee for
19 them to check on--

20 COUNCIL MEMBER LANDER: [interposing] And
21 some of them might be--

22 CATHY WYLE: --when am I working?

23 COUNCIL MEMBER LANDER: [interposing] And
24 Some of them might be can you shift your hours to
25

2 right—I mean obviously there's a different, you know,
3 there will be some distinction between--

4 CATHY WYLE: [interposing] I think very
5 few. Certainly large employers are extremely careful
6 not to violate the overtime law.

7 COUNCIL MEMBER LANDER: I—I mean I think
8 you're right. We don't have data here. We are—the
9 technology has overtaken all of our patterns so
10 substantially that I just wonder. It would not
11 surprise me if there were companies in which the
12 creeping use of technology meant that even though
13 people were careful to pay, they weren't tracking
14 hours of when people were emailing back and forth.
15 So, I just—I think it's an interesting research
16 question. I get--

17 CATHY WYLE: [interposing] I don't know
18 of any company any large company that doesn't know—
19 doesn't have complete records of their email
20 relationships with their employees. They track that
21 very carefully.

22 COUNCIL MEMBER LANDER: I'm sure they
23 have the record of email relationship. Whether they
24 are tracking that as hours to be paid is a really
25

2 interesting question. I be glad to go take down this
3 information so that on as we move forward.

4 ZACH STEINBERG: The other—the other
5 issue to—to raise in the context of this legislation
6 is also what is an emergency because I think we're—
7 we're—some of the members we have—we have spoken with
8 the, you know, the lack of clarity about how you
9 would go and provide a high level of service to
10 someone in—in a building for example if, you know,
11 you need an extra maintenance person and there's only
12 one maintenance person on call, but there's a real
13 issue in the building, is that an—is that an
14 emergency? It could be. It could not be. So,
15 trying to wrestle with those sort of issues and how
16 you craft legislation even if those are hourly
17 employees remains a pretty serious issue for some.

18 CATHY WYLE: Well, if there's an
19 equipment breakdown and there's only one person who
20 knows how to fix the equipment, is that an emergency?
21 There are lots of o examples I think of that kind of
22 situation.

23 SAMARA KARASIK: I just want to address
24 sort of the small business perspective on this a
25 little bit. Small business is—they're having a tough

1 time. It's not like they have a lot of extra money
2 to pay overtime. So, I think they are pretty
3 conscious of not contacting people when that means
4 they're going to have to pay them time and a half
5 like I definitely heard that from some small business
6 owners. You know, most of the small business owners
7 are really just trying hard to make a living, and
8 they're trying to create a path forward for their
9 employees so they can aspire to own their own small
10 business. These are the kind of mandates that make
11 it really hard for them to continue to grown. There a
12 lot of additional costs that continue to rise for
13 them, and they're just, you know, I think they're--
14 they're very conscious for the most part about trying
15 to maintain good work/life balance for the employees
16 so they can keep them on. The owners themselves I
17 think is as--as Cathy Wylde said are the ones that
18 they don't get a break, but--

20 COUNCIL MEMBER LANDER: Two--just two
21 things and then I'll turn it back over to the chair
22 and be done. And one I think I--I would welcome
23 getting some real information from employees and
24 employers on these different situations. I'm less
25 confident than--than you are maybe that work/life

2 balance is being respected and maintained and to be
3 clear, that is not an accusation that employers don't
4 care about their employees work/life balance. This
5 is the belief that our technology has accelerated
6 faster than our ability to manage it well as, and if
7 we're just speaking honestly about ourselves as
8 individuals, I think we all know that's true that
9 technology has overtaken habits and patterns that we
10 used to have. In many ways, we're like we're not
11 good to ourselves, and we're not good to each other.
12 So, I just--this is not like employers are trying to
13 over on their employees. This is and I think you
14 know, a--has technology set some patterns in place
15 that we need to be thoughtful about, and I think
16 you're right. We want their information and the
17 data, and I could be persuaded to that this was just
18 happening with exempt employees who are at least
19 supposed to be salary for that work, but I--I think we
20 would do better if we were paying a little more
21 attention to what the situation really is, and where
22 those boundaries are and I--I thank the chair for
23 introducing this conversation and--and kicking it off,
24 and I--I would welcome as we move forward hearing some
25 more from your members and from employers and from

2 employees so we could really get a clear sense of
3 what the--

4 CATHY WYLE: [interposing] Maybe we could
5 get some sample policies for example that large
6 employers are using with this regard as--as something
7 that might be helpful, but if you're suggesting that
8 the law is intended for behavior modification, I
9 just--I just don't think that's a practical way to
10 approach how we're going to deal with the--the overuse
11 of overuse of our machines.

12 COUNCIL MEMBER LANDER: I hear you on
13 that, and this may be a philosophical point that we
14 don't need to continue on. I--I think there's a lot
15 of evidence that what technology has done to many of
16 our patterns and behaviors inside and outside of the
17 workplace is having consequences that are--are going
18 to require public policy responses if we are going to
19 move forward in thoughtful ways. And you're right
20 that one wants to do that very thoughtfully and
21 carefully because public policy can have unintended
22 impacts, but I think we've seen a lot from--that--that
23 just leaving it to companies to police themselves on
24 the ways that technology can do us harm is not having
25 the results that we want.

2 CATHY WYLE: [interposing] No this—I'm
3 talking about people policing themselves. Most of
4 this communication is voluntary.

5 COUNCIL MEMBER LANDER: I don't think most
6 employer-employee communication is perceived as
7 voluntary by the employees.

8 CATHY WYLE: You don't. [laughter]

9 COUNCIL MEMBER LANDER: No. I mean do
10 they like—even though as I think my employees like
11 working in my office and like being part of our team,
12 but if I email them after hours, do they think
13 they're supposed to respond to me? Yes, they think
14 they're supposed to respond to me. That's whether
15 they like me a lot or whether or not or whether they
16 like working for me or not. That's how it feels to
17 be an employee.

18 CATHY WYLE: And you don't think the
19 employee wants that interaction and that ability to
20 communicate and be on the job---

21 COUNCIL MEMBER LANDER: [interposing] Oh,
22 I think that's a--

23 CATHY WYLE: --for you?
24
25

2 COUNCIL MEMBER LANDER: --great hard
3 complex question and I think where the balance is
4 between--

5 CATHY WYLE: That's why I'm saying
6 they're talking behavior, the amount of behavior.

7 COUNCIL MEMBER LANDER: --what's healthy
8 for them and doing well in their work and succeeding
9 and helping make the city better and where their life
10 and their family and their work/life balance goes.
11 That's why this hearing is useful with that. So, I'm
12 going to turn it back over to the Chair, but just
13 because of his really important comment.

14 CHAIRPERSON ESPINAL: [interposing] Well,
15 no I mean just--just that I forgot, you know, I've
16 been elected to office seven years. I've had a
17 luxury of not having to feel the pressure of someone
18 telling me not to answer the call. Seven years ago
19 when I was an employee and my boss would text me, I'd
20 be like, damn, you know, I don't want to answer this
21 right now. I'm with my family, I'm with my friends.
22 I'm hanging out, but you felt the responsibility to
23 answer because it was--it was your job.

24 CATHY WYLE: [interposing] Now, you've
25 got thousands of constituents who are your boss.

2 CHAIRPERSON ESPINAL: But yeah, of
3 course, and now-now I'm on 24-hours a day, but I-I-
4 I'm doing this to have this broader conversation
5 about those employees who feel overworked that feel
6 their obligation to respond even though they might
7 not have the obligation. It's perceived obligation a
8 lot of times but, you know, this-this conversation
9 needs to be-needs to be had-and I'm-I'm glad we're
10 having it. And again, and I just want to-you won't
11 hear about that, but just to point out this specific
12 important detail. There's been a lot of headlines
13 about how this remains illegal for a boss-for their
14 boss to contact their employees. It does not make it
15 illegal for you contact the employee. What it says
16 is that it gives the employee the right at the moment
17 they receive that communication whether they want
18 respond at that moment. I do believe a lot of
19 workers enjoy doing their job. They probably would
20 respond, but if they decide at the moment not to
21 respond, they don't-they have to-they could do it
22 without fear of losing their job or any sort of
23 retribution. So, I'll just-I'll leave it at that.
24 Thank you. Thank you, Catherine, I appreciate all of
25 your insight. Oh, on last question. Would you all

2 be willing to, you know, send over some like sample
3 policies of what you think—

4 Councilwoman Sure.

5 CHAIRPERSON ESPINAL: --and ideas. Okay,
6 great. Thank you. We have the last panel here,
7 more—more supporters of the bill and Owen Hurran from
8 Dan—Dan Beaderman, Brian Park Partnership; Jenny Ying
9 from National Mobilization of Gun Sweatshops; Julia
10 Robecervo (sp?) and Debbie Sasla. [background
11 comments/pause]. Okay, are you ready to begin? You
12 can start. [background comments/pause]

13 JENNY YING: Good morning. My name is
14 Jenny Ying from the National Mobilization of Gun
15 Sweatshops and I'm here to testify in favor of the
16 bill. I speak on behalf of workers of the Workers'
17 Center in New York City. Our members come from all
18 trades and backgrounds from low-wage office worker—I
19 mean from low wage to office workers, immigrants and
20 citizens. We come together to stand up against
21 exploitation—exploitation that we face on the job or
22 where we live. MS (sic) supports the right to
23 disconnect bill as a step in the right direction
24 towards workers giving them the right to control
25 their time. We were founded on a mission to organize

2 workers against sweatshop conditions that we face in
3 our country and to gain control of our lives. In our
4 23 hist—in our 23-year history with our members,
5 homecare workers, service workers, nail salon
6 workers, deli workers, factory workers and office
7 workers have stood up against sweatshop conditions
8 such as wage theft and long hours. Many say that
9 long hours have been particularly destructive robbing
10 them of their health and time with their families.
11 In effect, long hours have robbed many of their
12 lives. That's why injured workers of all trades have
13 come together to call an end to mandatory overtime.
14 Homecare workers are demanding an end to 24-hour
15 shifts. So, this right to disconnect these workers I
16 think a chance to take control of their time as well,
17 and I think that the fact that someone says that, you
18 know, it's—like it's voluntary, it's a response to—
19 like it's a voluntary thing to respond to your boss
20 after. I think it's crazy. Thank you.

21 CHAIRPERSON ESPINAL: Thank you.

22 JULIA: Hello. I am here representing
23 freelancers and other creatives working in the
24 advertising industry. I know many of them can't make
25 because it's 10:00 in the morning, and usually people

1
2 are working and in our industry. And I'm fortunate
3 enough to be here because I have my own creative
4 agency. I started out as Junior Art Director. I
5 moved up to Creative Director in advertising working
6 for very large firms in the city over the last 10
7 years and 12 years, and I've seen the sweatshop laws
8 not enacted in this age of technology,. And I want
9 to bring to light the conversations that we have with
10 our full-time employees, and freelance employees.
11 Just because you're paying somebody a freelance rate,
12 does not mean that they cannot go home after 7:00. If
13 you work a 7 to 8-hour day, you should be able to go
14 home, and you should not be able to work a double
15 shift. And I am—I myself have worked endless hours,
16 14-hour days, 18-hour days at these agencies, and
17 once I've requested time off, I can be backlisted. A
18 lot of my friends have been blacklisted for having a
19 job after work teaching advertising. There are a few
20 agencies that have blacklisted a few of my friends
21 who have a teaching job at 7:00, which is a normal
22 time to teach. I have another friend who was a
23 single mom and she was blacklisted for leaving at
24 5:00 to pick up her daughter, and my voice is shaking
25 because it affects me and my friends, and it's not

1 legal to have people working two shifts back to back.
2 That is not our problem as a creative. It is the
3 creative agency problem, and nobody talks about it,
4 and it's very taboo, and I'm actually a little
5 nervous to be here and that's why my voice was
6 shaking because nobody talks about it. It's very
7 whispered about, and you have people like Martin
8 Sorell, a JWUT who was just laid off for sexual
9 harassment making \$13 million a year on the backs of
10 people who are making \$80,000 a year especially
11 junior art directors coming in maybe with a salary of
12 \$60,000. How many hours do you work for \$60,000 a
13 year? Is that 40 hours? What happens if you work 60
14 + 80 hours consistently on the job for a year or two
15 years without a raise? Do you get placed as much?
16 Do you get \$160,000 for working twice as much as we
17 do, weekends, missing Christmases? Technology has
18 moved on. The industrial era brought about
19 sweatshops and union regulations to control so
20 children won't be working at a sewing machine. But
21 these days the sewing machines have been replaces
22 with computers and laptops, and there is nothing
23 mandating what the workers, you know, rights are
24 except for Rafael. And I think this law is really
25

2 important especially with Amazon coming into town.

3 That is a whole Jewish corporation that is known for

4 timing workers. Jeff Bezos gets up at 10:00 in the

5 morning after he has workout. I bet he goes home at

6 decent time. What about the workers? And these are

7 the conversations that we have to have in New York

8 City because this city drives on sweat—it thrives on

9 sweatshop labor. I worked a job this past summer. I

10 took a month off to recuperate because I worked for

11 three months, but the hours that I actually worked

12 for 4-1/2 months worth of work in three months. I

13 had heart palpitations at the end, and I went to my

14 boss and I said, Hey, I love working here. I just

15 need like three days off because I'm having heart

16 palpitations and I'm doing the work of three people

17 and I know we're short staffed and somebody just had

18 a baby, but like we need to bring on people. I'm

19 having heart palpitations. So, they don't like me

20 complaining, which is complaining right. You're not

21 a team player. You're going against the grain and

22 you're speaking up. So, I got replaced, which is

23 fine. As a freelancer whatever. I kind of expect

24 it, but I'm speaking up for other people who don't

25 have their own creative agency and are not in my

2 position who are being taken advantage of on a daily
3 basis, and most of these people are creative. And I
4 want to bring up Nelly Bly who in the 1920s went into
5 the box factor and wrote a whole entire posse about
6 sweatshop workers in a box factory, and I want to say
7 that women are the ones who get the blunt of this
8 abuse at the workforce. It's usually male managers
9 who put a lot of work on the people below them, and I
10 want to bring attention to the women and the young
11 people that tend to suffer and ageism is a whole
12 different discussion I won't even get into right now,
13 but I think that corporations need to take a very
14 hard look at the hours that they make their worker
15 respond. I had an email at 2:00 in the morning asking
16 me to turn it around by 9:00 a.m. I left work at
17 1:00. I passed out. I did not see that email and I
18 got into trouble the next day for it. That's 2:00 in
19 the morning. That is ridiculous. This summer I went
20 home at 5:00 in the morning from finishing up a
21 project that another co-worker screwed up that they
22 put me onto fix because I'm a bad ass. You can quote
23 this, I'm a freaking bad ass and I deliver. So I
24 worked until 5:00 in the morning finishing this
25 project and then I was back at work at 9:00. So

2 between 5:00 in the morning I went home, too, a nap
3 for an hour and then I was back at work at 9:00 in
4 the morning cranking until 5:00 to deliver another
5 presentation to the client. Then I went home and had
6 heart palpitations and feel asleep, and then I went
7 into the agency the next day at 9:30 in the morning.
8 So, there are cases like these that are not
9 regulated, and we need to take a hard look at those.
10 Nobody is talking it except for the Public Advocate
11 and I'm here because I have a creative agency.

12 [laughter] Well, hey, I'm just saying that hopefully
13 [laughter] because there is nobody advocating for us,
14 and I'm here and I'm not dead ye, and by the way, I
15 have an account executive drop dead of a heart attack
16 in my office because he was being overworked. He was
17 50 years old. He was in cubicle. Luckily somebody
18 walked by and saw him on the floor. He had a heart
19 attack. Somebody had to resuscitate him because we
20 were working on a launch, and this is just one story.
21 Do you know how many I have? This is just this past
22 year. I have so many stories. I was on a launch of
23 a really big drug that I won't name and I was working
24 'til 4:00 in the morning in Chelsea Market like every
25 night with a bunch of team members. Sometimes I

1 would stay by myself to like 2:00, you know, and one
2 day I decided to go home because I was like you know,
3 what I'm exhausted and I went home at 9:00 and that
4 night that--some people pulled up a Loree-Loree a
5 truck to the Loree and robbed the whole entire
6 agency. This is where the new Google is right now.
7 That's where my old agency used to be, and I was
8 like, Oh, my God, if I was at this ad agency all
9 alone doing work at 2:00 in the morning, and who the
10 hell--I don't know who that was. Like these people
11 brought a truck and they took out like 20 laptops and
12 like computer equipment. Like I would be murdered.
13 Like I don't want to work late ever again alone.
14 It's dangerous. As a woman coming home late at night,
15 it is dangerous. I could take a taxi, now there's
16 Uber, but I should--I should have to be able to go
17 home and be with my family at 6:00 at night like
18 everybody else in the whole entire world. That is
19 legal. I put something on my calendar this summer--
20 final rant and I'm over. My boyfriend had a very
21 important event and I put it on the calendar two
22 weeks in advance and I said, you guys at 7:00 I'm
23 leaving work. I'm leaving work because this is a
24 family event. It's really important to me. I'm
25

1 leaving. I'll be back at like 5:00 in the morning if
2 you need me, whatever. At 6:00 they gave me 9 hours—
3 no, they gave four hours worth of work, and I made
4 the—I missed seeing that basically because I had to
5 stay there and complete the work, which wasn't even
6 like a rush anyway, but people were like we've got to
7 get this done. So, I really want to talk about who
8 is benefitting from all the work that I'm doing and
9 all the other people are doing who are getting paid
10 whatever they are a year. It's definitely not \$13
11 million like Martin Sorrell. So at the end this city
12 is focused on making sure that companies like Amazon
13 and WPP and all these other huge companies are making
14 a profit, but whose back are they making the profit
15 on? The end.

17 CHAIRPERSON ESPINAL: Thank you.

18 FEMALE SPEAKER: Hi, I'm also
19 representing myself and I agree with a lot of things
20 Julia said. I have a lot—a 100 similar stories, but
21 I'll just say that women to that point, women are the
22 ones that are retaliated against, and I think the
23 important thing about Rafael's bill is that you are
24 not retaliated against, and there have been—I have
25 worked in—for ten years in—for 10-person start-ups.

2 I worked at major media conglomerates over the past
3 10 years, and there's never been a time where I've
4 been retaliated against for not responding to your
5 email. There's never been a time where it's been—has
6 not been expected of me to respond to an email, and
7 especially as a young person as a person who's making
8 \$20-\$30,000 a year right out of college. You are—you
9 want to be the best employee you can be. You want
10 to—but if there is a bill, if there is a law, if
11 there's a line in the sand, that people know about,
12 if it is something—I mean I know about the law in
13 France. That was highly publicized. If there's one
14 in New York, I'm sure it would be infinitely
15 publicized. It would be this—I think it would be the
16 first one in the country yes. That is something that
17 people would know about, and that's something where
18 you can to your employer and negotiate with that. I
19 love my job. I love every job I've ever had. I—and
20 I've been out of work for two years because I have
21 had severe mental health problems from working
22 literally a 40-48 hours and with a boss standing over
23 my desk saying this needs to be done come hell or
24 high water. If I don't answer emails, if I don't go
25 home at work and go work at home, things are not

2 going to get done, and then again these companies are
3 making a ton of money. Hire more employees. If you
4 can't have-if you are short staffed in order to make
5 your employees work longer hours, hire more
6 employees. I negotiated with my employer. I said
7 I'll take a pay cut. I'll take a 25% pay cut if you
8 hire me assistant because I cant do this alone, and I
9 think that again women are the ones who are taking on
10 a lot of this responsibility because, you know, we-we
11 are expected to compete with male superiors and we
12 have to be able to-to outperform them and
13 outperforming means responding to our email 24/7.
14 That is something that if there was a law that we
15 passed even something that was modified in terms of
16 just something that would be retaliated-you could not
17 retaliate your employee. You could not fire an
18 employee, you could not let got of a freelancer
19 midway through a project because they aren't
20 responding on call. That would be something that is
21 immensely beneficial especially for the young people
22 in this country, in this city especially for the
23 women in the city across all industries, across low-
24 wage workers, across, you know, people like me who
25 work at media conglomerates. I haven't always, I

1 worked for the layout. Once I worked my way up, the
2 retaliation got more and more severe. I've mused
3 weddings. I have tried to go visit my grandfather in
4 the hospital as he had a fourth open heart surgery,
5 and eventually he passed away recently but when I was
6 trying to get there to see him if, you know, right
7 before I—because it could have been. It could have
8 gone either way at that point. This is two years
9 ago. My boss stood over my desk, and said, you know,
10 can that that part—can I see that thing you're
11 working on, and I said, I have to go. I have to go,
12 and he said to me, You know what I mean. So, asking
13 for a link to it constantly, and there is not one
14 person I know at least in my immediate circle of
15 people that has not had an experience like this. Who
16 has not had ten experiences like this. The academia
17 that I worked in, in media, policy, music. These
18 seem like fund jobs. They seem like great jobs
19 compared to—I'm very, very lucky compared to—to some
20 people who don't have the opportunities that I've
21 had, but I love—I love these jobs and I don't want to
22 be retaliated against. I want to be able to work,
23 and right now I can't because I'm scared to have that
24 interaction. I had a temporary job right after I
25

2 left my other job, scared to death of email
3 communication. Scared to death. So, I support this
4 bill. I support this bill wholeheartedly. I believe
5 that what Julia said that nobody is talking about it.
6 Nobody is speaking about it and there are countless
7 studies, countless that came from a media program at
8 today's school. I have read countless studies on
9 technology affecting mental health across all-across
10 the broad on social media, the effect on TV, on
11 communications, on workers. This is a widely known
12 problem and yes we do have to correct our own
13 behavior. I mean a lot of this has been put on me.
14 I want to be the best in play I can make, but of this
15 is that expectation, and a lot of it is about the
16 amount of work that we do in the city as people. We
17 should have the right to work a 9:00 to 5:00 job if
18 that is what is required of us, and that should be
19 able to be brought. No-no company I've ever worked
20 for has had a set in stone policy. Not a single one.
21 I don't know who said that but, you know, know
22 companies usually have employees. Not a single one I
23 worked for, for a major conglomerate to startups,
24 absolutely not. I've worked at five TV networks.
25 None of them has--none of them has had a policy. We

2 are expected. So, thank you so much for allowing me
3 to speak and I hope something about this conversation
4 will continue.

5 CHAIRPERSON ESPINAL: Thank you. Thank
6 you.

7 Just one note. I'm sorry if there was any
8 confusion, but I actually have a testimony
9 opposition. [laughter]

10 CHAIRPERSON ESPINAL: Yeah, I just saw-I
11 just saw-I just saw that. Sorry.

12 I happy to defer it to later if you would
13 like.

14 CHAIRPERSON ESPINAL: I think--no I think
15 we're done. No, you're the last one.

16 OREN HYME: Okay. So my name is Oren
17 Hyme (sic). I'm speaking on behalf of the Bryant
18 Park Corporation the 34th Street Partnership. So, we
19 oppose this legislation currently being considered by
20 the Council. We believe this legislation will put
21 excessive constraints on our organization's ability
22 to operate effectively and will negatively impact
23 streets conditions and businesses in New York City.
24 As Business Improvement Districts our organizations
25 manage two active, dynamic neighborhoods in the town

1 of Manhattan. The sidewalks, streets and public
2 plazas in these neighborhoods function 24/7 and our
3 companies must retain the ability to do the same.
4 The ability to communicate with staff around the
5 clock is crucial to maintaining high standards of
6 sanitation, security, public programming and capital
7 maintenance of which routinely require work as that
8 of regular business hours. Restricting the ability
9 of our employees to be reached during these times
10 will hamstring operations and impede our capacity to
11 keep these districts safe, secure and active at all
12 times. Although our organizations perform
13 traditional government functions, we operate
14 completely independently of government financial
15 support. Instead we rely in part on our vendor
16 revenues and sponsorship fees to finance these public
17 services at no cost to the taxpayer. Planning and
18 executing these public events must often be done last
19 minute during odd hours and under intense time
20 pressure. Operating within these constraints require
21 that we communicate effectively and reliably, but the
22 right to disconnect legislation threatens our ability
23 to do so, and without these major sources of revenue,
24 we fear that the free services and programs that we
25

2 provide to millions of people in New York City might
3 be threatened. Additionally, we work with
4 contractors and vendors from all over the world many
5 of whom operate in different time zones and business
6 hours. If we are limited in our ability to
7 communicate with each other during—outside of regular
8 Eastern Standard Time work hours, such relationships
9 might become difficult if not impossible to maintain.
10 We would the Council to clarify how these issues
11 specifically will be addressed if the legislation
12 were to continue, and beyond our own concerns, we
13 believe that the right to disconnect legislation will
14 do harm to all businesses in New York City by
15 imposing an operational handicap that businesses in
16 other cities won't have to contend with, this
17 legislation will limit the ability of local
18 businesses to react to opportunities, contend with
19 obstacles and move business forward. This in turn
20 will dis-incentivize businesses to operate in New
21 York City and perhaps will lead them to relocate
22 elsewhere. We as the Council vote against the Right
23 to Disconnect Legislation. Thank you very much.

24 CHAIRPERSON ESPINAL: Thank you. Any
25 questions from my colleagues? No. Well, thank you

1 all for sharing your testimony. I appreciate it.

2 Very impactful stories. I'm sure stories that people

3 are going to take to heart moving forward. With that

4 said, this concludes the hearing. We hope to have

5 further discussions on what's the best way to move

6 forward, but I thought it was important that we start

7 this dialogue and think about how technology has

8 seeped into the workplace, and what we can do to kind

9 of figure out ways that we can apprise them at least

10 to—to employees, but also improve just the employer

11 and the employee conversation and relationship. This

12 is the first bill introduced in—in the nation. So,

13 hopefully we in New York can—can start this

14 conversation and lead on this conversation. This is

15 not a new idea. It's happening in other countries in

16 Europe and—and in Asia. So, I just thought it was

17 time for us to have this similar conversation as

18 well. Thank you all. The meeting is adjourned.

19 [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 February 5, 2019