Testimony of Casey Adams
New York City Department of Consumer Affairs

Before the
New York City Council Committee on Consumer Affairs and Business Licensing

Hearing on
Right to Disconnect

January 17, 2019

Good morning Chairman Espinal and members of the committee. My name is Casey Adams and I am the Director of City Legislative Affairs for the New York City Department of Consumer Affairs (DCA). I would like to thank the committee for the opportunity to testify today on behalf of DCA Commissioner Lorelei Salas about a right for private employees to disconnect from work communications during off-work hours.

DCA's mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. As part of this mission, DCA houses the Office of Labor Policy and Standards (OLPS), which serves as New York City's focal point for labor issues and workers, giving a dedicated voice in local government to the issues facing workers. OLPS enforces key municipal workplace laws, conducts original research, and develops policies that are responsive to an evolving economy and issues affecting New York City workers, particularly communities of color, women, and immigrants.

The internet and other communications technologies have transformed the working world in a few short decades. Today, more than at any other point in history, workers can connect to their work at a moment's notice and respond quickly when they are needed, no matter where they are when the call comes. However, when work is just a click or swipe away, job-related stress travels with it. The pressure to constantly monitor electronic communications outside of work time can be both intense and pervasive. In some industries, these pressures and expectations are deeply ingrained in workplace culture.

DCA appreciates and shares Council's concern about the effects that the advent of "always-on" communications have on the health and well-being of employees who are expected, or even required, to constantly be on alert for work-related communications. According to the New York Times, a 2017 report found that, on average, workers spend an extra eight hours a week sending email after work.[1] In addition, recent research suggests that workers who respond to work communications late at night have lower sleep quality[2] that may impact their quality of life and

[1] Jonathan Wolfe, *New York Today: The Right to Disconnect*, N.Y. TIMES, Mar. 23, 2018, https://www.nytimes.com/2018/03/23/nyregion/new-york-today-the-right-to-disconnect.html.
[2] *See* Larissa K. Barber & Jade S. Jenkins, *Creating Technological Boundaries to Protect Bedtime: Examining Work-Home Boundary Management, Psychological Detachment and Sleep*, 30 STRESS HEALTH 259 (2014).

productivity at work.[3] Other studies have warned about the health impacts that "infobesity"[4] and "telepressure"[5] associated with always-on communications may have on workers. Government, workers, and employers would benefit from a deeper understanding of the effects that evolving technology and workplace cultures have on worker health, wellbeing, and productivity.

New York City prides itself on being "the city that never sleeps," but even New Yorkers need a break now and then. That's why Mayor de Blasio recently announced that New York City will become the first city in the nation to mandate paid personal time for workers. More than 500,000 full and part-time private-sector employees in the city currently have no paid personal time off. The de Blasio administration is committed to making New York City the fairest big city in America, and this proposal would guarantee that approximately 3.4 million New Yorkers who first received the legal right to paid safe and sick leave under Mayor de Blasio will now be able to take paid time off for any other purpose, including vacation, religious observances, bereavement, and time with family.

The push for paid personal time follows the Mayor's landmark establishment of OLPS, the nation's largest municipal labor standards office, which enforces NYC's Paid Safe and Sick Leave law, the Fair Workweek scheduling law that guarantees fast food and retail workers the right to a predictable and stable schedule, and implementation of the groundbreaking Freelance Isn't Free law, which helps ensure that freelancers are paid on time and in full for the work they've completed. Since its inception, OLPS has obtained almost $10 million in restitution and civil penalties, more than $7.5 million of which came in the form of restitution for workers.

Mayor de Blasio also announced that DCA's mission will expand as the agency is renamed the Department of Consumer and Worker Protection (DCWP) with a powerful mandate to defend consumers and workers. As part of this expansion, DCWP will develop a free, uniquely tailored alternative dispute resolution program to help domestic workers and employers resolve issues and provide both parties institutional support and tools for ensuring optimal employment conditions.

We believe that these core worker issues- access to paid personal time, the challenges of unpredictable schedules, realization of core workplace rights and provision of reliable benefits, and ensuring rights are real even in complicated employment relationships, the structure of which poses unique challenges to enforcement - should be New York City's focus. The initiatives I outlined are designed to help protect low-wage and vulnerable workers, many of whom are immigrants, women, or people of color.

Because of this renewed focus on groundbreaking initiatives to protect low-wage and vulnerable workers and other concerns, DCA does not support legislating a right to disconnect at this time. As I mentioned earlier, DCA believes that all parties would benefit from a greater understanding of the effects always-on communication has on employees. In other countries where similar

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[3] *See* Russell E. Johnson et al., *Beginning the Workday Yet Already Depleted?: Consequences of Late-Night Smartphone Use and Sleep*, 124 ORG. BEHAV. HUM. DECISION PROCS. 11 (2014).
[4] M. Bruno Mettling, TRANSFORMATION NUMÉRIQUE ET VIE AU TRAVAIL 31 (2015), https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/154000646.pdf.
[5] *See generally* Larissa K. Barber & Alecia M. Santuzzi, *Please Respond ASAP: Workplace Telepressure and Employee Recovery*, 20 J. OCCUPATIONAL HEALTH PSYCHOL. 172 (2015).

legislation has been considered or adopted, like Germany and France, the proposals followed in-depth, government-commissioned studies into the effects of always-on communications on workers, the array of potential legislative solutions, and the costs and benefits each approach would have for workers and employers. In some cases, further studies may actually motivate employers to adopt changes on their own because of potential benefits to worker productivity. Following the German government's report, several large employers in that country voluntarily created policies restricting off-work communication obligations for their employees.

Countries that have adopted right to disconnect laws have generally recognized that a one-size-fits-all legislative mandate is not the best way to change workplace cultures and help workers log off. In France, which has one of the first and broadest such laws, the law simply requires businesses that employ 50 or more workers to include the right disconnect in mandatory annual negotiations with their workforces. Companies are not required to come to an agreement and cannot be penalized for failing to do so. The French approach recognizes that changing workplace communications norms and rules will be a gradual process that should be responsive to the needs and expertise of workers, unions, and employers.

Other considerations also weigh toward a careful, deliberative, and collaborative approach. DCA has serious concerns about our ability to effectively enforce a law that requires the agency to closely regulate the development and implementation of workplace communications policies by thousands of employers across hundreds of industries. Because the regulation of off-work communications is a new and novel area, a broad law that requires DCA to insert itself into the complex, daily communications between many- our estimates suggest most- of New York's workers and employers could have wide-reaching implications that disrupt existing business models and employment relationships. The emerging nature of this type of regulation means that DCA would not have a robust body of research, experience, and best practices to build upon when implementing. A vague legal requirement for the right to disconnect would be difficult to enforce and could prove confusing and burdensome for workers to understand and employers to implement. Finally, the City would need to understand clearly how a right to disconnect would interact with the complex framework of state and federal laws regulating wages and hours.

DCA welcomes a frank, thorough discussion about the effects of always-on communication on New Yorkers and their jobs. We believe that both workers and employers stand to benefit from a dialogue about communications expectations in light of rapidly evolving technology and new and changing work arrangements. New Yorkers deserve a break and employers should recognize the benefits of a happy, well-rested workforce for both their businesses and the city as a whole.[6] We also believe that New Yorkers are best served by DCA's focus on protecting low-wage and vulnerable workers and that changing workplace communications calls for a detailed process of study and dialogue between workers, unions, employers, government, and experts.

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[6] *See* John Pencavel, *The Productivity of Working Hours* 25 (Institute for the Study of Labor, Discussion Paper No. 8129, 2014), http://ftp.iza.org/dp8129.pdf (finding that "employees at work for a long time may experience fatigue or stress that not only reduces his or her productivity but also increases the probability of errors, accidents, and sickness that impose costs on the employer.").

For the reasons I have outlined, DCA does not support legislating a right to disconnect at this time. Thank you for the opportunity to testify today. I am now happy to answer any questions you may have.

PARTNERSHIP
for New York City

Testimony of the Partnership for New York City
Kathryn Wylde, President & CEO

New York City Council
Committee on Consumer Affairs and Business Licensing

Int. 726, private employees disconnecting from electronic communications during non-work hours

January 17, 2019

Thank you Chair Espinal and members of the committee for the opportunity to testify on Int. 726, prohibiting private employers from requiring their employees to respond to electronic communications outside of scheduled work hours. The Partnership for New York City represents the city's business leaders and largest private sector employers and we work to maintain the city's position as a global center for commerce and innovation.

We object to Int. 726 as yet another unwelcome intrusion by local government into the relationship between employers and employees. There has been no analysis of the need for this legislation or of the costs and disruption that it may impose on employers. City government certainly has an obligation to protect the basic rights, safety and security of its citizens, including employees, but this bill and many others that the Council has passed or proposed in recent years go beyond those reasonable protections. On the contrary, they amount to unnecessary and unwelcome interference with the rights of employers and employees to establish terms of employment voluntarily or through collective bargaining.

Businesses with more than 100 employees account for 66 percent of the city's private sector employment and 76 percent of its payroll. A substantial number of these businesses operate on a national and global scale where business is conducted across time zones and at all hours of the day and night. This requires regular communication between employees, clients and partners around the world, often outside of "regular" work hours for the New York City office. These businesses could not function under the restrictions that would be imposed by Int. 726.

Int. 726 directly conflicts with the terms of employment of salaried employees who are exempt from wage and hour law requirements for overtime. These are typically professionals and managers who have latitude to determine when and how to complete their work. Exempt employees do not punch a time clock and their compensation is generally based on the expectation that they will be available whenever they are needed. Many exempt employees would object to a law that puts conditions on their personal decisions about receiving communications from their employers. Contrary to the presumption behind this bill, many employees do not wish to be disconnected from their work responsibilities.

Non-exempt employees, who are paid an hourly wage, are typically paid overtime when they are asked to work beyond their scheduled shift. These workers may have to be in communication with their employer for purely administrative purposes – for example, to confirm their work schedule – which would not be a basis for overtime pay. Does the Council seriously want to prohibit this interaction, which is standard business practice?

The rigid restrictions proposed by Int. 726 could also limit the flexibility employees now enjoy, such as accommodation of late arrival or telecommuting at times most convenient to the worker.

Legislative mandates are not a solution to every life problem. New Yorkers don't need the government's help to decide when to disconnect from work. The Council has not moved legislation that would confer the right to disconnect on government employees and they should apply the same logic to the city's private sector.

Thank you.

TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK BEFORE THE COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING IN OPPOSITION TO LEGISLATION IN RELATION TO PRIVATE EMPLOYEES DISCONNECTING FROM ELECTRONIC COMMUNICATIONS DURING NON-WORK HOURS, INT. 726

January 17, 2019

The Real Estate Board of New York, Inc. (REBNY) is a broadly-based trade association representing owners, developers, brokers, managers and real estate professionals active throughout New York City. Thank you for the opportunity to participate in today's hearing.

REBNY appreciates the Council's interest in taking steps to improve the work-life balance of New York City's private sector workforce. However, REBNY is opposed to Int. 726, which would place untested and vague regulatory requirements on New York City employers while failing to accomplish the goal of helping workers make full use of their time outside of the office.

According to a 2015 report from the Office of the New York City Comptroller, among America's 30 largest cities, New Yorkers spend the 12th most time at work, working an average of 42 hours and 50 minutes per week.[i] Given these relatively long periods in the office, Int. 726 purports to improve employees time out of the office by making it unlawful for an employer to require an employee to respond to electronic communication outside of the employee's usual work hours. In doing so, the legislation requires employers to establish a written policy that defines the usual work hours for each class of employee, prohibits employers from retaliating against employees, and sets monetary penalties that can be imposed on employers for violation the bill's requirements.

If enacted, Int. 726 would impose a regulatory system that has never been used in the United States. It would do so in a city whose employers include some of the nation's largest multinational companies in sectors including real estate, finance, law, accounting, technology, media, and more. These firms make up a significant share of the city's tax and employer base and rely on their employees to be accessible to provide services to their clients and successfully run their businesses across the globe. Given that no other U.S. jurisdiction has adopted regulations similar to Int. 726, it is unwise to use New York City as a testing ground for such a novel regulatory regime.

The provisions of Int. 726 do not recognize the reality of the modern economy. The only flexibility provided by Int. 726 is the stipulation that employees may be required to respond to employer communications in cases of emergency. However, emergency is defined incredibly narrowly and does not reflect the reality of businesses operating in New York City. For instance, is an overflowing toilet at 7 p.m. or broken refrigerator at 6 a.m. sufficient to be considered an event that requires "immediate action to avert, control or remedy harm?" Unfortunately, the legislation does not specify whether those scenarios would be emergencies that could provide employers with the confidence that they would get a response from their employees should those situations occur.

At a time when the global economy is becoming increasingly interconnected, the legislation fails to account for the reality that business must ensure that employees communicate with people located in other parts of the globe at unusual hours. For instance, if a real estate developer wants to schedule a call with an investor in the Tokyo, Japan, the company would have to contend with a 14-hour time change when scheduling a conversation. Successfully working across time zones requires flexibility on the part of employers and employees alike that would be undermined by this bill.

Furthermore, the requirements of Int. 726 appear to conflict with Federal and State overtime provisions that are designed to provide certain employees with flexibility in their work schedules in order to effectively run their businesses. Under both Federal and State law, employees who are classified as "executive," "managerial," or "administrative" are granted an exemption from overtime pay.[ii] According to the Department of Labor, this exemption for "white collar" work was premised on the idea that these workers earned salaries well above the minimum wage and that "the type of work exempt employees performed was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week."[iii] Consequently, Int. 726's requirement that employers define usual hours of work for all employees, without regard to whether they are exempt from overtime pay requirements, would undermine the purpose of the overtime exemption. Should the Council move forward with this legislation, at a minimum it ought to carve-out employees who are exempt from overtime requirements from the bill.

Finally, REBNY is troubled by the fact that the proposed legislation applies only to private sector workers. If improving work-life balance of all New Yorkers is truly the goal of this legislation, then it ought to apply to public sector workers as well. According to the Department of Citywide Administrative Services, New York City government is one of the largest employers in the nation, on par with the likes of IBM and Target.

Far too often the City Council proposes regulatory schemes that while well-intentioned, are approved without understanding the full feasibility or consequences. We would recommend that the City Council first adopt this legislation to apply to all Council offices, and following one-year after its enactment, provide a report to the public sharing how effective the program has been for its role as an employer and for its employees. This would also allow for a strengthened public discourse on the practicalities of extending this policy to all private employers.

REBNY further encourages the Council to consider other ways of helping workers better enjoy their time out of the office. For example, as the previously mentioned Comptroller's report documents, commuting times for New York City workers average 6 hours and 18 minutes per week, far greater than commute times in other large U.S. cities.[iv] Indeed, it is these commuting times, not normal work hours, that account for New York City workers having the longest work plus commuting times in the nation. Consequently, REBNY encourages the Council to continue its work to improve the City's public transit system and reduce congestion as a way to lessen the City's high commuting times and increase the amount of time New Yorkers can spend out of the office.

Thank you again for the opportunity to testify.

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[i] "The Hardest Working Cities," Office of the New York City Comptroller Scott M. Stringer, March 2015: https://comptroller.nyc.gov/wp-content/uploads/documents/Longest_Work_Weeks_March_2015.pdf.

[ii] U.S. Department of Labor Wage and Hour Division, Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA): https://www.dol.gov/whd/overtime/fs17a_overview.htm. New York State Department of Labor, Overtime Frequently Asked Questions: https://www.labor.ny.gov/legal/counsel/pdf/overtime-frequently-asked-questions.pdf.

[iii] U.S. Department of Labor Proposed Rule: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees." Federal Register Vol. 80, No. 128, July 6, 2015, pg. 38516-38612: https://www.govinfo.gov/content/pkg/FR-2015-07-06/pdf/2015-15464.pdf.

[iv] "The Hardest Working Cities," Office of the New York City Comptroller Scott M. Stringer, March 2015: https://comptroller.nyc.gov/wp-content/uploads/documents/Longest_Work_Weeks_March_2015.pdf.

Council of the City of New York
Committee on Consumer Affairs and Business Licensing
Thursday, January 17, 2019

Int. No. 0726-2018
Private employees disconnecting from electronic communications during non-work hours.

Testimony: **Dan Biederman, President**
Bryant Park Corporation and 34th Street Partnership
1065 Avenue of the Americas, Suite 2400, New York, NY 10110
Tel: 212-719-3434

The Bryant Park Corporation and 34th Street Partnership strongly oppose the "Right to Disconnect" legislation being considered by the City Council. We believe this legislation will put excessive constraints on our organizations' ability to operate effectively and will negatively impact street conditions and businesses in New York City.

Our organizations manage two active, dynamic neighborhoods in midtown Manhattan. The sidewalks, streets, and public plazas in these neighborhoods function 24/7, and our companies must retain the ability to do the same. The ability to communicate with staff around-the-clock is crucial to maintaining high standards of sanitation, security, public programming, and capital maintenance, all of which routinely require work outside of regular business hours. Restricting the ability of our employees to be reached during those times will hamstring our operations and impede our capacity to keep these districts safe, secure, and active at all times.

Although our organizations perform traditional government functions, we operate completely independently of government financial support. Instead, we rely in part on event revenues and sponsorship fees to finance these public services at no cost to the taxpayer. Planning and executing these events must often be done last-minute, during odd hours, and under intense time pressure. Operating within these conditions requires that we communicate efficiently and reliably, but the "Right to Disconnect" legislation severely threatens our ability to do so. Without these major sources of revenue, the free services and programs that we provide to millions of people would be threatened.

Additionally, we work with contractors and vendors from all over the world—many of whom operate in different time zones and business hours. If we are limited in our ability to communicate with each other outside of regular EST work hours, such relationships will become difficult, if not impossible, to maintain. We would ask the council to clarify how this issue specifically will be addressed if the legislation were to pass.

Beyond our own concerns, we believe the "Right to Disconnect" legislation will do harm to all businesses in New York City, as well as the city itself. By imposing an operational handicap that businesses in other cities will not have to contend with, the "Right to Disconnect" legislation will limit the ability of local business to react to opportunities, contend with obstacles, and move forward. This in turn will disincentivize businesses to operate in New York City, and lead them to relocate elsewhere.

We ask that the council vote against the "Right to Disconnect" legislation.

Thank you.

January 17, 2018
New York City Council
Committee on Consumer Affairs
Testimony on Introduction 726/"The Right to Disconnect"

My name is Bryan Lozano and I'm the External Affairs Manager at Tech:NYC. Thank you for the opportunity to testify today.

Tech:NYC is a nonprofit coalition with the mission of supporting the technology industry in New York through increased engagement between our 700 member companies, New York government, and the community at large. Tech:NYC works everyday to foster a dynamic, diverse, and creative ecosystem, ensuring New York is the best place to start and grow a technology company. New York City has proven itself a welcoming place for tech and a leader in the sector. There are now more than 330,000 tech workers in the city.

Over the past decade, new technologies—many of which our members have helped pioneer—have fundamentally altered people's everyday lives and the nature of modern work. Many of the changes resulting from new technologies have been for the better, leading to increased productivity, improved communication, and increased access to information.

These new technologies have also resulted in a blurring of the boundary between people's work and personal time. When people are at work, they can use their personal devices and accounts to communicate with friends and family. And when people are at home or out of work, they have access to their professional accounts.

Initially, as the division between work and personal time becomes less explicit, there is bound to be tension. And it is exactly this shift and this tension that Introduction 726 attempts to address. We applaud Council Member Espinal and the council for looking to address this shift in people's everyday lives. However, that being said, we feel this legislation is infeasible and burdensome, for both employers and employees.

We are specifically concerned with the provision that would require an employer to establish usual work hours for each class of employee. Many technology companies pride themselves on offering their employees flexible work schedules, allowing them to work at their prefered times. This type of flexibility provides benefits to a number of tech

employees, many at different stages of their careers and lives. For example, flexible work schedules allow mothers and fathers to balance successful careers and childcare. However, a requirement like the one proposed here to establish usual hours would likely prevent this type of flexibility and the benefits it offers.

Further, the technology industry is inherently global and New York City uniquely stands as a global capital for technology. Many of our members have offices and partners throughout the world, across time zones. While companies often try to avoid off-hours communications, it is occasionally a necessity in a global, connected industry. Penalizing New York City based companies for off-hours communications would put our City's tech ecosystem at a disadvantage and would likely dissuade international companies from coming to New York.

While it is important to have a serious conversation about employee-employer communications, it is not an area that should be legislated in such a manner. Just as we are discouraging the City Council from legislating a ban on work communications during off-hours, we would also discourage legislation banning personal communications during work hours.

Instead, when it comes to electronic communications—professional and personal—employers and employees must communicate with one other to develop solutions that work for all. This is especially important as technologies evolve and as our society continues to adapt to these new technologies.

BROOKLYN CHAMBER OF COMMERCE

The Brooklyn Alliance

BROOKLYN ALLIANCE CAPITAL

January 17, 2019

Written testimony respectfully submitted to the New York City Council on behalf of the Brooklyn Chamber of Commerce, regarding the Local Law to amend Int. No. 726 in relation to private employees disconnecting from electronic communications during non-work hours.

Good morning Chair Espinal and members of the Committee on Consumer Affairs and Business Licensing. I am Samara Karasyk, Chief Policy Officer at the Brooklyn Chamber of Commerce. The Brooklyn Chamber of Commerce is the borough's leading voice for Brooklyn's business community. We promote economic development and support businesses across the borough of Brooklyn. Through our programs and direct services, we help small businesses thrive and adapt to an ever-changing business environment.

Though the Brooklyn Chamber supports a healthy work-life balance and appreciates the efforts of NYC Council to promote this, we do not support the "right-to-disconnect" bill due to concerns that this would negatively impact our member businesses – particularly those that are small businesses. The proposed legislation carves out an exception for businesses with 10 or fewer employees, but New York State classifies small businesses as having fewer than 100 employees. Nearly 90% of all businesses in New York City have fewer than 20 employees. This bill is not realistic for them in terms of how they run their businesses. Many do not have in-house legal counsel and understanding the nuances of workplace regulatory changes require them to pay for legal assistance. In addition, they would require legal help to restructure contracts to comply with these new regulations.

Most importantly, our small businesses are already struggling to survive in an extremely complex regulatory environment with rising costs of business on many fronts – including but not limited to wages, benefits, insurance, and real estate. Our member businesses range in size and many rely on electronic communications to help their businesses grow and thrive. The landscape of conducting business has changed greatly in the last decade. It is important that business owners and employees navigate mutually acceptable terms for how they will be contacted when they are not in the office. However, many new businesses do not have traditional office environments and employees may have multifaceted roles with flexible hours needed to establish a company's digital presence. Schedules have become more flexible over the years, and it is not unusual for employees to be based from a remote work site either in a shared work space or in their own homes. This bill does not take into account the diverse work environments and schedules that exist today in businesses in different stages of growth and cannot approach this work-balance shift with a one-size-fits all law.

Thank you for the opportunity to comment on Introduction 726. I would be happy to take any questions that you may have.

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Testimony of the Alliance for Downtown New York

Committee on Consumer Affairs and Business Licensing
Hon. Rafael Espinal, Chair
Int. 726
January 17th, 2019

The Alliance for Downtown New York operates the largest business improvement district in New York City. Our district covers Manhattan south of City Hall and is home to approximately 90 million square feet of commercial space and almost a quarter million private sector jobs. The increasingly diverse mix of office tenants and retailers that make Lower Manhattan such a thriving business district are also critical to the success of NYC's economy as a whole.

The Downtown Alliance is supportive of the overall goal of promoting a healthier work-life balance for all New Yorkers, yet we are concerned about the potentially problematic impacts that Int. 726 would have for growing Lower Manhattan businesses given the dynamic nature of the modern workplace.

As technology has transformed the where and how we work, fewer businesses have have "set" 9am to 5pm schedules for staff. Many Lower Manhattan businesses offer employees flexible work schedules. Telecommuting and project based work schedules have become increasingly common, especially in the technology and creative sectors. Defining "usual work hours" for all employees may be challenging for the small, fast paced and rapidly growing firms that are leading private sector job growth in Lower Manhattan. The legislation also fails to consider the need of employers who do business around the globe, which is much more common in our interconnected world, and often necessitates responding to communications at unusual hours.

The legislation also fails to consider that many employees may prefer receiving electronic communications as opposed to phone calls outside of "usual" work hours. It's also unclear how enforcement would take place. How would regulators determine, for instance, if an individual communication meets the standard of a permissible after-hours emergency communication? And why are public sector employees excluded?

A healthy work-life balance is important both for employers and employees. The Council should be applauded for recognizing the importance of this issue. However, the proposed legislation leaves many unanswered questions and we look forward to a continued discussion on this bill.

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The mission of the Alliance for Downtown New York is to provide service, advocacy, research and information to advance Lower Manhattan as a global model of a 21st century Central Business District for businesses, residents and visitors. The Downtown Alliance manages the Downtown-Lower Manhattan Business Improvement District (BID), serving an area roughly from City Hall to the Battery, from the East River to West Street. For more information visit www.downtownny.com

NYC | HOSPITALITY ALLIANCE

January 18, 2019

NYC Hospitality Alliance Comments on Int. 0726-2018

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to private employees disconnecting from electronic communications during non-work hours

The New York City Hospitality Alliance ("The Alliance") is a not-for-profit association that represents thousands of eating and drinking establishments throughout the five boroughs that would impacted by Int. 0726-2018

The Alliance opposes Int. 726 because the City should not micromanage how the modern world works. While "disconnecting" is attractive rhetoric, the truth is that New York City never disconnects, which is why our city is the tourism and business capital of the world.

Consider the following example. An event booking manager at catering hall, restaurant, nightlife establishment or hotel is responsible for booking banquets and private events. It is a daytime job, since people who book events call during the day. But the events themselves are almost exclusively at night. The guests show up to the event and insist to the event staff that something is not right. The number of passed hors d'oeuvres is wrong, for example. The staff emails the booking manager to find out what was agreed to, and whether any adjustments can be made to resolve the situation. Under Int. 726, the event manager could not be expected to respond to that email until the next morning, when the event is over. That is simply unacceptable.

Most New York City restaurants and bars are small businesses, and in small businesses, employees wear many hats. The "ten or more employees" threshold will straitjacket small businesses who need the flexibility to address any number of concerns that can arise at any time. Moreover, the bill fails to recognize the distinction between managerial, professional, and other exempt employees, versus non-exempt "9 to 5" staff.

We also find it increasingly intolerable that the Council excludes itself from this type of legislation, particularly since the City government is the largest employer in New York City. If every councilmember considered what their reaction would be if they sent a text or email to their chief of staff at 5:05 pm that is not responded to until 9:30 the next morning, perhaps members would have more empathy for the small business owners that this bill impacts.

Respectfully submitted,

New York City Hospitality Alliance

If you have questions please contact Andrew Rigie, Executive Director at arigie@thenycalliance.org or 212-582-2506.

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Respectfully submitted,

ANDREW RIGIE I EXECUTIVE DIRECTOR **I NYC HOSPITALITY ALLIANCE**

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NEW YORK BUILDING CONGRESS

January 17, 2019
Testimony before New York City Council
Committee on Consumer Affairs and Business Licensing
Re: Intro. 726

On behalf of New York Building Congress, we wish to express concern with Intro. 726, which is currently under consideration by the New York City Council.

The New York Building Congress has, for almost a hundred years, advocated for investment in infrastructure, pursued job creation and promoted preservation and growth in the New York City area. Our association is made up of nearly 550 organizations comprised of more than 250,000 professionals. Through our members, events and various committees, we seek to address the critical issues of the building industry and consistently promote the economic and social advancement of our city and its residents.

Intro. 726 severely limits business owners' and staffs' capacity to communicate and work effectively. Ultimately, it strips their ability to make independent decisions, effecting the functioning, productivity, and safety of many workplaces. This law, virtually outlawing after-work-hours communications by employers, may sound appealing in our technology-filled world. However in regard to the building and construction industry, such a rigid and overbearing law does not fit the work styles and schedules of many in our industry.

Technicians, supervisors, human resource workers and other professionals who work in the field are often relied on to maintain workplace communication after regular work hours. The legislation does make exceptions for emergencies, defined as "sudden and serious event[s], or an unforeseen change in circumstances, that calls for immediate action to avert, control or remedy harm." But this definition is tremendously narrow. In a sector where client and customer concerns can be sporadic yet not necessarily reach the threshold of "emergency," banning communication creates a confusing environment at best and a costly one at worst.

Furthermore, this legislation creates an unbalanced environment for startups and small businesses. Larger companies can afford to put off addressing minor situations and workplace incidents. But for small businesses, the timely solution of even the smallest problems are paramount. Policies should support the growth of industry in our city not put fledgling companies at a disadvantage.

The Building Congress understands the intentions of this legislation and recognizes that achieving a work-life balance is crucial for the health of New Yorkers. We also recognize that there are ways this legislation could be tailored to provide more freedom to both worker and employee. These include:

- Excluding construction industry firms in the definition of "employer" or;
- Expanding or allowing companies to alter the definition of "emergency" to include industry specific cases where potential for harm to employees, customers, or revenue, would be a basis for employees using their devices outside of regular working hours.
- Increasing the 10-employee threshold to 25, so that small businesses and startups are not disadvantaged and punished for growth.
- Changing the on-call exception language to expand its application to anyone on call, not just those who had worked the day and are on call 24 hours on that day.

The New York Building Congress is an able and willing partner in any effort to support New York's talented and driven worker force. The most effective policy results from stakeholders and experts of varied backgrounds dialoging and finding common ground, and this issue certainly merits this type of process. We hope this committee will consider a comprehensive assessment of this legislation. Thank you all again for the time to be heard on this matter.

National Mobilization Against SweatShops
PO Box 130293 New York, NY 10013-0995
http://www.nmass.org e-mail: nmass@yahoo.com

Lower East Side Workers Center
345 Grand Street - New York, NY 10002
Tel: (212) 358-0295

January 17, 2019

To Whom It May Concern:

I speak on behalf of the National Mobilization Against SweatShops (NMASS), a workers center based in New York City. Our members come from all trades and backgrounds--low-wage to office workers, immigrant and citizen. We come together to stand up against the exploitation that we face on the job and where we live. NMASS supports the right to disconnect bill as a step in the right direction towards giving workers the right to control their time.

NMASS was founded with the mission to organize workers against the sweatshop conditions that we face in this country and to gain control of our lives. In our 23-year history, many of our members--home care workers, service workers, nail salon workers, deli workers, factory workers and office workers--have stood up against sweatshop conditions such as wage theft and long work hours. Many say that long work hours have been particularly destructive--robbing them of their health and time with their families; in effect, long hours have robbed many of their lives. That's why injured workers of all trades came together to call for an end to mandatory overtime. Home care workers are demanding an end to 24-hour shifts. The right to disconnect gives more workers a chance to control their time as well.

Please feel free to contact us at NMASS at 212-358-0295 if you have any questions.

Thank you.

Yanin Pena

TESTIMONY BEFORE NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING

JESSICA WALKER
PRESIDENT & CEO

THURSDAY, JANUARY 17, 2019

Good morning. My name is Jessica Walker and I am the President and CEO of the Manhattan Chamber of Commerce. The Chamber is a community of businesses – including startups, solo entrepreneurs, small businesses and large companies – that help one another succeed.

I am here today to urge the City Council to reject this legislation. This bill, dubbed the "Right to Disconnect," will unduly burden local businesses while doing little, if anything, to positively impact the lives of modern employees.

This legislation ignores the state of the modern workplace and the desires of the 21st century worker. As businesses compete to attract and retain talent, many companies now offer flexible and varied hours with options to work remotely. Communications vary in time and method, and responsibilities often span across locations, meaning that communications from employers or colleagues may be sent during one person's work hours while outside of others'. Implementing this bill would create confusion and disincentivize innovative businesses from operating in New York.

Further, this bill adds to the already burdensome environment that New York City businesses face when trying to survive. The bill would require businesses to implement and comply with an additional written policy while leaving them vulnerable to numerous investigations from disgruntled or former employees. Doing so would increase their costs of compliance regardless of the validity of a claim while doing nothing to help them compete in the modern marketplace.

Though the law would prevent businesses from requiring employees to access digital communications during non-work hours, the bill would merely prohibit explicit requirements. It does nothing to mitigate an employee's inferred expectation when an employer may have no such expectation. Thus, it leaves employers vulnerable to claims that they required employees to correspond when there was no such requirement or request.

Finally, the proposed legislation allows for an emergency exemption that would create further confusion. The bill defines an emergency as "a sudden and serious event, or an unforeseen change in circumstances, that calls for immediate action to avert, control or remedy harm." In cases of physical emergencies, the determination is simple. However, less obvious events will require the City to determine what is or is not an emergency. The potential loss of a client may be a mere inconvenience to some but an emergency to a business owner struggling to survive. Such discrepancies will prevent equal enforcement and predictability.

On behalf the Manhattan Chamber and our members, I urge the Committee on Consumer Affairs and Business Licensing to reject the proposed legislation. Thank you.

575 Fifth Avenue, 14th Floor
New York, NY 10017
(212) 473-7875
WWW.MANHATTANCC.ORG

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Appearance Card

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

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Deyve Sislaw

Address: 170 Metropolitan Ave #1R

I represent: Good Myzel, ~~Com~~

Address: _____

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☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Yanin Pena

Address: ~~580 W 57 apt 66~~

I represent: National Mobilization Against Sweatshops

Address: 345 Grand

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Appearance Card

I intend to appear and speak on Int. No. 0726 Res. No. _____

☐ in favor ☑ in opposition

Date: 1/17/2013

(PLEASE PRINT)

Name: Owen Herring

Address: 5 Bryant Park #2400

I represent: Durst Bryant Park ~~24th St~~ Partnership

Address: _____

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Appearance Card

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☐ in favor ☒ in opposition

Date: 1/17/19

(PLEASE PRINT)

Name: KATHRYN WYLDE

Address: _____

I represent: PARTNERSHIP FOR NYC

Address: 1 BATTERY PARK PLAZA NY, NY 10004

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Appearance Card

I intend to appear and speak on Int. No. 726 Res. No. _____

☒ in favor ☐ in opposition

Date: Jan 17 2019.

(PLEASE PRINT)

Name: Yulia Laricheva

Address: 73 Devoe St Brooklyn NY 11211

I represent: myself

Address: _____

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Appearance Card

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☐ in favor ☐ in opposition

Date: 1/17/19

(PLEASE PRINT)

Name: Kenny Minaya

Address: 42 Broadway

I represent: NYC DCA

Address: "

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☐ in favor ☐ in opposition

Date: 1/17/2014

(PLEASE PRINT)

Name: Casey Adams

Address: 42 Broadway

I represent: NYC DCA

Address: 42 Broadway

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Date: _____

(PLEASE PRINT)

Name: Zach Steinberg

Address: _____

I represent: Real Estate Board of New York

Address: _____

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☐ in favor ☐ in opposition

Date: 1/17/19

(PLEASE PRINT)

Name: Samara Karasyk

Address: _____

I represent: Brooklyn Chamber of Commerce

Address: _____

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☐ in favor ☒ in opposition

Date: 1/17/19

(PLEASE PRINT)

Name: Bryan Lorano

Address: _____

I represent: Tech:NYC

Address: _____

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