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COMMITTEE ON CIVIL SERVICE AND LABOR

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE CIVIL SERVICE AND LABOR

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February 13, 2020
Start: 1:17 p.m.
Recess: 4:05 p.m.

HELD AT: Council Chamber - City Hall

B E F O R E: I. Daneek Miller,
Chairperson

COUNCIL MEMBERS:

Adrienne E. Adams
Daniel Dromm
Farah N. Louis
Francisco P. Moya
Helen K. Rosenthal
Eric A. Ulrich

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COMMITTEE ON CIVIL SERVICE AND LABOR

A P P E A R A N C E S

Lorelei Salas
Commissioner for the Department of Consumer and
Worker Protection

Ben Holt
Deputy Commissioner for Department of Consumer
and Worker Protection

Jessica Walker
President and CEO of the Manhattan Chamber of
Commerce

Kathleen Reilly
New York City Government Affairs Coordinator for
the New York State Restaurant Association

Keith Stephenson
Director of State and Local Government Affairs on
behalf of the National Restaurant Association

Patricia Smith
Council to the National employment Law Project

Alyssa Peterson
Liman Fellow for Worker Justice at the Center for
Popular Democracy

David Cohen
32BJ reading our President Kyle Bragg's testimony

Melody Walker
Worked at Chipotle

Gavin Florence
Chipotle Mexican Grill

Yerald[SP?] Martinez
Worked the Chipotle store a 4009 Broadway

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COMMITTEE ON CIVIL SERVICE AND LABOR

A P P E A R A N C E S (CONT.)

Angelis Salas[SP?]
Make the Road New York

Shaun Richman
Program Director of the Harry Van Arsdale Junior
School of Labor Studies at the State University
of New York

Zubin Soleimany
Staff Attorney with the New York Taxi Workers
Alliance

2 CHAIRPERSON MILLER: [GAVEL] Good afternoon.

3 I'm Council Member I.Daneek Miller and I am the Chair
4 of the Committee on Civil Service and Labor. I'd
5 like to welcome everyone to today's very important
6 hearing in which we will be hearing Introduction 1396
7 and 1415 related to fast food employees and
8 employers.

9 I would like to acknowledge and welcome my
10 colleagues who have joined us today, Council Member
11 Louis, Council Member Adams, Council Member Dromm,
12 Moya and our special guest, Council Member Brad
13 Landers.

14 Today, this Committee will hear two pieces of
15 legislation related to fast food industry.
16 Introduction 1396 sponsored by Council Member
17 Adrienne Adams is Local Law that would require fast
18 food employees to layoff employees according to rule
19 of inverse seniority, meaning that those who have
20 been hired last will be discharged first.

21 And in Introduction 1415, introduced by Council
22 Member Brad Lander, is Local Law that would prohibit
23 fast food employees from terminating employees of
24 fast food employees without just cause.

2 The U.S. Labor Department traditionally allows
3 two categories of employment. Termination;
4 termination with just cause and termination without
5 cause, which is also referred to, at-will employment.
6 Just cause termination requires an employer to
7 provide some reason, some cause, for dismissing an
8 employee and often requires a written notice before
9 filing. As well at-will employment on the other hand
10 allows employees to let go of their employees at any
11 time without notice for any cause or for no reason.

12 So, long as the basis for the hiring is not
13 discriminatory under law. Currently, all 50 states
14 and Washington DC are at-will employment
15 jurisdictions. Although certain states have limited
16 exceptions to the at-will rules. New York State is
17 an at-will state, meaning that all employees with the
18 exceptions of collectively bargained agreements,
19 employees are considered at-will. Employees can be
20 fired without warning at any time for any reason or
21 no reason at all.

22 Although, there are legal protections in place to
23 ensure that employees are not fired due to identity
24 or physical characteristics, many employees in at-
25 will employment jurisdictions have the ability to

1
2 lawfully terminate their employees due to a wide
3 range of reasons or no reasons at all.

4 On one hand, this allows employees flexibilities
5 to fire and manage their staff more easily and allows
6 employees and employers to work together without long
7 term contracts or promises from either party. Just
8 as employees are able to fire an employee without
9 notice, employees are also able to leave their jobs
10 freely. However, on the other hand, at-will
11 employees can make it more difficult for employees to
12 prove instances of wrongful or illegal termination.
13 Wrongful terminations particularly common within the
14 fast food industry, New York has approximately 3,000
15 fast food locations that employ nearly 67,000
16 people, with two-thirds of that being women and two-
17 thirds being immigrants. Two-thirds being women,
18 one-third of them immigrants and 88 percent of the
19 workforce are people of color.

20 Since the fast food industry in New York City is
21 generally made up of women, immigrants and people of
22 color, difficulty in improving wrongful termination
23 may be exasperated by mistreatment already existing
24 within the industry. The Council is committed to
25 ensuring that these fast food workers have the

2 dignity and respect and the legal protections that
3 they deserve and that this committee will be at the
4 forefront of all its efforts in doing so.

5 We thank the Administration as well the industry
6 stakeholders who are here present today and those who
7 will be testifying.

8 I'd like to thank my staff, Chief of Staff
9 Council Member Ali Rasoulinejad, Brandon Clarke my
10 Legislative Director and I would also like to thank
11 the Central Staff for all the work that they have
12 done in preparation. Nuzhat, Kevin, Kendall,
13 Elizabeth and John, great job. Let me also say that
14 before we hear from our two sponsors, Council Member
15 Adams and Council Member Lander's for opening
16 remarks, we've been joined by one of our
17 distinguished colleagues from across the seas.
18 Council Member [INAUDIBLE 24:15] welcome and it is
19 not unpleasant to have you in the Chambers and
20 certainly you're welcome in the people's house at any
21 time.

22 With that, I'd like to call on Council Member
23 Adams for her opening statement.

24 COUNCIL MEMBER ADAMS: Thank you Chair Miller and
25 good afternoon everyone. I'd like to start again by

2 thanking Chair Miller for allowing me to deliver
3 comments about an important bill to many workers in
4 our city Intro. 1396. For far too long, fast food
5 workers have been subjected to unfair work
6 environments and have been the victims of unfair
7 reduction of hours or arbitrary termination causing
8 them to live in a constant state of uncertainty.

9 These employees are getting up before dawn or
10 working overnight commuting long hours to work, doing
11 physically demanding work and missing meals with
12 their families. In exchange, they are often faced
13 with impossible choices. Indoor hostile working
14 conditions; leave or be fired and face financial
15 struggle without a job. This is simply unacceptable.

16 New York City's fast food industry has served as
17 a laboratory for the nations labor movement for the
18 last several years and it is the natural place to
19 start with Just Cause legislation. Many of these
20 families are already living paycheck to paycheck and
21 losing their job for no reason whatsoever.

22 This can have catastrophic effects. This
23 legislation is a chance for hardworking New Yorkers
24 to finally have the piece of mind that comes with
25

1 knowing that they will be treated with the dignity
2 and respect they deserve.

3 I'd like to thank my colleague and partner in the
4 Just Cause package, Council Member Brad Lander. I'd
5 also like to thank my Legislative and Communications
6 Coordinator Stacey Yearwood for all of her hard work.

7 I'd like to thank 32BJ, the center for a popular
8 democracy, fast food justice and the National
9 Employment Law Project for their support of this
10 important legislation. Most importantly, I'd like to
11 thank the fast food workers of New York City who
12 continue to fight for the rights on their job.

13 Thank you, Mr. Chair.

14 CHAIRPERSON MILLER: Okay, so, we do this and I
15 know there is going to be a lot of cheering moments
16 today but just as a reminder particularly for those
17 BJ members that are often here, this is how we show
18 our appreciation, okay.

19 So, we're now going to hear from Council Member
20 Brad Lander.

21 COUNCIL MEMBER LANDER: Thank you very much Chair
22 Miller. I want to thank you for scheduling this
23 hearing. There is obviously a lot of business before
24 the Civil Service and Labor Committee and we're
25

2 grateful for the opportunity to have these bills here
3 today and it is an honor to be doing this in
4 partnership with Council Member Adrienne Adams. She
5 is the lead sponsor of Intro. 1396 and I am the lead
6 sponsor of Intro. 1415.

7 Despite the fact that fast food workers have some
8 of the most precarious jobs in our very unequal
9 economy, they have been on the frontlines of winning
10 dignity and making jobs better and turning what have
11 been low wage tenuous precarious jobs into one's on
12 which you could support a family, have some dignity
13 and be a human being in New York City.

14 That goes way back, those fast food workers who
15 help lead the way on the fight to win paid sick days
16 for all New Yorkers. It was fast food workers who
17 went out on those first strikes, the first one was in
18 Brooklyn and the fight for 15 and not only won \$15.00
19 an hour for themselves but started a movement all
20 across the country that has now over 10 million
21 workers earning \$15 and 22 million workers having
22 received minimum wage increases. Fast food workers
23 who because they were subject to precarious
24 scheduling, with no advance notice, with no pass way
25 to full time jobs. One, the Fair Work Week laws that

2 we passed here and have now also been passed in
3 Seattle and San Francisco and Philadelphia and across
4 the country. But when we learn from fast food
5 workers that this challenge in all of it is knowing
6 that you could be fired on a moments notice without a
7 reason, without any warning, you know, because you
8 didn't smile nicely at the boss. Because one
9 customer complained about you or with no reason at
10 all because you would never be told the courage that
11 it took to fight all those fights became dramatically
12 more clear.

13 In a study last year by the Center for Popular
14 Democracy and Make the Road, 65 percent of fast food
15 workers who had been terminated, said that they had
16 not been given a reason for the termination. And
17 when you know that you don't have to be given any
18 reason when you could be fired on a moments notice,
19 then how can you complain when that boss says, I
20 expect you to smile at me or says more than that.
21 How can you stand up for yourself in the face of
22 sexual harassment? How can you say, I need next
23 Thursday off to go take care of my mom or my kid.
24 How can you have the courage to organize together
25 with other workers to make your work place a place of

2 dignity? You really can't. So, the courage that it
3 has taken to win all those things and now to bring
4 this to us, I think I just really want to give as
5 Council Member Adams did, just a great deal of credit
6 to the fast food workers who are here. I've had the
7 honor to be out with you on the picket lines that
8 you've been on across the city. You are transforming
9 the economy in a direction of fairness and dignity
10 and it's an honor for us to be your allies in doing
11 that.

12 What you are fighting for here is just such a
13 normal obvious basic thing. I mean, this would in
14 some ways be a big change in our economy to go from
15 well, employment to Just Cause for folks who aren't
16 in a union and yet on the other hand, if you would
17 say to most people, do you think it's right that
18 people could be fired without any reason or any
19 notice? Obviously, anyone would say no, that is not
20 right. Of course any decent employer would have a
21 policy in place in which it was clear what the
22 standards were and if you follow them, you keep your
23 job and if you don't, you get some feedback and an
24 opportunity to improve and it's clear what the cause
25 is for which you might be fired and you would be told

2 what it was before you were. That is not like a big
3 dream in the sky that is just a basic way of treating
4 people like human beings and it makes for good
5 workplaces also.

6 So, you know, we might get asked later today you
7 know, is this something that all workers should have
8 and I'll answer it in advance. I think yes, I think
9 all workers should have this protection but fast food
10 workers in New York City are a great place to start,
11 because you've organized, because it's clear that
12 this is a significant problem in the fast food sector
13 and I think some day after we pass this here in New
14 York City and it spreads all around the country, a
15 whole lot of workers who have dignity and protections
16 they lack today will have New York City fast food
17 workers to thank.

18 I also want to thank SCIU 32BJ for their support.
19 I want to thank my staff Steph Silkowski and Naomi
20 Dann, CPD, Make the Road. We're going to hear from
21 Shaun Richman later and everybody who has been
22 working hard to lift up this issue but again, to
23 begin and end with thanking the workers whose courage
24 has gotten us here today.

25 Thanks very much Mr. Chair.

2 CHAIRPERSON MILLER: Thank you so much Council
3 Member Lander and you certainly can do this. It
4 deserves it. We are now going to hear from the
5 panel, the Administration and so, Commissioner Salas
6 and Deputy Commissioner Holt. We're going to have
7 Council affirm.

8 COUNCIL CLERK: Please raise your right hand. DO
9 you affirm to tell the truth, the whole truth and
10 nothing but the truth in your testimony before this
11 committee and to respond honestly to Council Member
12 questions?

13 LORELEI SALAS: I do.

14 BEN HOLT: I do.

15 CHAIRPERSON MILLER: Okay, you may begin your
16 testimony.

17 LORELEI SALAS: Good morning Chair Miller and
18 Members of the Committee and everyone in the room.
19 My name is Lorelei Salas and I am the Commissioner
20 for the Department of Consumer and Worker Protection
21 and as you heard, I am joined today by my colleague
22 Ben Holt, Deputy Commissioner for DCWP for short. We
23 would like to thank the Committee for the opportunity
24 to testify today on Introductions 1415 and 1396,

2 relating to wrongful discharge from employment and
3 fast food employee layoff's respectively.

4 DCWP's mission is to protect and enhance the
5 daily economic lives of New Yorkers to create
6 thriving communities. As part of this mission, DCWP
7 serves as New York City's central resource for
8 workers. The agency promotes policies that create
9 fair workplaces, ensuring workers are empowered to
10 realize their rights and protections. Key workplace
11 laws we enforce include Paid Safe and Sick Leave and
12 Fair Workweek Laws, as well the Freelancers Isn't
13 Free Act, which have helped to elevate labor
14 standards for thousands of workers across New York
15 City.

16 I'd like to talk a little bit about the fast food
17 industry and Fair Workweek Laws. The bills under
18 consideration today touch upon an industry that we
19 are all well acquainted with, the fast food industry.
20 Workers in the fast food industry have historically
21 been confronted with declining real wages and
22 unstable working schedules. However, these workers,
23 more than 67,000 in New York City alone have
24 continually fought to address these challenges. Most
25 recently, this Administration fought alongside them

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2 for a \$15 minimum age, to end abusive scheduling
3 practices and to promote full-time employment in the
4 industry.

5 During the Council's deliberation on the Fair
6 Workweek legislation, the Administration testified to
7 and cited extensive research that highlighted the
8 negative impacts of unpredictable and unstable
9 schedules in the fast food industry. As you may
10 know, unpredictable schedules have negative impacts
11 for both workers and businesses. For workers, the
12 instability makes it hard to work as second job, to
13 manage a household budget, to go to school or arrange
14 for childcare and elder care.

15 For businesses, unpredictable schedules are
16 associated with understaffing at peak business hours
17 and weak execution of business practices processes,
18 resulting in poor customer service, reduced sales and
19 lower productivity.

20 Today, thanks to the Council's passage of Fair
21 Workweek legislation, New York is the largest city in
22 the country to take steps toward ending abusive
23 scheduling practices for fast food workers. Fair
24 Workweek guaranteed fast food workers at chain
25 establishments of 30 locations or more nationally,

1
2 two thing: Greater predictability through advance
3 scheduling and premium pay requirements; and the
4 chance to work full time by picking up shifts before
5 new workers can be hired.

6 As the agency charged with implementation and
7 enforcement of Fair Workweek laws, DCWP educates
8 stakeholders, holds trainings and meets with
9 businesses and workers alike to ensure their
10 familiarity with the law. Since 2017, DCWP has
11 conducted more than 550 worker-related educational
12 events. This past December, we visited more than 200
13 businesses, in commercial districts in all five
14 boroughs, to educate employers about Fair Workweek
15 laws. Later this year, we also plan to conduct a
16 citywide public awareness campaign highlighting these
17 protections for both workers and businesses. DCWP
18 also holds fast food employers to account for
19 noncompliance with Fair Workweek, having completed 83
20 investigations and obtained resolutions awarding \$1.3
21 million dollars in restitution and fines and this
22 covers and impacts over 3,000 workers. This is since
23 the law went into effect two years ago. We're
24 currently pursuing another 34 active investigations.
25 We have filed litigation against prominent fast food

1
2 brands, such as KFC, McDonalds, and Chipotle to name
3 a few.

4 Our enforcement activities focus on ensuring that
5 workers are made whole for past violations of their
6 rights and that workplaces are in compliance with the
7 law going forward. We work together with employers
8 to create a proactive plan for coming into compliance
9 as part of a large effort to use both education and
10 enforcement to promote a culture of compliance that
11 protects workers and gives employers the information
12 and tools, they need to meet their obligations and in
13 so doing, to reduce future business costs.

14 Fair Workweek is aimed at alleviating the
15 unstable working conditions that are prominent in the
16 fast food industry, which just a short time ago
17 reported a yearly staff turnover of 150 percent.
18 However, we believe there is still more that can be
19 done to realize these protections and ensure these
20 workers have stability in their lives and the means
21 to support themselves and their families. This leads
22 us to the bills before the Committee today.

23 Introduction 1415: Too often, fast food workers
24 face the injustice of arbitrary and wrongful
25 discharge. They are discharged or have their hours

1 cut for not smiling enough, for not having the right
2 hat or for having nails that are too long. Moreover,
3 65 percent of fast food workers reported being given
4 no explanation at all for their termination. Imagine
5 working hard at your job and one day being fired,
6 losing your source of income, beset with uncertainty
7 and not knowing why or what caused it to happen.

9 We are also aware that workers are too frequently
10 dismissed in retaliation for asserting their rights
11 under the Fair Workweek laws, a practice that is
12 already illegal but highlights just how precarious
13 fast food work is.

14 For a worker to be able to defend their rights at
15 work by pointing out unlawful practices and reporting
16 violations, it is critically important that they are
17 protected against termination as a reprisal. To that
18 end, 1415 supplements and strengthens the anti-
19 retaliation protections for fast food worker in Fair
20 Workweek laws. In addition, 1415 would give fast
21 food workers greater certainty about their
22 employment, so long as a worker is performing
23 adequately, they will have a reasonable expectation
24 of continued employment. 1415 does not eliminate
25 businesses ability to remove employees who fail to

2 perform or engage in misconduct. Instead, it
3 promotes transparency in the workplace and protects
4 employees from arbitrary dismissals for which they
5 are not at fault.

6 Just cause standards are not new and have been
7 negotiated and arbitrated by employers and unions for
8 more than a century. In addition, the state of
9 Montana has had a statewide just cause standard since
10 2001 and Philadelphia has a similar protection for
11 parking lot attendants which went into effect in
12 September 2019. And I just read that Puerto Rico has
13 just cause protections too. 1415 contemplates using
14 similar standards that have been developed over time
15 to assess whether employers have met just cause. We
16 look forward to examining in greater detail, just how
17 just cause standards have been applied in other
18 jurisdictions and how they might be incorporated into
19 the City's legal landscape.

20 Still, these cases are likely to be factually
21 complex and are most similar to the retaliation cases
22 we already handle. Retaliatory dismissals represent
23 some of DCWP's most challenging investigatory work
24 and present imminent concern for workers who are out
25 of work and missing a paycheck. Just to give you an

1 idea of who often we hear retaliation in these cases.
2
3 Out of approximately 82 investigations closed in the
4 fast food industry alone, almost half of those cases
5 presented allegations of retaliation which can
6 involve anything from discharge to a reduction in
7 hours to threats. There are cases we take very
8 seriously, but half of those cases include
9 allegations of retaliation, that is a huge
10 percentage.

11 For this reason, DCWP utilizes a fast track
12 process when employers take retaliatory measure
13 against the workers. This entails conducting a
14 separate, specialized investigation focusing only on
15 the retaliatory firing with strict deadlines for
16 collecting and weighing the relevant evidence. These
17 cases are typically focused only a single
18 complainant, but usually involve competing factual
19 accounts and mixed motivations that take care and
20 time to sort out.

21 Overall, Introduction 1415 builds on Fair
22 Workweek's ideals of enhanced predictability and job
23 quality by giving fast food workers increased job
24 stability. We support this goal and believe there is
25 a strong factual record demonstrating just how

1 important this would be for fast food workers in New
2 York City.

3 Introduction 1396 ensures that employers have the
4 ability to make business decisions based on
5 reasonable, objective economic circumstances. It
6 sets forth parameters for layoffs of fast food
7 employers when a business has a bona fide economic
8 reason for doing so. DCWP believes that this is a
9 sensible to the goals of just cause standards in
10 balancing an employee's right to more predictable
11 employment with an employer's legitimate business
12 needs to adjust staffing levels.

13 There are existing legal frameworks for assessing
14 business financial condition and whether layoffs are
15 factually supported. Under the federal National
16 Labor Relations Act and other laws, legal tests have
17 been developed to examine economic health that can be
18 used and built upon for 1396.

19 An arbitrary or wrongful dismissal is all too
20 common, much more common than we should expect. In
21 fact, in one poll, 90 percent of workers expected
22 that they were protected from being fired for an
23 arbitrary reason, such as their supervisor simply
24 disliking them. We know that this is not the case for
25

2 fast food workers without the protections such as
3 those contemplated in Introductions 1396 and 1415.

4 In supporting just cause standards, our priority
5 is to ensure it is a protection that is embraced by
6 workers, is reasonable for businesses and is
7 effectively enforced. While this innovative and
8 groundbreaking policy builds upon Fair Workweek
9 enforcement and our anti-retaliation measures, it
10 will require additional personnel to perform
11 outreach, implementation, intake, investigations and
12 litigation in order to ensure businesses understand
13 how to comply and to protect workers who are
14 illegally dismissed.

15 Under the Fair Workweek laws, workers have
16 available to them a combination of agency led and
17 private enforcement which is an approach that has
18 leveraged our existing enforcement model. The bills
19 today include three distinct enforcement options,
20 administrative enforcement, a private right of
21 action, and a DCWP overseen arbitration process.

22 DCWP does not currently administer an arbitration
23 system. We would like to work with Council to
24 understand how this process would work and what
25 resources and expertise are needed for it to be

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implemented effectively. Additionally, we would like to work with Council, through the legislative process to ensure there is clear guidance on items such as bona fide economic reasons for termination and just cause to facilitate clarity and flexibility for businesses. We note that the Law Department is currently reviewing the bills as well.

In closing, both Introductions 1396 and 1415 help provide workers increased stability in both their working and personal lives. We look forward to working with the Council on these bills and other progressive policies that ensure New York City remains at the forefront of workers rights issues in our country.

Once again, thank you Chair and Members of the Committee for the opportunity to testify today and we'll be happy to answer any questions you may have.

CHAIRPERSON MILLER: Thank you Commissioner.

So, based on that fine testimony, one may might assume that the Administration was in favor of these two pieces of legislation but I don't want to assume, so I will ask the question. Do you support these two pieces of legislation?

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LORELEI SALAS: We certainly support the goals of the legislation. I will just say that Law Department as I mentioned is reviewing the language. We do have some questions around operational issues and how to put this in place but we believe these are protections that would add to the already great array of benefits the city is providing for workers.

CHAIRPERSON MILLER: So, certainly, that is the goal of this Committee and this Council to make sure that happens and how we actually get to that point implementation and we want to make sure that we're working with the Administration.

So, aside from implementation roll out and so forth, because we do have some question about whether or not your agency has the ability to enforce and the staff and resources. We know that we have challenged the agency over the last few years with some of the policy that's come out of the Council here. First of all, do you have the capacity to address this considering the cases that we have seen over the past few years as well as, do you anticipate any legal litigations around this? Are there any such concerns and to speak to some of the states and municipalities that may employ these standards already and in terms

2 of what best practices look like and what you have
3 seen thus what we might anticipate here?

4 LORELEI SALAS: Yes, thank you for the question.
5 I would say, and you've heard me say this before, I
6 always say that my agency tries to do the best we can
7 with the resources we have at our disposal.

8 I do believe though this mandate would require
9 additional resources for the agency. The arbitration
10 program itself is something that is not currently
11 something we handle and obviously would have to be
12 you know, come out of city funding. I think that,
13 I'm being very frank about this, you know, we want to
14 be able to make sure that these protections are real
15 for workers and that requires additional staffing.

16 It's hard to tell right now what that would be
17 because until we see the final language and we have
18 further discussions as to what the arbitration
19 process would look like, we'll have a better
20 understand of the necessary staffing needs.

21 We are, however, very proud of everything we've
22 been able to accomplish with the resources we have
23 and we have you know, exceeded \$11 million, \$12
24 million dollars already in restitution across the
25 different laws that we enforce like Paid Sick and

2 Sick Leave and Fair Workweek and the Freelance Isn't
3 Free Act.

4 So, I think that we managed to do a good job
5 until now but as you know, we could be doing more and
6 we certainly would welcome additional resources
7 through the work.

8 I want to answer the question regarding having
9 spoken to other states in municipalities. We've been
10 able to connect to Philadelphia, the city of
11 Philadelphia and I'll let my colleague Ben speak a
12 little bit about that.

13 BEN HOLT: Thank you for having me here as well
14 today. I haven't had a chance to say that yet. So,
15 we have had some preliminary discussions with the
16 City of Philadelphia regarding their just cause law
17 that went into effect in September of 2019. It's a
18 relatively short time period. However, there are a
19 couple early findings or things they've been able to
20 report about their experience.

21 One is that so far there has not been a deluge of
22 complaints. I believe they've had very few possibly
23 as few as one complaint in the first five months of
24 their law.

1
2 Another law applies with a different industry,
3 it's parking lot attendance, which covers
4 approximately 1,000 workers in Philadelphia. One of
5 the other key findings they've had so far is that
6 because this law requires understanding by both
7 businesses and workers that there are increased needs
8 for outreach and education around just cause and what
9 it means both for businesses, so that they know how
10 to comply but also for workers so that they
11 understand what the protection is and how they can
12 assert that right.

13 LORELEI SALAS: If I may add one more thing.
14 This doesn't really go to resources but I would say
15 that currently we have some issues with our
16 enforcement powers and some of the decisions that are
17 coming out of the OATH tribunal. To be perfectly
18 honest, the tribunal has found that in some cases our
19 authority is not fully clear and the fact that we can
20 recover restitution for workers and consumers which
21 is obviously the whole point of these important
22 protections you are all legislating and putting in
23 place and we have before you a couple of pieces of
24 legislation that we hope that you would support

2 because they complement anything that you know, you
3 ambition would add protections for workers.

4 CHAIRPERSON MILLER: Okay, so, along that line,
5 so, currently does your agency – how many wrongful
6 terminations because even though that the oversight
7 doesn't exist there, but certainly the complaints
8 come through DCWP, right.

9 So, how many wrongful terminations within the
10 industry are we seeing on average?

11 BEN HOLT: So, to this point, the Commissioner
12 has spoken to our retaliation work, which is one of
13 our highest priorities in the fast food industry and
14 this is covering the approximately two plus year
15 period that it's been in effect.

16 We've had about 45 investigations closed that
17 involved allegations of retaliation.

18 CHAIRPERSON MILLER: Okay, and so, in terms of
19 how do we remedy what would be the mechanism and
20 obviously there was a number that would discuss, and
21 so, could you speak to that in particular? Based on
22 what you had before and some of the oversight that
23 you're charged with. Do you deal with arbitration
24 panels or other mechanisms of enforcement that would

2 mitigate or I'm sorry, that would address these
3 issues.

4 LORELEI SALAS: I'll start and then Ben can help
5 me, but I would say that, so right now, we do not
6 have an arbitration model in place, right. All our
7 enforcement is handled by investigators, attorney's
8 who are employed by my office, who would take
9 complaints and often time in cases in which we
10 suspect the violations effect multiple workers, we'll
11 extend those cases to include the entire workplace.

12 I'll say that for our retaliation cases, in the
13 different laws that we enforce, we have very strong
14 protections you know, we look to obviously the
15 council was very supportive of including strong anti-
16 retaliation language in our laws and therefore, in
17 many cases we've been able to either get workers
18 reinstated which is something that is very important
19 to workers, but in many cases it's about providing
20 them with a monetary award for having being either
21 fired or having had their hours reduced.

22 Typically, on average [INAUDIBLE 1:06:42] about
23 \$9,000 but that is like Ben said, these are cases
24 that we take very seriously. We fast track those
25 cases to make sure that we're quickly addressing the

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2 potentially retaliatory activity and to make sure
3 that all the workers voices don't get chilled if they
4 see that someone has been displaced of their jobs
5 because they found a complaint or they simply
6 asserted their rights. Just to be clear, they don't
7 have to - workers don't have to necessarily file a
8 complaint with us, but if they go to an employer and
9 just say well, I haven't received my premium pay or
10 my Paid Sick day and the employer takes an action
11 that is enough of retaliatory action for us
12 intervene.

13 CHAIRPERSON MILLER: So, as far as the role that
14 the agency would play moving forward in terms of
15 enforcement, do you see the agency playing the same
16 role in terms of enforcement or an oversight, an
17 investigation. Is that something within the
18 authority of the agency or would we feel more
19 comfortable with sort of a tri-panel and the agency
20 play the smaller role. That we had employees and
21 certainly workers on the panel. Do we see that as a
22 more viable and equitable way to serve justice?

23 LORELEI SALAS: So, I would say two things about
24 that. We're obviously most familiar with our own
25 enforcement mechanisms right and we would take these

1 cases that would be very similar to our retaliation
2 cases, which do take a lot of resources but we know
3 how to do our work and because of the challenges that
4 I expressed in terms of some of the decisions from
5 the tribunal and the need to really fix our language.
6 There's also, we lack an ability to appeal those
7 decisions from OATH. I think that today an
8 arbitration panel would probably better serve
9 workers.
10

11 CHAIRPERSON MILLER: Okay, thank you. We've been
12 joined by Council Member Ulrich; Council Member
13 Rosenthal and we are going to take some questions
14 from colleagues now. Council Member Lander, Council
15 Member Adams.

16 COUNCIL MEMBER ADAMS: You're such a gentleman
17 and gentle ladies up here, it's just wonderful to
18 work with my colleagues, I got to say that.

19 Thank you again, Mr. Chair.

20 Thank you so much for your testimony thus far.
21 We appreciate your candor. As one sponsor of one of
22 these bills primarily, specifically 1396, I'm
23 interested to know, we know that you said that you
24 support the legislation, which we thank you for that
25 but you also said that you would like to and I'm

1 paraphrasing perhaps tweak the language a little bit.

2 SO, I'm just curious to know, you mentioned

3 operational specs I believe. Can you drill a little

4 bit down, a little bit more for us and give us some

5 more specifics on how you would tweak the language in

6 either piece of legislation actually? And what are

7 you concerns if any, with this legislation?

8 LORELEI SALAS: I think I would just say that

9 again, we support the legislation. We do believe

10 that it's important for there to be a lot of clarity

11 on the definitions of when we talk about bona fide

12 economic reason, what do we really mean there? When

13 we talk about reduction of hours by 15 percent, for

14 that to be a layoff, what are we saying there? Are

15 we saying that a reduction of hours on any week or a

16 permanent reduction of hours. I think it will be

17 important to just make sure that the language is

18 clear enough so both employers understand their

19 obligations but also workers understand when they

20 have you know, when they are experiencing a violation

21 of the law, right.

22 So, we would love to keep working with the

23 Council on this and we noted that there is already

24 some language that we could look to under the

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National Labor Relations Act, and we could be speaking to them about how in practice they're able to investigate these issues.

COUNCIL MEMBER ADAMS: Okay, that's fair.

BEN HOLT: If I could just add to that.

COUNCIL MEMBER ADAMS: Yes, please.

BEN HOLT: Obviously, one of our priorities is, how can we implement and enforce this effectively. With respect to bona fide economic reasons, just cause, what those mean, there are criteria set forth in the bills and I think we just want to do a little bit more work to understand exactly how those standards would play out in practice and our view point and kind of going back to the importance of outreach and education here, is we want to just make we end up in a place where we can give clear guidance to employers, clear guidance to workers, so everyone understands ahead of time exactly how these are going to work.

COUNCIL MEMBER ADAMS: So, to what extent have you actually explored the policy, legal and/or economic dimensions of extending the provisions of the bills to other industries even? Particularly

2 those where poor working conditions and/or low union
3 density are known to prevail.

4 LORELEI SALAS: I mean the straight answer is we
5 haven't. You know, we can tell you about the cases
6 that we touch on and we can tell you about the types
7 of violations we see and we see in this particular
8 industry as you have all said already, a majority of
9 workers are immigrants, people of color, many are
10 women and we think that in this industry the document
11 like really lack of protections for workers and it's
12 documented at the national level, at the state level,
13 at the city level.

14 So, we are ready to start with this industry and
15 we would love to continue to have discussions as to
16 whether it would be appropriate to extend the same
17 protections to other industries.

18 COUNCIL MEMBER ADAMS: And what do you think
19 would be some of the pros or cons even of potentially
20 applying these provisions to other low wage sectors?

21 LORELEI SALAS: You know, I mean the pros
22 obviously I think, it brings stability to workers
23 lives, right. My office also hosts the Office of
24 Financial Empowerment and we work with individual New
25 Yorkers to make sure that they budget accordingly.

2 That they are able to tackle their debt and if a
3 worker comes in and they tell us, I have no idea how
4 much money I'm going to earn this month, right or I
5 don't know if I'm going to be employed next week,
6 that is an issue right. It really effects the
7 financial health of New Yorkers.

8 We do point out in our testimony that this policy
9 does not just provide for better working conditions
10 but also improve businesses productivity and
11 employees are happier at work and it provides for a
12 better service to customers. I would say that you
13 know, we talk about just cause, just being you know,
14 New York City potentially being one of the first big
15 city's in the country to pass these protections but
16 just cause standards are very typical for CEO's in
17 contracts according to an offer that I just read
18 recently.

19 So, it turns out that the higher paid employees
20 actually have access to all of these protections but
21 not the employees who need it the most, right.

22 So, I see benefits, I do think that again, the
23 challenges is making sure that the law is understood
24 clearly by employers and we put a lot of resources
25 into educating our business community. As you know,

2 and other member of the Committee, we are really
3 thinking about events where we can go, provide
4 education to business owners, especially in their own
5 workplace, in their own businesses. So, we invest
6 heavily in making sure that they have tools that they
7 need to comply with these laws, with any new laws
8 that come into place.

9 COUNCIL MEMBER ADAMS: Okay, my final question is
10 going to be, how do you think that small businesses
11 and unions will be effected by this legislation?

12 LORELEI SALAS: Well, so, I would say one thing,
13 that the law, these protections built on the Fair
14 Workweek Laws in terms of the definition of who gets
15 covered. Which type of establishment gets covered by
16 these protections or these obligations and we are
17 talking about either chains or franchises that have
18 30 or more establishments nationally, right.

19 So, through our work see primarily corporations
20 or owners of establishments that have operators that
21 have several locations in place. So, I think we're
22 talking again about an industry in which the majority
23 of the cases we are seeing come through our doors,
24 aren't for people who should be capable of
25 implementing these practices, who have the resources

2 to do that. And it wouldn't apply to a small like a
3 pizzeria in the neighborhood right, that's not what's
4 envisioned under this proposal. And I'm sorry, but I
5 think I only addressed one part of your question.

6 COUNCIL MEMBER ADAMS: No, it's okay, because you
7 addressed the part that I was really trying to get to
8 because there has been buzz out there that this will
9 greatly impact small businesses, so I just wanted to
10 get your take on that.

11 LORELEI SALAS: Yeah, and I will just repeat
12 again that you know, the cases that we've publicized
13 have been cases litigation and complaints that we
14 received and companies like Chipotle and McDonalds.
15 So, those are well known establishments and in
16 companies again that have resources to put these
17 protections in place.

18 COUNCIL MEMBER ADAMS: Okay, that's good enough
19 for me. Thank you, Commissioner, thank you Deputy
20 Commissioner for your testimony.

21 LORELEI SALAS: Your welcome.

22 CHAIRPERSON MILLER: And before we go to Council
23 Member Lander, the second part was the impact in
24 small businesses and unions and if you care to
25 articulate further.

2 LORELEI SALAS: Oh, the impact on unions, I
3 really, I would not be able to predict what impact
4 this would have on union establishments. I can tell
5 you that we have other laws right, Paid Sick and Sick
6 Leave which provide for basic minimal protections. I
7 think that it's a similar legislation, where in this
8 case we're providing basic protections and it's a
9 floor and unions can always negotiate above that
10 floor.

11 CHAIRPERSON MILLER: Okay, Council Member Lander.

12 COUNCIL MEMBER LANDER: Thank you very much
13 Chair. First of all, let me thank both of you for
14 the work that you have done in standing up the Office
15 of Labor and Policy Standards at DCWP which has
16 really done just a great job of you know, I don't
17 know that I think its gotten enough credit for what
18 it means that New York City has this worker
19 protection agency that has recovered all those
20 resources for workers and set a whole set of people
21 who didn't have them before, so I just want to thank
22 you for that work.

23 And actually, just transitioning from that, just
24 sort of the impacts because I know we'll hear some of
25 this later, now we're you know, when we started

2 talking about Paid Sick days we heard, oh there will
3 be mass business closures and when we were doing Fair
4 Workweek, we were told that would have a very big
5 impact on people's ability to operate and of course,
6 even though we don't enforce the \$15 minimum wage
7 here, we were also so that.

8 Well, you've been doing a lot of enforcement now
9 on especially Paid Sick days and Fair Workweek for a
10 while and I have not noticed like a massive number of
11 fast food closings or you know, the industry in
12 freefall in New York City. It seems like we see the
13 operation of fast food businesses continuing with
14 workers having Paid Sick days, getting paid \$15 an
15 hour and with some exceptions that you guys are
16 enforcing, mostly having their rights followed and
17 they get two weeks advance notice of their schedule
18 and access to hours. Am I missing something or is
19 the industry continuing to operate pretty well while
20 providing a lot more dignity and stability to its
21 workers?

22 LORELEI SALAS: The industry is still in place,
23 that's true and I would just say that thank you,
24 thank you for championing these protections for
25 workers but we can do more obviously right. I mean,

2 we've done a lot of enforcement in this area but we
3 could always do more and I think there's definitely
4 more work to be done to make sure that these
5 protections are real for all of the workers in New
6 York City.

7 You know, we have record employment numbers. Our
8 economy keeps thriving. There's been reports of how
9 the rest of the industry continues to grow despite
10 all of these protections and there are definitely
11 studies that we will be happy to provide or Ben could
12 speak about them. To talk about how effective the
13 minimum wage hasn't really effected businesses in a
14 way that we sometime hear it could.

15 So, we continue to operate and enforce our laws.
16 We often are able to you know; the goal really is to
17 have these protections be real. It's about assessing
18 fines, that's not the goal of it and so, that is our
19 main objective to create a cultural compliance and if
20 we can do that without assessing fines, well, great
21 but you know, people need to comply with the law.

22 COUNCIL MEMBER LANDER: And it strikes me on this
23 one, I mean obviously, paying a higher minimum wage
24 has an economic impact on a company and giving
25 advanced noticed of schedules, you might need some

2 software to change your practices. Giving Paid Sick
3 days might actually cost a little bit of money but
4 this one doesn't need to cost you anything as I
5 understand it. You know, I mean providing your
6 workers some understanding of what the provisions
7 they have to follow are and then following those
8 rules and that's just a good business practice. That
9 doesn't you know, I think could have even less
10 financial impact or bottom line impact than some of
11 the other legislation we've talked about so far.

12 LORELEI SALAS: Yes, I mean, absolutely, we think
13 that in this case you know, the employers are already
14 hiring the workers. There's a probationary period,
15 it's only after that, the worker passes that
16 probationary period that the provisions apply and so,
17 we do think that there isn't really a cost associated
18 with this but we would be happy to and we have done
19 this in the past, come out with templates or model
20 forms that could make it easier for employers to just
21 borrow that and use that and don't have to spend time
22 doing it.

23 COUNCIL MEMBER LANDER: So, that's a great
24 transition to my next kind of comment or question
25 because I think your point about looking together

2 with the language is a good one. We also want it to
3 be really clear and some of this of course, is common
4 sense but in a way that we're not necessarily going
5 to spell out in the law and we should think together
6 about what's in the law, if there are rules and
7 what's in the rules and definitely what's in the
8 template and you know, I'll just give the example of
9 obviously, there's like a big difference between
10 persistent lateness for example.

11 So, like if an employee comes in late. You know,
12 normally like maybe the first time you get a verbal
13 warning from the manager. You know, don't be late
14 again. At some point, you get a written warning and
15 at some point, persistent lateness if you're always
16 coming in late and therefore disrespecting your
17 colleagues and making it hard for the business to
18 operate can become a legitimate cause for
19 termination. That is different, very different from
20 you know, something like let's say if a worker
21 physically assaults another worker in the workplace,
22 okay, like that could be grounds for immediate
23 termination. Everyone knows you don't do that and
24 you don't need like you know a verbal warning and a
25 written warning and then a third incident and the law

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actually makes very clear that something like that particularly egregious incidents, you know, there could be an immediate termination.

So, we want to work together to make sure that this is clear because it's obviously possible to put policies in place that let people know what their responsibilities are. Have everybody follow the rules and guidelines in a pretty reasonable way and I think this is a situation where kind of everyone has a common sense of what's a good reason and not a good reason but we want to do as well in the law of making it clear.

In parts, so then when there are complaints and issues that need to be resolved through a complaint jurisdiction, we'll have clarity. So, let me drill down a little just on that. If I understand you right around the retaliatory firings, I guess like, it's easy enough to know if someone did or didn't give someone two weeks advance notice of their schedule. Like, they can either provide you evidence they did or they can't provide you evidence that they did, it's a relatively a matter of fact. I assume that in the cases of these retaliatory firings, the worker is saying you know, I believe I was fired in

2 retaliation, here is a thing I did and then after I
3 did that you know, I joined a workplace action and
4 then after I did that, I lost my hours and maybe the
5 company is saying well, we didn't even know.

6 You know, so you have to adjudicate a kind of
7 more complex set of I don't want to say, he said, she
8 said, but where there is two sides and you are going
9 through and trying to really get to the bottom of
10 what happened, is that right?

11 LORELEI SALAS: Absolutely, I mean, I'll Ben
12 explain a little more how we deal with these cases,
13 but I mean, it's true, there are two sides to the
14 story and it takes more digging in and more
15 interviews and often times we'll go beyond the two -
16 you know, the worker who filed the complaint and the
17 employer but we talk to all the workers, right. And
18 so, we have experience doing that but I'll let Ben
19 develop a little more.

20 BEN HOLT: Yeah, so our retaliation cases are
21 extremely fact specific. They often do lead us to a
22 place where we have competing versions of what
23 happened. So, there are questions about weighing
24 statements from different parties, making assessments
25 of credibility.

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2 Also, looking at whether or not other similarly
3 situated workers have been treated in the same way by
4 that employer and that I would actually note, I think
5 is one of the pieces of our retaliation work that is
6 actually quit immediately transferrable to something
7 like progressive discipline. Looking at whether or
8 not the employer is treating other similarly situated
9 workers in the same way. Applying the same standards
10 across the board to all of their workers but they are
11 very complicated cases, even though they are
12 typically only involving and single complaint for us.

13 All of the factual digging and weighing that we
14 have to do is quite resource intensive.

15 COUNCIL MEMBER LANDER: I mean, it strikes me the
16 same would be true around 1415. Some situations
17 would be pretty straight forward if you didn't get
18 any notice or any warning or any reason. I mean
19 obviously, the employer could show that you did but
20 if you didn't, there would be nothing to show, that's
21 pretty straight forward. If there was a situation
22 where there had just been documented progressive
23 discipline, also pretty easy for the employer to
24 provide evidence that they complied with the law, but
25 you could imagine situations where there was some

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2 disagreement about what had happened and someone
3 would need to dig in and really do that fact finding.

4 So, I just want to end asking about, since you
5 raised it, the arbitration panel pathway. Because I
6 think your right, you know, I think we feel very
7 encouraged by how you guys have been doing enforcing
8 these other laws and so, having the pathway where
9 people can come to you, where you guys can move quite
10 quickly if it's an issue of termination.

11 Obviously, because you want to move quickly in
12 that situation and what the person really wants is
13 their job back, so that's valuable. You guys can
14 move in quickly. We like having that pathway, it has
15 some of the challenges that you described with OATH's
16 authority and maybe some of those can get remedied
17 through things we can do or things the state
18 legislature can do.

19 Most of the laws, or at least several of them
20 already have a private right of action. Paid Sick
21 days actually doesn't, although we should fix that
22 but you know, it's a challenge for people to go to
23 court. They have to hire a lawyer; it can take a
24 long time. So, it's good to be able to officiate
25 your rights in court but it can be a challenging

1 pathway. And so, I think the idea here was if there
2 were an arbitration panel, you know the fact finding
3 can then get done. There is an arbitrator, you got
4 to have a panel that was agreed on by some set of
5 both employers and worker representatives and then at
6 least as I understand it, that order has a binding
7 authority that is as strong as the courts would be
8 without having to go to court.
9

10 So, that's your understanding as well?

11 LORELEI SALAS: Yes, and I'm not an expert on
12 that right, but I would just say yes, so both parties
13 agree or the worker submits himself to arbitration,
14 they are bound by the decision from the arbitrator or
15 the panel.

16 So, it is definitely another avenue and possibly
17 a faster way of getting their cases resolved faster
18 than going to court on their own privately and having
19 to hire a lawyer to represent them.

20 So, for us, it's mostly just questions about how
21 to make it operational and where the funding comes
22 from to put that in place, but it's certainly an
23 avenue for workers.

24 COUNCIL MEMBER LANDER: Great, and it sounds like
25 you need some additional resources whether it was to

2 stand up an arbitration panel or to have the staff in
3 place to handle complaints and investigations. You
4 know, on this new law beyond what you're getting.

5 LORELEI SALAS: Yeah, even with the arbitration
6 panel, right, a lot of the fact finding would be done
7 by them but there's still an administrative use to it
8 that would require us to assign staff to set that up
9 and make sure that it is running well.

10 COUNCIL MEMBER LANDER: Okay, I'm eager to hear
11 from some workers and some employers. I don't want
12 to take more time with you guys but I really
13 appreciate the seriousness you know, having a city
14 agency that takes these issues seriously, that's
15 really listening and building a practice. You know,
16 it makes me proud of New York, so thank you.

17 LORELEI SALAS: Thank you.

18 CHAIRPERSON MILLER: Thank you Council Member
19 Lander, we're going to hear from Council Member
20 Ulrich.

21 COUNCIL MEMBER ULRICH: Thank you Mr. Chair, I
22 want to apologize for being late. I did have a
23 chance to read the read the testimony and I have a
24 few concerns. In advance to the hearing, I'd write a
25 couple of articles about the number of fast food

1 chain establishments that have closed in New York
2 City alone. I think close to 150 in the past couple
3 of years. I think the number was 148 if I'm not
4 mistaking. I know that the Mayor recently announced
5 in his state of the City Address that he wanted to
6 make an initiative supporting small businesses. I
7 don't see how supporting these pieces of legislation
8 advances that, considering how many fast food
9 establishments are closing. The McDonald's in my
10 district, many of them have recently been renovated,
11 as a result of the renovations, they've moved to
12 automation. They've eliminated the number of jobs
13 that were there previously. I'm sorry, they've
14 reduced the number of jobs that were there
15 previously.

17 I just think all of these unfunded mandates that
18 we're placing on the small business community is
19 hurting low wage workers. Is hurting the people that
20 we need to create more jobs for and I just want to
21 say on the record that you know, the economy is doing
22 great now thank God, but we know that is not always
23 going to be the case and one of the provisions of the
24 bills, if I'm not mistaken would force a small
25 business to prove an economic hardship in making the

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2 decision to layoff certain employees. Why should we
3 have to wait for the bad times for small businesses
4 to have to prove to the city and shift that burden of
5 proof onto them.

6 Small businesses make long-term business planning
7 and models based on their budget, based on the
8 economy, based on shifting you know considerations.

9 I just think it's really unfair to force them to say
10 hey, you can't layoff anybody until things really get
11 bad and then you've got prove it to us and you know,
12 and then we'll let you know if you're off the hook.

13 I have a big problem with this. I come from a union
14 household; I support unions. I'm all for collective
15 bargaining and protecting the rights of workers. The
16 state has passed some I think really meaningful
17 pieces of legislation in recent years around wage
18 theft and other areas that were sort of ambiguous but
19 this really, I think could deal a death blow to the
20 small business community and the fast food industry
21 and I would hate to see that. I would hate to see
22 constituents of mine and more New Yorkers lose their
23 jobs or lose job opportunities because of more
24 burdens and regulations that we're putting on them.

1 So, you know, I know that people had concerns and
2 questions but I did want to go on the record and
3 state some of these things because I think that the
4 intentions are good but I think that the consequences
5 of this definitely will be bad, especially when we do
6 get into an economic downturn and I just want to
7 know, has the Administration consulted with the
8 Chambers of Commerce and the people who are actually
9 functioning in these industries to get specific
10 feedback on what their legitimate concerns are about
11 these pieces of legislation.
12

13 Has the Administration engaged those stakeholder
14 and what type of engagement have they actually
15 carried out. That's what I would like to know.

16 LORELEI SALAS: So, I will say a couple of things
17 in response. I mentioned earlier that from our own
18 experience just from the enforcement work that we do,
19 we haven't seen you know, enforce the Fair Workweek
20 laws, right, which apply in the fast food and the
21 retail industries. We haven't seen any employers
22 come to us and say, I'm going to close because you're
23 trying to enforce this law and for the universe of
24 businesses we touched through our enforcement, we
25 haven't seen businesses or employers go out of

2 business. Because of our enforcement work, I'm not
3 familiar with numbers you are just citing of 150.

4 COUNCIL MEMBER ULRICH: 148 in the past three
5 years. Fast food establishments closing in New York
6 City, just in New York City.

7 LORELEI SALAS: So, yeah, so I was just speaking
8 from our own experience, we haven't seen that. I
9 would say a couple of other things. You know,
10 obviously, we're here at the other hearing and this
11 is an opportunity to hear from the industry and to
12 hear what are the challenges and limitations in
13 having protections like this in place. With respect
14 to automation, I think that that's a separate thing.
15 I don't think that we can control that but I think
16 for the jobs that are still in existence, we should
17 make sure that they are good jobs.

18 So, we will be happy to continue to talk with the
19 Council to listen to the comments from the industry
20 but can tell you that at least from the work that
21 we've done enforcing the protections that are
22 currently in place, it hasn't been an obstacle for
23 the fast food industry to continue to do well.

24 COUNCIL MEMBER ULRICH: I would like to say and
25 maybe at a later date, if there's an opportunity for

1 the Administration to having meaningful and
2 transparent and public engagement process before, I
3 know you've already signed on to supporting the bills
4 but before the bill is passed, if it is going to be
5 passed and before it's signed into law, so that those
6 stakeholders, many of - probably most of them in the
7 city are women and minority owned businesses in
8 particular and they are struggling, okay.

9 I would like to see a meaningful engagement to
10 make sure that they absolutely have a seat at the
11 table to make sure that when this legislation is
12 passed, assuming that it will pass, that they are not
13 shut out of the process completely. I've been in the
14 Council for almost 11 years and I've seen instances
15 where we've engaged the stakeholders on both sides in
16 a good way and I've seen bills passed in this body
17 when one side was completely ignored and I don't
18 think that something as important as this is an area
19 where the small business community should be ignored.

20 I think engaging the Chambers of Commerce is a
21 very good start in Brooklyn and Queens and the outer
22 boroughs in particular because that's where the bulk
23 of these establishments are because of geography and
24 also the bids. I think that through SBS, that
25

1 there's an internal mechanism already in place for
2 you to have an honest, thorough and objective, you
3 know, maybe a survey or some sort of series of
4 engagement. Town Hall meetings where you can have
5 them come and say, these are our concerns. This is
6 how this legislation would impact our business. This
7 is what we're really concerned about. I haven't
8 heard a lot of their concerns expressed except
9 through some of the advocates and I actually had two
10 McDonald's and Chipotle owners in my district reach
11 out to me in advance of this hearing, send me a
12 couple of emails. I'm happy to forward them over to
13 you if you like but these are legitimate people that
14 have been doing business in the community for a long
15 time, they employ lots of good people in the
16 community. We want to support them. We want them to
17 grow, turn a profit, hire more employees and help
18 revitalize our communities. I'm just very, very
19 concerned about these bills and I think there was a
20 rush to support it and I hope that the Administration
21 independently will take it upon themselves in light
22 of what the Mayor said of the state of the City and
23 have that meaningful engagement with the small
24

2 business stakeholders and with the people who would
3 be directly impacted by this legislation.

4 So, thank you Mr. Chairman. Thank you.

5 CHAIRPERSON MILLER: Thank you Council Member
6 Ulrich.

7 You know, just on the Council Member's line of
8 question, I have kind of a hypothetical in the
9 situation that we have seen unfortunate, automation,
10 under these pretenses, is that something that we
11 would evaluate in terms of justification, economic
12 justification for termination and how then would we
13 address that?

14 LORELEI SALAS: I'd like to say possibly, I can't
15 really give a definite answer on that. Yeah, I don't
16 - we'd have to go back and think about it some more.
17 I'm not sure if that by now it's envisioned in the
18 language that it would include something like that,
19 something like automation but we're open to thinking
20 about it.

21 CHAIRPERSON MILLER: Yeah, in just, in my travels
22 throughout the district, throughout the City that
23 we've seen that, I've heard from workers, I've heard
24 from business owners that said that by virtue of some
25 of the other policies that have come to effect that

1 they anticipated the savings because of this. Well,
2 this was there way of kind of neutralizing some of
3 the things that, some of the policies and so, while
4 certainly that's not the intent of any of the
5 legislation to always uplift workers. If in fact
6 that there were unintended consequences but we want
7 to make sure that whether or not that was an
8 unintended consequence or just merely a justification
9 for an attempt to save money and so, uhm, it's
10 something for us to look at in the past and how then
11 in the future but then how would we really be able to
12 assess whether or not this was just say an economic
13 decision or something otherwise. It's something to
14 think about.

15 And then finally, I just want to ask, so, you are
16 comfortable that this is going to pass legal mustard
17 beyond implementation and as it pertains to federal
18 policy and that we are not kind of overstepping
19 boundaries.

20 LORELEI SALAS: I mentioned earlier that the Law
21 Department is still reviewing the language and
22 obviously the goal is to make sure that the language
23 is careful to avoid pre-emption challenges but
24 certainly even with legislation that has been
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1
2 thoroughly reviewed, in some cases, we've ended up in
3 litigation. So, I cannot say that even we had the
4 most perfect language, that we wouldn't be sued but I
5 think that the Law Department is continuing to review
6 the language and we'd be happy to discuss with
7 Council to make sure we have the strongest law in the
8 books.

9 CHAIRPERSON MILLER: Thank you so very much for
10 your testimony. Thank you again for your work and
11 support of these workers and the partnership that
12 you've demonstrated with the Council for both of you
13 and the agencies that has provided the guidance,
14 leadership and oversight. Thank you.

15 LORELEI SALAS: Thank you so much.

16 BEN HOLT: Thank you.

17 CHAIRPERSON MILLER: Next panel. Jessica Walker,
18 Keith Stephenson, Kathleen Reilly.

19 UNIDENTIFIED: I think our colleague might have
20 stepped out for a moment. I don't know.

21 CHAIRPERSON MILLER: Did you provide testimony,
22 so we can get a copy of that before they get started.
23 Okay, thank you very much.

24 UNIDENTIFIED: Alright, he's back in the room.

25 CHAIRPERSON MILLER: Is this Mr. Stephenson?

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KEITH STEPHENSON: Yes, sir.

CHAIRPERSON MILLER: Okay, you may begin.

JESSICA WALKER: Good afternoon. My name is Jessica Walker, I'm the President and CEO of the Manhattan Chamber of Commerce. As you know, we represent the business community here across the borough.

I'll spare you the — I'm not going read line for line but we're here today because we do strongly oppose these two bills. The Legislation is singling out and needlessly picking on one industry, which is bad enough. But whats more is that what you are suggesting here is absolutely terrifying for most small businesses who fear that they may be the next targets of an expanded version of this dangerous legislation.

First of all, I want to state very clearly that employers never want to eliminate jobs. There is no joy derived from laying off employees and I say that because these bills do seem to be predicated upon the notion that employers everywhere are just firing people, laying them off with no strategic thought about the health of their business or the possible

2 impacts that it might pose on the employee and that
3 is false. It is never fun.

4 But the reality is that sometimes a business has
5 to make these tough decisions in order to thrive.
6 And tying an employers hands here could unfairly hurt
7 the business.

8 The process laid out in Intro. 1396 does just
9 that. It puts the onus on an employer to prove that
10 layoffs are for bona fide economic reasons, as
11 narrowly defined in the bill. If they do lay people
12 off it must be done by seniority even if that means
13 they will lose their best employees. They may be
14 forced to go to arbitration which is a time killer
15 and takes away from their business and the bill also
16 opens them up to lawsuits.

17 Intro. 1415 is equally unworkable. It prohibits
18 employee termination for reasons other than just
19 cause. It forces businesses to use a very confusing
20 disciplinary process to determine what rises to the
21 level of their definition of just cause. And once
22 again, employers may find themselves in timely
23 arbitration or court as a result of the law.

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1
2 There are legitimate reasons for an employee's
3 termination other than bona fide economic reasons or
4 just cause as narrowly defined in this legislation,

5 I want to give you an example: When a new member
6 of the City Council takes office, they rarely retain
7 all of the staff of their predecessors. Why? It's
8 hardly ever about economics or just cause. And those
9 holdover employees certainly have more seniority than
10 anyone new that's brought in. I ask you; would you
11 want to spend your precious time sitting in
12 arbitration for days in order to justify why you need
13 to make staff changes? The answer is no, you want
14 the best team surrounding you to help you move
15 forward. And there is some subjectivity in that as
16 an employer because you have a certain vision of what
17 you want your workplace to feel like, you want all
18 employees to get along and work well together, you
19 want your employees to be onboard with your agenda,
20 and you may want greater strength I a certain skill
21 set, certain skill sets that are lacking.

22 Eroding an employer's ability to make these
23 strategic staffing decisions is simply wrong. And it
24 could be extremely damaging to a business. I will
25 give you some examples here. You can suppress

1
2 revenue, if I can't hire a better salesperson to
3 replace the current salesperson who has mediocre
4 skills, that can suppress my revenue.

5 It can take very precious time away from the
6 business to go to an arbitration or court, it could
7 suppress morale and productivity in the workplace if
8 an unruly employee is allowed to stay on while I have
9 to spend months in arbitration. It may force me to
10 layoff someone I didn't want to simply because of
11 seniority.

12 This again, this would tying an employer's hand
13 and taking away the critical, albeit hard choices
14 that must be made to keep a business viable, which is
15 already not an easy thing to do.

16 Of course, all employers must adhere to anti-
17 discrimination laws already in place that prohibit
18 wrongful termination on the basis of any protected
19 class or as retaliation. That is already current law
20 and employers should abide by that.

21 Moreover, these bills could actually have a
22 detrimental impact on employees. If it becomes next
23 to impossible to discharge employees then the hiring
24 process will become that much more rigorous and bias
25 quite frankly. Employers will take fewer chances on

2 candidates who are untested, who come unrecommended
3 or have even a hint of red flags. Which will further
4 shut out a whole swath of people who don't have a
5 long work history and are simply trying to get their
6 foot in the door to prove themselves. And so, I
7 think it would take us in the wrong direction of what
8 I think we're all trying to do, which is to really
9 try to open up the workforce and open up opportunity.

10 So, for these reasons, I urge the Council to halt
11 these bills. Thank you.

12 KATHLEEN REILLY: Good afternoon everyone, my
13 name is Kathleen Reilly, I'm the New York City
14 Government Affairs Coordinator for the New York State
15 Restaurant Association. I will attempt to be brief;
16 we have a little bit of longer written testimony as
17 well, but just sort of hit the highlights for you.

18 So, we are here today also in opposition of
19 Introductions 1396 and 1415 and we will begin with
20 1396 because we have a few more straight forward sort
21 of concerns with it.

22 First and foremost, requiring a private business
23 to prove something about its business condition to
24 the city as a justification for making its own
25

1 internal HR decisions, feels like a really enormous
2 overreach by the government.

3
4 Beyond that, specifically, you're required to
5 show the full or partial closing of operations or
6 technological organizational changes to the business.
7 Resulting, I'm emphasizing resulting, in the
8 reduction in volume of production sales or profit and
9 the word resulting, tells us that businesses will be
10 forced to take a demonstrable hit to justify layoffs,
11 rather than practicing good business practices, where
12 you preempt harm to your business. You are forward
13 looking, you think about the trends, the potential
14 future costs, whether it's your lease is going to be
15 renewed, you see a minimum wage hike on the horizon,
16 costs of your essential goods like ingredients are
17 rising and you preempt harm to your business. This
18 would cause you to have a resulting damage before you
19 are able to justify layoffs.

20 Beyond that, our other main issue is that
21 longevity of employment is not a good single
22 indicator. For conducting layoffs. There are a
23 number of other factors that are not mentioned in the
24 legislation that you are not allowed to consider when
25 you're conducting layoffs.

1 These could include: What is your job
2 description, what is your job performance, how
3 essential or critical is the role that you play in
4 that store, how able is your role to be consolidated
5 with another role compared to maybe a role that the
6 owner can pick up off hours to make up the slack,
7 what are you intentions for moving forward with the
8 company? For example, do you have managerial
9 aspirations.
10

11 We have a couple examples that we wanted to put
12 forward because we really think that this ends up
13 playing out in somewhat bazaar and unintended ways
14 and we just want to sort of put a little bit more of
15 a face to it. If a business has four counter workers
16 and two line cooks, they know they need the line
17 cooks the most. The workers at the counter can
18 likely have their work best consolidated,
19 unfortunately, the line cooks are the two newest and
20 must be laid off first.

21 Another business has recently hired an excellent
22 counter worker, unfortunately rather than laying off
23 the worker who comes into clean part time, which the
24 owner could pick up instead. The excellent counter
25 worker must be laid off first because she is newest.

1
2 Another business recently hired a local mom who
3 expressed interest in taking advantage of trainings
4 and work up to a manager position. The operator is
5 excited to have her on the team and she is excited to
6 be there.

7 The operator also has a student on staff who has
8 expressed plans to leave at the end of the summer
9 when he goes back to school. In the meanwhile, he
10 will be unavailable for all weekend shifts because of
11 another job he works. Unfortunately, the operator
12 has to layoff the mom before the student even though
13 she had long term hopes and was available for any
14 shift because she is the newest.

15 So, that sort of just to give a couple examples
16 or any number of situations that could arise in which
17 in fact pretty much every situation that arises in
18 which an operator who needs to make layoffs is going
19 to want to take the actual people that they employ
20 and decide where they do that best and causing the
21 least harm.

22 Furthermore, we just want to add that a reduction
23 of hours and 15 percent, that equates to 6 hours of a
24 40 hour workweek which could easily be less than one
25 full shift. As somebody else earlier mentioned, I

1 think it was actually the commissioner, there is
2 currently some lack of clarity about how long term a
3 reduction of hours would have to be to qualify. I
4 don't know if the authors of the bill or the
5 supporter of the bill have been personally schedulers
6 for the fast food industry, but there are a lot of
7 moving pieces there and beginning to punish an
8 operator over the discrepancy of potentially less
9 than one full shift in any given week, is punitive
10 and it's unrealistic for the circumstances of the
11 industry.
12

13 I'd like to move on to Intro. 1415, which is just
14 cause and I think that one poses a more complicated
15 set of challenges and it's not nearly as clean cut to
16 understand how an operator will be impacted by it and
17 what concerns we may have. So, allow me the time if
18 you will. Thank you.

19 So, first of all, we want to sort of return to a
20 point that the Chairman Miller made, New York is at
21 will state. At will employment is the law of the
22 land. At will employment allows employers to both
23 hire people as well as let people go at their
24 discretion in order to accommodate their business
25 needs.

1 On the other hand, New York State has some of the
2 best labor protections in the country and it protects
3 people from discrimination based on a protected
4 class. It protects people from retaliation,
5 especially retaliation for reporting something like a
6 workplace around like wage theft or sexual
7 harassment.

8 Actually, the Commissioner mentioned that their
9 ability to prosecute retaliation cases is both strong
10 and successful in her testimony.

11 With that being said, we have heard a lot of the
12 conversation around the need for legislation like
13 this and it has often times featured anecdotes which
14 we are grateful to workers for sharing about illegal
15 workplace behavior that they've experienced. It
16 typically goes something along the lines of, I
17 reported wage theft to my manager and then my hours
18 were cut.

19 There is a reason why that should take a strong
20 reaction from the crowd, it's because it's wrong and
21 because it's illegal but what we do not want to do as
22 the industry, of course, we want to hold bad actors
23 accountable and we want to eliminate the behavior.
24 What we don't want to do is take anecdotes about
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currently illegal behaviors and use them as a justification for legislating a way at will employment in this industry all together.

What we see as being consequence for legislating the way at will employment in this industry follow into three categories.

One, is related to hiring directly. As my colleague Jessica mentioned, if you are forced as the employer, based on limitations set upon you by the city, to consider any potential employee as the potential for a costly liability should something go wrong. It is going to change, that's a new lens with what you're looking at hiring and it's going to cause you to be both risk averse and restrained in your hiring practices.

As I'm sure everyone is familiar and Jessica also mentioned, often times the fast food industry is the first door that people knock on. It can employ people who might have barriers to other traditional means of employment, whether those be educational barriers, lack of job record, as Jessica mentioned, language barriers, any other number of barriers. As the current picture stands, the industry extends that hand of opportunity to people who might have a

2 difficult time finding work elsewhere. If you take
3 those same employers and you make it even riskier and
4 potentially a costly and somewhat unbalanced
5 arbitration risk to hire that person, they are going
6 to have to seriously consider it and potentially
7 decide not to do it at all.

8 Which brings us to point two of automation. I
9 know that the Council is aware of automation and its
10 trends. In fact, I know that this committee itself,
11 actually held a hearing about automation and I'm
12 aware that in that hearing about automation, the fast
13 food industry was pointed out as a place where there
14 is an especially high risk of job loss to automation.

15 With that in mind, we find it especially ironic
16 that the exact same industry be targeted to make it
17 even more risky to hire human beings to perform
18 workplace tasks.

19 Obviously, this is the hospitality industry.
20 People like the human element and the human warmth of
21 hospitality but if you take an operator and they feel
22 that their hand is being forced into considering
23 automation as a realistic alternative to hiring a new
24 person, a new neighbor to work in their store, it's
25 going to be a another decision they have to think

1 about very carefully. Which leads us to our third
2 point, which is the idea that businesses will leave
3 New York City all together.
4

5 I know that you can certainly still track down a
6 fast food restaurant if you should want to, but as
7 Council Member Miller pointed out, there's been a net
8 loss of 148 chain restaurants over the last three
9 years. These are real trends that are taking place.
10 It's a very realistic possibility and if you're an
11 operator who has currently been fighting for single
12 digit margins, you feel that you have been singled
13 out and targeted for numerous pieces of legislation,
14 some of which do not affect your other business
15 peers, some of which do and yet another piece of
16 legislation come down the pipeline that is going to
17 even additionally raise your risks and potentially
18 raise your costs for hiring people, you might just
19 decide to pack up and leave the city and with you go
20 the jobs and the City will feel the impact.

21 With all of that being said, those are sort of
22 the bigger picture issues that we have with it. We
23 also would like to discuss a little bit the mechanism
24 and language issues.

25 CHAIRPERSON MILLER: Could you wrap up?

1
2 KATHLEEN REILLY: Yes. The mechanism, the
3 employer has the burden of proof of proving that they
4 had just cause. If a complaint is lodged, the
5 employers is guilty until proven innocent, that is
6 contrary to American justice. Vague language poses
7 an issues especially with the term egregious, which I
8 know was used as an example earlier today but if
9 you're the business owner and you know you have the
10 burden of proving that you followed the rules
11 exactly, you're going to be put in a very difficult
12 decision when you witness something that to you is
13 egregious, your personal investment is on the line,
14 your brand is on the line, the safety of everyone in
15 your store is on the line but you know that your
16 decision making is going to be verified by some third
17 party who might disagree with the interpretation.

18 All of that being said, we understand the
19 intentions of the legislation. We understand the
20 intention of protecting workers and making sure they
21 have access to information and resources to right any
22 workplace illegal acts that are taking place.

23 Briefly, we would just suggest informational and
24 resource based campaigns. I don't know if anyone
25 road the subway anytime around the minimum wage hike,

2 but you couldn't have not known about it if you
3 tried. That's an example of something you could do
4 as subway informational campaign. Maybe it's an
5 online resource base of giving people a step by step
6 guideline of how to walk through a conversation like
7 that with your manager. What do you need to
8 document, so that if you need future recourse, you
9 have all of the right things and last, maybe it's an
10 access of a public fund, much like the defense fund
11 that was recently created for people who are facing
12 eviction.

13 Thank you for your time, we are supportive of
14 protecting workers and making sure they have access
15 to the resources but we do not feel that this is the
16 right way to move forward.

17 Thank you.

18 KEITH STEPHENSON: Thank you Mr. Chairman,
19 Council Members of the Committee.

20 Mr. Chairman, I'm going to make this quick. My
21 colleagues did a fantastic job really laying out the
22 problems and our potential pros proposed solutions
23 was through education. For all the reasons that
24 Jessica and Kathleen mentioned.

1
2 My name is Keith Stephenson, I am Director of
3 State and Local Government Affairs on behalf of the
4 National Restaurant Association. We're proud to say
5 that we represent 10 percent of the nations
6 workforce. We're a very popular employer and it's
7 because we have good product and because we have good
8 operators and managers and team members. It speaks
9 volumes of the teams that we actually have and that
10 we work with.

11 I did submit extensive testimony, focusing on
12 diversity of our industry that was brought out many
13 times today and the opportunities provided by all
14 restaurants but in particular, quick service
15 restaurants.

16 With your permission Mr. Chairman, I just want to
17 read a couple statistics. I think folks would be
18 really interesting in hearing about the diversity of
19 our industry. I'm going to make this very quick and
20 then just touch on a couple points and then I'm going
21 to finish.

22 48 percent of industry employees are minorities
23 compared to 36 percent across the rest of the
24 economy, 25 percent of restaurant employees are
25 Hispanic, 12 percent of restaurant employees are

1 African American, 7 percent of restaurant employees
2 are Asian, 3 percent of restaurant employees belong
3 to more than one race, 40 percent of restaurant
4 businesses are majority owned by minorities compared
5 to 29 percent of businesses across other sectors, 40
6 percent of managers and supervisors are minorities,
7 more women and diverse leaders than any other
8 category of business community around the country.

9
10 Now those statistics suggest to me that we're
11 doing a fantastic job recruiting the best people and
12 helping them grow and training them to grow whether
13 it's in our industry or whether they grow beyond our
14 industry.

15 So, we're very proud of that, so wanted to take a
16 moment to tout that because I've heard a lot about
17 the focus on diversity in minority interests, which
18 we fully support. In fact, we're the industry of
19 opportunity.

20 I'd like to pose a few questions to Council
21 Member Lander. I might have missed other questions
22 that were being raised but when I walked in, you
23 asked a number of questions or you made a number of
24 statements I should say.

1 I heard you say a number of times, just how easy
2 the recent myriad of labor laws have been on the
3 restaurant industry to comply with. It hasn't really
4 harmed or these are reasonable, so it's easy to
5 absorb. I'm just curious to know, you know, how do
6 you know that? Like, what statistics and what
7 research are you referencing to know whether or not
8 the laws that you've passed in support recently have
9 helped or have harmed? Above and beyond anecdote and
10 I feel and I believe, that's number one.

12 Number two, we represent 10 percent of the
13 workforce. Another words, we represent every
14 restaurant in New York City. You haven't come to ask
15 us. You never said, hey, Keith, thank you for
16 meeting with me at the scheduling meetings. How is
17 that law going? Have you guys done any research to
18 determine whether or not it's helpful or harmful?
19 That's disappointing.

20 And in fact, on top of that, I will say that you
21 didn't reach out to us and talk to the restaurant
22 community when you were drafting these bills. So, it
23 begs the questions, who you are talking to, to get
24 this information and we'd be happy to work with you
25 in informing you about the restaurant industry. The

1
2 opportunities provided and how these laws that you're
3 proposing without our input really does impact us,
4 because we actually believe in our employees and we
5 want these laws to be right. We don't want just them
6 to pass because it's good policy because we feel like
7 it.

8 So, here's what I can tell you. The myriad labor
9 laws have hurt restaurants, small business in
10 particular. Quick service restaurants in particular
11 because they have been discriminated against for the
12 past five years and I'm sure you know all about that.

13 The studies have shown and I'd be happy to share
14 them with you and Mr. Chairman I'd be happy to share
15 them with you. That they have hurt small businesses,
16 quick service restaurants in particular. Their
17 margins are so thin that this does harm employees and
18 what we have found is that its reducing hours and as
19 a result, it's hurting wages for employees. Mr.
20 Chairman, I hope that you'll take a look at the
21 statistics in the testimony that was submitted,
22 because it will really do a great job laying out who
23 works for restaurants. In particular part timers and
24 teens, because that's a big portion of who the quick
25 service industry hires.

1 So, a couple points, New York is an at-will
2 state, the laws already exist. That's a great thing
3 because we want our employees to be protected and she
4 was talking about anecdotes that are being used about
5 how employees are harmed. We'll probably hear some
6 today, probably completely legitimate and if they
7 are, they should be investigated and bad actors
8 should be persecuted but if you're not doing that, we
9 don't feel like you should add another layer to
10 business and then presume that they're wrong before
11 enforcing your own laws or asking an industry how it
12 impacts them.
13

14 Look, all employers need flexibility. I love
15 Jessica's example of when you come into office, that
16 you want people that understand your philosophy, that
17 have experience, that are going to represent you.
18 Restaurant employees and employers are no different
19 and they should have the flexibility to do that.
20 What these laws are essentially doing, these private
21 entities, they take on all the risk, right, private
22 entities.

23 They have to hire the staff, they have to sales
24 and market, they have to educate their staff, keep
25 their staff, develop a great product. They have to

1
2 make money and it's so slim and hard to do in this
3 city. They are the ones that bear all the risk but
4 what you're doing in these laws is your saying, you
5 know what, that's not enough. What we're going to do
6 is we're going to make the government your business
7 partner and we're going to tell you even though we're
8 not business operators and even though we don't run
9 restaurants and know how to do it but we're going to
10 tell you what works best for your restaurant.

11 Personally, I don't believe that's rule of
12 government, I know our members don't believe that and
13 in instances where that's happened, it's had a more
14 detrimental effect on the operators, employees than
15 it's helped.

16 So, I'll pause there Mr. Chairman. Thank you so
17 much for the opportunity to present today.

18 CHAIRPERSON MILLER: Thank you very much. Thank
19 you all for your testimony and I know that Council
20 Member Lander is eagerly awaiting a response and
21 Council Member Adams also has some questions but I
22 just want to say that the Lorelei was pretty detailed
23 and part of your testimony was the lack of engagement
24 with the business community when these policies are
25 adopted.

1 KEITH STEPHENSON: Yes, sir.

2 CHAIRPERSON MILLER: And so forth and for the
3 record, I know that some of you have been the room
4 for the working round table this committee is moving
5 forward on some ongoing legislation, right. So, we
6 kind of dismiss that, that we have not taken into
7 consideration the impact on small business and
8 certainly, this is the Committee on Civil Service and
9 Labor and so, I'm not always, as Dr. Kane would say
10 that, all labor has dignity and that uplifts humanity
11 had dignity and should be undertaken with pain stake
12 and excellence, which I'm sure these men and women do
13 but this legislation at its core, is simply about
14 dignity and transparency and whether or not when you
15 terminate somebody, you are going to tell them why.
16

17 I would hope that as we drill down on the rest
18 and obviously, you all have paid attention, looked at
19 and researched the legislation and based on your
20 responses, but I think that there's also some
21 opportunities for some engagement that if and when we
22 move forward, that you would move forward as a
23 participant and that you can see where you see
24 something, where you have some concerns about the
25 bills that those concerns could be mitigated and that

2 we can address any of your concerns as we move
3 forward. That's what hearings are about and that's
4 why we're here to here that as well but ultimately,
5 we want to make sure that workers have the dignity
6 and respect that they deserve.

7 Some of the things, you know, we're here to hear
8 that's what this hearing is about. We're here to
9 hear your concerns and certainly hear the testimony
10 of the workers and as we move forward with the
11 legislation and so, we want each and every one of you
12 to be a part of that and with that being said, I'm
13 going to leave the question and portion to Council
14 Member Lander and Council Member Adams. Council
15 Member Lander.

16 COUNCIL MEMBER LANDER: Thank you Chair Miller
17 and I appreciate all three of you being here today
18 and you know, I think despite some of what was said,
19 we spent a lot of time before the Fair Workweek
20 legislation. I met with dozens of employers, we
21 amended that legislation and I certainly don't think
22 that all employers are evil. I value restaurant
23 employers; I value fast food restaurant employers.
24 You know, legislation is designed to protect people
25 who are in the most vulnerable situations and most

2 employers would not fire someone without cause or
3 without notice but that doesn't mean the law
4 shouldn't protect people, so that they can't be.

5 So, and I'm going to try to take a deep breath.
6 You know Jessica and Kathleen your testimony was
7 extremely respectful. Keith, I don't know if your
8 goal was to actually engage me in conversation but
9 coming in the way that you did didn't make me feel
10 like it is, so just to be straight forward.

11 KEITH STEPHENSON: Sure.

12 COUNCIL MEMBER LANDER: But I'm going to take a
13 deep breath because I think the value here is to move
14 forward with thoughtful legislation and if we can
15 learn from your testimony to do it, that will be
16 valuable even if you oppose it right on until the
17 end.

18 I do want to take a step back because you know,
19 it is true that as though I did a lot of meetings
20 with fast food employers about the Fair Scheduling
21 legislation, I spent a lot more time over the last
22 five years talking to fast food workers and you know,
23 when I started talking to them, they were earning
24 \$7.25 an hour which was the federal minimum wage. I
25 got no advance notice of their schedules and learned

1
2 very precarious scheduling. Many of them that I
3 talked to were stuck in permanent like part time
4 involuntary jobs and had no pathway to full time
5 work.

6 They did not have Paid Sick days and each of
7 those things was opposed just like your opposing this
8 pretty basic protection today. Like we were told, we
9 can't have Paid Sick days, because that will make it
10 impossible to operate businesses. We can't raise the
11 minimum wage; we can't give people advance notice of
12 their schedules. We can't offer people a pathway to
13 full time work. We did each of those things, three
14 of them here, one in Albany and yeah, I have
15 continued to talk to both employers and to employees
16 and I'd be delighted and we introduced this bill a
17 year ago. So, if there are employers that would like
18 to come talk to me about it, I'd be delighted to hear
19 and if there are employers that would like to come
20 talk to us about our Fair Workweek legislation, its
21 been thrilling to hear from workers who are stuck in
22 involuntary part time positions and have been able to
23 get full time jobs thanks to the access to hours
24 provision and because I have heard from a bunch of
25 workers tell me how valuable that has been and not

2 one employer who have my phone number, come and say,
3 here's the harm that it did. That's the perception
4 that I have on the set of laws we passed in the
5 future and honestly, it's the perception.

6 So, I guess, I do want to ask a couple of
7 questions first. I mean, you spoke about the things
8 for which there is wrongful termination and you're
9 right, you're not allowed to discriminate and your
10 not allowed to retaliate but is it illegal to fire
11 someone in a fast food restaurant or anywhere else
12 for not smiling at the manager?

13 JESSICA WALKER: How widespread is that?

14 COUNCIL MEMBER LANDER: Well, did you read the
15 report that said in which 65 percent of fast food
16 workers who had been terminated were told they were
17 not given any reason for the termination. Have any
18 of you read that report?

19 JESSICA WALKER: I have seen it and I think that
20 first of all, it's a small pool, right, obviously 500
21 people out of 1,000.

22 COUNCIL MEMBER LANDER: 500 people is a small
23 survey?
24
25

2 JESSICA WALKER: It's a very small survey.

3 Listen, I'm not going to dismiss anyone's experience.

4 I do believe that if that's what -

5 COUNCIL MEMBER LANDER: 65 percent of 500 people
6 is anecdote?

7 JESSICA WALKER: Of 500 people in a survey, yes,
8 I think, yeah, I'm not a researcher but that is very
9 small in a large industry.

10 KEITH STEPHENSON: It depends on who is being
11 surveyed as well.

12 JESSICA WALKER: But listen, the issue here is,
13 that might be the person's experience but how
14 widespread is it that somebody -

15 COUNCIL MEMBER LANDER: I didn't ask how
16 widespread it was. I mean I have some statistics
17 that say it is pretty widespread and you say you
18 don't believe them but you don't have other
19 statistics but my questions are pretty simple,
20 because it is a question about what the basic
21 protections are and right now, it is not illegal in
22 New York City for a manager in a fast food restaurant
23 to fire someone because they like a different
24 employee better and would rather give that person
25 more hours, and so, they fire the one the dislike.

2 It's not illegal for a manager to fire an
3 employee who they don't feel smiles enough. It's not
4 illegal for an employer, for a manager to fire an
5 employee without any reason or cause or notice. Do
6 you think that's right?

7 KEITH STEPHENSON: Can I address that.

8 COUNCIL MEMBER LANDER: Yeah, if you'll answer.
9 If you start by answering no.

10 KEITH STEPHENSON: Absolutely not.

11 COUNCIL MEMBER LANDER: It's not right, wait,
12 absolutely it's not right. Then we have a lot of
13 common ground. I just want to make sure I understood
14 what you said that it's not right?

15 KEITH STEPHENSON: But the devil's in the details
16 here. The way you've written it is -

17 COUNCIL MEMBER LANDER: We need to be able to ask
18 the question, so I'm going to just finish asking this
19 question. I asked a question; I think you said
20 absolutely not. You know, I said, is it right that
21 an employer could fire an employee for those reasons
22 that I gave? And you think it's,

23

24 not right?

25

2 KEITH STEPHENSON: I don't think it's good
3 business. I think it's an at-will state, so can it
4 happen? Is it legal?

5 COUNCIL MEMBER LANDER: Sure.

6 KEITH STEPHENSON: Is it right, no.

7 COUNCIL MEMBER LANDER: Alright, great, then we
8 have a lot of common ground to build from because if
9 you agree it's not right for someone to be able to be
10 fired without cause or a good reason, then figuring
11 out how we protect people from being fired without
12 cause and good reason is what we're going to do here.

13 KEITH STEPHENSON: Can I follow with a question to
14 you?

15 COUNCIL MEMBER LANDER: Go ahead.

16 KEITH STEPHENSON: Okay, so let's say that that
17 doesn't happen. Okay, under the new law, the way we
18 read it, it looks good on the surface. You intention
19 of your bill is good but when you read the details in
20 terms of how definitions are spelled out and the
21 amount, all the onus is in the employer. Here is
22 what I would argue back. I would argue back that
23 let's say the employer said that happened right, or
24 the employee said that happened and the employer
25 didn't do it.

2 Under these laws, the way they are drafted,
3 basically, all the power would go to the employee to
4 make that argument and the employer could be sued.

5 COUNCIL MEMBER LANDER: So, this is actually a
6 great conversation, I want to continue on because I
7 actually think we can drill down and make some
8 improvements to the legislation and work with you
9 because you know, I think you would have to have a
10 different reason. You know, if the employer fired an
11 employee and the employee said, I mean, obviously, it
12 would be pretty unlikely that the employer would give
13 a reason which was like, I liked your friend better
14 or you didn't smile at me but if they didn't give any
15 reason, then you are right, they would have been
16 violating the law.

17 Now, you gave two reasons in your testimonies
18 which I actually think were not bad reasons. You
19 gave the example of a salesperson, it's a little
20 different because I don't know that we have the same
21 kind of salespeople as you were imagining in fast
22 food restaurants.

23 KEITH STEPHENSON: Sure.

24 COUNCIL MEMBER LANDER: Who had mediocre skills
25 at sales.

2 KEITH STEPHENSON: Yes.

3 COUNCIL MEMBER LANDER: So, that is absolutely
4 why you know, if you hired someone, now this bill has
5 a probationary period and if they weren't doing well
6 you could fire them without cause during the
7 probationary period. But let's say they got past the
8 probationary period and their sales were mediocre, if
9 you had an employee whose sales were mediocre, what
10 would you do?

11 JESSICA WALKER: First of all, I don't mean
12 necessarily, first of all, I don't know that that
13 would reach just cause in the way that it's laid out
14 in this bill just because maybe sales were up 20
15 percent. I meet somebody whose like amazing, who I
16 know comes very well recommended and they're going to
17 increase my revenue 50 percent. That would not rise
18 through a just cause under this bill.

19 COUNCIL MEMBER LANDER: I guess you were right,
20 if a fast food manager was going to fire an employee
21 because they believed a new person that they could
22 hire with their bright smile might sell more big
23 mac's, you are right, that I don't think it would be
24 a just cause.

25 JESSICA WALKER: This is not laughable.

2 COUNCIL MEMBER LANDER: I agree. I'm talking
3 about trying to protect workers from being fired
4 without any reason at all, it's definitely not
5 laughable.

6 JESSICA WALKER: No, no, I am representing the
7 small business community here because there is a fear
8 and you said it yourself in your opening statement
9 that you do want this to go to all industries.

10 COUNCIL MEMBER LANDER: I do.

11 JESSICA WALKER: That's frightening and so, I
12 think that that is a real life example. We're not
13 talking about just big mac's here.

14 COUNCIL MEMBER LANDER: And so, then I'm happy to
15 come back to the salesperson. Wouldn't you, if you
16 were the employer of a salesperson who wasn't doing
17 well enough, provide them some notice, indication,
18 you know opportunity. You give them a verbal
19 warning, you give them a written warning, you say,
20 here's the targets that you need to hit to succeed in
21 this job. Like, isn't that what you do with your
22 employees?

23 JESSICA WALKER: Yes, but it doesn't have to be
24 uniform in terms of what is here.

1
2 COUNCIL MEMBER LANDER: I'm happy to work with
3 you on the language because one good example is the
4 thing that would be best would be is if a workplace
5 developed a set of protocols that made clear what
6 good, success, what you have to do to succeed in the
7 job.

8 JESSICA WALKER: Those are best practices that
9 don't necessarily need to be enshrined in law. So,
10 they could be sued and have to be in arbitration.

11 COUNCIL MEMBER LANDER: So, the only choices are
12 to leave workers entirely vulnerable to firing
13 without any notice, any reason or any warning.

14 KEITH STEPHENSON: I think you're generalizing.

15 COUNCIL MEMBER LANDER: Or hope we have employers
16 who have best practices, is that what you're saying?

17 JESSICA WALKER: Yes.

18 KEITH STEPHENSON: So, I think you're way
19 oversimplifying it right. The reality is in the
20 market system, if I have a business and I don't have
21 the right team or the right product or service, I go
22 out of business, right. So, it's up to me as an
23 employer to do the right thing. Based on your
24 example, look, do they have the right? Is it
25 unlawful for them to fire? No, it's not unlawful.

2 Are they going to keep good employees? Are they
3 going to be able to attract new employees? Is there
4 business going to grow? No, they'll go out of
5 business. I'm not suggesting there shouldn't be a
6 modicum of safety.

7 COUNCIL MEMBER LANDER: You are suggesting. Just
8 to be clear, you absolutely are suggesting there
9 should not be a modicum of safety.

10 KEITH STEPHENSON: Are you suggesting that there
11 is going to be in rules a like, a thousand page
12 diatribe on what represents good and bad behavior?
13 Because what you are doing.

14 COUNCIL MEMBER LANDER: I really apologize if you
15 think that a thousand page diatribe is what we're at
16 here. What we're talking about is responding to a
17 set of workers who currently can be fired without
18 notice, without warning or without cause and if you
19 are going to come in with that attitude and think
20 it's going to then, say oh, you didn't meet with us.

21 KEITH STEPHENSON: It doesn't make a difference.

22 COUNCIL MEMBER LANDER: It might now.

23 KEITH STEPHENSON: What this doesn't say, what
24 this doesn't say is what represents a proper
25

2 progressive process through which an employer could
3 use to give notice.

4 COUNCIL MEMBER LANDER: If you would like to give
5 us some feedback on what you think a good progressive
6 progress is, we'd be delighted to have it. If you'd
7 like to give us feedback on what you think good
8 reasons are that it's appropriate for people to be
9 terminated, we would love to have it. If you would
10 like to give us feedback on how employers and
11 employees can understand what the expectations of a
12 job are, so that vulnerable workers can know what
13 they are. Can show up and do their jobs and
14 businesses that they are trying to help without fear
15 of being fired, without warning or cause or reason,
16 we would be delighted to have it.

17 There is room for us to work with you guys to
18 improve this, to make sure that people can comply but
19 if what you are going to continue to say is, it must
20 stay the right of employers to terminate people at
21 their own discretion with no notice, with no warning
22 and with no reason, then I don't think that you
23 should expect for us to get to a same place together.

24 So, I'm going to close my questioning because you
25 know we got a lot of people we want to hear from but

1 I guess one thing, I would love to see the data about
2 business closures because I was looking online and
3 actually, it looks to me like businesses, restaurants
4 other than fast food are actually closing at rates
5 faster than fast food restaurants. Obviously,
6 increasing rents and a whole range of other causes
7 are in place and I think there is zero evidence that
8 the provisions that we have made to make sure fast
9 food workers have some dignity have led to any of
10 those closures at all. And I guess finally, like
11 threatening that automation is a reason for people to
12 accept jobs with less dignity. Like fast food
13 employers are going to replace workers with
14 automation when believe it is in their economic
15 interest to do so and you know, that has downsides
16 for sure but that's what happens in the economy and
17 if McDonalds believes that you know, those automated
18 touch screens can reduce workers in an amount that
19 makes sense for them economically, they're going to
20 do it. But asking the workers who remain to be
21 vulnerable because they fear being replaced by
22 machines is not a good way for us to build an economy
23 that's got dignity for people.
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KATHLEEN REILLY: I'm sorry, if I may just respond to the automation of question.

COUNCIL MEMBER LANDER: Of course.

KATHLEEN REILLY: The point was actually more that in an at-will state where the vast majority of all workers are at will, the ability to be let go without notice or at the employers discretion is an almost universal situation. I know all my colleagues and I are in the same position as well.

COUNCIL MEMBER LANDER: I would love to see you guys also protected from unfair firings, just to be clear.

KATHLEEN REILLY: From unfair firings, everyone is protected by state and labor law.

COUNCIL MEMBER LANDER: No, you're not. You're protected from a discriminatory firing or you're protected from a firing in retaliation for your rights. You're not protected from a firing without a reason whatsoever.

KATHLEEN REILLY: I'm fairly confident that my contract states that I would at the Employment, at the what's the word? The pleasuring, is that word?

KEITH STEPHENSON: At the will of the employer.

2 COUNCIL MEMBER LANDER: Don't you think that's
3 rotten?

4 KATHLEEN REILLY: But the point is, I'm sorry,
5 can I please, I just wanted to finish the point. The
6 point is just that when all jobs outside of
7 collective bargaining agreements are at-will jobs, to
8 target the same industry that the Council has already
9 acknowledged is especially at risk for automation.
10 To target that industry for their jobs to become
11 riskier to fill with people, seems counter intuitive.
12 That was the point about automation, just to clarify.

13 KEITH STEPHENSON: Great, well said.

14 JESSICA WALKER: May I say one thing. Two
15 points, one is I invite all of you to engage and do
16 some Town Hall meetings with small business owners.
17 It is not there experience that there has been no
18 pain. I think all along and all of these different
19 polices, we've said, not that you can't do them but
20 if you do do them, there will be pain. There will be
21 consequences and I think that we have seen some of
22 that. You can just look at storefront closures. I
23 mean there's a lot of things that are happening there
24 that I think should be discussed, that's number one.

1
2 Number two, I just want to give a policy matter
3 that I've been trying to push for a while now, which
4 is the City Council really should adopt a system to
5 study the economic impacts of legislation before they
6 are passed, so that you do have a clear understanding
7 of how it's going to effect jobs, small businesses,
8 the economy and that's just putting three really,
9 really good economists in your fiscal bureau and to
10 be able to look at these bills, so we don't have to
11 go off of third party research and talk about what
12 their pool size is and what is, you know, this would
13 be something that would be unbiased. Everybody could
14 see and then we could make some of those decisions.

15 CHAIRPERSON MILLER: Well, we thank you for that
16 and from this Committee's perspective, as I said, I
17 think transparency really translates into dignity for
18 the workers and we've kind of taken it to another
19 level. When we saw talking about the economic
20 impacts of it and whether or not you can and I don't
21 think that there is the intention that we want to put
22 any business under and that we are, as Council Member
23 Lander said, that we are willing to address any
24 concerns that you may have that may lead to real
25 economic impacts but the fact of the matter is, that

2 we are really trying to bring dignity to the most
3 vulnerable. And as you mentioned that there are
4 folks who are working at will but statistically,
5 these are the most vulnerable but also the most
6 impacted.

7 And so, that's why this particular legislation
8 addresses this target audience here.

9 Thank you so much for your testimony.

10 KEITH STEPHENSON: Thank you.

11 CHAIRPERSON MILLER: Next panel, Patricia Smith,
12 Alyssa Peterson, Hope Gozo, David Cohen.

13 Okay, you can begin your testimony. Please
14 identify yourself and press the red button.

15 PATRICIA SMITH: Thank you. My name is Patricia
16 Smith, I am currently of Council to the National
17 employment Law Project. I'm a former Commissioner of
18 Labor here in New York and I was the US Solicitor of
19 labor during the Obama Administration and I'm
20 testifying in support of the pair of bills.

21 They would set some minimum standards for
22 termination in the fast food industry. Now, industry
23 opponents have objected saying that such standards
24 are unprecedented, that they would stifle business
25 but in fact, there is extensive precedent for minimal

2 standard often caused just cause standards in the
3 United States and around the industrialized world.

4 Just cause for discharge is the norm in Europe
5 and in many Canadian providences it is also the norm
6 for all workers. You already heard about
7 Philadelphia last year, which has also adopted this
8 and the State of Montana also has it. And in New
9 York and really around the country, there are well
10 established legal standards for what just cause
11 employment looks like. Now, they've been developed
12 primarily in the context of unionized workforces but
13 the standard is often, very often in the contracts of
14 CEO's and other executives who are given lavish
15 severance payments when their fired unless the firing
16 is for just cause.

17 So, what is this just cause standard that
18 businesses are afraid of? There is actually a gold
19 standard out there for just cause employment. It was
20 developed in 1964 by Professor Doctor Darhadi[SP?]
21 and this standard is still commonly used and widely
22 accepted both by arbitrators and courts.

23 So, the principles generally correspond to the
24 principles in the bill but I'd like to go into them
25 to show you exactly how commonsense they are and

1 really not difficult to implement. The first is
2 notice, an employee must have adequate notice of
3 rules and expectations. Now, exceptions obviously
4 can be made for certain conduct which is so serious
5 that the employees presume to know that it's
6 punishable.
7

8 Second, the orders and the rules must be
9 reasonable. They must not be arbitrary; they must be
10 reasonably related to the efficient and safe
11 operation of the employers business.

12 Third, there must be an investigation, an
13 employers has to make a sufficient effort to discover
14 whether the employee did or did not violate a rule of
15 management.

16 Fourth, the investigation has to be fair. It's
17 got to be fair and objective. Fifth, there has to be
18 proof. There must be some evidence of guilt. Now,
19 this standard is not as high as the standard in the
20 courts or in civil cases but the employers must have
21 some real evidence, not just guesses.

22 Six, equal treatment. The rules, the orders, the
23 penalties, they have to be applied even handedly
24 without discrimination. If enforcement has been lax
25 in the past, management can't suddenly reverse its

1 course. It has to warn employees that it's now going
2 to start to enforce these rules before it does it.

3
4 Finally, the penalty has to be reasonable. The
5 discipline including discharge has to be reasonably
6 related to the seriousness of the offense and the
7 person's past record.

8 So, ensuring the workers receive notice, a good
9 reason, and fair process before losing their jobs, it
10 protects families, it protects communities, it's a
11 good human resource policy. It is not difficult to
12 implement.

13 One last thing I'd like to talk about. I've
14 heard the people representing businesses talking
15 about the difficulties of arbitration. The horrors,
16 the possible horrors of arbitration, which I have to
17 tell you that one of the things that I work on is the
18 tendency of employers now to force employees into
19 arbitration. And one of the things that I think is
20 very important in this bill, is that arbitration is
21 voluntary. It is not forced.

22 So, in the one hand, we here employers saying
23 arbitration is a bad thing. On the other hand, what
24 we see is a trend that employers are choosing
25 arbitration as where they want their employees to go.

1
2 Finally, I've been around Labor Law a long time.
3 I've been to a lot of these testimonies around the
4 country in New York State, the United States
5 Congress, here and one thing, when worker protections
6 are proposed, you hear and I know it's legitimate,
7 you hear fear from the business community. You are
8 always hearing oh, we may have to close down. This
9 is going to stifle our business; we're going to lose
10 jobs.

11 I think we have to look at the evidence as we've
12 been saying in the past of what happens. This is not
13 a bill which unlike raising the minimum wage or
14 requiring Paid Sick days actually imposes an economic
15 cost. Yes, employers are going to have to learn just
16 cause discharge, which is not that difficult, which
17 has been around for a long time, which there are many
18 resources but it's just about a fair process.

19 Thank you.

20 ALYSSA PETERSON: Good Afternoon Chair Miller and
21 all the Members on the Committee on Civil Service and
22 Labor. My name is Alyssa Peterson, I am a Liman
23 Fellow for Worker Justice at the Center for Popular
24 Democracy. I'm together with National Employment Law
25 Project, Fast Food Justice and SEIU 32BJ. We

1
2 conducted the survey that the business community had
3 issues with. I'm happy to talk more about the
4 survey.

5 Primarily in my role at CPD, I've worked on issue
6 that Patricia mentioned of forced arbitration and
7 also implementing Fair Workweek policies around the
8 country. I'm here to present testimony from Ana
9 Maria Archila who serves at the Co-Executive Director
10 at CPD.

11 So, CPD is a high impact national organization
12 that builds organizing power to transform the local
13 and state policy landscape. We do this work through
14 having deep and long term partnerships with leading
15 community based organizations nationwide and the
16 victories of fast food workers in New York City is a
17 perfect example of what can be accomplished at this
18 approach.

19 Here in New York, fast food workers have
20 organized to win \$15.00 minimum wages and brought
21 about Fair Workweek policies.

22 So, in this context, each of these victories have
23 moved fast food workers further toward the goal of
24 transforming the industry but that goal is always
25 going to be undermined until workers have just cause

1
2 protections and can be fired because at present, they
3 remain at-will employers and they can be fired at any
4 time without explanation.

5 In the context of working with our affiliate
6 organizations at Make the Road or at New York
7 Communities for Change, we often talk to workers to
8 toil under the constant fear that they could be fired
9 at any time for any reason and a termination could
10 lead their family, push them into homelessness, force
11 them to drop out of school or otherwise disrupt their
12 economically fragile lives.

13 So, together with NELP, SEIU 32BJ and Fast Food
14 Justice, we issued a report last year that found out
15 of a survey of 539 New York City fast food workers,
16 that 50 percent of them had been fired, laid off or
17 compelled to quit a job due to intolerable working
18 conditions. 65 percent of these workers reported
19 that they were denied even a basic explanation when
20 they were terminated. So, this is not an issue where
21 it's a one not smiling, this is a systemic problem in
22 the industry where workers are terminated possibly
23 for discriminatory other illegal issues that they
24 have no opportunity to challenge the circumstances of
25 their termination.

1 And as we know, this workforce is already
2
3 incredibly vulnerable, two-thirds of the fast food
4 workers are women, two-thirds are immigrants and 88
5 percent are people of color. So, this combined with
6 the threat of dismissal and a business model that
7 tolerates exceptionally high turnover rates,
8 contributes to a proliferation of abuse of employment
9 practices.

10 Other findings of our report were that 90 percent
11 of fast food workers experience wage theft, 78
12 percent of them had been injured on the job and 73
13 percent had experienced burns and 40 percent of women
14 had experienced sexual harassment.

15 And again, as Tricia was saying, despite
16 employers objection to arbitration in this context,
17 when it's about parties with equal power, employers
18 had been using forced arbitration to make it
19 impossible for workers to vindicate their rights when
20 they experience these abusive working conditions.

21 So, many of these abuses are prohibited by our
22 laws, but when employers can fire workers on a whim
23 without giving reasons, that frees them to
24 discriminate against workers and retaliate against
25 those who stand up for their rights.

1 So, in sum, we strongly support this just cause
2 legislation, the legislation incorporates ideas that
3 we take for granted, that it's unfair to punish
4 someone who had no way to know about a policy. It's
5 unfair to discipline people who have similar
6 behaviors of other workers but the policy is applied
7 unevenly and it also requires employers to conduct
8 objective and fair investigations and to have some
9 proof when they confront workers with allegations.
10

11 These are pretty basic principle within our
12 democracy. There are principles that white collar
13 workers, even if we are at-will employees assume in
14 our workplace, it's only fair that these principles
15 are also extended to well wage workers in the fast
16 food industry.

17 And then in additionally, to prevent employers
18 from exploiting loopholes in the law, 1396 would also
19 make sure that employees are protected against
20 layoffs without a bone fide economic reason. So,
21 essentially, these bills are about addressing severe
22 power imbalances in the industry and they'll bring
23 more stability and security to the more than 67,000
24 fast food workers.

2 So, as representing CPD today, I stand strongly
3 with these workers and as that you give them their
4 strongest possible support.

5 Thank you.

6 DAVID COHEN: Thank you. I'm David Cohen at 32BJ
7 reading our President Kyle Bragg's testimony and
8 thank you Chair Miller and Committee Members for
9 holding this important hearing today, Intro's 1396
10 and 1415, will give fast food workers the just cause
11 protections as we've heard from the previous two
12 speakers from arbitrary firings, cuts in hours and
13 layoffs.

14 And as I just continue, Kyle unfortunately had to
15 leave a little bit earlier, so I'm going to read on
16 his behalf.

17 These bills are going to give workers the respect
18 that they deserve and we'll hear from some workers
19 after this. We're submitting also over a dozen
20 worker testimonies. Testimony from 32BJ members,
21 testimony from 32BJ supporters as well as all the
22 advocates you hear from as well but the industry
23 itself, you know the management practices treat
24 workers as disposable commodities and you know the
25 reports that CPD mentioned, which is co-authored with

2 NERP and others, found 50 percent of those workers
3 are losing their jobs on unjust terms. So, thank you
4 again for reiterating the importance of that report.

5 The workers who've suffered these practices and
6 again, you'll hear from them are working for
7 companies worth billions of dollars but their
8 managers see fit to fire the workers on a whim or
9 reduce their hours or point out that they can't make
10 enough to survive. No one should be treated like
11 this when going to work and that's why we're here
12 today. Workers should at least be able to expect
13 that if they are doing something wrong on the job,
14 their boss will let them know and give them a chance
15 to improve it. It's also responsible for workers to
16 expect that their company does face bone fide
17 economic headwinds that their years of service will
18 be recognized in the order that any layoffs occur and
19 I again, want to thank the lead sponsors. Council
20 Members Lander and Adams for recognizing these
21 important issues.

22 So, I think we talked about what fast food
23 workers have gained, a \$15.00 minimum wage. The City
24 Council passed Fair Scheduling Laws that are so
25 important and create workplace protections. Even

2 with these advances though, the threat of a downward
3 economic spiral remains for fast food workers when
4 their employers are able to fire them, cut their
5 hours without any legitimate reason.

6 So, I ask again, that you listen to the stories
7 of fast food worker and please review the testimonies
8 that we've submitted in writing. And I also want to
9 really talk about the importance of enforcement
10 around all these pieces, both Paid Sick and Fair
11 Scheduling.

12 If we're going to be able to both enforce the
13 existing statutes and future statutes here, we need
14 strong resources and support for agencies charged
15 with that enforcement. And so again, we ask the
16 Council to support adequate resources for the
17 Department of Consumer and Worker Protection and on
18 the arbitration issue and there are certainly others
19 who can speak to this. You know, enforcement is so
20 important and arbitration maybe a preferred option
21 because of you know, a lack of appeals at OATH. The
22 way that the enforcement has done administratively,
23 we might need another option to better protect worker
24 and that's what we're here advocating for.

1 So, again, you'll here from so many workers today
2
3 who need these protections. We'll hear from other
4 advocates and I want to thank you again for the time
5 and leadership for holding this hearing and giving
6 workers a chance to speak and get these workplace
7 protections.

8 CHAIRPERSON MILLER: Thank you. Thank you all
9 and I think there is a couple of questions that we
10 have here. There was some questions around
11 implementation and some of the concerns that
12 obviously that the business community had an that
13 they express and I don't know if there was
14 demonstrated really the desire to really engage and
15 kind of work through this legislation that we were
16 hoping to see.

17 But from our esteemed panel and some from by
18 virtue of their expertise, perhaps we can look a
19 little further into the legislation that would make
20 it a more palatable, not just to the business folks
21 but to ensure some of the things that David just
22 mentioned about enforcement. Whether or not we had
23 the arbitration panel for a distinguished panel as
24 was said to us earlier that there has been much
25 concern that has actually, I know in the Committee,

2 there is a resolution that address forced arbitration
3 which is a problem that we've seen nationally and
4 certainly that we've seen here.

5 One of the other things that concerns me and that
6 I'd like to hear from the panel briefly, is obviously
7 there's emphasis on the fast food industry but there
8 is a lot of concern of at-will and termination even
9 within white collar that we see right her in New York
10 City that we've held hearings on that as well.

11 And so, certainly this is a prelude to address
12 holistically what we see is something that has not
13 been fair and transparent to all workers here in the
14 City of New York. And so, I'd like to talk about
15 that but specifically, are there any other industries
16 or any industries that you know of where just cause
17 termination that are standards that we should talk
18 about and that we are looking to address or duplicate
19 here through this legislation.

20 PATRICIA SMITH: I could talk about arbitration
21 for a minute. One of the problems with forced
22 arbitration is that it's often in the allegations
23 wage theft and frankly, arbitrators are not
24 necessarily wage hour investigators but one thing

2 that arbitrators do know, is just cause employment
3 because it is in every union contract.

4 So, some of the concerns about arbitration, about
5 arbitrators not understanding various aspects of the
6 labor law are not at issue when you're talking about
7 just cause arbitration, because that is almost the
8 number one thing especially in union context that
9 they will be dealing with in their arbitrations.

10 So, I just want to make that distinction between,
11 and again, in this particular instance, you do have
12 voluntary arbitration. You don't have forced
13 arbitration, so you know, people can make their
14 decisions. I'm not sure I can talk about other
15 industries, maybe my other panelists can.

16 ALYSSA PETERSON: I guess I can quickly speak to
17 the other industry. And so as far as, if Fair
18 Workweek is a potential model that we would want to
19 replicate here, because Fair Workweek is about
20 identifying employers who have the means to implement
21 policies and practices consistently across the
22 industry. So, I know in other Fair Workweek laws and
23 other jurisdictions, there's retail, there's
24 hospitality, there's nursing homes.

1
2 So, other states are sort of experimenting but
3 again, the type of corporate actors who do have
4 strong control over the franchisees, that it could be
5 another group of industries that would also be of
6 interest.

7 DAVID COHEN: Yeah, and Mr. Chairman, just
8 speaking again for the fast food workers who are here
9 today, I think you know, a year ago, there were 100
10 fast food workers outside on the steps to introduce
11 the bill or 100 workers here today and you know, many
12 years ago, they started fighting for a \$15.00 minimum
13 wage.

14 In 2017, we passed the Fair Workweek, so I think
15 I can speak to the need that fast food workers who
16 have just been organizing intensely both advocating
17 with the leadership of the Council for workplace
18 protections but also, in Albany and also in the
19 streets and calling on employers to do the right
20 thing. I think you know; we see just cause for fast
21 food workers as something that's you know, that's
22 close because the workers are demanding it and we
23 hope that you will agree with that.

24 CHAIRPERSON MILLER: So, I'm going to take a
25 point of personal privilege at the Chair here and

1
2 talk about something that myself and other members of
3 the Committee and the Council have addressed and
4 adopted as we work on uplifting workers and
5 protecting the rights of workers and that is a
6 philosophy that the best way to do that is to support
7 the right to collective bargaining and support the
8 right to organize and that has been vital.

9 And that obviously, knowing my history, who I am
10 and that the upward mobility not just with myself but
11 those that we represent that it's been achieved
12 through those things and so, that is something that
13 we like for all workers to have. And so, often
14 times, this body in lieu of that ends up doing this.
15 And so, as related to this legislation and respects
16 that we've seen and particularly in the fast food
17 industry and low wage workers, you know, whether it
18 is an attempt to organize or that has occurred in the
19 past or as we move forward, how do we address this as
20 we move forward in terms of policy actions and
21 feasibility to pursue policy that address this. But
22 also, supports the ability and the rights to organize
23 in here because as I look at workers, I see an
24 excitement in those who are willing to come out each
25 and every day in all of these instances that you just

2 mentioned and be supportive of these initiatives and
3 protest and policy changes, how do we then translate
4 that into the ability to organize and collectively
5 bargain.

6 Because that then, you know, allows this Council
7 to do the business of the Council, which right now is
8 this but those folks who do it best, where are they?
9 And where are they in this fight? And I see 32BJ and
10 recognize this is a partnership but you get it to a
11 certain point and you're kind of handing it off to
12 the Council, right. SO, this is a long term plan in
13 how we do because there are a lot of workers. There
14 are less than 15 percent of workers that are
15 represented throughout the country now and so, I
16 don't know if the appetite of legislatures and
17 legislative bodies throughout the country have the
18 same commitment as this New York City Council.

19 Right, so in lieu of that, what do we do?

20 JESSICA SMITH: So, if I could sort of maybe
21 address that a little bit. Just a few weeks ago, a
22 major report came out, out of Harvard. It's called,
23 The Clean Slate for Workers Rights and it was
24 hundreds of labor folks academics, came together to
25 reimagine what labor law would look like to make it

1
2 easier for workers to collectively bargain and one of
3 the suggestions was that just cause for discharge be
4 adopted. And the reason was that even though and
5 we've talked about, you know there are retaliation
6 provisions that one of the major things that does
7 hamper organizing is people's fear of being fired and
8 that if there were just cause provisions, it would
9 actually enhance the ability to collectively bargain.

10 So, while the City Council obviously cannot
11 rewrite the National Labor Relations Act, as this
12 proposal does. It may well be that by passing just
13 cause discharge, you actually do enhance a workers
14 ability to collectively bargain and I do recommend
15 just for reading the Clean Slate, it has lots of
16 proposals but that was the one that struck me about
17 just cause discharge and the connection with
18 collective bargaining.

19 DAVID COHEN: And thank you and we have also some
20 of our - one of our Council's is here who could speak
21 to this and I also want them to say on behalf of 32BJ
22 and our President and we fully respect also Chairman
23 where you come from and all the work that you've done
24 and you know, I think where 32BJ is on this and I
25 think if we fully support fast food workers who are

2 fighting just cause protections here legislatively in
3 Council and we fully support fast food workers,
4 right, to collectively bargain. You know, really to
5 create the situation and circumstances. So, we
6 support both those things and we don't see them as
7 mutually exclusive.

8 So, I wanted to actually check with the Council
9 first, but I think we're okay. Okay, great.

10 CHAIRPERSON MILLER: Council Member Lander,
11 you're good? Council Member Adams? Thank you so
12 very much for your time, look forward to continuing
13 to work with each and every one of you and look
14 forward to that reading.

15 And we'll call the next panel, thank you. Gavin
16 Florence, Yerald[SP?] Martinez, Carmelo Polaco[SP?],
17 Jeremy Espinal and Melody Walker.

18 Good afternoon, welcome to the people's house. I
19 look forward to hearing your testimony.

20 One person is missing, but you can start. Ms.
21 Walker. Press the red button please.

22 MELODY WALKER: Sorry.

23 CHAIRPERSON MILLER: There you go, thank you and
24 we all can hear you.

1
2 MELODY WALKER: Good afternoon, my name is Melody
3 Walker. I worked at Chipotle store at 55th Street
4 and 3rd Avenue for a little under a year until I was
5 fired without just cause in August of 2017.

6 My story explains why you need to pass this bill
7 into law. I'm a single mom, I have two daughters age
8 8 and 17. When I started at Chipotle, I was working
9 23 hours a week before being moved up to regularly
10 work between 30 and 35 hours. I did my job well and
11 made sure I arrived early for my shifts. I was
12 hopeful that it would be a stable job with an income
13 I could support my family with.

14 Things changed when a new manager took over the
15 store. He cut existing workers hours including mine
16 while bringing on new workers from other stores. It
17 seemed clear to me that he was trying to drive out
18 workers who had been at the store before he arrived.
19 My hours were cut as low as eight hours per week.
20 Things were so bad that I had to go on unemployment
21 while I was still working.

22 It is crazy that anyone should have to get public
23 benefits while working for a company that makes
24 billions of dollars a year. When I was fired, it
25 happened on the spot during a shift. The manager

2 told me that I was not smiling while I was at
3 counter. I was shocked, there were not even
4 customers in the store at the time.

5 If this law had been in place and my manager
6 acted as he did, I would have had the right to
7 challenge my hours being cut and my firing. Instead,
8 I had no protection. It took me months to get
9 another job and put my families life back on track.
10 I had to get public assistance again to help pay my
11 bills. I don't want anyone to have to go through
12 what I did. I ask you to support this bill and give
13 fast food workers protection against unfair
14 treatment. Thank you.

15 GAVIN FLORENCE: Good evening at this point now
16 right. Committee Chairman Miller and Committee
17 Members, my name is Gavin Florence and until recently
18 I worked at Chipotle Mexican Grill.

19 I am here to say that workers like myself need
20 protection provided in the just cause legislation
21 that we introduced almost a year ago in the City
22 Council.

23 On November the 6th, I was returning from holiday
24 scheduled to work when my flight was delayed. I
25 called my Assistant General Manager and told him that

1
2 I was going to miss my shift. He told me, it was
3 fine and that he had found another co-worker to cover
4 my shift. The next day, November the 7th, Chipotle
5 emailed me telling me that I was fired. I was
6 shocked.

7 Immediately, I called my general manager who told
8 me that he fired me because I missed my shift without
9 giving notice. A no call, no show. He said, the
10 Assistant GM never told him that I called ahead and
11 that his failure to communicate, this was my fault.

12 Even if I had missed my shift without giving
13 notice, Chipotle does not consistently terminate
14 workers for this offense. I know several co-workers
15 who have done a no call, no show multiple times
16 without punishment.

17 Since being fired, I've struggled to pay my rent
18 and tuition towards graduate school, where I'm
19 studying law. [INAUDIBLE 3:45:03]

20 My unfair termination by Chipotle has set me back
21 financially. Under the just cause legislation,
22 Chipotle would never have been able to use an
23 inconsistently enforced rule to fire me. If they
24 disputed the facts of my case, I would have access to
25 fair arbitration system to resolve my employment

2 status. Instead, I am worried about losing my
3 housing. Right now, fast food workers have few
4 protections against [INAUDIBLE 3:45:46]. We need
5 just cause.

6 Committee Members, I ask that you support this
7 legislation and stand with us as we ask the Council
8 to pass it into law. Thank you.

9 UNIDENTIFIED: And yes sir, yeah, I'll just be
10 providing translation for Yerald[SP?]. He'll read it
11 one time through in Spanish and then I'll read his
12 statement in English.

13 CHAIRPERSON MILLER: Okay.

14 YERALD MARTINEZ: 3:46:20-3:50:30.

15 TRANSLATOR: Good afternoon Committee Chair
16 Miller and Committee Members. My name is Yerald
17 Martinez. I worked the Chipotle store a 4009
18 Broadway for over three years before I was fired in
19 October 2019. During this time, I believe I
20 experienced a number of things that shouldn't happen
21 in the workplace. Being underpaid for shifts and not
22 getting paid overtime when I worked more than 40
23 hours in a week. It was also clear to me that the
24 managers were determined to stop workers from talking
25 to one another about their rights.

1
2 One of the managers even said, Chipotle pays a
3 lot of taxes to the city to do whatever it wants to
4 the workers and no one cares what Chipotle does to
5 you or your co-workers. I was fired the day after I
6 called out sick due to back pain. The pain had
7 started on my previous shift. I tried to leave work
8 when the pain started but the managers wouldn't let
9 me leave. When I was fired, I told the manager that
10 it was wrong and that I had Paid Sick time and
11 Vacation time that I could have used. The manager
12 said, they didn't care, they had already fired me and
13 they didn't need any reason to fire me.

14 Before I lost my job, I was living in an
15 apartment and because of losing my job, I ended up
16 having to move into a shelter. I was also in the
17 process of trying to move out and find another
18 apartment.

19 After I was fired, I couldn't sign the paperwork
20 to move in. I have been looking for work since I was
21 fired and we're still living in a shelter. We need
22 these laws to pass. Fast food workers are afraid of
23 being fired and being unable to care for our families
24 and we're too afraid to take any time off.

2 Please support these bills and show us that New
3 York does care how companies treat their workers.
4 Thank you.

5 CHAIRPERSON MILLER: Thank you. Thank you all
6 for your important testimony and continue to tell
7 your story and know that this Council is supporting
8 your efforts. Thank you, I'm going to call out next
9 and final panel. Angelis Salas, Zubin Soleimany,
10 Shaun Richman.

11 Could you just push the red button there?

12 ANGELIS SALAS: Now you can hear me, okay, great.
13 Good afternoon Chair Miller and Members of the
14 Committee. My name is Angelis Salas[SP?], I'm the
15 Lead Organizer of the Workplace justice team at Make
16 the Road New York and we are in unwavering support of
17 a just cause legislation.

18 Make the Road New York builds the power of 23,000
19 working class and immigrant members across five
20 boroughs to achieve dignity and justice for workers,
21 tenants, immigrants, youth and more.

22 Every single day, immigrant workers come through
23 our doors with stories of exploitation, wage theft,
24 harassment, discrimination, injuries on the job and
25 unsafe conditions but also stories like the ones that

1
2 are being described today. Being let go over
3 arbitrary reasons that make no sense.

4 If you ask workers what holds them back from
5 speaking up, it is overwhelming the fear of being
6 fired. For many of our membership, this is
7 compounded by the fear that management can fire them,
8 cut hours and often use their immigration status to
9 threaten workers, especially those who do speak up.
10 Employers in the industry must do better, must be
11 held accountable and if there is a strong reaction
12 that to abate basic commitment to provide valid
13 reasons for termination, that should indicate to the
14 Council the urgency of why we all need just cause.

15 The fast food industry has enabled a culture of
16 fear and instability for thousands of its employees
17 because of the at-will model. It puts at risk
18 thousands of hard working people in our communities,
19 people working to put food on the table for their own
20 families.

21 One of those people is Guana[SP?], Guana was a
22 member leader in the fight for \$15 and I'll share her
23 story briefly on her behalf.

24 She worked the morning shift at McDonalds from
25 6:00 a.m. to 2:00 p.m. She picked up her daughter at

2 daycare by 3:00 p.m., dropped her off at her sisters
3 just to go back at work at a Wendy's for the
4 nightshift.

5 She would get back around 10:00 p.m. and crawl
6 into bed with her sleeping five year old, because
7 that was to her, according to her, the few moments of
8 the day that she had with her daughter.

9 She would often share stories of panick attacks
10 due to her managers verbal abuse of needing to walk
11 into the bathroom, lock the door, breath, splash
12 water on her face, because of the abusive conditions
13 on the job that not only her but her co-workers
14 faced. She talked often about feeling like she was
15 walking on eggshells at work and mind you, she had
16 been in fast food for over ten years.

17 She spoke often of the fear that any small
18 mistake could cost her a job. These conditions are
19 precisely the one's just cause will address.

20 Guana worked fast food jobs, two fast food jobs
21 because she had a daughter to support, a daughter who
22 needed to see her be strong. Her story is just one
23 of many in an industry that is majority staffed by
24 women, immigrants and people of color. Any failure
25 to enact just cause is a failure to support a

1
2 vulnerable workforce of primarily Black women, Brown
3 women, immigrants and people of color.

4 The New York City Council has an opportunity to
5 enact life changing legislation for 67,000 people and
6 their families and we're here to ensure it will
7 happen.

8 Thank you.

9 SHAUN RICHMAN: Hello, my name is Shaun Richman.
10 I am the Program Director of the Harry Van Arsdale
11 Junior School of Labor Studies at the State
12 University of New York.

13 Just cause is an employment standard, an
14 employment right across the industrialized world.
15 It's not just France but the idea that they can't
16 fire you for no reason or bad reason is found
17 throughout Africa, throughout Asia, it's enormously
18 common.

19 The at-will standard, the At-Will Law that the
20 industry was referring to, it's not a law that anyone
21 ever voted on. It was an invention of 19 Century
22 judges and arguably and I do make this argument, the
23 Constitution was amended twice to give people more
24 protections throughout society but judges have
25 disagreed.

1 Like much of our system of worker representation,
2 the general sort of acceptance of at-will is an
3 accident. When unions represented one in three
4 workers, nonunion firms tried to match union
5 standards in pay and benefit but also, they behaved
6 with a little bit of decency around terminations. 40
7 plus years into a sustained corporate assault on
8 unions with union density hovering around 10 percent,
9 employers are really acting with impunity now and
10 they manage through a routine of workplace
11 authoritarianism.
12

13 I've argued for a federal just cause law. I
14 think it needs to be an amendment to the Fair Labor
15 Standards Act. According to a survey by Data for
16 Progress and UGOV, 56 percent of voters agree. Only
17 30 percent of voters oppose the idea of a federal
18 right to your job. The rest I suspect think that it
19 already is the law because it seems reasonable enough
20 that it should be the law.

21 But it's clear, the bosses are relying on the
22 antimajoritarian parts of our federal government, the
23 senate, the electoral college to fort this popular
24 agenda. It is a saving grace for our democracy that
25 local governments like New York City are willing to

1
2 consider the protections that workers need and
3 congress will not consider.

4 We have plenty workplace protection laws as the
5 industry representative were saying. You know,
6 you're not supposed to be fired for your race, your
7 gender, your age or sexual orientation until the
8 Supreme Court comes after that one. The problem is
9 a. that there are special protections but b. the law
10 puts the onus on the employee to make a case that the
11 termination was fair. The employer just gets to make
12 the termination and of course it's worse when there
13 is no cause at all, which I understand in this
14 industry, you're generally not fired. You just don't
15 see yourself on the schedule next week, you don't see
16 yourself on the schedule the week after that and by
17 then, you probably had to go get another job because
18 who can live without a paycheck for two weeks?

19 What just cause requires of employers is not
20 onerous and I'll say that in a previous life, I was
21 an Organizing Director for the American Federation of
22 Teachers. I had a staff of 50 people around the
23 country, everybody covered by a collective bargaining
24 agreement. Very complex work requiring a tremendous
25 amount of discretion and judgment by the employees

1 and I was able to manage. It requires clear
2 communication, some counseling, some training and
3 some warnings, basic human decency.
4

5 And I would say, so, Van Arsdale is just a labor
6 study school. Sometimes labor studies is sort of put
7 in the management school, unfortunately for my
8 temperament, we're not in that case but I do have a
9 lot of respect for management as a science, far more
10 than most corporations do.

11 Human resources and management, they are academic
12 disciplines, they are professions, it's a field of
13 study and it needs to be taken seriously. So, even
14 though we're focused on making frontline fast food
15 jobs livable here, one happy side effect of this law
16 I think, would be to raise the standards for
17 supervisors. A manager of a McDonald's store is
18 really a branch manger of a global brand representing
19 a fortune 500 company. That should be a middle class
20 profession, which entails not just a reasonable
21 salary but also minimum standards of education and
22 support for training.

23 So, whatever gloss the industry puts on it, all I
24 hear is please don't make us invest in our people and
25 I say to you, please make them invest in their people

1
2 and if I may, there was a question that was asked a
3 couple panels ago that I'd like to respond to in
4 terms of are there other industry models of just
5 cause and arbitration? And I would say there are and
6 we don't have to travel very far geographically, we
7 might have to go a little bit back in time, but it's
8 actually the restaurant industry itself. Which was
9 once upon a time fully unionized. Not just the high
10 class restaurants, not just the restaurants and
11 hotels but also the fast food of it's day. The
12 cafeterias and automats. It all got organized in a
13 two year period, 1937-1938 after the industry had
14 spent 20 years fighting these union efforts a
15 tremendous number of strikes happened.

16 And what happened is, the industry made peace
17 with the fact that there was going to be a union.
18 The nations laws had changed, the states laws had
19 changed, you had a governor that was going to weigh
20 in on the workers behalf, you had a Mayor that was
21 going weigh in on the workers behalf and the industry
22 decided you know, that if it's going to happen, they
23 want it to happen in a way that improved their
24 business and they all developed an impartial Chairman
25 model of employment relations.

1 Which is where there is an arbitrator that both
2 parties agree. There's a term of office for that
3 person and it develops almost a sort of voluntary
4 court of not quite law, but a voluntary court,
5 because there's a shared understanding of what the
6 standards are for certain jobs. What the training
7 standards are, what the employment standards are,
8 what the sort of punishment standard should be and
9 before it even went to arbitration, there was always
10 a step of mediation. Of sort of, let's see your
11 case, let's see our case. How hard do you want to
12 fight this? How hard do we want to fight this?

14 This model still exists in the hotel industry and
15 it's very successful. I used to work for the Hotel
16 Trades Council and I think that at least 90 percent
17 of grievances actually wind up getting settled out.
18 It does require an employer making peace with the
19 fact that there is going to be a union and from the
20 industry panel, it didn't sound like they are there
21 yet.

22 ZUBIN SOLEIMANY: Good afternoon Chair Miller and
23 Committee Members, Council Member Lander. My name is
24 Zubin Soleimany, I'm a Staff Attorney with the New
25 York Taxi Workers Alliance. We're 21,000 members

1 strong union, yellow cab drivers, green cabs and
2 black cars. And the Taxi Worker's Alliance is really
3 proud today to stand with our brothers and sisters
4 working the fast food industry, with 32BJ and with
5 Fast Food Justice to support Intro's 1396 and 1415.

6
7 The goals of these bills to create the just cause
8 standard for termination, clear standards for
9 progressive employee discipline and clear written
10 explanations for terminations are essential to
11 economic security for fast food workers and for all
12 workers.

13 For the Taxi Workers Alliance and for at base
14 driver members, the struggle of fast food workers to
15 not only establish a right to decent wages but to
16 build upon those rights with real economic security
17 and job security is a really familiar one to us.

18 Like fast food workers, at base FHV drivers are
19 predominately immigrants or people of color. Working
20 at low wages but who both recently won laws or rules
21 that provide some \$15.00 hour standard of earnings,
22 whether in minimum wage or through the TLC of driver
23 minimum pay protections.

24 But for all these workers, those protections
25 whether passed by law or regulation, can't provide

1 economic stability when your boss whether it's
2 Chipotle or whether it's they can simply fire you for
3 a bad reason or for no reason at all or cut your full
4 time schedule in half overnight.
5

6 And driver's know too well this economic security
7 of unfettered arbitrary termination and schedule
8 reductions. So, I mean, we've had so many of our
9 member have been fired upon the mere allegation of
10 misconduct by an app base company with no meaningful
11 or impartial opportunity to contest the accusations
12 against them.

13 And like fast food workers, who so many of them
14 don't even get a reason for the explanation. In the
15 majority of cases, a lot of our members are fired by
16 Uber or Lyft and they ask, what is this about?

17 Please explain, so I can have a chance to explain to
18 you my side of the story. They want to tell them
19 what fair it relates to, even what day it happened
20 on.

21 It makes it a complete impossibility for the
22 driver to contest a fairness of these terminations.
23 There are whole categories of misconduct, where the
24 companies won't even allow the driver to make a case
25 even if they tell them what it is about. You know, a

1
2 common occurrence is we have Muslim driver who is a
3 member of ours, never had a drink in his life and is
4 accused of driving while intoxicated. And in those
5 cases, the companies won't even begin to let the
6 driver make their case.

7 You know, likewise, many of our member toil with
8 the irregular and uncertain schedules and in recent
9 months, the for-hire vehicle companies have tried to
10 dodge the purpose of the minimum driver payment rules
11 by forcibly logging off driver's from the apps when
12 they are working. Reducing their hours, reducing
13 their income and they will do this, typically the
14 idea is based on the number of trips the driver has
15 performed in a recent period and that puts the
16 drivers in the position of saying you know, one trip
17 back to Bangladesh to visit a dying family member or
18 one week out with the flu, puts you in a position
19 where you're eligible for full time work to suddenly
20 no longer being eligible for full time work.

21 Then putting you at risk to not be able to make a
22 car payment, losing your vehicle or at risk of
23 eviction.

24 It shouldn't be the case that in our city, people
25 who make some of the largest private companies in the

1
2 world function can simply be tossed aside without a
3 reason or any due process.

4 The Council has the opportunity to create
5 economic stability for fast food workers and if a
6 \$15.00 minimum wage offered them the promise of
7 decent income and a livable income for fast food
8 workers, these Intro's help secure that promise.

9 We urge you to pass these bills and we look
10 forward to seeing the Council take similar steps to
11 fulfill the promise of the minimum payment rules for
12 at-base driver's as well.

13 I also do just on the record, make one comment in
14 response to our friend from the business council who
15 spoke to the sort of unknown ability of the standard
16 for just cause. You know, we've represented our
17 members in unemployment hearings and have prevailed
18 against Uber in unemployment hearings on substantive
19 issues and also on the question of replaced data's
20 and so the idea that an employer in New York State
21 doesn't know what just cause is, is really curious to
22 me because although it won't get you your job back
23 when you apply, you can get unemployment benefits and
24 for 80 years, every employer in the state of New York

1
2 has had to contend with that threshold in order to
3 win an unemployment case.

4 So, they're all thoroughly familiar with this,
5 this is a well developed body of law and frankly I
6 think these Intro's will probably help them reduce
7 some of their liability and their bottom line because
8 in making sure that folks are providing a you know,
9 clear written determination for why somebody is being
10 employed and serving as a barrier to committing you
11 know bad cause terminations in the first place.
12 They're limiting their liability for increased
13 unemployment benefit payments.

14 So, win, win. Thank you.

15 CHAIRPERSON MILLER: Thank you so much. Thank
16 you so much to this panel for your testimony and that
17 is our final panel. Before we shut down, we're going
18 to hear final words from our Lead Sponsors of today's
19 legislation, Council Member Lander and Adams.
20 Council Member Lander.

21 COUNCIL MEMBER LANDER: So, I think that last
22 point Zubin was really interesting and I hadn't
23 thought about it in terms of the relationship to
24 unemployment filings and it's actually something I
25 think we can drill down a little more on and then Mr.

1
2 Chair, I just wanted to say, I enjoyed the dialogue
3 on both the last panel and this one about the dynamic
4 relation between municipal legislation to lift up
5 worker rights and support organizing and collective
6 bargaining and how we build a model that kind of
7 keeps lifting them both up but I think there was a
8 lot on this last panel and in your comments about how
9 we do that and look forward to continuing that
10 conversation hopefully through this legislation but
11 far beyond as well.

12 Thank you.

13 COUNCIL MEMBER ADAMS: I just want to thank
14 everybody that testified today who is still in the
15 room. Thank you, Mr. Chair. Thank you, my colleague
16 Brad Lander for the opportunity to be a part of this
17 legislation and just a foot note, I didn't get an
18 opportunity to say it to our management friends, but
19 to me, it is very, very disheartening to have leaders
20 dismissing employees and that is the flavor that I
21 got with that particular testimony. To me it seemed
22 like leadership was in effect dismissing the very
23 folks that enable them to be part of leadership.

24

25

2 So, I just wanted to put that on the table as
3 well. Thank you again for being here today. Thank
4 you, Mr. Chair.

5 CHAIRPERSON MILLER: Thank you so much Council
6 Member Adams and Lander for introducing this
7 thoughtful legislation. That once again really adds
8 to the legacy of this Committee and this Council in
9 uplifting the vibes of workers throughout the city
10 and it is transcendent and the focus has been often
11 times on fast food and low wage workers and I will
12 tell you that working families and workers throughout
13 the city, no matter what industry they are in have
14 been under siege and it has been our responsibility
15 to make sure that we continue to protect them as best
16 as possible. There is two pieces of legislation,
17 while they will go a long way in protecting the
18 rights of fast food workers, giving them the dignity
19 that they deserve and quite frankly just creating the
20 transparency that is absolutely necessary to
21 transform workers humanity and dignity.

22 While it is a minimum threshold, it is absolutely
23 necessary and I look forward to working with you on
24 passing this legislation.

1 With that, I want to thank everybody for coming
2 out. I want to thank workers for coming out and
3 telling their story and sometimes your voice is
4 necessary but it's also painful in telling that story
5 and in order for us to get where we need to be, we
6 need to hear from you as well. We need to hear from
7 all parties involved and just know that this
8 Committee is absolutely committed to making sure that
9 we get this right. That we protect the rights of
10 workers and do it in a way that we're not impeding on
11 businesses but they have to come to the table.

12 Alright, and so, I respect and I value all those
13 who give their time to come here in testimony today.

14 With that, this hearing is adjourned. [GAVEL]
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C E R T I F I C A T E

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



Date April 1, 2018