



# Worker Justice Center of New York

## 2024 Joint Legislative Budget Hearing Economic Development & Workforce Development January 30, 2024

My name is Emma Kreyche. I am the Director of Advocacy, Outreach & Education at the Worker Justice Center of New York. We are a non-profit legal services and advocacy organization that serves low-wage workers throughout a large portion of New York State, from Westchester up to the North Country and all the way out to Western NY. WJCN's mission is to pursue justice for those denied human rights with a focus on agricultural and other low-wage workers, through legal representation, community empowerment, and advocacy for institutional change. Each year, our organization serves thousands of our state's most vulnerable immigrant workers – people whose essential labor sustains our local economies, but who are too often left unprotected from exploitation and abuse. Every day, we encounter workers who are struggling to make ends meet, often working multiple jobs, with limited access to safety net resources and little recourse to address widespread labor law violations.

Today, I would like to discuss three critical measures that should be incorporated into the 2024-2025 state budget in the interest of worker protection.

- 1) **The Unemployment Bridge Program (Ramos S3192 Ramos / Reyes A4821)** which would provide unemployment protections to an estimated 750,000 workers who are currently excluded from traditional UI. The program covers freelancers, self-employed workers, undocumented workers, and certain cash economy workers, who earn under \$56K annually. UBP would also cover people released from prison or immigrant detention who often struggle to find a job post-release. The estimated cost for UBP is \$500 million (a capped appropriation), of which \$75 million will go towards the Department of Labor for administrative purposes and labor.

The current UI system doesn't reflect today's economic realities, where freelance workers make up an ever-greater part of the workforce, and it disproportionately locks out the most vulnerable workers in our economy - Black and brown low-income workers in precarious industries. While UBP legislation does not directly aim to reform the unemployment insurance system, its passage is a critical component of broader UI reform efforts.

There are numerous reasons why the legislature should push for UBP's inclusion in the budget.



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- **The UBP is a lifeline for the self-employed.** Freelancers are often denied or exempt from critical labor protections, but UBP would cover 180,000 thousand self-employed workers from the likes of street vendors to digital media artists, business consultants, farm owners, and more.
- **This is a public safety issue.** 20,000 workers re-entering the labor force after prison or detention would be covered during their first year post release. Providing recently incarcerated people access to UI is cost-effective. Recidivism can cost the state upwards of \$50,000 per person per incident; this fund would provide a maximum of \$7,200 per year in benefits (6 months times \$1,200) and would give everyone the security of knowing they could be covered if they needed it.
- **This is an immigrant justice issue.** Immigrant workers pay over \$100 million a year into the Unemployment Insurance system in New York - but cannot access a cent. Undocumented workers pay \$1.1 billion every year in New York state and local sales, property, and income taxes.
- **It protects workers in the informal sector.** For those in the shadows of the cash economy - domestic workers, nannies, and day laborers are often exploited in informal industries, and because they are paid in cash, there is no record of their wages to collect UI. Our program would provide critical support during joblessness for these workers.
- **This is a racial and economic justice issue.** The Immigration Research Initiative has found that 73% of the New Yorkers who would benefit from the Unemployment Bridge Program are non-white, compared to 27% who are white. Black and brown workers are disproportionately impacted by unemployment with for example Black unemployment rates typically running nearly twice as high as the rate for white.
- **Raises the overall working standards for all workers.** Investing in the safety net isn't just good for the workers who are directly impacted, it's good for all workers. With a safety net to fall back on, workers are more likely to stand up against abusive employers. We can hold bad employers accountable, making workplace conditions safer and better for everyone.
- **It's a good return on investment.** Investing in excluded workers also reaps benefits for NY's economy. The Immigration Research Initiative estimates upwards of millions to be re-invested right back into New York.
- **Out bill is revenue-neutral.** Last but not least, we're aware of the concerns about the massive deficit in the Unemployment Insurance Trust Fund that pays for NYS unemployment insurance, and we've often heard from legislators that the deficit needs to be restored before any action can be taken on expanding future UI programs. However, UBP has its own revenue stream through the Digital Ad Tax (S5551 Senator Gianaris / A5842 Walker) that is expected to raise up to \$750 million for NYS. This is a palatable tax that would collect a small



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portion of annual revenues of digital advertising services from companies with gross annual revenues of \$100 million from these services - leaving no burden on the state, small businesses, or individual taxpayers.

We urge the state legislature to invest in this critical social safety net program that prepares us for future crises, safeguards our communities, and sustains our economy. New York's excluded workers' ability to survive and put food on the table depends on it.

- 2) The **Upstate Parity & Minimum Wage Protection Act (Ramos S8154)** is crucial legislation would establish a statewide minimum wage of \$17 by 2026 and nullify off-ramp loopholes that deny workers a raise when the cost of living goes up. Last year, Governor Hochul and NYS leadership approved a disappointingly small increase to the minimum wage—\$17 downstate and \$16 upstate by 2026—and adopted annual cost-of-living adjustments thereafter. These increases fail to catch up with even half of the minimum wage's lost value as measured by the Consumer Price Index (CPI). As a result, New York's minimum wage will be [lower in inflation-adjusted dollars](#) in 2026 than it was in 2019. New York continues to lag behind [more than 20 state and local jurisdictions](#) that have adopted minimum wages of \$17 or higher. The 2023 package was well below what the vast majority of New Yorkers wanted – [more than two thirds of New Yorkers](#) in a 2023 public opinion poll said the workers need to earn at least \$20 an hour to live at a decent level. And even worse, the 2023 package included a harmful loophole in the form of an "off-ramp" provision that suspends inflation adjustments any year that unemployment ticks up. With this provision, workers' wages will fall further behind the cost of living and deny working families a living wage.

Under the 2023 package, starting in 2027, **New York's minimum wage would automatically freeze if unemployment slightly ticks up or employment slightly drops.** These conditions occur with enough frequency to have been observed [25% of the time](#) over the last 23 years, and we should be wary of these circumstances reoccurring soon. The United States currently has a historically tight labor market, where there are more job openings than unemployed workers. A modest increase in the unemployment rate could still reflect an otherwise healthy economy; in fact, the unemployment rate can sometimes rise for good reasons if strong job opportunities encourage previously discouraged or disinterested workers into the labor market. Yet the enacted off-ramp would still automatically stop any increases in the minimum wage even in such circumstances.

The practical implications of an off-ramp would be devastating for New Yorkers at the bottom of the wage distribution. [According to estimates](#) from the Economic Policy Institute (EPI) and the National Employment Law Project (NELP), if the off-ramp provision was triggered in 2027, 1.45 million low-wage New York workers would lose out on a wage increase. In total, the off-ramp would cost these workers \$609 million (in 2022 dollars) in earnings.



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In addition, there is no economic evidence supporting the claim that continuing to raise the minimum wage during economic downturns would hurt hiring—the purported rationale for this loophole. Instead, [all of the economic evidence, including multiple studies of New York's \\$15 minimum wage](#), shows that raising the minimum wage does not hurt hiring or employment levels, including during economic downturns. Raising the minimum wage is actually an excellent way to boost the economy because it increases consumer spending. Minimum wage raises go into the pockets of people who are most likely to need to spend it.

In addition to being economically unsound, this off-ramp loophole is unique among the 19 states and scores of localities that index their minimum wages to rise with the cost of living. The few states that proposed off-ramp language have either repealed it completely or are in the [process](#), making New York a conservative outlier.

Beyond the loophole and the insufficient raise to \$17 downstate, the 2023 minimum wage package fails to increase the wage to \$17 statewide, raising the upstate minimum wage to just \$16 an hour by 2026. This disparity ignores the reality that many upstate regions, such as the Hudson Valley, have experienced skyrocketing housing and living costs that are comparable to those in parts of downstate. The living wage in Governor Hochul's hometown of [Buffalo is already more than \\$16](#); statewide, it's already over \$21. By 2026, a \$16 minimum wage will be even more inadequate.

We cannot leave upstate behind. New York should therefore eliminate the lower upstate wage and instead ensure that New York has, at minimum, a statewide minimum wage of \$17 by 2026. While the passage of the 2023 minimum wage law was an important milestone, much more needs to be done to restore the wage floor for New Yorkers, including raising the minimum wage higher than \$17 per hour. But as a first step, these poorly designed provisions in the 2023 minimum wage package that do not bring upstate to match downstate's minimum wage and may block increases in future years must be fixed.

- 3) The **EmPIRE Worker Protection Act (Hoylman S541 / Joyner A1893)** expands the capacity of the state in to remedy wage theft, equal pay violations and other employee exploitation undermining recent New York labor policy accomplishments. In the past several years, New York has taken the lead in worker protections, including increases to the minimum wage, paid family leave, and protections against gender-based pay discrimination. Constraints on enforcement, however, have blocked many working families from experiencing the real benefits of these policies. Through our work, we see that employers bet on the state having inadequate enforcement capacity; they steal wages from their workers and allow toxic workplaces to fester with the expectation that it is unlikely they will be caught. Our labor laws are rendered meaningless when workers do not have a reasonable expectation that employers who violate the law will be held accountable.



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The EmPIRE Worker Protection Act creates a public enforcement action allowing affected workers and labor unions to expand the reach of the DOL and Attorney General, and following a notification process to the state, sue to enforce state labor law. The action, when victorious, allows for recovery of penalties that the Commissioner of Labor could recover, most of which returns to the state coffers to enable further public worker protection enforcement, and a portion of which is awarded to the workers who brought the action. The EmPIRE Act is common-sense legislation which will expand resources available for public enforcement and meet the needs of workers suffering from New York's labor law enforcement crisis.

New York's Workplace Law Enforcement Crisis: Effective enforcement of labor law has historically depended on a combination of public enforcement by the New York Department of Labor and private enforcement by harmed individuals bringing private lawsuits. Limits on government resources mean that labor violations subject to enforcement inevitably outstrip public enforcement capacity. Private litigation supplements public enforcement, penalizing violations that public regulators are unable to prosecute due to issues such as resource constraints or insufficient knowledge of violations.

However, a crisis of enforcement has emerged over recent decades. On the public side, capacity constraints have exacerbated as caseloads have risen and staffing levels declined. Meanwhile, on the private litigation side, fear of retaliation and other hurdles have posed obstacles to workers trying to address violations of their rights. The EmPIRE Act expands the states' enforcement power and grows revenue, without burdening public servants.

The EmPIRE Solution: The EmPIRE Act strengthens our labor laws. Claims brought under EmPIRE are public in nature. The people or labor organizations filing claim(s) do so on behalf of the state government, not in the name of any private party.

EmPIRE encourages robust enforcement of state labor law by awarding those who enforce civil penalties a share of those penalties. Where the state chooses not to intervene, relators (i.e., those filing EmPIRE claims) who succeed are awarded 40% of all civil penalties they enforce. The remaining 60% is distributed to the state Department of Labor to fund public enforcement efforts. This incentivizes more workers to play an active role in labor law enforcement and, in so doing, generate revenue for the state Department of Labor. Prevailing relators would also be able to win injunctive and declaratory relief that brings lawbreaking employers into compliance with the Labor Law, as well as reasonable attorney's fees and costs for bringing the EmPIRE action.

This legislation would significantly increase the state's capacity to enforce labor standards and critical workers' rights protections. By passing EmPIRE, New York could



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reaffirm its position as a leader in workers' rights protection and make the promise of the minimum wage law and Equal Pay Act real for New York workers.

Before closing, I would like to address a major concern about a provision contained within the Governor's budget proposal which aims to limit liquidated damages for violations of the labor law relating to the required frequency of pay for manual laborers. This one hits especially close to home because virtually of the clients represented by WJCNY's are manual laborers. Eliminating liquidated damages for pay frequency violations means that employers would face no penalty for failures to comply. Without an enforceable requirement to pay weekly, employers can pay when they choose, leaving payment unpredictable for low-wage workers who live paycheck-to-paycheck. I cannot overstate how is awful for low-wage workers. We have countless examples of workers getting strung along by employers, being paid piecemeal at random intervals. Financial stress and chaos invariably ensue. Weekly pay requirements are critical to reducing instances of workers going without pay at all. The Freelance Isn't Free Act, which was signed in November 2023, provides double damages for independent contractors when they are paid late. The proposed language would eliminate for manual workers a protection the Governor just made a state-wide for independent contractors.

Hourly workers are frequently underpaid due to inaccurate timekeeping policies or time-shaving. Those claims are difficult to enforce through class and collective actions. The same workers are also protected by weekly pay. The ability to pursue damages for both late pay and off-the-clock work serves the goals of compensating them fully for their work and deterring employers from underpayment and late payment. The Worker Justice Center emphatically opposes limiting liquidated damages for pay frequency violations, as the Governor has proposed.

Thank you for your time and attention.



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