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New York State Joint Legislative Budget Hearing on Economic Development
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Thank you very much Senator Krueger, Assemblymember Weinstein, Senator Ryan, Assemblymember Stirpe, members of the Senate and Assembly, and legislative staff, for allowing NFIB to testify today.

NFIB is a member-driven organization representing close to 300,000 small businesses across the country and more than 11,000 across New York State.

NFIB members are the businesses that define our neighborhoods and strengthen our communities with character and value: local hardware stores, independent restaurants, florists, barbers, small retailers, dry cleaners, convenience stores, farmers, roofers, landscapers, mechanics, and fitness and retail boutiques. These are NFIB members.

There are close to 500,000 small businesses with employees in New York. These businesses employ 40 percent of the state's private-sector workforce, over 3 million New Yorkers, and their production accounts for nearly half of the state's GDP. A strong, vibrant small business eco-system supports local tax bases, governments, and schools. Sixty-seven cents of every dollar spent at a local small business is reinvested into the community.

Small businesses are local job creators and the bedrock of the state and regional economies. Neighborhood employers continue to face significant financial challenges, including inflation, elevated gas and energy prices, the highest possible state Unemployment Insurance taxes, and an exodus of workers from the labor force.

In NFIB's latest Small Business Economic Trends report, 23 percent of small business owners report inflation as their single most important problem, and 40 percent of small business owners report job openings that could not be filled. The labor shortage continues to drive wages even higher with 36 percent of small business owners reporting that they raised compensation, and 29 percent plan to raise compensation in the next 3 months. Additionally, 25% of small business owners continue to report raising average selling prices[1]. The ongoing pressures of inflation and labor shortages have left small business owners very pessimistic about economic prospects in 2024.

While small businesses continue to battle unparalleled and unique challenges in this post-pandemic economy, substantial challenges existed before the pandemic. In NFIB's 2020 Problems and Priorities report, New York small business owners ranked 75 potential business problems, with the top ten problems relating to taxes, regulations, and the cost of insurance. New York's small business owners identified property taxes as the second most burdensome problem, followed by state business income taxes as the third most burdensome problem – both higher than the national average.[2] Other critical problems higher than the national average include, the cost and availability of liability insurance (7th), workers' compensation (11th), government regulations (4th), and state/local paperwork (8th). Running a business in New York State is extremely difficult and unnecessarily costly.

Unfortunately, post-pandemic financial challenges and New York's difficult business environment have taken a toll on the small business eco-system and New York's economy at large. According to Empire State Development, since 2018, New York State has lost more than 17,000 small businesses[3]. This is an ongoing year-over-year trend that demands attention and action. New York has an opportunity to stop the closure of thousands of small businesses, stem the tide of out migration of New Yorkers, and get the state's economy back on track. This begins by rethinking "economic development" and creating an environment where small businesses are not hanging on by a thread, but instead are prospering and growing.

Supporting pro-small business priorities as proposed in Governor Hochul's Fiscal Year 2025 Executive Budget, addressing the state's outstanding Unemployment Insurance debt, and overhauling the state's poor economic development strategy, is the best way to spur economic growth in communities across our state.

First, it is time to finally close the chapter on pandemic-era policies intended to be temporary but have dragged on and are unnecessarily driving up the cost of operating a

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[1] NFIB Research Center, Small Business Economic Trends, Dec. 2023. SBET-Dec-2023.pdf (windows.net).
[2] NFIB Research Center, 2020 Small Business Problems & Priorities, https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf
[3] New York State Empire State Development, Annual Report on the State of Small Businesses, 2023. 2023-Annual-Report-on-the-State-of-Small-Businesses.pdf (ny.gov)

small business. New York is the only state in the nation that still requires employers to provide paid COVID-specific leave. While other states have phased out COVID sick leave laws, New York's law will remain in perpetuity because the statute does not include a sunset provision. S.8306/A.8806, Part M, would sunset the state's COVID sick leave law as of July 31, 2024, and should be included and enacted in the state's final spending plan.

It is prudent to phase out this law as the federal COVID-19 state of emergency has concluded and the state has already phased out other COVID-related laws and regulations, including the state's paid vaccination leave requirements. Furthermore, quarantine and isolation requirements have changed drastically since 2020, and contrast with what is prescribed in statute. The ever-changing guidance related to COVID has created confusion for small businesses and their employees and promises to only become murkier as individual states create their own COVID recommendations and guidance. States have recently shifted away from CDC guidance and no longer expect specific periods of isolation. In Oregon and California, the health departments allow people with symptoms to return to school or work once symptoms have improved, and they have been fever-free for at least 24 hours. These changes are further evidence for New York to abandon its outdated and rigid COVID sick leave law. With the pandemic behind us, readily available and effective vaccines, and COVID treatments, it is necessary to take action to end COVID paid leave requirements, especially since employees have access to regular paid sick and safe leave, required by New York State law, and can use those days should they need them to recover from COVID or any other ailment.

Second, New York must thwart the surge of devastating lawsuits related to frequency of pay violations, which is putting businesses, large and small, at risk of closure. Hundreds of businesses, including small businesses, have been swept into lawsuits for paying manual workers bi-weekly or semi-monthly instead of weekly. Under Labor Law §191, employers are required to pay "manual" workers on a weekly basis, an archaic statute that ambiguously defines manual worker as a "mechanic, workingman or laborer." The New York State Dept. of Labor interprets this broadly to include "individuals who spend more than 25% of working time engaged in 'physical labor'." These outdated and poorly defined terms have left many employers confused about who qualifies as a manual worker, and thus, the frequency of pay requirements. Nonetheless, when manual employees are not paid weekly, Labor Law §191 expressly holds employers accountable through New York State Dept. of Labor enforcement and the issuance of penalties. Unjustly, this appropriate enforcement mechanism has been overrun by plaintiff's lawyers resulting in a large number of businesses, including small businesses, being sued for millions of dollars.

These staggering lawsuits are the result of a 2019 court case, *Vega v. CM & Associates Construction Management, LLC*, which held that payment of wages to "manual" workers other than weekly gave rise to an employee private right of action generally equal to 50 percent of manual worker wages for 6 years (the statute of limitation), plus interest and attorneys' fees. These excessive amounts can be claimed even though the employees were paid all of the wages owed to them. S.8306/A.8806, Part K seeks to remedy this situation and prevent businesses from further harm by clarifying that the Labor Law does not entitle a plaintiff to liquidated damages if they were paid at least semi-monthly. To be clear, the Governor's proposal does not limit an employee's ability to file private wage claims or frequency of pay complaints with the Labor Department, it simply stops the multi-million-dollar lawsuits that are putting small businesses out of business and killing jobs.

The Governor's proposal to clarify the language is also in line with a recent decision, *Grant v. Global Aircraft Dispatch*, from the Appellate Division, Second Department. In that case, the court disagreed with the reasoning of *Vega* and sided with employers and NFIB. The decision states that "the plain language of Labor Law § 198(1-a) supports the conclusion that this statute is addressed to nonpayment and underpayment of wages, as distinct from the frequency of payment *(see Gutierrez v Bactolac Pharm., Inc.*, 210 AD3d 746, 747), and we do not agree that payment of full wages on the regular biweekly payday constitutes nonpayment or underpayment." While some may argue that the Governor's proposed language is unnecessary due to the *Grant* case, this decision will undoubtedly be challenged, which means any pending litigation and future litigation will remain ongoing. Too much time has passed without a resolution and small businesses should not continue to be extorted by plaintiffs' attorneys simply because they paid their manual workers bi-weekly instead of weekly. These damaging lawsuits are overly punitive and unreasonable and must come to an end if the state is serious about creating a robust and thriving economy.

Third, the Fiscal Year 2025 Executive Budget proposal fails to tackle the state's $7.3 billion Unemployment Insurance (UI) debt which is saddling small businesses with unnecessarily high taxes and dragging down the state's economy.

Applications for unemployment benefits surged when non-essential businesses were shut down by New York State due to the pandemic. The UI system quickly became overwhelmed by the unparalleled spike in claims and extraordinary amounts of money poured out of New York's UI Trust Fund, fully depleting it. To continue to satisfy claims, New York borrowed funds from the federal government. New York, California, and Connecticut are now the only states with outstanding federal UI advances, but unlike nearly three dozen other states, New York has not used any of the billions in federal COVID relief to help pay off its UI advance. The outstanding pandemic-related federal UI advance has led to the highest possible state UI taxes, an Interest Assessment Surcharge (IAS), and increased federal UI taxes for New York businesses.

In July 2023, businesses were notified that they would, again, take on the state's interest debt payment in the form of an annual IAS of $21.60 per employee. Businesses will continue to pay the IAS until the interest and the multibillion-dollar debt has been satisfied. Employers in New York also continue to face a Federal Unemployment Tax Act (FUTA) tax offset credit reduction resulting in a FUTA tax increase of $84 per employee. This is in addition to the highest possible UI tax rates, which average an extra $250 per employee per year. For many employers, UI costs have risen by thousands of dollars each year over pre-pandemic levels. These substantial added costs are shouldered solely by businesses across New York, even though state public policy positions led to this crisis.

At the very least, New York State should allocate $150 million to pay the interest on the debt for calendar year 2024, which would provide modest relief for businesses, while also acknowledging that the state has a responsibility to assist in this crisis. For years, businesses have been repaying the federal government without any assistance from the state, but businesses cannot, and should not, be required to bear the burden alone. We must do more as a State to aid in this crisis, our long-term economic recovery depends on bold action and restoring the solvency of the state's UI Trust Fund.

Lastly, the state must rethink its economic development strategy and acknowledge our abysmal track record. New York State, county, and local governments spend more than $9 billion each year on economic development that often does not directly benefit Main Street or native businesses. As an example, the film production tax credit is now over $700 million annually, a massive sum, that goes into the pockets of Hollywood film production companies, rather than small businesses right here in our neighborhoods. New York has poured billions into certain industries, sectors, or regions with little transparency or oversight. Programs, such as START-UP NY, have failed. Investigative reporting, research, and audits have shown that projects, such as the $750 million state-built and -equipped factory for SolarCity, the $14 million Central New York Film Hub, and most recently the $100 million microchip factory in a Syracuse suburb, have not generated the jobs or tax revenue promised. The effectiveness of these initiatives has and should be subject to scrutiny and forensic examination.

Moving forward, the State must ensure that the money invested in economic development each year is benefiting local, independent businesses. Many existing economic development programs available through New York State are not geared towards the small businesses that already occupy our Main Streets. Tax credits, such as the Life Sciences Research and Development Tax Credit Program, the Commercial Tax Credit Program, or the Excelsior Jobs Program, are specific to life sciences companies, scientific research and development firms, production companies, software development, or businesses with more than 100 employees. Most economic development programs available to small, family-owned, independent businesses are loan programs, which are useful to finance growth or expansion, but do not offer the same benefits or advantages as tax credits, grants, or tax-free incentives.

To be clear, NFIB does not suggest the complete elimination of economic development incentive programs, nor does it suggest that state-based incentives be solely judged by job creation. Successful economic development initiatives can also protect existing jobs and businesses, maintain vibrant communities and Main Streets, invest in critical infrastructure such as broadband, and address blight, but there is no doubt New York State's existing economic development strategy needs significant improvement. There must be a shift in the state's priorities that no longer subsidizes big businesses and industries at the expense of small businesses. Out-of-state transplants should not be favored with taxpayer incentives to compete with homegrown, local employers. Any business owner will tell you it is far more cost-effective to keep an existing customer than it is to attract new ones. New York State's economic development policy should reflect this simple truth: creating an environment that invites investment, growth, and the sustained prosperity of existing employers will always provide more economic and social benefits than spending millions of dollars to attract new ones.

Generating a thriving economy does not require billions in subsidies and headline-grabbing projects, but instead relies on creating a better business environment with lower taxes, fewer regulations, and more affordable insurance. The Governor's proposals to sunset COVID sick leave and address the outrageous frequency of pay lawsuits is a small first step in achieving those goals and must be included in a final state budget. Tackling burdensome UI taxes and reforming economic development tax incentives and grants should also be included in a final spending plan and would be a step in the right direction to create an economy that supports small businesses. A prosperous state is only possible if Main Street is alive and well. This will require improving New York's overall business climate, disciplined and deliberate economic policy, transparency, accountability, eliminating waste, and abandoning picking winners and losers.

NFIB thanks you for the time and consideration and looks forward to working together to create an environment that helps small businesses thrive, for the betterment of their employees, local communities, the economy, and all New Yorkers.