

**Written Testimony of  
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**Joint Legislative Budget Hearing on Labor/Workforce Development**

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My name is Francisco Diez, and I am a Senior Policy Strategist at Popular Democracy in Action. Popular Democracy in Action is a network of high-impact base-building organizations that work to create equity, opportunity, and a dynamic democracy. I am testifying because worker protection bills should be included in the budget. In particular, the EmPIRE Worker Protection Act (Hoylman-Sigal, S448/Simon, A4278) needs to be included in the budget as a revenue raiser that would eventually contribute \$103.6 million annually to the DOL's budget.<sup>1</sup> These revenues can be used to fund staff salaries, hire new staff, improve retention of existing staff, and much more.

In recent years, our network has been deeply engaged in campaigns to win new workplace protection standards: increases to the minimum wage, reforming and expanding unemployment benefits, paid sick and family leave, and protections against volatile and unpredictable work schedules. These victories deliver real benefits to low-wage workers and their families. Yet under-enforcement risks rendering many of these legal rights – along with many well-established protections – hollow.

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 workers and their families from experiencing the real benefits of these policies. Recent improvements like the increase in the minimum wage will continue to face these obstacles unless public labor law enforcement is expanded. Specifically, the agencies and public servants who are the first line of defense of our labor rights in New York need more resources to have their pay increased, retention improved, and staffing augmented.

Through our work, we have seen that too many employers bet on the state's limited enforcement capacity; they steal wages and benefits (an estimated \$3 billion annually<sup>2</sup>)

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<sup>1</sup> Evan Karl, Center for Popular Democracy, Making Rights Real: How the Whistleblower Enforcement Model Can Address the Crisis in Labor Rights Enforcement (November 2023), <https://www.populardemocracy.org/news/publications/whistleblower-revenues-report-2023>.

<sup>2</sup> Center for Popular Democracy, By a Thousand Cuts: The Complex Face of Wage Theft in New York, November 2016, <https://populardemocracy.org/sites/default/files/WageTheft%2011162015%20Web.pdf>.

from their workers and allow toxic workplaces to fester with the expectation that it is unlikely they will be caught. A recent *ProPublica* and *Documented* investigation found that from 2017 to 2021, “more than \$203 million in wages had been stolen from about 127,000 workers” between 13,000 cases of wage theft in the state of New York alone, with the total amount stolen from working people “almost certainly a significant undercount.” The analysis also found that \$79 million in back wages owed to victims of wage theft in New York – or *63 percent of stolen wages* – had yet to be collected, pointing to chronic understaffing at the NYS Department of Labor among other causes. Our labor laws are made hollow when workers do not have a reasonable expectation that employers who violate the law will be held accountable.

The EmPIRE Worker Protection Act extends the reach of the Department of Labor and the Attorney General by establishing a public enforcement action – similar to the long-established *qui tam* action – allowing affected workers and labor unions to step into the shoes of the state, 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 Worker Protection 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 Current Enforcement Crisis**

Effective enforcement of labor law has historically depended on a combination of public enforcement by the New York Department of Labor and the Attorney General and private enforcement by harmed individuals bringing private lawsuits. Insufficient government resources mean that labor violations subject to enforcement will 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, under-resourcing and resulting capacity constraints - insufficient pay, high turnover, and - have exacerbated as caseloads have risen and staffing levels declined. In 1966, the DOL had over 300 labor inspectors. As of the end of 2017, the DOL had 115 investigative officers handling 16,400 open cases.<sup>3</sup>

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<sup>3</sup> Make the Road NY, Center for Popular Democracy, *Coming Up Short: The State of Wage Theft Enforcement in New York* (2017),

Meanwhile, on the private litigation side, fear of retaliation and other hurdles have posed obstacles to workers trying to address violations of their rights. In a more recent study by the Raise the Floor Alliance and the National Economic and Social Rights Initiative, 61% of workers who made a complaint to their employer faced retaliation, as did 80% of workers who made a complaint to a government agency and 89% of those who took group action to challenge employer practices.<sup>4</sup>

This risk of retaliation is even higher for immigrant and organizing workers, particularly given the current climate. The Trump administration is conducting high-profile workplace raids. The administration has also increasingly deployed ICE agents to make arrests across locations once considered off-limits—making undocumented and documented workers fear that bringing a civil action that requires them to appear at court could lead to arrest and deportation. Fear of immigration-related retaliation has only grown, as racist attacks on immigrants continue to reverberate in national media.

While New York has strong anti-retaliation laws and recently expanded them to include new protections against immigration-related retaliation, a NELP 2019 study found that such strong anti-retaliation laws “remain under-utilized by low-wage workers” and are still “difficult and time-consuming to enforce.”<sup>5</sup> While these laws “can address retaliation after the fact,” “they continue to expose workers to immediate financial and emotional consequences that dissuade workers from holding employers accountable.”

It is particularly scary for workers to come forward as named plaintiffs in employment law claims. Making matters worse, most courts do not allow workers to proceed anonymously (i.e., under a pseudonym) in wage theft cases, absent concrete evidence that they face much greater retaliation than the typical plaintiff.<sup>6</sup> Because the typical plaintiff in employment law cases faces such a high risk of retaliation already, meeting this extra hurdle is difficult.

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[https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short\\_-The-State-of-Wage-Theft-Enforcement-in-NY-4\\_8\\_19.pdf](https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short_-The-State-of-Wage-Theft-Enforcement-in-NY-4_8_19.pdf)

<sup>4</sup> See Raise the Floor Alliance & National Economic & Social Rights Initiative, *Challenging the Business of Fear* 13 (2016), <https://www.raisetheflooralliance.org/report>.

<sup>5</sup> See Laura Huizar, National Employment Law Project, *Exposing Wage Theft Without Fear* 21 (2019), <https://www.nelp.org/wp-content/uploads/Retal-Report-6-26-19.pdf>.

<sup>6</sup> See, e.g., *Agerbrink v. Model Service LLC*, No. 14 Civ. 7841 (JPO)(JCF), 2016 WL 406385, at \*10 (S.D.N.Y. Feb. 2, 2016) (“[C]ommonplace concerns over termination or blacklisting will not ordinarily justify anonymity unless the victim would suffer exceptional repercussions . . . . The plaintiff’s worries of ‘termination and blacklisting’ do not rise to the level of extraordinary consequences meriting anonymity.”); *Doe I v. Four Bros. Pizza, Inc.*, No. 13 CV 1505 (VB), 2013 WL 6083414, at \*10 (S.D.N.Y. Nov. 19, 2013) (denying motion to proceed anonymously despite workers’ evidence that Defendants had “repeatedly threatened to ‘call the police or immigration on any one of their employees’ and have, in fact, followed through on those threats in certain instances.”).

EmPIRE levels the playing field between unscrupulous corporations and law-abiding businesses, and between employers and workers. When law-breaking corporations bet on lack of enforcement of NY's labor law, it creates unfair market competition that undermines law-abiding employers.

The EmPIRE Act expands the states' enforcement power and grows revenue, without burdening public servants.

### **How the EmPIRE Act Expands Public Enforcement and Raises Revenue**

New York can act to address the state's lack of public enforcement capacity by passing the EmPIRE Act (S448/A4278) in the 2025 Budget. The EmPIRE Act would allow workers and labor organizations to expand the reach of the state and seek civil penalties, declaratory, and injunctive relief to address wage & hour violations, health & safety violations, and retaliation violations of the Labor Law.

Claims brought under the EmPIRE are public in nature. The people or labor organizations filing claims do so on behalf of the state government, not in the name of any private party. The state remains in control throughout the process.

Under the act, workers whose rights have been violated (called "relators") first give notice of violations to the Department of Labor and the state attorney general. Either agency can then step in to investigate the claims. They can also take over the case at any time. If the agencies cannot prosecute, the relator can move forward with a lawsuit to collect penalties on behalf of the state and all affected workers. Whistleblowers who fear retaliation can authorize a union to represent them. If a judge finds that the employer broke the law and imposes a penalty, most of the penalty revenues generated go to the agency, buttressing its enforcement capabilities against these very violations, with a portion (40% if the relator takes the case; 30% if the state takes over) going to the whistleblower and the other workers affected by the violation(s). The remaining 60% or 70% goes to the state Department of Labor to fund public enforcement efforts.

Since relators must notify the Department of Labor and state attorney general of their claims, *EmPIRE* will bring a wider scope of potential labor law violations to the state's attention. The result is a better-funded, better-informed public enforcement apparatus; the resulting penalties and increased scrutiny and enforcement create a virtuous cycle that bolsters the reach of public enforcement of labor law.

EmPIRE will help all workers, but especially low-wage, non-union, and immigrant workers, as well as workers of color. These workers tend to see the most violations of their rights and the most instances of wage theft, while facing the most barriers in fighting back through the legal system. If a worker feels particularly vulnerable, EmPIRE gives them the option of staying anonymous and having a labor organization listed as the plaintiff in the claim.

The EmPIRE Act does not create any new requirements for employers. It expands public enforcement of labor laws already on the books here in New York.

The Act specifies that civil penalties recovered for the Department of Labor are “to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.” These funds should be used to improve pay and working conditions of the public servants leading direct public enforcement efforts at the Department of Labor.

Right now, the state leaves millions of dollars on the table in penalties against law-breaking employers. These penalties have already been authorized by New York statutes to deter companies from breaking the law, but the state rarely collects them to the full extent permitted by law. And more importantly, the DOL simply does not have the resources to enforce the Labor Law in every single workplace, and it never will even if the agency’s funding is temporarily increased in this budget, or any given budget.

The similar Private Attorney General’s Act (PAGA) in California has generated an average of \$98 million per year from FY 2016 to 2022. In FY 2022, it generated \$209 million. Those revenues have led to important expansions in public enforcement staff.<sup>7</sup> In those same years, California labor standards enforcement civil staffing has increased at a pace faster than the growth of the California workforce, in significant part directly thanks to the funding provided by PAGA.<sup>8</sup> California also has one of the best ratios of labor standards enforcement staff to workforce size of any state in the country: 31,644

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<sup>7</sup> Rachel Deutsch, Rey Fuentes, Tia Koonse, California’s Hero Labor Law: The Private Attorneys General Act Fights Wage Theft and Recovers Millions from Lawbreaking Corporations. (2020) Center for Popular Democracy, UCLA Labor Center, and Partnership for Working Families.

[https://www.populardemocracy.org/sites/default/files/PAGA%20Report\\_WEB.pdf](https://www.populardemocracy.org/sites/default/files/PAGA%20Report_WEB.pdf)

<sup>8</sup> Budget Change proposals from FYs 2016, 2019, 2020, 2021, 2022, and 2023 show that LWDF funds were used for about 80 FTE outside of the regular budget process:

[https://esd.dof.ca.gov/Documents/bcp/1617/FY1617\\_ORG7350\\_BCP474.pdf](https://esd.dof.ca.gov/Documents/bcp/1617/FY1617_ORG7350_BCP474.pdf)

[https://esd.dof.ca.gov/Documents/bcp/1920/FY1920\\_ORG7350\\_BCP3230.pdf](https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP3230.pdf)

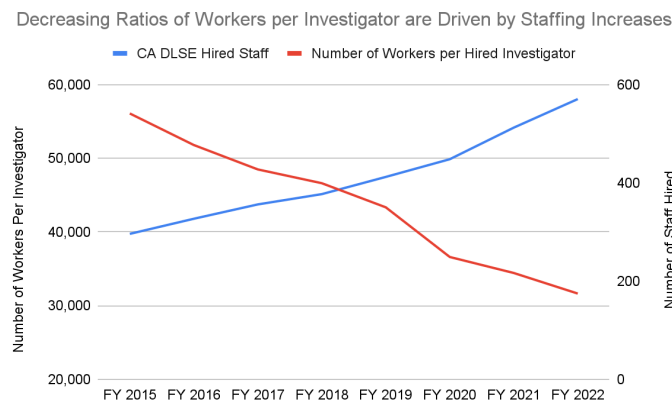
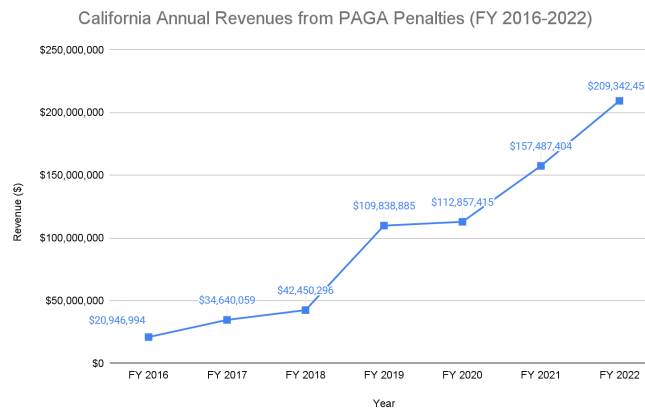
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[https://esd.dof.ca.gov/Documents/bcp/2122/FY2122\\_ORG0559\\_BCP4413.pdf](https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG0559_BCP4413.pdf)

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[https://esd.dof.ca.gov/Documents/bcp/2324/FY2324\\_ORG7350\\_BCP6630.pdf](https://esd.dof.ca.gov/Documents/bcp/2324/FY2324_ORG7350_BCP6630.pdf)

workers per staff. By contrast, New York's ratio is 72,883 per labor standards enforcement staff.<sup>9</sup>



In November 2023, we published a report and estimated that the EmPIRE Act would generate close to \$103.6 million per year once attorneys and labor organizations have become familiar with this new mechanism. These results were reviewed by experts in and analysts of worker rights enforcement including experts at the Economic Policy Institute.

Because the revenues generated for DOL must be continuously appropriated to supplement and not supplant the funding of the agency for enforcement of the Labor Law, a permanent revenue stream for DOL's enforcement efforts would be created and protected.

<sup>9</sup> Evan Karl, Center for Popular Democracy, Making Rights Real: How the Whistleblower Enforcement Model Can Address the Crisis in Labor Rights Enforcement (November 2023), <https://www.populardemocracy.org/news/publications/whistleblower-revenues-report-2023>.

## **EmPIRE protects Worker Organizing at the State Level: Fighting Back Against the National War on Workers' Rights**

With Trump in the White House, unions and those who support unions are bracing for a renewed assault on workers rights. From gutting collective bargaining to rolling back workplace protections, the federal agenda is set to weaken the very foundations of our unions. In this new political climate, ensuring enforcement basic protections in New York is critical to defend workers, unions, and fight back against these national attacks.

New York can lead by example, showing that strong unions create thriving neighborhoods and local economies. Pro-worker legislation like the EmPIRE Act and other anti-wage-theft bills give unions the tools to make real the promise of the NY Labor Code laws, ensuring workers get what they're owed and bad employers face consequences.

It is critical that the Legislature pass a budget that includes the EmPIRE Worker Protection Act – to make workers' rights more real, expand public enforcement, and create a dedicated revenue stream for future public enforcement efforts for years to come.

### **Regarding Limiting Liquidated Damages for Delayed Payment to Workers**

Popular Democracy in Action also strongly opposes ELFA Article VII. Part U – Liquidated Damages for Delayed Payment to Workers, which would deprive manual workers of liquidated damages as a remedy against employers who violate NYLL Section 191(1)(a) by paying failing to pay them timely, on a weekly basis.

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. By eliminating liquidated damages and replacing them with “lost interest,” which in reality will be minuscule, the proposal eliminates any meaningful incentive for employers to comply with the weekly pay requirement. The current liquidated damages available, by contrast, adequately compensate workers for the harms that flow from having your wages paid late—such as the stress and turmoil that come with falling behind on your bills and being unable to cover unexpected medical costs— that are often difficult to quantify and measure. In addition, as we have seen firsthand in our experience enforcing the Labor Law, manual workers are frequently underpaid due to inaccurate timekeeping policies or time-shaving. Those violations are often difficult to detect when wages are paid late.

If we are committed to putting money into working New Yorker's pockets, this proposed change in policy does the opposite of that.

Thank you for your time and consideration.