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New York State Joint Legislative Budget Hearing on Labor

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Thank you very much Senator Krueger, Assemblymember Pretlow, members of the Senate and Assembly, and legislative staff, for your consideration of NFIB's testimony.

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 staggering 98 percent of New York's businesses have fewer than 100 employees. 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 also enrich their communities through financial support, in-kind contributions, and volunteerism. Ninety percent of small business owners have financially supported community or civic groups, sixty-three percent have provided in-kind contributions, and seventy-six percent of all business owners reported volunteering their time according to NFIB's 2024 Small Business' Contribution to the Community report.[1]

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, escalating utility bills, the highest possible state Unemployment Insurance taxes, an exodus of workers from the labor force, rising insurance premiums, and the threat of costly lawsuits.

In NFIB's latest Small Business Economic Trends report, 18 percent of small business owners report inflation as their single most important problem, and 35 percent of small business owners report job openings that could not be filled. The labor shortage continues to drive wages even higher with 33 percent of small business owners reporting that they raised compensation, and 20 percent plan to raise compensation in the next 3 months. Additionally, 22 percent of small business owners continue to report raising average selling prices[2]. The ongoing pressures of inflation and labor shortages are leading to growing uncertainty over future economic prospects and the opportunity for increased sales going forward.

In NFIB's 2024 Problems and Priorities report, New York small business owners ranked 75 potential business problems, with the top ten problems relating to taxes, regulations, economic uncertainty, and the cost of insurance and utility bills. New York small business owners ranked 75 potential business problems, with the top ten problems relating to taxes, regulations, economic uncertainty, and the cost of insurance and utility bills. New York's small business owners identified state business income taxes as the third most burdensome problem – six spots higher than the national average.[3] Other critical problems higher than the national average include government regulations (4th), electricity rates (7th), workers' compensation (14th), minimum wage (15th), credit card payment processing costs (20th), and unemployment compensation (21st). The top 20 problems for New York's Main Street illustrate small business owners' struggles with the cost and logistics of running a business in New York State.

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[1] NFIB Research Center, 2024 Small Businesses' Contribution to the Community, Nov. 2024. 2024 Small Business Contribution to the Community.

[2] NFIB Research Center, Small Business Economic Trends, Jan. 2025. SBET Report - NFIB.

[3] NFIB Research Center, 2024 Small Business Problems & Priorities, 2024 Small Business Problems & Priorities.

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 2019, New York State has seen a 2.2 percent growth in small businesses with fewer than 100 employees but a 2.4 percent decline in employment in small businesses[4]. There are nearly 11,000 more small businesses with fewer than 100 employees (due to growth in firms with less than 25 employees) but 75,000 fewer employees working in those businesses, undoubtedly a reflection of business owners trying to contain costs while also facing a severe labor shortage. More troubling, small businesses with more than 24 employees but fewer than 100 employees, have decreased by 4 percent over the last four years, and employment has fallen by 3.8 percent. In the FY 2026 final budget New York has an opportunity to help small businesses overcome their challenges, address the affordability crisis, stem the tide of out migration of New Yorkers, and put the state's economy in a more competitive and better position.

The Fiscal Year 2026 Executive budget includes two of NFIB's top priority issues related to labor; addressing the onslaught of lawsuits related to New York's 100-year-old frequency of pay law requiring "manual workers" be paid weekly, and allocating $165 million to pay the interest on New York's outstanding Unemployment Insurance (UI) debt.

NFIB strongly supports **S.3006/A.3006 (ELFA), Part U**, which would protect small businesses from multi-million-dollar lawsuits related to wages being paid to manual workers bi-weekly 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 Department of Labor (DOL) interprets this broadly to include "individuals who spend more than 25% of working time engaged in 'physical labor'." This outdated and poorly defined term has left many employers confused as to who qualifies as a manual worker, and thus, the frequency of pay requirements. Nonetheless, when manual employees are not paid weekly, Labor Law §191 already expressly holds employers accountable through New York State Department of Labor enforcement and the issuance of penalties. Unjustly, this appropriate enforcement mechanism has been discarded and businesses, including small businesses, are being named in multi-million-dollar lawsuits.

[4] New York State Empire State Development, Annual Report on the State of Small Businesses, 2024. https://esd.ny.gov/sites/default/files/media/document/2024-ESD-ANNUAL-REPORT-ON-SMALL-BUSINESSES.pdf

In 2019, an Appellate Division First Department's ruling in *Vega v. CM & Associates Construction Management* sustained that payment of wages to "manual" workers other than on a weekly basis is subject to a private right of action and liquidated damages equal to half of all wages paid up to 6 years (the statute of limitation), plus interest and attorneys' fees. These substantial penalties are generally reserved for wage theft (violations of Labor Law §198(1-a)) but are now being awarded in frequency of payment claims (Labor Law §191).

To be completely clear, in these cases, employees are not missing any wages owed to them. Employees are being paid for every hour they have worked; they simply are not being paid weekly, but bi-weekly or semi-monthly instead. These substantial penalties are generally reserved for wage theft, and this decision started an avalanche of lawsuits. Increasingly, these claims are being brought as large class action suits. The *Vega* decision has led to a surge of cases brought against businesses, large and small, with many more yet to be filed. The jaw-dropping multi-million-dollar settlements and awards resulting from these cases cause permanent damage to our state and local economy. Small businesses cannot afford to keep their doors open if named in one of these absurd lawsuits.

Currently, more than 500 cases have been filed, including against small businesses. The settlements from these cases are staggering and range from $950,000 to $23 million. This disturbing substantial increase of class action litigation will ultimately damage businesses statewide, including mom-and-pop shops, who cannot absorb the potentially millions of dollars in damages from frivolous lawsuits, or are sued into bankruptcy. It is essential to reverse the harmful impacts of the *Vega v. CM & Associates Construction Management, LLC* decision, and support the Main Street businesses that are essential to our economy and communities.

New York State must urgently address this issue, NFIB strongly supports **S.3006/A.3006, Part U**, which would clarify that liquidated damages are not applicable to past and future pay frequency violations where the employee was otherwise paid the wages owed. This provision aligns with the Second Department's decision in *Grant v. Global Aircraft Dispatch, Inc.*, eliminating the private right of action under Labor Law to pursue violations of the law's weekly pay frequency requirement. 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."

The *Grant* decision should reinforce that the law must be clarified to protect businesses from overly punitive and unreasonable penalties.

Additionally, NFIB recommends legislators explore altering the definition of “manual worker” to align with the 21st century and allow small businesses the opportunity to apply for waivers to the weekly pay law like their big-business counterparts. The manual worker frequency of pay statute is woefully outdated and should be amended to provide greater clarity to employers and employees.

NFIB also fully supports the Governor’s proposal in the Fiscal Year 2026 Executive Budget to **allocate $165 million to pay the interest on New York’s outstanding Unemployment Insurance (UI) debt**, which would otherwise be paid by employers through an Interest Assessment Surcharge (IAS) in the summer.

Small businesses have been shouldering the repayment of the UI debt, as well as the IAS, and it is time for New York State to chip in. The dedicated $165 million to pay interest on the UI debt this year will save employers from a surcharge of approximately $15 per employee and is the least that New York can do to alleviate the financial burden stemming from the Unemployment Insurance Trust Fund crisis. The $165 million would cover the IAS for 2025, but will need to be addressed again in 2026, otherwise businesses will continue to pay the IAS until the interest and the multibillion-dollar debt has been satisfied.

While this is a key step in the right direction, the state must provide additional funds in the Fiscal Year 2026 budget to satisfy the state’s outstanding $6.3 billion UI debt which is leading to 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 COVID-19 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. To continue to satisfy claims, New York needed to borrow funds from the federal government. New York and California are now the only two 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.

These substantial added costs are being shouldered solely by businesses across New York even though state public policy positions and UI fund mismanagement led to this crisis. Employers in New York continue to face a Federal Unemployment Tax Act (FUTA) tax offset credit reduction of 1.2 percent resulting in a FUTA tax increase of $105 per employee. If the outstanding federal UI advance is not paid off this year (2025), the FUTA offset will double due to the Benefit Cost Rate offset. The Benefit Cost Rate offset is triggered when a state has not repaid a federal UI advance as of January 1st for five years. New York's employers are potentially looking at a total credit reduction of 2.3 percent to be paid by January 31st, 2026, if New York does not pay off the remaining debt in 2025. This is in addition to the highest possible state 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. New York's businesses, especially small businesses, remain at a competitive disadvantage as their counterparts in 48 other states do not have this added cost.

It is imperative that the above-mentioned proposals are supported and included in the final budget. The state cannot afford to ignore the outrageous frequency of pay lawsuits crushing small businesses or avoid tackling burdensome UI taxes shouldered by Main Street. A prosperous state is only possible if the small business economy is alive and well.

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.