



Testimony of NELA/NY

Protections for Contracted Delivery Workers

NYC Council Bill: Int. No. 1133-2024 | New York City Council Bill: Int. No. 1133-2024

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My name is Christopher Marlborough. I am the Principal Attorney of the Marlborough Law Firm and operate the website www.fightwagetheft.com. I represent low-wage workers in wage theft litigation. I also sit on the Legislative Committee of The National Employment Lawyers Association/New York (“NELA/NY”) and chair the Wage Theft Legislation Subcommittee.

I submit this written testimony in strong support of Int. Nos. 1133 and 1135 (“the Delivery Worker Bills”). This crucial legislation will ensure that all NYC delivery workers will be treated with parity and extend the protections of the 2021 restaurant delivery worker law to all contracted delivery workers in New York City.

NELA/NY has more than 350 members and is the New York affiliate of the National Employment Lawyers Association (NELA), the nation’s only professional bar organization comprised exclusively of lawyers who represent individual employees.

The business model of delivery and app companies includes the classification of their delivery workers as independent contractors, rather than employees. We believe that the foundation of this corporate business model is one based on wage theft and exploitation of low-wage workers. As a result of this classification contracted delivery workers have been shut out of the protections available to workers under traditional federal and state labor laws. In doing so, the companies avoid the costs of minimum wage and overtime payments, worker’s compensation insurance, paid leave, and unemployment insurance that all New York employers are required to pay their employees.

Therefore, we applaud the City Council’s bold efforts in 2021 to ensure many of the protections of the labor laws are provided to restaurant delivery workers, resulting in an increase in revenue of more than \$500,000,000 to those workers. However, many thousands of New Yorkers who perform essentially the same delivery worker responsibilities do not benefit from the 2021 restaurant delivery worker because they deliver items other than food from restaurants. We agree that it is time to extend those same benefits to all contracted delivery workers.

The Remarkable Success of the 2021 Restaurant Delivery Worker Law Should Be Replicated

The 2021 law is an excellent model for protecting all delivery workers. Delivery companies complained that providing a minimum wage to delivery workers would sound the death knell for

the delivery service industry. However, the opposite is true. Earnings for the delivery companies increased substantially, even as restaurant delivery worker's pay also increased from less than \$5.00 per hour before tips to more than \$19.56 per hour before tips. *See* 12/9/24 Testimony of Commissioner Vilda Vera Mayuga Commissioner DCWP. *See also* DCWP Data, Q1 2024; Amir Khafaghy, <https://documentedny.com/2024/04/16/nyc-minimum-wage-app-workers-uber/>. This 2021 law has resulted in an increase of more than \$500,000,000 for restaurant delivery workers. Moreover, during that time, the number of deliveries increased by approximately 5%. These results show that New Yorkers will continue to utilize delivery services, even when the delivery workers are paid a more reasonable wage.

All Contracted Delivery Workers Deserve a Minimum Wage

During the pandemic, contracted delivery workers were considered essential workers, and their services remain critical to the city's economy. Yet, the companies who retain their services continue to exploit these workers by classifying them as independent contractors rather than employees. Contracted delivery workers receive no benefits and are often paid wages that would be unlawfully low if they were classified as employees.

Int. Nos. 1135 and 1133 will extend minimum wage and other protections to all contracted delivery workers, not just restaurant delivery workers.

Int. No. 1135 (Minimum Payments to Grocery Delivery Workers) – This bill builds upon the success of the Council's 2021 Restaurant Delivery Worker Law. It extends the reach of that law to grocery delivery workers by providing them with the same worker protections, including the same minimum wage guarantee provided to restaurant delivery workers. Because the responsibilities of grocery delivery workers are substantially similar to those of restaurant delivery workers, this law will not require any additional rulemaking procedures and will provide immediate relief to more than 20,000 grocery delivery workers. The bill will also correct a 2023 misinterpretation of the Restaurant Delivery Workers Law, which has excluded workers for the Relay delivery service from the protection of the 2021 Restaurant Delivery Workers Law.

Int. No. 1133 (Protections for Contracted Delivery Workers) - This bill will expand delivery worker protections to cover all contracted delivery workers who deliver goods for any delivery service, not just restaurants food and groceries. First, the bill will provide a minimum wage for contracted delivery workers that accounts for both their labor and vehicle maintenance costs. Second, workers would be entitled to information concerning their delivery before accepting each assignment, the opportunity to set a maximum distance for each delivery, and the right to decline to accept trips over bridges or through tunnels. Third, the bill would require delivery services to provide insulated delivery bags and fire safety materials to their delivery workers. Fourth, food service establishments will be required to provide access to a toilet facility to contracted delivery workers picking up goods. Fifth, delivery companies will be prohibited from retaliating against delivery workers who assert their workplace rights. Finally, the bill would set forth enforcement options, including those available to the City and a private right of action for workers. This bill will require rulemaking by the Department of Consumer and Worker Protection. As a result, in



contrast to Int. No. 1135, the bill will not go into effect immediately. DCWP estimates that it may take approximately eighteen months for the law to become effective.

The 2021 model should be extended to all delivery workers classified as independent contractors, without regard to the specific goods they are delivering. Indeed, tying a worker's fair pay to the cargo she is delivering is a distinction without a difference. In light of the enormous success of the 2021 Restaurant Delivery Worker Law and the similar conditions under which all contracted delivery workers work, we believe the new law will be just as successful as the 2021 law. Indeed, we believe that the City's laws should serve as a model to be followed by cities across the country, that respect and value their low-wage workers.

We agree with the Commissioner that the DCWP needs more resources and staff to carry out the enforcement and rulemaking provisions of the bills.

We further join our colleagues in the National Employment Law Project ("NELP") in urging the City Council to prohibit unfair deactivations and require delivery companies to give customers a straightforward method of providing tips to delivery workers. *See* Written Testimony of NELP, David Ocampo, dated Dec. 9, 2024.

NELA/NY urges the City Council to pass Int. Nos. 1133 and 1135, providing parity to all contracted delivery workers classified as independent contractors.