



Memorandum in Support

**The EmPIRE Worker Protection Act | Empowering People In Rights Enforcement**

Senate Bill: 541B Hoylman-Sigal | Assembly Bill: 9012 Simon (formerly 1893A Joyner)

April 2024

The National Employment Lawyers Association/New York (“NELA/NY”) strongly supports the EmPIRE Worker Protection Act (A9012/S541B), which expands the public enforcement capacity of the state in order to remedy wage theft and other violations of the New York Labor Law. A crisis of underenforcement of the Labor Law has been undermining recent advances by the Legislature in expanding and strengthening workplace rights.

NELA/NY has more than 350 members and is the New York chapter of the National Employment Lawyers Association (NELA), the nation’s only professional bar organization comprised exclusively of lawyers who represent individual employees. In the past several years, we have been heartened as 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 New York workers 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. And we also see that our members have to make hard choices about what cases they are able to take on—and that they are often unable to take on important cases in high-violation, low-wage industries because the current penalties for breaking the law are too low. **The Labor Law’s protections are rendered meaningless when workers do not have a reasonable expectation that employers who violate the law will be held accountable.**

**The EmPIRE Worker Protection Act** creates 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 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 the Labor Law has historically depended on a combination of public enforcement by the New York State

Department of Labor (NYSDOL) 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 (particularly immigration-related retaliation) and other hurdles have posed obstacles to workers trying to address violations of their rights.

Our members have seen firsthand the growing challenges that are undermining the ability of the workers we serve to enforce their statutory rights under the Labor Law. The EmPIRE Act expands the state's enforcement power and creates an ongoing funding mechanism for the NYSDOL's enforcement efforts, without burdening public servants.

**The EmPIRE Solution:** The EmPIRE Act strengthens the reach of the Labor Law. 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 the Labor Law by awarding those who enforce civil penalties a share of those penalties. Where the state chooses not to intervene, relators who succeed are awarded 40% of all civil penalties they enforce, to be equitably distributed among affected workers. The remaining 60% goes to the NYSDOL 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 NYSDOL. 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 attorneys' fees and costs for bringing the EmPIRE action.

NELA/NY supports this legislation that would significantly increase the state's capacity to enforce labor standards and critical workers' rights protections. **We urge you to pass S. Bill 541B/A. Bill 9012, the EmPIRE Worker Protection Act.**