



## **Testimony of Najah Farley**

National Employment Law Project

# **In Support of The Securing Wages Against Theft (SWEAT) Act (S1977/A46)**

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## **Hearing before the New York State Senate**

Labor Committee

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Thank you, Senator Ramos, and members of the Labor Committee. My name is Najah Farley, and I am a senior staff attorney at the National Employment Law Project (NELP). NELP is a leading non-profit and non-partisan advocacy organization with the mission to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. NELP regularly partners with federal, state, and local lawmakers on a wide range of issues to promote workers' rights and labor standards enforcement, including wage theft enforcement and retaliation. In addition, NELP has previously submitted comments supporting the SWEAT Act. NELP appreciates another opportunity to engage with the Senate Labor Committee and to comment in support of the SWEAT Act.

In the past few years, New York has taken the lead in progressive worker protections, including increases to the minimum wage, paid family leave, paid sick time protections, and protections against caregiving discrimination. But constraints on enforcement have blocked many working families from experiencing the real benefits of these policies. New York faces a crisis in enforcement of its labor laws, with more than \$3 billion in wages and benefits stolen from New Yorkers each year. Recently *City Limits* reported on the findings that workers lost \$130.5 million to wage theft during the pandemic.<sup>1</sup> This wage theft has occurred despite Governor Hochul's commitment to wage theft enforcement and recovering \$3 million during her crackdown in 2022.<sup>2</sup>

Through our work, we see that one of the biggest issues facing workers is not being able to collect unpaid wages, even with a valid judgment against the employer. The SWEAT Act will ensure that workers have the tools to hold dishonest employers accountable by allowing them to use the existing mechanic's lien law to attach an employer's assets at the start of litigation. The law will also make it easier for workers to hold privately held corporations and limited liability corporations accountable for wage theft.

NELP first wrote about wage theft lien laws in 2011, in its ground-breaking report *Winning Wage Justice*, describing such laws as a strong incentive for employers to pay unpaid wages.<sup>3</sup> In 2011 a handful of states had wage lien policies, such as Wisconsin, and the wage lien law there helped workers recover 25 percent of the amount of unpaid wages found to be owed, 1.5 times more than California.<sup>4</sup> The law in Wisconsin gave wage liens priority in bankruptcy actions as

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<sup>1</sup> Daniel Parra, *With SWEAT, Labor Advocates Renew Push for Anti-Wage Theft Legislation*, CITYLIMITS, Jan. 25, 2023, <https://citylimits.org/2023/01/25/with-sweat-labor-advocates-renew-push-for-anti-wage-theft-legislation/>

<sup>2</sup> *Governor Hochul Announces Major Crackdown to Combat Wage Theft*, Press Release, July 19, 2022, <https://www.governor.ny.gov/news/governor-hochul-announces-major-crackdown-combat-wage-theft>

<sup>3</sup> *Winning Wage Justice*, NATIONAL EMPLOYMENT LAW PROJECT, Jan. 2011, <https://www.nelp.org/publication/winning-wage-justice-an-advocates-guide-to-state-and-city-policies-to-fight-wage-theft/>

<sup>4</sup> Eunice Hyunhye Cho, Tia Koonse and Anthony Mischel, *The Crisis in Collecting Unpaid Wages for California's Workers*, NATIONAL EMPLOYMENT LAW PROJECT AND UCLA LABOR CENTER, June 27, 2013, <https://www.nelp.org/publication/hollow-victories-the-crisis-in-collecting-unpaid-wages-for-californias-workers/>

well.<sup>5</sup> Maryland also passed a similar wage lien law that has been helpful in assisting workers to recover unpaid wages.

The SWEAT Act has been vetoed once in New York State because of opponents' vociferous opposition. Opponents of the bill claim that workers will file unscrupulous actions to attach property or liens when wage theft does not actually exist. However, there is no evidence of widespread fraud or unscrupulous claims in the states that have passed these laws. In fact, the laws in Wisconsin and Maryland have resulted in more workers receiving their unpaid wages in a timely fashion.<sup>6</sup> The SWEAT Act instead will stop unscrupulous employers from betting on the state having inadequate enforcement capacity—and moving money from place to place to hide it from workers looking to collect on unpaid wages—expecting that they likely will not be caught. It will benefit honest employers who pay the correct wages, because the law will stop dishonest employers from paying less and skirting the wage and hour laws.

**The labor laws on the books are rendered meaningless when workers do not have a reasonable expectation that employers who violate the law will be held accountable.** For workers to file a case, receive a judgment, and be unable to recover those wages renders the wage theft laws inadequate. There is no wage lien law in place and currently it is relatively easy for employers to get away with not paying workers and then cheating them out of the judgment that they are duly owed.

Since the pandemic started, workers have faced many obstacles in filing wage claims. Passing the SWEAT Act will assist workers in recovering the wages they are owed and contribute to a just recovery. It is an integral part of the workers' rights protections needed in New York State at this time. New York continues to be a great place for workers, passing the SWEAT Act will only improve on this reputation.

The National Employment Law Project urges the New York State legislature to pass the SWEAT Act and urges Governor Hochul to sign it.

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<sup>5</sup> Rebekah Didlake, Comment: *Ensuring Wages for California Restaurant Workers: Utilizing the Self-Help Prejudgment Wage Lien Tool*, GOLDEN GATE UNIVERSITY LAW REVIEW, Nov. 2022, <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=2264&context=ggulrev>

<sup>6</sup> *Id.*