



February 15, 2024

Speaker Carl Heastie
 Legislative Office Building, Room 932
 Albany, NY 12248

Assembly Minority Leader Will Barclay
 Legislative Office Building, Room 933
 Albany, NY 12248

Senate Majority Leader Andrea Stewart-Cousins
 Legislative Office Building, Room 907
 Albany, NY 12247

Senate Minority Leader Rob Ort
 Capitol Building, Room 315
 Albany, NY 12247

Re: Fiscal Year 2025 Budget Requests

Dear Leaders, Senators, and Assemblymembers,

We, the undersigned organizations representing tens of thousands of businesses of all sectors and sizes across New York, write to respectfully request that the Senate and Assembly allocate funding in the Fiscal Year 2025 budget to address the Unemployment

Insurance (UI) debt, as well as support the Governor's proposals to sunset the state's outdated COVID Sick Leave law, address the eruption of lawsuits over frequency of pay claims for manual workers, and combat the rise in retail theft.

In the post-pandemic economy, employers, particularly small businesses, continue to face unprecedented financial challenges. According to NFIB's Small Business Economic Trends (SBET) report, 22 percent of small business owners reported that inflation was the single most important problem in operating their business, 62 percent are experiencing significant supply chain issues, and nearly half of small businesses report job openings that cannot be filled. NFIB's Small Business Optimism Index continues to decline and now stands at 22 consecutive months below the 50-year average¹. Every industry and type of business continues to struggle with these global challenges as well as minimum wage increases, new regulations and mandates, and increased energy prices.

The following priorities of the business community were strongly advocated for in both the Fiscal Year 2024 budget and during the 2023 legislative session but were not acted upon and now require your urgent attention and action. With negotiations of the Fiscal Year 2025 budget underway, the State should include the following relief measures in the final spending package:

- **Unemployment Insurance Debt:**

Applications for unemployment benefits surged when non-essential businesses were shut down by New York State due to COVID. 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, depleting it. To continue to satisfy claims, New York borrowed funds from the federal government. New York and California are now the only states with outstanding federal UI advances, but unlike California, 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. New York's economy remains erratic and any progress towards reinvigorating the state's economy will only be further delayed until the state addresses UI taxes and the solvency of the Trust Fund.

In July 2023, businesses were once again notified they would take on the state's interest debt payment in the form of an annual IAS of \$21.60 per employee. Businesses will continue to pay the IAS until the interest and the multibillion-dollar debt has been satisfied. Employers in New York also continue to face a Federal Unemployment Tax Act (FUTA) tax offset credit reduction resulting in a FUTA tax increase of \$84 per employee.

¹ "Small Business Economic Trend Report." NFIB Research Center, October 2023.
<https://strgnfibcom.blob.core.windows.net/nfibcom/SBET-October-2023.pdf>.

This is in addition to the highest possible UI tax rates, which average an additional \$250 per employee per year. For many employers, UI costs have risen by thousands of dollars each year. These substantial added costs are being shouldered solely by businesses across New York, even though state public policy positions led to this crisis.

At the very least, New York State should allocate \$150 million to pay interest on the debt for calendar year 2024, which would provide some relief for businesses while also acknowledging that the state has a responsibility to assist in this crisis. For years now, businesses have been solely bearing the burden of repaying the federal government, but businesses cannot and should not be compelled to bear the burden alone.

The Legislature must also reject any attempts to put the UI Trust Fund on even more dire footing. Expanding or increasing UI benefits while the UI debt stands above \$7 billion is not only fiscally irresponsible but would trigger increases in UI taxes per federal requirements. Higher UI taxes on businesses above and beyond the debt-induced elevated tax rates is unreasonable and unmanageable for businesses across our state. New York must not exacerbate this crisis; our long-term economic recovery depends on bold action and fiscal discipline.

- **S.8306/A.8806, Part M, Sunsetting COVID Sick Leave:**

On March 18, 2020, at the peak of the COVID pandemic, Governor Cuomo signed legislation guaranteeing paid leave benefits for New Yorkers because of COVID-related mandatory and precautionary orders of quarantine or isolation. New York, unlike other states, continues to maintain this legislation that mandates an additional minimum of five days of paid sick leave per quarantine period (up to 14 paid sick leave days per quarantine period for large employers) specifically for COVID. New York's COVID Paid Leave law does not include a sunset provision and New York remains the only jurisdiction that continues this COVID-related mandate. With the worst of COVID behind us, readily available and effective vaccines, and COVID treatments, it is necessary to end COVID paid leave requirements. Additionally, CDC guidance is being adjusted to align with guidance for illnesses like the flu and RSV. The new guidance is expected to recommend if someone tests positive for COVID, they no longer need to isolate if they remain fever-free for 24 hours and their symptoms are mild or improving. The New York COVID sick leave statute is quickly becoming obsolete. There is precedent for sunseting this policy as the state's required paid leave policies for COVID vaccinations expired at the end of 2023. It is a logical and reasonable expectation that this leave law also expires in the post-pandemic era; therefore, S.8306/A.8806, Part M, must be included and enacted in the state's final spending plan.

- **S.8306/A.8806, Part K, Frequency of Pay Claims:**

Under Labor Law §191, employers are required to pay "manual" workers on a weekly basis; however, most employers are unaware of this little-known and archaic statute. In today's economy, a common practice in New York, and nearly every other state, is to pay employees on a bi-weekly or semi-monthly basis. 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.

In 2019, the Appellate Division, First Department in *Vega v. CM & Associates Construction Management, LLC* held 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. 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. The only group that benefits from the status quo is the plaintiffs' attorneys who continue to line their pockets at the expense of New York's businesses. Small businesses cannot afford to keep their doors open if named in one of these absurd lawsuits. New York State must urgently address this issue by supporting S.8306/A.8806, Part K, 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 in the Governor's budget is also in line with a recent decision, *Grant v. Global Aircraft Dispatch*, from the Appellate Division, Second Department. In that case, the court disagreed with the reasoning of *Vega* and sided with employers. 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.

- **Combatting Retail Theft**

The dramatic rise in retail theft has significantly harmed businesses, employees, consumers, the economy, and the state, and must be addressed. New Yorkers visiting businesses, large and small, are frustrated with their shopping experiences, customers and retail workers question their safety, and business owners are suffering substantial financial losses due to the loss of stolen goods and property damage. According to a report by Capital One, retailers in New York lost \$4.4 billion in revenue to theft in 2022, and the state lost \$176 million in retail sales tax dollars². In New York City alone, retail theft complaints have increased by 77 percent over the last 5 years³. This is a pervasive issue that must and can be addressed through the Governor's proposals, including:

- S.8305/A.8805, Part A – Amending the Penal Law to elevate assault of a retail worker to a class D felony of assault in the second degree.
- S.8305/A.8805, Part B – Amending the Penal Law to establish criminal penalties for fostering the sale of stolen goods, including online.
- S.8309/A.8809, Part E - \$5 million for a commercial security tax credit program for small businesses to receive credits for retail theft prevention expenses.
- \$25.2 million in new funding to deploy a dedicated State Police team focused on combating organized retail theft.
- \$10 million in funding for District Attorney (DA) offices to prosecute property crime cases.
- \$5 million in additional funding to build the capacity of local law enforcement to combat retail theft.

These initiatives are good first steps to begin responsibly addressing the proliferation of organized retail theft, smash and grab incidents, and shoplifting. New York State government is responsible for public safety and upholding its and enforcing its laws. The financial burdens and security costs cannot and should not continue to be passed on to the business owners, who are victims of retail theft.

It is imperative that these issues are addressed in the FY 2025 budget. Businesses drive New York's economy, provide essential tax revenue, create, and maintain jobs for New Yorkers, and support local charities and communities. New York businesses cannot afford additional regulations and a high tax environment, while also seeing sensible policies rejected and ignored. The state must focus on working with the business community to help improve the business climate to achieve an economy in the Empire State that is prosperous, fair, and

² Capital One Shopping Research, "Retail Theft (Shoplifting) Statistics." Dec. 24, 2023. [Shoplifting Statistics \(2023\): Retail Theft Data by State \(capitaloneshopping.com\)](https://www.capitaloneshopping.com/research/retail-theft-statistics).

³ The City of New York, "Combating Retail Theft in New York City." March 2023. [combating-retail-theft-report-may-17-2023.pdf \(nyc.gov\)](https://www.nyc.gov/combating-retail-theft-report-may-17-2023.pdf).

accessible for all New Yorkers. That goal starts with supporting policy to advance the interests of the business community, the jobs they create, and the communities they sustain.

Thank you for the time and consideration.

Sincerely,

American Council of Engineering Companies of New York
Associated Builders and Contractors Empire State Chapter
Associated General Contractors New York State
Bronx Chamber of Commerce
Brooklyn Chamber of Commerce
Buffalo Niagara Manufacturing Alliance
Buffalo Niagara Partnership
Capital Region Chamber
Empire State Forest Products Association
Food Industry Alliance of New York
Greater Binghamton Chamber of Commerce
Greater Rochester Chamber of Commerce
Lawsuit Reform Alliance of New York (LRANY)
Long Island Association
MACNY, The Manufacturers Association
Manufacturers Alliance of New York
Manufacturers Association of the Southern Tier
National Federation of Independent Business (NFIB)
New York Association of Convenience Stores
New York Construction Materials Association
New York Farm Bureau
New York Insurance Association
New York State Builders Association
New York State Council of NECA Chapters
New York State Economic Development Council
New York State Electrical Contractors
NYS Health Facilities Association | NYS Center for Assisted Living
New York State Hospitality & Tourism Association
New York State Restaurant Association
North Country Chamber of Commerce
NEAAPA - The Northeast's Entertainment Association
Northeast Dairy Producers Association
Northeastern Retail Lumber Association-New York (NRLA-NY)

Retail Council of New York State
Rochester Technology and Manufacturing Association (RTMA)
SKI NY
The Business Council of New York State
The Business Council of Westchester
The Council of Industry, The Manufacturers Association of the Hudson Valley
Trucking Association of New York
Upstate United
Watkins Glen Area Chamber of Commerce

CC:

Entire New York State Senate
Entire New York State Assembly