

NEW YORK JOINT SENATE AND STATE ASSEMBLY

SENATE STANDING COMMITTEE ON LABOR
SENATE STANDING COMMITTEE ON BANKS
SENATE STANDING COMMITTEE ON INVESTIGATIONS AND GOVERNMENT
OPERATIONS

ASSEMBLY STANDING COMMITTEE ON LABOR
ASSEMBLY STANDING COMMITTEE ON BANKS
ASSEMBLY STANDING COMMITTEE ON OVERSIGHT, ANALYSIS
AND INVESTIGATION

PUBLIC VIRTUAL HEARING

IMPACT OF COVID-19 ON THE WORKFORCE

August 13, 2020

10:00 a.m. - 11:00 p.m.

Joint Hearing COVID Impact on Workforce, 8-13-20

SENATORS PRESENT:

SENATOR JESSICA RAMOS,
Chair, Senate Standing Committee on Labor

SENATOR JAMES SANDERS,
Chair, Senate Standing Committee on Banks

SENATOR JAMES SKOUFIS,
Chair, Senate Standing Committee on Investigations and
Government Operations

SENATOR JOHN LIU

SENATOR ANDREW GOUNARDES

SENATOR GEORGE BORELLO

SENATOR DIANE SAVINO

SENATOR MONICA MARTINEZ

SENATOR PATRICK GALLIVAN

SENATOR JAMES TEDISCO

SENATOR ROBERT JACKSON

SENATOR DAPHNE JORDAN

SENATOR TODD KAMINSKY

SENATOR GUSTAVO RIVERA

SENATOR SHELLEY MAYER

SENATOR JEN METZGER

SENATOR THOMAS O'MARA

SENATOR BRAD HOYLMAN

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ASSEMBLY MEMBERS PRESENT:

ASSEMBLY MEMBER THOMAS ABINANTI,
Chair, Assembly Standing Committee on Banks

ASSEMBLY MEMBER JOHN MCDONALD,
Chair, Assembly Standing Committee on Oversight,
Analysis and Investigation

ASSEMBLY MEMBER MARIANNE BUTTENSCHON

ASSEMBLY MEMBER BRIAN MANKTELOW

ASSEMBLY MEMBER HARRY BRONSON

ASSEMBLY MEMBER ROBERT SMULLEN

ASSEMBLY MEMBER KEVIN BYRNE

ASSEMBLY MEMBER JOSEPH DESTEFANO

ASSEMBLY MEMBER JO ANNE SIMON

ASSEMBLY MEMBER ALFRED TAYLOR

ASSEMBLY MEMBER CARMEN DE LA ROSA

ASSEMBLY MEMBER CATALINA CRUZ

ASSEMBLY MEMBER N. NICK PERRY

ASSEMBLY MEMBER YUH-LINE NIOU

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New York State Department of Labor

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New York State Office of the Attorney General

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Mario Cilento
President
New York State AFL-CIO

Mike Neidl
Legislative Director
New York State AFL-CIO

PANEL 4:

Wayne Spence
President
New York State Public Employees Federation

Pat Kane, RN
Executive Director
New York State Nurses Association

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1199 SEIU United Healthcare Workers East

PANEL 7:

M. Patricia Smith

Of Counsel
National Employment Law Project

James A. Parrott, PhD

Director for Economic and Fiscal Policies
Center for New York City Affairs

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Nicole Salk
Senior Staff Attorney
Legal Services NYC

Richard Blum
Staff Attorney
The Legal Aid Society

PANEL 8:

Jacalyn Goldzweig Panitz
Paralegal Casehandler
Legal Aid Society of New York City

E. Jeanne Harnois
Worker

Gaela Solo
Worker

Yamilez Quinones
Worker

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Zubin Soleimany
General Counsel
New York Taxi Workers Alliance

Rafael Espinal
Executive Director
Freelancers Union

Stephanie Freed
Worker/Co-Founder
ExtendPUA.org

PANEL 10:

Richard Winsten
State and Broadway, Inc.

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PANEL 11:

Deborah Axt
Co-Executive Director
Make the Road New York

Carlyn Cowen
Chief Policy and Public Affairs Officer
Chinese-American Planning Council

Diana Moreno
Programs Director
New Immigrant Community Empowerment

PANEL 12:

Charlene Obernauer 483
Executive Director
New York Committee for Occupational Safety and Health

Rebecca Miller
Deputy Legislative & Political Director
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Executive Director
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Lisa Zucker
Legislative Attorney
New York Civil Liberties Union

Margaret McIntyre
Attorney at Law
National Employment Lawyers Association
New York Chapter

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Joint Hearing COVID Impact on Workforce, 8-13-20

(The public hearing commenced at 10:00
a.m.)

SENATOR JESSICA RAMOS, CHAIR, SENATE

STANDING COMMITTEE ON LABOR:

Okay. Well, good

morning everyone. My name is Jessica Ramos, I am
the state senator representing District 13 in
Queens and I also have the honor of chairing the
Senate Committee on Labor. Today, we will be
holding a workforce development hearing so that
we can better understand how COVID impacted New
York workers. And I'm very glad we are joined by
many of my colleagues, including Senator Skoufis,
Senator Liu, Senator Jordan, Senator O'Mara,
Senator Serino, Senator Borello, Senator
Martinez, Senator Gounardes, Senator Tedisco and
Senator Jackson and I hope I didn't miss any of
my colleagues. Raise your hand if you're missing.

But, the importance of this hearing is
really critical to figuring out how we can
prevent some of the confusion and lack of
resources that we saw in the responsiveness to
the crisis of New Yorkers trying to access their
benefits. And that's why we are all here today,

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2 to hear from not only the Department of Labor,
3 but many other entities, so that we can figure
4 out how we can work better, make sure that we're
5 protecting our workers not only with unemployment
6 insurance and other benefits, but making sure
7 that they've been provided with PPE and other
8 protections in light of, well, the disaster that
9 COVID wreaked in our state, unfortunately.

10 Right now, as of June, the statewide
11 unemployment rate is at 15.7 percent. Needless to
12 say that my colleagues here and I, and my
13 colleagues from the assembly, who you will meet
14 in a second, will be working in lockstep to
15 ensure that we are fighting for New Yorkers, that
16 we're rebuilding our economy in a responsible way
17 and that we are putting our New Yorkers and
18 workers first. So with that, I want to kick it
19 off to my colleague from the New York State
20 Assembly and he is the chair of the Oversight
21 Committee, and that is Assemblyman John McDonald.

22 ASSEMBLY MEMBER JOHN MCDONALD, CHAIR,
23 ASSEMBLY STANDING COMMITTEE ON OVERSIGHT,

24 ANALYSIS AND INVESTIGATION:

Thank you, senator,

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2 and good morning to everybody. And I'm also
3 joined by our co-chair, another co-chair, the
4 Chair of Banking, Tom Abinanti. As many of you
5 may know, the labor chair position is currently
6 vacant, but be not afraid, there are many
7 dedicated and trusted staff that are following
8 every single word and moment of testimony today
9 to make sure all thoughts and concerns and
10 solutions are captured properly.

11 What I'd like to do first of all is
12 recognize our colleagues in the assembly that
13 have joined us today, Marianne Buttenschon, Harry
14 Bronson, Jo Anne Simon, Joe DeStefano, Kevin
15 Byrne, Robert Smullen, ranker Bryan Manktelow and
16 I think that's it for now. Anybody who hasn't
17 been recognized, follow the senator's lead and
18 raise your hand.

19 Just a little bit of process today. We
20 have 14 panels, which is an awful lot of panels.
21 And it's important because we have a lot to hear
22 and a lot to consume, and therefore we are going
23 to move along in an appropriate process that
24 we've been working on the last couple of days

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2 with 31 hours of testimony on nursing homes. Each
3 panelist will be given five minutes to speak and
4 it's a hard five, I'll be very clear. Each chair
5 and each ranker will also be given five minutes
6 for questions and responses, and then members of
7 the respective committees that are hosting this
8 event will have three minutes for questions. Be
9 not afraid if you don't get your questions in or
10 if you're not one of those committees. Please
11 feel free to forward to the senator or myself
12 your questions your questions and comments and we
13 will make sure to get them to the appropriate
14 entities, and to ensure a timely response within
15 a couple of weeks from when that letter is sent.

16 I think that's it. The only thing that I
17 want to share before we get started and turn it
18 back to the senator is Dick Gottfried, who is our
19 health chair has a nice little comment that he
20 talks about. Because we expect to go for a period
21 of time, so after three hours we will take a
22 break for what he calls ambulation and toileting.
23 Being a healthcare professional, I want to add
24 nutrition to that, so ambulation, toileting and

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2 nutrition will be in three hours, give or take.

3 And we'll give you a heads up and that way those

4 who are watching can plan their day accordingly,

5 so senator, back to you to introduce our first

6 panel.

7 SENATOR RAMOS: Thank you, assemblyman.

8 I want to add one more point of information for

9 our colleagues, and that is if you do wish to be

10 recognized, make sure to use the raise hand

11 function on Zoom, so that way we can put you in

12 the queue. And with that, our first panel, which

13 is a member of one, is our Department of Labor

14 commissioner, Roberta Reardon, who now has five

15 minutes to testify before we begin questions.

16 Thank you.

17 MS. ROBERTA REARDON, COMMISSIONER, NEW

18 YORK STATE DEPARTMENT OF LABOR: Good morning

19 And thank you for inviting me today. I'd like to

20 especially thank the chairs and distinguished

21 members of each committee for convening this

22 hearing, so could I speak directly with you about

23 the unprecedented challenges the Department of

24 Labor has been facing over the last five months.

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2 And the emergency measures we have taken to get
3 money into the hands of unemployed New Yorkers
4 during this crucial time.

5 As you know, we are in the midst of a
6 crisis no one saw coming. Every state has
7 experienced an historic surge in unemployment
8 claims and every state systems have been pushed
9 to the limit by this pandemic. However, in New
10 York we have moved faster and more aggressively
11 than any other state in the nation to get much
12 needed benefits into the hands of unemployed New
13 Yorkers.

14 To give you some context about this
15 crisis, since the COVID-19 pandemic began in
16 early March, the Department of Labor has paid
17 almost \$40 billion in unemployment benefits to
18 more than 3.3 million New Yorkers in just over
19 five months. In 2019, we paid just \$2.1 billion
20 in total. In that context, we have paid over 18
21 years worth of benefits in just over five months.

22 That's staggering and sobering. Before
23 this pandemic, the highest number of new
24 unemployment claims in one week nationally was

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2 695,000 in October of 1982. During the height of
3 this crisis, we saw one week with 6.8 million new
4 claims. That means this economic crisis is
5 greater than anything the United States has seen
6 since the Great Depression and every state is
7 struggling. In fact, we have seen 20 straight
8 weeks with over one million national unemployment
9 claims. And these numbers are simply unheard of.

10 The surge of applications crashed on New
11 York like a wave, pushing our systems to the
12 brink. In a typical week before the current
13 crisis, our call center averaged about 50,000
14 calls. But during the peak week in late March,
15 our call center received over 8.2 million phone
16 calls, a 16,000 percent increase. And our
17 website, which typically received 350,000 hits
18 during the course of a week, received over six
19 million visits one week an increased 1,600
20 percent.

21 As this wave was crashing over New York,
22 we immediately began to address these issues with
23 real time technology updates including building
24 and launching a new online unemployment

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2 application backed by Google cloud technology. To
3 free up our phone lines, we launched a callback
4 initiative and we increased the number of DOL
5 representatives making outgoing calls, answering
6 incoming calls and processing applications from
7 400 to over 7,000.

8 We were able to do that because of our
9 incredible state workforce. Thousands of state
10 workers came from other state agencies to join us
11 in this massive effort. We also expanded call
12 center and online filing hours to seven days a
13 week. And despite cumbersome federal guidelines,
14 we updated our online application to provide a
15 seamless experience for pandemic unemployment
16 assistance applicants on April 20th, weeks ahead
17 of other major states.

18 We have launched new proactive
19 communication initiatives to keep New Yorkers
20 informed throughout the process. This included
21 identifying the number one reason why
22 unemployment applications go into partial status,
23 which was an incorrect or missing federal
24 employer identification number. We issued a

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2 directive to all New York based businesses
3 reminding of their legal obligations to provide
4 employees this information. We also took steps to
5 proactively inform New Yorkers that they must
6 submit a federally required certification each
7 week to receive their benefits. And we rolled out
8 a new online system to help them quickly and
9 efficiently submit previous weeks'
10 certifications. Through the automated system and
11 DocuSign technology, they can now be done much
12 faster.

13 In addition we launched another tool,
14 which has directly contacted millions of New
15 Yorkers via e-mail and text messages as their
16 applications moved through each step of the
17 process. We've also implemented an automated chat
18 bot on our website to answer New Yorkers most
19 frequently asked questions. And lastly, we've
20 introduced a triage phone system that better
21 connects unemployed New Yorkers with the help
22 they need.

23 We did everything within our power and
24 authority to cut through the bureaucratic red

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2 tape and get New Yorkers their benefits as
3 quickly as possible. However, we are bound by
4 specific federal laws and regulations to
5 safeguard against fraud. Thanks to the proactive
6 efforts of agency investigators and the strong
7 protections built into our application system,
8 the New York State Department of Labor has
9 identified over 42,200 fraudulent claims during
10 the COVID-19 crisis and stopped fraudsters from
11 stealing over \$1 billion in taxpayer money.

12 We knew very early on in the crisis the
13 workplace was going to be forever changed. As
14 people return to work, there is an underlying
15 fear of safety in the workplace as it relates to
16 COVID-19. To educate employers about the their
17 responsibility to keep their employees and their
18 businesses safe, we established our DOL COVID
19 complaint portal. If any New Yorkers feels unsafe
20 or has another COVID related workplace concern,
21 they can file a complaint right on our website at
22 labor.ny.gov/covidcomplaint. We've had over
23 30,000 complaints to the portal and the vast
24 majority of complaints are resolved quickly and

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2 voluntarily.

3 Now that New York is moving forward
4 through the reopening process, we want to help
5 connect every job seeker in New York with the
6 right job opportunity. We are sending proactive
7 recruitment e-mails and encouraging both
8 businesses in need of workers and in New Yorkers
9 in need of a job to take advantage of our jobs
10 express web website at jobs.ny.Gov. There are
11 over 1,000 [unintelligible] [00:11:27]

12 ASSEMBLY MEMBER MCDONALD:

Commissioner

13 we need you to wrap it up, so we can get on to
14 questions.

15 COMMISSIONER REARDON:

Okay. I'm right

16 there, concluding.

17 ASSEMBLY MEMBER MCDONALD:

Thank you

18 COMMISSIONER REARDON:

Okay. Personal

19 these last five months have been heartbreaking on
20 many levels. We have dedicated every resource we
21 have to helping New Yorkers weather this storm.
22 Many of your staffs were right there with us on
23 the front lines and I sincerely thank you for
24 your efforts. And I just want to take a moment to

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2 say how proud I am of my staff, who has worked
3 tireless throughout the pandemic while also
4 trying to navigate this crisis within their own
5 families. They continue to work overtime and they
6 will continue working until this crisis has
7 passed.

8 We have all worked endlessly, seven days
9 a week around the clock to get the job done and
10 we will continue to do whatever is necessary to
11 help all New Yorkers get through this crisis. Now
12 I'm happy to take your questions.

13 SENATOR RAMOS: Thank you for your
14 testimony, Commissioner Reardon, thanks for
15 joining us this morning, it's good to see you.
16 Can you tell us a little bit about the return to
17 work guide that was posted by the Department of
18 Labor, which was a little misleading considering
19 that we weren't exactly promoting people or
20 urging people to return to work per se, states
21 that only employers with public facing workers
22 have to supply face masks, which violates section
23 193 of the Labor Law. How does this address co-
24 workers transferring COVID to each other and

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2 can't non-public facing workers transfer COVID as
3 well?

4 COMMISSIONER REARDON:

So I'm looking

5 for a little guidance from my staff here. I'm not
6 quite sure what you are referring to. We do have
7 the COVID complaint form up on the website and
8 that's for anybody, whether they're public facing
9 or not. If you have a concern about your
10 workplace, if you feel that your employer is not
11 properly sanitizing the workplace or offering the
12 kinds of protections that are required, you
13 should go on the COVID website and register your
14 complaint and we will follow up. There is
15 guidance about what everybody has to do, wear
16 masks, wash your hands, make sure the area is
17 sanitized and I'm actually not clear which
18 direction.

19 It's on your website, it's called the
20 return to work guide.

21 COMMISSIONER REARDON:

So, I don't ha

22 my website on in front of me. Can I get back to
23 you in a minute? I'm going to have somebody give
24 me some information about it.

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2 SENATOR RAMOS: Sure. So, in the
3 meantime, can you tell us about what the
4 Department of Labor is doing to protect workers
5 from wage theft during the pandemic?

6 COMMISSIONER REARDON: As always, our
7 inspectors are out and ready to go inspect if
8 somebody thinks that their wages are being
9 stolen. We have an online application for that
10 and of course they can always call the number
11 that is registered for wage fraud issues and we
12 have followed up during the pandemic. There, our
13 investigators have been very busy. Obviously,
14 they are working remotely as much as possible.
15 It's very difficult for them to go to work sites,
16 as it is difficult for workers to go to work
17 sites. But they're following up and we are
18 continuing to enforce the laws as we always do.

19 SENATOR RAMOS: So, I'm assuming that
20 you're working closely together with OSHA of
21 course, to make sure that workplaces are as
22 compliant as possible. Can you tell us what the
23 process --

24 COMMISSIONER REARDON: To be clear, we

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2 don't enforce the OSHA regulations. We do it for
3 public health, but the private industries are
4 overseen by the federal government.

5 SENATOR RAMOS: Right. Okay. So can you
6 tell us when complaints are received about an
7 unsafe workplace, what happens then? What is the
8 process for that?

9 COMMISSIONER REARDON: So the
10 investigators follow up. They talk to the worker
11 who has lodged the complaint, they contact the
12 employer to see what the situation is and as I
13 said in my testimony, the overwhelming majority
14 of those cases are resolved quickly and
15 voluntarily. We have had very few people resist
16 making changes in order to ensure that their
17 businesses are safe. I mean, remember, it is in a
18 business owner's best interest to have a safe
19 workplace. They don't want to harm their workers
20 and frankly they don't want to depress their
21 business.

22 SENATOR RAMOS: But we also know that
23 there are unscrupulous employers who will cut
24 corners at any opportunity --

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2 COMMISSIONER REARDON: We've always had
3 that.

4 SENATOR RAMOS: -- because they largely
5 see many workers, especially undocumented people,
6 as disposable, unfortunately, and we've seen this
7 in the construction industry. So unfortunately
8 that's not always the case. But I do -- I wanted
9 to move on and ask how workers are being educated
10 about their right to refuse unsuitable or unsafe
11 work so that they can remain eligible for
12 unemployment benefits.

13 COMMISSIONER REARDON: So if a worker
14 feels that they are being put in an unsafe
15 position, they can apply for pandemic
16 unemployment assistance, which is specifically
17 for COVID reasons and they have to say that
18 they're turning down this job because of a COVID
19 reason and then they can apply for the benefits
20 and they can get the benefits. That does not mean
21 that a worker can say I have a generalized fear
22 of COVID. That is not an allowable instance in
23 order to collect benefits. But if they feel
24 they're being put in harm's way, if they have a

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2 medical condition, if they have a person in their
3 home that they have to take care of who would be
4 endangered by this, then they the absolutely are
5 eligible to receive their benefits.

6 MS. RAMOS: Okay, and then we have a few
7 minutes left. I don't want to start talking about
8 this. So can you talk about the possible
9 expansion or why it would be important to expand
10 partial UI during the pandemic. I know obvious
11 will I we have received some guidance from the
12 federal administration. Now is that new guidance
13 going to be implemented or what concerns are
14 there at the state level?

15 COMMISSIONER REARDON: So I think
16 partial unemployment, you mean being able to work
17 and collect at the same time, having a day or two
18 of employment and then also collecting
19 unemployment benefits? So there are currently
20 regulations in New York State governing that.
21 There is a ratio the first day I think you lose
22 25 percent of the benefit and goes down from
23 there until you reach the max.

24 There is also a program that we have

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called shared work that an employer registers for
and it allows them to have their workers return
to work at a reduced schedule. They file a plan
with the Department of Labor, we approve it and
those workers are able to follow the plan and
they can receive partial unemployment under the
shared work program and maintain connection with
the employer. Remember that a lot of these
regulations are federal laws that cover how
people receive their benefits.

SENATOR RAMOS: Thank you, commissioner.

I will now yield to Assemblyman McDonald for his
questions.

ASSEMBLY MEMBER MCDONALD: Thank you

senator, and commissioner good morning and thank
you for joining us.

COMMISSIONER REARDON: Good morning.

ASSEMBLY MEMBER MCDONALD: Actually

just want to pick up on a quick point towards the
end. The shared work program, that's actually
been in effect for a long period of time,
correct.

COMMISSIONER REARDON: Mm-hmm.

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2 ASSEMBLY MEMBER MCDONALD: Are you a
3 to measure how much participation in the past,
4 but also how much now?

5 COMMISSIONER REARDON: I don't have the
6 figure for past engagements. I know during the
7 last recession it was a very valuable tool for a
8 lot of employers. Right now, we have 88,000
9 workers enrolled in the shared work program. It
10 is 100 percent federally covered, so it's a
11 wonderful program for employers. And as I said,
12 it allows, you know, what is happening with a lot
13 of businesses are people coming back at half
14 speed. They don't have enough work to keep
15 everybody 100 percent employed. And this way, you
16 can keep them.

17 ASSEMBLY MEMBER MCDONALD: And speak
18 since you said 100 percent federally covered,
19 overall with employment and all the other
20 benefits, what is the total cost? What is the
21 state on the hook for at this stage of the game?

22 COMMISSIONER REARDON: So the numbers
23 are really staggering. The benefits paid from
24 March through August of 2020 is \$40.0 billion,

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2 but remember that almost three-quarters of that
3 money is federal money. FPUC, the \$600 is totally
4 federally covered, some of the emergency
5 extensions are totally covered, so that the part
6 of state UI is much smaller. We are on a federal
7 loan at this point, it is interest free. And that
8 is not unusual, I think many, many, many states
9 if not all states are now in a loan status
10 because of the pandemic.

11 ASSEMBLY MEMBER MCDONALD:

Well,

12 obviously there has been a lot of discussion
13 about the process and a lot of the headaches that
14 everybody, whether it's the department, your
15 staff who really are, have done yeoman's work in
16 a difficult situation and of course the ones
17 we're most concerned about, our constituents, the
18 people who are struggling and suffering. What is
19 the current backlog of unemployment claims as of
20 this moment and compare that to what it was at
21 the peak.

22 COMMISSIONER REARDON:

So, I'm very

23 happy to say right now we don't really have a
24 backlog. Anything that's three weeks old or newer

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2 from three weeks back to now is not a backlog. It
3 essentially takes three weeks to fully process
4 the average claim. Some people go through in a
5 week, some people go in three weeks, so we say
6 three weeks. There are pockets of people who are
7 waiting for adjudication. There are pockets of
8 people who have identity issues and we have to
9 further identified who they are and we're needing
10 documents, people with foreign work
11 certifications, also we need to get copies of
12 those, so there are issues. Sometimes people have
13 holds on their claims but it is not a large
14 number of people.

15 And remember that all of these things
16 are done. We carefully look at all of these
17 filings because of the fraud issue. So we've
18 stopped over a billion dollars worth of fraud
19 from going out the door.

20 ASSEMBLY MEMBER MCDONALD:

21 very eye opening number. I'm sure there will be
22 more information shared with all of us probably
23 as we are going through this hearing today.

24 That's remarkable.

That is a

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2 COMMISSIONER REARDON: Yes.

3 ASSEMBLY MEMBER MCDONALD: Absolute.

4 remarkable. You know, what's been interesting
5 about this financial crisis, and it's a good
6 thing is that traditional workers were able to go
7 through process but in the past, independent
8 contractors, gig workers were never really
9 allowed this benefit and actually initially they
10 were all like, thank God. But the process has
11 been a little bit problematic, I would think you
12 would admit.

13 Could you walk us through the challenges
14 that we dealt with in that because -- and the
15 other thing is are we getting cooperation from
16 the gig companies in regard to providing
17 necessary information?

18 COMMISSIONER REARDON: So we all
19 remember the pandemic started in early March. The
20 Federal CARES Act was not passed until March 27th
21 and we did not get federal guidance on how to
22 administer it, which meant we couldn't do
23 anything until April 5. That CARES Act is what
24 established pandemic unemployment assistance and

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2 that is the form of benefit that's available for
3 people who have COVID reasons for not being
4 employed, but also for people who don't have
5 regular W-2 employment.

6 We had to stand up a new benefit system,
7 as I say to people, it looks like UI, it talks
8 like UI, it's not UI. So we had to figure out
9 with a mainframe system, how to get this into the
10 coding so the machine could process it. All of
11 that took a certain amount of time. But we also
12 had to reach out to a community over a million
13 workers who now were able to apply for this
14 benefit, most of whom had never been in UI
15 before. They had no idea what to expect. They
16 were afraid. They were desperate, they were
17 locked in their homes, they were afraid to go
18 outside, they had no work. It created a huge
19 amount of anxiety for people. Everybody in the
20 system thought they had to call us. And that was
21 one of the first problems we had. As you know,
22 our phone systems went down repeatedly because
23 they just couldn't sustain, we had over a million
24 phone calls a day.

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2 ASSEMBLY MEMBER MCDONALD: Thank you

3 commissioner. Being a moderator, I have to be
4 respectful of the time because the members will
5 get on us. Senator, back to your team.

6 SENATOR RAMOS: All right. Thank you
7 Assemblyman McDonald. Next, we have my colleague
8 Senator James Skoufis.

9 SENATOR JAMES SKOUFIS, CHAIR, SENATE
10 STANDING COMMITTEE ON INVESTIGATIONS AND
11 GOVERNMENT OPERATIONS: Okay. Thank you and thank
12 you, commissioner for your appearance today and
13 answering our questions, nice to see you. And I
14 do want to acknowledge and thank all the really
15 tremendous work, the enormous undertaking that
16 the Department of Labor has been involved in over
17 the past five months or so.

18 But I do want to drill down into some
19 things and your testimony certain, it's important
20 to highlight all of the challenges and the, quite
21 frankly, the achievements of the department over
22 these many months. But I think it did gloss over
23 some of the associated pain that our constituents
24 received and were on the receiving end of,

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2 especially early on in March, April and May. And
3 I know this and I know all my colleagues know
4 this because we were getting all these calls,
5 too.

6 COMMISSIONER REARDON: Yes.

7 SENATOR SKOUFIS: You know, my office,
8 we assisted over 4,000 constituents with
9 unemployment issues, liaising with your
10 department. And so, if I may, so March 22nd,
11 nonessential workers were directed to stay home.
12 I suspect that is really when the crush began, at
13 or around that time, as businesses, workplaces
14 were closing. Yet the large majority, as far as I
15 could tell, of the improvements that were made to
16 the system didn't occur until May and correct me
17 if I'm wrong, so DOL Servers working with Google
18 were at four. I think they scaled up to 60 or a
19 little more than 60.

20 COMMISSIONER REARDON: Sixty-five I
21 think.

22 SENATOR SKOUFIS: It was my
23 understanding that DOL reps went from 400 to a
24 little over 3,000. You had mentioned 7,000 in

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2 your testimony, so I'm not sure which it is, but
3 it scaled up tremendously either way. Can you, as
4 it stands now on August 13, do we still have
5 those 60 plus servers?

6 COMMISSIONER REARDON: Oh yes.

7 SENATOR SKOUFIS: Yes?

8 COMMISSIONER REARDON: Oh, yes, I mean
9 out of --

10 SENATOR SKOUFIS: How many of the
11 thousands of additional DOL reps are still either
12 employed or contracted with, as it stands today?

13 COMMISSIONER REARDON: We still have,
14 let me see if I actually have the hard number
15 here. We went up to 7,000 in total, and right now
16 we have 4,500.

17 SENATOR SKOUFIS: Okay.

18 COMMISSIONER REARDON: And that includ
19 other workers within the DOL, who do other parts
20 of the agency. They've all been trained to do UI
21 work as well as, you know, the vendors that we
22 also brought on board. Let me take one --

23 SENATOR SKOUFIS: Presumably that number
24 will, as we continue to move through the pandemic

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2 and all continues to go well, presumably those
3 numbers will continue to go down.

4 COMMISSIONER REARDON: We hope.

5 SENATOR SKOUFIS: And you'll return to

6 maybe not 300 or 400 but somewhere in that
7 ballpark. And so my question is, looking forward
8 here, it took months to scale up to where you are
9 and where you needed to be, as people waited
10 months and months themselves to get benefits,
11 they're out of work, they and many simply didn't
12 know how to make ends meet. And so, what sort of
13 confidence can you give us that it will not take
14 two months again to scale up, get to where you
15 need to be and, you know, if we have a second
16 wave, some people think the second wave might be
17 worse than the first wave. God help us.

18 Does the economy shut down again and do
19 we have the same exact situation? We can't be
20 going through the same motions where our offices
21 are getting calls with people crying on the other
22 end because they can't even get a call back from
23 DOL after two, two-and-a-half, three months of
24 waiting?

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2 COMMISSIONER REARDON: So let me just

3 point out 75 percent of all the claims that came
4 in since the beginning of the pandemic, 3.3
5 million claims, 75 percent of those claims never
6 had to talk to an agent at all. They went into
7 the computer system, they were handled by the
8 computer system and they received their benefits.

9 SENATOR SKOUFIS: Yeah, but respectfully
10 with 25 percent of the literally millions is
11 still an enormous number.

12 COMMISSIONER REARDON: [unintelligible]

13 [00:28:20] got handled immediately. That says to
14 me that something was working even though it
15 wasn't 100 percent working, it was working better
16 than we had any right to expect. Moving forward,
17 we now know more about what this pandemic can do
18 to people and we know more about how to handle
19 this vast number of people in a more agile way.
20 We have updated our systems we have automated the
21 way we that we report to people. We have
22 automated the way that people work within the
23 system. We had --

24 SENATOR SKOUFIS: Just because my time

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2 is running out, so if we go through a very
3 similar situation again, similar circumstances,
4 how long will it take for you all at DOL to scale
5 up. It took two months in March, April and May.
6 How long, given these improvements will it take
7 to scale up for the next time?

8 COMMISSIONER REARDON: First of all,
9 me point out it did not take us two months to
10 scale up. What happened was at the beginning
11 because there was such an overwhelming surge of
12 cases, we had the backlog issue because we
13 couldn't get to them. But we were approving
14 people right along. April 20th was when the new
15 Google application went live and had the seamless
16 PUI application, so it did not take until mid
17 May.

18 That said, we know what we are doing now
19 with the improved systems that we've got. We've
20 got a trained pool of workers, not just in the
21 DOL but across the state workforce and in the
22 world of vendors. We know how to get the help
23 that we need, so I am very prepared for anything
24 that comes. But let me point out. We went one

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2 week from 16,000 applications, the next week had
3 over 100,000 applications and it went up from
4 there for weeks. So that was the problem. We
5 completely renovated our system, we automated the
6 way people worked with us. We've got chat bots to
7 answer questions and more than anything else, we
8 are telling people you do not have to call us in
9 order to complete your claim.

10 SENATOR SKOUFIS: Thank you.

11 COMMISSIONER REARDON: Google was a hu
12 change in the way people came in.

13 ASSEMBLY MEMBER MCDONALD: Okay. Tha
14 you. We're going move to the Assembly and it
15 looks like Member Marianne Buttenschon has her
16 hand up. Marianne.

17 ASSEMBLY MEMBER MARIANNE BUTTENSCHON:
18 Good morning everyone. It is a pleasure to be
19 here and to the commissioner as well as to your
20 staff, please extend our sincere appreciation for
21 the hard work and dedication and commitment. And
22 I just want to add to what some of my colleagues
23 have already brought up, but clearly there are
24 still some issues that we are seeing. Retroactive

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2 pay is still an issue in the area that I come
3 from, which is the Utica Rome area, we're still
4 receiving calls. We're also receiving calls from
5 individuals that were on unemployment,
6 unfortunately were laid off again and tried to go
7 back on, so the only way it works is delete,
8 completely delete them out of the system. But
9 this is what is happening with these individuals.
10 So I just want to bring it forward that these are
11 issues that we're dealing with from individuals
12 that, for months past.

13 And finally, the portal, as I know the
14 portal was set up, and the challenge we have is
15 it's a one-way communication so the individual
16 has attempted, reaches out to one of the offices
17 for assistance, being mine, and the staff follows
18 the procedure, receives a confirmation that the
19 information has been received. We ask the
20 individual to be patient, to give you a week and
21 we hear from them after the week that they still
22 are waiting. So if there's a possibility that not
23 only a confirmation or a call possibly to our
24 office or an e-mail that says we have reached out

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2 to this constituent and we are working on it.

3 Because we find that that is probably the biggest
4 challenge is the one-way communication with your
5 office. So we're not sure, clearly, if someone is
6 helping this individual, unless the individual
7 calls the office, which enthusiastically tells us
8 that they've had this taken care of. So I just
9 wondered if this is something that you're aware
10 of, that your staff is working on or if it
11 possibly could be rectified.

12 COMMISSIONER REARDON:

Yes, and I will.

13 I'm having conversations with staff now how to do
14 that. As you know, we are not allowed to discuss
15 any personal details of a claimants' case, so
16 that may be one reason they're hesitant do it.
17 But I'm going to talk to them. I'm very happy to
18 say that we have worked through the portal list
19 100 percent. They've all been contacted. Now,
20 remember contacting a claimant doesn't mean that
21 they are automatically made whole. Some of the
22 people have very difficult cases, some of them
23 have been, there are fraud issues, they've been
24 victims of fraud, they have adjudication issues,

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2 they have identity issues. So they may not have
3 been made 100 percent whole in the moment but we
4 are working them. The other thing to remember is
5 unfortunately sometimes people don't like the
6 answers that they get from us and we can't change
7 that.

8 ASSEMBLY MEMBER BUTTENSCHON:

9 understand that. But the community that I'm
10 honored to represent has a large refugee
11 population, so we have the ability that we've
12 created these relationships to be able to work
13 with them and possibly help your staff through
14 whether it's a communication issue or a concern,
15 as you stated.

16 ASSEMBLY MEMBER MCDONALD:

And lad.

17 speaking of relationships we are going back to
18 the senate. Thank you. Senator.

19 SENATOR RAMOS:

Thank you, Assemblyman

20 McDonald. I appreciate that we're really sticking
21 to the schedule here. Before we move on to the
22 next senator, I want to recognize that we have
23 been joined by Senators Kamisky, Sanders,
24 Gallivan and Metzger. And up next we have senator

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2 George Borello, you have three minutes to ask
3 Commissioner Reardon your questions.

4 SENATOR GEORGE BORELLO:

Thank you ve

5 much, Chair Ramos, I appreciate it. Good morning,
6 commissioner, I want to start off by saying thank
7 you for the hard work of you and your staff. Like
8 other senators and assembly people, we have been
9 inundated with calls and your staff that we work
10 with one-on-one and we appreciate the hard work,
11 so thank you for that.

12 I'm speaking to you not only as a
13 senator but also as a small business owner, who,
14 you know, my family-owned business employs nearly
15 200 people. And despite the fact that we had this
16 crisis in unemployment, I can tell you that, like
17 many other small business owners, we watched as
18 the unemployment claims piled up on my wife's
19 desk while she was desperate to hire employees
20 because we could not get people to work. And this
21 is something I've heard across the spectrum from
22 big businesses to small businesses, that we could
23 not get workers despite the fact that you paid
24 out \$41 billion in unemployment insurance claims.

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2 So my question to you is what is going
3 to happen with unemployment insurance
4 experiencing ratings and the impacts on business?
5 It seems wholly unfair that while we were trying
6 to hire people that we could not, largely because
7 New York State gave the longest list of reasons
8 why you could collect unemployment and quit your
9 job and not work. So please let us know how that
10 is going to impact and hopefully not add further
11 insult to injury to the the business owners of
12 New York State.

13 COMMISSIONER REARDON: So, look, we
14 understand at the DOL and the governor
15 understands that this pandemic is unlike anything
16 we have ever experienced and that goes for
17 businesses as well as workers. And the shutdown
18 of New York State businesses was not something
19 that you asked for. So we are looking at, the
20 governor signed an executive order and allowed us
21 to look into the issue of the experience ratings
22 and how that might be adjusted for businesses and
23 we are working on that right now, because we
24 understand. I always understand, I say to my

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2 folks all the time the relationship between a
3 worker and a business person is symbiotic. The
4 worker needs the paycheck, the business person
5 needs that worker so one can't exist without the
6 other. And we will do everything we can to make
7 sure that New York business, particularly small
8 businesses, which are the backbone of New York
9 State, remain healthy and can grow in this state.
10 We take it very seriously. At the same time --

11 SENATOR BORELLO: Well, I'm glad to hear
12 you say that. Go ahead, I'm sorry.

13 COMMISSIONER REARDON: People are
14 allowed to collect the benefits according to the
15 federal regulations.

16 SENATOR BORELLO: Yeah, I understand.
17 That was in my opinion, a mistake made in
18 Washington that was weaponized in Albany by
19 allowing virtually anyone to claim unemployment,
20 even if they didn't have a real legitimate excuse
21 and that's really where we have the problem here.
22 That's why like I said, we've watched
23 unemployment claims pile up on the desks of small
24 business owners across New York State while we

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2 paid out a record amount of unemployment claims,
3 many of which are unnecessary in my opinion,
4 since 70 percent of the workers were making more
5 on unemployment than they were making when they
6 were working. So I realize that was not your
7 mistake but it something that's now laid at your
8 feet and the governor's feet to ensure that we
9 don't have further flight of businesses from New
10 York State. Thank you.

11 COMMISSIONER REARDON: Thank you.

12 ASSEMBLY MEMBER MCDONALD: Okay. Th

13 you, back to the assembly and we will now go to
14 Robert Smullen for three minutes. Roberty? Going
15 once, going twice, gone, three times. We'll go to
16 Harry Bronson. Oh, he's back, he's there, go
17 ahead, Robert.

18 ASSEMBLY MEMBER ROBERT SMULLEN:

19 I'm here. Can you see me now?

20 ASSEMBLY MEMBER MCDONALD: Yeah, we

21 COMMISSIONER REARDON: Hi.

22 ASSEMBLY MEMBER SMULLEN: Great.

23 Commissioner, thank you for coming before us
24 because it's been rare to see you in public to be

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2 able to answer questions about this unemployment
3 insurance issue, which has grievously affected my
4 constituents. Not only those who have been put
5 out of work but more importantly those who have
6 simply been unable to navigate the process and
7 haven't gotten the attention, despite our best
8 efforts from legislative inquiries to be able to
9 adjudicate their claims. And I want to go back to
10 what my colleague said about the difficulties in
11 navigating the system. Now who is responsible for
12 the Google contract to get this system up and
13 running in your organization?

14 COMMISSIONER REARDON:

The person? I

15 mean we, these contracts go through the usual
16 state process, Department of Budget, you know,
17 OSC is actually the person who signs off on it.

18 ASSEMBLY MEMBER SMULLEN:

And they

19 and now that software is run by the Department of
20 Labor and administered by your department?

21 COMMISSIONER REARDON:

Mm-hmm.

22 ASSEMBLY MEMBER SMULLEN:

So there s

23 to be a lot of holes in this system and one in
24 particular, one of my constituents, Kathy Katuchi

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2 has been waiting nine weeks for her unemployment
3 benefits. We've submitted numerous legislative
4 inquiries. Where can I direct Ms. Katuchi to be
5 able to get a person to be able to specifically
6 help her navigate the system between the New York
7 unemployment insurance and the federal pandemic
8 unemployment assistance program?

9 COMMISSIONER REARDON: Why don't we take
10 offline and I can take care of that.

11 ASSEMBLY MEMBER SMULLEN: It would be
12 very helpful because she's not alone. Like I
13 said, I have a mixed district in the Mohawk
14 Valley and through the mountains, 2,200
15 legislative inquiries from my constituents. It's
16 been the number one issue and their major
17 frustration with New York State government
18 working for them. And it's been a variety of
19 things from March until, you know, here we are in
20 the middle of August and people are still
21 confused as to how to navigate the system. And we
22 are doing very our best to help those people, but
23 it would be helpful if now that there are DMVs
24 open that DOL offices would also be open where

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2 people could go in in-person that are not
3 computer savvy or not able to work the system
4 online. And I appreciate that much of it's
5 automated, but I think now is the time with
6 appropriate guidelines in place to meet people in
7 person. When is the DOL going to open up in
8 person offices again?

9 COMMISSIONER REARDON: We are looking
10 into that. As you can appreciate, it is a
11 difficult thing to handle 96 career centers
12 across the state and the last thing we want to do
13 is create any kind of unsafe situation, either
14 for our workers or for your constituents. We are
15 working very hard to make sure we can bring
16 people back safely and appropriately. But again
17 we have worked very hard to make sure our online
18 presence is as easy to navigate as possible.
19 Right now, if somebody has been waiting for --

20 ASSEMBLY MEMBER MCDONALD: Thank you
21 commissioner, and speaking of presence, I think
22 the senate has somebody who would like to speak.

23 SENATOR RAMOS: Thank you, assemblyman.
24 We have been joined by Senator Mayer and up next,

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2 I want to recognize Senator Robert Jackson, who
3 has three minutes to ask questions.

4 SENATOR ROBERT JACKSON: Thank you. I
5 commissioner, how are you?

6 COMMISSIONER REARDON: Hi. You're my
7 senator.

8 SENATOR JACKSON: I know. And listen,
9 during this pandemic, I understand that this was
10 like a disaster for everyone and there was no
11 pull out the playbook in order to get it done.
12 But obviously knowing the systematic process in
13 DOL and I worked in DOL from '75 to '80
14 investigating fraud, so I know some of the old
15 processes that existed. But clearly my staff,
16 along with all the other staff in the state of
17 New York as far as legislators, were basically
18 inputting the information and sending it up. And
19 we were communicating directly with the
20 governor's office who was the liaison with DOL.
21 And now, from my staff and I found that the best
22 way is to go straight to your employees to
23 resolve matters. But we still, like some of my
24 colleagues have some, a group of individuals that

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2 are still outstanding in which we would like to
3 get that list to whoever you determine and like I
4 can talk to you or have someone offline to
5 contact me so we can get that to you, because the
6 more people wait, the more they're suffering and
7 we're just trying to relieve the suffering that
8 our constituents are seeing right now and having.
9 So I would appreciate that that's number one.

10 Number two, as you know, I formerly work
11 as an employee of PEF, the New York State Public
12 Employees Federation and get their newsletter and
13 found out that hundreds, if not thousands, of PEF
14 employees that were working and was made to work
15 overtime or they worked overtime and were being
16 paid at like a grade nine even though they may be
17 a grade 14 or grade 18, and obviously, that's not
18 right. So, I hope that that matter is resolved
19 internally within the state of New York, rather
20 than them pursuing all of the legal aspects that
21 they have. It's not right to tell people you
22 continue to work and do your job as a
23 professional, but we're going to pay you as grade
24 nine, totally unacceptable.

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2 But other than that, I say to you that I
3 understand the complexities and I understand, but
4 your staff, I believe, within the past couple of
5 weeks, they've gotten hold of everything and
6 moving things faster but there are still some
7 wrinkles here that we have to work out. So I
8 thank you and your staff for understanding our
9 concerns as representatives of the people and so
10 please help us out. Thank you.

11 COMMISSIONER REARDON: We will. And
12 thank you. Let us know what we can do to help.

13 SENATOR JACKSON: Thank you.

14 COMMISSIONER REARDON: Good to see you

15 ASSEMBLY MEMBER MCDONALD: I'd like

16 recognize my colleague Al Taylor, who's joined us
17 and I would like to now ask Harry Bronson to join
18 us for a comment. Although he's a former labor
19 chair, he only gets three minutes. Sorry, Harry.

20 ASSEMBLY MEMBER HARRY BRONSON:
21 first of all, John, thank you. I haven't been
22 labor chair yet. We may work on that.

23 ASSEMBLY MEMBER MCDONALD: Oh, sorry
24 about that. I gave out a secret. All right.

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ASSEMBLY MEMBER BRONSON:

That's oka

Commissioner how are you doing today? Very nice seeing you.

COMMISSIONER REARDON:

Thank you, it's

good to see you, Harry.

ASSEMBLY MEMBER BRONSON:

Thank you

One of the senators asked some questions about getting ready for the next wave, things of thing that nature. Can you explain to us what you are doing to get ready for any changes that come down where the federal government is dictating it, whether we are moving 600 to 400, those kinds of changes? What are we doing right now so that we can get money in the hands of our families.

COMMISSIONER REARDON:

So we've alrea

mapped out various scenarios, if it's a flat fee, if it's a portion of a person's former salary, which would be a terrible idea by the way. Just, you know, statistically for us, but we've looked at various iterations of plans. Unfortunately, right now, what has come out of the federal government is incredibly garbled and probably going to be litigious. So we have our tabletops

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2 ready, but we have yet to receive any guidance
3 from the federal government that tells us how
4 they want us to do it. So we're waiting for them
5 to let us know. But we are mapping out scenarios
6 so we know if it's this, we can do that, you
7 know, we're not waiting until they tell us. We
8 have it in the pipeline.

9 ASSEMBLY MEMBER BRONSON:

All right

10 we know that caused some delays in this wave
11 previously without those guidance coming until
12 April sometime.

13 COMMISSIONER REARDON:

Right.

14 ASSEMBLY MEMBER BRONSON:

My next

15 question really isn't about UI, I want to thank
16 you for all your efforts on that though. I know
17 you and the workers worked very hard to make that
18 happen. My next question is what are we going to
19 do as we move forward? My suspicion is that we
20 are going to have a lot of hybrid in facility
21 remote workers and we're probably not going to go
22 back to where people go to facilities all the
23 time in many industries. Some industries, that's
24 a necessity. What are we doing to deal with

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2 workers who will now be working remotely, at
3 least part of the time, and are we anticipating
4 any changes as that relates to independent
5 contractors and gig workers?

6 COMMISSIONER REARDON:

So, let's put t

7 independent contractor and gig worker on another
8 question because one, I'd really like to focus on
9 the remote work, the mixed remote, some here,
10 some there. It is a looming issue. Now, during
11 the pandemic, the state workforce worked
12 remotely. My DOL Staff were calling people from
13 their homes on cell phones, so we understand
14 firsthand what it takes to provision a worker to
15 begin to supervise remotely, what the work plans
16 look like and we are working with industry. I've
17 already had a conversation with the Long Island
18 REDC about this. I expect to talk to other REDC
19 about this. I expect to talk to the other REDCs.
20 We're reaching out to our business partners now.

21 But we understand that this is going to
22 require a different kind of direction from the
23 employer and a different kind of discipline from
24 the worker. And it's going to require a lot of

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2 different materials. So, we are looking to see
3 how we can facilitate this, how we can help
4 workers up their digital skills and help
5 employers have better approaches to remote work.
6 It is going to be quite the experience in a
7 short-term kind of way. Long-term, three years
8 from now, who knows? Once there's a vaccine, will
9 people want to gather together again? I mean
10 that's yet to be seen. But right now, it is going
11 to be a mix and it's going to be a struggle for
12 some people who are not digitally savvy, both the
13 businesses and the workers.

14 ASSEMBLY MEMBER BRONSON: All right
15 well, my time is up, but --

16 ASSEMBLY MEMBER MCDONALD: Thank you
17 commissioner. Thank you, Harry. Senator.

18 SENATOR RAMOS: Thank you. We've also
19 been joined by Senator Hoylman and up next, we
20 have Senator Tom O'Mara who, as a ranker on the
21 Committee of Investigations is allotted five
22 minutes for questioning.

23 SENATOR TOM O'MARA: Thank you,
24 chairwoman, thank you, commissioner, for being

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2 here with us today in these very difficult times
3 and was has certainly proven to be very
4 frustrating times for all of us, without
5 question. As you were finishing your last
6 comments there, you mentioned that some
7 businesses and a lot of individuals are not
8 computer tech savvy and that's been a real issue
9 with these claims being made and also with the
10 lack of broadband in many areas it is difficult
11 or somewhat impossible for individuals to be able
12 to have that kind of computer portal connection.

13 Since we are helping so many individuals
14 with their claims, why can't there be some type
15 of a release from the claimant that would allow
16 our staff, myself, to be able to communicate
17 directly with DOL about the individual's claim,
18 so that that contact is being made and we would
19 have individuals working in conjunction with DOL
20 from our offices helping the claimants when we
21 just kind of -- we make the contact and then say
22 wait for DOL to call you.

23 COMMISSIONER REARDON:

So, we're look:

24 into that. Remember that there are federal

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2 regulations surrounding a lot of the privacy
3 issues. Those are not New York State regulations.
4 Those are federal regulations. Given that, we
5 would like to be able to facilitate your offices
6 and the claimants. We'll do everything we can but
7 we are limited by the federal laws.

8 SENATOR O'MARA: And a release can't be
9 made under federal law?

10 COMMISSIONER REARDON: We can look into
11 it. They haven't been very forthcoming lately.

12 SENATOR O'MARA: Well, I think we should
13 look into that and we should press them on that
14 because we have, my staff and myself are
15 virtually spending 90 percent of our effort on
16 unemployment claims. And they're still coming in
17 daily, several a day into my office still, and we
18 still have some claims that have not been
19 resolved from April, even despite repeated
20 contacts with our labor representative that we
21 have that we can contact through our office. It's
22 just very frustrating when we have to say wait
23 for a callback and then the call doesn't come or
24 it comes and nothing happens. For us to be

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2 involved and help those constituents would be,
3 would, I think make it easier for labor too
4 dealing with someone that knows the process on
5 the claimant's end as well.

6 At the outset of this, you had, I think,
7 thousands of state workers from other agencies
8 starting, handling these claims. What happened to
9 those workers and why were they taken off the
10 jobs, the state workers from other agencies?

11 COMMISSIONER REARDON: Well, you know
12 you can imagine that the other agencies also have
13 work that they have to do. So they gave us a lot
14 of time during the very height of the pandemic
15 when it was really critical. But as I said, we
16 have 4,500 workers right now working on these
17 cases. And remember that in order to have someone
18 come in and work with us, it takes a lot of
19 training. As you can imagine, these are very
20 intricate cases. There are a lot of laws apply to
21 them. You don't get trained in an hour or two.
22 You don't even get trained in a day or two. So
23 this is a very extensive process and we were very
24 thankful for the help we've gotten. But frankly a

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2 lot of these people have their day jobs in other
3 state agencies and they could not stay with us
4 forever. But we do have 4,500 workers doing it.

5 SENATOR O'MARA: Yes, and I appreciate
6 that, but I think the many that I knew that were
7 involved in it only did it for a couple of weeks.
8 And they were ready, willing and able to continue
9 and were somewhat surprised they were taken off.
10 Certainly I think this should have been all hands
11 on deck to get people the money that the they
12 deserve because, you know, frankly, they were
13 starving.

14 COMMISSIONER REARDON: So this may have
15 been a decision by other agencies, it was not a
16 decision by us.

17 SENATOR O'MARA: What is the department
18 doing with the issue of the extra unemployment
19 being paid and some people earning or receiving
20 more than they did at their regular job before
21 they were laid off? If that job is offered back
22 to the claimant, what is the department doing
23 about making sure that person goes back to their
24 job or cutting off their benefits?

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2 COMMISSIONER REARDON: So let's remem

3 that FPUC, which was the extra \$600 ended the end
4 of July, that is no longer being paid. So they
5 are only getting whatever their unemployment
6 insurance or PUA amount is and that's remarkably
7 lower than it was with FPUC. So we have even a
8 decrease over the last couple of weeks in new
9 cases and we've seen, you know, things are
10 beginning to lower on the phone volume and we can
11 only assume that people are beginning to go back
12 to work. We, the law, the federal regulation is
13 that you need to be ready, willing and able to
14 work in order to collect and if you turn down an
15 appropriate job offer, then you are not ready,
16 willing and able and then we would have to cut
17 off your benefits.

18 SENATOR O'MARA: How many people do you
19 have working on following up on those issues?

20 COMMISSIONER REARDON: I don't know th

21 we do it in the way that you are thinking, but
22 when somebody asks for an adjudication, it goes
23 to an adjudication person and is looked into. I
24 don't know offhand how many people that is.

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2 ASSEMBLY MEMBER MCDONALD:

Thank you

3 very much. We're going to move back to the
4 Assembly. I also want to recognize my colleagues
5 Carmen De La Rosa and Catalina Cruz, who joined
6 us and we will now go to Joe DeStefano. Joe?

7 ASSEMBLY MEMBER JOSEPH DESTEFANO:

8 Commissioner, I have only a couple of questions.
9 One of them was when you mentioned earlier before
10 when someone who is experiencing the pandemic and
11 they are offered to go back to work and they
12 choose to opt out either because of a family
13 issue or illness or anything like that, is there
14 any verification of proof or anything like that
15 required to receive that benefit?

16 COMMISSIONER REARDON:

You mean like a

17 doctor's note?

18 ASSEMBLY MEMBER DESTEFANO:

A doctor's

19 note, some kind of documentation that somebody in
20 their care needs to be cared for and they're the
21 only ones that can help them so therefore, they
22 can't go back to work?

23 COMMISSIONER REARDON:

I don't think

24 it's like that, as you had described it.

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2 Remember, this is federal legislation. Anybody
3 collecting PUA is paid 100 percent by the
4 federal dollars and it is completely covered by
5 the CARES Act, it's not New York State
6 legislation at all. So the federal government set
7 up that system and they wrote the guidance for
8 it.

9 ASSEMBLY MEMBER DESTEFANO: Okay. S
10 basically we can assume by that, that it's the
11 honor system. If someone claims that they can't
12 go back to work for whatever reason, then it's
13 assumed that it's just something that's covered
14 under the PUA.

15 COMMISSIONER REARDON: It's whatever t
16 CARES Act set forth as the requirements is what
17 we enforce.

18 ASSEMBLY MEMBER DESTEFANO: Second.
19 again, I'd like to you and your staff for all
20 your efforts. I spent many an afternoon with all
21 of my Long Island colleagues, with Dana going
22 over all of the unemployment claims and problems
23 that we had, and under the circumstances, your
24 team did a remarkable job. Obviously it did fall

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2 short in a lot of places. I still have
3 constituents calling on a daily basis saying they
4 called in April or March and they still haven't
5 received anything. And as you say there are
6 complex cases that need to be gone through. But
7 it's certainly understandable under the siege
8 that you guys were under. But I do appreciate it,
9 and my office appreciates it.

10 Also, the last thing I'll touch on is
11 the governor has already indicated that if the
12 executive order that the President signed about a
13 week or so ago, that he's opting out. He's not
14 going to partake in the new executive order that
15 was signed. How is that going to affect you and
16 the staff and obviously the constituents of the
17 state? Where does that leave them?

18 COMMISSIONER REARDON:

So, right now I

19 don't think we have a final determination on any
20 of this. Frankly, we've gotten very mixed
21 messages from the federal government and the U.S.
22 DOL on what the memorandum actually means. So
23 it's very hard to say with any reliability what
24 they're asking us to do. Our hope is that this

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2 will be an enticement for the Congress to come
3 back together and actually pass a law that will,
4 you know, be sustainable and we can work with.
5 But right now we don't really know the parameters
6 of what they're asking.

7 I can say that if we had to pay an extra
8 \$100 for every claimant currently between now and
9 the end of December, it would be something like
10 four plus billion dollars in cost to New York
11 State. It would be completely intolerable. We
12 couldn't do it.

13 ASSEMBLY MEMBER MCDONALD: Thank you
14 back to the Senate.

15 SENATOR RAMOS: Thank you. I want to
16 shout out Senator Gustavo Rivera and I apologize.
17 Apparently, he's been with us from the beginning
18 and I skipped over him. My apologies. But up next
19 we do have Senator Monica Martinez who has three
20 minutes on the clock to for her questions.

21 SENATOR MONICA MARTINEZ: Hello, can
22 hear me?

23 SENATOR RAMOS: Yes.

24 SENATOR MARTINEZ: All right. So

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2 commissioner first of all, I love the new hairdo.

3 COMMISSIONER REARDON: Thank you.

4 SENATOR MARTINEZ: It looks great. And

5 again, I just want to say thank you for
6 everything that you've done thus far in helping
7 my office with things that we've had. But I just
8 want to say we are still going through things and
9 I just want to make sure that we communicate a
10 little better. But here are my questions. In
11 terms of some of our labor issues that we've been
12 having in the districts is regarding protecting
13 employees in terms of how that's being handled.
14 We have a couple of businesses and distributors,
15 big distributors here on Long Island who have
16 one, failed to negotiate any type of fair labor
17 agreements, working conditions to be fair enough
18 and they haven't really been I guess forthcoming
19 in trying to provide PPE for employees at certain
20 factories.

21 What are we doing in terms of that
22 process and is there a way to put a complaint --
23 I know you said earlier that there is a way to
24 put a complaint in. But I'm also afraid that

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2 people will be afraid to put a complaint in if
3 they have to provide any type of information,
4 such as their name. I don't know if on the
5 website there is a way that you can become
6 anonymous or be anonymous in terms of what they
7 can put in as a complaint.

8 COMMISSIONER REARDON:

So you have, if

9 you file a complaint with the Department of Labor
10 against your employer, we do not disclose any
11 identification to the employer. It is anonymous
12 for the very reason that you're talking about. We
13 understand it's hard to come out and say my
14 employer is harming me. We protect your identity.
15 We also have a retaliation unit, so if something
16 should happen and the employer retaliates against
17 the employee, we will go after the employer. We
18 take it very seriously. So they should not be
19 afraid to come to us. We do this all the time,
20 work with everybody who comes in. We understand
21 how hard it is to take that first step. But if
22 you don't take the first step, we won't have the
23 ability to come in and look at what's going on.

24 SENATOR MARTINEZ:

And I appreciate

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2 that. So I have one in particular, Quality King.
3 They have a couple of distributing centers in my
4 district, one being in Bellport and they have yet
5 to provide our employees with the proper
6 equipment needed. And I've tried to call them.
7 They refuse to call me back and the union has
8 tried to negotiate, but they are not responding
9 what can we do to protect those employees?

10 COMMISSIONER REARDON: Let us know.

11 Absolutely, go on the website or call the office,
12 let us know who this is and we will absolutely
13 look into it. If there's a union involved, tell
14 them to reach out them to me as well. That's an
15 additional piece of leverage that we have, but we
16 take this very seriously. This is an airborne
17 disease and a contact disease. And last thing we
18 want is workers being forced to go to work in
19 unsafe conditions, it's not supportable.

20 SENATOR MARTINEZ: And I appreciate
21 that. And my last question is do you have a total
22 number of businesses that have reported not
23 having adequate safety measures?

24 COMMISSIONER REARDON: Do I have a ph

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2 number for businesses or?

3 SENATOR MARTINEZ: No, no, no if you
4 have -- how many businesses do you have that have
5 put a complaint in that they have not been able
6 to provide adequate safety measures? Whether it's
7 funding or whether it's just they don't know how
8 to do it. I mean do you have a total?

9 COMMISSIONER REARDON: No, I don't have
10 -- but, but we can talk about that offline, I
11 don't have that right in front of me but we can
12 certainly have that conversation.

13 ASSEMBLY MEMBER MCDONALD: And speak
14 of offline, we're going to go back to the
15 Assembly and we're going to ask my colleague, Jo
16 Anne Simon to the panel. Good morning, Jo Anne.

17 ASSEMBLY MEMBER SIMON: There we go. I
18 starting my video. There we go, okay.

19 ASSEMBLY MEMBER MCDONALD: Beautiful.

20 ASSEMBLY MEMBER SIMON: All right, so
21 thank you very much. Good morning, commissioner
22 and thank you for your testimony.

23 COMMISSIONER REARDON: Good morning.

24 ASSEMBLY MEMBER SIMON: I have a series

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2 of questions, I'm going to lay them out to
3 maximize time. And so a couple things that are
4 new trends. Number one, we are getting more and
5 more older cases that had been successfully
6 certifying and are now having difficulty
7 certifying. And we don't understand why that
8 might be. Back pay is still a problem. The
9 process and the ability for people to get through
10 that process is still very sticky. And so they're
11 forced to call our offices repeatedly and by time
12 we get them, and we have to call your office
13 again and again, by time we get that, it's
14 already protracted. So there's quite a gap for
15 people.

16 Also contesting, is some people who feel
17 they're not getting the level of benefit they
18 should be, but that process to contest is the
19 same as appealing, you know, applying for
20 unemployment and so that kind of slows that down.
21 There doesn't seem to be a more streamlined way
22 to do that and so we just find that a lot of the
23 sort of general communications are still very,
24 very sticky. We are following up with your office

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2 numerous times and we realize everybody is
3 overworked, but we have very little staff as
4 well.

5 And then the other thing is there was an
6 Uber lawsuit and there was a question about those
7 Uber workers who were employees under state law
8 who were not falling into the right category or
9 something. And there was a finding for those
10 employees and is the Department of Labor now
11 processing them and how is that going?

12 COMMISSIONER REARDON:

So, let me wor

13 backwards, I made a list. The Uber case of course
14 is in litigation and I can't comment on that. The
15 reconsideration for your benefits, we are doing
16 those as we speak, and I can look into, you know,
17 cases and see if there's a particular problem
18 that you're having. The back pay, people get a
19 DocuSign document sent to their e-mail, they fill
20 it, it has their information and it automatically
21 goes into the computer. So they should watch for
22 the DocuSign and fill it out when it comes. We've
23 paid out \$4 billion in back certifications
24 through the DocuSign system, so they should make

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2 sure that if the DocuSign system comes in, they
3 have to use it. It's the most efficient way to
4 get back certifications. Remember, nobody ever
5 back certified before the pandemic. This is all
6 brand new. And difficulty certifying now, that is
7 an oddity, if there was a break in their claim,
8 if they forgot to certify for a week, that might
9 be the problem, because then they had a break in
10 service. But, you know, we'll look into it and
11 see. It should be automatic, you can certify
12 every week online, so they shouldn't be having a
13 problem.

14 ASSEMBLY MEMBER SIMON:

That was our

15 view too, they shouldn't be having a problem
16 because they had been doing that regularly. And
17 so let me just, if I can, follow up on your point
18 about the DocuSign document and people should be
19 getting it regularly. What if they're not get --
20 I think the problem is they're not getting
21 anything. They're never getting the DocuSign
22 document.

23 COMMISSIONER REARDON:

Okay. Then, we

24 need to talk to them. It could be that they gave

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2 us a bad e-mail. It's all done by e-mail if we
3 have a bad e-mail, that's why. So we need to have
4 a conversation. If they have two-way
5 communication on their account, if they signed up
6 for that, then they can just send that through
7 two-way communication and we can begin the
8 process that way. But, usually, if they didn't
9 get a DocuSign it's because we don't have a good
10 e-mail.

11 ASSEMBLY MEMBER SIMON: Okay. Thank you.

12 SENATOR RAMOS: All right. Thank you.

13 Thank you, assemblywoman. Up next, we have state
14 Senator Diane Savino who has three minutes on the
15 clock for her questions.

16 SENATOR DIANE SAVINO: Thank you,

17 Senator Ramos. Good morning, commissioner. A lot
18 of my questions have been answered so I'm not
19 going to repeat them for time. I do want to talk
20 about two issues that I think are important
21 because you and I have had this conversation in
22 the past about the issue of staffing and not just
23 your agency, it's in every state agency. And as a
24 result of the pandemic and the demands upon your

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2 agency, you were forced to bring people in from
3 other agencies. And I think you used the number
4 of 4,500 people -- have they come in from other
5 agencies or is that 4,500 people from other
6 agencies plus temps from outside agencies?

7 COMMISSIONER REARDON:

So we've hired

8 about 500 people at this point, I think, in the
9 DOL. We have outside vendors. We may still have
10 some volunteer, you know, people from other state
11 agencies. I don't know of that mix. But let me
12 just point out because you and I have talked
13 about this a lot. In the universe of UI, our
14 budget is mainly, almost 100 percent federal. So
15 the ability to hire more staff is really a
16 federal dollars issue and it's an inverse
17 proportion. When the economy is good, our
18 staffing shrinks, because we don't need them.
19 When the economy is bad, we grow. That's why we
20 just hired 500 people. We get administrative
21 funds from US DOL to do that. It's not state
22 dollars that's paying for them.

23 SENATOR SAVINO:

So the two other issues

24 I want to mention and you can answer. The

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2 strength or the safety of the trust fund, we've
3 spoken about in the past. Maybe you can address
4 that. And two, I know that in 2019, the
5 department decided to implement a new computer
6 system because the system had you in place dated
7 back to the 1970s and the new system is not quite
8 yet in place.

9 COMMISSIONER REARDON: Correct.

10 SENATOR SAVINO: Or you may have been in
11 the process of implementing it. This could not
12 have happened at a worse time, so you brought on
13 60 servers from Google and now you still have the
14 new processors that are supposed to come in. Are
15 you going to continue with the implementation of
16 I believe it's the Tata system to complement the
17 Google servers that you have? Or what do you see
18 as the future of technology in the Department of
19 Labor?

20 COMMISSIONER REARDON: Great question.

21 Thank you. So, I'm happy to say all through the
22 pandemic, the outside contractors and the staff
23 that we had devoted to, we call it UISIM is the
24 acronym for this, devoted to the rebuild of the

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2 system. They worked throughout the pandemic on
3 the rebuild. They focused, they took all the
4 information -- remember we got a lot of new
5 information that we had never -- we never
6 expected to serve three million people for
7 instance, so that has enriched this program
8 enormously. They are continuing to work through
9 it. We have a very aggressive timeline for it.
10 The Google information has very helpful. TCS is
11 the American part of Tata and they are doing a
12 superb job and we are looking forward to rolling
13 that out.

14 You're right. We were nowhere close to
15 being able to have it ready during this. But the
16 good news is they're working very hard on it. The
17 trust fund, we are on a federal line of credit at
18 the moment. It is interest free and there is a
19 lot of talk in Washington about some kind of
20 federal forgiveness of at least some of the loan
21 for states because every state in the country is
22 facing this.

23 I am very happy to say that the work at
24 you all did in the legislature following the last

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2 recession to rebuild the system of the trust fund
3 really worked. Our trust fund was solid, we got
4 through the first part of it without having to
5 take out a loan which was great. And we
6 appreciate the work you did and I know once this
7 is all over I'm sure we will revisit this whole
8 conversation, because this has changed
9 everything.

10 SENATOR SAVINO: Thank you.

11 SENATOR RAMOS: Thank you. Up next we
12 have, oh I should mention that we don't have any
13 more assembly members on the list, so we are
14 going proceed with the rest of my colleagues who
15 have questions. And up next we have state Senator
16 James Sanders who has five minutes for his
17 questions.

18 SENATOR JAMES SANDERS: Thank you, Ma
19 Chair and thanks to the other chairs. Good to see
20 you commissioner, how are you?

21 COMMISSIONER REARDON: I'm well, than
22 you.

23 SENATOR SANDERS: Good. Let me follow up
24 with Senator Savino's question of computer

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2 systems. Computer systems often have problems of
3 being merged. How do we get rid of one system and
4 grab a different system or what is the plan after
5 this? Are we going to -- are we going to still
6 another system and who is going pay for this
7 Since this was a problem to begin with.

8 COMMISSIONER REARDON:

So remember, th

9 UI system is by and large almost 100 percent
10 federally funded. We have appropriate fundings
11 for this rebuild. It is not coming out of the
12 trust fund, would never come out of the trust
13 fund, not coming out of state dollars. It is, as
14 you can imagine, I used to say to people at the
15 height of the pandemic, you are you are not
16 buying socks off Amazon, this is a huge knowledge
17 machine and they are highly complex. That's why
18 the rebuild of the system is years long instead
19 of months long. There will be migration of
20 information from one system to another, there
21 will be bridges. It would take me way too long to
22 begin to explain the little bit that I understand
23 about technology to you.

24 But it is a highly complex system and we

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2 have excellent, and I mean excellent people
3 working on it. We have, of course, the outside
4 vendor, but we have our own subject matter
5 experts and people from around the rest of the
6 state government, ITS is working with us. So,
7 it's huge. It will be a complex issue and once
8 it's rebuilt, I'm very excited because I think
9 with a rebuilt system, we would not have the same
10 kind of problems that we did today. We've learned
11 so much from this COVID disaster and all of that
12 is being integrated into our thinking for the new
13 system.

14 SENATOR SANDERS:

Well, Madam

15 Commissioner, all of these things were being done
16 in theory before this disaster struck. What's to
17 ensure and what timeline do we have to make sure
18 that we're automated?

19 COMMISSIONER REARDON:

So we remain

20 automated. We've done a lot of upgrades to our
21 system during the pandemic. We literally rebuilt
22 the plane while we were flying it and that's a
23 good thing. And a lot of the progress we've seen
24 in the last six weeks is because of all that

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2 technology that we've been able to use.

3 The pandemic has taught us some
4 interesting lessons. We had done a lot of
5 scenarios, obviously going into the rebuild of
6 the system, no one ever envisioned shutting down
7 New York State, no one. And so now we do envision
8 it and we know how to prepare for that. Other
9 states are asking us how we have gotten through
10 this pandemic. As difficult and problematic as it
11 has been, we have been months ahead of other
12 states. I had a call in mid-May from a
13 neighboring state saying how did you set up your
14 third party call centers? We set them up in early
15 April. I know other states were just beginning to
16 pay PUA at the end of May and into June. We paid
17 ours in early April, as soon as we could.

18 So as painful as it's been for us, we
19 are leading the country. And I'm very proud of
20 that we have learned all of those lessons and we
21 are not going to forget any of them.

22 SENATOR SANDERS: Madam, since time is
23 up my friend, let me put in two questions to you.
24 We've heard a lot of this talk of people earning

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2 more on unemployment than work. I'd like to have
3 a quantification of that, how true is this. Then
4 the other, I have so many people in my district
5 that are crying out, screaming out, dealing with
6 the question of depression, suicide, et cetera,
7 because they're not getting their needs met. So
8 if you can answer with assurance, how do I go it
9 these people and their needs met? And how true is
10 this comment that lots of people are earning more
11 from unemployment than work?

12 COMMISSIONER REARDON:

So there have

13 been a number of studies, not just in New York
14 State but across the country, about that very
15 large issue and there are a large number of
16 people in various states, including New York who
17 have earned more on unemployment than they did at
18 their job. I think that speaks more to the low
19 wages than it does to the system that's assisting
20 them. Let's remember that this system was devised
21 to keep people home, so they did not get sick and
22 it worked. And I think it was worth every penny
23 that we have all spent to protected our citizens.

24 As far as people being desperate, I hear

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2 you. I think it is a terrible situation I want to
3 get people back to jobs and not just some crummy
4 low wage job, I want to get people back to good
5 jobs. I want to help people find a better career,
6 I want to offer them the opportunity for training
7 so that they can improve the lives for them and
8 their families.

9 And by the way, we are participating
10 with Head Space. It's a company that does mental
11 health counseling and there are lots of resources
12 there, call me offline and we can give you the
13 information for your constituents. It's all free,
14 it's all confidential. People should never suffer
15 the way they've been suffering these days and we
16 have help available.

17 SENATOR SANDERS: Thank you, Madam
18 Commissioner, thank you Madam Chair.

19 COMMISSIONER REARDON: Thank you.

20 ASSEMBLY MEMBER MCDONALD: Thank you
21 will now move back to the Assembly, co-chair Tom
22 Abinanti for five minutes.

23 ASSEMBLY MEMBER ABINANTI: Thank you
24 all. Commissioner, thank you very much for

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2 joining us. You and I have had a conversation on
3 a bit more of a general area. And I'd like to
4 take you away from unemployment insurance to
5 another part of your role. If you look back, a
6 year ago, the unemployment rate in this country
7 and in New York was you know, much, much lower,
8 New York, we were talking maybe four percent. Now
9 we're talking 15 percent, New York City 20
10 percent.

11 COMMISSIONER REARDON:

Yes.

12 ASSEMBLY MEMBER ABINANTI:

And we ha

13 seen so many people lose their jobs. We've seen
14 so many sectors of the economy that have been
15 badly damaged and we may be losing them
16 permanently, or at least they're going to be it
17 is going to be a long time before they come back.
18 And so we need to find a way to restore parts of
19 our economy or substitute new ones we need to
20 find a way to support the green economy and move
21 towards the sustainable jobs that are not going
22 to be affected or not going to damage the economy
23 or the environment and which are going to be
24 there if there's a second round of COVID. So what

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2 are we doing to make employees feel safe that
3 they can leave their homes? What do we do to
4 stimulate other areas and do we need to raise the
5 minimum wage so that we don't face this issue of
6 unemployment benefits being better and more than
7 working for 40 or 60 hours a week? Your thoughts?
8 Do you have a plan? Where do we go from here?

9 COMMISSIONER REARDON:

Let me start w

10 the green economy. I am fortunate to be on the
11 clean, the climate counsel and I am co-chairing
12 the Just Transition working group, so we have
13 begun working throughout the pandemic for that
14 future because the green economy is the future
15 and it has a lot of jobs in it. We are currently
16 assessing what are the skill sets people need,
17 what kind of training do they need. How
18 sustainable are those jobs and where are those
19 jobs going to be? So we are in actually in
20 process right now, looking at where in the state
21 they are, where the workers could be and what
22 they need, what skill sets they need in order to
23 compete. It's a great area and it is literally
24 the future.

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2 We also know, as I said earlier, being
3 digitally savvy is going to be more and more
4 critical as we move forward because workers,
5 those workers who can work remotely are going to
6 need to know how to work, how to work through the
7 internet, how to work on a telephone, how to send
8 their work product back and forth and that means
9 a skill set that a lot of people have minimal
10 comfort with. So we are looking at where do you
11 get that kind of training, how do you assist
12 those people.

13 Employers also need this kind of
14 training. It is very difficult for some employers
15 to manage their workforce remotely, so we are
16 looking at how can we work with our business
17 partners and help them develop the skill sets.
18 DOL developed a telecommuting policy over a year
19 ago. We are the first agency that I know of in
20 New York State to float one. And it was not easy
21 to do, but it was highly productive. And when
22 this pandemic hit, in that sense, we were ready
23 with a plan, we know what it takes.

24 So businesses have to be digitally

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2 savvy, they have to be willing to trust their
3 employees to be able to work remotely and report
4 accordingly. We found at the DOL, workers are
5 often more productive remotely than they are in
6 the office. So, you know, these are changing
7 paradigms that people need to get comfort with.
8 We have to have public conversations. We need to
9 work with our education partners. We signed an
10 agreement with Empire State, which is mostly an
11 online college last year so that we could help
12 our people in our work centers go to Empire State
13 for training. So that is a great solution and
14 we're looking to build up more of that.

15 It's education, it's public awareness,
16 it's making sure that people have the technical
17 knowhow and the infrastructure, the cell phones,
18 the laptops, the iPads, whatever it is. Broadband
19 is critically important. We said earlier parts of
20 the state have very bad access to broadband.
21 Without that you can't work, so there are
22 definitely things we need to do.

23 ASSEMBLY MEMBER ABINANTI:

24 you mention the REDCs. I don't know, these are

Commissi

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2 kind of, the governor's economic development arm.

3 How do we get them to understand what you just

4 said? How do we get them to change their focus to

5 the things that you are talking about? And

6 secondly, I'm going to come back with this whole

7 concept of the minimum wage. I think we have to

8 have a minimum wage that is different in every

9 part of the state, but has to be raised quite a

10 bit so that we encourage workers to come out. I

11 appreciate what you're saying about the digital

12 savvy. This COVID has taught me to become

13 digitally savvy. I was just on two different

14 meetings at the same time. I see some of my

15 colleagues were on the other meeting. I literally

16 have two computers in front of me right now and

17 I'm doing two Zooms at the same time. I got

18 remember to shut the right one off at the right

19 time so can I talk to the right one.

20 ASSEMBLY MEMBER MCDONALD:

speaking

21 shutting off --

22 ASSEMBLY MEMBER ABINANTI:

But that

23 what has taught me to do that, and I think we've

24 got to have a plan and would I like to continue

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2 this conversation in the future. We need your
3 leadership --

4 ASSEMBLY MEMBER MCDONALD: In the
5 future, and not now.

6 ASSEMBLY MEMBER ABINANTI: -- in he
7 everybody [unintelligible] [01:22:42].

8 ASSEMBLY MEMBER MCDONALD: Thank you
9 senator, go right ahead.

10 ASSEMBLY MEMBER ABINANTI: Thank you

11 SENATOR RAMOS: Thank you, guys. Up next
12 we have Senator Shelley Mayer, who has three
13 minutes for her questions. Thanks for keeping it
14 lively.

15 SENATOR SHELLEY MAYER: Thank you, tha
16 you Madam Chair and thank you commissioner, nice
17 to see you.

18 COMMISSIONER REARDON: Good morning,
19 nice to you see you. As you know, because you and
20 I have had many conversations, I am still
21 fighting incredibly hard, as I know all of my
22 colleagues on this call are, for their
23 constituents, many of whom have been waiting
24 since March. Every day, I send five, what I call

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2 urgent, new urgent cases to the department for
3 resolution. So I know that you've greatly
4 improved your operation, but no one should take
5 away from this hearing that our constituents
6 aren't still absolutely in the midst of dealing
7 with challenges with the Department of Labor
8 itself. And so I appreciate the attention you
9 have brought to it, but I don't think we should
10 minimize and pat ourselves on the back because we
11 are not in perfect situation.

12 COMMISSIONER REARDON:

No one has ever

13 said we're perfect.

14 SENATOR MAYER:

Well, I know, and I

15 appreciate that. But I think during the pandemic
16 there was a tendency several times, to blame
17 applicants for so called you have forgotten to
18 certify, you have haven't dealt with knowing a
19 particular number. I think we ought to take a
20 lesson learned from that. Many of our applicants
21 could not certify because of problems. They were
22 not at fault. So I just think language wise,
23 there's a lesson to be learned here. We're all in
24 it together. You were very much with it with our

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2 constituents who are suffering. Let us not blame
3 those who are trying to get through a difficult
4 situation. So I just, lesson learned for all of
5 us in my opinion, but I think it's important to
6 raise it.

7 I have a question about hazard pay for
8 the many workers who had to go out like nurses,
9 for example, people who work in group homes. You
10 know, many of them serve at the bottom end of the
11 wage scale, many black and Latino women in most
12 of our districts. I wonder whether you could
13 consider under the provisions of Article 19 of
14 the labor law convening a wage board to look at
15 whether they ought not to be entitled to hazard
16 pay, given what they may go through in another
17 pandemic.

18 I think there are real questions about
19 whether their health be endangered by their work
20 and I think the Department of Labor has power to
21 review that and consider whether we couldn't add
22 to their pay a statutorily required hazard pay.
23 So I just put that before you as something to
24 consider.

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2 COMMISSIONER REARDON: Thanks.

3 SENATOR MAYER: And thank you for your
4 comments on shared work. I wonder, what is the
5 department doing to ensure to promote shared
6 work, which is a fantastic idea.

7 COMMISSIONER REARDON: So we have work
8 with a lot of businesses, as you know, we have
9 business services reps across the state, they
10 have very well developed networks with businesses
11 and we've reached out very extensively.
12 Obviously, not to everybody because that's
13 impossible, but we try to tell it wide and far
14 that shared work is available. We also worked
15 internally to make sure that our internal
16 processes were ready to take the onslaught,
17 because we knew it would really ramp up quickly,
18 and I'm very happy to say we've automated a lot
19 of it so it's no longer a paper-driven exercise
20 and we're able to handle these shared work issues
21 in real time which is very, very helpful.

22 You know, I've made the offer to you and
23 I've made the offer to a number of other people.
24 If you want us to come out and meet with a

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2 business group, with your local chambers of
3 commerce, whoever, we are happy to send a
4 representative out and walk them through A to Z
5 what shared work is and how it works. It is an
6 excellent way to hold on to your trained work
7 force.

8 SENATOR MAYER: Thank you. That's great
9 and I will take advantage of it. Thank you very
10 much. Thank you, commissioner.

11 COMMISSIONER REARDON: Good to see y

12 SENATOR RAMOS: Thank you. We don't have
13 an assembly person signed up for questions at
14 this time, so up next, we have state Senator
15 Daphne Jordan. You have three minutes for your
16 questions.

17 SENATOR DAPHNE JORDAN: Good morning
18 everybody. Thank you to all the committee
19 chairman for putting this public hearing together
20 and thank you very much, commissioner for
21 answering so many questions. Many of the
22 questions I would have asked you have already
23 been asked and they dealt with my constituents
24 having a hard time getting their claims. And we

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2 still are working on quite a number of claims and
3 several do come in each day that need assistance.

4 But I guess my question goes back to
5 something you said in the opening statement and,
6 you know, really, this has been, COVID has been
7 about a terrible loss of lives, but it's been
8 about a terrible loss of livelihoods as well. And
9 your department has been the lifeline for very
10 many people. In your opening you had said that
11 you've paid out \$40 billion worth already and
12 that's 18 years of unemployment claims within
13 just five months.

14 So I know that in order to replenish the
15 UI fund, that the state had applied and received
16 from the federal government \$5 billion through a
17 unique federal loan and I guess it's interest
18 free for the first year. It was a disaster type
19 loan, and I don't know all about it, but how are
20 you planning to pay that back. And I guess the
21 fear that I've heard from some of the companies
22 is that the state will raise unemployment taxes
23 on them to pay back the debt and they're already
24 hurting. So, it's like a spiral, it could be a

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2 spiral downward.

3 COMMISSIONER REARDON: So here's the

4 really good news about that atrocious number, the

5 \$40 billion, 75 percent of that is federal

6 dollars because of federal programs created

7 during the Cares Act. Only 25 percent of that

8 comes from the UI trust fund, so our trust fund

9 loan, while it's big, is not \$40 billion and

10 hopefully never will be. We are working very

11 hard. The governor gave us the authority to look

12 at the experience rating issue. We understand

13 that businesses are under a tremendous amount of

14 pressure because they've lost their ability in

15 many instances to have a business, so we're

16 looking at all of these issues and we will be

17 making recommendations you know, relatively soon.

18 The experience rating itself does not

19 get sent out, the new year's experience rating is

20 not sent out from the department until February

21 of next year, so we have some time to really work

22 through all of this and see what's really going

23 to help everyone. But we are definitely looking

24 at it. But remember, \$40 billion is not \$40

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2 billion out of the New York State UI trust fund.

3 It's only, that's only a quarter. It's like we

4 only have a loan of \$5 billion which is large but

5 it's not 40.

6 SENATOR JORDAN: Do you foresee that you

7 will be needing more than the \$5 billion that

8 you've taken already?

9 COMMISSIONER REARDON: Well, we have

10 over three million claimants in the system, so

11 yes. You know, it really depends on how quickly

12 the economy recovers, how quickly people go back

13 to work. There are a lot of variables, do people

14 with higher benefits go back to work sooner? That

15 leaves you with less being paid out. It all, it's

16 a great variable. But it is interest free at the

17 moment and I know that there is interest in

18 Washington to see if the federal government can

19 forgive some of these problems because, of

20 course, it's not just New York State, it's every

21 state in the union. Everybody is suffering from

22 this.

23 ASSEMBLY MEMBER MCDONALD: Thank yo

24 Back to the Assembly. Carmen De La Rosa, come on

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2 down.

3 ASSEMBLY MEMBER CARMEN DE LA ROSA:

4 Hello commissioner, how are you?

5 COMMISSIONER REARDON:

I'm well, how

6 you?

7 ASSEMBLY MEMBER DE LA ROSA:

Good

8 you and thank you to all my colleagues for
9 putting together this hearing and for you for
10 attending. I have a question about workers that
11 have not been able to get any assistance. You
12 know, we have been working with some workers that
13 were not able to get any federal relief from the
14 economic stimulus plan and workers who have not
15 been able, unfortunately, to qualify for
16 unemployment because they're not part of the
17 traditional workforce. Yet they're considered
18 essential in our communities and in keeping our
19 city running, our state running.

20 What can you do within your authority to
21 help bring some relief to some of these families
22 that are in this moment, you know, facing
23 homelessness, hunger and historic unemployment?

24 COMMISSIONER REARDON:

It is a

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2 heartbreaking situation. And I take it very
3 seriously. Unfortunately for us in the UI system,
4 we are heavily regulated by the federal
5 government and they have regulations on
6 citizenship, how you qualify for benefits. If you
7 are participating in the cash economy, by and
8 large you are not considered eligible for either
9 PUA or UI. And that is a serious problem.

10 There are other forms of assistance in
11 the state government and at the federal level and
12 we can talk offline about some of them in case
13 there are ones that we know about that you don't
14 know. But unfortunately, for me, as the head of
15 the DOL, for the UI system and the federal CARES
16 Act, we are very limited by the federal
17 government itself.

18 ASSEMBLY MEMBER DE LA ROSA:

19 as wage theft and other practices that may put
20 workers at risk, what oversight is your
21 department going to have, for example, for
22 employees who are coming back to work to ensure
23 that they are safe but also that they're being
24 paid what they're supposed to be paid rather

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And a

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2 than, you know, whatever the economy allows.

3 COMMISSIONER REARDON:

Yes, and I've

4 heard that from a number of people. It is, you
5 know, it's a concern to have and I share it. So
6 any worker who is concerned about the safety of
7 their workplace can go online, on our COVID
8 complaint form and fill it out, and again it is
9 anonymous. We do not go to the employer and say
10 Jane Doe registered this complaint. We would
11 never do that. So we protect the identity of the
12 worker, we contact the employer and assess are
13 you handing out the proper PPE, are you doing
14 proper sanitizing, are you enforcing all the
15 regulations.

16 And most of the compliance that we've
17 gotten, almost all of it has been voluntary
18 because you know, most businesses don't want to
19 endanger their workers. There are some that do, I
20 know that. So there's that.

21 If a worker feels that they are being
22 abused on their pay scale, certainly if a worker
23 is being paid less than minimum wage, immediately
24 let us know, because that is a violation and we

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2 take it very seriously. Same thing with overtime,
3 if you're working 42 hours and getting paid for
4 40 let us know. Again, we will look into it
5 immediately because these are not allowable in
6 this society. And I know that there are
7 unscrupulous employers who think I'm not making
8 enough so you can't make enough. That's not the
9 system. We have laws.

10 ASSEMBLY MEMBER DE LA ROAS: And 1

11 with your discretion, if we were to get a second
12 wave, which hopefully we don't, is your agency
13 prepared, financially but also with the
14 technology in place to begin to quickly upload
15 these cases [unintelligible] [01:34:16]?

16 COMMISSIONER REARDON: Yes. So that, y

17 know, we are running those scenarios as well,
18 because we are very concerned about a second
19 wave. On one hand a lot of the workers who might
20 again be laid off would already have a UI claim
21 in the system, so it's much easier to reconnect
22 them. But we understand where the speed bumps
23 were before, what the kinds of fixes we need to
24 make, how we need to expand our workforce in

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2 order to accommodate it. You know, we started out
3 with something like 1,700 ports and we now have
4 over 10,000 telephone ports that allow more calls
5 to come in. So we're very aware of where the pain
6 points were before.

7 ASSEMBLY MEMBER DE LA ROSA:

8 SENATOR RAMOS: Thank you, thank you
9 ladies. Up next, we have state Senator Andrew
10 Gounardes, who has three minutes for his
11 questions.

12 SENATOR ANDREW GOUNARDES:

13 we go. I'm in my car, so thank you very much
14 commissioner. I first just want to echo the
15 sentiments of -- thank you for answering a lot of
16 questions that we have, but really echo the
17 sentiments of Senator Mayer about the language
18 that we use, and not just for your department but
19 I think at all levels of government when we use
20 certain words and certain phrases, how it affects
21 people's psyche, especially when they're going
22 through such severe economic trauma like they
23 have been the last couple of months. So I would
24 just urge you to consider that as the department

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2 continues work to help get money into the hands
3 of people who need it.

4 And I also want to echo the sentiment
5 about hazard pay. I have grocery workers in my
6 district who have had hazard pay taken away from
7 them and yet they are still subjected to really,
8 really difficult working conditions and anything
9 we can do to hold those employers accountable but
10 also support those workers, I think, is very
11 important.

12 I do want to focus my questions on the
13 public employers and public employees
14 specifically and I know that the Department of
15 Labor has the Public Employee Health and Safety
16 Bureau and I was wondering if you could share
17 with us how many complaints of unsafe public
18 workplaces has the bureau received over the last
19 five months while employees have had to come into
20 work during the pandemic

21 COMMISSIONER REARDON: So, I don't
22 actually have that number. I can get it for you
23 offline, but remember that for a lot of public
24 employees, they also were sent home. The DOL

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2 Workers who were working on this crisis, by and
3 large, were working from their homes, not from
4 our offices. We have, you know, I'm in building
5 12 right now and we could hold over I think 1,500
6 employees in here. We have maybe 500 at max. So
7 many, many agencies do not have their staffs on
8 site. And that's a good thing. That is an
9 important way to protect people. So, but I can
10 find out what kind of complaints we got.

11 SENATOR GOUNARDES: Yeah, that would be
12 great.

13 COMMISSIONER REARDON: Let me just
14 back to the --

15 SENATOR GOUNARDES: Sure.

16 COMMISSIONER REARDON: I just want to
17 point out, it is critical for us to educate our
18 users on how to access their benefits correctly
19 and we say you need to certify every week. If we
20 don't say that, people don't. And I'm not
21 criticizing people, but if they don't know to do
22 it, this won't do it. And then they will not get
23 service. So when we say you must certify every
24 week, that's a reminder and we send it out. This

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2 is a federal requirement. We cannot do it
3 automatically at New York State. The federal
4 requires an individual to personally certify
5 their benefit every week.

6 SENATOR GOUNARDES: Sure, thank you. I

7 appreciate that. And just circling back to the
8 public employee question again, while many
9 agencies and many departments may have sent their
10 workers home, as chair of the Civil Service
11 Committee, I receive several dozen complaints
12 from workers across the state, as well as some
13 unions who, for totally administrative jobs were
14 being told to come into work and being told to
15 come into work without any equipment, any
16 protection, anything whatsoever. So it's
17 obviously very concerning that that is happening,
18 even into end of April, May, et cetera. So, I
19 would really like to see those numbers and see
20 what else we can be doing to make sure that as
21 we're sending workers back and preparing for a
22 potential second wave, we are keeping our public
23 employees safe and we are holding public
24 employers at all levels of government fully

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2 actable for a safe work place.

3 COMMISSIONER REARDON: Absolutely.

4 SENATOR GOUNARDES: Thank you.

5 SENATOR RAMOS: Thank you, and up next,

6 we have Senator Brad Hoylman, three minutes.

7 Hoylman going once, Brad Hoylman going twice.

8 SENATOR BRAD HOYLMAN: I'm here. I'm

9 here.

10 SENATOR RAMOS: He's here.

11 SENATOR HOYLMAN: Sorry, sorry. Hello

12 commissioner, good to see you thank you for being

13 here and testifying. I just wanted to ask a

14 question. Thank you, Madam Chair for indulging

15 me. As you know, Key Bank has a contract with the

16 Department of Labor to provide benefit banking

17 services, which includes issuing Key Bank branded

18 debit cards on which unemployment insurance

19 recipients can receive their UI benefits.

20 And it's come to our office's attention

21 that Key Bank charges UI recipients between \$1.50

22 and 3 bucks per ATM withdrawal if a benefit

23 recipient draws down on their benefits on an ATM

24 outside of key bank's network and that's in

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2 addition to whatever fees those outside ATMs
3 might also charge. You know, particularly at a
4 time when so many New Yorkers are struggling and
5 out of work, it seems unconscionable, would you
6 agree, that UI recipients can be nicked and
7 dimed like this by their, from their benefits?

8 COMMISSIONER REARDON:

Let me address

9 this, because we've had a lot of conversations
10 about this. There's information on the Key Bank
11 site, there's information on the DOL Site and
12 there's information on the packet that comes with
13 the debit card. First thing, it's always better
14 to have direct deposit into the bank account.
15 That's the best way to get it, it's the fastest
16 way, the most convenient. If you get a debit
17 card, they list on their sites and on the card,
18 on what comes with it, there are over a thousand
19 sites in New York State outside, it's a network,
20 outside of Key Bank, where you can withdraw your
21 money fee free. And I can't remember the name of
22 it at the moment, I can get it to you, but there
23 are over a thousand of these sites. They're
24 available, they're in all five boroughs of New

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2 York City, why people line up in front of the one
3 branch on East 31st Street, I don't know. But
4 they are also telling them there you don't have
5 to a Key Bank in order to withdraw without a fee.

6 If you use the debit card outside of the
7 network, yes there is a fee. Same thing with, I
8 bank at a credit union and I have a network and I
9 try to use that network, but if I have to use
10 another one, that's what I do. It's called All
11 Point Network and they have over a thousand
12 branches available fee free with your credit
13 card, you debit card.

14 And just to set the record straight,
15 only 20 percent of our participants get the debit
16 card, 80 percent have it direct deposited. And if
17 you want to change to a direct deposit, you can
18 go on the website, do it yourself automatically.
19 It's safe and then your money goes right into
20 your bank account.

21 SENATOR HOYLMAN: It seems to me though
22 that we should be doing everything we can to make
23 sure that, you know, that these benefits stay in
24 the pockets of the recipients. Is it something

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2 you may consider looking at changing in the
3 future with your contract with Key Bank? I mean
4 they are taking on a very important
5 responsibility during this pandemic.

6 COMMISSIONER REARDON: We can certainly
7 have any number of conversations with them, but
8 it is standard practice. Again, my credit union
9 has a large network where I can withdraw for free
10 but they're not everywhere, so if I --

11 SENATOR HOYLMAN: I would argue,
12 respectfully, this is not a standard banking
13 procedure, this is banking in the middle of a
14 pandemic.

15 COMMISSIONER REARDON: They still have
16 over a thousand places they can withdraw for free
17 and they are noticed everywhere on the websites,
18 on the package. We can certainly have a
19 conversation to see if they want to expand their
20 network. But they can also transfer to their own
21 bank account if they'd rather not struggle with a
22 debit card.

23 SENATOR HOYLMAN: Thank you very much.
24 Thanks for looking into it. I appreciate it.

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2 COMMISSIONER REARDON: Sure.

3 SENATOR RAMOS: All right, thank you,
4 Senator Hoylman. Up next we have Senator John
5 Liu. You have three minutes to ask your
6 questions.

7 SENATOR JOHN LIU: Thank you, Madam
8 Chair and thank you commissioner, for being with
9 us this whole time. Actually Assembly Member
10 Members Bronson and Simon already asked questions
11 along the lines of my questions but you didn't
12 have a chance to respond to them because they ran
13 out of time. So with regard to the digital
14 marketplace employees, I know you had mentioned
15 there is a lawsuit going on with the Uber drivers
16 right now. But it is my understanding that
17 ultimately, many of these drivers did get their
18 unemployment insurance. Is that correct or what
19 happened there?

20 COMMISSIONER REARDON: Many of them d.
21 I mean there was no set policy one way or the
22 other. The UI and PUA rules were determined by
23 the federal government and we follow them. That's
24 all can I say about the lawsuit. But like many

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2 people who work in the gig economy, they got most
3 of them got on to the PUA benefits without a
4 problem.

5 SENATOR LIU: Okay. So, I mean --

6 COMMISSIONER REARDON: [unintelligible]

7 [01:43:43] in that area.

8 SENATOR LIU: I just seem to recall that

9 at toward the beginning of the administration of
10 the unemployment benefits that many of these
11 drivers were left out in the cold. And so was
12 that --

13 COMMISSIONER REARDON: Not so much

14 drivers, but for people who were going to be able
15 to get the PUA benefits, originally the federal
16 government had a regulation that said they had to
17 apply for unemployment, be denied and then apply
18 for PUA.

19 SENATOR LIU: Got it.

20 COMMISSIONER REARDON: People thought

21 that they were denied for benefits. We fixed
22 that. On April 20th, we rolled out the new Google
23 application that was a seamless way for people to
24 be guided to one benefit or the other. But

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2 unfortunately in those first weeks, people
3 thought they were being denied benefits. They
4 were not. That was just the federal regulation
5 that got in our way.

6 SENATOR LIU: Well they, I mean from
7 their perspective, and we also have to try to put
8 our ourselves in the shoes of our constituents,
9 from their perspective, they were denied. And
10 they were, in fact, based on what you were
11 saying, they were told they had to be denied
12 first for unemployment before they could get the
13 PUA. So that's what happened. Okay. There's
14 nothing that DOL could have done differently
15 there.

16 COMMISSIONER REARDON: No. After we
17 the application, we dealt with it with a tech
18 fix. But we, remember, we did not get guidance
19 from the federal government on how to administer
20 that until April 5th.

21 SENATOR LIU: All right. With regard to
22 lessons learned thus far, and I know we are all
23 learning a lot of lessons, what has transpired
24 with the digital marketplace workers that can

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2 probably be applied going forward long after we
3 hopefully get out of this pandemic situation?

4 COMMISSIONER REARDON: In what regard

5 SENATOR LIU: Well, so, for example,
6 they were somehow afforded unemployment benefits,
7 right. I mean from their perspective, it is
8 unemployment benefit.

9 COMMISSIONER REARDON: They were
10 afforded pandemic unemployment assistance by the
11 CARES Act. That is not straight up unemployment
12 insurance. And it's a --

13 SENATOR LIU: Yeah, but it's still
14 called pandemic unemployment assistance.

15 COMMUNITIES REARDON: Yes. But it's not
16 UI. And that's a significant difference and
17 people need to understand --

18 SENATOR LIU: I understand it's not
19 unemployment insurance per se, that it's -- but
20 it's still unemployment assistance, which somehow
21 connotes that they are employed. So all I'm
22 saying is that -- and my time is up. I don't want
23 to keep you much longer. But we need to figure
24 out how to move forward here recognizing that

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2 these drivers are just really not independent
3 contractors, but are employees of employers,
4 which is why they're getting unemployment
5 assistance. Thank you.

6 SENATOR RAMOS: Thank you, Senator Liu.

7 That actually exhausts both the Senate and the
8 Assembly lists when it comes to questions. So we
9 are, as chairs going to be asking a second round
10 of questions, and I will begin. I wanted to ask
11 about something you said earlier, commissioner,
12 with regard to voluntary agreements when there
13 are complaints. And I'm wondering what it is that
14 if these voluntary complaints don't take place,
15 how is it that any of these conflicts are
16 resolved, is there any enforceable law, I'm
17 sorry, when it came to the voluntary resolutions.

18 COMMISSIONER REARDON: Mm-hmm. So, we

19 work on a compliance model and we work and we do
20 this, we did this before the pandemic. We did it
21 in a lot of situations. We go out and we work
22 with the employer and we say, you know, these are
23 the issues that we see in your workplace. These
24 are the things you need to remediate. And for the

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2 most part, they do. And you know, we're very
3 happy with the results. You know, very rarely do
4 we have to follow up and do any kind of, you
5 know, further work with them.

6 SENATOR RAMOS: Thank you. With regard
7 to the DOL having obviously more servers, you
8 still can't actually apply for PUA in Spanish,
9 let alone other languages. You need to call to
10 receive language access and yet people haven't
11 heard from your department in months. How are,
12 you know, are any efforts dedicated to ensuring
13 that non-English speaking people are being
14 prioritized in any way and made sure that they're
15 able to access their benefits?

16 COMMISSIONER REARDON: So, fortunately
17 we do have some agents that are bilingual and we
18 use them first when someone calls, particularly
19 in Spanish because that's the most generally, you
20 know, that's usually the second language that we
21 have available. And if they do not have someone
22 who can speak in that language, then we have to
23 use language line, and we use that all the time.
24 Unfortunately, it takes longer, as you know, it

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2 takes longer because you speak in one language,
3 it translated, so it doubles the time. And that's
4 just the nature of the business. We print up, all
5 of our printed material is printed up in six
6 languages. We are working on some of our
7 automated phone lines and we're getting them
8 translated into Spanish first and then perhaps
9 into other languages. We understand the issue.

10 We recently had a meeting with a lot of
11 the advocates for these other language groups to
12 make sure that we were all working together and
13 they were very helpful, and, you know, we are
14 happy for the assistance. I understand the
15 difficulty. The governor takes it very seriously
16 --

17 SENATOR RAMOS: But you're not telling
18 me how you are addressing the problem. How are
19 people who don't speak English going to be able
20 to access their benefits, when it's been
21 increasingly frustrating for them to do so?

22 COMMISSIONER REARDON: When someone
23 speaks in another language, if we do not have
24 someone on, available in the telephone claim

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2 center who speaks that language, they have to use
3 the language line. They call the language line
4 for whatever language is spoken, and that person
5 translates. And that is the system that we've
6 always had. We are actually trying to automate
7 some of our automated responses in Spanish.

8 That's actually being worked on right now. And we
9 hope to real that out soon so you can understand
10 when you go to certify, all of that it will be in
11 Spanish as well, and that is what we are doing.

12 SENATOR RAMOS: All right, one more.

13 When asked about gig workers, you responded with
14 answers about PUA, but the point is that they're
15 not eligible for UI, they're actually eligible
16 for unemployment insurance and not PUA. You can't
17 get PUA if you're eligible for unemployment
18 insurance. If you had to process their
19 unemployment insurance applications, workers
20 wouldn't have had to worry about PUA. That's why
21 I understand there was the lawsuit about Uber and
22 Lyft. What have you done to implement the
23 Postmates decision? When did the DOL begin to
24 make app-based employers contribute UI fund and

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2 when will you receive earning data from app-based
3 employers?

4 COMMISSIONER REARDON: That's all unde
5 litigation and I can't comment on it.

6 SENATOR RAMOS: Okay. Well, then in that
7 case, can you answer why if quarantine leave
8 guidance can be expanded, like it was for certain
9 healthcare workers by the Department of Health,
10 so more essential workers can qualify without
11 having to go to their local health department?

12 COMMISSIONER REARDON: I'm sorry. I
13 don't understand. Ask me again. I didn't -- I
14 don't understand.

15 SENATOR RAMOS: Sure. The quarantine
16 leave guidance can be expanded, or can it be
17 expanded like it was for certain healthcare
18 workers by the Department of Health. Is that
19 something you're able to do in order to cover
20 more essential workers who can qualify without
21 having to go to their local health departments?

22 COMMISSIONER REARDON: I'd have to lo
23 into that. I don't have an answer for that. I can
24 get back to you.

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2 SENATOR RAMOS: Okay. And by any chance
3 if we go back to my first question, has your
4 staff given you the guidance from your website
5 that I had referenced before?

6 COMMISSIONER REARDON: So the return t
7 work talks about UI, it talks about what happens
8 when you get an offer, when you can decline the
9 offer. That's the UI part of it. Is that, if
10 that's what you were talking about, that really
11 is how I'm being called back to work, I don't
12 feel safe, what are my options? We talk about,
13 you know, the COVID reasons for not going back to
14 work. I think there are seven, the federal
15 government listed them out. And you can, if one
16 of those is your reason for not returning to
17 work, then you can turn down the job and you
18 qualify, I think usually for PUA in that
19 instance, because PUA is actually for COVID
20 reasons. That's one of the reasons PUA was
21 invented, to cover people to have COVID reasons
22 for not working.

23 SENATOR RAMOS: But PUA is not included
24 the in guidance. It is not in the document.

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2 COMMISSIONER REARDON: It is, they're
3 telling me. Let's take this offline. I'd be happy
4 to have that conversation, but, you know, this is
5 about how you can return to work and how you can
6 turn down work.

7 SENATOR RAMOS: Okay. All right. Very
8 good, thanks. I'll yield my time, and I believe
9 Assemblyman McDonald, do you have more questions?

10 ASSEMBLY MEMBER MCDONALD: Yes, actu
11 I really don't have a second round except for
12 chairs. Kevin Byrne got tied up in a meeting so
13 we're going to ask if we can give three minutes
14 for Kevin to ask some questions of the
15 commissioners, and then the assembly will rest.

16 SENATOR RAMOS: All right, and then we
17 have Senator Skoufis.

18 ASSEMBLY MEMBER MCDONALD: Okay, gre
19 Thank you.

20 ASSEMBLY MEMBER KEVIN BYRNE:
21 Chair McDonald, and commissioner, for your
22 testimony. Like Chairman Abinanti, I was
23 multitasking with another meeting as well, and I
24 was able to hear bits and pieces. I do want to

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2 start first by thanking you personally for
3 directly reaching out to me. I know you reached
4 out to colleagues throughout this pandemic. We
5 had hundreds of constituents in my district going
6 through this very, very painful process, having
7 been forced to go on unemployment, waiting for,
8 quite frankly, months to not just get checks but
9 in some cases just to get some answers. And in
10 many ways I think you would accept that members
11 of the legislature, our offices in some ways
12 became an extension the Department of Labor just
13 by the very nature of the constituent services we
14 were providing.

15 So I did want to at least thank you.
16 It's pretty clear to me, and this is not a
17 criticism of you or the department necessarily,
18 but that we were unprepared because this was such
19 an unprecedented virus. And I don't think any
20 state was fully prepared for this. But now that
21 we're, you know, we've flattened the curve, that
22 the infection rate is lower, that we're preparing
23 for the potential second wave, and I understand
24 that there's going to be the financial component

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2 to this from the state and the federal government
3 that we're always going to be looking for. Are we
4 prepared, is the state Department of Labor
5 prepared with its website, with its phone
6 systems? I know you increased capacity with other
7 I think outside, I'm not sure if telemarketer is
8 the right word but people answering the phones.
9 It's not the right word. Call centers, right,
10 there it is, call centers.

11 COMMISSIONER REARDON: Yes.

12 ASSEMBLY MEMBER BYRNE: Fair enough.

13 Okay. Do we have that built in? Are you ready? Is
14 the Department of Labor ready, so folks who are
15 forced potentially to go back on unemployment and
16 I really hope that does not happen, for many
17 reasons -- are we ready to make sure that they
18 don't have to wait months and months and go
19 through every state legislator, every senator,
20 congressperson? I'm happy to provide constituent
21 services, a great part of our job, but I would
22 rather they just get something that's owed to
23 them up front.

24 COMMISSIONER REARDON: I'm with you. S

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2 yes, we have done a tremendous amount of work to
3 update, modernize, digitize our system. We have a
4 chatbot on our website now that can answer all
5 kind of questions for people. It won't answer
6 about your individual claim yet but it can answer
7 how do I file? This has happened, what do I do?
8 It's a really useful tool. We also have greatly
9 expanded the number of people working in the
10 telephone claims center. We have almost all of
11 the staff of the DOL now has at least some
12 training on how to work on UI. Our inspectors in
13 worker protection know how to do it. Our career
14 center workers know how to do it. Our executives
15 know how to do it. I've worked on the phone. Many
16 of us have. So we are ready.

17 And we know that should the second wave
18 come, we know where the pain points are, we know
19 where to focus our efforts. One of the things
20 that we did that was really critical that we
21 didn't realize until this pandemic hit, we live
22 if an on-demand society now and people expect
23 answers immediately, so we have now set up a
24 robust communication tool that sends out texts

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2 and e-mails. You're at this stage of your
3 process. Congratulations, your claim is being
4 processed. Don't forget to certify every week.
5 Here's your DocuSign for your back
6 certifications. We send out, last weekend we sent
7 out a mass e-mail about the President's
8 memorandum because we knew people were puzzled.
9 Does this mean I'm getting more money or not? So
10 we sent out a quick message by e-mail and text to
11 over three million people in the system saying
12 this is what the memorandum does. Nothing is
13 coming now. We will alert you when you need to do
14 anything. Please don't call the TCC because we
15 have to help other claimants. It worked
16 beautifully.

17 ASSEMBLY MEMBER BYRNE: Thank you,
18 commissioner. I know I'm out of time. I'll just
19 say I still have some constituents with
20 outstanding claims that will reach out directly
21 to your office, and thank you for sticking it out
22 and answering all of our questions.

23 COMMISSIONER REARDON: Thank you.
24 They're not telemarketers.

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2 ASSEMBLY MEMBER BYRNE: Yes. Call
3 center, right.

4 COMMISSIONER REARDON: Yes.

5 ASSEMBLY MEMBER MCDONALD: Thank you

6 SENATOR RAMOS: All right. James
7 Skoufis, round two.

8 SENATOR SKOUFIS: Okay. Thanks very
9 much. And I just have a couple of additional
10 questions, if I may, and thank you for spending
11 now the entire morning with us. First, very
12 specifically, if you have a construction site,
13 out-of-state workers who have driven to this New
14 York construction site, the contractor has not
15 employed local labor. Do the quarantine rules, if
16 those out-of-state workers come from a state on
17 the governor's list, apply to those workers? Do
18 the fines apply to the workers and/or the
19 employers, the contractors, et cetera?

20 COMMISSIONER REARDON: So this is a
21 question that has come up. We can look into
22 individual cases. I mean, by and large, essential
23 workers are essential workers and so they don't,
24 you know -- if I'm an essential worker and I have

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2 to go out of state to a state that's on the list
3 and I come back, I'm not required to quarantine
4 if I'm well. So that's --

5 SENATOR SKOUFIS: So these are not New
6 York, so these are people who live in these other
7 states who have been brought here to work for a
8 period of time.

9 COMMISSIONER REARDON: Yeah. It's a
10 complicated question, and let's talk offline
11 about it. We've had a lot of conversations with
12 various construction unions about it and various
13 communities, so I'd love to have that answer but
14 I need to know a little bit more about each
15 thing. The question about the fines, fines for
16 what?

17 SENATOR SKOUFIS: So I know there are
18 \$2,000 fines for individuals who don't follow
19 this directive and self-quarantine after coming
20 in through an airport or driving to New York, et
21 cetera. So I'm asking if the fines apply in these
22 cases, but it sounds like, as you said, this is
23 complicated and it's --

24 COMMISSIONER REARDON: It's actually

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2 Department of Health that oversees all of that.

3 It's not the Department of Labor. So they would

4 be able to answer that question better than I

5 could.

6 SENATOR SKOUFIS: Okay. Got it. When

7 filing complaints, I know this has come up from a

8 couple of other colleagues, but one of the issues

9 that I have heard from a number of people about,

10 is the inability to file COVID-related workplace

11 complaints anonymously. And despite your

12 assurances, and I understand what you're saying

13 completely, where you're not giving up the

14 employee's name to the employer, I get that. But

15 nevertheless, two things, one, if it's a very

16 small business, there might only be one or two or

17 three employees.

18 COMMISSIONER REARDON: Yeah, and you

19 in trouble.

20 SENATOR SKOUFIS: And they may know

21 where the complaint is coming from, even if you

22 don't give up his or her name. And the other is

23 despite any assurance like that, people just

24 naturally are not going to feel comfortable one

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2 way or the other giving their name on this form.

3 And so what can be done in those kind of

4 situations where you do have problems in a

5 workplace and people either, they're just not

6 comfortable or they're not in a position to file

7 a complaint with their name attached.

8 COMMISSIONER REARDON:

So we're a

9 complaint-driven agency. That's the way it works

10 for us. If a person, and, you know, as an actor,

11 when as I often was the only actor on a gig, so

12 if I had a complaint they'd know who it was, so I

13 understand that scenario very well. If a worker

14 feels very uncomfortable, they should by all

15 means call our worker protection people and talk

16 to one of them and explain the situation and see

17 how they can work it out. Because more than

18 anything, we want to make sure that the worker is

19 protected and that they are treated according to

20 the law. So they should pick up the phone and

21 call the DLO number. It's much easier to get

22 through to worker protection than it is to UI,

23 and talk to somebody and we will make every

24 effort to protect them.

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2 SENATOR SKOUFIS: Okay. Great --

3 COMMISSIONER REARDON: Because that's
4 what --

5 SENATOR SKOUFIS: No, I appreciate that.

6 That's helpful information. And just lastly a
7 comment, I know you had mentioned availing your
8 representatives to come to our districts or
9 virtually or in person, come to our districts for
10 events. I just wanted to bring to your attention
11 we actually were planning an event that my office
12 was hosting. We tried actually three times to get
13 someone from your department to join us. We were
14 met with unresponsiveness. And so I just want to
15 let you know to flag that. You've offered it to
16 all my colleagues here, and to just bring to your
17 attention that there just needs to be a bit more
18 responsiveness.

19 COMMISSIONER REARDON: Yeah, just let
20 know because that should not happen.

21 SENATOR SKOUFIS: Thank you.

22 SENATOR RAMOS: All right, we have one
23 last round of second questioning, Senator
24 Jackson.

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2 SENATOR JACKSON: Sure, hi commissioner.

3 SENATOR RAMOS: And then we're moving on
4 to the second panel.

5 SENATOR JACKSON: Yeah, hi. Hi,
6 commissioner.

7 COMMISSIONER REARDON: Hi.

8 SENATOR JACKSON: Just glad you're still
9 hanging in there, and you have answered most of
10 the questions. I just have a question about DOCCS
11 summer teachers. As you know, they were not
12 getting unemployment because of COVID, but my
13 understanding was that gig workers like Lyft and
14 Uber got. Will they be treated the same, meaning
15 that they should be entitled to unemployment
16 insurance during the summer?

17 COMMISSIONER REARDON: So we're looking
18 at all of this. I mean, part of the issue for
19 teachers is that they typically work a 12-month
20 contract, and, you know, so those are the rules
21 that apply to them. We are looking at individual
22 cases. I know it's different now. The pandemic
23 has changed everything for everybody. So we are
24 definitely taking it under advisement. But as you

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2 know, a lot of teachers actually have a 12-month
3 contract and that's the problem.

4 SENATOR JACKSON: Okay. All right. I
5 would just ask to raise this as an issue, that
6 not only downstate but it's all of the correction
7 facilities in the state of New York.

8 COMMISSIONER REARDON: Yes.

9 SENATOR JACKSON: Thank you. Thank you,
10 Madame Chair.

11 SENATOR RAMOS: Amazing. Assemblyman
12 McDonald, would you look to introduce the second
13 panel?

14 ASSEMBLY MEMBER MCDONALD: I will
15 think co-chair Tom Abinanti just wants to say
16 goodbye so if we can unmute him for a second, he
17 wants to say goodbye to the commissioner, like we
18 all do.

19 ASSEMBLY MEMBER ABINANTI: Yes,
20 commissioner, I just want to thank you for being
21 with us this morning, and I look forward to
22 taking you up on your offer to have a
23 conversation about where we go from here. I do
24 think we're going to need some state legislation.

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2 I think we're going to need some cooperation
3 between the executive branch and the legislative
4 branch and I look forward to working with you
5 very soon --

6 COMMISSIONER REARDON: Thank you.

7 ASSEMBLY MEMBER ABINANTI: -- because
8 really need to address some of the things that
9 you highlighted as to where we go from here, so
10 thank you very much.

11 COMMISSIONER REARDON: My pleasure.

12 Thank you.

13 ASSEMBLY MEMBER MCDONALD: And, than
14 you, commissioner. We are now moving on to panel
15 number two. So if we could allow Karen to join
16 us, there she is, she's on the screen. Do we have
17 her video? There she is.

18 MS. KAREN CACACE, LABOR BUREAU CHIEF,
19 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL:
20 Hi, good morning.

21 ASSEMBLY MEMBER MCDONALD: So, from
22 New York State Attorney General's office, and
23 Karen, I apologize, I'm a pharmacist, I'm not a
24 linguistics expert but it's Karen?

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2 MS. CACACE: It's Cacace.

3 ASSEMBLY MEMBER MCDONALD: Cacace, v

4 good. You have five minutes for your testimony,
5 thank you.

6 MS. CACACE: Thank you. Good morning,
7 committee chairs and members. My name is Karen
8 Cacace and the I'm the bureau chief for the New
9 York State Attorney General's Labor Bureau. I
10 want to you thank you for convening this
11 important hearing at such a vital time for
12 workers of all levels and in all industries
13 throughout New York and for giving our office an
14 opportunity to share our recent experiences,
15 feedback and insight.

16 Today's hearing offers many of us
17 working on labor issues in New York State the
18 chance to report back on how the state system and
19 laws have fared under extreme stress from the
20 coronavirus and resulting economic toll and to
21 discuss possible legislative and policy changes
22 to address any such issues.

23 At the outset, I want to note that
24 Attorney General Letitia James and the rest of

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2 our office continue to appreciate the strong and
3 constructive relationship between our office and
4 the legislature and with other issues we've
5 worked on together. We offer our time and any
6 relevant expertise we may have to assist with
7 legislative objectives of these committees or
8 legislative leadership or other individual
9 legislators.

10 Following the governor's executive order
11 202.8 that required businesses deemed
12 nonessential to reduce by 100 percent their in-
13 person workforces, our office began responding to
14 workers throughout the state to who were unsure
15 if their employer could legally require them to
16 report to work on Monday, March 23rd. Over the
17 past nearly five months, our office has received
18 over 12,000 inquiries from workers regarding
19 whether they should be allowed to telecommute,
20 health and safety requirements for workplaces
21 that remained open, employer obligations under
22 the new state and federal paid sick leave laws,
23 and most concerning to our office, allegations of
24 retaliation against workers who complain about

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2 unsafe working conditions in work places that
3 remained open.

4 We created a comprehensive know your
5 rights brochure, which we published on our
6 website, and sent to all workers who contacted us
7 by e-mail. The brochure will be attached to our
8 written testimony. In collaboration with the
9 state Department of Labor, we have responded to
10 these workers' inquiries and concerns, provided
11 information about the constantly changing
12 workplace health and safety requirements, and
13 contacted employers to discuss discussion a
14 resolution of the employees' concerns.

15 Our office has directly contacted over
16 850 employers and in more cases these
17 conversations, resulted in employers voluntarily
18 agreeing to comply with the applicable laws
19 without need for further action by this office.
20 The employers allowed employees to telecommute,
21 improve safety standards, agreed to compensate
22 employees for sick leave, and reinstate workers
23 who had been fired in retaliation for complaining
24 about health and safety conditions.

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2 In some cases, however, employers did
3 not initially agree to comply with the executive
4 orders of the health and safety requirements, the
5 entire [unintelligible] [02:08:06] laws and the
6 new sick leave and emergency quarantine laws. In
7 those cases we sent formal demand letters. To
8 date, we have sent 80 of those, which resulted in
9 those employers complying.

10 For those employers who appear to have
11 failed to remedy or correct their unlawful
12 practices, we have opened formal investigations
13 including one into the practices at Amazon's
14 fulfillment center on Staten Island.

15 This crisis has demonstrated that many
16 employees in low wage jobs are absolutely
17 essentially to the functioning of our economy and
18 society, even in a pandemic. But unfortunately,
19 are not adequately protected by existing laws.
20 Protecting these workers requires, among others
21 things, stronger safety standards, increased
22 protection from retaliation, elimination of non-
23 compete requirements, and updates to the
24 unemployment insurance laws.

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2 Our office also welcomes the opportunity
3 to share our input on any ideas that the
4 legislature is [unintelligible] [02:08:57] to
5 strengthen worker protections.

6 Regarding safety standards, because OSHA
7 has failed to create standards to protect workers
8 from COVID-19 specifically and airborne illnesses
9 generally, the state can and should create
10 specific enforceable standards for all
11 industries. These standards should also cover
12 employer provided housing. It is imperative that
13 employers be required to provide safe working
14 conditions for their employees. This is true in
15 any time, particularly during this pandemic. The
16 legislature can mandate that the Department of
17 Labor and Department of Health create these
18 standards and empower our office to enforce them.

19 As I mentioned, employer retaliation
20 against employees who speak up about health and
21 safety concerns is one of the chief concerns in
22 this office in recent months. We have seen
23 several situations where employees raised
24 concerns about safety issues at their workplace

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2 and were fired soon after raising those concerns.

3 This has a chilling effect on other workers.

4 Workers should not have to choose between keeping

5 their jobs and advocating for safe working

6 conditions. New York's current whistle blower

7 law, New York labor law 740, is limited to both

8 the type of activity it protects and the remedies

9 it provides. In order for worker conduct to be

10 protected, the worker must oppose action by the

11 employer that violates a law, rule or regulation

12 and the action must create a substantial and

13 specific danger to public health and safety. This

14 restricted definition should be broadened.

15 In addition, currently employees may

16 only get obtain back pay reinstatement and

17 attorneys fees as a remedy. For employers of low

18 wage workers, the financial risk of retaliation

19 is much too low to deter them from taking action

20 against employees who complain. In order to

21 sufficiently deter employees and to adequately

22 compensate whistleblowers who risk their jobs,

23 employers should also be liable for additional

24 damages.

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2 Another area that I would like to
3 highlight is non-compete clauses and labor
4 contracts. Non-competes signed by employees and
5 usually required to start or continue a job
6 prevent employees from working for that
7 employer's competitors or starting a competing
8 business after they leave that job for a certain
9 amount of time in a certain geographic area.

10 Historically, non-competes were used
11 sparingly for executives with trade secrets or
12 confidential business information and these
13 executives were typically represented by lawyers
14 who negotiated the terms of the agreement with
15 the employer. In recent years --

16 SENATOR RAMOS: Karen?

17 MS. CACACE: Yes, oh, sorry.

18 SENATOR RAMOS: You're actually out of
19 time.

20 MS. CACACE: Okay.

21 SENATOR RAMOS: Thank you so much for
22 your testimony. I'm sure hopefully the rest of
23 your testimony will correspond with the upcoming
24 questions. And first up is actually the Assembly

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2 on this one.

3 ASSEMBLY MEMBER MCDONALD:

Very good

4 And Karen, thank you for your testimony. There
5 was a little bit of feedback so I may have missed
6 parts of it, so this if this question is
7 repetitive I apologize. But have we seen a
8 significant increase in violations in employees'
9 rights and protections during this time, these
10 last three or four months? And really what should
11 we be advising our constituents, the employees,
12 to be on the lookout for?

13 MS. CACACE: Well, what we have seen the
14 increase in is concern about whether they have to
15 go to work, what the safety conditions are when
16 they are there, retaliation if they're
17 complaining about safety conditions. That is all
18 new related to the pandemic. There are continuing
19 ongoing issues of minimum wage and overtime but
20 the complaints coming in to us have been COVID-
21 related, the vast majority.

22 ASSEMBLY MEMBER MCDONALD:

And when

23 do these investigations, is it mostly interaction
24 just with the complainant? There must be

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2 interaction with the employer group as well,
3 correct?

4 MS. CACACE: Yes, right. So that's what
5 I'm saying, that there were 12,000 inquiries came
6 in. Out of those cases, we felt it was necessary
7 to speak with 850 employers, so and those 850
8 cases, we have contacted the employer and have
9 tried to explain to them what their obligations,
10 and in most of the cases they were able, they
11 were agreeable and remedied the situation.

12 ASSEMBLY MEMBER MCDONALD: That's
13 encouraging to hear. I can tell you as an
14 employer myself, it's been challenging to follow
15 the shifting sands of what we're supposed to do
16 if you're well-intentioned. And we also know that
17 there are some employers that are not well-
18 intentioned and those are the ones I would hazard
19 a guess probably weren't as cooperative with you,
20 but thank you. Senator, back to you.

21 SENATOR RAMOS: Thank you, John. And
22 thank you, Karen, for testifying with us today.
23 I'm a little -- I want for you to elaborate a
24 little bit on what you said in terms of the

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2 restrictive definition when it comes to I guess
3 whistleblowers, and you mentioned another issue
4 that keeps being brought up. It has to do with
5 minimum wage and overtime and overall compliance
6 with wage laws. Can you tell me how rampant these
7 concerns are and what can be done through your
8 office or beyond to address that?

9 MS. CACACE: Right, so for the
10 whistleblower laws, it's New York labor law
11 section 740 and it requires that if a worker is
12 concerned about the safety condition at work and
13 they oppose it, their activity is only protected
14 if what their employer was doing violated a law,
15 rule or regulation, so it has to be specific,
16 that there's a specific law, rule or regulation
17 that was at issue, and that it is a substantial
18 threat to public safety.

19 So the pandemic actually is one of the
20 rare circumstances that I think leads to claims
21 that arise under this law, that the activity is
22 covered because workers are saying it's not safe
23 for me to go to work, and if we do have an
24 executive order, particularly focused on safety

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2 conditions, we can say that's the law, rule or
3 regulation and it is a threat to public safety.
4 But if, and I'm sorry. One of the lines, I didn't
5 catch that in my testimony was the need for more
6 clear safety regulations and laws, because there
7 are many industries it's not clear exactly what
8 the employers need to do, and so that's something
9 I would encourage the legislature to take a look
10 at to see if there is room to regulate because
11 then it would be we would be able to enforce
12 that, and everyone would be able to enforce that.

13 SENATOR RAMOS: Thank you so much. And
14 how do you feel about expanding partial UI?

15 MS. CACACE: Yeah, I was going to get to
16 that. That was later on --

17 SENATOR RAMOS: I figured.

18 MS. CACACE: -- in the testimony. And so
19 absolutely. So, the way partial unemployment
20 works, that was very confusing for workers. I
21 think it is difficult for the Department of Labor
22 administer. If you work even one hour one day
23 you're disqualified for that entire day and that
24 could be even if you're doing work that you're

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2 not actually getting paid for, your own business
3 type of thing. There's a much simpler way, is
4 just to actually subtract the amount of wages
5 that you earn. If you work part-time, you earn a
6 certain amount, and that's what the Department of
7 Labor could look at, and many other states do it
8 that way. So I would certainly encourage Albany
9 to look at an amendment, and I think that you've
10 already been doing that, to focus on amending the
11 UI law in that way.

12 SENATOR RAMOS: Thank you. So before I
13 yield over to the Assembly, are there any other
14 mechanisms that would be helpful to you and your
15 office in order to address health and safety
16 concerns? Whether they be legislative or
17 otherwise.

18 MS. CACACE: I think legislation really
19 would be important to address the pandemic going
20 forward. As we all know, as people are going to
21 be back to work, there are more and more concerns
22 about what does the workplace -- what is a safe
23 workplace, and I think there is room for the
24 state legislature to fill the void that the

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2 federal government has left and to create those
3 safety standards so that we will be able to
4 enforce them.

5 SENATOR RAMOS: All right. Thank you.

6 ASSEMBLY MEMBER MCDONALD: Thank you
7 the Assembly Member Harry Bronson.

8 ASSEMBLY MEMBER BRONSON: Thank you

9 Thank you, chairs. You brought up some statistics
10 regarding the number of complaints, I think it
11 was 12,000 inquiries. Do you have the breakdown
12 of the numbers by industry?

13 MS. CACACE: I don't have it with me,
14 but we could find that and provide that to you.

15 ASSEMBLY MEMBER BRONSON: All right

16 That would be helpful for us so that as we
17 develop future policies, we can determine whether
18 it's an industry-specific problem or if it's all
19 industries or something of that nature. How about
20 demographics of the workers? By race, by gender,
21 et cetera.

22 MS. CACACE: That we do not, I don't
23 think we collected that information. I don't know
24 if we'll be able to tell.

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2 ASSEMBLY MEMBER BRONSON: Okay. And

3 you have information of those inquiries or
4 complaints broken down by the wage level of the
5 workers who came to you?

6 MS. CACACE: I think for most, we
7 probably could provide that.

8 ASSEMBLY MEMBER BRONSON: Again, that
9 would be helpful. As we know, many wage theft
10 violations occur for low-wage earners.

11 MS. CACACE: Yes.

12 ASSEMBLY MEMBER BRONSON: Not others
13 And then lastly, you started to talk a little bit
14 about the non-compete clauses, what your office
15 did. I'd be interested in having you complete
16 your thoughts about what it is about the non-
17 compete clauses in connection with COVID.

18 MS. CACCE: Thank you. Particularly, I
19 was going to mention the low-wage workers and
20 healthcare workers, and so in these industries
21 where there really is not about a reason to have
22 a non-compete clause, it is -- these jobs still
23 exists and for a lot of low-wage workers they are
24 essential workers, and to not allow them to get a

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2 different job that might be safer working
3 conditions, let's say for healthcare workers, I
4 just think it's really wrong. And so I think that
5 the legislature can take action to address the
6 validity of the non-compete clauses, so we really
7 encourage you to take a look at that.

8 ASSEMBLY MEMBER BRONSON: Okay. And
9 may or may not be aware, a number of years ago
10 about a decade ago, there was a law passed that
11 prevented non-compete clauses in connection with
12 small media markets and with reporters shifting
13 jobs. So I would be interested in working with
14 your office to see if we can really narrow the
15 parameters of non-compete so it really addresses
16 the issue. And that is, you know, professional
17 managerial folks who might to go a competitor and
18 have trade secrets. I mean that's really the
19 purpose there. The downside of non-competes is
20 that it prevents people from being gainfully
21 employed after they leave an employer.

22 MS. CACACE: Yeah, we'd be happy to work
23 with you.

24 ASSEMBLY MEMBER BRONSON: I look for

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2 to having those conversations with you.

3 MS. CACACE: Thank you.

4 ASSEMBLY MEMBER MCDONALD: Senator

5 to you.

6 SENATOR RAMOS: And I'll throw the ball

7 to --

8 SENATOR SKOUFIS: You cut out there.

9 SENATOR RAMOS: Sorry. I was introducing

10 you. I was introducing you, Senator Skoufis. I'm

11 so sorry. It's your turn.

12 SENATOR SKOUFIS: I just wanted to be

13 sure. Thank you. And thank you for your

14 testimony, as well as the Attorney General's and

15 your whole team's leadership over these past five

16 months making sure that our workers are

17 protected. So I just am looking for some clarity

18 myself, and I suspect that if I don't have

19 clarity, there are many thousands of my

20 constituents that don't have this clarity.

21 Can you speak to I guess the distinction

22 between violations that are handled by the

23 Attorney General's office versus violations that

24 are handled by the Department of Labor. Are there

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2 areas of jurisdiction? Is there a complete
3 overlap? Who handles what kind of violations?
4 Where do people go, if you can speak to that.

5 MS. CACACE: It's an excellent question,
6 and it evolved during the last five months
7 because our office just did not have enough staff
8 to answer 12,000 inquiries. So we collaborated
9 with the Department of Labor and through that
10 partnership, we were able to respond to all of
11 these workers who were calling. And so
12 Commissioner Reardon described some of have some
13 of the investigators at the Department of Labor
14 were doing the initial contact with the workers
15 and potentially with the employers.

16 If they were -- if the Department of
17 Labor was not able to resolve it, they were and
18 are continuing to refer cases to us for
19 enforcement. So, we are continuing to ask people
20 to file the complaint on the Department of
21 Labor's website if it's a COVID related issue and
22 they will then take the first, you know, sort of
23 the first crack at trying to resolve it and then
24 referring it to us.

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2 SENATOR SKOUFIS: Got it. That makes
3 perfect sense. I thank you.

4 ASSEMBLY MEMBER MCDONALD: Assembly
5 would be Jo Anne Simon. We hear her. Here she is.

6 ASSEMBLY MEMBER SIMON: Okay. It's time
7 for them to send you the signal that allows you
8 to support video.

9 ASSEMBLY MEMBER MCDONALD: We should
10 have lead-in music or something like that.

11 ASSEMBLY MEMBER SIMON: Yeah, exactly
12 Anyway, thank you very much, Ms. Cacace for your
13 testimony. I have a couple of questions for you
14 and I think that like a number of people I
15 probably didn't hear everything you said terribly
16 clearly. There is something of an echo, at least
17 as I'm hearing it.

18 But the issue about 740 and the need to
19 change the definition of what would constitute
20 the basis for a retaliatory claim is a question
21 I've been trying to get some movement on this in
22 the legislature. We have two bills, for example,
23 and this may be an injudicious question, but
24 there are two bills out there that would address

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2 some of the issues you've raised with regard to
3 740. I'm curious whether your office is familiar
4 with those bills and/or has an opinion about
5 which way they would need to go. There are some
6 differences, availability of damages, not
7 availability of damages, those types of things,
8 but they address that issue about 740. And I'm
9 curious about that.

10 And then the other thing is the safety
11 standards you talked about. Do you believe those
12 should be legislatively established? That's my
13 other question.

14 MS. CACACE: Yes, I apologize for the
15 audio. Is it better with the headset?

16 ASSEMBLY MEMBER SIMON: Much better.

17 MS. CACACE: So sorry. So, yes, on 740,
18 we are aware that there are different bills
19 pending. Our hope really is just that it is
20 expanded. And both bills expand coverage of
21 what's protected, and I believe expand damages
22 that are allowed. So it's just really important
23 to us that some expansion happens, and so I hope
24 that can happen quickly because, as I said, it's

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2 -- we are seeing -- people are calling us. And a
3 lot of people asked questions about this during
4 the first panel.

5 What about workers who are afraid to
6 report safety standards, safety violations? It is
7 an enormous problem for workers. It puts their
8 job at jeopardy. And so the more protection, the
9 better, and it is really desperately needed. So I
10 would just really encourage you all to expand it
11 in whatever way you can agree on.

12 And then your second question -- I'm
13 sorry, could you remind me?

14 ASSEMBLY MEMBER SIMON: You talked about
15 the need for --

16 MS. CACACE: Safety standards.

17 ASSEMBLY MEMBER SIMON: -- safety
18 standards as they return to work.

19 MS. CACACE: Right.

20 ASSEMBLY MEMBER SIMON: And housing a
21 well.

22 MS. CACACE: Yes, right. Because right,
23 there's a lot of farm workers where there's
24 employer-provide housing and in some other

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2 industries as well. And there is, you know, the
3 executive orders provide some specifics but not
4 enough, I think, to cover all of the safety
5 concerns that workers have and are going to have
6 going forward. And so I think that there could be
7 legislation that will require either the
8 Department of Labor or the Department of Health
9 to go industry by industry and mandate what those
10 safety standards are.

11 And so some of this has been done in the
12 forward documents that have been put out by the
13 state but I think it certainly could be
14 strengthened through legislation.

15 ASSEMBLY MEMBER SIMON: Thank you very
16 much.

17 MS. CACACE: You're welcome.

18 SENATOR RAMOS: Thank you. Senator James
19 Sanders, you have five minutes.

20 SENATOR SANDERS: I have to get up to
21 unmute. I'm here. Thank you. I have to jump up to
22 exercise, exercise. Thank you, Madame Chair.
23 Thank you, Mr. Chair. Let's see. Thank you very
24 much for coming to testify to us. Can you tell me

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2 -- I want to go back, I just have one question
3 and I'll be finished in one minute. Let's go to
4 the issue of the undocumented workers. Is there
5 any way that we can sue to see if we can't get
6 their needs met? They're by and large not being
7 met in this economy, and that is so dangerous. Is
8 there anything that the AG's office can do here?

9 MS. CACACE: So all of the labor laws
10 with the exception of unemployment insurance
11 cover undocumented workers. So, if an
12 undocumented worker is not paid the minimum wage
13 or overtime, we absolutely can and have sued on
14 their behalf and recovered them wages. If they
15 are a whistleblower and they fall within the
16 whistleblower law we can sue on their behalf.
17 They are not however, if don't have work
18 authorization, eligible for unemployment
19 insurance, so that's an enormous gap.

20 SENATOR SANDERS: Okay. Can I encourage
21 guys to continue bouncing this around to come up
22 with some -- you're office has been very
23 creative. We really need to bounce this around to
24 see how we can protect these workers.

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2 MS. CACACE: It's an absolute priority
3 for us.

4 SENATOR SANDERS: Okay. Thank you. Thank
5 you, Madam Chair.

6 ASSEMBLY MEMBER MCDONALD: Thank yo
7 and back to the Assembly and Marianne
8 Buttenschon. Come on down. Or come on in. How's
9 that?

10 ASSEMBLY MEMBER BUTTENSCHON:
11 very much. And thank you to the Attorney
12 General's office as well as my colleagues. I just
13 have one question in regards to you talked about
14 the 12,000 cases that you're working on, and I
15 appreciate those efforts. Are you hearing in
16 regard to -- we have been receiving comments that
17 an outside entity is identifying themselves as a
18 Department of Labor and asking personal
19 information from individuals that have not
20 applied. And I just wondered if it's outside of
21 the state or is it an in-state issue and what's
22 the status that the office has been able to work
23 with those.

24 MS. CACACE: Yeah. So we have certainly

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2 gotten complaints of identity theft or identity
3 fraud related to filings of unemployment
4 insurance claims. So we have in our know your
5 rights brochure information about where to report
6 those, and we have coordinated with DOL and
7 referred any complaints that we have gotten to
8 DOL on those.

9 ASSEMBLY MEMBER BUTTENSCHON:
10 work in progress that's progressing? I guess
11 that's the question more.

12 MS. CACACE: Well, I mean it's on an
13 individual basis, you know, for each person, and
14 I'm looking in our know your rights brochure, so
15 I can tell you exactly where to, uh, to report
16 it.

17 ASSEMBLY MEMBER BUTTENSCHON:
18 will reach out to your office later.

19 MS. CACACE: Yeah, and it'll be in our
20 testimony. We're attaching all the know your
21 rights information, which goes on for like 15
22 pages, so it's very detailed.

23 ASSEMBLY MEMBER BUTTENSCHON:

24 MS. CACACE: You're welcome.

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2 SENATOR RAMOS: All right. Up next is
3 Senator George Borello. You have three minutes.
4 Senator Borello? Senator Borello going once.
5 Senator Borello going twice. All right. I suppose
6 we yield to the assembly for this turn.

7 ASSEMBLY MEMBER MCDONALD: And back
8 you. We're going to give you a former assembly
9 member in return, Shelley Mayer. Don't forget
10 where you came from, Shelly.

11 SENATOR RAMOS: Don't forget where you
12 are.

13 SENATOR MAYER: Thank you. Thank you
14 both. Thank you and thank you, Karen, pleasure to
15 see you.

16 MS. CACACE: You too.

17 SEANTOR MAYER: Let me start my video.
18 One, as you know, I want to thank the Attorney
19 General's office for their willingness to jump in
20 on the WARN Act action in my district involving
21 the layoff of over 200 people on Christmas Eve
22 with no notice, and were it not for your
23 persistence and willingness to enter into this
24 case, I'm not sure we would ever have had a path

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2 to recover for these individuals. But it brings
3 up the issue of what we're going to do about the
4 WARN Act. On the Department of Labor's website
5 today, there's probably 20 major institutions
6 that have filed WARN Act notices as they are
7 beginning to close or lay off large numbers of
8 people including the Metropolitan Opera, Neiman
9 Marcus, Restaurant Associates.

10 What is the Attorney General planning to
11 do to ensure that every one of these employees in
12 these mass layoffs gets both the money they are
13 entitled to and every other protection they are
14 entitled to, given our very poor experience with
15 the employer at the Double Tree Hotel.

16 MS. CACACE: So thank you for bringing
17 Doral to our attention and thank you for bringing
18 this up now. I think that you are right, that
19 employees may not know about their rights under
20 WARN Act, and if employers are not advising them
21 of that, it is incumbent on us to reach out to
22 them to make sure that they do know. So it's
23 something that we can -- that we should and we
24 can do some outreach on.

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2 SENATOR MAYER: Well, to that point, I
3 mean, I think we need to clarify that the
4 Department of Labor can intervene as a party in
5 these lawsuits, otherwise, there really is no
6 advocate, and I hope you will support me in a
7 bill to both expand the liability for large
8 employers and to ensure that the Department of
9 Labor has standing to intervene.

10 MS. CACACE: Yes.

11 SENATOR MAYER: Secondly, during the
12 period of the pandemic, do you know how many
13 enforcement actions the Department of Labor has
14 commenced as a result of violations of provisions
15 of law related to employees during this time?

16 MS. CACACE: I don't have that
17 information, no, but I'm sure we can ask the
18 Department of Labor.

19 SENATOR MAYER: No, I meant from you,
20 from the Attorney General's office, affirmative
21 actions that you have commenced during this time.

22 MS. CACACE: Oh, we have not actually
23 sued anybody in court yet. So we have, as I said,
24 hundreds of employers that we have reached an

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2 informal resolution with and we have ongoing
3 investigations, but we have not -- we haven't
4 sued anybody yet.

5 SENATOR MAYER: And finally, did the
6 Attorney General's office advise the Department
7 of Labor on how to interpret the PUA requirements
8 that you actually apply and be rejected by the
9 Department of Labor? Were you advising them on
10 how to interpret the federal regulations?

11 MS. CACACE: No.

12 SENATOR MAYER: No? Okay.

13 MS. CACACE: I don't think so, no.

14 SENATOR MAYER: Thank you. Thank you
15 very much.

16 MS. CACACE: Sure.

17 SENATOR RAMOS: All right. Thank you. I
18 have actually just one more question for you, if
19 that's okay, based on some comments that you just
20 made about acknowledging issues with wage theft
21 in our state, unfortunately. We recently re-
22 passed the SWEAT bill in both houses of the state
23 legislature, and you know it's largely baited on
24 the mechanics' lien, yet there has been some

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2 conflict around how it is that -- whether there's
3 going to be an ex parte judicial review before a
4 lien is actually placed on the employer's assets,
5 which largely we see as not only a reason to
6 dissuade particularly undocumented workers from
7 seeking relief, but also gives the employer an
8 opportunity to transfer assets. Does your office
9 take a position on the SWEAT bill? And if not, is
10 there another mechanism that you guys are
11 advocating for in order to solve this \$1 billion
12 problem?

13 MS. CACACE: It is a bill that our
14 office has been in support of. And the issue that
15 you identified is a significant issue, and so we
16 would very much like to see it come into law as
17 it is.

18 SENATOR RAMOS: All right. Well, thank
19 you very much. And I guess that concludes our
20 questions for you.

21 ASSEMBLY MEMBER MCDONALD: Senator
22 sorry. I'm sorry. We have a late bloomer,
23 Chairman Tom Abinanti. Are you in or out, Tom?

24 ASSEMBLY MEMBER ABINANTI: I'm in

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2 in. Thanks.

3 ASSEMBLY MEMBER MCDONALD:

All right

4 then that'll be it. Thank you.

5 ASSEMBLY MEMBER ABINANTI:

Thank you

6 joining us. I am actually the chair of the
7 banking committee, so I want to ask you -- you
8 may not be the person in our your office to
9 respond to this, but the federal government used
10 the banks as the way to funnel money into the
11 states in an attempt to get the employers to keep
12 people on their payrolls or put them back on, the
13 PPP program.

14 Has your office had any involvement with
15 that? Have you had any complaints about banks not
16 doing what they were supposed to do or employers
17 taking the money and then not funneling it back
18 to the employees like they were supposed to? I'm
19 just wondering if there's been anything involved
20 in this. And who is doing the enforcement? Is
21 this purely federal enforcement or do you have
22 some role in enforcing this?

23 MS. CACACE:

So those complaints have

24 not come to the labor bureau and I can find for

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2 you if they have come to another bureau within
3 the AG's office and let you know.

4 ASSEMBLY MEMBER ABINANTI: Yeah, I v
5 appreciate that because I think we, in the
6 banking committee, would like to hear a little
7 bit about how that program is working its way
8 through. We've already held a hearing on how
9 effective it was about getting money out. Now
10 we're to the next stage, okay, the money is
11 getting out, is it actually getting to the
12 employees.

13 MS. CACACE: Okay. We'll follow up.

14 ASSEMBLY MEMBER ABINANTI: Thank you

15 SENATOR RAMOS: We have another late
16 bloomer. I understand state Senator George
17 Borello is back. Is this true? Are you there?

18 SENATOR BORELLO: Yes, thank you. I was
19 here the whole time, but I got kicked out.

20 SENATOR RAMOS: That's okay. You have
21 three minutes.

22 SENATOR BORELLO: Thank you very much.
23 First of all, thanks for your testimony. I
24 appreciate it. I certainly appreciate all that

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2 you're doing on of behalf workers and those folks
3 that may potentially be taken advantage of, but
4 also businesses, many businesses I spoke with
5 have had reports of fraudulent paperwork or
6 claims being filed by employees that either quit
7 or never actually worked at the company. And I
8 didn't hear you speak about any actions being
9 taken to protect not only those businesses,
10 because we talked about experience claims and the
11 cost, the tremendous cost from an increased
12 experience claim that were unjustified, but also
13 bilking the taxpayers by having to might
14 potentially millions if not more in unnecessary
15 claims. So I'm curious what the AG's office is
16 doing to address this fraud.

17 MS. CACACE: Those complaints have not
18 come to the labor bureau. I would imagine that
19 they're ever they're going to the Department of
20 Labor, but I can follow up with the Department of
21 Labor to find out if they are enforcing -- you
22 know, if they've gotten those complaints and are
23 taking enforcement actions. I know that in
24 general on UI fraud, and I think Commissioner

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2 Reardon testified about that, they are actively
3 investigating an enormous amount of,
4 unfortunately, UI fraud. But I can follow up on
5 that.

6 SENATOR BORELLO: Yeah, because you had
7 mentioned before that you were working closely
8 with them because of the inordinate amount that
9 they've had to really take on, the Department of
10 Labor, and we all know this has been a tremendous
11 strain on that, so I'd certainly like to ensure
12 that we're also protecting those businesses that
13 work so hard to provide employment to people.
14 It's kind of a two-way street, I would say. We
15 want to protect the businesses as well as the
16 employees. So we'd love to see you get involved
17 in that very actively. Thank you.

18 MS. CACACES: Okay. Thank you.

19 SENATOR RAMOS: All right. And, Karen,
20 thank you for taking the time out of your day to
21 testify and answer our questions.

22 MS. CACACES: Thank you for having me,
23 and I'm so sorry about the audio earlier.

24 SENATOR RAMOS: That's okay. Thank you.

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ASSEMBLY MEMBER MCDONALD:

Thank y

Karen.

MS. CACACES: Bye-bye.

SENATOR RAMOS: Now for panel three, we have from the AFL-CIO, president Mario Cilento and legislative director Mike Neidl. Gentlemen, can you share your testimony?

MR. MIKE NEIDL, LEGISLATIVE DIRECTOR, NEW YORK STATE AFL-CIO: Is Mario there? Hello, senator.

SENATOR RAMOS: Hey, Mike.

MR. NEIDL: Mario has the -- there he is.

SENATOR RAMOS: All right.

MR. MARIO CILENTO, PRESIDENT, NEW YORK STATE AFL-CIO: Can you hear me now?

MR. NEIDL: There he is.

MR. CILENTO: Yeah, can hear me?

MR. NEIDL: All right.

MR. CILENTO: Thank you, senator, and thank you all for holding this hearing today and for the opportunity to present testimony on behalf of the two-and-a-half million members of

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2 the New York State AFL-CIO. I'll get right to it.

3 We all know that countless workers continue to
4 risk their lives and their physical well-being to
5 serve all of us, and they deal with the mental
6 toll because they're constantly worried about the
7 continued risk of getting sick on the job and
8 they're constantly questioning just the safety
9 plans or the inadequate adherence to those plans.

10 So what we're saying is fines for
11 inadequate safety plans and adherence to those
12 plans must be steep. We've already passed a bill
13 to establish safety standards in the public
14 sector, and we should built on that by passing
15 the New York HEROES Act to require safety and
16 health plans specific to COVID-19 for private
17 sector employers that also include workers
18 participation and an enforcement mechanism.

19 We know in addition all workers, I think
20 we all agree on this, I know we all agree on
21 this, should have adequate PPE recognizing the
22 unique nature of certain sectors, such as
23 healthcare in preparation for a second wave, a
24 90-day supply of PPE should in place as well as

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2 adequate staffing plans and backup plans.

3 For example, we all understand that
4 reopening school building represents a huge
5 challenge. We must have clear protocols for how
6 and when school districts must close their
7 buildings and how health officials will perform
8 contact tracing and initiate quarantines in the
9 event of a positive COVID-19 cases in schools.
10 Most important, no matter what, we must act on
11 the side of caution at all times. In the event
12 that a worker is exposed in the workplace, that
13 worker should receive the best available care at
14 no cost to the worker, as well as wage
15 replacement benefits and survivor benefits
16 should, God forbid, they die. This can be
17 achieved, as we've said, many times over the last
18 few months, by establishing a rebuttable
19 presumption on workplace exposure.

20 In addition, workers are economically
21 stressed as well. We have to ensure prompt access
22 to unemployment insurance benefits for everyone.
23 We must remove hurdles for workers to access
24 quarantine and isolation paid family leave

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2 benefits. We have to reform the state's partial
3 unemployment insurance standards to remove the
4 penalty for part-time work. And we must remove
5 restrictions on eligibility for unemployment for
6 voluntary separation such as if an employee has a
7 heightened health risk or is aware of unsafe
8 conditions in workplace. And keep in mind because
9 the UI trust fund is now below the threshold
10 levels, there's not going to be an increase in
11 unemployment insurance benefits this upcoming
12 year.

13 The state also must fully implement the
14 decisions from the Department of Labor, the
15 unemployment insurance appeals board, the court
16 of appeals and now the federal judiciary by
17 processing app based works claims as unemployment
18 claims and by compelling contributions from app
19 companies to the unemployment insurance trust
20 fund.

21 And speaking of app-based workers, I'm
22 going to say it again, state administrative
23 agencies and the courts have begun to reaffirm
24 what we all know. These workers are employees.

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2 The pandemic has highlighted the disparity
3 between the rights of gig workers and employees.
4 And if there ever was a time for the legislature
5 to pass a comprehensive law to protect these
6 workers, it is now.

7 Moving forward, we have to create middle
8 class jobs, opportunities include increasing
9 investment in public transportation, roads and
10 bridges, telecommunications infrastructure,
11 offshore wind, other renewable energy projects.
12 Also, adult use marijuana can also bring in a new
13 industry with solid wages for workers that can be
14 invested right back into local economies. And
15 somewhat related to all this is as we hopefully
16 increase the number of New Yorkers getting back
17 to work on a regular basis, funding and
18 programmatic changes to ensure working families
19 have access to childcare is critical. I have
20 three daughters of my own.

21 Last, this pandemic has hurt workers,
22 it's hurt poor people, it's marginalized
23 communities while having less of an impact on
24 wealthy. And we have heard over and over again

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2 that people must sacrifice, and if that's the
3 case, sacrifices must be made by all. And that's
4 why we must raise revenue at all options, need
5 and should be on the table.

6 With bold leadership, I think amongst
7 everyone who's here today, we can protect all New
8 Yorkers from the worst of the health and economic
9 effects of the pandemic. And I have to say this
10 is not just labor's hope, but on behalf of two-
11 and-a-half million members and their families,
12 it's our expectation.

13 So, again, I want to thank you for
14 allowing me to join all of you today. We know
15 that unemployment numbers, it was mentioned
16 before at over 15 percent. It's much more than
17 that, and we're going to have to address all of
18 these situations, create jobs and make sure that
19 everyone who is out of a job is taken care of
20 properly. And I just want to say we look forward
21 on behalf of the two-and-a-half million members
22 of the state AFL-CIO to work with all of you to
23 make sure that New York emerges stronger and
24 healthier and more united as a result of these

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2 joint efforts. So again, I thank you for allowing
3 me time this morning and please all, stay safe.

4 ASSEMBLY MEMBER MCDONALD: Thank you

5 Mario and Mike. It's good to see you as well.

6 Jessica, why don't we start off with the
7 Assembly. I don't know where you went, so I don't
8 see you on my screen.

9 SENATOR RAMOS: I'm right here. Sorry. I

10 fell off. I'm sorry. I apologize. Do you want to
11 start with the Assembly again?

12 ASSEMBLY MEMBER MCDONALD: Let's sta

13 with the Assembly. It's up to you. Well, yeah,
14 we'll start with the Assembly. Mario, it's
15 amazing that you are able to take your multipage
16 report and condense into five minutes. Great job.

17 MR. CILENTO: That was not bad, right?

18 ASSEMBLY MEMBER MCDONALD: No, it wa

19 pretty darn good and congratulations on your re-
20 election. You know, your report was very
21 thoughtful and very comprehensive. Actually I
22 thought I was reading the state budget for a
23 little bit, because it has a little bit of
24 everything in it. And that being said, you know,

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2 sometimes -- I like to paraphrase Dick Gottfried
3 every once in a while. Plagiarism sometimes can a
4 good thing. Are there things other states are
5 doing? You're obviously the largest group in the
6 state, but you also work across the country. Are
7 there things other states that are doing that we
8 really need to take a hard look at? To protect
9 our employees.

10 Mr. CILENTO: That's a great question,
11 John. And I serve on all these different
12 committees with the nation AFL-CIO and we have
13 meetings by region, we have national meetings,
14 and there are some states that are doing some
15 things. Some of them have the rebuttable piece
16 for the workers' comp that the -- for workers'
17 comp for those dealing with COVID. So I think
18 there were 12 or 13 states -- you'd have to
19 correct me on that -- who have already done
20 something to address that. There are some other
21 things here and there, but for the most part I
22 have to say they have looked to us for
23 leadership. We are the largest state labor
24 movement in the country. And I would say the

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2 workers' comp piece is probably the one that
3 other states have taken a lead on.

4 ASSEMBLY MEMBER MCDONALD:

Okay. How

5 has, for your members, the unemployment process,
6 and of course, it's a very bad situation for all
7 of us to be in, but what has the feedback been
8 from your membership who have been enduring the
9 process?

10 MR. CILENTO: Well, look. It's been

11 talked about quite a bit here this morning. I
12 thought the commissioner did a great job. And I
13 do want to say I'm very proud and we all are
14 proud of the labor movement and the job that our
15 brothers and sisters at CSEA and PEF did really
16 throughout the initial period and that they
17 continue to do. I would just say they experienced
18 all of the sort of the hiccups at the beginning
19 that everyone else has gone through, no more, no
20 less than anyone else. And as we go throw it now
21 and it's gone through the last month or two,
22 things have gotten smoother, so they have seen
23 improvements in the system that the commissioner
24 was talking about this morning.

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2 ASSEMBLY MEMBER MCDONALD: Great. An

3 thank you, and I thank you for your comments and
4 response. Senator, over to the Senate.

5 SENATOR RAMOS: Thank you, assemblyman.

6 President Cilento, I was hoping you can tell us a
7 little bit more about the Postmates decision and
8 what we think about come of it, what you think
9 the DOL's consideration should be for app-based
10 workers.

11 MR. CILENTO: Well, we feel that these
12 workers should be treated as employees and have
13 the, get under the employment insurance benefits
14 as all other employees in the state. We feel that
15 moving forward these workers should in fact be
16 considered employees for all of the other rights
17 and protections, whether it's minimum wage or
18 overtime pay, the right to organize. We know that
19 they're in discussions now and taking a look at
20 where things are. But we do, in fact, would like
21 them to follow the ruling as it was adjudicated,
22 and that's our position.

23 SENATOR RAMOS: Thank you. And what
24 about for quarantine leave? Have you heard of any

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2 workers having trouble qualifying for it? What
3 can we be doing in the state legislature and/or
4 at the DOL to make it easier for them?

5 MR. CILENTO: Well, I think
6 communication is most important. And again anyone
7 who is required to take that type of leave should
8 receive quarantine pay, so I think we need to
9 have that communication and make sure that we
10 understand why it is they were out, why they're
11 coming back, what the situation is, and just make
12 sure that they are paid.

13 SENATOR RAMOS: Okay. And I would
14 imagine there's been a lot of concern around
15 employers providing PPE. Of course, for non-union
16 workers, but for union workers as well. How have
17 you been fielding sort of those complaints from
18 your own, the members of your umbrella union, so
19 that we can help fight for better protections for
20 them?

21 MR. CILENTO: Well, again, as I had said
22 before, we want to make sure that there are
23 standards in place and that the employers are
24 held accountable. You've had many conversations

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2 this morning. Most employers want to do the right
3 thing. They really do. But to be honest, to keep
4 the bad actors in place, we must have really
5 strong standards and requirements in place,
6 making sure that PPE, you have at least a 90-day
7 supply, that, in fact, the workers in the
8 workplace have a voice in what it's going to look
9 like, what that workplace is going to look like
10 moving forward, whether it's PPE, whether it's
11 other standards, everything that is involved in
12 how we're going to move forward.

13 So we've heard all of the, particularly
14 at the beginning, about how sometimes it was a
15 struggle to get employers on the same page. If
16 you're a union member, it's a little easier
17 obviously because you're going to have a
18 collective voice, so I can only speak to that.
19 And once the first few weeks went by, voices were
20 raised, and it's been a little easier, but I
21 would just ask all of you to work with us to
22 ensure that the employers who may not be
23 predisposed to being helpful here are held
24 accountable. And the only way you're able to do

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2 that is to put a financial component on it for
3 them. So that's what I would ask, senator.

4 SENATOR RAMOS: What about in terms of
5 the presumption of coronavirus? What impact has
6 had that on your members?

7 MR. CILENTO: Well, you know, we don't
8 have the rebuttable presumption right now. So
9 what that means is if you are a grocery store
10 worker, if you are a nurse, take a nurse who sees
11 at the height of this thousands, thousands maybe
12 patients in the course of a couple of days. If
13 you're a grocery store worker, even now and you
14 see hundreds of people come by the check-out
15 line. Without that, you would have to actually
16 figure out which customer gave you the
17 coronavirus.

18 Think about that for a second. You'd
19 have to figure out which customer, you saw 300
20 people come through your line today for eight
21 hours, you're a nurse and you had 400 patients
22 today and you're going pick out which customer or
23 which patient gave it to you? What we're saying
24 is for the presumption, it should be presumed --

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2 it doesn't mean the employer isn't going to have
3 the ability to contest it. They still are going
4 to be able to do that. That's not taken away from
5 them. What we're saying is presumptions should be
6 if you are in a job such as that, under those
7 circumstances, that they should have that
8 presumption, and then move forward with the case
9 at that point, from that point of view.

10 SENATOR RAMOS: All right. Thank you so
11 much. It's good to see you President Cilentto and
12 be congratulations on your re-election.

13 MR. CILENTO: Thank you.

14 SENATOR RAMOS: The workers are very
15 lucky to have you.

16 MR. CILENTO: You're very kind.

17 ASSEMBLY MEMBER MCDONALD: Back to t
18 Assembly. Harry Bronson.

19 ASSEMBLY MEMBER BRONSON: Thank you
20 Hello, Mario. How's everything going, and how is
21 the start of your new term as president?

22 MR. CILENTO: So far so good. This is
23 the most difficult day so far, so I'm not bad.

24 ASSEMBLY MEMBER BRONSON: You're am

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2 friends, so I think you'll be okay. I want to
3 touch on a couple of things some of my colleagues
4 have already asked you, but I want to delve into
5 a little bit more. First of all, your comment
6 about reaching out to labor and having you as
7 part of the discussions, whether we're talking
8 about PPE, we're talking about making sure that
9 employees get unemployment insurance, the
10 workers' comp, all of that. I'm a firm believer
11 that if labor and management work together, then
12 we usually come up with the best solutions. So I
13 will definitely take you up on that so that the
14 state can be part of those conversations.

15 Two areas, though, I want to hone in on
16 a little bit. The first is the misclassification
17 of workers or sometimes we refer to in current
18 times as gig economy or app-based workers. You
19 had talked about having app-based workers
20 contribute to the UI trust fund.

21 MR. CILENTO: Employers.

22 ASSEMBLY MEMBER BRONSON:

Pardon me

23 MR. CILENTO: The companies, not the
24 workers, the companies.

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2 ASSEMBLY MEMBER BRONSON:

Yes. How c

3 you see that actually working? Because there's
4 that constant debate, some of us believe that
5 they're employees, others don't. How do you see
6 that working with the app employers contributing
7 to the fund?

8 MR. CILENTO: They'd have to go about it
9 as any other employer would have to go through it
10 in the state, which is having a finite
11 understanding of how many workers there actually
12 are at a given time who are out there working and
13 what their hours are and compiling the same
14 information that every other employer in this
15 state has to go through, and by the way is
16 subsidizing the app-based companies who aren't
17 paying into the UI trust fund and the workers'
18 compensation fund. So it's just the same rules
19 would apply.

20 MR. NEIDL: I might add to that, Mario.
21 Assemblyman, the courts are now finding that
22 these are employees after several decisions. It's
23 not just what you might think or we might think.
24 There's rulings now that have found that they are

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2 employees, and like every other employer, the DOL
3 can charge them based on the payroll records. It
4 shouldn't be that difficult.

5 ASSEMBLY MEMBER BRONSON: And I would
6 suggest in response to that, Mike, we actually
7 need to pass the legislation so it doesn't have
8 to be litigated and make it clear, everybody will
9 know who is an employee and the benefits that
10 flow from that.

11 MR. LNEIDL: Right.

12 ASSEMBLY MEMBER BRONSON: In connect
13 with the rebuttable presumption, I think it's
14 important for us to point out it's a rebuttable
15 presumption. So the presumption is you got
16 exposed to COVID at the workplace, but the
17 employer can rebut that presumption. And so I
18 think that that's an important distinction. Just
19 real quick and my time is running out, Mario, the
20 workers' comp system isn't really employee-based
21 at this point. They're not neutral. And are there
22 steps we can take to ensure that if we make this
23 change, that the workers actually get their lost
24 wage replacement and their medical care as

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2 quickly as possible.

3 MR. CILENTO: Well, again I would say
4 that as long as we classify these workers as
5 employees, they would have the same rights and
6 protections as everyone else, they would have to
7 go through the same process, and I would be
8 confident at that point that they would, in fact,
9 receive the same benefits.

10 ASSEMBLY MEMBER BRONSON: All right
11 Thank you so much.

12 ASSEMBLY MEMBER MCDONALD: Thank you
13 gentlemen. Thank you. Senator.

14 SENATOR RAMOS: Yes. Senator James
15 Skoufis, you're up next. You have your five
16 minutes.

17 SENATOR SKOUFIS: Thanks very much. It's
18 good to see you both. I echo my colleagues,
19 congratulations, President Cilento on your re-
20 election. You and I know, you all know there are
21 some elements, especially on the far right, who
22 have argued for as long as I've been involved in
23 legislature, that unions have not been important
24 and necessary since children were working 70, 80

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2 hours, 100 years ago. But I think this pandemic
3 is really exhibit A as to how important unions
4 continue to be. And quite frankly, they are as
5 important now that is they have ever been, in my
6 opinion was as people look for safer workplaces
7 to return to.

8 With that in mind a couple, sort of a
9 multifaceted question, one, I know there's still
10 some uncertainty, especially given what, if
11 anything, is going to be in the stimulus for
12 state and local governments that will impact what
13 happens to your members in CSEA, ASFCME, PEF, et
14 cetera, potentially. But can you share some
15 insight as how this pandemic has impacted the
16 roles, the union roles here in New York State.

17 And the second piece is I suspect that
18 there are some New Yorkers who maybe were not as
19 welcoming to joining a union pre-pandemic who
20 maybe have seen the light now and want a safe
21 workplace and want all the protections that are
22 afforded to the members of a union. Is there an
23 effort, a new effort underway, especially in the
24 private sector side, to organize in some

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2 industries and in some areas that maybe there
3 wasn't a lot of attention paid to with that in
4 mind? If you can speak to those couple issues.

5 MR. CILENTO: Yeah. Well, to get to the
6 first part first, the role of labor at times like
7 these. I think it's certainly heightened. I think
8 members are in the most part aware of what their
9 union does, for the most part.

10 When you have a situation like this or
11 when you have a situation where you have
12 Hurricane Irene, Hurricane Sandy and those
13 situations, big, big large scale events where you
14 have to have a union, where you have to have a
15 voice in the workplace and it's even heightened,
16 I think workers are even more aware of what it is
17 that their union does for them, because whether
18 it was unemployment insurance or workers' comp or
19 how do you deal with an employer to reopen as
20 they've been gradually reopening, workers are
21 even more involved in the day-to-day workings of
22 their particular union, paying even more
23 attention than they normally would, that's our
24 role. That's what we're supposed to be there for.

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2 It's actually not a bad thing when
3 members, you don't want to say take for granted,
4 but when members aren't calling or maybe they're
5 not part of every single thing or aware of every
6 single thing, it sort of means that everything is
7 going smoothly, right.

8 So you have a situation here where you
9 have more involvements and that's been helpful
10 because we've asked our members to poll their
11 congressional representative, so we can get
12 federal aid in to the state, right, into the
13 states that need it, so they're more active in
14 that end of it.

15 And as for the second part about
16 organizing, most of our unions are out there
17 organizing every day against situations like
18 this, senator. You make a good point. It
19 certainly heightens the awareness of those who
20 aren't members to help us. In this state, we've
21 been sort of fortunate anyway, we have two-and-a-
22 half million members and it's the highest in the
23 country, the largest in the country. But to your
24 point, yes, it does heighten others' awareness

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2 outside of the labor movement on why it may be
3 important to join.

4 And it also gives them the understanding
5 that what we fight for aren't just wages, right?
6 People think of wages, vacation pay, all those
7 other things. Now they're recognizing it's about
8 having a concerted voice for your basic safety on
9 the job, which a lot of people take for granted.
10 So that's also heightened as well, and I would
11 expect going forward, once we get past this --

12 SENATOR SKOUFIS: I'm glad to hear that.

13 And hopefully that bears fruit in terms of the
14 number of people who want to join union
15 membership. I just want to clarify. My first
16 question, when I spoke to union rolls, I meant r-
17 o-l-l-s not r-o-l-e-s and I wonder what's the
18 impact on the number of people in unions here in
19 New York State, you know with all these
20 businesses closed on the private side, have we
21 seen a decline in numbers? What's been that
22 impact?

23 MR. CILENTO: We didn't, we haven't seen
24 a decline in numbers. What we have seen is a

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2 greater number of members on unemployment. So
3 whether if it's the entertainment industry, you
4 know, there are some unions that are
5 entertainment industry, over the last five months
6 that are at about 95 to 97 percent unemployed;
7 members in the hotel industry, hospitality
8 industry, 97 to 99 percent unemployed. So they're
9 still part of their union. They're out of work
10 like everyone else is.

11 SENATOR SKOUFIS: Sure. Okay. Thank you.

12 ASSEMBLY MEMBER MCDONALD: Thanks,

13 senator, back to the assembly. Ranker Brian
14 Manktelow, you have five minutes.

15 ASSEMBLY MEMBER MANKTELOW: Thank y

16 Mario, could you explain something to me again if
17 you don't mind. I come in a little late. You were
18 giving the example of the grocery clerk or
19 whatever that's working in the store. Can you
20 just explain that to me one more time, please.

21 MR. CILENTO: Right. As things stand
22 now, it would be incumbent upon the actual worker
23 to prove that, for example, if you're working in
24 a grocery store and you're working at the check-

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2 out counter, in the course of an eight-hour day
3 you might see 200 or 300 customers come by your
4 lane. If you are a nurse and you are seeing a
5 couple hundred patients, particularly at the
6 heightened level that it was a few months ago,
7 right now, you would have to point out which
8 particular customer who came by on that line in
9 that grocery store or that supermarket, gave you
10 the virus. What we are saying is there should be
11 a presumption that if you're in that line of work
12 and that you are in that situation, that if you
13 have contracted the virus, that you contracted it
14 at work, so that you start from that beginning,
15 from that premise. It does not preclude the
16 employer from rebutting it and controverting the
17 claim. It just means that you're starting from a
18 different viewpoint to start the conversation.

19 ASSEMBLY MEMBER MANKTELOW:

20 employee X comes in to work the cash out that
21 day, employee X comes down with COVID two days
22 later. How do we really know where that
23 individual got the COVID from? I mean you've got
24 to think about the employer as well because I

Okay. S

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2 want these jobs to stay here. We need the jobs.
3 We need the employers to do this. So how does
4 that work? How do we know that individual didn't
5 get it on the way in on the bus? And, in fact,
6 maybe exposed some of the people coming into the
7 grocery store, maybe some of or her coworkers,
8 how do we differentiate from that?

9 MR. CILENTO: Right, it could be any of
10 those. It could be the coworkers. It could be
11 going in on the bus. It could be anything at any
12 point. What we're saying is that if you are in
13 that job during that time, that you would be
14 presumed. Mike, am I missing anything on that?

15 MR. NEIDL: No, I think in the context
16 of what you're asking, assemblyman, that we're
17 looking for, and one of the things Assembly
18 Member McDonald asked before is what can we look
19 to other states. There's 12, 14 other states that
20 have enacted a presumption like what Mario was
21 describing. And your question, so the presumption
22 is rebuttable, meaning the issues you're bringing
23 up, if you can show there was a family member or
24 a worker had traveled somewhere else and

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2 contracted COVID elsewhere, that's a rebuttable
3 presumption. But in the absence of that, it would
4 be assumed they got it at work if they were
5 otherwise healthy and went to work and showed up
6 without having to go through those normal really
7 excruciatingly long hearings to prove that you
8 got it at work. That's the difference.

9 ASSEMBLY MEMBER MANKTELOW: As an
10 employer, what right do I have to ask my employee
11 what they did in their personal time when they
12 were not at the job?

13 MR. NEIDL: That happens through the
14 workers' compensation hearing process. The
15 employer doesn't do that directly. That happens
16 through the process.

17 ASSEMBLY MEMBER MANKTELOW: Well, I
18 once it get to the workers' compensation hearing,
19 everybody knows that a majority of those cases
20 will side with the worker, and I'm not saying
21 that's wrong or right --

22 MR. CILENTO: That's, that's not true.

23 MR. NEIDL: I would dispute that. I
24 would respectfully disagree with that.

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2 MR. CILENTO: That's not true.

3 ASSEMBLY MEMBER MANKTELOW: Do you
4 what the stats are?

5 MR. CILENTO: You, you just said that
6 they're mostly employee-related. What are the
7 stats that back that up?

8 ASSEMBLY MEMBER MANKTELOW: I'm not
9 saying that --

10 MR. NEIDL: The Workers' Comp Board has
11 those stats. Those are obtainable. We see some,
12 we think there's stats available soon related to
13 COVID, specific to COVID, but that is information
14 that the Workers' Comp Board does have, and
15 there's an army of worker -- there's attorneys
16 involved in this process as well, so there are a
17 number of cases that controverted, and employers
18 always have the right to question a claim by an
19 employee that they were hurt at work.

20 ASSEMBLY MEMBER MANKTELOW: No, I
21 understand that, but I just know that the numbers
22 tend to side with the employee. It's pretty tough
23 to reverse one. Once it gets to the comp board,
24 I've been involved in this for a long time, once

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2 it gets to the comp board, it's pretty tough to
3 overrule that comp board. It really is.

4 And that's not my question. My question
5 is how do we really know where the employee got
6 the coronavirus, the COVID from. And I just want
7 to make sure we don't get rid of after all our
8 businesses. We have to make it work for both
9 sides.

10 MR. CILENTO: And I would agree with
11 you. Let me just say this. We don't want our
12 employers to go out of business. We want to have
13 that working relationship. And I think that's
14 very important.

15 ASSEMBLY MEMBER MANKTELOW: Absol

16 MR. CILENTO: So let me just be clear
17 about that, and that's why we go through the
18 process of the Workers'Comp Board.

19 ASSEMBLY MEMBER MANKTELOW: And

20 you know, I love businesses, I love employees. I
21 think as a business owner taking care of the
22 employees is my number one asset, because they're
23 the most important person to me in my operation.
24 So I just want to be sure that we're looking at

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2 it equally for both sides for both sides because
3 I just don't want, you know, we have some of the
4 best workmen's comp stuff in New York right now.
5 And the other states are coming on board. They're
6 not leading. We're still leading in that area.
7 They're catching up to New York State.

8 ASSEMBLY MEMBER MCDONALD: Thank you
9 gentlemen. And we'll move it back to the Senate.

10 SENATOR RAMOS: Thank you. Up next, we
11 have Senator Jackson. Uncle Bob, your floor.

12 SENATOR JACKSON: I got to go because I
13 got to ask this question. Thank. You're welcome,
14 Bill. Hi. Okay, Bill. Thanks. All right. Thank
15 you. Hi, Mario.

16 MR. CILENTO: How you doing, senator?

17 SENATOR JACKSON: I'm doing good. I was
18 talking to one of our former union president,
19 Bill DeMartino from Long Island, so he sends his
20 regards. But let me thank you for your service
21 and, Mike, let me thank you. I have a question
22 about, I understand that the situation currently
23 as it exists and I understand some of the
24 questions that have been asked already and your

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2 responses.

3 I am very concerned about the lack of
4 federal money and that I'm so happy that our
5 leaders Andrea Stewart-Cousins and Carl Heastie
6 have come together to say that we need to raise
7 revenue in order to save jobs and maintain the
8 status for people to survive this pandemic. What
9 is your position as the head of the union as far
10 as us, if we have to raise revenue so there's no
11 layoffs, you've heard them project 20 percent cut
12 to education, 20 percent cut to healthcare, 20
13 percent cut to municipalities, and to agencies.
14 So I'm very, very concerned about that, that
15 that's the direction if we don't raise revenue.

16 So are we working together to raise
17 revenues when we need to do that in order for
18 everyone to survive? And especially our workers
19 that are not collecting unemployment, they're not
20 getting any other type of government assistance.
21 These are people that are in desperate need.

22 MR. CILENTO: Yeah, thank you for that
23 question, senator. Yes, we have long been, the
24 state AFL-CIO, has long called for raising

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2 revenue, whether that's tax increases on
3 millionaires and billionaires, whether it's the
4 stop transfer tax, whether it's the
5 [unintelligible] [03:11:03] tax, our point of
6 view is, as we said, any deficits we run are
7 always going to be to hurt those at the bottom
8 end of the economic scale more than anyone else
9 because they rely on the services you're going to
10 have to cut to bridge that deficit. So we have
11 been working, all of our affiliates coordinating,
12 not only here in the state but just so you know
13 we coordinate with the other states to have them
14 reach out to their congressional representatives
15 across the country, to call for the federal
16 funding. So, yeah, we have long been on that, and
17 again, without it the services and the jobs,
18 first of all you're going to lose X amount of
19 jobs, whatever that would be. And the services
20 that those workers provide are vital to the
21 everyday lives of everyone across the states. And
22 again, those at the lower end of the economic
23 spectrum end up relying on those services more
24 and have been hurt again. So we're with you on

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2 that, senator.

3 SENATOR JACKSON: I appreciate that.

4 It's imperative that we continue to talk about
5 the options that we must look at in order to make
6 sure that we sustain ourselves, so I appreciate
7 you expanding on in your responses. Thank you,
8 co-chairs.

9 ASSEMBLY MEMBER MCDONALD: Thank you

10 Back to the Assembly, oh, wait a minute. Where
11 did he go? Well, I saw Nick Perry arrived. I
12 thought he had his hand up and it may have been
13 just to let us know that he's here, so senator
14 I'm going to push it back to you until somebody
15 else shows up.

16 SENATOR RAMOS: All right. Senator James
17 Sanders.

18 SENATOR SANDERS: Thank you, co-chair.

19 SENATOR RAMOS: Five minutes.

20 SENATOR SANDERS: Absolutely. I'm not
21 going to take that much, but a guy like Mario,
22 he's got all the answers so I don't have to worry
23 about that. Brother Mario, let me take you to the
24 issue of undocumented workers, undocumented

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2 workers. What's your organization, AFL-CIO's
3 stance on this sir, on how do we aid the
4 undocumented workers?

5 MR. CILENTO: They should have the same
6 rights and protections. They go to work. They're
7 in the workplace. They deserve the same rights
8 and protections of everyone else, regardless of
9 where they came from at any particular time.
10 They're doing the same work as everyone else, as
11 we see it, everyone is equal regardless.

12 SENATOR SANDERS: Well put, sir.
13 Following up Senator Jackson's point, at the end
14 of the day, if there is a budget shortfall, and I
15 have no idea why anybody was looking to White
16 House for aid to the states and cities, I have
17 absolutely no idea. There's no history of this,
18 and why anybody thought that we would get
19 anything from that, I have no idea.

20 However, why is there a hesitation in
21 some of the upper realms of New York State
22 government in dealing with any of these taxes
23 that you spoke of transfer, stock transfer, any
24 of the one percent taxes?

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2 MR. CILENTO: You know, I can't answer
3 for anyone who opposes that. They're going to
4 have to answer for themselves, and there are some
5 are on record. I can only tell you, senator, that
6 from our point of view, from the labor movement's
7 point of view, we wholeheartedly support raising
8 revenue in every way, shape or form necessary to
9 curtail those cuts, to keep people working and to
10 keep those services running, because without it,
11 you're going to see cuts in education and
12 healthcare and transportation and infrastructure
13 and sanitation and law enforcement and
14 firefighting and everything else across the
15 board. So from our point of view, senator, we're
16 on the same page, and we will continue to voice
17 our support for the raising of revenue moving
18 forward.

19 SENATOR SANDERS: There's only, as you
20 know well, sir, there's only a couple of things
21 that one can do when you're in a hole like this.
22 You can hope to find money, maybe gold somewhere.
23 It doesn't seem like it. You can raise taxes on
24 those who have plenty, or else you're going to

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2 cut to the middle class and to the working class
3 or else you're going to cut social safety net.
4 And those are the only choices that we have. And
5 all of this other talk, whose ox is going to be
6 gored, or we can just cut services left, right
7 and center and make this a very unappealing
8 state, and we're up to that level. Thank you very
9 much for fighting for the working people of this
10 state. You guys, while everybody else was running
11 all over and hiding under the beds, you guys were
12 up front, and I'm just scared that the essential
13 workers today will become the furloughed and
14 fired workers tomorrow. Thank you very much.
15 Thank you to the chairs.

16 SENATOR RAMOS: All right. Thank you. We
17 currently don't have any assembly members with
18 their hands raised, so we're going to move on to
19 state Senator Diane Savino. She has three minutes
20 for her questions.

21 SENATOR SAVINO: Thank you. Good
22 afternoon, Mario, and first of all,
23 congratulations on your re-election. Obviously,
24 people recognize how important you are and we're

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2 so lucky to have you in the labor movement today.

3 I just want to briefly touch on an issue that you

4 and I and Mike and others have been working on

5 for a couple of years now, and that's the issue

6 of what we call the gig economy. And so last

7 year, remember we introduced a bill at the end of

8 the session, the Dependent Workers Act, and

9 everybody hated about it. The industry hated and

10 it workers hated it, and in fact I will tell you,

11 I've gotten a lot of nasty e-mails in my career

12 in the state senate but none was nasty as the e-

13 mails I got from some people who insisted they

14 did not need the protections of the legislature,

15 many of them were freelancers, independent

16 contractors, 1099ers who told me to mind my own

17 business, that they didn't need any protections

18 whatsoever, that they were happy with the

19 flexibility that they had and the ability to

20 negotiate the value of the labor that they were

21 trading in this new marketplace.

22 And then the pandemic hit. And

23 proverbial crap hit the fan, and we saw the

24 effect it had on the UI system, as people who

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2 were currently not eligible for traditional UI
3 now becoming eligible under the pandemic
4 assistance that the feds put in place. And so now
5 we had thousands and thousands of people who are
6 currently recognizing how important these
7 workplace protections are.

8 So I think it resets the table for us in
9 our discussion. And I'll just ask you your
10 opinion on this. Two days ago, the CEO of Uber
11 wrote an op ed for the New York Times about how
12 they believe that Uber drivers and others should
13 have these same types of protections and that
14 they're prepared to create a third way, paying
15 into systems, providing those workplace
16 protections, but failing, or falling short on the
17 definition of an employee which, of course,
18 follows other protections.

19 So what I'm concerned about is people
20 may jump on that and say, well, let's allow that
21 to happen, but it excludes the most important
22 protection that workers should have, which is, of
23 course, the right to organize. So how do we push
24 back on that and make sure that we use this

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2 crisis to really fully flesh out that working
3 people should have the same protections, whether
4 they are obtaining employment through an app or
5 punching a time clock somewhere, on working in a
6 government agency?

7 MR. CILENTO: Great question, senator,
8 great question. I read that op ed a couple of
9 times and it just seemed to me that he wanted or
10 he wants to provide some benefits for workers but
11 on his own terms, right.

12 SENATOR SAVINO: Right.

13 MR. CILENTO: So in other words, I'll
14 give you, you should have some benefits. We'll
15 decide what they are. We'll decide how much we
16 put in. But we don't want to be held accountable
17 as every other business or enterprise in the
18 state or in this country, right. So again,
19 everything we already know. No minimum wage. No
20 overtime. No workers' comp. No paid family leave.
21 No grievance procedures at a time of COVID, where
22 workers who are doing this kind of work have
23 nowhere to go if they feel unsafe or if they, in
24 fact, feel they could contract the virus. So it

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2 seems as though it was on their terms. We're
3 going to pick and choose. And remember now, if
4 you do that, and there are certain things you
5 provide, those workers in fact feel certain,
6 they're certainly beholden to you in some way,
7 but not really because you don't really have a
8 voice in the workplace.

9 So we have to be careful of that, we
10 have pick up, senator, from where we left off
11 last year and finally pass the legislation that
12 allows these workers to have a real voice on the
13 job, have every other right as every other
14 employee in the state, including the right to
15 organize.

16 SENATOR SAVINO: Thank you.

17 ASSEMBLY MEMBER MCDONALD: Thank you

18 That concludes our comments from this panel.
19 Mario before you leave and we take a little bit
20 of a break, I would like to thank you. You
21 mentioned something earlier in regards to the
22 fact that you are reaching out across all the
23 states to share the message about the work that
24 needs to be done in Washington. And many of us in

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2 New York sometimes worry because we tend to one
3 of the blue states that our voices aren't being
4 heard but we appreciate the fact that you're
5 reaching out with your brothers and sisters to
6 share that message because COVID-19 has impacted
7 everybody in every state. It doesn't matter what
8 political leaning they are. So thank you very
9 much. We will be taking a ten minute --

10 ASSEMBLY MEMBER ABINANTI:

Before yo

11 end, can I just jump in and join you in thanking
12 Mario for joining us. Tom Abinanti here, I was
13 listening very carefully to what you were saying,
14 because I did not have any questions doesn't mean
15 I wasn't paying attention. Thank you for joining
16 us. I appreciate it.

17 ASSEMBLY MEMBER MCDONALD:

And now t

18 that has been documented, we will now move on --

19 SENATOR RAMOS: Thanks, Tom.

20 ASSEMBLY MEMBER MCDONALD:

-- to a

21 minute break. Why don't we say 1:45 because I
22 want to get my coffee. Thank you for the
23 panelists so far, and we look forward to
24 finishing this up in a timely manner. So see you

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2 at 1:45 live.

3 [OFF THE RECORD]

4 [ON THE RECORD]

5 SENATOR RAMOS: Thank you, we're back.

6 And Assemblyman McDonald would you like to
7 introduce the fourth panel?

8 ASSEMBLY MEMBER MCDONALD: Absolute.

9 Our fourth panel is a panel of one, but an
10 important one, like they all are, but it's our
11 friend Wayne Spence from PEF. Wayne, you have
12 five minutes of testimony. Welcome aboard.

13 ASSEMBLY MEMBER ABINANTI: Panel of

14 ASSEMBLY MEMBER MCDONALD: It's good

15 see you. Wayne, we need you to unmute yourself.

16 MR. WAYNE SPENCE, PRESIDENT, NEW YORK

17 STATE PUBLIC EMPLOYEES FEDERATION: Okay. Can

18 hear me now?

19 ASSEMBLY MEMBER MCDONALD: You're gr

20 Thank you.

21 MR. SPENCE: All right, so thank you
22 again for this opportunity, so to the senate
23 chairs, Ramos, Sanders and Skoufis, thank you. To
24 the assembly chairs Abinanti and McDonald, again,

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2 thank you for this. If I was to read through my
3 introduction I would run through the five-minute
4 clock which I can't see. I could see that before.

5 So again, I want to take this
6 opportunity to thank and just say a bit. I
7 submitted something in writing more lengthy. But
8 what I want to say is that at the start of this
9 pandemic, New York State residents have had to
10 realize the importance of government services and
11 support. I represent 52,000 state workers in the
12 professional, scientific and technical titles in
13 the bargaining unit. So we represent workers that
14 served on the frontline in the state response to
15 the COVID-19 pandemic.

16 And what we saw from this from what
17 happened was that chronic understaffing and under
18 resource of state agencies led to really bad
19 outcomes. I heard and saw the testimony earlier
20 from the Department of Labor commissioner. The
21 Department of Labor did not have the technology
22 nor the manpower to process the wave of
23 unemployment applications and the enhanced
24 benefits afforded others under the CARES Act.

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2 Several years ago, I testified in front
3 of Senator Savino and I remember she saying to me
4 back, I think in probably 2016 that we were at
5 diminished return when it comes to the workforce.
6 We weren't more with less, we were actually doing
7 less with less. And that was so apparent during
8 the pandemic. Years of two percent artificial
9 budget lines of no increase beyond two percent
10 led to some bad outcomes. And I'm hoping that we
11 really take a look at this.

12 If there's no help from Washington, I
13 guess we'll be looking at potential furloughs and
14 layoffs. And what will mean to the state
15 workforce that's already at a point of diminished
16 returns in terms of the number of state workers
17 that can do the job. Nursing shortages, that was
18 so apparent. We have struggled and the SUNY
19 hospitals struggled to meet their mission when it
20 came to the COVID crisis. SUNY Downstate, SUNY
21 Stony Brook have struggled.

22 Our members were left short staffed.
23 They had to deal with failures of management to
24 confront the imposition of mandatory overtime,

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2 forced redeployment, hiring freezes, lower wages,
3 challenging patient population and poor working
4 conditions and staggering student debt loans,
5 which has limited nurses to stay in the
6 profession or even want to come into the
7 profession when it comes to working for New York
8 State government, especially at SUNYs in the
9 capacity as a nurse.

10 Management other workforce planning
11 problems, again we had to deal with issues around
12 agencies that had to deal with the governor's
13 directives about designation of essential versus
14 nonessential personnel. It was a scramble from
15 day-to-day when the governor came on television
16 and would have his briefing. Because every
17 briefing was almost like a gut wrench for me what
18 is he going to say today that is not going to be
19 able to work out when it comes to the state
20 workforce.

21 It was almost two sets of rules, what
22 the governor said seemed to apply to everybody
23 else but their own workforce. Because there
24 didn't seem to be any real direction from the

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2 state commissioners of how was these things going
3 to be implemented. You heard the governor said
4 one person is going to get one PPE per day, but
5 yet, we knew nurses were getting one PPE per
6 week. They were telling to expect to use an N95
7 mask once a week. So then when I heard about the
8 talk what happened in the second wave? What does
9 a 90-day supply mean of PPEs? Does it mean that
10 it's one respirator per patient, per nurse, as
11 the N95 mask manufacturer said it should be done?
12 Or is it going to be one per week? So what does a
13 90-day supply look like?

14 There's a host of things that we need to
15 have some conversations about, that went wrong
16 and should be addressed should and when another
17 pandemic come about.

18 Again, my members are the ones who are
19 actually processing the UI applications and we
20 know it's been a disaster. How I know? I've
21 experienced it myself. My daughter worked in a
22 mall that was shutdown and had to go and apply
23 for UI. My son had to do the same thing. And for
24 them to tell me that it takes them two days just

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2 to process an application online because of the
3 software?

4 Again, PEF members are the ones that's
5 blamed when these things happen and I'm hoping
6 that we can look at those things and evaluate it
7 and make sure we can come up with fixes for these
8 things.

9 The overtime payments, so again to meet
10 the crisis, many agencies have relied on
11 mandatory or voluntary overtime. Staff at the
12 Department of Labor were mandated to work 15
13 hours overtime a week, staff at the Department of
14 Motor Vehicles are being asked to work six days a
15 week, to cover expanded hours and staff. And
16 staff at the Department of Health are being asked
17 to work overtime as contract tracers at regional
18 airports. But guess what? They're not being paid
19 the same rate as what they were hired at. So for
20 instance, you if were hired at a rate of \$15 an
21 hour, they're now telling you when you work at a
22 airport, that's a clerical function, so you're
23 going to \$9 an hour. These are the things that's
24 going on right now across the state.

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2 ASSEMBLY MEMBER MCDONALD:

Wayne,

3 speaking of overtime, unfortunately we are
4 overtime. But I know we're going to go back to
5 this issue in our question and answer period.

6 MR. SPENCE: All right.

7 ASSEMBLY MEMBER MCDONALD:

So, thank

8 for your comments. And Pat, a mea culpa on my
9 part. On the agenda I had, you were on a
10 different panel by yourself but you're in there
11 with Wayne, so Pat Kane from NYSNA. Welcome
12 aboard.

13 MS. PAT KANE, RN, EXECUTIVE DIRECTOR,
14 NEW YORK STATE NURSES ASSOCIATION:

Thank you

15 glad to be with my brother, Wayne. Hi everyone
16 and thanks for the opportunity to testify this
17 afternoon. So my name is Pat Kane and I am the
18 executive director of the New York State Nurses
19 Association and I've been a hospital-based RN for
20 more than 30 years. NYSN represent more than
21 40,000 frontline nurses that reported to work
22 every day during the worst of this pandemic and
23 thousands of them became ill, many of them
24 seriously ill, sadly some of them succumbed to

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2 this disease and we still can't get an accurate
3 count or information about those numbers.

4 We know that nurses worked in dangerous
5 conditions without adequate personal protective
6 equipment and Matilda's law did not apply to our
7 most vulnerable nurses. Staffing levels were
8 stressed to the breaking point and waves of COVID
9 patients came through our doors. And as we
10 struggled to cope with all of this, we were
11 frustrated by constantly changing federal and
12 state infection control guidelines. The DOH
13 sanctioned the use of the CDC's downgraded
14 protocols, including crisis capacity strategies
15 and these are for use during a known shortage of
16 PPE and they carry risks for our patients and our
17 staff.

18 Many hospitals instituted policies that
19 were even worse than the crisis guidelines and
20 nurses were forced to provide care sometimes with
21 only a surgical mask or reuse the disposable N95
22 respirators for as long as a week. In some
23 places, management was using unproven methods to
24 sterilize and reuse N95s, which the DOH also

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2 reduced the guidelines that reduced the isolation
3 and quarantine period for healthcare workers and
4 this was dangerous for us and our patients.

5 We often received policy directives that
6 made no sense and we were rarely if ever
7 consulted or included in these decisions. So as
8 we draw these lessons from this first surge,
9 there are some things we would like you to
10 address as we approach possible second.

11 First of all, we need to implement
12 minimum safe staffing standards. Staffing was a
13 huge problem before the crisis and the shortage
14 of nurses and other direct care staff made us
15 even more vulnerable. Minimum staffing standards
16 applied to all hospitals would have reduced
17 preventable deaths and lessened the inequalities
18 that we saw and we often read about. We need to
19 pass the Safe Staffing for Quality Care act to
20 provide an adequate base to be able to surge
21 capacity for future emergencies.

22 Second, we have to solve this PPE
23 problem. We need to make sure that we have
24 coordinated control over the production,

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2 stockpiling and distribution of PPE to all
3 hospitals equally, transparently and based on
4 needs and not just hospitals, all the places that
5 need it. We also need to move to reusable,
6 elastomeric and [unintelligible] [03:31:35] so
7 we don't have to face this running out of PPE
8 again. And this is actually going to save
9 hospitals money and provide us with the
10 protection that we need on the frontlines.

11 Third, we need to implement science-
12 based standard infection control protocols and
13 PPE standards that acknowledge that this is an
14 airborne transmitted disease. We need COVID
15 occupational safety standards to protect workers
16 similar to the blood born pathogen standard that
17 we do have.

18 Third, we need to protect nurses and
19 other essential workers who are exposed or become
20 ill. We need to have the same quarantine period,
21 get the same days of paid sick leave that
22 everyone else does for our sake and for our
23 patients. And for those that become seriously ill
24 or do die, we have to treat COVID as an

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2 occupational disease and create a presumption
3 that it's work-related.

4 Finally, we have to give healthcare
5 workers and other essential workers a seat at the
6 table. The state and local agencies talk to our
7 hospitals and employers, they need to talk to us
8 on the frontlines. We are the experts.

9 Lastly, as healthcare workers are still
10 suffering greatly from all the trauma and harm
11 they've endured during the height of the
12 pandemic, now unbelievably, these heroes after
13 facing the fear of losing their lives to save
14 others, are facing the fear of losing their
15 livelihoods. They're being threatened with
16 layoffs and furloughs as we speak. We've heard
17 over and over that this pandemic is not over, but
18 somehow healthcare workers, the frontline of this
19 battle are now expendable.

20 You know, last year the WHO declared
21 2020 as the international year of the nurse and
22 midwife, who knew what we were going to be
23 facing. But they did that because the world needs
24 nine million more nurses by 2030 to achieve

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2 universal healthcare. So let's protect and grow
3 one of our most precious resources both for our
4 immediate needs during this time and also for our
5 children's futures, so thank you for letting me
6 testify.

7 SENATOR RAMOS: Thank you panelists,
8 thank you so much for your testimony. It's very
9 good to see you both. I wanted to begin --

10 ASSEMBLY MEMBER MCDONALD: Jessica
11 you there? Well, oh, there she is. Sorry about
12 that.

13 SENATOR RAMOS: Sorry, about that, I
14 just got dropped for a second. But I wanted to
15 ask both panelists what happened to your members
16 when they requested additional PPE? Was there any
17 formal request that needed to be submitted? And
18 then what was the process for that? And what were
19 folks told, what were your members told if and
20 when they were denied?

21 MS.KANE: Do you want to start, Wayne?

22 MR. SPENCE: Yeah, sure. It depended
23 where it was. There was nothing consistent. Just
24 so you know, we spent over quarter of a million

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2 dollars purchasing PPEs, and most of the time we
3 ran into bit problems trying to secure
4 specifically the N95 respirators. The only place
5 we could find them, where every state across the
6 country, the whole world was looking for it was
7 China. And what we found out was the ones we,
8 when we did get them into the country, they
9 turned out to be, they were fake. They weren't
10 the real stuff. And so we tried to distribute
11 them as much as possible. There was just not a
12 consistent plan.

13 For example, there was a drug treatment
14 center in Brooklyn and when this pandemic hit, if
15 you remember it was during what was considered to
16 be regular flu season. They had no respirators at
17 all. They should have had something there. They
18 were actually telling people how to make PPEs out
19 of coffee filters. I had two members that died at
20 that facility. About seven PEF members died as a
21 result of exposure to COVID. One of them was a
22 psychiatrist who worked at an OPWDD facility
23 because that facility had no PPEs to give out. So
24 we were literally life and death. We spent over,

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2 we housed nurses from March 17th to May 22, we
3 actually put up with dues money, nurses in hotels
4 because there was a lack of PPEs for nurses and
5 they were afraid to go home, because if you
6 remember at that time, we'll bring you back, no
7 one knows how the virus was transmitted, so if
8 you had a vulnerable person at home, if you were
9 living at home with your elderly parent, nurses
10 were worried that they would bring it home and
11 they would die. So you got nurses who actually
12 live in hotels.

13 And when we asked SUNY, again, you ask
14 SUNY who has campuses and housing to house nurses
15 and they said to you I'll get back to you. They
16 never got back to us. To this day, they never got
17 back to us. We put people in hotels. And spend
18 again, over a quarter of a million dollars out of
19 our pocket.

20 Are we expected to do that again? When
21 does the union expect to do these things? And are
22 we expected to do that should a second wave hit?
23 I want you guys to know that these are the things
24 that we had to do.

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2 SENATOR RAMOS: Well, thank God for the
3 union, huh?

4 MS. KANE: Yeah, really. And just to add
5 to your question, you know, after this all
6 started in most places, the PPE was put under
7 lock and key. And very often that was problematic
8 for nurses to get into the manager's office on
9 overnight shifts in particular, sometimes they
10 had to call security. Now normally these things
11 are out on the unit, they're available whenever
12 you need them because that's where they should be
13 in order to have everyone be protected.

14 In some places, when you received an n95
15 respirator, you actually had to sign for it and
16 if you went back and asked to have another one
17 before you had worked five shifts the supervisor
18 would often ask you what happened to the one that
19 you got last Thursday. Sometimes they would have
20 to produce that one if it was broken. In some
21 instances, nurses sent me pictures where they
22 were told to staple a rubber tourniquet to the
23 N95 when the strap had broken. So they were --

24 SENATOR RAMOS: Sorry to cut you off, I

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2 have one minute and a half left and I want to ask
3 one more question. Feel free to fold it in. I
4 wanted to ask about overtime and hazard pay for
5 both of your members both PEF and NYSNA. What has
6 been the conversation around that, I mean we know
7 that there's corona presumption issues going on
8 for you guys as well. Can you speak to those
9 types of issues that are happening to our
10 essential workers?

11 MR. SPENCE: Just --

12 MS. KANE: Real quick and then Wayne can
13 go. Our public sector workers who are hardest
14 hit, you know, in the public sector we are not
15 able to get any hazard pay, and the private
16 sector some did. Go ahead, Wayne.

17 MR. SPENCE: Yeah, that's pretty much
18 it. To date, not one public sector nurse or
19 healthcare worker got any hazard pay while in
20 some places like Long Island Jewish, they got
21 \$2,500, other places got one week of extra
22 vacation. Nada. Zilch. Nothing. Heroes, what
23 zeros when it comes to the state employees.
24 That's it.

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2 ASSEMBLY MEMBER MCDONALD: Okay.

3 SENATOR RAMOS: Thank you. I'll yield
4 the rest of my time.

5 ASSEMBLY MEMBER MCDONALD: Okay. Ba

6 the Assembly and actually, it's going to be
7 myself. Pat, thank you for your testimony, I've
8 had the privilege to listen in or interact with
9 NYSNA for probably three days in the past week
10 and a half. So your testimony is real and it's
11 not being ignored or discounted, but I want to
12 reserve some of my time with Wayne today on a
13 couple of things because I really haven't had the
14 chance to follow-up on some of the concerns that
15 were raised earlier and Wayne has reinforced.

16 Probably within the last month, I
17 remember seeing the release from you in regards
18 to basically it mentioned to the governor about
19 making sure that all the state agency buildings
20 have the proper filters in place. This is kind of
21 around the same time as a decision was made on
22 what type of filter. As more science is evolving,
23 it was recognized that there needs to be a
24 certain MERV value for filters for malls and I

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2 think around that same time, you in your
3 leadership position put out a release about that.
4 Have you had any response to that?

5 MR. SPENCE: Yes. The response we got
6 from state was it's that we're working on it, as
7 we bring people back in. And I believe it was a
8 fair question to be asked. If you're asking malls
9 to do this, then why are you not going to ask the
10 state workforce in terms of the Harlem state
11 office building, the office building in the
12 Brooklyn state office building, the various state
13 office buildings and even the ones that's under
14 contract with private entities, with private
15 landlords. I believe they should have the same
16 value then, because then you send a message to
17 the people that we do value you as a worker. And
18 to date it's not consistent. We still haven't got
19 a consistent response.

20 ASSEMBLY MEMBER MCDONALD: So have t
21 indicated like an assessment is being done or? I
22 mean reality is we can't just replace them all in
23 30 days, more than likely. But there hasn't been
24 we're doing an assessment? Or just working on it?

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2 Is that what you're hearing?

3 MR. SPENCE: We heard that we're just
4 working on it. And I didn't make a big issue
5 about it, because what I was led to believe was
6 telecommuting was working, so a lot of these
7 places were not fully staffed and the number of
8 staff was minimal.

9 ASSEMBLY MEMBER MCDONALD: Okay.

10 MR. SPENCE: But that's not what is
11 going on now. More and more members are being
12 told they are returning to work in full drove,
13 not even staggered, but at full capacity, full-
14 time. And so then, let's go back and have that
15 conversation. Are we going to have those MERV-9
16 or higher filters?

17 ASSEMBLY MEMBER MCDONALD: I agree v

18 you on that and that's something we should be
19 following up jointly. The other thing, it was
20 mentioned about, I think it was during the
21 Department of Labor commissioner's comments,
22 basically, members of PEF and probably other
23 organizations have been working and being paid at
24 lower grade levels. Could you walk me through

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2 that please, because that seemed to strike me a
3 little bit odd.

4 MR. SPENCE: So when the big rush for UI
5 claims hit and what we recognized was that the
6 state system was antiquated. So let me give you
7 an example. If you are a student or a parent
8 filling out the FAFSA, you might have six
9 questions. And if you don't know, say you don't
10 have your social security number you can skip
11 that question and go to the next one. Not with
12 the state system. If you get to question six out
13 of 12 and you can't answer six, you get timed out
14 and you have to start all over again. And so that
15 was frustration right there, so because of those
16 things they said idea, let's see if we can get
17 people to walk people through the application
18 process. So you start asking state workers from
19 other agencies to help in. So they said fine,
20 I'll volunteer. I make \$20 an hour, I could use
21 the extra 15 hours. After they volunteered to do
22 it, they were then told no, this was really a
23 clerical function, so we're not going to pay you
24 at your state rate, we're going to pay you at a

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2 different rate, which could be \$10 an hour.

3 People felt they were bamboozled into doing it.

4 ASSEMBLY MEMBER MCDONALD: Yeah, no

5 that's a little bit mis- [unintelligible]

6 [03:43:11] that's for sure. Has there been any

7 response from the administration about that?

8 MR. SPENCE: They felt that they have

9 the right to do that. And so we've actually now

10 taken the state to court on this matter and we

11 didn't want to do that. We understand again that

12 the state is in a financial situation. But have a

13 conversation with us.

14 ASSEMBLY MEMBER MCDONALD: Right.

15 MR. SPENCE: Don't play three-card Monte

16 with the members. Have a conversation with us

17 about it.

18 ASSEMBLY MEMBER MCDONALD: I agree.

19 Thank you. Senate?

20 SENATOR RAMOS: Thank you. Up next, we

21 have Uncle Bob is back, who used to be a member

22 of PEF.

23 SENATOR JACKSON: Once a member of a

24 union, always a member of a union.

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2 SENATOR RAMOS: Solidarity forever,
3 brother.

4 SENATOR JACKSON: So let me just first
5 thank Wayne and Pat for chiming in, because as
6 you know, nurses were the frontline, along with
7 doctors and everybody else that were dealing with
8 this, patients from -- you know, those members of
9 1199 and all the other unions. And quite frankly,
10 you deserve, all of you, deserve to be taken care
11 of because you took care of hundreds of thousands
12 of people that were our loved ones. I say that
13 loud and clear. I know it, because Pat, I've been
14 with the Zoom calls with your membership. And
15 Wayne, you know, I'm talking to Darlene Williams,
16 who is the region 10 which is Manhattan and the
17 Bronx coordinator. So it's imperative to know how
18 the members are feeling.

19 And then when I hear that if we don't
20 get federal money and you know the state is
21 considering to lay off 20 percent in healthcare?
22 After everything that you all have done? Totally
23 unacceptable by any standard, so I'd say to you,
24 I want to know from you Wayne and Pat, what is

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2 the morale of the people that you represent?

3 Understanding one, they didn't get paid

4 appropriate overtime and number two, as far as

5 the projection if we don't get federal money, we

6 don't raise revenue against the wealthiest New

7 Yorkers that there's going to be layoffs in

8 healthcare. What are the members saying to you?

9 MR. SPENCE: I will defer to Pat this
10 time, let her go first, if that's okay.

11 MS. KANE: You know, the members are
12 terrified about the possibility of a second wave,
13 we're really not ready. They still really haven't
14 recovered. I mean they're in the process. This is
15 going to take a long time for that healing to
16 take place, right. They have each other, they get
17 a lot of support from each other. But the idea
18 that they're facing now losing their livelihoods
19 as well is very bad.

20 I mean, you know, just to have all that
21 own you and have all that on your back, and then
22 to kind of just be -- they feel like they are
23 just expendable, that they're considered
24 sacrificial. It's nice that people clap at 7:00

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2 o'clock every day, and that helps I think, get
3 the people through, to a certain extent. But they
4 really feel like they have been used up, abused,
5 and are now just being tossed away.

6 SENATOR JACKSON: Wayne, now that we
7 have only about 17 seconds, can you respond to
8 that as far as your members, whether they're in
9 New York City or upstate New York, because you're
10 statewide?

11 MR. SPENCE: They feel exactly the way
12 Pat described. Basically, used heroes but now
13 being treated like zeros, if you want to put it
14 in a metaphor.

15 SENATOR JACKSON: Hmm.

16 MR. SPENCE: That's exactly how they
17 feel.

18 SENATOR JACKSON: Well, thank you both
19 for coming in and representing your members. It's
20 imperative that union stays strong and you know
21 Mario was on earlier speaking on behalf of all of
22 the AFL-CIO and let me just thank the co-chairs
23 for allowing me the time to say hello.

24 ASSEMBLY MEMBER MCDONALD: Thank yo

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2 senator. Harry Bronson, state assembly.

3 ASSEMBLY MEMBER BRONSON:

Hello, fo

4 Wayne, Pat, thank you so much for being here. And

5 thank you for representing your members so aptly.

6 I only have three minutes so I'm going to try to

7 ask each of you one question and we'll do a

8 minute-and-a-half. Pat, we'll start with you. We

9 have had a couple of hearings in connection with

10 nursing homes and things that we needed to do to

11 make sure that we better provided for the

12 residents and the staff people. Minimum nursing

13 staffing came up repeatedly. Could you share with

14 us the impact of staffing in the hospital

15 setting?

16 MS. KANE: Sure. We saw, at the height

17 of the pandemic, nurses being responsible for

18 assignments that were up to four times what they

19 normally should be. And another feature of this

20 was that nurses were taken out of clinical areas,

21 like I was an open heart OR nurse for 20 years.

22 It would be like taking me and now putting me

23 after 20 years in the open heart operating room

24 on a medical surgical floor or in a medical ICU

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2 with little or no training. So we definitely felt
3 that -- nurses felt unsafe. You know, the
4 liability, immunity is one thing, but we are held
5 to a standard of care to serve our patients. It
6 was very distressing. I mean some of our members
7 were literally in tears what was going on with
8 the staff.

9 ASSEMBLY MEMBER BRONSON:

Thank you

10 Pat. That's an issue we have to work on both
11 because of COVID and even predating COVID, making
12 sure we have appropriate staffing.

13 Wayne, I want to talk a little bit about
14 again, the nursing home, it's really congregate
15 living. A lot of your members are in those
16 settings, whether it's through the Office of
17 Mental Health, the Office for People with
18 Disabilities. Can you share with us what's
19 happened in those settings for your members?

20 MR. SPENCE: Those settings, it was a
21 disaster in the OPWDD settings and OMH setting.
22 Especially in places like Creedmoor in Queens and
23 in Rockland Psychiatric Center and some of the
24 group homes. Literally, similar settings, but

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2 when private nursing homes were requesting
3 testing, you had to take a test, a temperature
4 test in the very beginning, we were saying what
5 is the difference between a nursing home, private
6 nursing home and these congregate living? Why are
7 we not doing the same thing? We were saying that
8 in April. It took letters to you guys and the
9 governor for the state commissioners to recognize
10 that these things should happen. But by the time
11 it did happen several of our members already
12 died. Several residents died. You saw the New
13 York Times reports, and it is a damn shame that
14 you have to go to the New York Times to get a
15 story out to save lives.

16 I personally lost two people that was in
17 a nursing home. I lost my father-in-law and my
18 uncle-in-law within a space of four weeks. They
19 lived in nursing homes and I didn't want to see
20 the same thing happen in congregate living. It's
21 as if somebody think that the congregate living
22 was somehow different than a nursing home and
23 they were exactly the same. But no one listened
24 to us and the expertise from our members until

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2 after the fact.

3 And, senator I'm afraid that another
4 pandemic, management, state management is going
5 to take that high horse approach and disregard
6 our members and the staff, as if they're
7 disposable and that cannot happen. And I'm asking
8 you to make sure that it doesn't happen.

9 ASSEMBLY MEMBER BRONSON:

Well, th

10 you, Wayne. And I certainly heard from your
11 members here at the Rochester Psych Center about
12 this issue and we need to take care of it and
13 make sure that there's personal protective
14 equipment, there are safeguards, there's tracing
15 that's happening and things of that nature. So,
16 thank you both Pat and Wayne for your testimony
17 today.

18 MR. SPENCE: Thank you.

19 SENATOR RAMOS: All right, thank you. On
20 our end we have Senator Shelley Mayer, three
21 minutes.

22 SENATOR MAYER: Okay I will try to hurry
23 up and get this on. Thank you, Wayne and Pat
24 both, thank you for your work here. Two

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2 questions, Wayne, how often during the pandemic
3 and these issues of your members were you meeting
4 with the governor's representative about the
5 issues your members were facing?

6 MR. SPENCE: We tried to meet as fluid
7 as possible. We understand again and again, I'm
8 going to give the governor credit where credit is
9 due. We watched him every day. And so while we
10 were fighting about respirators, meaning the
11 N95s, we know that the governor had something big
12 on his [unintelligible] [03:52:33] could he get
13 ventilators, so I tried to balance that.

14 And what we tried to do was we
15 recognized from time to time that what was
16 happening on the ground was not being telegraphed
17 to Mujica, to Melissa, and to those people you
18 saw on television. So we tried to, as best as
19 possible, so from the point of March 17th until
20 all the way maybe June, myself and my staff were
21 working I would say 17-hour days. Most of the
22 time our conversation with the governor usually
23 happened on a Sunday, which was an off day and we
24 tried to let them know what was going on.

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2 But the frustration was that the
3 departments were not being truthful to the
4 governor. It's one of those things where the
5 emperor had no clothes on. The governor would put
6 out something, and he would say it on TV and then
7 we kind of have an idea what was going on. But we
8 didn't realize that that was not being translated
9 down into what was on the ground.

10 For instance, PPEs, when the governor
11 said one PPE per person --

12 SENATOR MAYER: Right.

13 MR. SPENCE: -- we had to then let him
14 know it was not happening at Stony Brook, it was
15 not happening at Creedmoor. And thank God for
16 senate and assembly leaders like you, because
17 when we then said to management it wasn't
18 happening, it took letters to you, when we could
19 cc you on a letter for them to draw. But that is
20 that the way you should govern. We should not
21 govern that way. And I hope that as we move
22 forward that will not be the case.

23 SENATOR MAYER: Right. We need to do
24 better. I'm not faulting the governor, but you

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2 bring up a good point that we have not addressed
3 enough, which is the shortfall on information, so
4 thank you for that. And then, Pat, for your
5 members that, you know, the need for hazard pay.
6 So many of your members worked and got no
7 additional funds, even though they were under
8 extraordinary burdens and challenges. What is
9 NYSNA doing to fight for, even going forward, to
10 ensure there if there is another outbreak your
11 members get hazard pay?

12 MS. KANE: You know, we've had multiple
13 conversations with employers. You know, and I
14 have to say, even some of our smaller community
15 hospitals have come up with something.

16 SENATOR MAYER: I know.

17 MS. KANE: But the city was not able to
18 do anything. And it's just really unfortunate,
19 they were the hardest hit and they were really,
20 you know, and to begin with their pay rate is
21 lower than a lot of the privates, and there's
22 still also private sector hospitals in other
23 places, so we're just, we just keep trying.

24 SENATOR MAYER: Thank you. Thank you for

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2 that. And thank you for what your members have
3 done and continue to do. Thank you both, thank
4 you. Thank you Madam Chair.

5 SENATOR RAMOS: Assembly?

6 ASSEMBLY MEMBER MCDONALD: Sorry. Or

7 Assembly, it's now time for Nick Perry. Do we
8 have Nick Perry in the house?

9 ASSEMBLY MEMBER N. NICK PERRY:

10 ASSEMBLY MEMBER MCDONALD: There he

11 ASSEMBLY MEMBER PERRY: Just trying to

12 get unmute, yeah.

13 ASSEMBLY MEMBER MCDONALD: There you

14 ASSEMBLY MEMBER PERRY: So I was -- le

15 me say hello to Wayne and my NYSNA chair, Pat. I
16 listened to you, Wayne and I agree with you that
17 we have an obligation as leaders in our state to
18 make sure that first responders are not just
19 hailed as heroes publicly for the show of it, but
20 that they are never left to feel like zeros, as
21 you seem convinced have been the case.

22 I received a tremendous amount of
23 complaints about the PPE situation, the lack of
24 it or the distribution of it. I also received a

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2 lot of complaints about concerns with first
3 responders that they were made to worry about
4 their time back, because they did not -- if they
5 felt, if they felt symptoms that they needed to
6 get attended to, whether they could stay home and
7 feel better before they report too, and all of
8 those concerns that I think should not be among
9 the matters when you are concerned about trying
10 to be at work, to be there for those who need
11 your services. What -- can you give me some
12 response as to the level of that concern among
13 your workers and how that might have impacted and
14 affected their ability to provide the excellent
15 service that they are trained to provide without
16 that duress and stress that comes from the other
17 stuff that's monetary at the end of it. And what
18 recommendations you might have, both Pat and
19 Wayne --

20 MR. SPENCE: Well, well, Nick, the
21 stress of --

22 ASSEMBLY MEMBER PERRY: -- the PPE,
23 regarding the protocol for supply and
24 distribution, and who controlled that and what

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2 recommendations -- what we could do to make it a
3 better process as we move more into this pandemic
4 control operations.

5 MR. SPENCE: So I'm going to take the
6 last one first and go backwards. So, one of the
7 things that would help, Nick, and I'm sorry,
8 Assemblyman Perry, because we know each other, I
9 don't want to be --

10 ASSEMBLY MEMBER PERRY: Nick is fine,
11 problem.

12 MR. SPENCE: Part of the thing is this,
13 when you hear and recently -- I'm going to use
14 SUNY Downstate Medical Center. We recently had a
15 meeting and they said they have a 90-day supply.
16 How do you quantify a 90-day supply of PPEs? Is
17 it 90-day supply based on the manufacturer's
18 recommendation of one mask per patient? Or is it
19 going to be one a week? Because -- or one a day?
20 Because the 90-day supply, they need to quantify
21 and qualify what the 90-day supply is based on
22 because that 90-day supply could end up becoming
23 only a two-week supply if they do it properly. So
24 it would be great if we could put clarification

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2 on what the supply is. If you go by the N95
3 manufacturer, it's supposed to be one mask per
4 patient, because you can actually transfer the
5 virus to other patients if you use it. But during
6 the pandemic, we did what we had to do. But we
7 should be beyond that now and be prepared to do
8 it the proper way. In terms of being sick, if you
9 come into the hospital now and say I have a
10 scratchy throat, it's allergy season, they'll
11 tell you to go home and get tested, COVID tested.
12 But then they'll tell you, you have to take ten
13 days. And if you don't have ten days, you're out
14 of a paycheck for ten days. How is that right?
15 Because that's what's going on.

16 ASSEMBLY MEMBER MCDONALD:

Gentlemen

17 thank you for your comment, we need to continue
18 to move on. Back to the senate.

19 SENATOR RAMOS: Yes, up next we have
20 Senator Skoufius, you have five minutes.

21 SENATOR SKOUFIS: Thank you very much
22 and thanks to each of you for your testimony and
23 for everything that your members have done over
24 these past many months. So tomorrow, we're told

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2 to expect the long awaited Department of Health
3 study on staffing in hospitals, nursing homes and
4 other venues. Obviously, this is I'm sure, of
5 great interest to NYSNA, but PEF, you have
6 significant interest I'm sure in this as well.
7 You have nurse members and other members in
8 healthcare.

9 I'm curious, what's been each of your
10 union's involvement in that Department of Health
11 study? Have they spoken with you much? Do you
12 have any expectations as to what tomorrow's study
13 will have? And where do you think we need to go
14 from here?

15 MR. SPENCE: So the study was due back
16 on the 31th of December.

17 SENATOR SKOUFIS: That's right.

18 MR. SPENCE: So, wow. Finally, so here's
19 what, what are they going to say? One, I don't
20 think they're going to say much. What I'm hoping
21 that we will see out of this is stop ignoring the
22 problem that we know exists and recognize that
23 there's a need to attract and retain nurses and
24 personal care staff. Lift the hiring freezes that

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2 was established and go with safe minimum. And I'm
3 going to let my NYSNA counterpart finish because
4 I know our time is together, because I think we
5 have some of the same issues.

6 MS. KANE: Sure, we do, Wayne,
7 absolutely. And that I think that goes to the
8 whole point of having the state staffing
9 standard, right. So as far as how much
10 interaction we had with the Department of Health
11 during the study, I guess it's going to be
12 fantastic because it's taken so long, very little
13 in the beginning. We did have some interaction.
14 But actually I think that that individual isn't
15 even at the Department of Health anymore. So you
16 know, very little, some in the beginning when it
17 first passed, but really nothing since then.

18 You know, we've been at this fight for
19 many, many, many years talking about how we need
20 a minimum standard. And I think we've all seen
21 how this disease has really laid bare the
22 inequalities, the communities of color that were
23 hardest hit, the hospitals hardest hit. And I
24 think, you know, just as a basic principle, can

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2 we agree that everyone deserves the same level of
3 care and the same access to care.

4 As far as what they're going to say, I
5 think it will be interesting. I expect they're
6 going to say something along with the hospital
7 industry has been saying about it's really hard
8 to establish a number. And just guys, remember
9 what we're talking about is a minimum standard,
10 right. We do recognize that we do have to have
11 individual standards in particular facilities,
12 depending what's going on. But we have to start
13 with a minimum. A minimum guarantee of what's
14 going to be there in order to provide safe care.
15 We've had staffing committees in contracts for a
16 long time and have struggled with this issue and
17 we need this legislative fix.

18 SENATOR SKOUFIS: As we look towards the
19 next public health crisis, whether it's a second
20 wave or some other pandemic, how important is
21 this issue of staffing as we try to best prepare
22 for the next time? Is it the most important
23 issue? Is it top three? Making sure we have
24 adequate staffing in hospitals and nursing homes

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2 and healthcare facilities around the state. Can
3 you give us as legislators some sense of just how
4 important this issue of safe staffing is?

5 MS. KANE: I would say the most
6 important.

7 SENATOR SKOUFIS: The most important?

8 MS. KANE: Yeah. We heard about bed
9 capacity, we heard about ventilators all the
10 time. I really very -- and, you know, we heard
11 what was being done about staffing and getting
12 volunteers as if people can all of a sudden know
13 how to work in a particular facility or be
14 trained to handle these kind of diseases. If you
15 want to improve the outcomes and save more lives,
16 safe staffing, I think it's the most important
17 thing.

18 MR. SPENCE: Also, one of my biggest
19 fear when I was hearing that was if you don't
20 have the staff and you have the ventilators,
21 who's going to operate them?

22 MS. KANE: Exactly.

23 MR. SPENCE: And as we saw nurses
24 getting taken down because of the COVID

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2 requirement, remember there was an exposure in
3 the beginning, 21 days, we weren't sure how many
4 days and how, so you had nurses who did not want
5 to come to work and the management who did not
6 want to bring the nurses in because we weren't
7 sure in March how the virus was spreading. As we
8 know more about it, we're still very cautious,
9 but if you don't have the staff and you're not
10 going to have it.

11 And there's another piece that we
12 haven't spoken about was the post traumatic
13 stress on nurses. These nurses that worked in
14 these areas like in Downstate and in Queens, it
15 was as if they were in a MASH unit, it was as if
16 they were actually in a war zone, because that's
17 what they experienced. If you were a neonatal
18 nurse, if you dealt with mostly the delivering of
19 babies, but then you were thrust into an ER and
20 you watching people die by the minute, you're not
21 going to recover from that.

22 SENATOR SKOUFIS: That's right. We
23 actually spoke about exactly that at yesterday's
24 hearing. It's important you bring it up. And we

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2 have -- it has not been adequately prioritized. I
3 agree with you completely, but my time is up. I
4 thank both of you.

5 ASSEMBLY MEMBER MCDONALD:

Thank you

6 senator, and now we're back to the Assembly.

7 Assembly Member Marianne Buttenschon.

8 ASSEMBLY MEMBER BUTTENSCHON:

9 afternoon, thank you for being here this
10 afternoon. I sincerely appreciate your leadership
11 as well the hard work that your members have done
12 throughout this horrific pandemic that we have
13 faced. And I have heard from many of your members
14 and many of my questions were answered today, but
15 I just I wanted to follow-up a little bit in the
16 question that was just recently asked in regards
17 to your top three priorities as you see them
18 today. And I know that safe staffing you said is
19 number one. Could you just elaborate on those? As
20 I'm very concerned about the mental health of
21 your members as they are the individuals that
22 face daily what so many of us just take for
23 granted, as we know they're either working within
24 our facilities or within hospitals or any other

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2 area that they're providing the care for others
3 that need it.

4 MR. SPENCE: Well, we've been trying to
5 pass safe staffing for quite some time and I
6 understand that management, the hospital
7 administrators have come out and said no, it's
8 not necessary it's not needed. I'm hoping this
9 pandemic and the aftermath of that shows that we
10 were woefully unprepared. And we need to go back
11 and look at what happened in California.

12 California passed it and hospitals did not close.
13 As a matter of fact, certain diseases actually
14 were more preventable, SARS and certain other
15 things did not spread in hospitals when we went
16 to safe staffing.

17 So to suggest that somehow, it would
18 cripple the hospital industry in New York State,
19 that's not true because it didn't happen. But,
20 and I would hope that people recognize that we
21 could have had much better outcomes and we did
22 have good outcomes for the rest of the country.
23 But it could have even been better. Remember when
24 we were at 800 deaths per day? I don't want

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2 people to ever forget that because that took a
3 toll on our nurses. Nurses work shifts. And, in
4 such a way where if you are working a lot and you
5 don't get enough sleep, you are then susceptible
6 to that disease because your body can't fight it
7 off. So then, you're at a minimum staffing levels
8 and we were beyond, we're lower than the minimum
9 staffing levels, what did you expect in terms of
10 an outcome? And what will people expect in the
11 next wave when some nurses walked away.

12 Nurses quit at Downstate Medical Center.
13 And some people are not looking to come back into
14 nursing, based on what they went through and saw
15 their loved ones went through. So we really need
16 to get a hard look on what we're going to do to
17 attract and keep nurses, especially within the
18 state workforce and I'll defer to NYSNA.

19 MS. KANE: So, two other things. I
20 mentioned the reusable respirators. We really
21 have to -- just, the top three things related to
22 this, to COVID. The reusable respirators, the
23 elastomeric respirators, we actually have a pilot
24 going on in Brooklyn. You know, we're really

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2 depending on like charity to do this work. But
3 that's a really big deal. Getting stuff like
4 that, that'll make us more resilient and ready.

5 ASSEMBLY MEMBER MCDONALD: Thank you
6 Pat. Thank you, Marianne. Back to the senate.

7 SENATOR RAMOS: Thank you so much. Up
8 next, we have Senator Tom O'Mara, who as a
9 ranker, has five minutes on the clock.

10 SENATOR O'MARA: I'm coming, sorry, I
11 had to pull over. Thank you, can you hear me now?

12 MR. SPENCE: Yes, sir.

13 ASSEMBLY MEMBER MCDONALD: Yes.

14 SENATOR O'MARA: Great. I want to say
15 thank you for the tremendous work of your
16 membership throughout this crisis, it's truly
17 been amazing. I have two sisters who are nurses
18 and I know a little bit about anyways, what goes
19 on and the issues you are faced with and have
20 been faced with, with this. And I want to state
21 for the record that I think one of the most
22 insulting things we've seen, you were talking
23 earlier about hazard pay and not getting any
24 hazard pay, is that the governor actually froze

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2 wage increases that were bargained for and
3 contracted for prior to this disaster. And I
4 think that just adds insult to injury for the
5 great effort that your membership has put forth
6 throughout this. And I have been outspoken about
7 that wage freeze and continue to be here today.
8 But I wanted to say thank you, I don't have
9 questions for you. Thank you for you and thank
10 you to all your membership for your hard work.

11 MR. SPENCE: Thank you, sir. Appreciate
12 hearing that from you.

13 SENATOR O'MARA: That's all I have.

14 ASSEMBLY MEMBER MCDONALD: Senator,
15 looks like it will be the Senate on the table
16 now.

17 SENATOR RAMOS: Well, that's all that I
18 have on my end as well. So I think all that's
19 left is to say thank you to both Wayne and Pat
20 and please extend our appreciation to your
21 members.

22 ASSEMBLY MEMBER MCDONALD: Senator.

23 SENATOR RAMOS: Oh, someone else?

24 ASSEMBLY MEMBER MCDONALD: I think

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2 you've got a couple names up there.

3 SENATOR RAMOS: Oh, on, yeah, you're
4 right. I just got Andrew Gounardes, Senator
5 Gounardes are you still here?

6 SENATOR GOUNARDES: Unmute, there we go,
7 I'm here, sorry about that.

8 SENATOR RAMOS: Three minutes.

9 SENATOR GOUNARDES: Thank you very much.

10 Thank you both Wayne and Pat for speaking today.
11 You've answered a lot of questions about what
12 your members faced, and so thank you for sharing
13 their stories, their perspectives. I want to
14 focus and I believe it was someone on the
15 Assembly side who picked up the questioning with
16 the labor commissioner about workplace complaints
17 on the public sector side for employees that had
18 to report to work for nonessential tasks. So this
19 question is more for Wayne than for Pat, but
20 Wayne, do you have examples or instances where
21 your members were still told to come into work
22 even though they were not deemed essential or
23 they were doing purely administrative things that
24 they could have been doing home and they brought

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2 into work where without proper precautions and
3 safety guidelines being adhered to?

4 MR. SPENCE: Yes, senator. We had
5 members of ITS who were, who could have done work
6 from home. They were told to go to the
7 facilities, they had to take the train. And
8 that's at the time when the train was now being
9 filled with folks who did not have a place to
10 stay, where there was a big homeless population
11 on the train and there were no social distancing,
12 that was not a big term then. They died. One of
13 those people died actually, and we believe the
14 contracting of that actually came from traveling
15 on the train and that was not necessary at the
16 time.

17 We have a person when there was a
18 quarantine on people visiting private nursing
19 homes, we had PWDD in Brooklyn that was running
20 CPR training and the trainer was a woman who was
21 six months pregnant. So she said, I am expected
22 to do this. And if I don't do this, then I'm
23 going to lose my job. I had to write letters to
24 the commissioner of OMH with threats to cc the

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2 letters to the New York Times and the Daily News.

3 Why should we -- why isn't that common sense?

4 SENATOR GOUNARDES: So, let me ask you,

5 since my time is running out soon, what was the

6 response you got from the public employers when

7 you brought that to their attention?

8 MR. SPENCE: Well, most of the time, we

9 got no response and then we would have to go to

10 Melissa or Mujica because GOER was silence also,

11 and that's what it took. And at the time, Melissa

12 and them, they were busy trying to find

13 ventilators. They shouldn't have to deal with

14 that.

15 SENATOR GOUNARDES: Right. Got you, let

16 me ask one more question before my time expires.

17 You know we passed a line of duty death benefit

18 bill for public workers who die from COVID. We

19 left out the question about long-term disability.

20 I know it's still early. But for your members

21 that got sick, for both Pat and Wayne, have you

22 started to see any long-term effects from your

23 members who have been sick with COVID and their

24 ability to do their jobs right now? Or has not

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2 yet manifested itself?

3 MS. KANE: No, it has manifested. I
4 think it's the viral load they're exposed to,
5 Andrew, or something. I mean it seems like even
6 people who recover, it just does take the nurses
7 longer and we are seeing people with long-term
8 disabilities now.

9 MR. SPENCE: The same thing here. We
10 have seen people who have gotten ill, who said
11 that since they have come back to work, they are
12 more fatigued. There seems to be a lot more long-
13 term issues to somebody getting back to full
14 health when they contract COVID.

15 SENATOR GOUNARDES: Okay. Thank you
16 both.

17 MR. SPENCE: And thank you for what
18 you're doing on behalf of the public sector
19 workers, in terms of your bill, sir. I appreciate
20 that.

21 SENATOR GOUNARDES: My pleasure.

22 SENATOR RAMOS: All right and then, I
23 guess we don't have another assembly member on
24 the list, is that correct, Assemblyman McDonald?

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2 ASSEMBLY MEMBER MCDONALD: That's
3 correct. We're good.

4 SENATOR RAMOS: All right. So then up
5 next and to close for the Senate is state Senator
6 Daphne Jordan. You have three minutes on the
7 clock.

8 SENATOR JORDAN: Good, I thought you
9 were going to forget me and I've had my hand
10 raised since the beginning. But anyway, thank you
11 to the panelists for your hard work and for the
12 work that your members have done. We've touched
13 upon mostly the physical needs and that would be
14 PPE and proper pay and proper hours that your
15 members need. And we've touched upon just very
16 lightly, the mental needs and we don't see those.
17 And so it is a problem, because I heard yesterday
18 in the hearing for hospitals that that is
19 something that affects everybody that has seen
20 the tragedies of COVID. And I only saw news clips
21 and I can't get those out of my head. But I
22 cannot imagine dealing with all of that. Is there
23 a program that you have set to help the mental
24 health needs of the healthcare workers, of the

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2 nurses?

3 MS. KANE: So, in our union at least, we
4 do provide services through a company where our
5 nurses can access 24/7, they can talk to a
6 counselor that's credentialed and nurses have
7 been availing themselves of that. You know, I
8 think, you know, and a lot of hospitals have kind
9 of put forward these self-care kind of things.
10 It's very difficult to get the nurses to use the
11 services. I think it's part of the nature of what
12 we do. But I do think more time has to be set
13 aside at the workplace. Because you know, group
14 interaction and interaction with their colleagues
15 that they've been through this together would
16 really be helpful. I mean people do the
17 individual therapy, but we would like to see time
18 set aside out of their workday for this to
19 happen.

20 SENATOR JORDAN: I do want to let you
21 know that I did introduce a bill in May and it's
22 Senate Bill 8371 that is modeled after the
23 successful PFC Joseph P. Dwyer peer-to-peer
24 veterans counseling program, but this would be

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2 for our healthcare workers and it's called the
3 Healthcare Worker Peer Support Program. So I am
4 hoping that that gains traction and can help the
5 healthcare workers that have seen the horrors of
6 COVID.

7 MS. KANE: Thank you.

8 MR. SPENCE: I appreciate it. I hope
9 that, there was not a lot of emphasis in some
10 agencies on the EAP program, that's the state
11 agency, the Employment Assistance Program. And
12 I'm hoping that the state will actually recognize
13 the need for it and fund it. And not just fund
14 it, make sure that management understand that
15 this is something that's necessary and show that
16 it's something and not something that's ancillary
17 and an annoyance, because that's kind of like how
18 it is now. It's almost as if it's an
19 afterthought. And it should not be an
20 afterthought, it should be built in as something
21 that's necessary when it comes to the healthcare
22 workers, given what they've just went through.

23 SENATOR JORDAN: Absolutely, I agree,
24 thank you.

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2 ASSEMBLY MEMBER MCDONALD:

We have c

3 last member, and it's Brian Manktelow, ranker,
4 five minutes.

5 ASSEMBLY MEMBER MANKTELOW:

Thank y

6 chairman. Wayne, I apologize, I had to step away
7 for a few minutes, but I'm back on. I know in our
8 area, I'm a veteran and I know there's a lot of
9 veterans that are members of PEF. Is there
10 anything that we need to be doing for our
11 veterans through this whole COVID situation right
12 now that we're in, this pandemic do you see that
13 we could help our PEF members?

14 MR. SPENCE:

I don't know if you know

15 that the veterans' home out at Stony Brook took a
16 big hit, it took a big hit. And I think again
17 that the veterans' home that is run by the state
18 again, the agency that's responsible, was asleep
19 at the wheels. And they need to be able to sound
20 the -- it was my members again, who sounded the
21 alarm. And it was part of a conversation and
22 again, when you hear these alarms and no one's
23 listening, what do you do?

24 There was frustration that there was an

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2 emphasis on nursing homes, but yet, congregate
3 homes similar that was run by the state seemed to
4 have gotten lost in the sauce. So how do we make
5 sure that should this happen again, should there
6 be a second wave, this doesn't happen again? I
7 have not seen anything from the vets' homes
8 management on the stateside to suggest that they
9 are not won't do the same exact thing again.

10 ASSEMBLY MEMBER MANKTELOW:

Well, I

11 think that's one of the beauties of having the
12 testimonies from everyone. All the members on
13 both sides of the aisle, Senate and Assembly, you
14 know, we've been listening to these. This is my
15 fourth one here in the last week, and I've
16 learned so much about what we're missing and what
17 we didn't do. It's our job as legislators to make
18 sure that we do that moving forward, especially
19 if we do end up getting a second wave. So, Wayne,
20 I will let you know. I will reach out to Stony
21 Brook and talk with them, okay, and see what we
22 need to do from the stateside to make sure that
23 happens.

24 MR. SPENCE:

Thank you, sir.

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ASSEMBLY MEMBER MANKTELOW:

Pat, is

there anything you'd want to add to this before I
step off, or are we all set?

MS. KANE: I think we're all set.

ASSEMBLY MEMBER MANKTELOW:

All rig

Thank you so much. Thank you both for being on
today and giving us your time, much appreciated.

MS. KANE: Thank you.

MR. SPENCE: Thank you. Pat, it was good
seeing you.

MS. KANE: Good seeing you too, Wayne.

ASSEMBLY MEMBER MCDONALD:

Thank you

our panelists, we appreciate your testimony. And
now, we'll move on to panel number five out of
13.

SENATOR RAMOS: Panel number five is Ron

Busby, president and CEO of the U.S. Black
Chambers, Ken Pokalsky vice-president of the
Business Council of New York State and Melinda
Mack, executive director of the New York
Association of Training and Employment
Professionals. Welcome to our hearing.

MR. RON BUSBY, PRESIDENT & CEO, U.S.

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2 BLACK CHAMBERS, INC.: Well, thank you.

3 SENATOR RAMOS: And you may begin your
4 testimony.

5 MR. BUSBY: I don't know the roll call,
6 but I guess I'll go first.

7 ASSEMBLY MEMBER MCDONALD: It goes
8 Ken and Melinda, just in that order.

9 SENATOR RAMOS: Yes, sorry, yes.

10 MR. BUSBY: No problem. I will go.

11 Again, my name is Ron Busby and I am the
12 president of the United States Black Chamber of
13 Commerce, here in Washington D.C. and ally of our
14 co-chair, Mr. Sanders. And I appreciate you
15 having me here to speak this afternoon. We
16 represent approximately 332,000 black-owned
17 businesses and in this moment of time, we as an
18 organization see this as a conversation about
19 black concerns.

20 If you really look at the pandemic, it
21 was the black community, especially in New York
22 that suffered the most. If you look at the number
23 of deaths from the black community, it doubled
24 that of the number of deaths of the white

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2 community. If you look at the number of
3 unemployed that were laid off or just outsourced,
4 it almost doubled the number of white people as
5 well.

6 And so for us, the first thing that we
7 have to do is say this is not a diversity and
8 inclusion conversation. This conversation is
9 about black communities, black businesses and
10 black people. So you have to have a specific
11 issue that is going to address specific concerns.
12 And so for us, the first thing we want to do is
13 identify that these firms are particularly black-
14 owned. Right now, there is a lot of conversation
15 about black lives matter and about businesses
16 that are black-owned, about supporting the black
17 community through spending money with black
18 firms.

19 But, yet, in the State of New York there
20 is really no way of certifying, validating if
21 these firms and businesses are exactly black-
22 owned. And so the first thing that we're asking
23 from the State of New York is to ensure that when
24 you're creating policy that the policy addresses

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2 the businesses and the communities that need it
3 the most. This cannot be a broad brush solution
4 to a specific community and nationality in
5 reference to the issues that we are facing in
6 today's market.

7 You have seen that we lost 41 percent
8 nationally of black-owned businesses. That
9 represents 441,000 black firms that were closed
10 between the months of February and April. There
11 was a conversation prior to this, that if each
12 black firm in the state of New York could hire
13 one additional black person, there would be no
14 unemployment for black people in the state of New
15 York.

16 Well, that has changed because we've
17 lost so many black firms in the state that even
18 if the firms that exist were able to hire two
19 employees, we would still not be able to address
20 the unemployment conversation in the state of New
21 York.

22 Right now, in reference to employees, 14
23 percent of all black employees are in the grocery
24 store, convenience and drugstore, 26 percent of

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2 all your public transportation folk are black,
3 18.2 percent of all your folk that work in your
4 postal services, your warehouse and trucking
5 industries are black, 17.5 percent of the folk
6 that work in healthcare in the state of New York
7 are black.

8 So from an employment conversation, we
9 also need to look at how do we address black
10 homeowners, because we know that if I'm
11 unemployed the likelihood of me being able to pay
12 my mortgage is going to be challenging. How do we
13 address renters in the State of New York? If I'm
14 unemployed, I can't pay my rent. So those are
15 some of the things that we are looking at, but it
16 starts with being able to validate from our
17 perspective which firms need the help, can get
18 the help and most importantly can identify
19 themselves as who they really are, and that comes
20 through a validation form. I will stop and open
21 it up to questions that you may have.

22 ASSEMBLY MEMBER MCDONALD:

Thanks, P

23 What we're going to do is we're going to receive
24 the other two members' testimony and then we'll

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2 open it up to a potpourri of questions I am sure.
3 Ken?

4 MR. BUSBY: Thank you. Thank you.

5 MR. KEN POKALSKY, VICE PRESIDENT, THE
6 BUSINESS COUNCIL OF NEW YORK STATE, INC.:
7 good afternoon everyone. On behalf of the State
8 Business Council, we greatly appreciate the
9 opportunity to talk with you today. I know
10 there's limited time available for all the
11 panelists, we are always available for any
12 questions and conversations after today's hearing
13 as well.

14 I mean we certainly, we represent about
15 2,400 private sector employers across New York
16 State. We have about, and represent about a
17 million employed New Yorkers. We certainly agree
18 with the tone of today, that we're facing
19 unprecedented challenges and impacts.

20 We also echo something that Commissioner
21 Reardon said earlier today on the interdependence
22 on employers and employees. We could not agree
23 more. As a general comment, one of the things I
24 would like to say is that I think we all need to

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2 recognize even say if Congress passed the House
3 version, which was a \$3 trillion recovery bill,
4 there's simply not enough money available to
5 fully offset the adverse impacts of the COVID
6 pandemic.

7 We really need economic activity and
8 growth, return to work, job growth all done
9 without losing the focus on health concerns. And
10 I think it's important to recognize that even if
11 New York State and I think we've done better than
12 most states successfully implements public health
13 and employee health mechanisms, full economic
14 recovery in New York State is not a given.

15 And we know the experience after the
16 last recession. New York State's employment
17 growth had fallen in 2019 below national growth
18 trends and some parts of upstate New York had
19 just barely or not yet recovered jobs lost in the
20 last recession. And my point is that post
21 pandemic recovery is going to be affected by many
22 factors including the state's economic climate,
23 cost structure and regulatory structure. These
24 are factors that have to be kept in mind as well.

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2 Importantly, we've seen some encouraging
3 job numbers in New York State, 100,000 jobs re-
4 added in May, by June, 300,000 from our April
5 low. So that does reflect the gradual reopening
6 of New York States businesses.

7 To touch on a couple of the main points
8 of today's hearing on workplace safety, I think
9 from day one of this pandemic, our members had
10 agreed that our economic policies are going to be
11 driven by public health data broadly defined. And
12 the Business Council, myself included, my staff
13 has worked extensively with the Cuomo
14 Administration and our members on the New York
15 Forward reopening protocols, which focused on
16 protections for employees and customers alike,
17 and the various executive orders that went along
18 with that as well.

19 What we've seen and what limited data
20 we've seen from the state so far, is that COVID
21 cases among essential workers outside the
22 healthcare sector have tended to be lower than
23 the general public caseload. What we've heard
24 from our members the basic protections required

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2 under OSHA and New York Forward protocols have
3 seemed to proven to be generally effective.

4 The New York Forward protocols provide
5 detailed operational requirements sector
6 specific. They seem to be working. If there are
7 other specific public health or workplace
8 standards that members of the legislature would
9 like to discuss, we're certainly open to those
10 discussions.

11 On unemployment insurance, a lot is said
12 about the challenges that the department went
13 through, so I will avoid that for now. But the
14 number that was talked about today is really eye-
15 opening. We've, of the \$40 billion in UI payments
16 that have been out the door in New York State so
17 far, about 10 billion of that is from New York
18 State UI fund that's 100 percent employer tax
19 funded. And from what we can tell, New York State
20 has taken about a five to \$6 billion advance from
21 the feds to pay benefits. That entirety of that
22 amount will be repaid by New York employers over
23 the next several years through increased state
24 and federal unemployment insurance debts. It's a

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2 big number that needs to be looked at.

3 One of the things, talking about the
4 usefulness, the importance, the critical nature
5 of UI benefits to unemployed workers that might
6 be considered, we would point out that under
7 federal, state and New York City unemployment or
8 personal income tax laws, all unemployment
9 insurance benefits including the temporary
10 benefits under the CARES Act remain subject to
11 New York State, New York City unemployment
12 insurance tax that might be looked at.

13 And then on the Payroll Protection
14 Program, I think we agree it got off to a rough
15 start. The initial statute was misaligned with
16 small business [unintelligible] [04:31:18]. We
17 think those were eventually addressed and looking
18 at the final report on the program, we do think
19 it has done generally what the program was
20 intended to do. About 80 percent of New York
21 State's small business firms have received loans
22 covering about 75 percent of small business
23 payroll.

24 Just one more point for the legislature

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2 to consider, something that's being looked at at
3 the federal level, the IRS considers PPP loans to
4 small businesses that are forgiven to be taxable.
5 We believe that at least for non-incorporated
6 businesses, most small business in New York State
7 that's probably likely true under existing New
8 York State tax law, something that we're
9 exploring with the tax department and with our
10 tax attorneys. But it would be I think an
11 unwelcome surprise at the end of this process for
12 small businesses that are just barely hanging on
13 to the benefit of the PPP loans to receive a
14 significant unexpected tax bill next year.

15 So that's touching on the three major
16 areas of the hearing today, like others, I will
17 be happy to take your questions and comments. I
18 appreciate the opportunity.

19 ASSEMBLY MEMBER MCDONALD:

Thanks, P

20 Melinda, welcome.

21 MS. MELINDA MACK, EXECUTIVE DIRECTOR,
22 NEW YORK ASSOCIATION OF TRAINING AND EMPLOYMENT

23 PROFESSIONALS: Hi, good afternoon. I also want
24 to sort of extend my thanks for letting me come

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2 today and to speak to you all, but also to the
3 unions who represent some incredible workers
4 across the state. I mean it's hard not to be
5 deeply touched by some of the stories that
6 they've been describing.

7 So I represent NYATEP, the state's
8 workforce development association. My members
9 serve about 1.2 million New Yorkers each year,
10 getting them educated, trained and employed into
11 good jobs. I wanted to sort of reiterate a couple
12 of the key data points that came out from the
13 commissioner's comments earlier.

14 Again, I think we're all grappling with
15 these massive unemployment numbers. As of August
16 first, 3.4 million New Yorkers were unemployed
17 and another 1.3 million are receiving
18 unemployment assistance through pandemic UI. I
19 think one of the things to note is around 800,000
20 individuals were receiving UI at the peak, during
21 the last great recession. And so when we think
22 about the lift to get people back to work, it's
23 pretty massive and incredible.

24 I think as you also know, because I come

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2 to you every year in February or March, talking
3 about this, the labor market has had structural
4 issues, structural problems in it for decades,
5 right. One of the largest issues that we've
6 talked about for a longtime is that the top ten
7 largest occupations, which make up about two
8 million jobs are dominated by low wage work and
9 the majority of the sectors have been impacted by
10 COVID-19. So we're talking about folks in
11 hospitality, tourism, retail sectors that tend to
12 pay below \$32,000 a year.

13 We also know that about 45 percent of
14 New Yorkers, based on the ALICE Report that's put
15 out by the United Way, are working poor. These
16 are folks who are working, doing the right things
17 and are still unable to afford their basic
18 monthly costs like food, childcare,
19 transportation, et cetera.

20 And lastly, what we know, and again,
21 we've talked about this for decades is when
22 there's an economic downturn, the economy doesn't
23 improve for everybody the same way. In
24 particular, people who have a high school diploma

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2 or less did not recover in the last recession and
3 are very unlikely to see recovery during this
4 recession as well. In New York, that's 42 percent
5 of people, right. That's a lot of people who lack
6 above a high school education.

7 So before COVID-19, what we heard, the
8 rallying cry, what got people excited, was the
9 concept of the future of work, what the impact
10 would be on jobs and the skills gap. But as was
11 shared earlier by my fellow panelist, we know
12 that the labor market as it has been designed,
13 has not benefited everyone equally. But we also
14 know that the vast majority of New Yorkers who
15 have lost their job are people of color, people
16 in low wage work and individuals who are really
17 having trouble accessing better skills to get a
18 better job.

19 So I think we have a shot here to do the
20 right thing, right. This is a massive shift in
21 the labor market and we have a chance to make
22 investments where we need to, to really have a
23 meaningful and equitable recovery. So as part of
24 our Investment Skills New York Coalition, our

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2 group that's been together as an alliance, that
3 includes the business community, education,
4 workforce, community college leaders, we're
5 actually in the process of putting together a set
6 of recommendations that will come to you in
7 September.

8 But I want to caution you that you're
9 going to get lured by the big, shiny solutions.
10 Big ideas, the big ways to get people back to
11 work. There is a workforce system in New York. It
12 works well, it's effective, it gets people into
13 employment but I should note that it's
14 desperately underfunded, has 50 percent less
15 money than it had 10 years ago and year-over-
16 year, we continue to see cuts.

17 The CARES Act at the federal level
18 provides about a third of what we would need and
19 actually provides about the same amount for the
20 workforce system as we would see under ARA, so
21 the American Recovery Act.

22 So I say that because as we think about
23 the recommendations, know that these are tried
24 and tested solutions that we just need resources

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2 for. But some also are policy changes that we can
3 make that would have a huge impact.

4 A couple of the big ideas that I want to
5 share that are sort of circling right now. It's
6 the way that we utilize our economic development
7 power, how we align our incentives for businesses
8 to create quality employment. We also have
9 metrics that are coming out around how we rethink
10 about spending our federal Workforce Innovation
11 and Opportunity Act dollars as well as TANF, our
12 welfare resources, to really make sure that
13 individuals have access to in-depth services for
14 a longer period of time, but also are able to
15 keep their benefits and actually grow their
16 benefits so they can stay employed.

17 We also have some very specific
18 recommendations that will be coming out around
19 how we actually connect individuals around
20 education and training in the pipeline from K-12
21 through college.

22 And then finally, this concept of the
23 digital divide. I think what we're finding as we
24 go across the State, people don't have access to

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2 computers they don't have access to software.

3 It's really challenging people's ability to work
4 remotely, to learn remotely and also really
5 increasing the equity gap that we're seeing in
6 our state.

7 And then finally, as I shared before,
8 the state's workforce system is often seen as an
9 afterthought. This is the system that is meant to
10 educate, train and get people jobs that cannot
11 typically go through the traditional systems. If
12 we don't make investments here, I'm not sure who
13 is going to help people who need skills to get
14 back to work. And really as sort of Ken and Ron
15 have shared, businesses are going to be desperate
16 for workers and we need to sort of do all we can
17 to make sure folks have the supports they need to
18 get employment.

19 ASSEMBLY MEMBER MCDONALD:

Thank you

20 think if you don't mind, the Assembly will start
21 off.

22 SENATOR RAMOS: Your turn.

23 ASSEMBLY MEMBER MCDONALD:

Thank you

24 Linda, thank you for your comments. It's

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2 interesting, one of the things that these
3 pandemics is that you realize that organizations
4 that maybe not have been funded as much as they
5 should have in the past actually have proven to
6 be even more valuable because of the personal
7 approach, the hands-on approach.

8 I can tell you in the small business
9 community, the small business development center,
10 which you're aware of, has been a hero to many
11 small businesses who were really lost, and that's
12 not just here in the capital region but
13 throughout the State. I have some questions about
14 PPP and the impact. Ken, I think I'll start with
15 you, obviously. I imagine the majority -- Ken,
16 you may want to, there you go, you unmuted
17 yourself. I imagine when you look at the breadth
18 of the members of the Business Council, what
19 percentage actually availed themselves of the
20 program?

21 Mr. POKALSKY: I don't know because we
22 haven't polled them on that. About 80 percent of
23 our members have 100 or fewer employees. If you
24 look at -- the SBA just put out I believe what

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2 they considered a final report on the PPP program
3 phase 1 and 2. And the vast majority of -- they
4 measured their loans by size of loan, not size of
5 employers. The vast majority of the loans issued,
6 I think were under \$150,000, aimed -- and so
7 that's the universe of employers that are
8 relatively small.

9 So the evidence we see of the numbers
10 served, the smaller businesses did take advantage
11 of the PPP. I think that those that didn't fell
12 into two categories, particularly those who only
13 looked at the program when it first came out and
14 saw that just that the numbers just didn't work
15 out, that they, the minimum -- or the minimum
16 amount that had to be paid for wages rather than
17 other business expenses just didn't match. The
18 challenge of repaying the loan and initially was
19 a two-year turnaround. If you failed to meet the
20 headcount and payroll mandates, it just didn't
21 work.

22 So I think there's a problem on almost
23 every new initiative among the smaller
24 businesses. A lot just didn't know. It didn't

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2 have the wherewithal to access the programs.

3 ASSEMBLY MEMBER MCDONALD:

Do you th

4 just talking to members, that a majority use them

5 for what many of us intended them to do, which

6 was the keep our employees working? Were they

7 able to maintain their salaries and keep the

8 majority of the workers? I know, in the end it's

9 part of the reporting system, but that's going to

10 probably take months, if not years, to get the

11 results. I think we're curious to see was it

12 successful in its intended goal.

13 MR. POKALSKY:

And I don't think anyone

14 knows for certain. I think we just know what the

15 anecdotal evidence is. I think that the majority

16 did use it to maintain payrolls, not necessarily

17 employment, because some of the -- particularly

18 in the hospitality world, people were taking

19 these loans, in New York State under New York

20 State's [unintelligible] [04:41:03]. I know in

21 talking to banks who are now going to be required

22 to service and oversee the loans, there are some

23 infamous cases where individuals certainly used

24 the monies for unintended purposes and those

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2 monies are being recovered.

3 ASSEMBLY MEMBER MCDONALD:

Let me --

4 me jump on because my time is getting tight. Ron,

5 I want to ask you, because I know the U.S. Black

6 Chamber was a strong voice. The first round, a

7 lot of minority businesses were completely,

8 because they do community banking, their banks

9 weren't -- they went back and revisited the

10 program, and I know I talk to my friend Tony

11 Gatti quite regularly from the Upstate Chamber.

12 I'm hoping that we've gotten a greater uptick in

13 what black businesses are left were able to

14 participate.

15 MR. BUSBY:

So the National Bankers

16 Association, which represents the 19 black-owned

17 banks gave a report. Nationally, there were less

18 than 10,000 black firms that participated in the

19 payroll protection plan from the majority banks.

20 So those firms that did get funds, they got it

21 from CDFIs and local black banks. But I want to

22 say that what we're not interested in is another

23 program called payroll protection plan. Just from

24 the marketing and the title of the program, it

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2 did not do black firms well. We should have been
3 talking about the EIDL loan program, but again it
4 wasn't marketed well. When you talk to a small
5 firm and say a loan program, they're not
6 interested. When you talk to small firm talking
7 about payroll protection, they can't participate.
8 And so from the outskirts, we thought that it was
9 marketed extremely poorly, and for that fact
10 black firms did not participate, did not get a
11 chance to get the funding, and as we go forward,
12 I think you're going to face some of the same
13 types of challenges for black firms in the
14 future.

15 ASSEMBLY MEMBER MCDONALD:

Thank you

16 And as we go forward, we're going to go forward
17 with the Senate.

18 SENATOR RAMOS: Thank you, John. And
19 thank you to the panelists. I'm actually going to
20 allow our banking committee chair, Senator James
21 Sanders, to ask his questions. He has five
22 minutes.

23 MR. BUSBY: Mr. Sanders, you might want
24 to come back and sit down, sir.

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2 SENATOR SANDERS: I had to, but you have
3 to unmute and that's, you know, you don't want to
4 know our technical questions. What a great panel
5 that we have put together. I would love to have
6 had time to question each and every one. I may, I
7 will try to, but I'll go straight to Mr. Busby.
8 Mr. Busby, you spoke of policies that impact on
9 blacks and other communities. But let's take it
10 to New York State. Let's keep this where we can
11 do something about it. It's not enough to talk
12 about the world. We can think globally, but we
13 need to act locally.

14 New York State has a budget of around
15 \$179 billion of which zero goes into black,
16 Latinx, Asian or women-owned banks. What would 10
17 percent of that money do if it went through black
18 banks or any of these other banks that I just
19 spoke of?

20 MR. BUSBY: It would challenge them.
21 Many of them would not be able to take the
22 funding. Part of what we have asked, we have
23 policies that we're asking for from federal
24 governments. Ee're asking similar requests from

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2 our corporate partners, and part of what we ask
3 them, hey if you're \$100 million or about in
4 assets, we want you to take 15 percent of those
5 dollars and place them in the blank banks. We
6 thought that was a great idea, but the challenge
7 is the black banks don't have the liquidity. When
8 we were talking about banking black three, four
9 years ago when we created the Black Bank
10 Initiative, we had folk from New Jersey, Delaware
11 driving to New York to make a deposit. Those
12 banks were suffering. Banks don't make money when
13 you make a deposit. Banks make money when you
14 make a loan, because you have to pay interest
15 back. What we have to do is be creative for
16 black-owned banks so that there's an overarching
17 initiative and an overarching organization that
18 can fund them so that they don't have to have the
19 liquidity to continue to remain and they can get
20 the funding when they need it. You have someone
21 between them and the state to be able to hold the
22 funds.

23 Many corporations are saying, great, I
24 don't mind taking my money out of J.P. Morgan, B

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2 of A, Wells Fargo, and depositing it, but we have
3 to make it available to the black bank where they
4 can still take a bite at the option. We know that
5 blank banks make 70 percent of their loans to
6 black homeowners and black-owned businesses, so
7 it's a great idea. We've just to have to figure
8 out how to get them the liquidity, so that
9 they're not sitting on those dollars and still
10 being penalized for having more revenue that they
11 can put out.

12 It's got to be a programmatic approach
13 but I'm sure that Tim Sanders and the other
14 black-owned bankers would love to have that
15 conversation. I know we're discussing it at
16 [unintelligible] [04:46:13].

17 SENATOR SANDERS: I believe I may have
18 found the way. the intermediary that your
19 speaking of, sir. It is called a public bank of
20 which I'm working on. If you are not familiar,
21 then I encourage you to become familiar. Mr.
22 Busby I've got around two minutes left, what
23 policy would you want changed in New York that
24 would help black businesses?

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2 MR. BUSBY: Great question. For us, we
3 would love to see either someone placed in each
4 mayor's office, either an employee or
5 organization like a chamber of commerce, that was
6 there long-term to ensure that black businesses
7 had a look and an opportunity at the deal flow.
8 If all you're doing is just opening up your
9 contracts and saying, everyone come in and
10 compete, you're not going to have the biggest
11 impact for the communities and the businesses
12 that need it the most.

13 So, say we have \$100 million in
14 contracts that are going to come out. I'm going
15 to place either a chamber of commerce from the
16 black community or an individual that we're
17 hiring that is there to ensure that black
18 businesses have an opportunity. Usually you'll
19 say, we'd love to do business with black folk but
20 we can't find them. No problem. Have someone
21 there that their responsibility is to go find
22 them. And if that means putting two firms, three
23 firms, four firms together to be able to have the
24 size and the scale that you need to be able to

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2 award them that contract, then so be it. We have
3 the flexibility of being able to create that type
4 of partnership that can then fulfill the needs of
5 the contracts there that are being released
6 through the state.

7 SENATOR SANDERS: The same question to
8 you, Ms. Mack, what, and if I have time to the
9 other gentleman. What policy do you believe would
10 be useful to help blacks and others, especially
11 blacks perhaps, but and others, in this period?

12 MS. MACK: Of course, so I think for me
13 the biggest is around addressing the benefits
14 cliff, right. So if a low wage worker wants to be
15 able to work, they often are having to really
16 figure out some of the assets that they need to
17 be able to be employed. So childcare,
18 transportation, et cetera. And so if there are
19 ways that we can standardized what that benefits
20 cliff looks like statewide, but also make
21 investments in things like employer resource
22 networks or ways that individuals can access
23 assets or not be penalized for working, I think
24 that's sort of what we want to start to see

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2 included. You can't participate in a full-time
3 education and training program if you're on
4 public assistance and work. You end up being
5 penalized again for trying to do the right thing.
6 So I think those are the types of things and
7 flexibilities we're hoping we see during this
8 period.

9 MR. BUSBY: Senator Sanders, there is
10 one other idea. That is prompt pay. If you give a
11 contract to a small business owner and he's got
12 to go get a loan to be able to cover your float
13 to make sure that he can make payroll, that puts
14 him at a disadvantage because we know that
15 minority and black-owned firms pay twice the
16 interest rate for a loan, so now they've got to
17 borrow money just to cover your overhead. Pay
18 them on time. Under the Obama Administration,
19 there was a prompt pay program that said they
20 paid within 15 days. A state can implement that
21 without much headache. If I start a job January
22 1st, I invoice you January 15th, I should be able
23 to get paid January 31st to make sure that I am
24 growing my business through the cash flow that I

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2 have and I'm not depending upon lines of credit
3 just to make sure that I can make payroll.

4 ASSEMBLY MEMBER MCDONALD:

Ron, than

5 you and speaking of prompt, we're going to move
6 on to our next member, but I love the idea, we
7 love the idea. Harry Bronson.

8 ASSEMBLY MEMBER BRONSON:

Hello, fo

9 Thank you for being here, and I kind of want to
10 follow up on the discussion that was just being
11 had. I'm a strong believer in antiracism and
12 follow Dr. Ibram Kendi's guidance on that for
13 policymakers. And that is every decision we make
14 should either move us closer to equity or remove
15 barriers to equity.

16 With that in mind, if we are going to
17 help communities of color impacted by COVID and
18 impacted by previous deals that were not
19 fulfilled, like 40 acres and a mule that were
20 never delivered, we're going to do that through
21 entrepreneurial approaches, we're going to do
22 that by making sure that folks get education and
23 we're going to do that by making sure that folks
24 get the equity that they need. So my question is

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2 to Mr. Busby first and then to Melinda. Ron, to
3 you, in connection with business ownership and
4 being an employer, so you can hire folks, what,
5 if you could come up with three things that we
6 can do today to help black businesses, what would
7 they be? And me Melinda, the same question to you
8 but on the employee side, on the workforce
9 development side, three things that we could do
10 today to help make sure people of color are
11 getting a living wage with benefits. Go ahead,
12 Ron.

13 MR. BUSBY: Well, the first thing is
14 you've got to specify that they are a black-owned
15 business. You have got to be able to codify that
16 yes, this is a black firm. It's not a minority
17 firm. It's not a small firm. It's not a woman
18 firm, this is a black firm. If you want to
19 address the concerns of black people, make sure
20 they're black people.

21 Secondly, as I discussed, the prompt
22 payment I think would definitely improve the
23 conditions for black small businesses. That way
24 they wouldn't have to worry about paying the high

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2 interest rates.

3 And then third, when you really are
4 starting to look at contracts from the state and
5 local governments, you've got to make sure that
6 you are meeting the numbers. Set a goal. For us,
7 we're saying 15 percent of all new contracts need
8 to be awarded to the communities, local and
9 minority, black communities, brown communities so
10 that that they have an opportunity to not just be
11 involved in the community, but to have
12 sustainability. Those are the taxpayers, those
13 are the folk that hire from within the
14 communities. If you're really looking at
15 unemployment, black firms hire black people.
16 Hispanic firms hire Hispanic people. So you have
17 to make sure that you're investigating in the
18 firms that have the employees from your local
19 communities.

20 ASSEMBLY MEMBER BRONSON:

Thank you

21 Ron. And from the employee side, Melinda, what
22 training program, what development programs can
23 we have for people of color?

24 MS. MACK:

Sure. I think one thing I

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2 would sort of mention and to what Ron was just
3 sharing is we also know small businesses often
4 don't have the resources to upscale or hire
5 employees. And so I think we're also looking at
6 ways to increase wage subsidy and transitional
7 jobs to support small businesses to be able to
8 hire people from their local communities.

9 But my top three, I can probably give
10 you a top 20, right, because so much needs to be
11 done. The biggest really is around eliminating
12 all the issues related to transfer and credit
13 accumulation at SUNY and CUNY, right. When we
14 think about our ability to get people to and
15 through community college, we need to make sure
16 that when they go to BOCES, the credits they get
17 from BOCES transfer into credentials into
18 community college. It's real education. It's
19 important education. It's skill-based education.
20 It needs to actually translate, and not end up
21 costing people additional cash.

22 I think the second area is we have to
23 address the digital divide. The fact that we
24 cannot get devices, programming and broadband to

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2 every corner of New York State, including
3 communities that you all live in, there are
4 people in your communities who do not have access
5 to broadband, it's going to impact children's
6 ability to get public education this fall. I have
7 three kids at home in the city of Albany school
8 district. We're struggling through it right now,
9 right. It's going to impact workers' ability to
10 work remotely, and if you cannot work remotely,
11 you don't have a job in some instances. Aand it's
12 going to impact people's ability to get education
13 and training to get a good job.

14 The last thing is we've got to recognize
15 a lot of people who are unemployed are not going
16 back to work. There's not going to be a job for
17 them to go to. And we need to be utilizing this
18 time to address the skills gap so people are able
19 to go back to work in better jobs. We keep
20 talking about folks' wages. We have not equitably
21 invested in the education and job training
22 programs. Many of the labor union based programs
23 do not have enough pipeline to be able to get
24 people into those training programs, the BOCES

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2 programs, the community-based organizations in
3 your communities that do education and job
4 training for really meaningful jobs like
5 carpenters, plumbers, folks who fix your air
6 conditioner. We need to be investing in those
7 types of training pathways as well. So if we did
8 those three things, it would be revolutionary for
9 our state.

10 ASSEMBLY MEMBER MCDONALD:

Thank you

11 ASSEMBLY MEMBER BRONSON:

Great, thank

12 I know Co-Chair McDonald is going to cut me off
13 but I just want to give a shout out in connection
14 with the multi-craft apprenticeship preparation
15 program here in Rochester. That is a direct
16 pipeline of young folks of color getting into the
17 construction trades, which we do a much, much
18 better job of doing. Thank you very much. Thanks
19 for indulging me, co-chair.

20 ASSEMBLY MEMBER MCDONALD:

You got it

21 Harry. And let's bring on ranker Brian Manktelow
22 and that will probably close out our panel.

23 ASSEMBLY MEMBER MANKTELOW:

Hey, good

24 afternoon. Sorry about that. I was on the phone

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2 and I apologize. Can you hear me now?

3 ASSEMBLY MEMBER MCDONALD:

You're go

4 to go, Brian.

5 ASSEMBLY MEMBER MANKTELOW:

Good. I

6 thank you for being on today. Thank you everyone
7 for being on today. Just a quick question. I live
8 that a rural area just east of Assemblyman
9 Bronson's area between Rochester and Syracuse,
10 very rural, a lot of the agriculture. Would black
11 members, black families, I don't see a lot of
12 black members being -- and black families being
13 involved in agriculture or any of the smaller
14 businesses. What can we do to help promote that?
15 What can we do to get them engaged? How can we
16 engage them to make that happen? I mean, we're
17 here to help one another and we need to help
18 those individuals as well. What can I do from the
19 state side? What can I do from the local side to
20 help make that happen?

21 MR. BUSBY: When we first started U.S.
22 Black Chamber, our first advocacy was around the
23 black farmers in Beauford, South Carolina.

24 ASSEMBLY MEMBER MANKTELOW:

I think

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2 [unintelligible] [04:56:46].

3 ASSEMBLY MEMBER MANKTELOW:

And as

4 as we were very involved, we realized that we
5 lost a ton of our black farmers, not because they
6 weren't good farmers, not because they weren't
7 farming the right products. It was because they
8 checked the wrong box. And that box eliminated
9 them for the opportunity just to get the \$60,000
10 that we had been fighting for for years. And so
11 we had to go back to the USDA to get \$25,000 to
12 start making small business grants. You've got to
13 take it away from a loan conversation to a grant
14 conversation and make it very specific to new
15 industries and new opportunities.

16 We're talking now about existing
17 businesses. Understand we lost almost a half a
18 million black firms, so we've got to start
19 talking about what is the next generation of
20 opportunities and firms. There is going to be a
21 great deal of mergers and acquisitions, so we've
22 got to start talking about what is the future and
23 where should we be directing our black businesses
24 to get involved. And so there's not a lot of

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2 conversations going on about labor industries.

3 Everybody is talking about high tech and the gig
4 economy. We've got to go back to what got us the
5 wealth that we had in the previous generations,
6 and a lot of that deals with farmers, farmland,
7 and agriculture.

8 You'll see a lot of small farms growing
9 up in rural communities, but I have always stated
10 that we need more black farmers to ensure that we
11 have good food, good industries for us to work
12 on, and ultimately that turns into land. And for
13 landownership in our community, that is a
14 priority that we have lost over the last several
15 decades. And so I would love to partner with you
16 on that to talk about the importance of farming,
17 particularly for black farmers.

18 ASSEMBLY MEMBER MANKTELOW:

All rig

19 well, that would be great, Ron, because I'd love
20 to do that. I will look up your information
21 online and I will shoot you e-mail from my
22 district office and maybe we can chat about that
23 because the opportunities are there. There's jobs
24 in upstate New York. If I was a young person, I'd

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2 be looking at plumbing, I'd be looking at
3 electricians, masons. Nobody wants to do it
4 anymore, and these are going to be the backbone
5 of who we are. You can't have anything else
6 without these individuals, and if we can help
7 grow that and get these individuals involved in
8 my area, right between Syracuse and Rochester,
9 that would be awesome. So Ron, I will shoot you
10 an e-mail and maybe we can chat about that, that
11 would be great.

12 MR. BUSBY: Look forward to it. Thank
13 you.

14 ASSEMBLY MEMBER MANKTELOW: Thank y
15 everyone.

16 ASSEMBLY MEMBER MCDONALD: Okay. I t
17 we still have a, we have a second round for
18 Senator Sanders, it appears, right there, Senator
19 Ramos? Oh, now he's going to go take a walk.

20 SENATOR SANDERS: I'm trying to unmute.

21 SENATOR RAMOS: Where do you go? Oh, he
22 has to get up to unmute himself.

23 ASSEMBLY MEMBER MCDONALD: Oh, okay

24 SENATOR SANDERS: It's old-fashioned, my

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2 friends. It's old school. It's just to want me to
3 exercise. I was really thrilled by the speakers
4 and to the questions coming at the panelists. The
5 ranker's questions and points were really strong
6 and interesting points. I, of course, want to
7 alert the ranker that there is a history of theft
8 and plunder of why there are so few black
9 farmers, sir, and it would be useful to -- I'd be
10 delighted to share any of the information on that
11 with you. But I also would be delighted to work
12 with the ranker and jump into the conversation
13 with Ron over this because I agree, I had an
14 urban farm in New York City, so, you know, I'm no
15 stranger. But at the same time it is a lot,
16 there's a lot that can be done there.

17 Here's how I would do it, Mr. Ranker, if
18 I were you, the co-op, the co-op extension
19 movement. Here, we have Cornell and other co-op
20 extension movements. They have a mandate to aid
21 new farmers, but by law we can actually give them
22 an extra mandate to find black farmers and
23 farmers of color and to aid those folks into
24 getting into farming and things of that nature,

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2 so there are things that we can do at a
3 legislative level. I'm interested in being in
4 that conversation, also.

5 If you are going to take it further,
6 then, you know, you might draw me back to the
7 party of Lincoln. You never know! You never know.
8 We'll wait until after this election.

9 SENATOR RAMOS: That's a hard no. It
10 didn't work so well for a few of our colleagues a
11 few years ago, if you recall.

12 SENATOR SANDERS: Okay. We'll wait until
13 after this election, and you never know. If it's
14 the party of Lincoln, heck, I'd have been there
15 already. All right, before I get into more
16 trouble, to our chairs I really thank you for the
17 opportunity for the second round.

18 MR. BUSBY: Mr. Ranker, I will say that
19 there is a lot of interest in marijuana farming.

20 SENATOR SANDERS: Oh, my.

21 ASSEMBLY MEMBER MCDONALD: All right
22 that's its own hearing. [Laughter] Let's move on
23 to panel number six, and to our panelists on
24 number five, thank you very much. Enjoy the rest

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2 of your day.

3 MS. MACK: Thank you.

4 MR. BUSBY: Thank you for having us.

5 MS. MACK: good to see you all.

6 ASSEMBLY MEMBER MCDONALD: We're c

7 panel number six. I'll announce them, I think,
8 because I lost track of who is doing what. United
9 Food and Commercial Workers Union, Robert Newell,
10 the president. He'll be first. Then the New York
11 State Laborers' Union from Amanda Jensen. Then we
12 will have Jared Trujillo from the Association of
13 Legal Aid Attorneys. And from 1199 SEIU, United
14 Healthcare Workers East, Carlos Villalba. So once
15 we have everybody there, I see Amanda. There's
16 Rob Newell.

17 MR. ROBERT W. NEWELL, JR., PRESIDENT,
18 UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL
19 1500: Sorry about that.

20 ASSEMBLY MEMBER MCDONALD: Don't b

21 sorry. There's Carlos. Rob, you're going to be
22 first.

23 MR. NEWELL: Okay.

24 ASSEMBLY MEMBER MCDONALD: Jared?

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2 good to go. Rob, you pulled a Sanders on me, you
3 went running away.

4 MR. NEWELL: Sorry about that. Sorry
5 about that. Hi. Good morning.

6 ASSEMBLY MEMBER MCDONALD: You have
7 minutes. Thank you.

8 Mr. NEWELL: Good morning and thank you.

9 Good morning, Senator Ramos, and thank you to the
10 rest of the chairs, and all the members of the
11 New York legislature who in attendance. My name
12 is Rob Newell and I currently have privilege of
13 being the president of the UFCW Local 1500.
14 Currently, we represent over 17,000 grocery and
15 pharmacy workers throughout the state.

16 And unlike many other industries in New
17 York, 95 percent of our members never had to
18 worry about being furloughed or laid off because
19 of the pandemic. Instead our members were
20 immediately forced into the most difficult
21 working conditions our industry has seen in
22 generations. There was overcrowding, intense
23 hoarding, substandard workplace safety
24 precautions, forced overtime, supply chain

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2 failures became the norm for our members.

3 Conditions like this were never
4 discussed during the orientation. That much I can
5 guarantee you. Unfortunately, the grocery
6 industry was grossly unprepared for the impact
7 the pandemic dropped on it, and originally many
8 employers fought our members on the idea of
9 wearing masks because they were concerned about
10 the way it looked to the public. Additionally,
11 the CDC guidance said it really wouldn't help.

12 Thankfully we all know better now. Our
13 members were exposed to thousands of impatient
14 and frantic customers per shift, and hundreds of
15 them got sick in the first week or two. Is this
16 how we're supposed to treat our essential
17 workers? Most of them felt more disposable than
18 essential.

19 Working together with elected officials
20 and some of our union employers, we were able to
21 find ways to make our workplaces safer. Elected
22 officials helped us find PPE and sanitizer at a
23 time when many of our employers didn't even know
24 where to start looking for it. Our staff spent

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2 weeks flooding the stores with what we got and
3 did their best to keep our members calm. Working
4 with our sister UFCW and RWDSU unions, we were
5 able to negotiate hazard pay. We also managed to
6 convince our employers to put up Plexiglas
7 barriers, convince them to put signs and stickers
8 on the floors and walls to remind customers to
9 not only shop safely but continually socially
10 distance. We encouraged them to buy masks and
11 shields in bulk to further protect our members.

12 Every little bit helped but they were by
13 no means safe. I wish I had the time to tell you
14 about the employers that fought doing any of this
15 but sit back now and take credit for it all. I
16 also wish I could give you list of employers that
17 never did any or most of it. Profits over people
18 even during a pandemic when their volumes up more
19 than 35 percent. Thankfully, the governor took an
20 aggressive posture and started to issue mandates
21 and protocols to further protect the citizens of
22 New York and our essential workers.

23 Our members appreciated the mandatory
24 mask and crowd control mandates the most. These

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2 are the real keys to ensuring their safety on the
3 job. Unfortunately, mandates can be enforced
4 loosely or just ignored altogether.

5 I'm sure everyone has seen the recent
6 videos that are popping up all over the country
7 where maskless supermarket customers are
8 challenging and even threatening workers with
9 violence for simply asking them to comply with
10 the mask mandate. Although there may be only a
11 few video examples out there, I can assure you
12 this happens multiple times a day, every day
13 right here in New York.

14 Many supermarket employers have once
15 again chosen profits over people by choosing to
16 grant their customers access and serve them
17 quickly and quietly rather than refuse them entry
18 at their mostly unmonitored front doors. Anyone
19 can and does walk through the door of a
20 supermarket. What happens next can end in tragedy
21 if this continues to be left unaddressed.

22 There is no question that it's easier
23 and safer for a manager or a security guard to
24 refuse entry to a customer without a mask than to

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2 try to eject them once they're inside the store.
3 Unfortunately, our members are now stuck in a
4 scenario where there are great mandates without
5 great enforcement. Restricting the number of
6 customers in a store at one time and only serving
7 customers with face coverings is the only way to
8 guarantee our essential members and their
9 families are save. After all they've done, aren't
10 they at least entitled to that much?

11 Retail companies that didn't financially
12 benefit anywhere near as much as the supermarket
13 and with much lower customer counts, and quite
14 frankly, a lot more to lose have done and
15 continue to do more at their front door than our
16 employers. For our members' sake, this issue
17 needs to change and fast. Any customer that
18 doesn't want to or medically cannot comply with
19 the state mandate to wear a mask has other safe
20 options. They can order their food online and
21 pick it up or have it delivered to their home.
22 Our members don't have that choice. They can't
23 work virtually. They have no other option and
24 they deserve a safe workplace.

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2 Please help us protect the very same
3 workers that kept their communities fed. Please
4 help them get their hazard pay reinstated. Please
5 help us by enforcing the already excellent
6 mandates issued by our elected officials. This is
7 by no means an allegation that every supermarket
8 operator is the same. As a matter of fact, some
9 have protected their employees quite well.
10 Unfortunately, that number is significantly
11 dwarfed by the number that have not. We cannot
12 stop trying until all retail workers can both go
13 to work and go home safely. Thank you.

14 ASSEMBLY MEMBER MCDONALD:

Thanks

15 Amanda. We'll do questions after all the
16 panelists have spoken.

17 MS. AMANDA JENSEN, POLICY AND
18 LEGISLATIVE COORDINATOR, NEW YORK STATE LABORERS'
19 UNION: Hi, good afternoon. Thank you, committee
20 chairs, members and staff for your time and the
21 invitation to speak on this important topic. My
22 name is Amanda Jensen and I'm the legislative and
23 policy coordinator for New York State LECET, the
24 Laborers' Employers Cooperation and Education

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2 Trust. I'm testifying today on behalf of our over
3 40,000 unionized laborers, 24 local unions
4 and 1,500 affiliated contractors. New York State
5 LECET aggressively advocates for wage and safety
6 standards for our members, raising the floor for
7 both union and non-union construction workers.

8 The COVID-19 global pandemic presented
9 unique challenges to our membership, impacting
10 their health and safety, as well as our financial
11 security. Our members were called to serve as
12 essential workers when the majority of New
13 Yorkers worked safely from home. Thousands of
14 laborers across the state put their lives on the
15 line to continue the critical work of building
16 New York. Although we may never know did the
17 total number of members sickened by COVID-19, or
18 the total number of those who contracted the
19 virus on the job, their contribution to the state
20 is to be lauded and never forgotten.

21 The New York State Laborers worked in
22 coordination with the building trades and
23 affiliated employers in their development of
24 protocols to ensure the safest possible

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2 environment for our members. These protocols
3 include measures to reduce worker density on job
4 sites, the placement of signage promoting social
5 distancing guidelines, face covering
6 requirements, sanitizing stations located on all
7 job sites, and daily health screenings, including
8 temperature checks. These protocols are effective
9 in protecting the health and safety of our
10 membership and stopping the spread of COVID-19.

11 In addition to the heightened health and
12 safety protocols, New York State Laborers
13 launched a comprehensive education campaign to
14 inform members on how to access unemployment,
15 paid family leave and other state benefits.
16 Detailed instructions were listed in the COVID-19
17 section of our website, and local unions were
18 diligent in providing their members with the
19 needed answers. While COVID-19 brought the state
20 to a sudden and startling halt, our members
21 continue to work at great risk to themselves and
22 their loved ones.

23 Although a large number of construction
24 projects across the state shut down, projects

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2 deemed essential were permitted to continue
3 without interruption. Our members helped New York
4 stay in motion and their sacrifice should not be
5 forgotten.

6 In the absence of a federal bailout,
7 critical infrastructure projects including MTA
8 projects and projects funded through localities
9 should not be threatened. Our members are the
10 economic drivers of the state and only stand to
11 benefit from the creation of good jobs through
12 continued investment in infrastructure. Economic
13 resurgence cannot be achieved through austerity
14 budgets.

15 Members of the Laborers showed up for
16 New York just as they do in every crisis facing
17 our state. Whether by putting their life on the
18 line to build critical infrastructure projects,
19 including working 12-hour shifts to expand
20 hospital and morgue capacity, volunteering in
21 their communities through food donations and
22 other means, or by adhering to the guidelines of
23 New York Pause if their job sites were deemed
24 nonessential. The Laborers put New York first.

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2 Our state can repay their sacrifice by continuing
3 to demand the safest health and safety guidelines
4 for job sites and to remain committed to the
5 creation of great jobs. On behalf of the labors,
6 I thank you again for your attention to this
7 critical issue.

8 ASSEMBLY MEMBER MCDONALD:

Thanks,

9 Amamda. Jared?

10 MR. JARED TRUJILLO, PRESIDENT,

11 ASSOCIATION FOR LEGAL AID ATTORNEYS, UAW 2325:

12 Good afternoon everyone. Thank you so much for
13 inviting us to speak today. My name is Jared
14 Trujillo. I am the president of UAW Local 2325,
15 the Association of Legal Aid Attorneys. We're a
16 union of about 2,000 social workers, lawyers,
17 paralegals and other legal workers in New York
18 City, Nassau County and Orange County.

19 Our clients really -- our members, sorry
20 -- really represent low-income New Yorkers on the
21 worst days of their lives. We see people when
22 they're in danger of being evicted. We meet
23 people when they're stuck in a cage and they're
24 afraid of having their liberty taken from them.

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2 We meet children when they are at risk of being
3 put into the foster care system. And despite
4 these really difficult situations, our members
5 are incredibly dedicated to providing the highest
6 quality legal representation to every single
7 person that we represent.

8 During COVID, our resolve was tested,
9 and we truly stuck to the test. Our work only
10 amplified. Since mid-March, we did about 60,000
11 cases in criminal court. We helped disappeared
12 New Yorkers that were between different police
13 precincts, find their families and find their
14 freedom. We helped children really be able to
15 navigate the tangled labyrinth of the child
16 welfare system. And we did everything that our
17 communities needed from us.

18 However, during that time, the courts
19 really showed that our clients' lives did not
20 matter, really showed that black and brown low-
21 income New Yorkers lives did not matter in
22 several ways. The biggest way was their glacial
23 move to move to virtual appearances. Because the
24 courts were so slow to move to virtual

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2 appearances, we had over three dozen members
3 contract COVID. Three judges died. Court officers
4 died and so many of our clients contracted COVID.
5 And that not only impacted our clients, but that
6 impacted every single New Yorker that they came
7 into contact with within their communities.

8 Recently, after the court did move to
9 virtual appearances, they told us that they would
10 work with us, and they'd work the with legal
11 service providers that our members worked for to
12 make sure that returns to court were safe.

13 However, after certain comments were made to the
14 media about the courts being closed, which they
15 never were, leading to more gun violence, they
16 abandoned that plan, and they immediately moved
17 back to in-person appearances.

18 That is a tremendous issue for our
19 membership. That's a tremendous issue for our
20 clients. And that is a tremendous issue for every
21 single person that our clients end up interacting
22 with in the community. All we wanted from courts
23 was to be able to go in and inspect the
24 buildings, go to make sure that they had proper

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2 filtration systems, make sure that they had the
3 proper grade of MERV systems, make sure that they
4 had Plexiglas for more than just the judges,
5 which is what they do, but also for our clients
6 and also for our members. We wanted to make sure
7 that the actual environment that we were expected
8 to work in, where our members have died and
9 gotten COVID, we just wanted to make sure that
10 was safe, and that's not what we were given.

11 In addition to the issue with courts,
12 because the bar exam was canceled, so many of our
13 members are really in this limbo phase where
14 they're law graduates but they're not full
15 attorneys, so they don't have the full privileges
16 that full attorneys have. And more importantly
17 because there's a certain provision, sorry, I'm
18 noticing my time is ending, because there's a
19 certain provision for public interest attorneys
20 that lets them practice for a certain amount of
21 time so they can take the bar exam, because that
22 wasn't extended, a lot of our members are really
23 in danger of potentially even losing their jobs.

24 So, we do have a couple of asks of you

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2 today. We realize that the problem, one of our
3 issues is that we're in a kind of precarious
4 position because it's really difficult for us to
5 pressure OCA in a lot of ways, to actually make
6 sure that the facilities that we're supposed to
7 practice in are safe. So the biggest thing that
8 we can really ask of you is to support us
9 publically. Our union is very good at putting
10 pressure when our clients and our members face
11 unjust, unjust conditions, when ICE was detaining
12 our clients, we walked out of courts to put
13 pressure on ICE. As we do actions, we hope that
14 the legislature continues support us, not only by
15 signing all those letters for us, but also to
16 make sure that our funding remains intact and
17 that we can't be defunded a lot of antiunion
18 voices.

19 We ask that essential workers are really
20 recognized as essential workers. That includes
21 Senate organizers, that includes lawyers, that
22 includes a lot of other folks. And finally, we
23 ask that the legislature pass the two incredibly
24 important bills for law graduates that haven't

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2 been admitted to the bar yet, one of which was
3 introduced by Assemblywoman Simon last season.

4 Thank you.

5 ASSEMBLY MEMBER MCDONALD:

Thank you

6 Jared. We appreciate your comments and your
7 testimony. And last but not least, Carlos from
8 SEIU. How are you?.

9 MR. CARLOS VILLALBA, CASHIER/MEMBER,
10 1199 SEIU UNITED HEALTHCARE WORKERS EAST:

11 you for the invitation. I'm a 1199 SEIU member.
12 I'm part of the pharmacy division, and I work for
13 Rite Aid Pharmacy which is also a retail one. We
14 were lucky in a way, because we have a CEO who
15 has been in the company less than a year. He
16 seems to be very friendly for the employees. She
17 understands and respects the employees and
18 because she have been giving us, uh, if you were
19 paid, they will pay get sick. And she have been
20 able to give us the protections that we need. So
21 on that part there's no complaint with my
22 employers.

23 But the situation that we have right now
24 is that for example at the beginning, I know that

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2 everybody were focusing in on hospital workers,
3 on nursing home workers, and it's obvious because
4 they confront the COVID-19 epidemic right, it's
5 right in front of their face.

6 But we got in the beginning in retail,
7 we were very naive, because we thought that,
8 okay, people who are sick are not going to be
9 shopping our stores, they're going to be in the
10 hospital or at home. But it turns out that we
11 were wrong. People can have, be asymptomatic and
12 that's what happened. I work in Midtown
13 Manhattan. That store has like close to 40
14 employees. Out of those 40 employees, 10 of us
15 got sick, one of us passed away because of the
16 complication of corona-19. He was 70 years old.
17 So, and the thing is the PPE was very hard for
18 our company to get. We didn't even have it for
19 sale at the beginning. Now we are in a situation
20 that we have masks for everybody, we have
21 Plexiglas, and we even have masks for customers
22 who doesn't have it.

23 But this is the thing, is that our
24 policy is that we allow -- we tell customers that

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2 to walk in the store without wearing a mask, we
3 remind them, listen, in order for you to come
4 here to the store, you need to wear a mask, but
5 if don't have one, there's no problem, we can
6 have one for you. But if they refuse, there's no
7 way for to us enforce it, right. And
8 [unintelligible] [05:20:10] and the company tells
9 us not to enforce it, to prevent any conflict
10 with the customer. Some people have even got
11 killed because of that.

12 What I require is what I, you know, none
13 of that, but sometimes I work at the register,
14 and one of the things, sometimes it's hard to --
15 when the customer comes to my register, sometimes
16 I didn't realize that they don't have a mask
17 right when they're in front of me, and there's no
18 way to keep a six foot distance between me and
19 the customer. And there's always interaction.
20 There's no way around it. Like, is this on sale?
21 Is it buy one, get one free? Why doesn't this
22 coupon work? And it's scary, because we learn
23 that it has nothing -- you can get infected not
24 only because of the droppings, but also the

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2 vapor, the spray, aerosol spray.

3 And one of my things that I do in my
4 store, since we are retail, what I do is we have
5 a big fan that I put on the floor, turn it on and
6 that way it gives me a little bit of security
7 because like I'm blowing their breath away from
8 my face if they're not wearing a mask. So what I
9 suggest is that the governor, listen, New York
10 State, statewide, is to give fines to customers
11 who walk into retail. That way we don't have to
12 enforce it, because they know that if they don't
13 walk in without a mask, simply on the background
14 we call the cops, they come, and right away they
15 give them a fine, or late. That's the best way.

16 Right now there's no jobs available
17 anywhere, and the fact that you're not going to
18 be able to be fined \$100 or more, if you don't
19 believe that this is real, you're going to wear a
20 mask. That would be a great, great thing to do,
21 okay.

22 And now when it comes to unemployment,
23 pandemic unemployment, the other thing is that we
24 need the pandemic unemployment, the funding,

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2 because the flu season is coming, right. So, if I
3 sick, right, the test is going to take more than
4 two weeks, and then my employer will not let me
5 come to work. They give us two weeks pandemic
6 unemployment if we test positive, but if we have
7 the flu we're not going to get that. We as a
8 retail, we are minimum wage workers, and we are
9 not going to be able to afford being out if
10 there's no pandemic unemployment.

11 And do also understand why a lot of
12 businesses, it's hard for them to find workers is
13 because if I work a minimum wage and I get paid
14 more on unemployment, of course I'm not going to
15 come to work because of my family's safety and my
16 own safety. It's not worth it. So there should be
17 new rules or regulation to help that out because
18 what happens in my opinion, see, when people
19 apply for unemployment they get to get regular
20 unemployment and get pandemic unemployment. But
21 the moment that you make more than \$440 or work
22 more than four days, you will not get regular
23 unemployment, you not get pandemic unemployment.
24 But if they change the rules to make it if you

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2 work four days or more and also like I said, so
3 you get \$700 more per week, you still will get --
4 be allowed to get the pandemic unemployment, and
5 that pandemic unemployment automatically will
6 become partial pay for those people who actually
7 comes out to work. So if I know that I can work
8 40 hours and still get that pandemic
9 unemployment, of course, I'm going to go out and
10 look for a job, because now I'm not only going to
11 be getting paid more as minimum wage but also
12 have the \$600 which healthcare workers need and
13 deserve too, because it's risky for nursing home
14 hospital workers to go to work and get paid the
15 same. So that's my thoughts.

16 ASSEMBLY MEMBER MCDONALD:

Thank you

17 Carlos, I appreciate your comments. Is that it?

18 SENATOR RAMOS: Yes, thank you,
19 assemblyman. I have a few questions and it's
20 really a pleasure to see you all. Obviously, when
21 it comes to grocery store workers, there's been a
22 very huge discrepancy with employers when it
23 comes to hazard pay. I guess what I want to ask,
24 Rob, is do we know that the rate of infection,

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2 even roughly for grocery store workers is? At
3 what point did hazard pay stop for your members?
4 And what can we do to help?

5 MR. NEWELL: Our rate of infection was
6 really, really high in the beginning, senator.
7 Thankfully, and I do mean it thankfully, whether
8 it be by the grace of God or by just because we
9 were pretty violently vigilant to ensure that our
10 employers followed the mandates and, quite
11 frankly, we gave out more than 50,000 masks in
12 the first two weeks because our employees, our
13 members, their employees had nothing. We had
14 employers coming to our office to collect
15 sanitizer and collect masks and distribute it in
16 their stores so we could aid in the quick
17 distribution of the PPE.

18 But we did lose nine members to COVID in
19 the supermarkets, in just our supermarkets.
20 Obviously there's more than one clerk local
21 definitely in the UCFW and RFW in New York State
22 and all of us suffered losses. The most important
23 thing for us right now is just maintaining this
24 low level of infection right now, because it's

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2 one of the last things that they have to worry
3 about. And what we're more trying -- we're just
4 trying to make sure that customers have to abide
5 by the mandates as they were presented. And I
6 forget one of the points that you asked me about.

7 SENATOR RAMOS: Well, I was just asking
8 about the hazard pay situation with your
9 employers and what we can do to help.

10 MR. NEWELL: The biggest thing with the
11 hazard pay, it was all over the lot, right. So
12 we had some employers that didn't want to do
13 anything, they don't feel they had to. A lot of
14 the smaller employers just took it as an
15 opportunity to put a lot of cash in their pocket.
16 In our industry, the opportunity to be cash rich
17 and inventory poor doesn't exist. This was an
18 albatross. It was a pink unicorn with dotted
19 wings, if you will, because it just doesn't ever
20 exist. And the holes in the supply chain created
21 opportunities. So being [unintelligible]
22 [05:26:09] on hazard pay, the majority of our
23 large employers complied and they stopped in the
24 early part of, the earliest part of August.

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2 However, Stop & Shop got off the boat on July 5th
3 and Stop & Shop is by far our biggest employer.

4 And the expression the tail does not wag the dog
5 is not an understatement here. When the big dog
6 on the block gets out of the way, nobody else was
7 lining up to continue to pay, although we did
8 have a number employers that did.

9 There's been a number of conversations
10 about some type of legislation for essential
11 workers to get some type of pandemic pay or
12 hazard pay or appreciation pay and, quite
13 frankly, none of it seemed to get out of its
14 original conversation. And I respect that
15 businesses need to operate and they need to keep
16 some semblance of payroll control, but no retail
17 worker signed up for this ever. These are not
18 emergency services workers, they're not doctors
19 or --

20 SENATOR RAMOS: Sorry, Rob. I have less
21 than two minutes left and I want to squeeze in a
22 few questions about construction for Amanda. I
23 wanted to ask, you know, those construction sites
24 that were deemed essential, how essential were

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2 they? I mean by and large, were they construction
3 sites for luxury developments? Should
4 construction sites have been shut down earlier?
5 As it is, we know many contractors don't
6 necessarily, especially non-union contractors,
7 don't provide their workers with safety
8 equipment. Did we see that trend also when it
9 came to PPE? I know you said your union was
10 really the one who stepped up to provide a lot of
11 workers with what they needed.

12 MS. JENSEN: So, yeah, I think
13 initially, there was just a lot of confusion on
14 what should be done, and then initially we were,
15 construction was considered essential just, you
16 know, as just a blanket essential worker and then
17 later it was a project by project basis. I don't
18 want to get into what project -- it was kind of
19 on a project by project basis, what was
20 considered essential. There were some residential
21 projects that probably shouldn't have been
22 included in that, looking back. But on the whole,
23 it was large scale infrastructure projects, road
24 projects, airport projects, like JFK that were

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2 given the green light to go ahead.

3 In terms of PPE, it was a scramble
4 initially and there was a lot of misinformation
5 about who should be wearing masks and who
6 shouldn't. We made sure to have hand sanitizing
7 stations at every job site. That was something
8 that the union did, our health and safety fund
9 made sure that that happened. We made sure to get
10 out information to our members to use their own
11 masks if it was permissible and they didn't need
12 N95 masks. But it was a scramble to get them the
13 equipment that they needed. We do feel that they
14 were provided that in the end, but initially it
15 was kind of a confusing time. Was there another
16 question that I missed? I'm sorry.

17 SENATOR RAMOS: Well, it's okay. We're
18 out of time, and I can come back for a second
19 round after so I'll do that and yield to the
20 Assembly.

21 ASSEMBLY MEMBER MCDONALD: And we're
22 going to yield back to the Senate.

23 SENATOR RAMOS: Okay. Well, in that
24 case, Senator Sanders, got to get up and unmute

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2 yourself.

3 SENATOR SANDERS: All right. We're
4 getting there. All the panelists have done a
5 great job, and I am getting a lot of exercise,
6 but all the panelists have done a great job, and
7 I just want to speak on the issue of hazardous
8 duty pay. On a personal level, I think it is
9 incredibly shameful that the idea had been
10 dropped. Our chair, one of our chairs, took this
11 one up, Chair Ramos, of course, took this one up,
12 and I just wanted to echo it and say and well,
13 I'll ask a question.

14 In light of some of these corporations,
15 food corporations that have had a record, making
16 record profits last year and now this year, when
17 should they have -- this one will go to you, Rob
18 -- when should they have ended the hazard duty
19 pay?

20 MR. NEWELL: We didn't really look at it
21 as a profits reward. From our perspective,
22 there's an absolute danger on the job that they
23 didn't have before. We looked for anything from
24 the creation or the development of a vaccine on

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2 the job being a sign that there was no need for
3 hazard pay or, quite frankly, once masks came
4 off. The fact that every one of our workers for
5 every minute of every day has to put on a mask,
6 can't go on the sales floor, can't walk in the
7 building, that's a very different set of job
8 restrictions and it's a very different workplace
9 for them. So that was the opinions of the unions,
10 at least in the RWDSU and especially the UCFW
11 that the when the masks went away, the pay could
12 go as well.

13 SENATOR SANDERS: I will be kind to the
14 others and thank you very much, chairs. That idea
15 of loss of hazard pay is ridiculous, shameful.
16 Thank you.

17 ASSEMBLY MEMBER MCDONALD: Thank you
18 have Jo Anne Simon from the Assembly.

19 ASSEMBLY MEMBER SIMON: Okay. Thank you
20 very much. I want to thank all of the witnesses
21 for your excellent testimony and for everything
22 that you have done and all that you and your
23 members have been through. I did want to just
24 follow up with Mr. Trujillo. I'm sorry if I am

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2 saying your name wrong.

3 MR. TRUJILLO: Trujillo.

4 ASSEMBLY MEMBER SIMON: Trujillo. Okay

5 The issue you brought up with regard to your
6 members who are practicing under this order that
7 allows them to practice for a public interest
8 firm for a period of time, even if they're not
9 licensed. Can you explain, just for the record,
10 specifically how this affects those members and
11 why that's a problem for legal aid as an employer
12 and for the clients, if they are sort of in this
13 part of suspended animation.

14 MR. TRUJILLO: Sure. And thank you for
15 bringing it up. So currently, under the judiciary
16 law there is a provision that says if you work
17 for either a legal services organization or if
18 you work for the government, so DAs and child
19 welfare attorneys and other folks, you get to
20 practice under the supervision of an attorney
21 even before you pass the bar. And that stays in
22 place until you fail the bar twice.

23 We could talk certainly for hours about
24 the racist origins of the bar and how the bar is

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2 more difficult for a lot of particularly like
3 black and brown attorneys to pass, but the
4 reality is, is right now we have about 14 members
5 that fall into this category just from the last
6 time they took the bar, and so these are people
7 that have been practicing law since last October,
8 and because they had that second bar failure, now
9 the judiciary law excludes them from being able
10 to practice.

11 Because of the pandemic, the bar exam
12 that normally would have been held in July was
13 postponed until at least October and it's not
14 even clear whether those people will be able even
15 to take the bar in October. So right now that
16 means that all of their clients who are already
17 really dealing with the multiple traumas from
18 COVID-19, now also have to have a whole new
19 lawyer, and we're not fungible. We build
20 relationships with clients, and losing out on the
21 person that's so close to your case is a real
22 loss for our clients, but then also our members.

23 It means that our employers are put into
24 the difficult position of do we keep this person

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2 on even though we don't necessarily get
3 reimbursed by the city or the state or however
4 their line is funded or do we let them go during
5 a pandemic? And that's, of course, something I
6 don't think that anyone wants. These are people
7 that have been practicing under supervision
8 satisfactorily for several months, and there's no
9 reason that they shouldn't still be able to
10 practice just because the bar exam didn't go
11 their way. And in this instance because of COVID,
12 we don't even know when they'll be able to retake
13 the bar.

14 ASSEMBLY MEMBER SIMON:

My understand.

15 is that people who fail twice weren't even
16 allowed to take this bar exam in New York, and
17 some of those people tried to take it in a
18 different jurisdiction, just to have a bar exam
19 under their belt, but now all of the
20 jurisdictions are in flux. Is that correct about
21 your members as well?

22 MR. TRUJILLO: Exactly, it is. And even
23 for people, it's a really big issue for a lot of
24 our members, especially those with health

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2 conditions. But I'll say really for everyone it's
3 a problem. Practicing, particularly in a public
4 interest firm when you're first starting, it's a
5 lot of work. And, it's, you know, you're
6 representing real people right off the bat. It's
7 not like working in a big firm. And you have just
8 a tremendous amount of pressure on you.

9 Usually people can take the bar, and I'm
10 talking about that haven't taken the bar yet,
11 usually people can take the bar in July before
12 they're practicing, so it's a summer, and they
13 have a little bit, I don't want to say it's free
14 time, because you're studying all the time, but
15 they have more time to focus on that.

16 The issue with COVID is that now people
17 are expected to take the bar while carrying a
18 caseload, and it's really just incredibly
19 difficult for people and we really hope that the
20 legislature passes those two incredibly important
21 bills that relate to the bar exam to really
22 recognize that for people.

23 ASSEMBLY MEMBER MCDONALD:

24 down on this panel. We're going to be moving on,

So pens a

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2 but we want to thank all of you for your
3 testimony.

4 SENATOR RAMOS: No, no, no. I'm so
5 sorry, Assemblyman McDonald.

6 ASSEMBLY MEMBER MCDONALD: No? Oh
7 sorry.

8 SENATOR RAMOS: We have one more
9 senator, and he is Mr. James Skoufis.

10 ASSEMBLY MEMBER MCDONALD: How can
11 forget Mr. Skoufis?

12 SENATOR RAMOS: Who has a few questions,
13 five minutes.

14 SENATOR SKOUFIS: Now I feel bad keeping
15 everybody. Thanks, and I should be brief. This is
16 for you, Amanda, if you don't mind. I raised this
17 issue with the commissioner earlier today about
18 out-of-state construction workers coming to New
19 York and whether they need to adhere to the
20 quarantine rules that are in effect if they are
21 on this list of states that the governor's put
22 together. Have you worked on this issue at all
23 since I think that list came out or the governor
24 started with this directive about a month ago?

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2 For those construction sites that are not
3 employing local labor, that have out-of-state
4 construction workers, have you engaged on trying
5 to get enforcement at those sites?

6 MS. JENSEN: So I can't speak to if
7 we've engaged. I've heard anecdotal evidence from
8 our business managers that this is an issue that
9 exists, that we're concerned about. Obviously,
10 our membership, the majority of them reside in
11 New York State but they've seen non-union job
12 sites where there are out-of-state workers coming
13 in. They're not quarantining. It is an issue that
14 is pervasive, so we're taking a closer look at it
15 for sure.

16 SENATOR SKOUFIS: Okay. Well, keep in
17 touch if you'd like to partner on it. Thanks.

18 ASSEMBLY MEMBER MCDONALD: Okay.

19 SENATOR RAMOS: Now we're done.

20 ASSEMBLY MEMBER MCDONALD: Now we're
21 done.

22 SENATOR RAMOS: Thank you so much to all
23 the panelists, and we are going to be moving on
24 to the next cohort, which is Patricia Smith from

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2 the National Employment Law Project, James
3 Parrott, director for Economic and Fiscal
4 Policies at the Center for New York City Affairs,
5 Nicole Salk, senior staff attorney at Legal
6 Services NYC, and Richard Blum, staff attorney at
7 the Legal Aid Society. So that is actually the
8 order of testimony, so Patricia, if you can kick
9 us off, and Ricky will close us out.

10 MS. M. PATRICIA SMITH, OF COUNSEL,
11 NATIONAL EMPLOYMENT LAW PROJECT:

Okay. So th

12 you for having me testify today. I'm currently of
13 counsel to the National Employment Law Project.
14 In my past, I have been chief of the Labor Bureau
15 in New York State, in the attorney general's
16 office. I was commissioner of labor during the
17 2008-2009 recession and was solicitor of the U.S.
18 Labor Department in the Obama Administration.

19 And I want to address today two serious
20 problems facing jobless New Yorkers as they
21 attempt to get unemployment insurance benefits
22 during the COVID crisis. The first is New York's
23 outmoded rule that, unlike the rules at almost
24 every other state in the country, disqualifies

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2 from continuing to receive unemployment benefits,
3 many jobless workers who are able to find part-
4 time limited work. Involuntary part-time work is
5 soaring. The number of workers working part-time
6 for economic reasons in the U.S. in July was
7 three times the number it was last year. Tens and
8 thousands of New Yorkers are returning to work
9 but only with limited hours and many fewer hours
10 than they worked before.

11 Yet, New York is one of the only states
12 in the country that disqualifies workers whose
13 hours have been slashed, if they still work a few
14 hours over four or more days. Under New York's
15 rule for each day in a week that a worker works,
16 even one minute, they lose 25 percent of their
17 weekly unemployment system, and if they work
18 briefly four days a week, they lose all of their
19 unemployment benefits. And while increasing
20 unemployment benefits, I want to say, is a great
21 stimulus and it's also a help for the New York
22 budget, I'd like to point out, because increased
23 benefits, unemployment benefits, are actually
24 taxable in New York.

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2 New York's partial unemployment method
3 is also a disincentive to return to work. It
4 would be much better to encourage workers to seek
5 out part-time work without jeopardizing all or
6 most of their unemployment benefits. Fixing this
7 problem will likely require the state to borrow
8 more money for the trust fund via federal loan,
9 but it's important to note that it will not
10 impinge upon the state budget. Loans are paid
11 back by employer payroll taxes. Any loans, as the
12 commissioner mentioned earlier this year, any
13 loans are interest-free this year. That
14 provision, as she also mentioned, is likely to
15 continue. Further, repayment of the loans does
16 not begin until the current recession periods
17 end.

18 When I was commissioner of labor in 2008
19 and 2009, New York borrowed \$13.3 billion for the
20 trust fund. All of that money went into the
21 ailing New York economy and all of that money was
22 paid back in better economic times. Moreover,
23 while allowing partial UI will likely result in
24 some additional cost to the trust fund, I believe

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2 those costs will be marginal because the
3 increased costs will be offset by some degree
4 from savings by removing the disincentive for
5 workers to increase their part-time work.

6 The other thing about New York's partial
7 UI rule is that it's costing New York and the New
8 York economy millions of dollars in 100 percent
9 federally funded UI benefits. These are benefits
10 that would benefit the New York economy, but New
11 Yorkers will not receive unless there is a change
12 to the partial UI rule. That's because all of the
13 100 percent federally funded benefits incorporat
14 by reference New York's rules, including New
15 York's partial UI rules.

16 The second issue that I would like to
17 address concerns the troubling and legally
18 inaccurate guidance the Department of Labor has
19 issued on return to work and when employers may
20 continue to refuse to return to dangerous jobs
21 and continue to receive unemployment. The
22 Department of Labor has basically said that you
23 must return to work, even if the work is
24 dangerous, but that the only thing -- and you

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2 must you return to work if you want to continue
3 to receive unemployment benefits and that all you
4 can do is file a complaint with the Labor
5 Department. This is out of line with existing New
6 York case law [unintelligible] [05:43:37] that
7 says that if you have health and safety risks on
8 the job, you can refuse to return to that work as
9 unsuitable work and continue to get unemployment
10 insurance benefits.

11 So I think it's very important that New
12 York both fix their partial UI problem and that
13 they clarify their rules around refusing to
14 return to dangerous jobs.

15 SENATOR RAMOS: Thank you, pat. And the
16 next person to testify, Nicole, oh sorry. I'm
17 sorry. James, actually. James Parrott. My
18 apologies.

19 MR. JAMES A. PARROTT, PHD, DIRECTOR FOR
20 ECONOMIC AND FISCAL POLICIES, CENTER FOR NEW YORK
21 CITY AFFAIRS: No problem. Good afternoon,
22 distinguished chairs, members of these
23 committees. My name is James Parrott. I'm
24 director of Economic and Fiscal Policies at the

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2 Center for New York City Affairs at The New
3 School.

4 I've been trying to follow and
5 understand what's going on in the current COVID-
6 19 economy that's affecting the workforce. We've
7 produced three pretty extensive reports on that.
8 The most recent one was released this morning.
9 I'd be happy to send a link around on that. A
10 couple of the highlights from this research, one
11 is that if you wanted to design an event to
12 intensify the extreme income polarization with a
13 dramatic racial dimension, you'd be hard pressed
14 today find something more effective than a COVID-
15 19 pandemic to do that, because it has created
16 such lopsided effects. You have predominantly low
17 wage, persons of color, immigrant workers, young
18 workers, heavily impact by this. And on the other
19 hand those people fortunate enough to be able to
20 work remotely, still have their jobs, their
21 benefits, their businesses are not on the verge
22 of going under, and so on. This is really
23 lopsided.

24 Secondly, of course, we all understand

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2 the historic proportion of this decline. If you
3 divide the number of people receiving
4 unemployment insurance in New York, 2.8 million,
5 by the size of the state's workforce in February,
6 that would give you an unemployment rate of 28
7 percent, far greater than the, quote, official
8 unemployment rate of close to 16 percent.

9 I want to focus my remarks today on the
10 partial unemployment insurance issue. Before I
11 get into that, I'd like to underscore the fact
12 that New York's -- once you strip away the
13 federal components of New York's unemployment
14 insurance program, it's pretty mediocre. And I
15 don't think that's anything that we should be
16 proud of. The average benefits in New York State
17 are \$386 a week rank 21st among all states, the
18 maximum benefit of \$504 rank 20th. Both of those,
19 the average and the maximum, are below all of our
20 five neighboring states.

21 The U.S. Labor Department notes that a
22 low taxable wage base and in New York, it's
23 \$11,400, that's considered well below average, is
24 the main reason that certain states, including

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2 New York, have perennial UI trust fund solvency
3 problems. And any time you have perennial
4 solvency problems, it limits the ability of the
5 state to improve and modernize and extend the
6 economic benefits of unemployment insurance and
7 the protection and safety that it should provide
8 to all workers, particularly low income workers.

9 The partial unemployment system that
10 Patricia spoke about is particularly problematic.
11 She actually touched upon many of the issues that
12 I wanted to raise, so let me summarize by
13 enumerating what I believe are five compelling
14 arguments in favor of fixing the partial UI
15 problem. Involuntary part-time work is soaring,
16 as she noted. The number of workers working part-
17 time for economic reasons is three times as large
18 today as it was a year ago. Low wage workers who
19 account for the lion's share of affected workers
20 in New York receive very little in regular UI
21 benefits to begin with. The partial UI approach
22 in New York is a flat-out disincentive to work.
23 That's been discussed. Then there's the issue of
24 leveraging federal UI benefits. Again, the less

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2 that's received in New York benefits, the less
3 opportunity to access federal benefits, which
4 have accounted for up until late July, accounted
5 for three out of every four UI dollars paid out
6 in New York. New York, as Patricia noted,
7 desperately needs the additional consumer
8 spending. Our sales tax collections in the month
9 of June, which are a good indicator of the extent
10 of retail sales and consumer activity, were 23
11 percent lower than a year ago. And finally, a
12 fifth argument is that even if fixing the partial
13 benefit problem leads to a slight increase in the
14 amount a state UI trust fund must borrow, federal
15 loans are interest-free and it makes great
16 economic sense to pay better benefits now. And
17 again it's also important to understand that if
18 the UI trust fund borrowing does not impinge on
19 the state budget.

20 Let me close by noting three related
21 issues. The state law needs to be clarified to
22 allow workers to refuse offers to return to work
23 and retain their UI benefits when they consider
24 that there are justifiable serious health

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2 concerns with returning to work. It's also
3 important to monitor Workers' Comp Board
4 determinations on the ability of workers
5 contracting COVID-19 through their work to
6 receive adequate and timely workers' compensation
7 benefits. And finally, there's the issue that
8 Senator Ramos has championed, the 250,000 or so
9 undocumented workers in New York who have been
10 dislocated by what's gone on were not eligible
11 for UI benefits or any federal economic
12 assistance. Thank you.

13 ASSEMBLY MEMBER MCDONALD:

Next show

14 be Nicole.

15 SENATOR RAMOS:

We have Nicole, mm-hmm.

16 MS. NICOLE SALK, SENIOR STAFF ATTORNEY,

17 LEGAL SERVICES NYC:

Good afternoon and thank you

18 for having us testify today. I'm in great company
19 here with all the folks on this panel, who know a
20 whole lot about unemployment and the effect on
21 the economy. My name is Nicole Salk. I'm a senior
22 staff attorney with the workers' rights and
23 benefits unit of Brooklyn Legal Services, which
24 is part of Legal Services NYC. I'm also a proud

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2 union member of UAW Local 2320. Legal Services
3 NYC, as many of you know, is the largest provider
4 of free civil legal services in the country with
5 600 staff serving over 100,000 low-income New
6 Yorkers annually throughout the five boroughs.

7 I have been a staff attorney with Legal
8 Services since 1997. For the last 14 years, I
9 have represented workers at unemployment
10 insurance hearings. I am also part of the New
11 York Unemployment Insurance Coalition, UI
12 Coalition which is a group of legal services
13 providers from across New York State who advocate
14 to improve access to unemployment benefits for
15 unemployed New Yorkers.

16 I'm also counsel on the case of Islam v.
17 Cuomo which was the case where we have been able
18 to get, successfully get, a preliminary
19 injunction against the Department of Labor
20 regarding getting increased unemployment benefits
21 for Uber and Lyft and other app-based drivers. I
22 worked very closely with the New York Taxi
23 Workers Alliance and I assume Zubin Soleimany
24 will be testifying later specifically on some of

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2 the issues in regards to misclassification.

3 I'm wanting to talk about once again, as
4 many of the other panelists have talked about,
5 partial unemployment. This has been an issue that
6 has been ever since I've been doing unemployment,
7 has been something that's been a disaster for
8 low-wage workers. Since the beginning of the
9 pandemic, members of the UI Coalition have been
10 working diligently to help guide claimants
11 through the difficult and confusing unemployment
12 application process, which has been made nearly
13 impossible to navigate given the large number of
14 workers applying for unemployment.

15 Under New York's partial UI law,
16 claimants only receive unemployment benefits if
17 they work less than four days a week and receive
18 less than the maximum rate, currently \$504. New
19 York's partial UI law reduces the claimant's
20 benefits by 25 percent for every day they work,
21 no matter how few hours they work, no matter how
22 little they earn. Due to the economic downturn,
23 many workers being offered part-time work as has
24 already been talked about.

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2 New York has the worst partial
3 unemployment system in the entire unemployment
4 insurance -- partial UI laws in the entire
5 country, worse than Mississippi, worse than
6 Alabama. Worst in the country. New York's partial
7 unemployment system disincentivizes work and
8 harms low-wage workers who are disproportionately
9 black and brown. For example, J.B. who was
10 furloughed by both his full-time and part-time
11 employers due to COVID-19, receiving \$504 per
12 week in unemployment was called back to work by
13 his second job. He was given a six-hour shift one
14 day a week at the minimum wage of \$15. He earned
15 \$90 for this work, this one day of work, six
16 hours. However, his benefit rate was reduced by
17 \$126. Thus he lost \$36 just by going to work on
18 that day. It's pretty outrageous. If he were to
19 work four days six hours a day and earn a total
20 of \$360, he would receive no unemployment
21 benefits, losing \$144 that week by going to work
22 part-time.

23 The Assembly and Senate bills, Senator
24 Ramos' bill creates, which is the Assembly Bill

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2 0446 and the Senate Bill 05754, create a partial
3 definite benefited credit or income disregard of
4 50 percent of earnings or \$100, whichever is
5 higher. It allows a claimant to work part-time
6 while keeping part or in some cases all of their
7 unemployment benefits.

8 For example, using the example of J.B.
9 above, he could earn \$90 and still keep his full
10 weekly benefit rate. If he earned \$360, he could
11 still keep \$396 of his unemployment benefits, no
12 matter how many days he worked. This helps both
13 individual workers, mostly low wage workers, many
14 of whom are black and brown, but it also is good
15 for New York as a whole and for the economy, and
16 it's already been discussed by the panelists
17 because, as has been mentioned, the same rules
18 apply to the federal dollars. So we are losing
19 federal unemployment dollars because we have not
20 -- because of our terrible worst in nation
21 partial UI law. I thank you for inviting me to
22 testify on this crucially important issue for New
23 Yorkers.

24 SENATOR RAMOS: Okay. Last but certainly

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2 not least, Mr. Richard Blum.

3 MR. RICHARD BLUM, STAFF ATTORNEY, THE
4 LEGAL AID SOCIETY: I'm Richard Blum. I'm the
5 staff attorney in the employment law unit of the
6 Legal Aid Society, and I'm also a member of UAW
7 Local 2325, Jared is my friend and union
8 president.

9 I want to focus on three issues. The
10 first is the need for mandatory enforceable
11 health and safety standards in the workplace.
12 We've now heard quite a lot about this subject
13 from unions in particular, who have the
14 wherewithal and have put tremendous resources
15 into trying to protect their workers. We
16 represent people mostly outside the unionized
17 sectors, people who are more on the margins, more
18 subject to exploitation and abuse in good years.
19 And without mandatory standards, they are
20 incredibly vulnerable.

21 As President Cilento mentioned, there is
22 a bill that we are working on, the New York Hero
23 bill that would address this. I think it's very
24 telling that the commissioner could only speak

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2 about voluntary resolution where they bring
3 something to an employer's attention and they get
4 them to agree to change, but there are no
5 enforceable mandatory standards, there are no
6 fines at the present. President Cilento is
7 absolutely right that we need steep fines as a
8 deterrent to say to people this is unacceptable,
9 it's bad, it's immoral, it endangers the workers
10 lives, it endangers the lives of their families,
11 their communities, the larger society, it's bad
12 for the economy. It can lead to another lockdown.
13 It doesn't prevent the spread of this horrible
14 disease. And it also is a racial justice issue
15 because the people most affected by these unsafe
16 conditions are mostly black and brown people.

17 So on every count, this is critically
18 important. I appreciate that the Attorney
19 General's Office, which has been actually doing
20 the fighting over this issue with more
21 recalcitrant employers is calling for exactly
22 this remedy. So I would urge that the legislature
23 move this and move it forward quickly and get it
24 done.

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2 Second, I want to talk for a minute
3 about unemployment insurance. In my written
4 testimony, I detail a number of the, I would say
5 self-inflicted, wounds of the Labor Department,
6 how it bungled the administration of the
7 unemployment assistance programs during the
8 pandemic. There are a number of good examples
9 there in the written testimony, but I would
10 highlight two.

11 First of all, just to set the record
12 straight, and I'm sure Zubin will speak about it
13 later, the issue of the gig economy workers has
14 nothing to do with PUA, has nothing to do with
15 the federal rules or the delay in federal rules,
16 nothing whatsoever. New York law is that they are
17 employees, they're supposed to get unemployment
18 insurance. Unemployment insurance has existed for
19 a very long time. The rules are clear. The state
20 simply was not complying with the law and wanted
21 to get these people onto federal benefits and
22 refused to process their unemployment insurance
23 claims. That's why they're the in pickle that
24 they are in. That's why these workers have been

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2 so grievously harmed so that was completely a red
3 herring.

4 The other point I wanted to get to is
5 one that Trisha raised and that Senator Ramos
6 raised in her questioning, which is that there's
7 been an incredibly misleading guidance to the
8 public about what their rights are to refuse to
9 return to unsafe conditions. The case law is very
10 clear but it obviously needs to be codified in
11 statute. Fortunately, there is a bill that
12 Senator Hoylman and Assemblywoman Jo Anne Simon
13 have co-sponsored that would remedy this problem
14 by clarifying the right to refuse unsafe
15 conditions and that invoke the existing guidances
16 that are now not binding to at least justify the
17 decision not to return to work if those are being
18 violated. So if there are no masks at your
19 workplace, for example, you can say that is not
20 safe, I'm not going to risk my life and I can
21 continue to put food on the table, I don't have
22 to worry about my UI being cut off.

23 I think it's egregious that the
24 Department of Labor has misled people into not

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2 knowing that that is their right and that they're
3 referring people just to a complaint process that
4 has no enforceability whatsoever.

5 Obviously, we support strongly the
6 changes in the partial UI rule that all the other
7 speakers have addressed. I think it's been
8 thoroughly addressed. It's in our written
9 testimony. So I'll stand on that.

10 And the last area I wanted to address
11 was the excluded worker fund that's already been
12 touched on by James Parrott. Senator Ramos has a
13 bill with Carmen De La Rosa in the Assembly that
14 would provide coverage for workers who are
15 excluded from the unemployment system. We've
16 talked a lot about people without work
17 authorization, people who are expressly excluded
18 about but also we have to look at the people who
19 because they don't have access to the labor
20 market for discriminatory reasons, don't qualify
21 for unemployment insurance or any of the federal
22 programs, in particular people who have been
23 recently released from incarceration who have no
24 access to jobs and cannot get the earnings that

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2 they need to qualify for UI, don't have a job to
3 lose due to COVID, so they are left out in the
4 cold. And that bill would remedy that by
5 providing income supports for these people and
6 would address a very serious racial justice issue
7 that we face. Thank you.

8 SENATOR RAMOS: All right, well, thank
9 you. John, do we go first? It's hard to keep
10 track.

11 ASSEMBLY MEMBER MCDONALD: Yeah, :
12 hard to keep track, but go ahead, senator.

13 SENATOR RAMOS: All right, I appreciate
14 that. And I appreciate the testimonies in this
15 panel because largely we're getting a lot of
16 information that, or at least I was seeking from
17 the DOL commissioner this morning in her
18 testimony, especially as it pertains to why we
19 need to expand partial UI. I'm wondering if, and
20 this can be Richard, I feel like this can be any
21 of you so feel free to jump in. What are some of
22 the other big barriers for our communities to
23 receive unemployment benefits aside from
24 undocumented people? And I really do appreciate

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2 you guys cooperating and collaborating with me
3 and my team on our mark-to-market bill to tax
4 billionaires and fund excluded workers. Carmen
5 and I have been working really hard to get it to
6 the finish line. But what other big barriers are
7 there and some solutions to those challenges in
8 our communities to access unemployment benefits?
9 What else should the Department of Labor be
10 doing?

11 MR. BLUM: The language access is a huge
12 issue. Language Line is just not a good solution.
13 It's not adequate. People wind up being
14 disconnected while they're waiting for Language
15 Line to come on and then no one calls them back.
16 Any time we require people to keep calling into
17 the system to get their benefits, it's not going
18 to work. So they have to have much more
19 facilities. It's not news that New York is a
20 polyglot city. That's not something new. And, of
21 course, it's unbelievable that they weren't
22 making services available to people in Spanish. I
23 mean, that's just astonishing. The PUA
24 application originally was not available in

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2 Spanish, only the automated system is available
3 in Spanish, you know, and it's not available to
4 anybody else. So language access is a huge issue.

5 The other thing is they have to get
6 their forms right. They keep asking wrong
7 questions that lead to automatic denials. They're
8 asking the wrong question in the wrong way.

9 SENATOR RAMOS: What's a good example of
10 one of those?

11 MR. BLUM: Well, one of them is that
12 they ask people initially, they said are you
13 available to work? Well, of course there's just
14 been a lockdown, so the answer was obviously was
15 no. People said no and then they got denied.
16 Well, the real question is if it were not for
17 COVID-19 would you be able to work? They
18 subsequently changed the question. Another one
19 that they've changed was can you telework? Well,
20 it's not about can you telework, it's has your
21 boss made it available to you as an option full
22 time, right, so people said, yeah, I could
23 telework, yes, if they answer yes or no, yes, I
24 could telework. Denied. They finally changed that

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2 in their twitter feed, right. But they didn't
3 change it on the form. They asked the wrong
4 question on certifications. They said, they told
5 people that if you work at all any time during
6 the week, you're ineligible for that week, and
7 that's the correct answer, which is wrong, and
8 their response to that was, we'll go back and
9 talk to those people. They're creating their own
10 administrative burden, their own inefficiencies
11 and that's just completely inexcusable.

12 The communication with the public has
13 been reprehensible, they will not answer
14 questions about policy and when they do, as with
15 this return to work thing, it's wrong. But we've
16 sent numerous questions to them about how are you
17 handling this? How are you handling that? And a
18 lot of it was about unemployment insurance, let
19 alone PUA, and they just don't answer the
20 questions. They don't put out the information
21 that people need. Communication is obviously with
22 the agency are --

23 SENATOR RAMOS: All right. Thank you,
24 Richard. Sorry to cut off, I have less than two

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2 minutes to ask one more question and I'm possibly
3 Patricia can help me out here. You said there is
4 existing case law that says if you refuse to
5 return to an unsafe workplace, you should qualify
6 for unemployment benefits, but that wasn't the
7 case now during the pandemic. If there's case law
8 the on books, why isn't this the practice? And
9 what can we do about it?

10 MS. SMITH: So I think one thing you can
11 do about it is pass Assemblywoman Simon's bill
12 that would clarify that. But I mean, I'm loathe
13 to say this, but I think that some of the answer
14 was answered by the commissioner this morning,
15 where she was saying that if you, you know, uh,
16 you'll get denied for unemployment, but if you
17 are afraid to go in because of the pandemic,
18 you'll get PUA. So it's like, it should be if you
19 qualify for state unemployment benefits, you
20 qualify.

21 But now because there are certain
22 paneled-related issues, you know, I'm afraid that
23 what people are trying to do is just say okay,
24 there's a different source, so we're going to

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2 deny you and then you're going to apply and then
3 maybe you'll get and it maybe you won't as
4 opposed to just having someone continue on
5 unemployment.

6 SENATOR RAMOS: And can you tell me a
7 little bit about the return to work guidance that
8 at first the commissioner didn't remember or seem
9 to remember where it even existed on the website.
10 Why was that return to guide so wrong? What parts
11 of it are misleading and incorrect and unsafe for
12 workers?

13 MS. SMITH: It says that if you return
14 to work because you feel that the workplace is
15 unsafe, that you will be denied unemployment
16 benefits, that your recourse is to file a
17 complaint with the Labor Department, with their
18 health and safety and then see if the Labor
19 Department can resolve the issue. In the
20 meantime, if the issue is not resolved and if you
21 haven't returned to work, you also are been have
22 been denied your unemployment benefits.

23 So there is no, there was no
24 acknowledgment that under the state unemployment

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2 insurance law, there is a right to refuse to
3 return to unsuitable work, and that health and
4 safety, now that doesn't mean that
5 [unintelligible] [06:06:10] person who says I'm
6 afraid to return to work is going to get on
7 unemployment benefits, but if it's adjudicated,
8 that there's a real health and safety risk that
9 you should get your unemployment.

10 SENATOR RAMOS: All right. Well, my
11 assistant and I thank you all for your testimony.
12 It's been very insightful.

13 ASSEMBLY MEMBER MCDONALD: And on be
14 of the Assembly, we also thank you for your
15 testimony. The calculation of the partial
16 unemployment is a little bit vexing and your
17 input has been helpful. I know we've had success
18 in the past in the Assembly moving that bill, but
19 like anything else everything has to move
20 together, and we're going to make some
21 commitments to do that. So with that we're going
22 to bid you adieu.

23 SENATOR RAMOS: Well, actually, sorry,
24 assemblyman. I was actually just notified that

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2 one of my colleagues in the senate raised their
3 hand as we started to say goodbye. And that is
4 state Senator Robert Jackson, Uncle Bob, take it
5 away.

6 SENATOR JACKSON: Thank you. Thank you.

7 I was like --

8 MR. RAMOS: Uncle Bob.

9 SENATOR JACKSON: Hi.

10 SENATOR RAMOS: You have a big fan.

11 SENATOR JACKSON: I was waving and I'm

12 saying, oh, my gosh and then I was getting ready
13 to try to dial you before we start off. So first
14 let me thank the panel and Patricia, thank you
15 for what you're saying even though, Jim, you
16 reiterated what she said and we need to, we need
17 to put pressure on DOL on that, Jessica, so
18 whatever we're going to do, just add me in
19 because I'm ready to fight on behalf of the
20 people being able to say, listen, I cannot go
21 back here, it's unsafe, you know, I'm
22 jeopardizing my health. And if anything, you can
23 always refuse a direct order if it's a direct
24 threat to your health or safety. I know that.

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2 But I want to ask about, since we're
3 talking about COVID-19 and workers, Jim, I'm
4 asking you, I saw your op ed or the article in
5 the Daily News the other day. What would be the
6 impact if in fact this coronavirus hits a second
7 wave in New York City? And I not only ask that of
8 you, but I'd ask that of the others,
9 understanding that it's rising up all over the
10 country, and especially with children going back
11 to school.

12 MR. PARROTT: Well, we can talk about
13 that for a long time. Not good. The impact would
14 not be good. What we tried to do in the report
15 today was essentially make the case that we're on
16 the verge of experiencing a second wave of the
17 economic impact as the \$600 federal supplement
18 goes away. That \$600 received by 2.7 million New
19 Yorkers is \$1.8 billion a week in spending that
20 had been coming into New York State and New York
21 City. That's going away. Even with that, we had
22 28 percent unemployment in the state, 33 percent
23 unemployment in the city. That amount, \$1.8
24 billion is greater than the value of Social

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2 Security received by all New Yorkers. It's
3 greater than an annual amount of workers'
4 compensation pay on a weekly basis. So that's
5 going away. We're on the verge of experiencing
6 heightened economic problems and job
7 displacements just because of that.

8 SENATOR JACKSON: And Jim, I only have
9 42 second and I'm asking this for Patricia and
10 others, do you think that we should raise revenue
11 from the wealthiest New Yorkers in order so that
12 we can deal with our economic situation, not only
13 in New York City but if, in fact, there has to be
14 cuts upstate, rural areas as far as education,
15 healthcare agencies and localities will suffer
16 tremendously. And so do you think New York City,
17 one, should borrow and there should be an
18 agreement on that, and number two, about the
19 whole entirety state if we don't raise revenue?

20 MR. PARROTT: Just if I can respond to
21 that quickly, so we really need to have another
22 round of federal economic assistance. So we saw
23 today that it might not occur until September,
24 but it has to occur in September, otherwise it's

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2 basically an entire political party waving the
3 white flag. If that doesn't happen in sufficient
4 scale, then rather than New York State or New
5 York City cutting their budgets, it would be
6 better at the state level to raise taxes on the
7 wealthy, at the city level to borrow.

8 SENATOR JACKSON: Anyone else? Patricia,
9 you're the former labor commissioner going back.
10 I mean I think devastation will happen if, in
11 fact, the state has to cut across the board with
12 healthcare, with education, municipalities, and
13 agencies, I mean, there will be tens of thousands
14 of layoffs and people are suffering as it is now.
15 That's my --

16 Ms. SMITH: Absolutely. And one of the
17 things that I think that we've learned from these
18 panels today is that there are a number of
19 agencies that have been chronically underfunded
20 like the workforce development agencies that we
21 need more than ever, and we need to somehow raise
22 the money to make sure that those agencies are
23 appropriately funded, and more than appropriately
24 funded, appropriately funded for the crisis that

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2 we have now.

3 ASSEMBLY MEMBER MCDONALD:

Thank you

4 And now, we will move on to Jo Anne Simon in the
5 Assembly.

6 ASSEMBLY MEMBER SIMON:

There we go.

7 Thank you. Thanks very much and thank you,
8 several people for the support for the bill that
9 would clarify the people's ability to return to,
10 to not return to work if they're in unsafe
11 conditions. I guess I would like to ask anybody
12 really about a couple things. One is kind of
13 whistle blower protection because if, in fact,
14 you don't go to work because you feel it's
15 unsafe, if you are unable to get something
16 resolved through the Department of Labor, if you
17 use that portal, what rights do you have with
18 regard to blowing the whistle? We are concerned
19 about the fact that 740 needs to be expanded and
20 strengthened. That's one question, because to me
21 they sort of lead one into the other.

22 And then the other question is it's sort
23 of a combination of standards, but also if you
24 feel the workplace is unsafe, how can a person

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2 who is fearful of going to work because there
3 isn't PPE, but PPE is not mandated, it's not a
4 strict standard, it's kind of guidance, are
5 people going to have difficulty with unemployment
6 if they can't prove that the PPE is required, for
7 example? So it seems to me there's not enough
8 teeth in those requirements and that's what I'd
9 like you to address.

10 MS. SMITH: I'd like to talk about 740.
11 I spent 20 years in the Attorney General's
12 Office, and one of the things that we did was
13 where we were in part responsible for enforcing
14 Labor Law 740, and it is the most narrow
15 whistleblower law in the country when it comes to
16 health and safety, which was explained in earlier
17 panels so I won't go over it.

18 ASSEMBLY MEMBER SIMON: Thank you.

19 MR. BLUM: We need to amend 740. We
20 also, the New York Hero bill that we talked
21 about, includes anti-retaliation provisions,
22 anti-interference, anti-discrimination provisions
23 and it has some teeth to that, so we don't need
24 to wait until the logjam over 740 gets resolved

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2 to move forward on that.

3 ASSEMBLY MEMBER SIMON: Okay. Thank

4 SENATOR RAMOS: All right. Thank you,

5 assemblywoman. Up next, we have former

6 assemblywoman and current state Senator Shelley

7 Mayer.

8 SENATOR MAYER: Thank you. Thank you,

9 Madam Chair. It's good to see you Patricia, it's

10 wonderful to see you. I have a question for you

11 and I know we're not supposed to be going

12 backwards but this is a legal issue where I

13 really would value your opinion. At the onset of

14 pandemic, when the Department of Labor indicated

15 that PUA would be available, they took a position

16 you had to apply for traditional UI, be denied

17 before you were eligible. Other states took a

18 different position, which was a presumptive

19 eligibility. I argued with the Department of

20 Labor and I think they subsequently were saying

21 that was because of federal regulations. They

22 changed their position.

23 Do you have a position about whether

24 that period -- and the only reason I'm making a

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2 point of this is because so many of our
3 constituents that were not eligible for
4 traditional UI were frustrated by the length of
5 time it took to get PUA and the poor
6 communication by the Department of Labor about
7 it. I wonder if you had a position about that
8 interpretation of the law.

9 MS. SMITH: So, yeah, I do have a
10 position, which is that the department, the U.S.
11 Department of Labor's position was very muddled,
12 so in my opinion you could have on the basis of
13 that opinion, taken a liberal interpretation or a
14 conservative interpretation. And a liberal
15 interpretation was you did not have to apply and
16 get disqualified. Unfortunately, some states took
17 that position. New York did not take that
18 position. But I don't think that it was
19 absolutely required even from the earliest
20 guidance. The earliest guidance was very muddled.

21 SENATOR MAYER: Thank you. And, James,
22 I'm so happy you talked about the economic impact
23 of the \$600 because in districts like mine that
24 go from the Bronx border to the Connecticut

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2 border, the spending of that \$600 has kept parts
3 of our economy afloat that without it, as you
4 point out, would not. So I understand, we may or
5 may not get some substitute or some lesser amount
6 or something else, but from an economic point of
7 view, not for the recipient, but for the economy
8 at large, have you done an analysis beyond your
9 \$1.8 billion a week in spending? What will be the
10 long-term impact of not having that additional
11 supplement to UI?

12 MR. PARROTT: No. We haven't done that.
13 I mean partly because it's hard to hold
14 everything else constant and then make a
15 projection of what difference one factor will
16 have. But generally, of course, the point is, is
17 that it's the opposite of what we need. There's a
18 lot more, even than what's being talked about in
19 the house bill, the \$3 trillion house bill. It's
20 a good start. Obviously, there needs to be a lot
21 of state and local fiscal relief or we're going
22 to see the kind of layoffs and public service
23 cuts that have been talked about, and we know
24 that would be forthcoming in New York.

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2 I think the, the duration of the
3 elevated levels of unemployment that we're
4 looking at are going to require substantial
5 public service and public works infrastructure
6 jobs programs. It's not just enough to pay people
7 not to work. I mean, it's better than cutting off
8 their unemployment insurance. It would be better
9 to put people back to work. And we're seeing
10 unfortunately, a lot of businesses close down
11 because they can't operate at a fraction of 100
12 percent of normal capacity and business revenues
13 and hold on. Those jobs, we will not get back, so
14 we're going to need to start figuring out how
15 we're going to fill that hole. That's going to
16 take job creation programs on a big scale.

17 SENATOR MAYER: Thank you. Thank you
18 very much. Thank you for the panel.

19 ASSEMBLY MEMBER MCDONALD: Thank you
20 and from the Assembly, Robert Smullen.

21 ASSEMBLY MEMBER SMULLEN: All right
22 I've got video. Chairman, thanks so much for
23 having us here. A couple of the comments from the
24 panelists stirred some thoughts in my mind that I

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2 want to get a little bit more definition on them,
3 particularly from Ms. Smith regarding the
4 scalability of unemployment insurance benefits.

5 What is the history, briefly, please, of
6 legislation in New York State over the past
7 decade? Now we're here in a crisis and we don't
8 have the scalability which would allow people to
9 get partial benefits, at the same time to get
10 them back to work, and it's very awkward, and
11 there's a federalism problem between the state
12 and federal statutes. What is the brief history
13 of that? Why hasn't that been done before?

14 MS. SMITH: Insurance is a program which
15 I believe is totally underappreciated in this
16 country, and so in times of crisis everyone's
17 focused on it and when the crisis passes, we
18 forget about it. So I just want to talk about the
19 fact that New York benefits have gone up very
20 slowly. They've not gone up at all. Twelve years
21 ago when I was commissioner of labor, we were
22 trying to fixed the computer program. We realized
23 that --

24 ASSEMBLY MEMBER SMULLEN:

It's not

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2 fixed.

3 MS. SMITH: We were trying to fix it. We
4 realized the federal government was not giving us
5 enough administrative money to fix it, so we went
6 to the Assembly, and we got -- and we wanted New
7 York State money, I mean not the Assembly, the
8 legislature -- and we got a little bit of money,
9 not as much as we needed, and so the fixing it
10 has -- and I don't know what's happened recently
11 but I mean it's very slow. So it's going to take
12 money to keep the infrastructure up. This is --
13 the infrastructure problem is not just a New York
14 problem. It's a problem around the country
15 because the federal government has, Democratic
16 and the Republican administrations have simply
17 not invested the in the infrastructure of
18 unemployment insurance.

19 ASSEMBLY MEMBER SMULLEN: I can c
20 see that's the case. And the problem there, and
21 as everyone knows, is that money from the federal
22 government, in this case money that's borrowed,
23 has to be paid back. It becomes part of the
24 national debt. And I just want everybody, and not

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2 only my colleagues and the panelists throughout
3 today, that this is not free money. This is money
4 that's been borrowed in the full faith and credit
5 of the United States government that indeed has
6 to be paid back and it becomes part of the debt
7 load that's part of the federal taxation sort of
8 thing. And I know New York is very concerned, as
9 am I, about our resource return from our federal
10 government sort of thing.

11 But I think this is an issue that New
12 York itself can solve through good solid public
13 policy, having scalable unemployment insurance
14 benefits that are well thought out, well crafted,
15 and I would certainly pledge to work with all my
16 colleagues to get this done, so we don't have
17 this crisis again when there's a severe economic
18 downturn. Thank you very much, Mr. Chairman. I
19 appreciate the time and thank you to the
20 panelists for your very informative, very
21 knowledgeable and very appropriate testimony.
22 Thank you.

23 ASSEMBLY MEMBER MCDONALD: Thank you
24 Senator, we're good on the Assembly, how about

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2 the senate side?

3 SENATOR RAMOS: The Senate's all good
4 here. I think it's time for one of those good
5 union breaks.

6 ASSEMBLY MEMBER MCDONALD: Yeah, a
7 little ten-minute tidy.

8 SENATOR RAMOS: Stretch it out, guys.
9 See you in ten.

10 ASSEMBLY MEMBER MCDONALD: 4:55.

11 [OFF THE RECORD]

12 [ON THE RECORD]

13 ASSEMBLY MEMBER MCDONALD: Well wel

14 back, everybody. Panel number eight is seated and
15 ready to go, I believe. So let me introduce them
16 and they can go on with their five minutes of
17 testimony, in this order if possible. Jacalyn
18 Goldzweig Panitz, with the Legal Aid Society of
19 the City of New York, and three workers Julianne
20 Barrington, E. Jeanne Harnois and Gaela Solo.
21 Welcome to all. Here's Jacalyn. Everybody is
22 here, all present and accounted for. Jacalyn, why
23 don't you start us off?

24 MS. JACALYN GOLDZWEIG PANITZ, PARALEGAL

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2 CASEHANDLER, LEGAL AID SOCIETY OF NEW YORK CITY:

3 Okay. Thanks so much, good afternoon everybody or
4 good evening. Like you said, my name is Jacalyn
5 Goldzweig Panitz. I'm a paralegal at the Legal
6 Aid Society of New York City. Today, I am
7 speaking on behalf the Unemployment Insurance
8 Coalition. I'll be sharing the stories of our
9 clients who couldn't be here today and who have
10 been hurt by New York State's partial
11 unemployment insurance rules. I'm really thrilled
12 to be going after the past panel.

13 So, the first person I want to talk
14 about is Hava Adams, she's a single mom in
15 Manhattan, a special education provider for
16 preschool and grade age children. She works
17 directly with families on a schedule that's set
18 by the Board of Education usually for an hour a
19 day for four days a week per child, four days
20 throughout the week. A colleague of hers, Sherry
21 Castle, has taught preschoolers with disabilities
22 for 30 years. Special education and early
23 intervention providers can be assigned by the
24 department of education to cases with as little

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2 as 15 minutes of instruction per day, spanning
3 across the week for maybe an hour. The reason is
4 because of the toddlers and little kids can't pay
5 attention for that long. When the pandemic hit
6 and learning went remote, Sherry and Hava's
7 caseloads fell dramatically. Hava's income was
8 immediately halved, and some weeks it's only been
9 20 percent of what she formerly made. So they
10 both, both Sherry and Hava applied for
11 unemployment insurance in March. But they've also
12 continued working four days a week, often with
13 only one billable hour per day.

14 Through New York State's partial
15 unemployment insurance rules, it's telling
16 providers like Sherry and Hava to either drop
17 their cases, their caseloads with vulnerable
18 kids, so that they are working less than 4 days
19 or miss out on benefits. They told me that's the
20 a choice that a lot of people in their industry
21 have had to make. Sherry and Hava themselves have
22 lost out on thousands of dollars of benefits
23 including the extra \$600 a week, and it's worth
24 noting here that it's independent contractors,

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2 their benefits would have been coming from the
3 federal government in the first place through
4 pandemic unemployment assistance, not New York
5 State.

6 Now, they're behind on bills like rent.
7 Sherry wants elected officials on this panel to
8 think about how we value special education
9 providers and she wonders why educators like her
10 are being overlooked. I also want to pause here
11 and note this field is dominated by working
12 women, a lot of working mothers. And the issue of
13 partial unemployment has been at the center of
14 conversation in the industry.

15 Another worker I want to highlight today
16 is named J.S. He worked two jobs, one full-time
17 and one part-time. When he lost his full-time
18 position, he kept on working part-time at K-Mart
19 doing the overnight shift, stocking shelves.
20 Because of the current partial unemployment
21 insurance rules, every overnight shift is
22 considered two days of work, reducing his benefit
23 amount in half for every shift he works. An
24 advocate with the Unemployment Insurance

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2 Coalition did the math. For every dollar J.S.
3 earns, he loses out on \$3 of unemployment
4 insurance benefits. Working just two shifts a
5 week means losing benefits altogether for the
6 week and it's devastating for low wage workers
7 like him.

8 And look, this might seem like savings
9 for the state, right, but without access to
10 benefits these workers aren't able to pay their
11 bills, or buy groceries. Take Elaina's story. She
12 worked at a Head Start program in Brooklyn before
13 the pandemic and she had her wages and her hours
14 slashed, slashed in March when learning went
15 remote. She's not eligible for benefits because
16 she's still showing Monday through Friday, though
17 again her hours have been drastically cut.

18 And in April, she had to apply for SNAP
19 benefits in order to feed other family. As a DACA
20 recipient and a family full of immigrants who had
21 also were laid off or seen their wages slashed.
22 Access to those unemployment benefits would be
23 life changing for the family.

24 For the sake of time, I want to end the

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2 experience and the story of Bernadette, an
3 elderly woman who lost all of her benefits when
4 she agreed to spend just one hour a day handling
5 garbage for the small apartment building where
6 she lives just for a break on rent. Thank you for
7 the opportunity to share these stories. I'm
8 really excited that there's some workers who are
9 going to follow after me and tell their own
10 stories. I was really encouraged by the comments
11 of all of you legislators in the last panel and I
12 really hope there's fast action on this.

13 ASSEMBLY MEMBER MCDONALD:

Thank you

14 also want to recognize Justin Green-Williams is
15 listed here and also Yamilez Quinones, who I see
16 has company with her as well. But is Julianne
17 Barrington available?

18 MS. PANITZ: She is not going to be able
19 to testify.

20 ASSEMBLY MEMBER MCDONALD:

Okay. We

21 see Jeanne is there. Can you join us?

22 MS. E. JEANNE HARNOIS, WORKER:

23 name is Jeanne Harnois and I am here today as an
24 unemployed worker affiliated with Unemployed

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2 Action, a 14,000 member project at the Center for
3 Popular Democracy. I have lived in Washington
4 Heights, Manhattan for over ten years, working as
5 a writer editor and then as a business analyst.
6 Before pandemic hit, I had just been laid off
7 from a two year consulting assignment for Wells
8 Fargo making approximately \$100,000 a year. In
9 addition, I worked a freelance editor and writer
10 generating various degrees of income. In prior
11 years I've also supplemented my income especially
12 during periods without full time work by picking
13 up side work, including working as a background
14 actor, being a poll worker, dog walking and
15 picking up holiday retail shifts at stores like
16 Macy's and Barneys.

17 I'm also honored to represent the
18 following three workers whose written testimony
19 is being submitted. I'm reading directly from
20 their bios. My name is John Smith. I live in
21 Manhattan and for many years I have worked full
22 time in the development department of a
23 university in the city earning a salary of about
24 \$90,000 a year. I'm also trained as a social

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2 worker and I supplement my income by working part
3 time as therapist for an organization that
4 provides counseling services.

5 My name is Abigail P. I grew up in
6 Brooklyn, where I still reside. I'm 26 years old
7 of Asian descent and have a college degree. I
8 started a new full-time job in October 2019 at a
9 cultural institution in New York City and was
10 furloughed six months later in May, during the
11 pandemic.

12 My name is LRF and I live in Nassau
13 County. Prior to the onset of COVID-19, I held
14 two part-time positions, one as teacher with a
15 local nursery school where I'm still employed
16 Monday through Friday. I also work part time as
17 manager for a pet care company. The onset of
18 pandemic had an immediate effect on my position
19 with the pet care company.

20 So as you can see, when it comes to our
21 workforce, it's New York, tough enough for you
22 yet? When I was laid off, I became eligible for
23 the maximum New York State amount of \$504 hour
24 and then the additional federal amount of \$600.

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2 If I do not have taxes withheld, that brings me
3 to just what I was making before I was laid off.
4 And yes, that is relying on not withholding
5 taxes, which means that I'm looking at a massive
6 tax bill next April, but one year's crisis at a
7 time.

8 What I am facing now is that if I take
9 on additional work, I will lose benefits equal or
10 greater than what I would earn on a supplemental
11 job. Part of the reason for this is that the
12 unemployment insurance system is running on not
13 just outdated computers, but on outdated ideas.
14 The U.S. system assumes that everyone has one
15 steady job, 9:00 to 5:00, Monday through Friday.
16 But the reality is so different.

17 New York is all about the side hustle. A
18 fair number of people have a regular job and when
19 they're done with that for the day, they go onto
20 a second job or professional passion. As most
21 effective, the UI system would mirror that
22 reality and be a safety net to help people
23 transition into an appropriate full-time job, not
24 penalizing them for attempt to go maximize both

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2 their earnings and professional potential.

3 Flourish or suffer.

4 When people like John Smith are able to
5 work as therapist, New York is a better place. I
6 knew I was in trouble when the pandemic, hit
7 because of the simple fact that I'm a woman over,
8 not just over 40, but over 50. I am 57. My age is
9 something that I have decidedly kept hidden for
10 the past several years, specifically regarding my
11 work. I'm sharing it with you today because of
12 how important this issue is and to impress on you
13 my sincerity in working towards a solution.

14 In the past several weeks, I have talked
15 to lot of older workers, who like me, have been
16 dealing with issues surrounding age
17 discrimination and discomfort, the discomfort of
18 other people, specifically hiring managers and
19 co-workers. My fear, shared by other workers that
20 I have talked to is that employers are using the
21 pandemic to favor younger workers who they
22 perceive to be lower risk and who they can pay
23 less too, by the way.

24 They can turn me down for COVID-related

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2 fears but I can't turn them down. I recently
3 started with the Census. This is by no means an
4 equivalent job to what I had before and certainly
5 doesn't even remotely take advantage of my skills
6 and experience. I have two master's degrees.

7 Despite precautions, I feel that it is
8 unsafe, as it involves regularly touching high
9 touch surfaces, going to people's homes where
10 they most likely are aren't masked and having
11 five to ten minute conversations with people in
12 their ecosystems over and over again. I have
13 autoimmune issues. And the thought of having to
14 do this petrifies me, especially as without full-
15 time work, I have very sketchy health insurance.
16 That's a hearing for another day.

17 I have not seen my mother, who lives in
18 congregate care out-of-state and is ill, in
19 several months, but I feel forced into doing this
20 work going into strangers' homes, as if I refuse
21 it, I risk losing my benefits. And then what? I'm
22 single person living alone, It's a real Sophie's
23 choice, my health or roof over my head.

24 I urge you to stand up for New Yorkers

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2 and support them through this crisis. Through
3 solid leadership, you can take action and get rid
4 of the penalty for part-time work, better
5 reflecting the reality for a significant number
6 of workers in this state. You can also set a firm
7 guideline protecting workers from being forced to
8 accept work that may be unsafe for them or a
9 member of their family during this time. Thank
10 you for the opportunity to talk today.

11 ASSEMBLY MEMBER MCDONALD:

Thank you

12 Jeanne and we're just going to work right on the
13 screen from what I see. Gaela, you're up next.
14 Welcome. I hope I said that correctly.

15 MS. GAELA SOLO, WORKER:

That's all

16 right. Thank you for having me. Good afternoon
17 everybody. My name is Gaela Solo. I am a young
18 transgender Latina woman and I live in New York
19 City. Up until mid-March 2020, I worked two jobs
20 as a bartender and a server at a bar and
21 restaurant, both located in Midtown, near Times
22 Square. I worked over 40 hours each week and
23 earned between \$800 to \$1,000 a week. However,
24 when the COVID-19 crisis hit, the restaurant and

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2 bar both shut down and neither has reopened.

3 I filed for unemployment with the New
4 York State Department of Labor and began
5 receiving unemployment benefits from the state
6 plus the additional \$600 a week that the federal
7 government has been providing during the crisis.
8 Together, they replaced my missing income and
9 allowed me to continue paying my rent and my
10 other bills.

11 In early July, however, I had an
12 opportunity to return to work part-time, not at
13 my old jobs, which were still shut but new job
14 working part-time from home, helping to staff a
15 help line, providing peer support for persons
16 needing assistance during the COVID crisis. I
17 started my new job in early July, after the
18 Fourth of July weekend.

19 However, the help line job, which paces
20 about \$17.25 an hour offers me just 15 to 16
21 hours a week, spread over four days. I
22 appreciated getting back to work and I enjoy the
23 new job and being paid to help others when so
24 many are going through times of personal,

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2 economic and health crisis. But the new job
3 provides less than half the hours that I used to
4 work and pays me only about \$260 to \$280 a week.
5 I had thought that after taking this part-time
6 job, I would be able to keep receiving some of my
7 unemployment benefits. Although I thought they
8 would go down somewhat, which would make sense,
9 but when I certified for unemployment, on the New
10 York State Department of Labor web the week after
11 I started my new job, I was shocked to learn that
12 my \$260 earnings spread over four days made me
13 ineligible to continue receiving any unemployment
14 benefits at all. As a result, in July, I stopped
15 receiving both my New York State unemployment
16 benefits, which had been at the maximum allotted
17 amount of \$504 a week and I also stopped
18 receiving the \$600 a week additional federal
19 unemployment payment.

20 Because of losing unemployment, my
21 weekly earnings have been slashed from \$1,104 per
22 week to just \$260 now. That doesn't come close to
23 enabling me to cover my basic living expenses
24 even after cutting back. My rent alone is \$1025 a

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2 month. My other basic expenses like my food, my
3 cell phone, my utilities, my health insurance, my
4 medication and my credit card bills add up to
5 more than \$450 a month. My student loans, which
6 will commence after the stop payment period ends
7 on September 30, will add an extra \$150 a month.

8 I was fortunate to have a small amount
9 of emergency savings, so I'm now living off that
10 and my part-time job. But it will not last me
11 that long. And when it's gone, I don't know how
12 I'm going to be keep paying my rent and other
13 expenses.

14 I know there are many other New Yorkers
15 in the same situation as me, people who lost
16 full-time jobs and have been able to find part-
17 time replacement work, but then lost their
18 unemployment insurance cushion when they accepted
19 the part-time work and are now facing extreme
20 economic crisis.

21 My understanding is that other states
22 allow unemployed workers who return to work part-
23 time to keep some or all of their unemployment
24 benefits. And that the New York legislature could

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2 change New York's unemployment laws to do the
3 same.

4 I strongly urge you to do that. If that
5 doesn't happen, I just don't know how I and the
6 thousands of others like me who have returned to
7 part-time work are going to survive the coming
8 months until the economy reopens and we can find
9 full-time jobs that pay our bills. Thank you very
10 much for the opportunity to share my experiences
11 with you today.

12 ASSEMBLY MEMBER MCDONALD:

Thank yo

13 Thank you very much. And Yamilez, you're next.

14 MS. YAMILEZ QUINONES, WORKER:

15 hear me?

16 ASSEMBLY MEMBER MCDONALD:

We can h

17 you.

18 MS. QUINONES: Well, hello may name is

19 Yamilez. I am actually a COVID survivor. I was
20 with it for four weeks. I was pregnant with the
21 little one here, and I was frustrated with the
22 unemployment office. I had to get in touch with
23 them about myself and then it was not getting
24 anywhere. I was getting hung up many times. I was

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2 waiting for more than two hours on the phone. I
3 was getting very frustrated, knowing I didn't
4 know if I was going to survive or not through the
5 situation that I was going through so I decided
6 to get in touch with Senator Skoufis. And he was
7 wonderful and gentleman named Mr. David Ravitz,
8 who was amazing specialist, who because of them I
9 was trying -- they got in touch with unemployment
10 for me. They have, I still have the problem with
11 the issues of my payments. My payments, I'm still
12 waiting on things that have been with since
13 April. And they've been having wrong information.
14 I've been giving them everything they needed and
15 still people that are working for the
16 unemployment office, they need a little bit more
17 training, because they're -- some of them are
18 very rude, disrespectful. They will hang up the
19 phone with you, they get frustrated. They don't
20 know a lot about the base rates and stuff like
21 that, that has happened with my case.

22 My case has been a very difficult case
23 for Mr. Skoufis. It's been awful. They have had
24 me with different kind of base rates and

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2 different kind of payments. And then they have
3 had me with not paying me the right amount of the
4 unemployment CARE Act, missing CARE Act on it,
5 weeks missing and right now they had to redo my
6 case all over again, so they can get the right
7 base rate and I'm just frustrated with the whole
8 situation with unemployment.

9 I tried to go and speak to many
10 different people, but every time there's somebody
11 that reaches me it's back to square one. So I'm
12 thankful for Mr. Skoufis anyway, because if it
13 wasn't for him, I wouldn't be able to get in
14 touch with none of these people, you know,
15 actually, grateful to him. And to Mr. Ravitz,
16 because right now my situation is supposed to be
17 clearing up, they did tell me that there's
18 supposed to be in three weeks giving me the
19 amount that is still owed to me. But it should
20 have been a little bit sooner, so they're working
21 that in Mr. Skoufis office to get it before three
22 weeks, because it shouldn't take at that long for
23 the accounting to already give me what is owed to
24 me.

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2 So being a single mom and a survivor of
3 COVID-19 it's a lot and going through my
4 postpartum depression, trying to deal with that
5 part of what's going on with me, it's a lot
6 tougher when you have somebody that closes the
7 door at you and don't want to help you. And if it
8 wasn't, like I said for Mr. Skoufis, I would have
9 still been struggling having that door closed.

10 ASSEMBLY MEMBER MCDONALD:

Thank you

11 MS. QUINONENS: So I'm like I think that
12 they should have better training, more people
13 that are caring for other people that are going
14 through difficult situations. I think it should
15 be more appreciative, you know, to understand
16 that not everybody is in a position to be able to
17 pay their bills and to be able to not lose
18 anything that they have, you know, being a mother
19 of four kids. I have a 17-year-old, 11-year-old,
20 a 2-year-old and a newborn. So it's kind of hard.
21 And for me not to receive my payments, it's
22 frustrating because you've got to look on ways to
23 try to survive, to make it for them. It's just,
24 it's hard, and I would like for everybody to

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2 understand, be more understanding, be more
3 helpful, not be judgmental, you know, and not to
4 be hanging up the phone. Just make sure you can
5 get to the bottom to helping that person. And
6 that's something I would like. And that's
7 something that I actually am thankful for Mr.
8 Skoufis, because through him and Mr. Ravitz,
9 they're wonderful people that are helping me
10 through the whole thing to getting to what is
11 needed for me to receive for me and my boys.
12 Because I only have four boys, so that's my major
13 concern.

14 ASSEMBLY MEMBER MCDONALD:

Thank you

15 Thank you very much for your testimony, and to
16 actually all the members of the panel. Senator?
17 We'll turn it over to the Senate.

18 SENATOR RAMOS: Thank you. Well, as the
19 mother of two boys, I can -- here they are -- I
20 can definitely vouch that it is very hard work,
21 figuring everything out, especially if you're on
22 your own. It has been, sorry my dad just got
23 here. It has been, I think, a very difficult
24 system to navigate for people in general, much

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2 less if you have very few access to resources,
3 and I'm glad Senator Skoufif was able to help you
4 and I know he has a wonderful staff.

5 I wanted to ask the first panelist,
6 particularly about that New York hustle. I often
7 like to say, especially as chair of labor, that
8 the unemployment rate is actually a very
9 deceiving metric, because especially as we enter
10 the shared economy and now during the pandemic,
11 we realize we depend on a cash economy much more
12 than before. We don't actually calculate how much
13 people have to have one, two, three jobs and then
14 we wonder why parents don't have time for their
15 children, right? So can you speak to a little bit
16 about how the economy has changed in that way?
17 And and where we should be headed?

18 MS. PANITZ: Sure. Were you referring to
19 me or Jeanne?

20 SENATOR RAMOS: You, yes.

21 MS. PANITZ: Okay. Well I mean look, I
22 don't think there -- there are some industries
23 that haven't changed. They just don't fit within
24 the box that unemployment, the Department of

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2 Labor considers when you think about work. But, a
3 lot of people are finding themselves doing the
4 sort of work that consists of two-hour shifts.
5 Some folks are finding themselves doing volunteer
6 work now and are not able to access benefits
7 because they're volunteering. So the Department
8 of Labor doesn't consider them to be ready,
9 willing and able to work.

10 But I'm just, I'm here only to share the
11 stories of at that were shared with me by the
12 worker clients of the Unemployment Insurance
13 Coalition so I do really want to defer to the
14 workers on this panel to share their experiences.

15 SENATOR RAMOS: Okay. Well, for the
16 workers, can you tell me, and you guys obviously
17 touched upon this in your testimony, the
18 friendliness or unfriendliness of the DOL, and I
19 mean user friendly and exactly how long did it
20 take you to navigate the filing process? And was
21 the Department of Labor in any way, shape or
22 form, whether it was through materials online or
23 one of the DOL servers, one of the DOL workers,
24 were they able to give you guidance throughout

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2 the process?

3 MS. QUINONES: No. Not with me. There
4 was no guidance for anything that had to do with
5 me. I had to do it on my own, which, you know, I
6 had to go online and figure it out what I had to
7 do and read up on it, because they would tell you
8 one thing to do, and like to claim a weekly and
9 then they'll tell you not to -- when you have to
10 say that you are ineligible to work. And then in
11 the time that it says that you were off for that
12 pandemic that we were not able to work because it
13 was by law that we were not supposed to go to
14 work, and they will tell you, oh you have to say
15 you're not eligible to work or you're eligible to
16 work. They were always giving me wrong
17 information. And every time they gave me wrong
18 information, they decided to give me a penalty.
19 It got to the point they gave me a \$2,000 penalty
20 on my case. And I had to reach Mr. Skoufis and
21 Mr. Ravitz investigated on that and they had to
22 actually eliminate it from my account, because
23 due to their mistakes and everything like that,
24 and the wrong information that they were giving

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2 me through the process after I had my son, they
3 were still giving me a hard time and they gave me
4 a \$2,000 penalty.

5 And like I said, a lot of staff members
6 are not very savvy of how get their information
7 across with the person who is applying for the
8 unemployment. So I have tried many different
9 people, even I have people that called me that
10 were working for 18 years that told me them self
11 they didn't know what to do with my case, and
12 trans transfer me to somebody else. And once at
13 the transfer me, I was on hold or two or three
14 hours. And then when they transferred me to that
15 person, they hung up the phone. So then that was
16 back to square one, to talking to Mr. Skoufis'
17 office. So it was, I'm still having a frustration
18 with --

19 SENATOR RAMOS: I'm sorry that you had
20 such a difficult time. I mean, but I'm glad your
21 senator was able to step up for you. I mean
22 that's exactly what all of state legislators here
23 are supposed to do.

24 MS. QUINONES: Absolutely.

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2 SENATOR RAMOS: Thank you. Oh, okay,
3 right on time.

4 ASSEMBLY MEMBER MCDONALD: We shall
5 continue with the senate.

6 SENATOR RAMOS: Okay. In that case, I'll
7 actually -- we'll switch over to Senator Skoufis.

8 SENATOR SKOUFIS: Thank you. And thanks
9 to all of you for sharing your stories. Quite
10 frankly, I think this is one of the more
11 important panels that we have today, is listening
12 to a handful of the many, many, many thousands of
13 New Yorkers who were just on the receiving end of
14 a lot of pain because the system did not work for
15 them. And Yamilez, thank you for your kind words,
16 it' really unnecessary, we're doing our jobs, as
17 Senator Ramos pointed out, in all of our offices.
18 We're doing our best. And we, my office we helped
19 over 4,000 people with unemployment problems
20 during the pandemic, which, a previously
21 unthinkable volume of people who were reaching
22 out and just having problems.

23 And when we were going through the list
24 of our constituents who we wanted to have their

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2 story told today in this hearing who had
3 compelling, really awful situations, I don't know
4 if it's a good thing or a bad thing that we chose
5 you, but we felt that you were among if not the
6 most compelling, you had COVID, you were
7 pregnant, you've just had all these enormous
8 difficulties, and we felt that your voice was
9 really important to share.

10 And I do hope, the Department of Labor
11 commissioner testified earlier this morning. I
12 hope she's listening to your story and the others
13 that were just shared with us, because you're
14 still not resolved. In fact, they tried to
15 penalize you. Not even like work to process your
16 claim, they were actively trying to penalize you.
17 So it's really just outrageous how the system
18 failed so many people, including yourself.

19 And I guess a couple things. First, if
20 you had a moment with the commissioner, Yamilez,
21 what would you tell her for the next time, right.
22 I mean we're still dealing with your situation
23 and we hope to get that completely resolved very
24 soon, but next time there's an unemployment

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2 crisis, what do you want to tell her now that
3 would encourage her to be better prepared? We've
4 heard, you shared that there needs to be better
5 training. It's, quite frankly, unacceptable that
6 you're passed off from person-to-person. You have
7 to start over and you're hung up on. But if you
8 could tell her one thing that you think would
9 help not just you if you're in this situation
10 again, but all New Yorkers for the next time this
11 happens, what would you tell her?

12 MS. QUINONES: I would tell her, you
13 know, to have her group or staff be more prepared
14 to help without being so, some of people were so
15 aggressive. I would tell her if she could have a
16 meeting with her group and make sure that
17 everybody is on the same level of speaking and of
18 helping other people that are going through the
19 same situation that I'm still going through. And
20 that they have the right information and the
21 right equipment to help the person that is really
22 needed to be helped instead of passing them on
23 like there's just a tool.

24 SENATOR SKOUFIS: Can you just go into

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2 that a little bit. So when you had someone on the
3 phone, and it sounds like you've gone through
4 this a number of times. You explain your
5 situation, and they just tell you, we don't know
6 how to help you?

7 MS. QUINONES: Unfortunately, yes. I
8 have had on my case already ten people working on
9 it. Ten different people have worked on my case
10 and they, same thing. I see that you have so many
11 issues with your unemployment. You have so many
12 different papers that we have sent you. You've
13 got so many different benefit rates. We don't
14 know how to help you so I'm going to transfer you
15 to the other person who can help you. Then
16 they'll transfer me and have me waiting for two
17 hours. And then when they get me to that person
18 and they tell me --

19 SENATOR SKOUFIS: And who -- sorry to
20 interrupt you. And so who are they transferring
21 you to that they think could help you? Is it --
22 it's not just presumably, another regular
23 representative who's picking up these calls, are
24 they transferring you to a supervisor? Who do

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2 they think is able to help you that they cannot?

3 Ms. QUINONES: Well, in one of my cases

4 I was transferred to a lady named Sherry that was

5 with 18 years experience and when they

6 transferred it to her, she was stunned how my

7 case was out of order and she was like I'm really

8 sorry. I haven't in 18 years, she said, I have

9 never seen a case so terrible as yours, so I'm

10 really not able to help you. I need more help

11 with your case and she transferred me and then

12 there goes the line and they hung up me. So I was

13 going back to square one.

14 SENATOR SKOUFIS: Yeah. I'm sorry that

15 you're still going through this. I know my time

16 is up. And I'm committed and I know my team is

17 committed to seeing you through to the end of

18 this process.

19 MS. QUINONES: Of course.

20 SENATOR SKOUFIS: And, we're going to

21 get this straightened out soon. But thank you for

22 being here and sharing your story.

23 MS. QUINONES: Absolutely. I thank you

24 very much for the opportunity that you guys have

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2 gave me to speak on behalf of all the problems
3 that I'm having in this situation. Because maybe
4 somebody out here is having the same problem and
5 they don't how to go about to get the help and
6 knowing a person like me can go ahead and find
7 different ways to get the help and hopefully can
8 get to somebody that will help them and do the
9 same thing I'm doing, going step by step and go
10 through the letters to get the adequate help that
11 they need.

12 SENATOR SKOUFIS: Absolutely. Thank you
13 again.

14 ASSEMBLY MEMBER MCDONALD: Thank y
15 From the Assembly, it would be Marianne
16 Buttenschon.

17 ASSEMBLY MEMBER BUTTENSCHON:
18 have to unmuate.

19 ASSEMBLY MEMBER MCDONALD: We have
20 figure out a code word for unmuting. I haven't
21 figured one out yet, but go ahead.

22 ASSEMBLY MEMBER BUTTENSCHON:
23 very much for all of you being here today.
24 Listening to what you've gone through, it's

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2 unacceptable. And I just want to thank you for
3 staying steadfast and continuing to be supportive
4 within our community. And I will work with my
5 colleagues to ensure that someone that is willing
6 to continue to work and needs that extra benefit
7 that it comes to you. So I'm just saying thank
8 you for all you're doing and what a beautiful
9 baby.

10 MS. QUINONES: Thank you. Thank you very
11 much, ma'am.

12 SENATOR RAMOS: On our end, to close, we
13 have Senator Robert Jackson.

14 SENATOR JACKSON: Let's see. Hi,
15 everyone. Hello, everyone. Well first, let me
16 thank all of the panelists for staying the
17 course, even though all of you are in your homes
18 but you've been our guest on this Zoom call,
19 waiting for your opportunity to be heard. And let
20 me just say to all of you, from all of us
21 panelists and the chairs of the various
22 committees, the co-chairs, we hear you loud and
23 clear.

24 And we have to find a way, when we get

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2 back up in Albany or even after this, to
3 introduce legislation to deal with the situation
4 with part-timers, Jessica and other co-chairs, it
5 has to be done, as per the previous panel talked
6 about, the former commissioner for labor and
7 others. It's just, it causes people to -- people
8 want to work, but if in fact they're going to be
9 losing benefits that they absolutely need, it
10 causes people to say, why should I talk a part-
11 time job if I'm going to lose the majority of the
12 benefits from unemployment that I need to
13 survive?

14 So we're going to find a way. I do thank
15 all of you because it was good hearing your
16 individual testimonies, as to what your situation
17 is, especially for us because we listen to the
18 commissioner and other people, from the attorneys
19 and other people that are negatively impacted,
20 obviously from an organizational point of view,
21 but to hear it from you directly, each and every
22 one of you, and one of them was my constituent. I
23 think that was -- one of them.

24 SENATOR RAMOS: I think it was Gaela,

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2 right? Was it Gaela who was your constituent?

3 SENATOR JACKSON: The woman with the red
4 hair.

5 SENATOR RAMOS: Oh.

6 ASSEMBLY MEMBER MCDONALD: Jeanne.

7 SENATOR JACKSON: Jeanne. She said she
8 lives in Washington Heights and that's my
9 district.

10 MS. HARNOIS: Yeah, I voted for you,
11 don't worry.

12 SENATOR JACKSON: Thank you.

13 ASSEMBLY MEMBER MCDONALD: Well, you
14 an extra minute now.

15 SENATOR JACKSON: You laid out what
16 you're trying to do to survive and how many
17 opportunities it takes and how you have to be on
18 your P's and Q's. And that's important and we
19 need to, as legislators need to make it easier
20 for people to get what they're entitled to. And
21 so I thank all of you and thank the chairs for
22 having this hearing. I'm still in there listening
23 to what everyone has to say. Thank you.

24 ASSEMBLY MEMBER MCDONALD: Okay.

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2 SENATOR RAMOS: All right, well I think
3 that closes us out for this panel. Thank you so
4 much to everyone who testified, for believe it or
5 not, our ninth panel today, we have four people
6 testifying. Sorry, three people testifying, I was
7 actually just notified. We have Zubin Soleimany
8 general counsel for the New York Taxi Workers
9 Alliance. We have we have Rafael Espinal,
10 executive director of the Freelancers Union, and
11 we have Stephanie Freed, who is a worker and co-
12 founder of ExtendPUA.Org. Thank you guys for
13 joining us, that will actually be the order of
14 testimony and Zubin, if we can start with you,
15 you have five minutes on the clock to tell us all
16 about your story. Thank you.

17 MR. ZUBIN SOLEIMANY, GENERAL COUNSEL,

18 NEW YORK TAXI WORKERS ALLIANCE: Thank you so
19 much, Chair Ramos and to your assistants and
20 Chair McDonald. So, my name is Zubin Soleimany.
21 I'm the general counsel for the New York Taxi
22 Workers Alliance. We're a 23,000 strong union of
23 professional drivers in New York City. That's
24 yellow cab drivers and about half of our members

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2 now drive for Uber and Lyft. And they have since
3 their entry into the marketplace but especially
4 during the pandemic, been feeling the disastrous
5 consequences of employment misclassification and
6 especially in the unemployment context.

7 The pandemic has really exposed the
8 inhumanity of that situation, but it's also
9 exposed the ways -- the lack of willingness on
10 the part of the DOL and the current
11 administration to meaningfully address that
12 misclassification.

13 I feel like I need to start out by
14 setting the record straight. I think there was
15 some inaccurate testimony earlier about the legal
16 framework and the status of drivers in the state.
17 There is a final decision issued by the
18 Unemployment Insurance Appeal Board in 2018 that
19 says Uber drivers and all similarly employed are
20 employees for UI purposes in New York State. Uber
21 did not appeal that decision and it's final. The
22 Court of Appeals decision in Postmates further
23 solidifies that decision.

24 We entered this pandemic knowing the

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2 status of these workers and yet knowing that,
3 these folks still face unconscionable delays. The
4 idea of whether they're supposed to get PUA or
5 UI, it's not an academic question. It has serious
6 consequences for workers and for their lives. Our
7 members found themselves waiting for three or
8 four months to get any benefits. And that delay
9 is baked into the process that has occurred
10 because the companies aren't complying with the
11 UI law, and the DOL isn't making them comply. So,
12 one problem is the delay.

13 The second problem is the benefit rate
14 itself, is that folks still have not, five months
15 into the pandemic, received the full amount of
16 benefits that they're entitled to. And the
17 problem there is because for when the DOL looks
18 at somebody and says they're self-employed and
19 puts them into PUA, they're getting a lesser
20 benefit rate based on their net income. They're
21 not getting the full rate they're entitled to
22 under the statute from the New York labor law
23 based on their gross income.

24 So we filed a lawsuit in federal court

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2 and we won a preliminary injunction. And one of
3 the things that that injunction did is it sets
4 forth a time frame for the DOL to pay out the
5 full amount of benefits and still that may not
6 happen for a lot of people until six months after
7 they apply. And we're grateful for that decision.
8 We hope that there will be some justice. But that
9 can't be the way the system works.

10 And basically this failure is coming
11 from two things in terms of how the DOL is
12 processing these clients. The first thing is that
13 they -- there's this decision on the books, and
14 they simply aren't following it. This decision
15 was won but it changed nothing about how cases
16 were handled going forward. So take the example,
17 of a Postmates worker. There's a Court of Appeals
18 decision saying those Postmates workers are
19 employees.

20 The DOL's position has essentially been
21 well, we handle every single case on a case-by-
22 basis. So you may win your case at the court of
23 appeals, become unemployed later and then it's a
24 whole new case and they go back to square one.

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2 This creates a delay because the DOL will then
3 ask again, as though they've never heard anything
4 about your job, send questionnaires to you, send
5 questionnaires to the employer, to ask about your
6 job to figure out if you're an employee or not.

7 The second thing is that they have not
8 used their power to collect wage data from the
9 employers, and this is really the nut of the
10 delay, is you have a decision on the books, you
11 found them to be an employer. That gives you that
12 power to get that wage data. And it's when you
13 get that in your computers that if somebody can
14 apply and get their benefits in two or three
15 weeks.

16 Yes, there are a lot of delays, there
17 are a lot of problems that we couldn't have
18 foreseen with the pandemic, but there are 40,000
19 Uber drivers who filed for unemployment, and
20 there is nothing that should have delayed those
21 applications if that data were in the computer.

22 The DOL is claiming that they don't have
23 the power to get that data. I don't believe
24 that's correct. The New York labor law says you

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2 request data from an employer, and if they don't
3 provide it, that can be a misdemeanor. That seems
4 like a pretty strong power to be able to get
5 thank. If that's not clear, if it's not
6 completely clear and there's room for dissembling
7 around this notion, then perhaps that's an area
8 that's ripe for legislative change in terms of
9 really, really absolutely mandating that
10 reporting, because without it, what workers have
11 to do is submit their own records, and what we're
12 dealing with right now is Uber and Lyft drivers
13 sending in literally 200, 300 pages of earnings
14 data to the DOL, facts, the secured messages,
15 mail because the companies haven't done that.

16 It puts that burden and extreme time
17 crunch not only on the workers but also on the
18 DOL, who while they're supposed to be handling
19 this unprecedented number of cases, are now
20 dealing with hundreds of pages of wage data
21 simply because they can't force or are unwilling
22 to force the companies to comply with the law.

23 I know my time is up. I do just want to
24 say, because I think it's very important that

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2 while these delays are horrible and they're
3 unconscionable, thankfully folks are getting some
4 benefits. I feel that it's really important to
5 address the needs of undocumented workers, and I
6 want to state our wholehearted support for the
7 Excluded Worker Bailout Act. Folks who are
8 working, contributing to the economy deserve some
9 level of protection right now.

10 ASSEMBLY MEMBER MCDONALD:

Thank you

11 very much, Zubin. We will now move to on to
12 Rafael.

13 MR. RAFAEL ESPINAL, EXECUTIVE DIRECTOR,
14 FREELANCERS UNION: Good evening, everyone. It's
15 a pleasure, as a former New York State assembly
16 member, it's really an honor to be back and
17 speaking to you all. But I'm really here to talk
18 on behalf of our members. We represent over
19 500,000 freelancers across the country, over
20 200,000 that are based here in New York City, and
21 what I'm about to say, I don't think captures
22 what we heard firsthand from the previous two
23 panels.

24 I think you heard it directly from those

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2 workers of how they've been impacted, how the
3 system was working against their favor, and also
4 how the lawyers and the groups like Legal
5 Services of New York City were working to be able
6 to help those people get back on track.

7 So I'm here today to really talk about
8 the union and the work we've done until the past
9 few months and ways I think that we can move
10 forward in providing immediate support to ensure
11 that the freelancers have the relief they need.

12 And the members we represent are an
13 incredibly diverse mix of people. They include
14 domestic workers, drivers, writers, graphic
15 designers, through media workers and night life
16 entertainers who are currently united by a common
17 struggle. And that is they're all out of work and
18 currently trying to find and qualify for any
19 assistance, grants or loans that exist.

20 At the height of the pandemic, an
21 internal survey that we'd done found that over 80
22 percent of our members have lost work and over 90
23 percent expected to lose their sources of income
24 throughout the year. To give a sense of how many

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2 freelancers have been negatively impacted and the
3 effect on the state's economy, I would like to
4 note that in a recent study commissioned by the
5 mayor's office [unintelligible] [07:07:19]
6 entertainment and the Freelancer's Union, it
7 found that in New York City alone, 1.3 million
8 residents have performed freelance work in 2019,
9 making up 34 percent of the city's workforce with
10 an estimated annual economic impact of \$31.4
11 billion in earnings.

12 Freelance workers choose to freelance
13 because they believe it provides them with a
14 greater opportunity for upward mobility and
15 appropriate pay for their skills, compared to
16 tradition a employment. Also allowing full-time
17 workers the opportunity to make a side income, a
18 side hustle, like my parents did, who were SEIU
19 union members and freelanced on the weekends,
20 giving them power over their financial
21 circumstances.

22 I would like to add that given the
23 number of freelancers in our state and the
24 positives of freelance work for individuals,

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2 there is still a great sense in the community
3 that the government has a long way to go in
4 recognizing their importance to our local economy
5 and to the survival of our big cities.

6 Before the pandemic, freelancers were
7 facing challenges that have led to the crisis
8 that we're in today like the rising cost of
9 health care premiums, the realities of not being
10 paid on time or at all, and the unpredictable
11 nature of their work combined with the lack of a
12 social safety net.

13 Historically, disasters and economic
14 downturns have shown to be a time in which
15 traditional employees who have been laid off
16 begin to think about how to take control of their
17 finances. They often ponder how can they create
18 their own work with professional skills that they
19 possess. For example, after the 2008 recession,
20 the number of freelancers increased by 12 percent
21 and we expect to see a similar trend once this
22 pandemic is over.

23 So I mention this to press on the point
24 that now is the time for a comprehensive approach

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2 to support the independent workforce. This
3 pandemic has made it clear that in order for our
4 economy to avoid collapse, every worker whether
5 union, independent or undocumented in every
6 sector needs to be supported. With over 80
7 percent of freelancers reported to be out of work
8 object, it's improbable to ignore the need for
9 creating a larger and permanent social safety
10 net.

11 Early on, I was proud is to work with
12 Senator Chuck Schumer in reviewing language for
13 PUA and as we know that program was very
14 essential providing independent workers with
15 unemployment insurance and the social safety net
16 they needed to get through this pandemic. But
17 reality is that now the \$600 benefits has
18 expired, even though we saw a downward trend of
19 members calling for financial assistance, we're
20 now seeing an uptick again of concern because of
21 the fact they will no longer get that \$600
22 padding that helped them deal with the daily cost
23 of living in our city.

24 And our most recently inquiry, just to

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2 give you an example came from a single mother of
3 two children, who back in December was proud to
4 get her own apartment but is now months behind on
5 rent and considering living in her car and
6 applying for food and financial assistance to
7 allow her to save money. That is a clear example
8 of why freelancers like every unemployed New
9 Yorker will benefit from real financial relief
10 and support through these times.

11 So through member feedback, the union
12 has identified a few issues that I believe will
13 have a significant impact in further supporting
14 free lancers through the crisis. PUA and UI has
15 had issues with recognizing mixed earners--
16 through the crisis. We have freelancers who file
17 with both 1099s and W-2s. What the Department of
18 Labor has doing is only recognizing their W-2s,
19 where freelancers have most likely gotten the
20 least amount of income throughout the year and
21 end up getting the smallest amount of
22 unemployment benefits, of the \$182 a week,
23 cheating them over the possibility of getting the
24 \$504 award.

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2 We've been working with Legal Services
3 of New York City, for example, they've been
4 helping them with the appeal process and then
5 after appealing the Department of Labor came back
6 to recognize their full wages. But I think that
7 the department has to go back retroactively, look
8 at all the applications and make sure that
9 everyone's income was accounted at the end of the
10 day.

11 The second important piece I think that
12 the state should take on Freelance Isn't Free Act
13 which we passed in New York City. We've heard
14 from a lot of our members who had issues getting
15 paid. They were not getting paid through the
16 pandemic and the pandemic was being as an excuse
17 cheating them out of their wages. If the state
18 implements this, we'll have coverage and better
19 wage protection across the entire state, not only
20 in the five boroughs. The state must also explore
21 extending PUA extra \$600 compensation. States
22 like California are looking at the idea that if
23 the federal government is not able to put forward
24 the extra money, of how the state can take that

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2 on.

3 And, of course, we believe in canceling
4 rent and mortgage payments because people are
5 behind on their rents, on their mortgages and are
6 facing evictions and having to go to shelters.

7 And last but not least, I just wanted to
8 extend my support for the Fund Excluded Workers
9 campaign. We as a union also represent
10 undocumented and [unintelligible] [07:12:06]
11 members that are in desperate need of support and
12 they have zero lifelines, so it's important that
13 the state looks at how they can get behind the
14 campaign and make sure those workers do not fall
15 through the cracks.

16 In closing, your support of freelancers
17 is very important. Thank you all and I look
18 forward to working with you all the next few
19 months to ensure that our freelancers are be
20 properly represented moving forward. Thank you.

21 ASSEMBLY MEMBER MAGNARELLI:

22 Rafael.

23 MR. SOLEIMANY: My apologies, folks, I
24 am running out of child care in five minutes, so

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Thank

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2 I will need to run, my apologies, unless you have
3 any questions, I'll have to go take care of my
4 little guy.

5 SENATOR RAMOS: Does anybody have any
6 specific questions for Zubin? Otherwise, I think
7 we're good. Thank you for your testimony and
8 thank you for your work for excluded workers.

9 MR. SOLEIMANY: All right, thank you,
10 senator.

11 ASSEMBLY MEMBER MCDONALD: Thank y
12 Zubin.

13 SENATOR RAMOS: Talk to you soon. Yeah.

14 ASSEMBLY MEMBER MCDONALD: Step
15 you're on.

16 MS. STEPHANIE FREED, WORKER/CO-FOUNDER,
17 EXTENDPUA.ORG: Hello. Thank you for having me
18 here today. My name is Stephanie Freed and I live
19 in Inwood, Manhattan and I am pandemic
20 unemployed. I have been a gainfully employed
21 freelancer behind the scenes the in entertainment
22 and live events industry for ten years and I'm
23 member of IATSE. My industry, which accounts for
24 almost 500,000 jobs in New York State alone, is

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2 not likely to return to work until well in 2021.

3 Many of us aren't sure how we survive until then.

4 Personally, now that the \$600 benefit has expired

5 I receive a quarter of my usual income in UI,

6 \$1,764 a month which is the New York State max.

7 My rent, health insurance and utilities add up to

8 \$2,300 a month, so I am losing my apartment.

9 While I am grateful New York State has

10 provided some rent relief, I and many like me do

11 not qualify. Rent relief needs to be expanded to

12 keep people in their homes. Friends and

13 colleagues are leaving New York City left and

14 right, threatening the entertainment industry's

15 ability to bounce back. In an attempt to make

16 rent, I've been looking for small copywriting

17 projects. The partial UI makes this not feasible.

18 An hour of work for \$20 costs me \$126 of my UI.

19 I need to take small projects in

20 addition to UI to even attempt to pay my bills,

21 but with the partial UI rule it's impossible.

22 Desperation around UI is rampant.

23 So a colleague and I created

24 ExtendPUA.org to provide everyone in need of

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2 pandemic assistance with resources to make their
3 demands heard. We're a grassroots organization by
4 unemployed, for the unemployed created in New
5 York. As part of our work, I have heard from
6 thousands of people who are struggling. Here are
7 three stories from New Yorkers.

8 Donna Reggio is a speech pathologist
9 from Calverton. She has spent 36 years building a
10 private practice for preschool age children, 16
11 of her 18 students are moving on to kindergarten
12 and the pandemic prevented all evaluations for
13 incoming preschoolers. She has seen her typical
14 work week of 35 to 40 sessions drop to just five.
15 However, due to educational mandates, these three
16 sessions must be spread out over three separate
17 days. Two-and-a-half hours of week in a work
18 eliminates 75 percent of her UI benefits, her
19 benefits dropped to \$60. Donna told me could I
20 have no choice looking long range, I'm almost 60
21 and I cannot find another career.

22 Richard Heisel has worked as a cook over
23 12 years at the same restaurant in Rochester. He
24 was furloughed from his job at the beginning of

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2 the pandemic. His wages were effectively replaced
3 by UI and the FPUA. Richard has now gone back to
4 work. His scheduled hours have gone from 60 per
5 week to 20, but spread across four days. This has
6 disqualified Richard from any UI benefits under
7 the partial UI rule, leaving him with one-third
8 of his previous wages. Richard told us he has
9 never struggled like he is now.

10 Lisa a western New York resident works
11 as a server at a chain restaurant. She's not
12 comfortable returning to work, but did so when
13 asked to five weeks ago, because refusing would
14 kick her off of UI and cost her the job. She's
15 uncomfortable because the precautions seem mainly
16 for the customer's benefit and not the employee's
17 benefit. With restaurants at 50 percent capacity,
18 she last seen her weekly shifts reduced from five
19 to only two. Her UI benefit has shrunk to less
20 than \$90 a week. See she now relies on that
21 benefit and nine to ten hours of tips at a 50
22 percent capacity restaurant to provide for
23 herself and her four-year-old daughter. Lisa told
24 me, I know many service people who this is

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2 affecting way worse than me so I am speaking for
3 them as well.

4 These are just three of the stories
5 [unintelligible] [07:16:21] Partial UI rules
6 punish exactly what the thousands of unemployed
7 people I have talked to want to do, go back to
8 work whatever way they can and make enough money
9 to survive. I was asked to speak about partial UI
10 but I would be misrepresenting my organization to
11 only speak about that here today.

12 ExtendPUA.Org represents a large group
13 of unemployment workers. When 12 percent of the
14 state and 20 percent of New York City's workforce
15 is unemployed, we must enact comprehensive
16 response until the pandemic is ended and it is
17 safe for us to go back to work. This includes
18 expansive and inclusive rent and healthcare
19 relief, as well as food assistance. Two million
20 people in New York City alone are estimated to be
21 food insecure because of this pandemic.

22 A concern I was hearing just yesterday
23 was that even though New York State expanded SNAP
24 benefits, many families were kicked off when they

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2 were receiving the \$600 and now they are not
3 receiving SNAP or the \$600. Rent relief is being
4 offered based on income requirements prior to
5 March 1st, which thankfully helps families who
6 are already at a disadvantage. However, it does
7 not help those who may have been middle income
8 prior to the pandemic. The assumption may be that
9 the middle class doesn't need the assistance. We
10 are actually feeling a different kind of hit, in
11 that we have lost all of our income and our bills
12 remain higher than the max UI coverage and
13 there's no further assistance provided.

14 We also need to take care of our
15 immigrant community who are left out of UI and
16 pandemic relief completely. We also voice support
17 for Fund Excluded Workers. Lastly, I want to urge
18 the New York State Senate to not take action on
19 with that they can surrounding the issues workers
20 are facing in this pandemic but to also join and
21 help us citizens who are putting pressure on the
22 federal government to pass a comprehensive relief
23 bill with urgency. We need your voices too.

24 Us unemployed at ExtendPUA.Org would be

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2 more than happy to continue to provide voices of
3 unemployed folks for the Senate as necessary.

4 Thank you for allow us to share our stories here
5 today.

6 ASSEMBLY MEMBER MCDONALD:

Stephan

7 thank you, Rafael, thank you. Before I forget,
8 because I should have done this four or five
9 panels ago, our colleague from the Assembly, Yuh-
10 line Niou has joined us as well and we want to
11 thank her, and my mea culpa, because every time I
12 went to do that, I got caught up in the testimony
13 before, so with that we turn it back to you,
14 Senator Ramos.

15 SENATOR RAMOS: Thank you, John. So I

16 have a few questions. Thank you so much for your
17 testimonies. I'm going to start with you, Raaf.
18 You mentioned in your testimony how you would
19 like to see the Freelance Isn't Free Act
20 implemented at the state level and I don't think
21 many people who are watching at home understand
22 what that means, what that is. Needless to say,
23 that freelancers have been having issues getting
24 paid before the pandemic, when folks, customers

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2 don't necessarily pay their bill or pay it on
3 time in a respectful manner of the person's work.

4 Can you tell us with that that would
5 look like, and especially I guess you can put
6 your old assembly hat back on, too, and tell us
7 what you envision at the state level.

8 MR. ESPINAL: Yeah. Well, in New York
9 City, actually when I was on the city council, we
10 passed a bill, and in the bill, the Department of
11 Consumer Affairs and Workers Protection plays a
12 vital role in foreseeing these [unintelligible]
13 [07:19:33] and making sure that freelancers who
14 have clients that are not paying at the end of
15 the day end up getting paid for the work that
16 they have performed.

17 So on the state level, I would just
18 imagine the Department of Labor being that
19 enforcement agency or any similar agency that can
20 play that role and that when they receive a
21 complaint from a freelancer about a contract that
22 they've signed, the client or the company that
23 they have not been paid, that the state will step
24 in and play that enforcement role of making sure

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2 that the client is making that payment on time or
3 just at all in general.

4 In New York City, there's also a fine
5 attached to it. It's about \$250 to \$500. If the
6 client doesn't pay within a 30-day period, they
7 can face those fines. Also, if the city finds
8 that there's a huge clusters of problems with
9 this one client or one company, then the city can
10 intervene and play a role in filing a class
11 action lawsuit against that company. And I think
12 it's important because we have seen, through the
13 pandemic multibillion dollars companies like
14 Equinox, for example, writing letters to their
15 freelance workers telling them that they can't be
16 paid for their work because of the pandemic, and
17 it's when you have multibillion dollars companies
18 taking these sort of actions, I think it's clear
19 that there has to be some sort of mechanism in
20 place on a state level to ensure that all workers
21 are protected across New York.

22 SENATOR RAMOS: Thank you. And now this
23 may go for any of you. We've actually seen, of
24 course, with the pandemic more the proliferation

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2 of working from home, and/or working remotely
3 which of course most, if not all freelancers
4 often do. How has the work culture changed, if at
5 all? Are we seeing more work being outsourced to
6 freelancers here in New York? I thought I had
7 heard in California that was the case briefly.
8 And are people falling behind on those payments,
9 on those receipts more often now?

10 MR. ESPINAL: Yeah, so I mentioned in my
11 testimony that in the previous recession in 2008,
12 there was actually an increase in the amount of
13 people is that decided to freelance, and it
14 increased by 12 percent over the years. We expect
15 the same thing to happen after this pandemic as
16 well. And I think that when you have small
17 businesses and companies that are struggling
18 financially or looking at ways on how they can
19 reboot their business, it makes sense for them
20 and it's easier for them to get someone on a
21 contract to bring their skills onboard to get
22 their companies back up and running, especially
23 after the shutdowns.

24 So I believe I think New York is going

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2 to see a big reliance on the freelance workforce
3 to help jump start the economy, which is why I
4 also mentioned that it's important that now,
5 given this moment, it's important that we look at
6 what laws are being discussed, have been
7 discussed in the past, what sort of benefits can
8 be created moving forward to ensure that
9 freelance workers who we're seeing a larger
10 increase of [unintelligible] [07:23:04] doing,
11 have the protections and social safety net they
12 need to succeed.

13 SENATOR RAMOS: Thank you. Now, I think
14 we lost Stephanie. I actually had a question for
15 her. But briefly, in the few seconds that are
16 left since PUA does directly affect your
17 membership as well, Rafael, can you talk about
18 why it's so important that we extend it, that we
19 are fighting for these federal benefits, and what
20 kind of a role we should be playing. Oh, there
21 she is, what kind of a role we should be playing
22 here to help.

23 MR. ESPINAL: I'm sure Stephanie will
24 eloquently answer that question, but, you know,

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2 just freelancers like every other worker, they're
3 out of work, there is limited opportunities,
4 they're spend depending on PUA to give them the
5 funding they need to deal with the cost of
6 living. As I mentioned, once the independent
7 contractors were able to get through DOL, we
8 began to see less phone calls from our members
9 who were in dire financial straits because they
10 were getting a funding stream to help them deal
11 with the cost of living.

12 And now I think there's again, there's a
13 feeling, there's a lot of anxiety in the air
14 given that the President decided to move forward
15 with an executive order instead of seeing
16 Congress expand and extend PUA, the \$600
17 financial compensation, because there's also a
18 question whether the executive order captures
19 independent contractors moving forward. There's a
20 concern that it's only going to apply to
21 traditional workforce.

22 So in order to, I think to prevent a
23 huge, a bigger financial crisis, the state has to
24 have a backup plan, a plan B for what we're going

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2 to do if the federal government fails to act
3 moving forward.

4 SENATOR RAMOS: All right. Thank you.
5 I'm out of time. Assemblyman McDonald, do you
6 have anyone?

7 ASSEMBLY MEMBER MCDONALD: I think v
8 okay. I think it's Senator Jackson's turn.

9 SENATOR JACKSON: Well, thank you.
10 Hello, everyone. So hey, co-chairs let me thank
11 you. And I mean, I'm glad that I'm still on this
12 and listening to all of the people that are being
13 impacted. Rafael, thank you, representing the
14 freelance unions and and Stephanie, if you're not
15 aware, I represent you. You live in Inwood. I
16 represent all of Inwood, and I am going to go to
17 the website ExtendPUA.Org and check it out and be
18 in contact with you. But I want to thank all of
19 you.

20 It's important that we hear from you
21 about the situations that each and every one of
22 you face, and as legislators, I think that we
23 have a mandate, co-chairs, in order to fix the
24 unemployment work situation. So let's get busy.

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2 Thank you.

3 ASSEMBLY MEMBER MCDONALD:

Okay. I

4 that's it for our panel. Thank you very much.

5 Rafael, it's good to see you. I know we only
6 overlapped for a year, but once a member, always
7 a member, as you know. And we will move on to our
8 next panel, which is panel number ten. And with
9 us on panel number ten will be only one witness.
10 His name is Richard Winsten with State and
11 Broadway. And we're looking for him to show up. I
12 see him showing up on the big screen right now.
13 Richard.

14 MR. RICHARD WINSTEN, STATE AND BROADWAY,
15 INC.: Hello, can you hear me?

16 ASSEMBLY MEMBER MCDONALD:

You've g

17 five minutes, go at it.

18 MR. WINSTEN: Well, thank you very much.
19 Thank you for inviting me to testify. I'm very
20 honored. I'm with the firm of State and Broadway.
21 I bring greetings from my colleagues, Jackie
22 Williams and Larry Sherer. We represent an
23 enormous number of unions from every sector of
24 industry and government in New York State, as

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2 also many not-for-profits that are supportive of
3 unions and that support unions as well.

4 Jumping right in, our clients, union
5 clients and these not-for-profits are extremely
6 concerned, if not terrified about the effects of
7 the collapse of the economy and the collapse of
8 state revenue on their ability to provide
9 service. The first quarter fiscal report came out
10 today, underscores this collapse. We believe that
11 for instance New York City Committee on
12 Occupational Safety and Health, which is the
13 preeminent safety and health organization in New
14 York City and provides crucial advice to unions,
15 workers during this pandemic, their services are
16 needed more than ever.

17 The Consortium for Education, the
18 preeminent worker training and placement
19 organization in the city, worker training and
20 placement as a result of the pandemic and the
21 collapse and everything, the services are going
22 to be needed more than ever. So we strongly
23 advocate for the federal aid for state and local
24 governments, and we're also a very strong

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2 advocate for increasing state revenue, and there
3 are a number of great proposals for increasing
4 taxes on the wealthy and a broad support from the
5 people I represent.

6 I'm not going to go into great detail on
7 a lot of the issues that have been covered
8 already by other panelists. One of the issues
9 that all of my clients are concerned about is the
10 workers' comp presumption for COVID. I represent
11 local 237 of the teamsters. All of their 17,000
12 workers for the city of New York are essential
13 workers, have been on the job. They represent a
14 large number of school safety agents who are
15 peace officers. We've had at least nine deaths
16 from COVID from these peace officers, so workers'
17 comp presumption is very, very important.

18 I've been observing the comp system
19 since I started lobbying New York State
20 government in 1978. I can tell you it is
21 extremely difficult to win a comp case if the
22 condition is not classified as an occupational
23 disease, which creates a presumption, and COVID
24 has not been added to the list of occupational

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2 diseases, so we need the legislation make the
3 presumption. I know Senator Ramos and Assembly
4 Member Simotas have a bill, and we're strongly
5 supportive, and we follow the lead and work with
6 the [unintelligible] [07:29:44] AFL-CIO on this
7 issue.

8 There's also been a lot of talk about
9 the so-called state HEROES Act. All of my
10 clients, NYCOSH, the unions, all of them believe
11 very, very strongly that we need an airborne
12 pathogen standard that can be enforced. And we
13 believe that the legislature should take a look
14 at creating or mandating the state labor
15 commissioner to create such a standard. The OSHA
16 law federally does not prohibit it and there's
17 federal case law that allows it, and it's time
18 for something to be done on an enforceable
19 standard.

20 One of my clients is Rural & Migrant
21 Ministries. They represent farm workers. They're
22 extremely concerned about the spread of COVID in
23 very cramped farm worker housing, and we're
24 hoping that working with the legislature, we can

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2 create some protections and some solutions for
3 that.

4 Another client is a communications
5 worker, Local 1180. They represent city workers.
6 They're concerned that their members are not
7 getting correct information about the interplay
8 between the federal and state paid leave benefits
9 and their city benefits. That's an issue that's a
10 problem. Many of their members have been
11 teleworking from home, very, very effectively.
12 They're concerned that they not be brought back
13 too soon and have their health jeopardized and
14 they would like the union to be more involved
15 when they are brought back, in the conditions
16 under which they are brought back.

17 Finally, we represent an employer, a
18 small to medium size employer called Carmel
19 Livery Service. This is a livery company based
20 the in Bronx. And when the livery industry
21 collapsed with the shutdown, they kept employees
22 on as long as they could, but they eventually had
23 to lay off 40 percent of their employees. They
24 kept the rest on, hoping that things might get

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2 better. The ones that were kept on were enrolled
3 in the state shared work program, which is run
4 very with very, very well by the State Labor
5 Department and I think there was testimony that I
6 think there are 80,000 some odd workers now
7 enrolled in shared work, which allows a
8 combination of work and wages and unemployment
9 insurance benefits. Carmel was told by somebody
10 on the staff at state labor --

11 ASSEMBLY MEMBER MCDONALD:

Wrap up

12 buddy.

13 MR. WINSTEN: -- that a laid off worker
14 could not be re-hired and qualify for the shared
15 work program. I think the statute can be read
16 differently, but I would urge you to take a look
17 at this, and if necessary change the statute to
18 allow these workers to be re-hired by an employer
19 like Carmel and participate in shared work. It
20 saves the state money on unemployment insurance,
21 and it allows them to earn a wage plus
22 unemployment that's equal to their pre-pandemic
23 wage.

24 ASSEMBLY MEMBER MCDONALD:

Richard

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2 thank you for your testimony. Your time has
3 expired.

4 MR. WINSTEN: Thank you, I'm done. Thank
5 you very much.

6 ASSEMBLY MEMBER MCDONALD: And we
7 appreciate the diversity of your representation
8 because it remind us of the diversity of
9 individuals impacted so negatively. Senator, I
10 don't see any questions on the assembly side at
11 this point.

12 SENATOR RAMOS: We don't seem to have
13 any hands up on our side, either, so I'll also
14 thank Richard for his testimony and for his
15 partnership, because we worked very closely
16 together last year to pass the Farm Worker Fair
17 Labor Practices Act, and obviously we have a lot
18 more work to do to together, so Richard thank you
19 for standing up for a variety of workers today.

20 MR. WINSTEN: Well, thank you for all
21 the hard work you've done legislatively, thank
22 goodness, during this pandemic in providing
23 service to beleaguered constituents. Thank you
24 very, very much.

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2 SENATOR RAMOS: Thank you, Richard. Talk
3 to you soon.

4 MR. WINSTEN: Thank you.

5 ASSEMBLY MEMBER MCDONALD: Okay. So
6 up is panel number 11. Senator, well, I've got
7 the list right here, I'll take it, I'm sorry.

8 SENATOR RAMOS: Okay.

9 ASSEMBLY MEMBER MCDONALD: Make the
10 New York, we have Deborah Axt, the co-executive
11 director. We have Carlyn Cowen, the chief policy
12 and public affairs officer from the Chinese
13 American Planning Council and from the New
14 Immigrant Community Empowerment organization, we
15 have Diane Moreno who is the program director.
16 So, Deborah, we will start off with you. Go right
17 ahead. Welcome.

18 MS. DEBORAH AXT, CO-EXECUTIVE DIRECTOR,
19 MAKE THE ROAD NEW YORK: Thank you so much. Thank
20 you to the chairs for convening this critical
21 conversation and to all of you for digging in for
22 so many hours in today's absolutely crucial
23 issues. I'm here testifying on behalf of Make t
24 the Road New York's 25,000 members who are black

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2 and brown community folks living in many of the
3 earliest epicenter communities in this pandemic,
4 Queens, New York City, Long Island and hard hit
5 communities in Westchester in particular.

6 The work that our members are doing puts
7 them in the position of essential jobs, so folks
8 are dealing with the absolute lack of clear,
9 mandated safeguards. We absolutely call on the
10 legislature to enact the HEROES Act, and those
11 kind of protections. And we have seen that
12 workers who dare speak up and ask for times to
13 sanitize have repeatedly been harassed and even
14 fired to silence them. Some of the most powerful
15 corporations on earth, Amazon in particular, has
16 become notorious for this kind of behavior to
17 shut down workers in standing up for their
18 rights.

19 And one of the things that we're seeing
20 and is cause for great dismay is that the
21 overburdened Department of Labor is really unable
22 to step in and provide protection. Of course,
23 there's missing standards. And even preexisting
24 protections, like wage theft protections are

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2 going substantially almost completely unenforced
3 at this moment in time. And so workers who are
4 facing wage theft, exploitation and danger on the
5 job just have to accept it, especially given the
6 other key issue that I want to talk about, which
7 you have heard many folks mention today, which is
8 the issue of excluded workers.

9 Make the Road released a report in May
10 called "Excluded in the Epicenter", studying the
11 lives of over 230 black and brown immigrant New
12 Yorkers and our follow-up report following that
13 same population was released earlier this week.
14 And we have discovered horrifying levels of
15 unemployment and income crisis in undocumented
16 communities, and black and brown communities in
17 general, 92 percent of respondents reported that
18 they or another earner in their household had
19 lost their job as a result of the crisis. In May
20 only five percent had received unemployment
21 benefits. There's some improvement in that number
22 among folks who do have the necessary immigration
23 status. But 98 percent of our unemployed,
24 undocumented immigrant survey respondents have

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2 not received a single penny in federal or state
3 economic assistance.

4 And this is because of what you've heard
5 mentioned time and time out today especially, is
6 that folks, regardless of how many citizen
7 children are in that household, regardless of how
8 many years they've been paying into and having
9 their employers pay into the unemployment system
10 to create that safety net for others, are
11 absolutely blocked from accessing a penny if they
12 lack work authorization. And let's be real, we
13 all know the racist immigration laws that block
14 folks from being able to access work
15 authorization, right.

16 Or if you are recently incarcerated and
17 are getting out of immigrant detention or out of
18 jail or prison into the pandemic and have
19 virtually no hope of getting employment or if you
20 are an undocumented immigrant who
21 [unintelligible] [07:38:00] a breadwinner spouse
22 and [unintelligible] [07:38:03] sustain the
23 family, though your breadwinner spouse has passed
24 away from COVID.

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2 So the experience of our members has
3 been on the one hand being told you're essential,
4 we need you, we need you delivering the food to
5 our families, we need you staffing the
6 warehouses, we need you cleaning the hospitals,
7 and on the other hand, if they're not able to
8 work or the bottom faults of their part of the
9 economy, you are totally disposable. And folks
10 are I would say growing in the intensity of
11 desperation in their neighborhoods.

12 It is really hard to convey to people
13 who are not in these communities or not connected
14 on a day-to-day basis. There's now an intense
15 competition to be able to access the recyclables
16 that incredibly poor and homeless folks gather in
17 order to make pennies, and that's growing in
18 intensity. That competition in the streets of
19 Queens is horrific, because folks do not have any
20 source of income.

21 And we know, thanks to Senator Ramos and
22 Assembly Member De La Rosa, that there is a
23 solution that has been designed for our state,
24 right. We have within reach legislation that

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2 would design a mark-to-market billionaire tax in
3 order to fully fund an excluded worker fund that
4 would give all of the undocumented workers and
5 recently incarcerated folks in need access to an
6 unemployment-like benefit, disaster emergency
7 income replacement at a flat rate, a monthly
8 benefit. It's a simplified version of
9 unemployment, a simplified version to make it
10 administrable. It would be fully funded, even in
11 the first year by the mark-to-market billionaire
12 tax. So there's no reason not to move that
13 forward immediately.

14 And frankly we cannot wait for Congress
15 to act. I understand we absolutely need federal
16 dollars, and Congress should act and they need to
17 send those federal dollars, but not a single
18 proposal that has any viability at the
19 congressional level would address any of the need
20 that we have for emergency income to these
21 families who are excluded from unemployment and
22 other stimulus benefits at the federal level.

23 So we need to ask you all to act now. We
24 cannot wait for a governor. We cannot wait for

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2 Congress. We need to move forward. The income
3 crisis is growing. The desperation and the need
4 is growing. This is a humanitarian disaster that
5 we cannot allow to happen on our watch. Thank you
6 all so much for all of your work. I know how hard
7 you're working around the clock, and we really
8 appreciate your support.

9 ASSEMBLY MEMBER MCDONALD:

Thank you

10 Deborah. Carlyn.

11 MS. CARLYN COWEN, CHIEF POLICY AND
12 PUBLIC AFFAIRS OFFICER, CHINESE-AMERICAN PLANNING
13 COUNCIL: Carlyn.

14 ASSEMBLY MEMBER MCDONALD:

Carlyn, I

15 sorry. Welcome aboard.

16 MS. COWEN: That's okay. It's a
17 difficult name. Good evening and thank you so
18 much for the opportunity to testify tonight. My
19 name is Carlyn Cowen. My pronouns are they/them
20 or she/her and I'm the chief policy and public
21 affairs officer of the Chinese-American Planning
22 Council, CPC. CPC is the nation's largest Asian-
23 American social services agency serving 60,000
24 Asian-American, immigrant and low-income New

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2 Yorkers throughout all five boroughs as well as
3 some in Long Island and Westchester.

4 During the pandemic, CPC has been
5 working with our community members from all over
6 facing all sorts of issues, and I want to uplift
7 a lot of the issues that we've heard in today's
8 hearing, but also share what we've been seeing
9 with our communities.

10 I want to talk about two different types
11 of workers today. Our frontline human services
12 workers who are essential and our excluded
13 workers, who are often also essential. Human
14 services workers are at the frontline of the
15 pandemic. We have been delivering food and
16 medications. We have been helping people navigate
17 unemployment and rent and avoiding eviction. We
18 have been helping young people navigate remote
19 learning and providing home care to people in
20 their homes.

21 Yet at the same time these essential
22 human services workers deemed essential by the
23 state and paid for through state contracts and
24 state funding, have been facing a complete lack

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2 of person protective equipment and the supplies
3 that we need to do our work safely. At CPC, we
4 employed over 5,000 staff and have had to resort
5 over the last several months, of seeking
6 donations for masks and sanitizer and trying to
7 cobble together to keep our staff safe as they
8 interact with our community members and support
9 our community members.

10 At the same time, these workers are
11 often paid minimum wage, and human services
12 workers are by vast majority women, women of
13 color and immigrant workers. And so we are being
14 put at the frontlines and being told that we have
15 to do this work for minimum wage.

16 And at the same time as our services are
17 increasing, we're seeing huge -- the demand for
18 our services is increasing, we're seeing huge
19 cuts to our services through state programs and
20 we're being forced to lay off workers, then who
21 are facing their own challenges with
22 unemployment.

23 That brings me to the other category of
24 workers, which as we've just had to lay off 100

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2 staff at CPC alone, workers that are being
3 excluded from our economy and from state support.
4 All of the stories that you've heard today are
5 stories that we have heard from our community
6 members or our staff. And we're seeing the
7 communities of color are by far being hit the
8 hardest. In the Asian-American community,
9 unemployment rose 6,900 percent over April, and
10 we know that that traces back partially to early
11 discrimination faced within the Asian-American
12 community causing massive job loss. But
13 communities of color across the board are being
14 hit hard.

15 In our own community at CPC, 50 percent
16 have our community members have lost jobs or
17 income and report not knowing how they're going
18 pay for rent, groceries or medication. In one of
19 or preschool families, 24 children in 24 families
20 in a four week span, 20 of those families lost
21 their jobs and income and less than half them
22 qualified for any sort of federal or state aid.
23 They are now going on month five of being
24 completely left out by the state and federal

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2 government.

3 We have community members that cannot
4 afford rent, cannot afford food, cannot afford
5 medication. We have young people that are
6 rationing food for their family members while
7 their parents are out seeking whatever work they
8 can. And we have had young people sharing
9 suicidal thoughts with our staff because they
10 don't know how their families are going to afford
11 to eat or how they're going to afford to bury
12 their parents who have died from COVID-19.

13 I recently testified at the hearing of
14 disproportionate impact of COVID-19 on
15 communities of color in April, and we shared a
16 number of recommendations there, and I'm sad to
17 say that the recommendations that I'm going to
18 share today are the exact same because we haven't
19 seen a lot of these changes happening yet.

20 We still have community members that are
21 waiting for state aid and now have months of rent
22 and other expenses piling up. We need to
23 establish an excluded workers fund, we need to
24 ensure hazard pay and wages for our frontline

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2 workers that are just struggling to get by and
3 finding extra jobs where they can. All of the
4 things that we've heard mentioned today are
5 urgently needed and were urgently needed in March
6 for our workers.

7 But it doesn't just stop there because
8 we have to look more, broadly housing. We have to
9 cancel rent and mortgages and support our small
10 businesses that struggling. Healthcare,
11 protecting Medicaid and passing the New York
12 Health Act, because yes, healthcare pertains to
13 the workforce during mass unemployment where so
14 many of our community members are losing health
15 care. And most importantly, raising revenues and
16 making sure that the billionaires that have
17 earned billions and billions of dollars during
18 this pandemic are not getting away with this
19 while our community members are the ones that are
20 suffering.

21 Thank you so much for the opportunity to
22 testify today, and I'm happy to answer any
23 questions you might have.

24 ASSEMBLY MEMBER MCDONALD:

Thank you

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2 And finally, Diana, Diana Moreno, welcome.

3 MS. DIANA MORENO, PROGRAMS DIRECTOR, NEW

4 IMMIGRANT COMMUNITY EMPOWERMENT:

Thank you s

5 much for having me. Hi, my name is Diana Moreno.

6 I am the program director at New Immigrant

7 Community Empowerment and I would really like to

8 thank Senator Ramos and everybody present for

9 giving us the opportunity to represent some of

10 the workers who have long been excluded from our

11 economy, from the benefits even though they pay

12 taxes into our system and especially now during

13 the pandemic have been some of the hardest hit,

14 not just in a health crisis but in an economic

15 crisis that has left many of them homeless and

16 struggling to put food on the table.

17 As one of the strange silver linings of

18 this, of this pandemic, has been actually to

19 expand our work and our reach of New Immigrant

20 Community Empowerment from a place that was

21 centered in central Queens, which as Senator

22 Ramos very well knew, was at the center of the

23 epidemic back in March and April, two, actually

24 opening up two more centers in Brooklyn and in

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2 the Bronx because we saw the need of the
3 community for disaster relief.

4 We became from an immigrant rights and
5 worker centered organization focused on helping
6 educate folks around their rights, helping
7 educate folks around safety and health training,
8 to a disaster relief organization helping people
9 put food on the table, and we continue to do that
10 to this day.

11 Unfortunately, our center has also
12 really -- we have been witness to those advancing
13 needs of a population that was already on the
14 edge long before this pandemic. These are day
15 laborers that every single day have to go out to
16 a street corner to look for work and they might
17 be in the most precarious conditions to be able
18 to maybe be offered, to get into a van for maybe
19 what's \$80 a day for a hard day's work, that they
20 may or may not get at the end of the day.

21 These are workers who face really high
22 incidents of injury and death on the job,
23 including two workers that we've recently mourned
24 at a rally a couple of weeks ago, which Senator

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2 Ramos attended, two workers that died due to
3 unsafe conditions, one in Queens and one in
4 Manhattan, both of them immigrant Latinos, who
5 again due to the lack of regulations and the lack
6 of employer oversights that care more about
7 profit than human life are no longer with us.

8 Unfortunately, this population also has
9 faced some of the worst outcomes as far as the
10 illness rates, contagion rates and the death
11 rates of this particular pandemic, which made us
12 do, as a staff at New Immigrant Community
13 Empowerment do something that we never thought we
14 would be doing, which is reaching out to
15 consulates from Latin America to help people
16 repatriate bodies, repatriate remains. This is
17 something that has truly changed our organization
18 from within, and I really hope that the stories
19 of our members reach you all, to understand that
20 the safety net was no longer there, and this
21 particular population that was already on the
22 edge of the cliff has fallen off the cliff. And
23 we need immediate emergency assistance in order
24 to the ever growing generational issues that are

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2 going to happen if we do nothing for these
3 workers.

4 One of the those issues is, of course,
5 even the mental health crisis that is tied to
6 this, to this overall health crisis in which we
7 see when we survey our members, that 15 to 20
8 percent are having deep depression, anxiety, and
9 even suicidal ideation, as was mentioned by one
10 of our former colleagues.

11 Something else that we really care
12 deeply about is the fact that as unemployment has
13 grown within this sector, other of our members
14 who may have worked in restaurants, who may have
15 worked in salons, who may have worked cleaning
16 homes, et cetera, they are out of work while most
17 of our members who work in construction are just
18 starting to enter back into the economy.

19 However, that labor pool of unemployed
20 people that are now trying to enter into
21 construction, what that creates is a really
22 unfortunate, exploitive conditions, in which
23 people were unfortunately take the lowest wage
24 that they can get, they will not ask questions.

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2 If there is no social distancing say, or no PPE,
3 they will go with it because they need the money.

4 And without those federal regulations --
5 excuse me, those state regulations and those
6 strong laws that prevent of these sorts of
7 exploitations from happening, our communities are
8 going to continue to be injured and to die on the
9 job.

10 I'm here in support of an essential
11 workers bailout. I'm here in support of Carlos'
12 Law which would allow for workers to actually be
13 safe and secure and for the fine for their deaths
14 to be more than \$10,000, which is the current
15 fine ever whenever an employer is found negligent
16 of a dying worker, and I'm here in support of the
17 SWEAT bill which would allow for our workers to
18 ensure that they have a recourse against wage
19 theft. I really appreciate your time. Thank you
20 so much.

21 SENATOR RAMOS: Well, thank you guys so
22 much. I have to say that working with all of you
23 throughout all of this has been quite an
24 experience, and I'm sorry that I'm getting

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2 emotional. The truth is that we all know that
3 what we're seeing on our streets is very hard,
4 that there really is a population here in New
5 York that is much worse off than many, than most
6 in our state. And thanks again for working with
7 me, especially on the excluded workers bill, to
8 make sure that we're providing them with some
9 compensation as the taxpayers that undocumented
10 people are, oftentimes paying more taxes than
11 billionaires themselves in this state.

12 Can Deb perhaps and Carlyn and Diana can
13 chime in at any point. Can we talk about how it
14 is that people are surviving? They can't work,
15 right. If they worked in restaurants in Midtown,
16 those closed. They don't qualify for unemployment
17 benefits. They don't qualify for PUA or anything
18 like that. How are people feeding their families
19 and making rent and paying for their needs?

20 MS. AXT: I mean, in our membership, it
21 varies. The answer is they're not. They're
22 obviously barely surviving, people are waiting in
23 incredibly long lines to get food. It is possible
24 to access some kind of food, but it's not enough.

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2 It's certainly not enough for substantial
3 families. There's no way to get diapers. There's
4 no way to get clothing for your kids, much less
5 enable your children to be remote learning for
6 school. People have managed to get small sums of
7 money from organizations like ours and others
8 that are testifying here, who have scraped
9 together money from donors and foundations. And,
10 of course, there was a city fund that did give
11 out some funds, right, a few hundred dollars to
12 help with food. It's to help with basic survival.

13 But as soon as the moratorium is lifted,
14 okay, people's debts are building up and the
15 landlords are starting to harass more and more,
16 and have already convinced many people to give up
17 on their homes. And as soon as the moratorium is
18 lifted, people will be facing massive debt that
19 there's no way to get out from under.

20 SENATOR RAMOS: Diana, can you add? I
21 know you guys also put together a pantry like
22 Make the Road and like our office and so many
23 other places where we've had to step up in that
24 way.

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2 MS. MORENO: Yeah. So, this kind of goes
3 back to a point that I touched on during my
4 testimony which is that folks are finding what
5 they can, and that means that there's people that
6 are switching industries, that means that there
7 are people that are working for less, that means
8 that there are people that are working six hours
9 a week if we can, right, and obviously that's not
10 enough to meet the needs of a family,
11 [unintelligible] [07:54:52] does not meet the
12 needs of even an individual, which is why we have
13 a lot of stories from members who have gone
14 through, you know, the unemployment un week one
15 in March to not being able to pay rent to now
16 living in a shelter.

17 And these are the same numbers that are
18 showing up three times a week to volunteer with
19 our organization to provide food for others. And
20 so it is incredibly heartening and inspiring for
21 me to be able to share their stories with you.
22 However, it is my duty to really communicate the
23 dire situation in which they find themselves
24 because it is through community organizations

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2 like ours, like Make the Road and through offices
3 like Senator Ramos and others that folks are able
4 to eat, however, we know that this is going to
5 take a long -- this is going to be a long
6 recovery and how sustainable is it for folks who
7 depend on any sort of services?

8 SENATOR RAMOS: I want to squeeze in one
9 question, which is kind of a non-sequitur for
10 Carlyn, only because I know CPC is such a big
11 umbrella organization and I think among them is
12 APA, right, which is in my district?

13 MS. COWEN: We work closely.

14 SENATOR RAMOS: You work closely. It's
15 kind of a switch in topics, but we've seen a lot
16 of small businesses also be hurt by SLA fines as
17 of late, particularly in the Asian and Latinx
18 communities which, of course, oftentimes are the
19 bigger employers for our people, right. Can you
20 tell us a little bit -- are you guys working at
21 all in that, with that issue? Have you been?

22 MS. COWEN: We've had a lot of community
23 members that have had this issue, and I think
24 that it's one of many issues that our small

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2 businesses are facing, and I think that
3 particularly for immigrant run and limited
4 English proficient small business owners, they
5 are facing so many burdens right now because they
6 have been left out of the PPP program, while I
7 think someone said earlier organizations like
8 shake shack get it, they are trying to navigate
9 ever changing guidance, fines, guidelines,
10 updates, from a bunch of different city and state
11 agencies, all in language that is not their home
12 language. And then they're being faced with
13 increasing fines and having to put out costs just
14 to get by that they don't have the money for. And
15 so it's been a huge problem. We're seeing
16 businesses close. It means that more families are
17 going hungry.

18 SENATOR RAMOS: All right. Well, thank
19 you. And thank you, I know Diana brought up
20 mental health, which is a huge issue. I mean
21 we're going through a collective traumatic
22 moment, but it only adds onto, you know, the
23 rhetoric and the hate that's coming from the
24 White House and unfortunately this is an issue

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2 that I think we need to start talking more about
3 is our mental health during and as a result of
4 this pandemic. I'm out of time, so I'll pass it
5 on to the Assembly.

6 ASSEMBLY MEMBER MCDONALD:

Thank you

7 senator and thank you to the panelists as well.
8 First up from the assembly will be our co-chair
9 of banking, Tom Abinanti.

10 ASSEMBLY MEMBER ABINANTI:

I want to

11 thank you all. I want to thank you all for giving
12 us a picture of what's really going on, on the
13 street. And it is sad that so many people are
14 hurting so badly. I want to go off on one issue,
15 though, and I'm particularly choosing this group
16 because you guys, particularly Make the Road have
17 been a leader in proposing some things that I
18 think really need to be detailed, and if not on
19 this call, offline.

20 I want to understand the proposal for
21 cancellation rent. It's very easy to say that,
22 and we understand why so many people need help,
23 but once you get away from New York City with the
24 big landlords and maybe not even having to leave

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2 New York City, you find that a lot of the
3 landlords are people who own a two or three
4 family building. Many of them are immigrants who
5 have scraped together a little bit of money, you
6 know, buy a three-family house. They live in it.
7 Their kids live in it with them. And then the
8 kids get married and move out and so they rent
9 the apartment. And so an across the board no rent
10 doesn't work.

11 How do we fashion something that
12 actually helps the tenants and doesn't
13 unintentionally hurt so many of the people who
14 really need that income because that's what
15 they're using to get by. They may have a store
16 down on the first floor and they may be the store
17 that's being closed that you're talking about,
18 and now they need the rent from the other
19 apartment just to pay the mortgage or just to buy
20 food themselves. How do we fashion this? Is there
21 a proposal out there that somehow makes all this
22 work?

23 MS. AXT: There are a number of
24 proposals, and I'm happy had to follow up on all

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2 of the details, but we are certainly not
3 proposing a mandate that just says landlords
4 cannot charge rent, right. That is absolutely not
5 acceptable and not the way that we should be
6 going about this. We absolutely agree. And a huge
7 risk here frankly, is that the same thing we're
8 seeing with the death of Main Street, which we
9 certainly hope will not be permanent, right, it
10 could happen in housing as well, right. We don't
11 need to see immigrant and other small homeowners
12 and small business owners be put out of business
13 while giant corporations and private equities
14 swoop in to profiteer off of the ruins.

15 So our approach on canceling rent and
16 our approach on funding excluded workers is
17 really fundamentally the same. On one day two
18 weeks ago Jeff Bezos made \$13 billion. On that
19 one day, he made more money than he and his
20 grandchildren and great-grandchildren could ever
21 hope to earn. It is disgusting. We live in a
22 state that says that is okay while our members
23 are going without a single penny to live on,
24 while our members, who are working in his

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2 warehouses and our members who are bicycling food
3 to us 13 and 14 hours a day with just plastic
4 bags covering their hands and home-fashioned
5 masks to protect them, that is disgusting! We
6 cannot say that this is the state we want to live
7 in. So it's all about recapturing that wealth.

8 ASSEMBLY MEMBER ABINANTI: I would
9 disagree with you. Why are we not talking about
10 increasing the minimum wage? I have never heard
11 anybody talk about that.

12 MS. AXT: I mean, that should absolutely
13 be a part of all of this, right. Unfortunately,
14 the 65 percent of our members who are still
15 unemployed, like that's not going to be an
16 immediate solution, so we're definitely in crisis
17 intention mode, of course, in terms of re-
18 stabilizing our communities and allowing people
19 to survive the next few months. But definitely,
20 we're with you on all of those broader solutions.

21 ASSEMBLY MEMBER ABINANTI: Okay. I
22 in order to having the conversation, because I
23 don't want to do more damage to the people who
24 need help by, like you said, just canceling the

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2 rent. I really want to have this conversation
3 because if we're going to move forward, we've got
4 to come up with a solution that works for
5 everybody.

6 MS. AXT: Definitely. I'll send you
7 follow-up info [unintelligible] [08:02:29].

8 ASSEMBLY MEMBER ABINANTI:
9 [unintelligible] [08:02:28] what needs to be
10 portrayed in this hearing. Thank you very much.

11 ASSEMBLY MEMBER MCDONALD: Okay, ba
12 the Senate.

13 SENATOR RAMOS: Up next we have Senator
14 Jackson.

15 SENATOR JACKSON: Hi, everyone. First
16 let me thank the three of you for coming in and
17 obviously I'm just listening to your detailed
18 situation that our people are in, and it's
19 devastating. The one thing really caught me is
20 Carlyn, when you said the percentage was 800 and
21 what, 80 or something like that?

22 MS. COWAN: For the unemployment
23 increase?

24 SENATOR JACKSON: Yeah.

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2 MS. COWAN: 900 percent increase in a
3 month.

4 SENATOR JACKSON: Oh, my God. I mean,
5 900 percent. It's just insane to even think
6 about, that people are, you know, being laid off
7 and struggling, and in fact I was being at one
8 hearing and they were talking about the food
9 distribution lines and how many meals are given
10 out in Chinatown area, over 10,000 per day or
11 something like that. And I mean compared to, you
12 know, like 1,000. It's just unimaginable that
13 we're in such dire situations, and that's why we
14 have to take corrective action ourselves if the
15 federal government is not going to do it.

16 We just have to. I mean, and in anyone
17 if anyone does believe the situation, they should
18 hear all three of your testimonies and then they
19 will know. And if they can't feel that in their
20 heart, let me tell you, if they can't feel that
21 in their heart, something's wrong. And those are
22 the individuals that we must get out of office,
23 because they basically have I guess a brick wall
24 in front of them that can't see it, can't hear

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2 it, and can't feel it.

3 And I'm glad that I was able to stay for
4 the entire duration and to hear all of what you
5 had to say, and obviously Jessica and some of us,
6 as you know, we did a fast for 24 hours and we
7 slept on the sidewalk, but that's no comparison
8 to the people that are struggling, struggling
9 every day just to try to make ends meet, to have
10 a decent meal. But let me thank you. You're doing
11 God's work on behalf of the people of our great
12 city and state. Thank you.

13 ASSEMBLY MEMBER MCDONALD:

Thank you

14 senator. From the Assembly we will go to my
15 colleague, Yuh-Line Niou.

16 ASSEMBLY MEMBER YUH-LINE NIOU:

17 Sorry about popping on and off. I couldn't figure
18 it out for a second. But I just wanted to say
19 thank you to everyone for testifying and, Deb, I
20 know that workers here in Chinatown too, our
21 [unintelligible] [08:05:48] workers are exactly
22 the same situation that you're describing, and I
23 just want to say thank you for your testimony.

24 And I also wanted to thank our chairs

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2 today because they're asking all the right
3 questions, and so many moments where I was like,
4 I need to ask this, and they asked it already.

5 So I just want to touch on a couple of
6 things today. I know that you were just talking,
7 so Chair Abinanti has mentioned minimum wage
8 increases, and then Carlyn you had talked about
9 how 900 percent increase in unemployment. I mean
10 minimum wage increases are great, but if you
11 don't have a job, you know, the wages aren't
12 going to be there and it won't help and that's
13 why we need to talk about canceling rent and we
14 need to talk about all of these things.

15 But I just wanted to say that the state
16 made huge cuts to our social services. And I
17 wanted to ask you what are some of the impacts to
18 the workers, to our social workers, et cetera, to
19 folks who are in our 501(C)3s who are actually
20 doing the actual footwork. And then on the flip
21 side what is happening to folks on the ground due
22 to these cuts? Like what is happening to the
23 folks that you're working with?

24 MS. COWAN: Yeah. So just quickly, the

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2 stat about Asian-American unemployment increase
3 is actually 6,900 percent. Like that is the scale
4 of the crisis that we are talking about. And
5 that's why yes, like we do need to increase
6 minimum wage. We needed to continue increasing
7 minimum wage for a long time, but that's not
8 going to be nearly enough when people that are
9 earning minimum wage are months behind on bills
10 and many, many more people are unemployed.

11 We need to stop talking about handling
12 this crisis in this measure or that measure. It
13 needs to be this and that and that. It needs to
14 be increasing the minimum wage and an excluded
15 workers fund and canceling rent and mortgages and
16 supporting small landlords and the New York
17 Health Act and all of these other things, because
18 otherwise we are just going to be stuck in
19 perpetual relief and we're never actually going
20 to get to the recovery phase of this crisis.

21 People are struggling too much and we
22 are in too deep, and we see that in the social
23 services sector every day. We deliver over 1,000
24 meals a day, and on top that of we distributed

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2 over 100,000 pounds of food, and people are still
3 going hungry every day. We are helping people try
4 to avoid eviction. We're helping people figure
5 out school and jobs and benefits and try to keep
6 people from getting deported, and all of this is
7 happening at the same time as like cuts are
8 happening to our programs.

9 And our contracts don't fort PPE or
10 supplies, our contracts aren't flexible enough to
11 actually manage a crisis. They are so rigid that
12 we have to figure out how to manage a crisis
13 around them. And what this means is like staff
14 are spending time instead of meeting people's
15 material needs, trying to get PPE, trying to get
16 it to be allowable within their contract, and
17 we're also losing staff. And if that continues
18 happening, not only is the scale of this crisis
19 going to grow, as more and more social service
20 workers end up in the unemployed pool, but we're
21 also not going to have the community-based
22 organizations that have been at the frontlines of
23 this crisis the whole time because we're not
24 going to be able to make it through.

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2 ASSEMBLY MEMBER MCDONALD: All right
3 good.

4 ASSEMBLY MEMBER NIOU: Thank you so
5 much, Carlyn.

6 MS. MORENO: If I could just add to that
7 very quickly. We just had this fight in New York
8 City, right. Like we had to march and demand and
9 ask that these frontline organizations that are
10 the only ones that are able to reach invisibilized
11 populations that are very difficult to, you know,
12 due to language barriers, due to not
13 understanding the system, [unintelligible]
14 [08:09:32], that we stayed alive and afloat,
15 right. We have to fight for our own existence in
16 order to fight for the lives of our members.

17 And that is such an unfortunate and
18 ironic twist considering the high needs of our
19 members in this moment. And that's something that
20 I would like to just spend my day serving our
21 members and helping them thrive, not just survive
22 and because there's a reason why even prior to
23 the pandemic, this population was on the edge.

24 As undocumented workers in an anti-

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2 immigrant, incredibly anti-immigrant political
3 climate, with a healthcare system that does not
4 meet most of their needs. There is layer upon
5 layer. I just want to reiterate what Carlyn said
6 in terms of like the solution, the actual
7 recovery is not just one policy, right.

8 I do believe that an excluded workers
9 fund is a fantastic way to start because it will
10 address that inequity, that generational inequity
11 of billionaires who pay no taxes to a population
12 that is barely surviving that pays taxes into the
13 system and is [unintelligible] [08:10:50] --

14 ASSEMBLY MEMBER MCDONALD:

Thank you

15 Diana, thank you very much Yuh-Line. Thank you,
16 as well.

17 ASSEMBLY MEMBER NIOU:

Well, thank you

18 and I want --

19 ASSEMBLY MEMBER MCDONALD:

Senator,

20 back, back to you.

21 SENATOR RAMOS:

Thank you. Up next, we

22 have state Senator Gustavo Rivera, who we haven't
23 heard from today.

24 SENATOR GUSTAVO RIVERA:

Although I've

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2 been in meetings up and down.

3 SENATOR RAMOS: You have, you have.

4 SENATOR RIVERA: But I've been here for
5 most of the thing.

6 ASSEMBLY MEMBER MCDONALD: Yes, you
7 have.

8 SENATOR RIVERA: A quick thing, it is
9 very important, I'm very disappointed that -- I'm
10 thankful for the assembly members in the minority
11 who are still here. Thank you. I'm quite
12 disappointed that there are no minority members
13 from the Senate right now here. I'm not going to
14 -- you've already been thanked enough. I'm going
15 to do something different. I'm not going to
16 devil's advocate. I'm going to play the devil.
17 Any of you. We can't -- you're talking about
18 taxing -- we can't tax our way out of this,
19 right. Does anybody have a response? We can't tax
20 our way out of this.

21 MS. AXT: That's completely ridiculous,
22 of course.

23 SENATOR RIVERA: What do you mean?

24 MS. AXT: Austerity politics have

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2 already decimated the Department of Labor that's
3 now supposed to be supporting unemployed workers
4 across the board. It's already decimated our
5 enforcement to support our workers in low wage
6 jobs who are being exploited, even before COVID,
7 right. So we have basically decimated the support
8 systems that we now need and that are not
9 available to us.

10 And now we're allowing the argument that
11 they're going to be cut further so our folks
12 cannot survive. The amassing of wealth, this idea
13 that billionaires will somehow --

14 SENATOR RIVERA: But they'll leave.
15 They'll leave!

16 MS. AXT: I recommend that everyone go
17 look at the little things on the internet that
18 demonstrate how much a billion dollars really is.
19 Taxing billionaires' increase in wealth by eight
20 percent, right, which is what Senator Ramos and
21 Assembly Member De La Rosa's tax would do, eight
22 percent on just the gains in wealth based on
23 their assets, right, they won't even feel it.

24 SENATOR RIVERA: But they'll leave. I

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2 mean they've left before. Won't they leave? Okay.

3 You know what? Moving on, moving on. You're

4 talking about other places.

5 MS. AXT: Right, The evidence is that

6 they don't leave. The evidence is that they don't

7 leave. They won't even feel this.

8 SENATOR RIVERA: Let's move on, let's

9 move on. Listen. This housing thing, you're

10 talking about the housing. That's problem solved.

11 Didn't we solve that problem? We, it's an

12 executive order. It's solved, right? It's solved.

13 Oh, so it's solved? Nobody wants to respond to

14 that?

15 MS. AXT: The which issue?

16 SENATOR RIVERA: The housing issue.

17 There is an executive order which actually makes

18 sure that you can't get evicted, so the problem

19 is solved, right?

20 MS. MORENO: I would point to the gap

21 between law and enforcement, and I would point to

22 the fact that many folks, especially in New York

23 City, that participate in underground economy

24 because they are undocumented because they're in

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2 an informal work situation, they're also
3 participating in an informal living situation in
4 which they don't know their rights, they don't
5 understand how those laws apply to them and if
6 they do. So, whether our governor has an
7 executive order, that makes no difference in
8 their lived reality. That makes no difference in
9 the fact that they're out of their home and all
10 their stuff is sitting outside of their home and
11 their stuff is lost, right.

12 SENATOR RIVERA:

Devil mask off. Cancel

13 rent. Tax billionaires, tax millionaires. Let's
14 do this. They're not going to leave, they're not
15 go anywhere. Let's do this. We can't tax our with
16 a out of it? How about we lessen the blow on the
17 people that are really hurting right now, it's
18 completely crazy and ridiculous. Governor Cuomo,
19 it is you, sir. You got your people watching
20 still? It is you, sir. You are getting people to
21 kicked out of their homes. You are making sure
22 that billionaires and millionaires are treated
23 completely different than the people who these
24 folks represent. Shame on you, sir. Devil mask

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2 on. Oh, but they'll leave. I'm done.

3 ASSEMBLY MEMBER MCDONALD:

Thank you

4 senator. And we will move on. A little bit more
5 passion next time would be appreciated. If we can
6 move on to our colleague Assembly Member Carmen
7 De La Rosa who will be finishing out the
8 Assembly's comments this evening.

9 ASSEMBLY MEMBER DE LA ROSA:

It's

10 hard to follow Gustavo Rivera and his devil and
11 saints masks but I will do my best. First of all,
12 I want to thank the panel for your testimony.
13 We've been working really, really hard to bring
14 to light the narratives of the people that you
15 all work every single day to represent. And I
16 just want us to, for our colleagues who may be
17 watching, who do not share a part New York City,
18 but have a vested interest in ensuring that the
19 solutions that we're proposing here understand
20 that it benefits the constituencies that they
21 also represent. Can we talk a little bit about
22 the tax and the solutions that have been
23 presented and how they will help those
24 constituents who live outside of New York City as

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2 well?

3 And I also want to dig a little deeper
4 into the impact, as it has been felt by the
5 families that you represent. What percentage of
6 the families that you represent have lost loved
7 ones in this time, and what does that mean for
8 access to healthcare? What does that mean for
9 staying in their homes? What does that mean as
10 families get ready to go back to school? How can
11 we kind of put all of this in a context where
12 people understand that New York State has the
13 ability and the authority to get this done, and
14 why this is a critical moment for us to do it.

15 MS. COWAN: I mean, I think the key
16 thing here is that this is a statewide issue and,
17 yes, it looks different downstate than upstate,
18 but New Yorkers across the state are facing the
19 same problems of mass unemployment, lack of
20 healthcare and inability to meet basics needs.
21 And we actually saw that the first city that has
22 made any moves towards anything like cancelling
23 rent is Utica, an upstate city, because they were
24 seeing the urgent needs of their community

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2 members.

3 And so this isn't just something that's
4 a downstate issue. It's something that we see
5 that is completely across the board, and we know
6 that New York has the ability to do things like
7 raise revenue. There's so many bill that are
8 already existing that with literally the flick of
9 a pen, we could completely change how we are
10 handling this crisis from just kind of creating
11 little band-aids here and there when like what we
12 really need to be doing is actually dealing with
13 this like the gigantic flood it is and is going
14 to continue being as measures like the eviction
15 moratorium expire.

16 As we're facing the end of that, as
17 we're facing going back to school, as we're
18 facing into the winter, this crisis is only going
19 to grow and the measures that New York State
20 already has that we just have to pass are the
21 things that are actually going to begin to
22 address this.

23 MS. AXT: Yeah, I would just add a quick
24 glance at a little bit of data. The fiscal policy

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2 institute did a geographic breakdown of the
3 exploited worker bailout fund and where it would
4 impact different regions. And like \$380 million
5 in investment would go to Long Island, \$450
6 million to Hudson Valley, \$260 million to
7 northern and western New York, so it's definitely
8 not just a New York City issue, right, and those
9 are obviously the concentration of folks who are
10 excluded from these benefits are also creating
11 real crises and economic crises for the
12 communities in all of those geographies. That
13 needs to be addressed as well as the humanitarian
14 aspect, of course, that we've been talking about.

15 ASSEMBLY MEMBER MCDONALD:

Well, tha

16 concludes our commentary for this panel. I just
17 want to take a moment of personal privilege as
18 well. Many of you know I'm an upstate member. So
19 these issues are in our area, but they're not as
20 predominant as they are in the city. But I have
21 to tell you, listening to your passion, to your
22 comments, it reinforces why we need to work
23 collectively to put some changes into effect. At
24 the end of the day, regardless of what your

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2 thoughts are, when people are being treated
3 unfairly, we need to level the playing field,
4 plain and simple. So, thank you I sound like Dick
5 Gottfried the other night. Here we are into our
6 tenth hour of testimony and the best is just
7 starting right towards the end. And senator, I
8 turn over the next panel to you.

9 SENATOR RAMOS: Actually --

10 ASSEMBLY MEMBER MCDONALD: Oh, I'm
11 sorry. Senate.

12 SENATOR RAMOS: Sorry, yes, we have one
13 more questioner, and that is state Senator James
14 Skoufis.

15 SENATOR SKOUFIS: Thank you. And I
16 apologize for jumping in here at the end and
17 keeping you. But thanks for your testimony. I do
18 want to echo a little bit of what John McDonald
19 just said and that is those are outside the city,
20 certainly we hear this perspective but I think
21 not nearly as much as some of our colleagues in
22 the five boroughs, and to hear it amplified by
23 all of you I think is valuable for us outside of
24 New York City. So I do appreciate it.

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2 Certainly you talked a lot about issues
3 and proposals that are pending that are in the
4 legislature. One of the most imminent of which is
5 this issue of revenue, I'll say as a marginal
6 member, I support raising revenue from those who
7 can afford to sacrifice, as many others have
8 including those families that you represent.

9 But I do want to hone in a little bit,
10 Deborah, on something you opened with and
11 something you touched on again maybe just in the
12 last or second to last set of questions, and that
13 is that we could talk about these things that are
14 pending but there are some issues right now that
15 the Department of Labor and others can help you
16 all with without us passing any legislation,
17 right.

18 And that is it sounds like there is a
19 significant issue with, for example, lack of
20 enforcement of wage theft. You mentioned that,
21 and I think one or two other items that, quite
22 frankly, it requires no new legislation, nothing
23 new from the governor, no new directives. That is
24 law as we speak on August 13th.

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2 And so I guess if you can hone in a
3 little bit on let's say, for example, that wage
4 theft issue, is the enforcement worse than it was
5 pre-pandemic or has it always been this bad and I
6 it's sort of status quo and par for the course? I
7 would like to offer to you as chair of
8 investigations my office and I, however we can be
9 helpful, but something that again doesn't require
10 legislative action like this, if I can get
11 endangered and be supportive and perhaps push
12 DOL, whether it's in my district or statewide or
13 whatever it might be, I really hate to hear
14 something like that happen. So if you can
15 elaborate a little bit, please.

16 MS. AXT: Thank you so much. That's a
17 really important question. The answer is the
18 Department of Labor, before COVID needed to
19 quadruple its size to get back to the 1960s
20 staffing capacity that it had, right. So it has
21 basically been decimated in its ability to
22 enforce labor law over the course of recent
23 decade. As a result, the DOL for many years now
24 doesn't even attempt to investigate the full six

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2 years of back wages that workers who have their
3 wages stolen are entitled to. It only tries to
4 investigate three years. So that's just one
5 example of the ways that they have just kind of
6 thrown up their hands. And I think it's largely
7 because of staffing and an unwillingness by this
8 administration to be honest about the fact that
9 there's not really an intention to enforce our
10 workers rights laws.

11 It has, I would say wage theft
12 enforcement from what I can understand from our
13 attorneys, and we usually are handling several
14 hundred wage theft cases at any point in time,
15 has come to a screeching halt, so cases are not
16 moving at all at this moment.

17 SENATOR SKOUFIS: So it's worse now than
18 it was six months ago?

19 MS. AXT: Yes.

20 SENATOR SKOUFIS: To be clear. Okay, got
21 it. I'd love to continue this offline if you're
22 interested.

23 MS. AXT: Yes, absolutely.

24 SENATOR RAMOS: If I may, I'd like to

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2 add, Senator Skoufis, that this is why we
3 recently passed the SWEAT bill.

4 SENATOR SKOUFIS: Oh, I'm well aware,
5 yeah.

6 SENATOR RAMOS: Yeah, you may recall
7 that the governor vetoed it last year, but the
8 attorney general's office today came out in
9 support of during their testimony so we're hoping
10 that it gets signed this year. I mean it would
11 actually -- and people don't realize this -- it
12 would actually hopefully solve the issue that we
13 have where wage theft happens in New York to the
14 tune of \$1 billion every year, according to the
15 U.S. Department of labor.

16 SENATOR SKOUFIS: Yeah, Deborah and
17 whoever else, if you want to reach out and
18 perhaps with some ideas where we can collaborate
19 again if you're interested, I'll look out for
20 that, thanks.

21 MS. AXK: Well we thank you, senator.

22 SENATOR RAMOS: I can reach out with a
23 bucket slip for my excluded workers bill, James.
24 All right. Assemblyman McDonald, do we have the

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2 next panel?

3 ASSEMBLY MEMBER MCDONALD:

We do hav

4 the next panel. This will be panel number 12. And
5 joining us tonight will be Charlene Obernauer,
6 the executive director of NYCOSH, Rebecca Miller
7 who is deputy legislative and political director
8 for CWA, and Maritza Silva Farrell, the executive
9 director of Alliance for a Greater New York,
10 ALIGN as they call it. So Charlene, you'll be
11 first, Rebecca you'll be second, and Maritza,
12 you'll be third.

13 MS. CHARLENE OBERNAUER, EXECUTIVE
14 DIRECTOR, NEW YORK COMMITTEE FOR OCCUPATIONAL
15 SAFETY AND HEALTH:

Great. Can you all hear me?

16 ASSEMBLY MEMBER MCDONALD:

Go ahead

17 Charlene. We're good to go.

18 MS. OBERNAUER:

Okay. Great. So thanks

19 to everyone, to our senators and assembly members
20 and, of course, to our chairs for truly listening
21 to every testimony today. I've been listening to
22 and it's been amazing to hear how many questions
23 and how engaged everyone is, especially as we get
24 into the 7:00 o'clock hour, so thank you so much.

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2 Today in New York State, as many other people
3 have testified, workers are in crisis. Workers
4 are facing record numbers of unemployment and
5 workers are facing unprecedented health and
6 safety risks on the job. Essential workers have
7 been exposed to COVID-19 hazards since the crisis
8 emerged in New York State and many have gotten
9 sick. And the exact number, we don't really know
10 because there's not really tracking on this data.
11 But some workers have not quite chosen to go back
12 to work but gone to work out of necessity because
13 they don't really have any other choice. And in
14 doing so, they're exposing themselves and their
15 families to health hazards.

16 And one of the questions that came up,
17 and as I said I've been listening all day as
18 well, is about the question of OSHA and whether
19 or not OSHA is effective enough to be able to
20 deal with the safety and health problems that
21 workers are facing on the job. And from our
22 perspective, the agency is asleep at the wheel.
23 They've issued guidance but there's no
24 enforceable standards whatsoever.

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2 And the standards that they do have not
3 related to COVID but their already existing
4 standards, they're also not enforcing and they're
5 not doing inspections. I was disappointed to see
6 that OSHA was not on the panel of speakers today
7 because I think it would be really important to
8 hear from them and to hear how they are
9 approaching inspection in New York State. And so
10 I'm going to give a couple of examples of why I
11 have issues with OSHA's enforcement. So, for
12 example, OSHA's inspection rate was higher before
13 coronavirus was declares a national emergency, so
14 the number of OSHA citations fell by over 17,000
15 between January 1, and May 22, 2020 when we
16 compared it to the same period in 2019.

17 And even though OSHA's investigators are
18 decreasing, workers complaints continue to rise.
19 For example, and this isn't a New York State
20 example, but it's an example of what's happening
21 all over the country. This was from a local news
22 report that I pulled when I was writing this
23 testimony, on April 1st, a worker at Maid-Rite
24 Specialty Food meat packing plant in Dunmore,

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2 Pennsylvania filed a complaint with OSHA and the
3 worker listed a number of COVID-related safety
4 issues and went on to say half the plant is out
5 sick, they hired more people and they're not
6 taking care of the problem, I'm scared to go to
7 work every day. I'm risking my life, right. So
8 the person states clearly I'm risking my life.
9 And OSHA didn't inspect the facility. They did
10 not inspect the facility. They took, the related
11 the worker's concern to Maid-Rite, to the company
12 itself and OSHA took no further action.

13 This is just an example of how OSHA is
14 responding when workers are saying that my life
15 is in danger and I don't know what to do. But of
16 course, this isn't about OSHA, right. This is
17 about New York State and what New York State can
18 do to improve worker safety.

19 So, first, and I know Ricky spoke about
20 this earlier, but NYCOSH is joining its
21 colleagues in labor and the community to call on
22 New York State to pass legislation, New York
23 HERO, which would create enforceable standards to
24 protect workers from COVID-19. This would include

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2 protocols on testing, face masks, PPE, social
3 distancing, hand hygiene, disinfection and
4 engineering control.

5 And I understand that some people may
6 think this is not necessary, we heard from people
7 earlier who said that OSHA is sufficient, which I
8 could give hours and hours of testimony on why
9 OSHA is not sufficient. But who do workers call
10 when they experience health and safety violations
11 on the job? We train 15,000 workers a year, and
12 when workers ask me, who do I call, they can't
13 call federal OSHA because no one's going to come.
14 And when we train workers who ask these
15 questions, we honestly and truthfully don't know
16 where to send them because the guidance put forth
17 is not enforceable.

18 Strong penalties and enforcement
19 mechanisms would lead to increased compliance and
20 lower COVID transmission rates. So, again, we
21 don't know where to send workers, we don't see
22 that they actually have a place to go. And
23 workers are scared and they're afraid for their
24 lives, they're afraid for the lives of their

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2 families.

3 The last thing I'll say is, speaking to
4 the previous panel, I earlier mentioned when
5 workers don't have economic stability they'll
6 ultimately work in jobs that will exploit them
7 and put them in unsafe working conditions. And we
8 believe like Deb Axt from Make the Road testified
9 and Diana from NICE testified, that one solution
10 to protect undocumented workers who have been
11 excluded from federal aid is to support the
12 Excluded Workers Bailout Act, and that's
13 something that we feel is important to protect
14 health and safety. Because like I said, if
15 workers, out of economic necessity, have to work,
16 they're not going to feel protected. And I will
17 say anyone who's spoken to workers who have to go
18 to work, mostly undocumented workers right now,
19 you will hear testimony after testimony of
20 workers who are just not safe on the job. Their
21 employers are not doing enough to protect them.
22 And they're scared. They're scared to go to work
23 feel they have to go to work because they can't
24 makes ends meet.

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2 So anything that the legislature can do
3 to make it easier on folks so they can make the
4 decision to potentially not go to an unsafe work
5 that might make them sick or make their family
6 members sick, that would be really necessary. So
7 that's it for me. Thanks to the Senate and
8 Assembly for having me here. I appreciate the
9 opportunity.

10 ASSEMBLY MEMBER MCDONALD:

Thank you

11 Charlene. Rebecca?

12 MS. REBECCA MILLER, DEPUTY LEGISLATIVE &
13 POLITICAL DIRECTOR, COMMUNICATION WORKERS OF

14 AMERICA DISTRICT 1: Good evening. My name is Bec
15 Miller, I'm the New York State deputy legislative
16 and political director for the Communications
17 Workers of America District 1. I just want to
18 thank all of you so much, as we get to the 7:00
19 p.m. time, thank you so much for your engagement
20 for your time here and for the opportunity to
21 testify today at this important hearing. CWA
22 District 1 represents thousands of essential
23 workers who have been on the frontlines of the
24 COVID-19 crisis in New York, including healthcare

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2 workers, telecommunication workers, New York City
3 traffic agents and supervisors, board of election
4 employees and all types of public servants in
5 city and state government.

6 Sadly, we've lost quite a few members to
7 COVID-19. Our members face extraordinary
8 challenges and dangers going to work since the
9 beginning of the pandemic. Luckily, they've had a
10 union and CWA has been able to win better
11 protections including extended paid leave, hazard
12 pay, safety accommodations for many of our
13 members. However, tens of thousands of essential
14 workers have no union to fight for them.

15 Throughout this crisis, we've seen an
16 outpouring of support for essential workers, but
17 we need to turn the support and gratitude into
18 bold, legislative change that meaningfully
19 protects workers on the job and improves the
20 lives of workers across New York State.

21 This testimony will touch on a few ways
22 we can do that. The first I'd like to say is
23 supporting New York HERO. So, as we reopen, we
24 urgently need enforceable and health and safety

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2 protections for all workers. I think we've heard
3 that over and over today. So New York State must
4 pass the New York HERO Act soon to be filed by
5 Senator Gianaris and Assembly Member Karines
6 Reyes.

7 We have stories upon stories of workers
8 who are afraid to go to work, laughed at for
9 requesting PPE, lied to about the level of
10 disinfection even after numerous confirmed cases
11 in their workplace threatened with retaliation
12 when they were speaking out. While the union has
13 been able to resolve many of these issues, we
14 know that most don't have a union in New York
15 State. And nobody should have to face these
16 workplace conditions.

17 This legislation would require all
18 employers to adopt enforceable health and safety
19 standards to protect workers from exposure to the
20 spread of COVID. A critical piece of this is
21 worker health and safety committees. In a time
22 where our labor agencies, as we just heard from
23 Deb Axt in a conversation in the previous panel,
24 at a time where we lack the resources to fully

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2 investigate and enforce health and safety laws,
3 worker health and safety committees are a
4 critical tool. Workers are the best, they're in
5 the best position to determine whether a
6 workplace is safe or not. And if a workplace
7 isn't save, they now have legally protected tool
8 to work their employers to address these concerns
9 if this bill passes. OSHA has even lifted these
10 up as central to maintaining workplace health and
11 safety. It's not a new concept, 14 states have
12 it.

13 Lastly on this topic, while I want to
14 say we desperately need this COVID-19 specific
15 infectious disease standard, we should look
16 towards next session and create a general
17 airborne infectious disease standard to make sure
18 that we're prepared for whatever's to come in the
19 future.

20 The next topic I'd like to talk about is
21 revenue, impending layoffs and cuts to necessary
22 programs and services. While we know that we need
23 assistance from the federal government, our state
24 was in dire fiscal concerns prior to the

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2 pandemic. Our state must raise revenue by asking
3 the wealthiest among us to pay their fair share.
4 This allows us to prevent cuts and invest in the
5 health and future of our state and fund excluded
6 workers.

7 There are a slate of bills, I don't need
8 to tell all of you. Ultra millionaires, tax
9 billionaires, tax [unintelligible] [08:34:26]
10 there's a lot of options that we must support and
11 pass. This is life or death. And this has
12 actually been particularly playing out already in
13 the lives of the 15,000 health care workers that
14 we represent. The financial toll of COVID on
15 hospitals has been devastating. So in order to
16 cut costs, they're cutting staffing. What this
17 means is the concern of safe staffing, which our
18 members have been dealing with for decades and
19 which was exacerbated during the COVID crisis is
20 now to an untenable level. We have a workforce
21 exhausted, traumatized and now they're being
22 forced to continue taking care of more patients
23 than they should by health and safety standards
24 and also for their own health.

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2 So we need to do right by the healthcare
3 heroes that we talk and that we clap for at 7:00
4 p.m., we need to do right by them. We need to do
5 right by those in nursing homes and other health
6 care facilities, we need to mandate safe staffing
7 and the only way to do this is to raise revenue
8 and fully staff our hospitals.

9 One other issue I'd like to talk about
10 is with board of election. CWA represents Board
11 of Election Workers Locacl 1183 and they
12 conducted a primary during a pandemic. This took
13 an extraordinary toll. As of the last count,
14 three of our members in this bargaining unit have
15 died, several have been on ventilator and more
16 than a dozen diagnosed with the disease and under
17 quarantine.

18 While CWA strongly supports measures to
19 make voting easier and more accessible and safe,
20 we also need to make sure that when this happens
21 that we don't leave the workers who are doing
22 that work behind. During the primary, more than
23 ten times the number of absentee ballots were
24 received than in recent elections, but the BOE

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2 did not have ten times more staff, copy machines
3 or the space to do social distancing. So as we
4 move forward with implementing necessary election
5 reforms, let's make sure that we also don't
6 forget the workers who are implementing them. And
7 with that, I will conclude with zero seconds
8 left. Thank you so much for all your time.

9 ASSEMBLY MEMBER MCDONALD:

Thank yo

10 Maritza, bring it home.

11 MS. MARITZA SILVA-FARRELL, EXECUTIVE
12 DIRECTOR, ALIGN: THE ALLIANCE FOR A GREATER NEW
13 YORK: Thank you so much again. My appreciation
14 to all of you for staying here until 7:00
15 o'clock, we're going to have dinner together.
16 Thank you so, so much for all the work that you
17 all are doing. So my name is Maritza Silva-
18 Farrell. I am the executive director of ALIGN,
19 the Alliance for a Greater New York. We are an
20 organization that builds longstanding alliance of
21 community and labor and environmental justice
22 organizations.

23 Since the beginning of the pandemic,
24 ALIGN has built the Essential Workers Table. My

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2 colleagues have mentioned about this coalition.

3 This is a statewide coalition composed of 87
4 labor unions, work organizations and other worker
5 advocates to advance the rights of workers during
6 the COVID-19 crisis.

7 To date, even months into a deadly
8 pandemic, there are few enforceable occupational
9 safety and health standard at the federal level
10 or in New York to adequately protect frontline
11 workers from infection, as my colleagues also
12 have mentioned. Racial and gender injustice are
13 at the heart of the lack of protections since the
14 beginning of this pandemic.

15 Essential workers didn't stop working
16 under unsafe conditions at the height of the
17 crisis. And there are disproportionately black
18 and Latinx workers who are least likely to work
19 in jobs that allow them to work safely from home.

20 New York State can fix this injustice by
21 enacting immediate and effective legislation to
22 protect workers. New York HEROES was mentioned
23 and that's what we're asking for. The stakes are
24 too high for inaction. And we must mitigate the

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2 devastating consequences that this disease will
3 continue to have in our communities. As we heard
4 today from many panelists, COVID continues to
5 spread around the nation and New York must
6 prepare for a second wave.

7 Effective legislation will require
8 employers to adopt key health and safety
9 standards that cover all workers in our state,
10 including face masks and PPE requirements, social
11 distancing and hand hygiene policies, and these
12 infection protocols. In addition, these standards
13 must enforceable with clear consequences and
14 penalties for employers who fail to comply with
15 the law.

16 Furthermore, we believe that workers are
17 experts in their own workplace and can play a key
18 role in ensuring safety measures are followed by
19 their employers. Through worker committees,
20 workers will be empowered to raise concerns and
21 report violations as Becca just mentioned.

22 Workers will be empowered and also I think, I
23 believe that the legislation will allow for us to
24 provide strong anti-retaliation protections for

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2 workers who blow the whistle. We heard some of
3 the comments earlier today as well and I'd like
4 to make sure that happen happens.

5 I want to take a few moments to share
6 what workers themselves are experiencing on the
7 ground and emphasize the urgent need for action
8 now. One private sanitation worker, Anthony Pena
9 remembers a time when his coworker was forced to
10 come to work despite him telling his employer by
11 his compromised immune system. That coworker
12 contracted COVID and died. And even after his
13 tragedy, Mr. Pena states that there is still no
14 safety measures in place and the truck and
15 offices are still not properly cleaned and
16 sanitized.

17 Evelyn Brown works at an assisted living
18 facility and she contracted COVID twice and each
19 time she feared of how her three-year-old
20 daughter will be cared for. She worked without
21 protective equipment and sometimes had to bring
22 her own mask to work or wear garbage bags due to
23 lack of gowns. The facility did not do deep
24 cleaning and often ran out of soap. At Mrs.

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2 Brown's facility, approximately 40 residents have
3 died from COVID-19. More than 30 caregivers have
4 tested positive and one housekeeper has died.

5 I also want to be clear that this is not
6 just a workers' right issue. Workers infections
7 lead to community spread and the lack of
8 enforceable standards in workplaces exacerbates
9 these public health emergencies. An outbreak,
10 there's an example of an outbreak at Chaplain
11 Valley Specialty, an apple manufacturing company
12 in Oswego was linked to other clusters of
13 positive COVID-19 cases in neighboring counties.
14 I know the outbreak at Green Empire Farms yield
15 390 positive cases and was at one point the
16 largest COVID-19 outbreak in upstate New York.
17 Both of these instances could have been
18 prevented.

19 So just guidelines are not enough to
20 protect workers. The COVID-19 crisis is shining a
21 light on the unsafe and abusive conditions
22 workers have had to endure simply to support
23 themselves and their families. For years,
24 [unintelligible] [08:41:15] obsession with

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2 efficiency have led to injury and even death. And
3 now these employees are forced to work shoulder
4 to shoulder with colleagues who may be infected
5 with deadly virus.

6 New York cannot rely on these businesses
7 to oversee themselves. Many businesses will not
8 change their behavior unless there are
9 consequences for their decisions. This pandemic
10 is no exception. We cannot risk anymore lives in
11 the interest of justice and protecting the public
12 health. ALIGN and the New York Essential Workers
13 call for immediate legislative action on this
14 matter. We thank Senators Gianaris and Assembly
15 Members Reyes for all the efforts that they're
16 doing right now.

17 Additionally, I would like emphasize the
18 importance of protecting essential workers and
19 families that are excluded from current income
20 relief.

21 ASSEMBLY MEMBER MCDONALD:

We need t

22 bring it home, okay?

23 MS. SILVA-FARRELL:

Yeah, I will say a

24 couple things. Albany must step in to create an

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2 excluded worker fund that would provide a flat
3 rate emergency income benefit to major groups of
4 workers who were mentioned earlier in the
5 testimonies of my colleagues. That is how we will
6 do right for the hard working people of New York.
7 Thank you so much for the time and I appreciate
8 the extra time you have given me.

9 ASSEMBLY MEMBER MCDONALD: Thank you
10 Senator, there is no assembly members ready to
11 speak, so to the Senate.

12 SENATOR RAMOS: Well, we do have Senator
13 Skoufis with a few questions. Senator?

14 SENATOR SKOUFIS: Thank you. And you
15 said that as if you were upset with me for
16 getting [unintelligible] [08:42:51].

17 SENATOR RAMOS: I am never upset with
18 you. I am never upset with you, just pointing out
19 you have been the consistent question asker.

20 SENATOR SKOUFIS: Okay. The record shall
21 reflect.

22 SENATOR RAMOS: That you're the
23 consistent question asker of every panel, which
24 is appreciated. And I'm just still waiting for

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2 you to sign that [unintelligible] [08:43:05]

3 slip. Love you, ask your questions.

4 SENATOR SKOUFIS: Okay. This question is

5 for Becca. And I asked this of a previous panel

6 with NYSNA and PEF. Obviously, CWA is very

7 interested in safe staffing. The long, overdue

8 safe staffing study is supposed to be released

9 tomorrow. I'm wondering what sort of engagement

10 CWA had with the Department of Health? Did they

11 do outreach? Were they bringing you to the table?

12 Also, what do you expect tomorrow, if you have

13 any sense of what this study might look like? And

14 connect it to all that. Can you speak to how much

15 of a priority, now we're on the other side of

16 this pandemic, we're not completely through it,

17 we're on the other side. Over the past five

18 months looking back, how much of a priority is

19 this getting safe staffing across the finish line

20 ahead of the next pandemic or ahead of the next

21 second wave? Is this the top priority? Is this

22 top three for your members in terms of things

23 that we could do as a legislature that would have

24 the greatest impact in protecting the public's

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2 health the next time we have to go through this.

3 I know there are a few questions sort of packed
4 into all of that.

5 MS. MILLER: Yeah, I will do my best to
6 answer all of them. I would say certainly safe
7 staffing. We've been fight for safe staffing for
8 decades. It is consistently a labor, it's number
9 one labor concern among our healthcare workers
10 and it is absolutely a top priority. I think,
11 listen, study after study for decades past by
12 research institutions has shown safe staffing
13 saves lives. And we have seen that time and time
14 again. And COVID hit and it was proven yet even
15 to the nth degree.

16 So I think the importance of safe
17 staffing cannot be minimized. However, I would
18 also say our hospitals are in a dire financial
19 situation as so many institutions and businesses
20 are. So it can't, we can't talk about safe
21 staffing without talking about revenue. We need
22 to raise revenue. We need to fully fund our
23 hospitals. We've been expressing such gratitude
24 towards our healthcare workers, yet our

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2 healthcare workers are still working in terrible
3 conditions. The number of COVID patients have
4 gone down, but the patients that they're seeing
5 is still very high and above state's
6 recommendation.

7 So safe staffing is definitely a top
8 priority. It is an essential thing for the health
9 and safety of our state and for the people of New
10 York but also for the health care workers who
11 staff our healthcare facilities and in that
12 conversation, we must explore raising revenue.
13 The money is there, we need to put it towards the
14 things that are critical.

15 SENATOR SKOUFIS: Any expectation as to
16 what's coming tomorrow?

17 MS. MILLER: Yes, I forgot about that
18 one.

19 SENATOR SKOUFIS: That's okay.

20 MS. MILLER: Yes. We, you know, we
21 absolutely participated in the DOH's process. I
22 have no idea what will come out tomorrow. We've
23 been waiting patiently for the last eight months.
24 This study was due in December of 2019. We are

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2 excited to see what it says tomorrow. However, I
3 would say that it would be surprising to me if
4 they found anything other than what we've seen
5 time and time again, safe staffing saves lives.
6 We need it.

7 SENATOR SKOUFIS: I guess we'll find out
8 soon enough. Thank you.

9 ASSEMBLY MEMBER MCDONALD: Okay.
10 Anything, anybody else? Oh, yes, Senate.

11 SENATOR RAMOS: Oh, Senator Jackson.

12 SENATOR JACKSON: Thank you. Let me
13 thank you for coming. If we were up in Albany or
14 New York City, you would be in the hearing room
15 you would have to wait. But all of you are either
16 in your office or in your homes and that's a good
17 thing. But I just have one question. And, Becca,
18 you talked about it raising revenue, I would
19 assume that your union is for us raising revenues
20 on the wealthiest New Yorkers. And I ask that
21 question of all the speakers, whether or not your
22 organization that you're with or union, are you
23 ready to help us raise revenue from the
24 wealthiest New Yorkers?

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2 MS. MILLER: Yeah, absolutely. Our union
3 has been actively in this fight for many years.
4 It is something our members feel very strongly
5 about. We understand that we cannot have the
6 society we all deserve to live in without an
7 equal revenue raising scheme. We need to tax
8 those among us who have profited the most and who
9 are the wealthiest and we need to make sure that
10 we have all the revenue we need to support the
11 public programs and services that we all rely on,
12 that make us a healthier stronger state, so 100
13 percent CWA is there.

14 SENATOR JACKSON: Maritza? Your
15 organization.

16 MS. SILVA-FARRELL: Yes, at ALIGN, I
17 think we are fully committed to this. This is a
18 fight we have had similar to CWA, like for a
19 really long time. There is a time in which we can
20 actually generate revenues by getting
21 billionaires to actually pay for their fair
22 share, the time is now, so we're fully at ALILGN
23 in support of this.

24 SENATOR JACKSON: Charlene, if you know

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2 and can speak for the organization.

3 MS. OBERNAUER: Yes, 100 percent.

4 SENATOR JACKSON: Okay. I just want to

5 know. As you know, a lot of people cannot

6 necessarily speak for the organization, and I

7 just wanted to know what the organizations,

8 especially when we move towards, as you know,

9 approximately two weeks ago, our leaders, both

10 the Senate and the Assembly leaders basically

11 came together and said that we should be looking

12 at raising revenues in order to make sure that we

13 address all the concerns that the panelists have

14 brought up as far as safe staffing, as far as

15 funding, the agencies' funding, healthcare

16 funding, education and this is not only for New

17 York City, this is for everywhere, small rural

18 areas, suburban areas.

19 It's very important that we maintain the

20 quality of life that all of us are used to and

21 those that are suffering the most, we need to

22 make sure that they can survive this pandemic

23 with us. So I thank you. Thank you, co-chairs.

24 ASSEMBLY MEMBER MCDONALD:

Jo Anne S

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2 from the Assembly.

3 ASSEMBLY MEMBER SIMON:

Thank you. Th

4 you very much. Thank you all for your testimony.

5 It's just been terrific and we've learned so much

6 throughout the day from all of the witnesses and

7 you've been just great. I did want to ask a

8 question of Ms. Obernauer about OSHA and that is

9 that cited a statistic about a reduction in

10 enforce I believe by 17,000 and what I didn't

11 quite get was since when, if you could clarify

12 that statistic because I'm not make sure got all

13 of it. It's quite astounding to me that there has

14 been that much of a drop off in OSHA enforcement

15 over the years. I'm curious if you could tell me

16 more about that.

17 MS. OBERNAUER:

Sure. So, the statistic

18 is that the number of OSHA citations that took

19 place between January 1st and May 22nd of 2020

20 was 17,000 less or 17,000 fewer when compared to

21 the same period in 2019.

22 ASSEMBLY MEMBER SIMON:

That's

23 incredible.

24 MS. OBERNAUER:

Yeah.

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2 ASSEMBLY MEMBER SIMON: What, do you
3 attribute that to something in particular? It's
4 not like it's -- we still have the same
5 administration, in Washington? Is it because of a
6 reduction in their own capacity during that time?
7 Do you have any particular rationale for why you
8 think that may have occurred?

9 MS. OBERNAUER: I think that they, like
10 many other agencies, like many other
11 organizations, started to do work from home and
12 stopped actually going out in the field and doing
13 inspections. So instead of what you would think
14 is that they would be out there on the
15 frontlines, they'd be doing inspections wherever
16 inspections were needed. But in this case, it
17 seems like the inspections actually slowed down
18 significantly.

19 And we've been analyzing OSHA's response
20 to this pandemic since it started and one of the
21 most shocking things is just the number of
22 citations they even have issued When Scalia
23 testified in front of the U.S. Senate, he
24 indicated that there -- this was in June, that

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2 they had only issued one fine to employers.

3 So their approach is very much trying to
4 work with employers and kind of handhold them
5 into following guidance, instead of actually
6 following what the standard should actually be.

7 And one really great read that I want to
8 recommend is President Trumka of the National
9 AFL-CIO wrote a letter to Scalia of OSHA and they
10 actually had a correspondence, which is public.

11 And it's really astounding just to see the
12 different perspectives. You know, on the one
13 side, President Trumka is saying that that
14 enforcement has not been there, that it has just
15 been totally weakened and OSHA is AWOL. And the
16 other side, the head of OSHA essentially saying
17 we rely on employers to follow the guidance, and
18 that's really been the MO of this administration.

19 ASSEMBLY MEMBER SIMON:

Okay. Thank yo

20 very much. I appreciate it.

21 MS. OBERNAUER:

Thank you.

22 ASSEMBLY MEMBER MCDONALD:

Senator,

23 you have any other members?

24 SENATOR RAMOS:

I don't. I don't have

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2 any other members with questions. Do you?

3 ASSEMBLY MEMBER MCDONALD:

I do not

4 want to thank our panelists. I want to mention
5 one thing, personal privilege, Becca, you had
6 mentioned about safe staffing but also the fact
7 that our hospital are really under resourced as
8 well. And the two need to work together. And as
9 you might have heard from a few of our
10 colleagues, there's plenty of suggestions of how
11 we can raise revenue, which you all support.

12 But there's also a recognition that we
13 need to keep in mind and I've been very clear on
14 this. For decades the federal government has
15 refused to reimburse for its Medicare rates to
16 hospitals appropriately. Whereas this state
17 contributes billions and billions of dollars to
18 the U.S. economy through our federal taxes, we
19 get peanuts when this comes to medical services.
20 And that needs to be a larger part of this
21 discussion as well. So to all of you, we thank
22 you for your contribution.

23 Unfortunately you're panel 12, you're
24 not lucky number 13, which is our finishing panel

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2 this evening. We will now seat our last two
3 speakers for the evening. No pressure. From the
4 New York Civil Liberties Union, legislative
5 attorney Lisa Zucker, and from the New York
6 Chapter of the National Employment Lawyers
7 Association, Margaret McIntyre. Lisa, you have
8 the privilege of kicking us off or kicking this
9 off and then Margaret has the privilege of
10 closing it out.

11 MS. LISA ZUCKER, LEGISLATIVE ATTORNEY,
12 NEW YORK CIVIL LIBERTIES UNION:

Okay.

13 ASSEMBLY MEMBER MCDONALD:

Go ahead

14 MS. ZUCKER: Great. Thank you, all, so
15 much. Good evening. I certainly never put good
16 morning or good afternoon in my remarks, I knew
17 it would be late. Thank you all for staying so
18 late and for all your questioning and interest in
19 this issue. My name is Lisa Zucker. I'm
20 legislative attorney with the New York Civil
21 Liberties Union, the NYCLU is the state affiliate
22 of the ACLU. We are a not-for-profit, nonpartisan
23 organization with eight offices throughout the
24 state and over 180,000 members and supporters.

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2 As the last panel I will try to limit my
3 -- I will limit my remarks to what has not been
4 said already today. Believe it or not, there are
5 a couple of things that I would like to address.
6 One is the special needs of the agricultural
7 workforce and two is the need to strengthen and
8 expand emergency COVID paid sick leave.

9 But before I begin, I want to echo what
10 Maritza said on the last panel. Although today's
11 hearing is entitled the impact of COVID on the
12 workforce, we are talking about so much more here
13 than workers' rights. For every worker who toils
14 in an environment where the risk of COVID is
15 high, the impact on family members, friends,
16 separate community risks that same infection. No
17 one wants to go back to the dark days of April,
18 but that is what we risk if we do not
19 sufficiently protect our workers.

20 So, on to the special needs of
21 agricultural workforce, there are an estimated
22 80,000 to 100,000 farm workers in New York who
23 produce over \$5 billion of revenue for our state
24 annually. The first reported infections among New

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2 York farm workers began in April. The worst
3 outbreak so far was in May, when 171 workers at
4 the Green Empire Farms in Oneida became infected
5 with the virus. Since then, we have been seen
6 more outbreaks across the state. In late June,
7 there was another outbreak in an Oswego county
8 apple processor infected 82 of 179 workers.

9 In May of this year the governor issued
10 guidance documents for the prevention and
11 response of COVID-19 on farms. While helpful, as
12 others have said today, we need more than
13 guidance. We need a legal obligation. We need
14 enforcement mechanisms. We need penalties and
15 teeth, really, to make the bad -- not all
16 employers are bad. The ones who follow the law --
17 follow the guidance, are not the one we're
18 talking about. We're talking about the ones who
19 aren't. That why we have laws most of the time.

20 We also need enforceable regulations for
21 all employer-operated housing. This is a huge
22 issue in the farm worker community. Too many
23 farmers live in cramped, unsanitary housing with
24 little or no ability to social distance. In fact,

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2 the Empire Farm outbreak was traced not to the
3 workplace but to the way that the workers, the
4 farm workers lived, many of whom lived in
5 employer housing.

6 Last year, this body led by Senator
7 Ramos, passed the historic Farm Labor Fair Labor
8 Practices Act, which does include a section on
9 housing and expands DOH's authority over the
10 certification and licensing of farm labor camps.
11 That provision takes effect in January. In
12 addition, there is, there may be some confusion
13 about whether the new provision applies to all
14 farm labor camps or just those that house migrant
15 workers. We need to clarify and fix that.

16 We also need to enact stronger
17 quarantine and isolation requirements. Because
18 farm workers are considered essential workers,
19 they're permitted to work if they test positive
20 and they remain asymptomatic. But they have to
21 quarantine when they're not working. If you're
22 working on a farm, in employer housing and you're
23 quarantining with all the other workers there,
24 you are spreading that infection.

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2 Another issue that is unique for farm
3 workers is there are 8,000 H2A visa holders,
4 workers who are coming into our state as we
5 speak. This is the high season for farm workers.
6 These people are coming from states that have
7 high infection rates. There need to be quarantine
8 and isolation enforcement. We have heard stories
9 where all the workers are just put together in
10 one house when they all are not part of the same
11 unit and they're just infecting each other and
12 then they're going out into the workforce and
13 they're infecting their co-workers.

14 I'm running out of time. I do want to
15 address for two seconds expanded paid sick and
16 family leave. Governor Cuomo in March signed the
17 emergency legislation. We need what was done for
18 health workers, I believe Senator Ramos asked the
19 commissioner this question, if DOL could do for
20 all workers what they did for health workers,
21 which is to ensure a doctor's note is sufficient
22 for an order of quarantine and isolation, that
23 workers would be entitled to more than one paid
24 sick leave period and we need to clarify that

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2 paid sick leave is an emergency sick leave, is in
3 addition to our new permanent paid sick leave
4 that is going to go in effect September 30th. I
5 yield the floor, but I'm happy to answer
6 questions. Thank you.

7 ASSEMBLY MEMBER MCDONALD:

We appreciate

8 your comments. Thank you. Margaret?

9 MS. MARGARET MCINTYRE, ATTORNEY AT LAW,
10 NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, NEW YORK

11 CHAPTER: Good evening. My name is Margaret
12 McIntyre. I'm a member of the legislative
13 committee of NELA New York, which is the New York
14 affiliate of the National Employment Lawyers
15 Association. And we are a group of attorneys who
16 represent employees who have been denied their
17 rights. We deeply appreciate the work of all of
18 you to put this hearing together and to include
19 our perspective here.

20 And I'm going to try to not repeat
21 things said, too. But, because I am glad that
22 labor law sections 740 has come up today, but it
23 is impossible to talk about the health and safety
24 issues in the workplace during COVID without

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2 addressing the fact that under New York law, it
3 is legal for an employer to fire workers who
4 complain about what they believe to be dangerous
5 and unsafe working conditions. It is legal for,
6 at a hospital to fire janitors who raise concerns
7 about lack of gloves and masks. It is legal to
8 fire retail workers who complain they are at risk
9 because they lack plastic barricades or other
10 PPE. It is legal to fire factory workers who
11 complain that they are working side by side in
12 what they believe to be inadequately sanitized
13 facilities or a lack of social distancing.

14 And this is because of New York's
15 whistleblower law, Labor Law 740. 740 only
16 protects people who complain about conduct that
17 is both an actual violation of a specific law,
18 rule or regulation and the contact also has been
19 to be a substantial threat to public health and
20 safety. So, the law as it exists today fails to
21 protect most workers.

22 And, you know, the country's response to
23 the pandemic has led to a lot of confusion and
24 constantly changing information about what kind

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2 of workplace is safe. And, as we've heard today,
3 there are too few requirements that workplaces be
4 kept safe, too many options for employees who are
5 not working in safe environments. So, basically
6 in New York State, if a worker raises a concern
7 about a safety issue that is not actually a
8 provable violation of a law and her boss doesn't
9 like that, she's subject to termination. Workers
10 who speak up can get fired. Workers who don't
11 speak up are left to work in potentially
12 dangerous situations.

13 So, and because of the weak
14 whistleblower law that we have, even essential
15 workers, the ones, people that all of us depend
16 upon are put in a double bind. Speak up and risk
17 getting fired or remain silent and risk illness
18 or death not only for themselves but for their
19 families, their communities, our communities, all
20 of us.

21 And as usual, the situation
22 disproportionately affects low wage workers who
23 are disproportionately people of color. And the
24 more financially insecure a worker is, the

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2 tighter the squeeze she's in when the workplace
3 is unsafe. And I mean, it's just not tenable. It
4 was bad enough before COVID, but it's not tenable
5 with COVID.

6 Workers, all workers must have the right
7 to speak out if they believe their workplaces to
8 be unsafe and COVID presents a very real and
9 serious threat to public safety and health, but
10 it's a little trickier right now about whether
11 there's any law, rule or regulation that's
12 violated by these unsafe conditions and that's
13 what has to change.

14 Since I have just a few more seconds, I
15 would say first of all, amending section 740 of
16 labor law would not cost the budget anything. So
17 that's something to be considered. And it's just
18 about, if nothing else, these people who have
19 gone through so much suffering over the last few
20 months, unemployment, sickness or maybe they've
21 managed to avoid sickness, but they finally get
22 back to work, but they can't say anything about
23 an unsafe place or they could risk being fired?
24 We need to give employees more power in this

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2 regard.

3 And I'm glad SWEAT came up in the last
4 couple of panels. That's also very important. If
5 workers have the ability to file a wage lien when
6 they're not paid, they would have much better
7 chance of collecting on unpaid judgments for wage
8 and hour violations. Thanks.

9 ASSEMBLY MEMBER MCDONALD:

Thank you

10 our final two panelists for the evening. I'm
11 looking to see if we have any comments on the
12 Assembly. I do see one, if you don't mind,
13 senator, if the Assembly goes first.

14 SENATOR RAMOS: Go ahead.

15 ASSEMBLY MEMBER MCDONALD:

All right

16 Anne Simon. Hmm, I wonder what she's going to
17 talk about?

18 ASSEMBLY MEMBER SIMON:

Gee, maybe

19 expanding 740? And whistleblower protections. I
20 did want to thank you, Margaret, for speaking
21 about that. You know you brought up the laws and
22 rules and regulations issue and whether or not
23 that could be proven under the current 740. I
24 have a concern that the guidelines are so

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2 amorphous that establishing whether someone would
3 -- whether a workplace is violating the rules
4 might not be as clear as it needs to be, even
5 with an expanded 740.

6 Do you have any suggestions as to how we
7 might remedy that? A number of witnesses have
8 called for establishing very specific standards,
9 going through it industry by industry, for
10 example, and working between the Department of
11 Labor and Department of Health. Is that something
12 that you would endorse? Do you have any other
13 approaches or proposals for that?

14 MS. MCINTYRE: Well, you know, I can't
15 speak to specific rules or bills, pending bills
16 that NELA supports in terms of the safety
17 regulations. But I do want to emphasize this,
18 that probably the most important change to
19 section 740 is eliminating this requirement that
20 some kind of conduct be both illegal and a threat
21 to public health or safety. Now, if it were just
22 the -- if the "and" were just changed to "or"
23 then people, and if this had, you know, if we had
24 this now, then people who are speaking out now or

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2 have been speaking out over the last few months
3 and having no recourse, that wouldn't be
4 happening because the way the bills that are
5 pending are proposing to change section 740 is to
6 eliminate that conjunctive requirement and make
7 it so an employee is protected if he or she has a
8 reasonable good faith belief that the employer's
9 activity is either illegal or poses a substantial
10 threat to public health or safety. So it's that
11 "and" that has to go.

12 ASSEMBLY MEMBER SIMON: Thank you. I
13 appreciate that.

14 ASSEMBLY MEMBER MCDONALD: Senate?

15 SENATOR RAMOS: I don't believe that we
16 have anybody. I don't believe we have anybody
17 else.

18 ASSEMBLY MEMBER MCDONALD: We do.

19 SENATOR RAMOS: You do? Go right ahead.

20 ASSEMBLY MEMBER MCDONALD: Yes, we
21 from the other side of the aisle, our Ranker
22 Brian Manktelow. Brian?

23 ASSEMBLY MEMBER MANKTELOW: Can yo
24 me okay?

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2 ASSEMBLY MEMBER MCDONALD:

Yes we ca

3 ASSEMBLY MEMBER MANKTELOW:

Thank y

4 Lisa, if you have a a few moments I would like to
5 talk to you about the farm workers. My district
6 covers Wayne County, Cayuga County, and Oswego
7 County, the county where the apple packing plant
8 was. In Wayne County, just to give you a
9 positive, myself and Senator Helming met with
10 Wayne County apple producers, the Department of
11 Health, other key individuals in the county who
12 were very proactive about two months ago, knowing
13 that Wayne County is the largest apple producing
14 county in the state, third largest in the country
15 knowing how many workers would be coming in.

16 So I had a chance to go out to the labor
17 camp, go through the labor camps with the
18 Department of Health, be there with the farmers,
19 coming up with a plan, looking at where they're
20 staying. And I believe that the farmers that we
21 met with and are in Wayne County are doing
22 everything they possibly can. I know that we've
23 talked about 14-day quarantine once they get
24 here, the workers, temperatures, masks and

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2 talking about where are we going to put a worker
3 if they do get COVID, so, just a positive thing.

4 We are in this area pushing it very hard
5 because the safety of the workers are so
6 important, not only to them, but also for the
7 making sure that the apples get harvested,
8 because we have six or seven weeks to make that
9 happen. So we are being very proactive there. And
10 I want to assure that we're doing everything we
11 can to make everything safe for everyone.

12 SENATOR RAMOS: All right.

13 ASSEMBLY MEMBER MCDONALD: Okay.

14 SENATOR RAMOS: We thank everyone for
15 coming.

16 MS. ZUCKER: I just wanted to say thank
17 you. Thank you, assembly member ranker. I
18 appreciate that you're doing everything that you
19 can and I'm sure that the workers are going to be
20 much safer for it. We just, you know, we think
21 that if we just have the chance for DOH to be a
22 little more proactive when we're licensing or
23 certifying, maybe these issues won't arise or
24 maybe won't arise in the future. But thank you

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2 for taking care of that and taking care of your
3 workers and your constituents.

4 ASSEMBLY MEMBER MANKTELOW:

Yeah, I

5 pretty good working with DOH on this and the
6 direction we're going. So we are very, very
7 proactive. Thank you, though.

8 SENATOR RAMOS: All right.

9 ASSEMBLY MEMBER MCDONALD:

I doesn't

10 look like there's any other questions. Senator,
11 I'll start with you with closing comments.

12 SENATOR RAMOS: Well, no, I just want to

13 thank you, first, John. You've been a great
14 partner throughout the day. Thank you so much for
15 working in lockstep with me on this. And of
16 course, Senator Skoufis and Sanders who helped
17 co-chair today's hearing. I want to thank all of
18 the folks who testified very bravely, especially
19 the workers. It's been quite difficult to hear
20 all of these stories of struggle and hardship,
21 but it's necessary to share those stories so that
22 as state legislators, we can come up with
23 possible solutions and push for the needs and
24 resources that we need at the state level.

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2 I do want to remind everybody that we've
3 lost more than 20,000 people in New York State to
4 the coronavirus. That is many times over from the
5 number of people that we lost in 9/11
6 unfortunately, and we have seen how hard the
7 fight for the Zadroga Act to protect our first
8 responders has been. We need to learn that lesson
9 and ensure that this does not become a similar
10 situation or worse. I want to make sure that
11 we're taking today's testimonies to heart and
12 putting them into action, into progressive
13 legislation that will protect our workers today
14 and forever more.

15 So thank you all for participating today
16 and I look forward to working very closely with
17 you all.

18 ASSEMBLY MEMBER MCDONALD:

And on be

19 of the Assembly, senator, it's been a pleasure to
20 work with you and your colleagues. We have had a
21 lot of great, meaningful, thoughtful testimony
22 today. Sometimes, it might have been seemed
23 repetitive, but the reality is it put a different
24 picture on the issue, because I think we tend to

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2 sometimes compartmentalize and there's many more
3 individuals involved. I want to thank our ranker
4 of banking, Tom Abinanti, who joined us today
5 well and Brian Manktelow, thank you. We've spent
6 believe it or not, 41 hours together in the last
7 three hearings and you've been a real trooper
8 through this. And of course, Jim, it's always
9 good to see you. I want to thank my colleagues in
10 the assembly that are still participating on both
11 sides of the aisle. It's great they have been so
12 committed.

13 And I want to mention something I
14 mentioned about ten hours ago that I think needs
15 to be reinforced. Although, sometimes the
16 questions may have been a little bit limited,
17 understand that there's dozens and dozens of
18 staff, hard-working staff, who deserve a great
19 shout out today, who have been taking copious
20 notes. And I know I've already been sharing
21 messages with the respective chairs on ideas and
22 thoughts on what we need to do.

23 So with that, we want to bid you adieu.
24 Thank you for tuning in to the New York State

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legislature Zoom channel and with that, we'll say
good night.

SENATOR RAMOS: Yes, good night, and
thank you to the central staff at the Senate and
the Assembly, thank you very much.

ASSEMBLY MEMBER MCDONALD: Thank you

SENATOR JACKSON: Thank you, everyone.

SENATOR RAMOS: Good-bye.

(The public hearing concluded at 8:15
p.m.)

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of Joint Public Hearing on the Impact of COVID-19 in the Workforce on August 13, 2020 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Date: August 28, 2020

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