

## **Testimony of Haeyoung Yoon**

National Employment Law Project

# **Hearing on Intro 1017-2015, In Relation to Establishing Protections for Freelance Workers**

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## **Hearing Before New York City Council**

Committee on Consumer Affairs

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**T**hank you to Chair Espinal and to the members of the Consumer Affairs Committee for the opportunity to provide testimony today in support of Intro 1017, a local bill to establish strong protections for New York City's freelance workers. My name is Haeyoung Yoon, and I am Director of Strategic Partnerships of the National Employment Law Project.

The National Employment Law Project (NELP) is a non-profit research and advocacy organization specializing in employment policy. From our main office here, in New York City, and throughout the country, we promote and shape employment policies for a wide range of labor market issues at the local, state, and national levels through empirical research, legal and policy advocacy, and in partnership with lawmakers and community allies. Across the country, our staff are recognized as policy experts in areas such as unemployment insurance, the minimum wage, and as is relevant to today's hearing, the rights of contracted workers and wage enforcement.

NELP has been a leader in raising and enforcing labor standards for low-wage labor markets. Through our work, we have seen how strong legal protections for workers, combined with robust and strategic labor enforcement, can go a long way towards ensuring that workers get paid what they are owed, while simultaneously promoting greater compliance throughout the affected industries, returning millions of tax dollars to state coffers, and bolstering the local and state economy.

### **Pay Violations Are Severe and Widespread Across the Country and in New York City**

Approximately 42 percent of workers in the United States earn under \$15 per hour.<sup>1</sup> As the real value of wages generally continues to decline<sup>2</sup> and income inequality worsens, ensuring that our nation's workers are compensated with fair wages and on a timely basis must be a priority. Pay violations – also commonly known as wage theft – are widespread across the country and span industries, costing workers and local economies billions of dollars each year.<sup>3</sup>

A seminal national study by NELP and other academic partners surveyed over 4,000 workers in New York, Chicago, and Los Angeles, and found that 26 percent were paid less than the required minimum wage in the previous work week, and nearly two-thirds experienced at least one pay-related violation in the previous week, such as failure to pay overtime, not being paid for all hours worked, and stolen tips.<sup>4</sup> In New York City, 21 percent of surveyed workers suffered from minimum wage violations in the previous work week, and more than half experienced at least one pay-related violation in the previous week. The report estimates that workers surveyed in New York City lost an average of 15 percent, or \$3,016, of their annual wages due to pay violations.<sup>5</sup>

Dozens of other studies have similarly uncovered severe pay violations in our economy. Freelancers Union's survey of over 5,000 workers in 2015 found alarmingly high rates of late payment or nonpayment across all industries and types of work in the independent workforce.<sup>6</sup> Seventy-one percent of surveyed workers reported that they had trouble getting paid at some point in their career, and of those who had trouble getting paid in 2014, 81 percent were paid late and 34 percent were not paid at all for some portion of their work.<sup>7</sup> The study estimated that workers surveyed, on average, were cheated out of 13 percent, or \$5,968, of their annual income due to nonpayment of their wages.<sup>8</sup> In short, wage theft has become an epidemic both nationally and in New York City.

## **Intro 1017 Will Benefit Freelance Workers, Law-abiding Businesses, and the Local Economy**

Intro 1017 – referred as Freelance Isn't Free Act – is a necessary and good policy to combat severe pay violations in the independent workforce. Most workers in our economy – both employees and those illegally misclassified as independent contractors – enjoy the protections of federal and state wage and hour laws and could pursue pay violations by filing a complaint with a federal or state public enforcement agency like a Department of Labor, or by filing a private lawsuit in court, even though there are many factors that make it extremely challenging for them to come forward to enforce their rights and collect unpaid wages.<sup>9</sup> But, for those who are legitimately working as independent contractors, running their own business, they are excluded from federal and state fair pay laws, making it more difficult for them to pursue late payment or nonpayment of wages. A national survey of freelance workers found that when businesses failed to pay, 92 percent of surveyed workers made repeated phone calls to try to collect their unpaid wages, and only five percent pursued it by going to small claims court.<sup>10</sup>

Intro 1017 creates an enforcement scheme that allows freelance workers to file a complaint with the City's Department of Consumer Affairs or pursue a lawsuit under the proposed bill in court to recover owed wages, double damages, and reasonable attorney's fees. The inclusion of both public and private tools in the enforcement scheme is important because wage theft is severe and pervasive, and government agencies with limited public resources cannot tackle enforcement alone. Additionally, public agencies' funding and priorities for enforcement change over time, and giving workers access to courts ensures they have a way to protect their rights.

Intro 1017 would also importantly provide anti-retaliation protection – a protection crucial for effective wage enforcement. Freelancers need strong protections so they are not vulnerable to harassment or retaliation when they report a violation. This is especially important because enforcement relies heavily on workers coming forward and filing complaints. Retaliation is too common. A survey of low-wage workers in New York City found that 42 percent of workers who complained to their employer about their wages or working conditions experienced retaliation, and 23 percent of workers never made a complaint because they feared retaliation or thought it would not make a difference.<sup>11</sup> Under the proposed bill, retaliating companies should be subject to strong penalties, which is key in deterring violations.

Combatting pay violations in the freelance workforce will benefit workers and law-abiding businesses and will provide a boost to the local economy. When businesses cheat workers out of their pay, workers are forced to borrow money and increase their debt to pay bills and cover living expenses. Law-abiding businesses often cannot compete with firms that illegally depress labor costs. In addition to benefitting workers and law-abiding businesses, when workers are able to take home their pay on time, they are able to spend money as consumers, contributing to the growth of local economy.

## **Intro 1017 Should Take Effect 180 Days After It Becomes Law**

Intro 1017 currently provides that it takes effect one year after it becomes law. Indeed, the City and relevant agencies will need time to hire and train relevant staff, develop outreach and education materials, and create new processes and systems to ensure effective implementation and enforcement of the law. However, one year is unduly long for freelance workers to wait to enforce their newly won rights. We urge the committee to adopt a shorter time period, such as 180 days, for the bill to take effect once it becomes law.

Thank you so much for the opportunity to testify today. I would be happy to answer any questions that you may have.

For more information, please contact NELP Director of Strategic Partnerships Haeyoung Yoon at [hyoon@nelp.org](mailto:hyoon@nelp.org). For more about NELP, visit [www.nelp.org](http://www.nelp.org) or [www.raisetheminimumwage.org](http://www.raisetheminimumwage.org).

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## ENDNOTES

<sup>1</sup> Irene Tung et al, The Growing Movement for \$15 (Nov. 2015) at 1, available at <http://nelp.org/content/uploads/Growing-Movement-for-15-Dollars.pdf>.

<sup>2</sup> National Employment Law Project, Occupational Wage Declines Since the Great Recession (Sept. 2015), available at <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf>.

<sup>3</sup> Brady Meixell and Ross Eisenbrey, Economic Policy Institute, An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year (Sept. 2014), available at <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>.

<sup>4</sup> Annette Bernhardt et al, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities (2009) at 9, available at <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1>

<sup>5</sup> Annette Bernhardt et al, Working Without Laws: A Survey of Employment and Labor Law Violations in New York City (2009) at 2, available at <http://www.nelp.org/content/uploads/2015/03/WorkingWithoutLawsNYC.pdf>

<sup>6</sup> Freelancers Union, The Cost of Nonpayment: A Study of Nonpayment and Late Payment in the Freelance Workforce (2015), available at [https://fu-web-storage-prod.s3.amazonaws.com/content/advocacy/uploads/resources/FU\\_NonpaymentReport\\_r3.pdf](https://fu-web-storage-prod.s3.amazonaws.com/content/advocacy/uploads/resources/FU_NonpaymentReport_r3.pdf)

<sup>7</sup> *Id* at 3.

<sup>8</sup> *Id*.

<sup>9</sup> These factors include woefully under-resourced public enforcement agencies with no political will to engage in more aggressive enforcement, inadequate anti-retaliation protections for workers who come forward to enforce their rights, a lack of strong consequences for employers who violate wage and hour laws.

<sup>10</sup> Freelancers Union, The Cost of Nonpayment: A Study of Nonpayment and Late Payment in the Freelance Workforce (2015) at 6, available at [https://fu-web-storage-prod.s3.amazonaws.com/content/advocacy/uploads/resources/FU\\_NonpaymentReport\\_r3.pdf](https://fu-web-storage-prod.s3.amazonaws.com/content/advocacy/uploads/resources/FU_NonpaymentReport_r3.pdf)

<sup>11</sup> Annette Bernhardt et al, Working Without Laws: A Survey of Employment and Labor Law Violations in New York City (2009) at 3, available at <http://www.nelp.org/content/uploads/2015/03/WorkingWithoutLawsNYC.pdf>