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CHRISTOPHER L. JACOBS
SENATOR, 60TH DISTRICT

January 9, 2018

Roberta Reardon
Commissioner
NYS Department of Labor
State Office Campus
Building 12
Albany, NY 12240

Re: NYS Senate Hearing Results / Employee Scheduling (Call-In Pay) / ID No. LAB-47-17-00011-P.

Dear Commissioner Reardon:

We are writing to share points of interest and express concerns that have arisen from our hearing conducted on January 4, 2018 concerning the Department of Labor proposed rule, *Employee Scheduling (Call-In Pay)*, published in the November 22, 2017 issue of the *New York State Register*.

The NYS Senate received overwhelming responses and testimony at the hearing from business organizations and businesses both large and small. The dramatic impact this proposed rule will have on New York's business climate and the ripple effect it will have on a wide number of industries and businesses dictates that we immediately request your agency's reconsideration.

Among the major concerns raised at the hearing are that the *Job Impact Statement (JIS)* and *Regulatory Flexibility Analysis (RFA)* compiled by the Department are severely flawed or completely wrong.

The Department's JIS states "...there will be no adverse impact on jobs or employment opportunities..." The testimony presented to us completely contradicts this assertion. Many businesses stated they would have to automate and eliminate jobs and employment opportunities to comply with the proposed rule. Even more alarming was the number of companies who said they could not feasibly adapt to the new rule, and instead they would put expansion plans on hold, withdraw from certain business sectors or leave New York State entirely.



The JIS also stated that the Department did not anticipate the rule having adverse impact on any particular region. While business opposition and concerns to the rule were statewide in scope, there was no mistaking that upstate New York's economy will be harmed severely by its imposition.

The Department contends in its RFA "small businesses...will not have to undertake any new reporting, record keeping or other affirmative act, other than providing timely notice of scheduling changes, in order to comply with this regulation." Statewide business organizations and individual employers have provided testimony whole-heartedly disagreeing with this analysis. Companies stated that they would have to make costly changes in their human resources departments to comply fully with this new administrative burden. Many small businesses that do not have formal human resources departments would be forced to hire additional staff to assist with the scheduling complexities created by this new mandate.

Beyond the contradictions in the JIS and RFA, implementing the strictest call-in pay scheduling rules in the country would do irreparable harm to New York's national and global competitiveness. There were many examples presented to us ranging from the increased cost of doing business to the increased cost for consumers purchasing services that affirm this rule would have serious negative financial consequences. The adverse effect on our health care delivery system would also be enormous and pose challenges for maintaining quality care. The regulatory burdens and lack of flexibility associated with the proposed rule's timeframes reinforce to anyone considering investing in our state that New York is a very difficult place to do business, especially if that business is seasonal in nature.

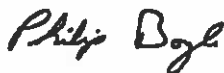
At a time when we are working hard to reverse decades of economic hardship, we believe this is the wrong message to send to job creators. We are respectfully asking that the Department of Labor issue a Notice of Withdrawal and immediately stop promulgation of any call-in pay regulations.

Copies of written testimony we have received supporting our request are also included with this letter. Additionally we ask that the department accept the official recording of the hearing for consideration during the comment period for the proposed rule. The recording may be found at the following link: <https://www.youtube.com/watch?v=H0R8uvZ7Ahc>

Sincerely,



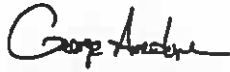
Chris Jacobs
Member of Senate



Phil Boyle
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Fred Akshar
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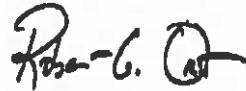
George Amedore
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Kathleen Marchione
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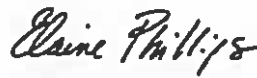
John DeFrancisco
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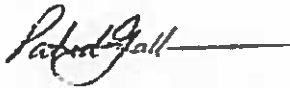
Robert Ort
Member of Senate



Rich Funke
Member of Senate



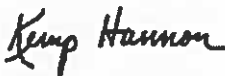
Elaine Phillips
Member of Senate



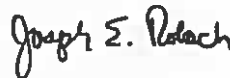
Patrick Gullivan
Member of Senate



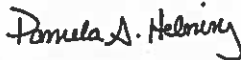
Michael Ranzenhofer
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Kemp Hannon
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Joseph Robach
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Pamela Helming
Member of Senate



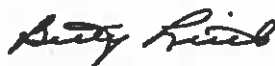
Patty Ritchie
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William Larkin
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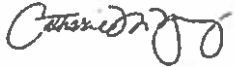
James Tedisco
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cc: The Honorable Andrew M. Cuomo
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