



2018 ANNUAL REPORT

New York State Assembly

Carl E. Heastie

Speaker

Committee on

Labor

Michele R. Titus

Chair





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Assemblywoman 31st District
Queens County

THE ASSEMBLY
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ALBANY

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SUBCOMMITTEES
Criminal Procedure

Task Force on Women's Issues
Puerto Rican/Hispanic Task Force

Black, Puerto Rican, Hispanic & Asian
Legislative Caucus
Legislative Women's Caucus

December 15, 2018

The Honorable Carl E. Heastie
Speaker of the Assembly
Room 932
Legislative Office Building
Albany, New York 12248

Dear Speaker Heastie,

As the Chair of the Assembly Standing Committee on Labor, I am pleased to submit to you the Committee's 2018 Annual Report. Each year, the Committee is tasked with finding new and improved ways to support New York State's diverse workforce. The following report is a summary of significant actions taken by the Committee and the Assembly during the 2018 Legislative Session to help achieve that goal.

Ensuring that workers receive the full wages to which they are rightfully and legally entitled is one of the Committee's top priorities. This year, the Assembly passed a bill that would conclusively establish a definition of "public work" in statute in order to determine when the requirements for paying prevailing wage under the New York State Labor Law would apply. Over the years, the interpretation and application of Article 1, Section 17 of the New York State Constitution, which states that labor is not a commodity and that laborers on public work projects shall not be paid less than the rate of wages prevailing in the same trade or occupation in the locality where the work is being performed, have been muddled and weakened by the courts. These standards have also become increasingly convoluted due to new and complex funding opportunities that have become available for public work projects. Thus, this legislation is necessary in order to restore the original intent of the State's Constitution and ensure that workers receive their rightful wages.

One of the most significant achievements of the Committee this year was the passage of legislation allowing employees to take paid time off for bereavement following the death of a family member through the Paid Family Leave program. Starting on January 1, 2018, Paid Family Leave provided employees with job-protected, paid leave in order to bond with a new

child, help relieve family pressures when someone is called to active military service abroad, or care for a family member with a serious health condition. However, employees were not able to access such benefits to have time to grieve the loss of a family member before returning to work. This new law will allow employees to utilize Paid Family Leave for bereavement time without the risk of losing their economic security.

This year, the State Fiscal Year 2018-19 enacted budget included landmark legislation to combat sexual harassment in the workplace. Among other significant measures to help protect and empower victims, this legislation required the New York State Department of Labor, in consultation with the New York State Division of Human Rights, to develop a model sexual harassment prevention policy and model sexual harassment prevention training program to help employers prevent and appropriately respond to sexual harassment in the workplace. As a result of this law, all employers in New York State are required to adopt a sexual harassment prevention policy and provide annual sexual harassment prevention training to their employees in order to promote a safe and healthy working environment and ensure that all victims of sexual harassment in the workplace have the resources and opportunities they need to seek justice.

Another notable achievement of the 2018 Legislative Session was the Assembly's passage of the New York State Fair Pay Act, which would prohibit employers from paying different wages between employees who work equivalent jobs on the basis of sex, race, or national origin. Under this bill, the New York State Department of Labor would be required to specify the methodology for determining equivalent jobs. New York State leads the nation in closing the gender wage gap, and while this is a noble achievement, the fact is that any disparities in wages are and always will be unacceptable. As a result, the Committee remains dedicated to strengthening equal pay laws for both women and minorities and closing existing loopholes that allow for harmful pay inequities to persist in 2018 and beyond.

Finally, the Committee has remained committed to ensuring that all New Yorkers have access to timely and dependable benefits when they are injured in the workplace. The New York State Workers' Compensation Law ensures that employers maintain insurance that provides weekly cash benefits and/or medical care for workers who are injured or become ill as a direct result of their job. This year, the Committee reported several bills to improve and expand treatment options and help eliminate barriers that impact injured workers' eligibility for such benefits and medical care. This includes allowing injured workers to be treated by occupational therapy assistants, physical therapy assistants, and massage therapists, requiring the New York State Workers' Compensation Board to provide language access services, and increasing the indexing the minimum weekly benefit provided by law. One piece of legislation that was signed into law also requires the New York Black Car Injury Compensation Fund, Inc. to continue providing workers' compensation coverage to transportation network company (TNC) drivers (i.e. ridesharing drivers) that are logged onto a TNC digital network but are not yet engaged in a TNC prearranged trip.

Under your leadership, Mr. Speaker, this Committee stands ready to meet the challenges of the upcoming 2019 Legislative Session with a continued commitment to policies that ensure equal employment opportunities for all workers and provide greater protections and benefits to injured and unemployed workers. I would like to thank the Members of the Assembly Standing

Committee on Labor for their hard work and dedication to improving the workforce that drives New York State, and to you, Mr. Speaker, for your guidance and your indelible commitment to the people of this great State.

Sincerely,

A handwritten signature in black ink that reads "Michele Titus". The signature is written in a cursive, flowing style.

Michele Titus
Chair, Committee on Labor

**2018 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON LABOR**

Hon. Michele R. Titus, *Chair*

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Aubree Heydrick, *Analyst*
Jeannie Shepler, *Administrative Assistant*
Claude Nelson, *Committee Clerk*

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▪ INTRODUCTION ▪

The Assembly Standing Committee on Labor (“the Committee”) is tasked with considering legislation relevant to the working people and businesses of New York State. The Committee is responsible for protecting the fundamental rights of workers, such as minimum wage, workplace safety, the right to organize, and a day of rest. Each piece of legislation considered by the Committee affects the livelihood of New York State’s workforce, as well as the overall economy.

The Committee reviews bills from a number of sources, including advocates and stakeholders, constituents, and Members of the Assembly. The Committee also considers bills from the Governor and various departments of the Executive, including the New York State Department of Labor, the Workers’ Compensation Board, the Office of the Attorney General, and the Office of the State Comptroller. Many of such bills address administrative issues which allow these departments, and the programs that they oversee, to run more efficiently while others allow for stronger statutes and enforcement of current law in order to strengthen protections for workers. A representative sample of the legislative proposals acted upon this year include a bill that would codify the requirement of the Workers’ Compensation Board to have and publish a language access plan, a bill that would authorize employees to utilize Paid Family Leave for bereavement time upon the death of a family member, and a bill that would extend existing provisions of law that allow employers to make deductions from employees’ wages for certain services.

Each year, the Committee also holds roundtables and public hearings on the important issues and components that impact the workforce here in New York State. These forums often serve as a sounding board wherein professionals, academics, workers, businesses, and other constituents may provide testimony and engage in meaningful discussion with each other as well as Members of the Assembly. The Assembly Standing Committee on Labor sponsored a number of public hearings this year, including one focused on the prevention and adjudication of wage theft in New York State. Additionally, on October 4, 2018, the Committee participated in a roundtable discussion alongside the Assembly Standing Committee on Health to examine and discuss wage and hour standards for 24-hour home care workers.

▪ 2018 LEGISLATIVE ACTION ▪

A. Wage and Hour Standards

One of the most significant issues impacting both full-time and part-time workers is wage and hour standards. In conjunction with the federal Fair Labor Standards Act, the New York State Labor Law establishes employment guidelines for hours of work, the payment of wages and benefits, rest and meal periods, overtime, minimum wage, prevailing wage, child labor, farm labor, and other working conditions. Each year, the Committee strives to advance fair and balanced legislation that will help protect and improve existing wage and hour standards for the benefit of all employees in New York State. In 2018, the Committee reported several bills to expand wage and hour protections, eliminate the subminimum wage for car wash workers, encourage pay equity in the workplace, and strengthen existing laws regarding the payment of prevailing wage on public work contracts.

1. New York State Fair Pay Act

A.4696 (Titus) / S.4482 (Sanders) – Passed Assembly

This bill would enact the New York State Fair Pay Act to establish that paying different wages between employees who work equivalent jobs on the basis of sex, race, or national origin is an unlawful employment practice. The New York State Department of Labor would be required to specify the methodology for determining equivalent jobs. The bill would also create a private right of action for such employees who have been discriminated against to recover back pay as well as compensatory and punitive damages.

2. Definition of “Public Work”

A.5498-A (Bronson) / S.2975-A (Murphy) – Passed Assembly

This bill would establish a definition for “public work” in the New York State Labor Law in order to determine when requirements for prevailing wage should apply. It would provide an exemption for homeowners, certain affordable housing projects, and small non-profits that receive less than \$100,000 in public funding. Further, this bill would allow the New York State Department of Labor to issue a stop-work order on any public work project where there are alleged violations of prevailing wage provisions.

3. Work Hours for Lifeguards

A.6153 (Cusick) / S.5082 (Lanza) – Passed Assembly

This bill would allow 16 and 17 year-olds to be employed as lifeguards or aquatic supervisory staff up to five hours on any day preceding a school day, provided that the employer receives and maintains the written consent of each minor’s parent or guardian as well as a certificate from their school following each marking period to confirm that they are in satisfactory academic standing.

**4. Reciprocity of Debarments Imposed Under the Davis-Bacon Act
A.8931 (Bronson) / S.7323 (Murphy) – Chapter 38 of the Laws of 2018**

This law amends Chapter 461 of the Laws of 2017 to ensure the proper implementation of the debarment of contractors in New York State that have also been debarred at the federal level by prohibiting all contractors, subcontractors, substantially owned-affiliated entities, or persons listed on the federal debarment list from being eligible to bid or being awarded a public work contract with the State, or any municipal corporation, public benefit corporation, or public body for as long as they remain on such list.

**5. Minimum Wage for Car Wash Workers
A.10612 (Espinal) / S.2664-A (Hamilton) – Ordered to Third Reading**

This bill would eliminate the subminimum wage for car wash workers employed in New York City and require that such workers receive the statutory minimum wage without allowance for gratuities.

**6. Permitted Deductions from Wages
A.10615 (Titus) / S.8834 (Young) – Chapter 368 of the Laws of 2018**

This legislation extends for two years the provisions of law that allow employers to make deductions from employees' wages for services including, but not limited to, gym memberships, cafeteria purchases, parking, school tuition, and day care, as well as for overpayments of wages and repayments of salary/wage advances.

**7. Additional Information Provided to Workers on Public Work Contracts
A.11045-A (Woerner) / S.9056 (Savino) – Ordered to Third Reading**

This bill would increase transparency with regard to the supplemental benefits paid to workers receiving prevailing wage pursuant to a public work contract by requiring contractors and subcontractors to provide more information regarding the calculation and payment of such benefits to such workers.

B. Employee Rights and Protections

Despite existing laws and regulations which are designed to protect the rights of workers and prohibit employment discrimination, many employees find that their rights are still being violated. Many employees also often face obstacles in seeking justice from their employers when such violations occur. As a result, the Committee remains dedicated to advancing legislation that seeks to protect employee rights and works to ensure that all workplaces are free of discrimination, retaliation, and other harmful employment practices. In 2018, the Committee reported several bills to enhance whistleblower protections, protect employees' personal information regarding reproductive health decision making, disclose the use of

electronic monitoring by employers, and provide job protections to healthcare professionals that volunteer overseas to fight the Ebola virus.

1. Reproductive Health Decision Making
A.566-A (Jaffee) / S.3791-A (Krueger) – Passed Assembly

This bill would prohibit an employer from accessing an employee's or their dependent's personal information regarding reproductive health care without the employee's informed, written consent. It would also bar discrimination or retaliatory action against an employee on the basis of such employee's or their dependent's reproductive health decisions, regardless of how the employer learned of such decisions.

2. Eliminating Disincentives for Whistleblowers
A.2565 (Steck) / S.6729 (Alcantara) – Passed Assembly

This bill would eliminate a provision of law that limits workers' rights by requiring employees to give up other causes of action in order to bring a whistleblower claim against their employer.

3. Notice of Electronic Monitoring
A.5112-A (Rosenthal) / No Same-As – Advanced to Third Reading

This bill would require private employers engaged in electronic monitoring of their employees to give prior written notice of such activity upon hire. Employers would also be required to post such notice in a conspicuous location in the workplace.

4. Enhanced Whistleblower Protections
A.5757 (Benedetto) / S.1887 (Avella) – Passed Assembly

This bill would expand whistleblower protections to employees who disclose or threaten to disclose a suspected illegal business activity committed by their employer. Under current law, an employee is only protected when they report an actual violation; generally, that violation must rise to the level of a substantial and specific danger to the public health or safety. This bill would also ensure that former and current employees are protected for disclosing an illegal business activity which the employee in good faith reasonably believes has occurred or will occur.

5. Authorized Absences by Healthcare Professionals Volunteering to Fight Ebola
A.11020 Rules (Epstein) / S.8757 (Hannon) – Chapter 330 of the Laws of 2018

This legislation extends for three years the provisions of law that offer rights and protections to healthcare professionals that volunteer overseas to fight the Ebola virus to ensure that, upon returning home from their volunteer opportunities, such workers will not be discriminated against based on an actual or perceived disability, are

restored to the same or comparable position, are not retaliated against for such leave of absence, and that they retain the same job benefits upon return.

C. Paid Family Leave

All too often when someone faces a family medical crisis or welcomes a new child into their family, they may be forced to take unpaid leave from work or quit their job altogether. Recognizing these challenges, the Committee has been a leader in helping working families in New York State gain access to programs that offer much-needed support and assistance. As a result, one of the Committee's most significant achievements was the enactment of Paid Family Leave in the State Fiscal Year (SFY) 2016-17 enacted budget. This benefit, which formally took effect on January 1, 2018, ensures that hard-working New Yorkers can afford to take paid time off to bond with a newborn or a newly adopted child, help take care of a family member who has fallen ill, or relieve family pressures when a family member is called to active military service abroad without the risk of losing their job or income. Nevertheless, the Committee remains dedicated to building on existing resources to help support working families, having reported several bills in 2018 to expand eligibility for Paid Family Leave so that more people may have access to its important benefits.

1. Paid Family Leave Benefits for Construction Workers

A.10583 (Pichardo) / S.8788 (Sepulveda) – Advanced to Third Reading

This bill would extend paid family leave benefits to include construction workers who have been employed for at least 26 of the last 39 weeks. Additionally, the bill would provide that such workers would remain eligible for paid family leave benefits if they return to work after an agreed unpaid leave or if they return to work after a lay-off, provided that they have met the eligibility requirement.

2. Paid Family Leave for Bereavement

A.10639-A (Morelle) / S.8380-A (Funke) – Vetoed Memo. 372 of 2018

This legislation adds bereavement time to the existing criteria for New York State's Paid Family Leave program, allowing employees to take paid leave following the death of a family member.

D. Unemployment Insurance

Since 1935, the New York State Unemployment Insurance (UI) Program has served as a financial safety net for people who are out of work through no fault of their own. To collect weekly benefits, one must be ready, willing, and able to work, and actively looking for work during each week in which they are claiming benefits. UI ensures that, while searching for new employment opportunities, individuals are still able to meet their basic financial needs in order to protect the well-being of themselves and their families. In 2018, the Committee

advanced legislation to make sure that workers stay connected to the workforce through proper access to unemployment insurance benefits.

**1. UI Benefits for Part-Time Professionals in Higher Education
A.4584 (Titus) / No Same-As – Referred to Ways and Means**

This bill would provide that a part-time professional employed in an instructional, research, or principal administrative capacity with a college, university, professional school, or junior college is not presumed to have reasonable assurance of employment with regard to eligibility for unemployment benefits when such employment is conditioned on enrollment, funding, or programmatic changes.

**2. Fees and Expenses in UI Proceedings
A.11026 (Espinal) / S.8653 (Murphy) – Chapter 457 of the Laws of 2018**

This legislation extends for two years the provisions of law that establish the qualifications and procedures for the registration of agents/representatives authorized to represent claimants or employers in proceedings before the Unemployment Insurance Appeal Board.

E. Workers' Compensation

Workers' compensation insurance provides weekly cash benefits and medical care, including rehabilitation, to workers who become partially or totally disabled as a result of disease or injury connected with their employment. If a worker dies from a compensable injury or illness, it also provides payments to their qualified dependents. The New York State Workers' Compensation Board is the state agency charged with the administration and adjudication of workers' compensation claims. Each year, the Committee considers bills that would facilitate the processing of claims and ensure that injured workers are provided with adequate access to quality care and treatment options that meet their needs.

**1. Treatment of Injured Employees by Occupational Therapy Assistants
A.1396-B (Zebrowski) / No Same-As – Passed Assembly**

This bill would authorize licensed occupational therapy assistants to provide occupational therapy care to injured employees under the workers' compensation system upon the prescription or referral of an authorized physician.

**2. Treatment of Injured Employees by Acupuncturists
A.2023-A (Bronson) / S.6666 (Amedore) – Vetoed Memo. 354 of 2018**

This bill would authorize the New York State Workers' Compensation Board to establish a fee schedule for the care and treatment of injured employees by licensed or certified acupuncturists under the workers' compensation system. Licensed or

certified acupuncturists would be authorized to provide massage therapy care upon the prescription or referral of an authorized physician.

**3. Treatment of Injured Employees by Massage Therapists
A.6797-A (Woerner) / S.406-A (Robach) – Passed Assembly**

This bill would authorize the New York State Workers' Compensation Board to establish a fee schedule for the care and treatment of injured employees by licensed massage therapists under the workers' compensation system. Licensed massage therapists would be authorized to provide massage therapy care upon the prescription or referral of an authorized physician.

**4. Conditional Renewal Notices to Policyholders
A.8932 (Hevesi) / S.7283 (Robach) – Chapter 11 of the Laws of 2018**

This legislation makes technical changes to Chapter 469 of the Laws of 2017 to ensure that workers' compensation policyholders are given 30 days advance notice when their premium will increase by more than ten percent upon renewal and the policy is being renewed by an affiliated insurer under common control with the insurer that wrote the expiring policy.

**5. Attachment to the Labor Market in Temporary Partial Disability Claims
A.9718 (Bronson) / S.3922-A (Savino) – Advanced to Third Reading**

This bill would provide that, in the case of temporary partial disability, a workers' compensation claimant would not be required to demonstrate ongoing attachment to the labor market unless the New York State Workers' Compensation Board has determined that the loss of wages is wholly unrelated to such disability.

**6. Treatment of Injured Employees by Physical Therapy Assistants
A.10535 (Zebrowski) / No Same-As – Passed Assembly**

This bill would authorize certified physical therapist assistants to provide treatment to injured employees under the workers' compensation system upon the prescription or referral of an authorized physician. Such physical therapy assistants would be required to work under the supervision of a licensed physical therapist.

**7. Language Access Plan
A.10573 (Titus) / S.5356-A (Alcantara) – Advanced to Third Reading**

This bill would require the New York State Workers' Compensation Board to translate all documents and forms used by or issued to injured employees in the six most commonly used languages in the State other than English, provide interpretation services to injured employees, publish a language access plan, and appoint a language access coordinator to monitor the Board's compliance with the aforementioned requirements.

8. Timely Access to High-Quality Medical Care
A.10903 (Barnwell) / S.8794 (Robach) – Ordered to Third Reading

This bill would increase the minimum threshold amount that requires authorization for special services, decrease the amount of time before such special services would be automatically authorized, and clarify the intent of the pre-authorized procedures list in order to help ensure timely access to treatment for injured employees under the workers' compensation system.

9. Extending Workers' Compensation Coverage for TNC Drivers
A.10970 (Cahill) / S.8929 (Golden) – Chapter 119 of the Laws of 2018

This legislation eliminated provisions of law that would have permitted the New York Black Car Operators' Injury Compensation Fund, Inc. to cease providing workers' compensation coverage to transportation network company (TNC) drivers that are logged onto a TNC digital network and are not engaged in a TNC prearranged trip.

10. Presumption in Opioid Overdose Claims
A.11028 Rules (Jean-Pierre) / S.8034 (Alcantara) – Passed Assembly

This bill would establish a presumption that the death of an injured employee due to an opioid overdose is compensable if such injured employee was prescribed opioids to treat a workplace injury.

11. Weekly Wages Basis for Compensation
A.11029 Rules (Bronson) / S.8035 (Alcantara) – Ordered to Third Reading

When determining whether an injured employee's earning capacity could be expected to increase, this bill would require the New York State Workers' Compensation Board to consider whether such injured employee is under the age of 35 or whether he or she was accepted into or enrolled in an apprenticeship training program approved by the Commissioner of Labor.

12. Presumption for Having Not Refused an Offer of Reemployment
A.11030 Rules (Rosenthal D) / S.7865 (Savino) – Ordered to Third Reading

This bill would establish a presumption that an injured employee who has not refused an offer of reemployment from his or her employer has not voluntarily withdrawn from the labor market.

13. Increasing and Indexing Minimum Weekly Benefits
A.11034 Rules (Titus) / S.8563 (Sanders) – Reported to Ways and Means

This bill would establish that minimum weekly benefits under the workers' compensation system shall not be less than one-fifth of the statewide average weekly wage (SAWW). The bill would also provide that if an employee receives a wage that

is equal to or less than one-fifth of the SAWW, then their minimum weekly benefit upon injury shall be their actual earnings.

**14. Removing Loss Adjustment Expenses from the Definition of “Loss Costs”
A.11036 Rules (Titus) / S.8433 (Funke) – Ordered to Third Reading**

This bill would remove loss adjustment expenses from the definition of “loss costs” under the New York State Insurance Law for purposes of workers’ compensation insurance rate setting.

F. Other Significant Legislation

1. Wage Data Clearinghouse

A.2164-C (Bronson) / S.5363-B (Alcantara) – Passed Assembly

This bill would require the Commissioner of Labor, in consultation with the Commissioner of Education and the State Workforce Investment Board, to establish a wage data clearinghouse within New York State for the purpose of analyzing available wage data, supplementing current data analysis, and assessing the outcomes and effectiveness of workforce preparation programs. Such a clearinghouse would be administered by an academic institution in New York with proven expertise in analyzing labor data, to be selected through a request for proposals (RFP) process.

2. Study on the Impact of Job Automation

A.5263-A (Rosenthal) / No Same-As – Reported to Rules

This bill would require the New York State Department of Labor to conduct a study and publish a report to the Governor and Legislature regarding the impact of job automation on the workforce in New York State.

3. Elevator Safety

A.5815-B (Titus) / S.5137-A (Savino) – Passed Assembly

This bill would establish guidelines and standards for the inspection and maintenance of elevators and other automated people moving devices, and prescribe the required licenses and certifications for individuals that would be authorized to perform such work.

4. Online Database for Workforce Development Funding Programs

A.8930 (Bronson) / S.7325 (Phillips) – Chapter 40 of the Laws of 2018

This legislation amends Chapter 458 of the Laws of 2017 to require the New York State Department of Labor to establish, maintain, and publish an online database for workforce development funding programs. State agencies that administer or oversee workforce development funding programs will be required to report certain information regarding such programs annually to the Department.

**5. Pre-Audit of Expenditures of the New York State Insurance Fund
A.10616 (Simon) / No Same-As – Ordered to Third Reading**

This bill would eliminate unconstitutional language that currently prohibits the pre-audit of expenditures of the New York State Insurance Fund by the New York State Comptroller.

▪ STATE FISCAL YEAR 2018-19 ENACTED BUDGET ▪

Each year during budget negotiations, the Committee advocates for proposals that would support working families and strengthen existing labor programs. The Committee also works closely with the Assembly Standing Committee on Ways and Means to secure funding for various programs and initiatives that can help improve the quality of life of New York State's workers and job seekers. This year, the State Fiscal Year (SFY) 2018-19 enacted budget included groundbreaking legislation to help combat sexual harassment in the workplace and also provided new funding for workforce investment opportunities.

A. Sexual Harassment in the Workplace

In the wake of the global #MeToo movement, which has exposed the astoundingly widespread impact of sexual misconduct in both the personal and professional spheres, the SFY 2018-19 enacted budget included landmark legislation to combat sexual harassment in the workplace and to ensure that victims in New York State have the resources and opportunities available to seek justice in the workplace and in the courts.

In summary, the law bans confidentiality clauses settlements involving sexual harassment claims, except at the election of the victim. It also permits any state entity or local government that has paid out an award to a victim for an adjudicated sexual harassment claim to recover such payment from the responsible officer or employee. In addition, except when inconsistent with federal law, it prohibits employers from requiring mandatory arbitration clauses with regard to sexual harassment claims.

Pursuant to the new law, entities that participate in any state or local competitive bidding process are required to certify that they have a policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment prevention training to its employees in order to submit a bid. Contractors, subcontractors, vendors, consultants, and other persons providing services pursuant to a contract in the workplace are also now protected from sexual harassment under the New York State Human Rights Law.

The law also requires all employers in New York State to have a sexual harassment prevention policy and provide sexual harassment prevention training program to its employees. To this end, the New York State Department of Labor, in consultation with the New York State Division of Human Rights, is required to develop a model sexual harassment prevention policy and model sexual harassment prevention training program to help combat sexual harassment in the workplace. Employers are required to adopt such model policy and model training program, or otherwise establish their own policy and program that equals or exceeds the minimum standards set forth by the law. Such minimum standards must:

- Prohibit sexual harassment consistent with guidance from the Department of Labor and the Division of Human Rights, and providing examples of prohibited conduct;
- Provide information on state and federal laws concerning sexual harassment and remedies available to victims;

- Include a standard complaint form;
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- Inform employees of their rights and all available forums for adjudicating complaints administratively and judicially;
- Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- Clearly state that retaliation against individuals who complain of sexual harassment, or against those who testify or assist in any legal proceeding regarding such misconduct, is unlawful.

The Department of Labor and Division of Human Rights published their model policy and model training program in August 2018, and as of October 9, 2018, all employers in New York State are required to have a sexual harassment prevention policy in place and conduct annual sexual harassment prevention training.

B. Workforce Investment

The State Fiscal Year (SFY) 2018-19 enacted budget provided \$175 million to establish a new Consolidated Funding Application for workforce investments, containing \$150 million in new resources and \$25 million in existing streams of workforce development funding, broken down into the following amounts:

- \$5 million for the federal Workforce Innovation and Opportunity Act (WIOA);
- \$5 million for the Empire State Development Employee Training Tax Credit;
- \$13 million for SUNY/CUNY job training;
- \$15 million for the New York State Energy Research and Development Authority's off-shore wind project;
- \$20 million for the New York State Department of Labor's Re-Employment Service Fund;
- \$50 million for SUNY/CUNY 2020; and
- \$69 million for the Pay for Success program.

Applications for these funds will be administered through the Regional Economic Development Councils (REDCs) in collaboration with the Office of Workplace Development, a new office created by the Executive which is designed to oversee and coordinate all workforce training programs for New York State. Services and expenses for workforce development in connection with the Pay for Success program, the New York State Department of Labor's Re-Employment Service Fund, and WIOA will also be administered in consultation with the State Workforce Investment Board and other state agencies responsible for the administration of workforce development programs.

▪ PUBLIC HEARINGS AND ROUNDTABLES ▪

A. New York State Department of Labor’s “13-Hour Rule”

On October 4, 2018, the New York State Assembly Standing Committees on Labor and Health conducted a roundtable in New York City to examine and discuss 24-hour home care in the context of the New York State Department of Labor’s regulations which allow employers of 24-hour residential home care workers to exclude meal periods and sleep times from hours worked for the purpose of calculating workers’ wages. Following a series of decisions handed down by the New York State Appellate Division which ruled in favor home care workers, who claim that this “13-hour rule” violates New York State’s minimum wage laws, the matter is currently under review by the New York State Court of Appeals. The Committees heard from various advocates and stakeholders that could be affected by this decision, including the Home Care Association of New York State, New York State Association of Health Care Providers, Visiting Nurse Service of New York, SEIU 1199, and the Legal Aid Society, which fostered an insightful discussion about the potential impact on workers, employers, patients, and the home care industry as a whole.

B. Wage Theft in New York State

On December 4, 2018, the New York State Assembly Standing Committees on Labor and Judiciary conducted a public hearing in New York City to examine continuing challenges in the prevention and adjudication of wage theft in New York State. The Wage Theft Prevention Act was enacted in 2010, and amended in 2014, to help empower employees to recover wages that have been withheld by unscrupulous employers. Despite this progress, many employees remain vulnerable to wage theft and are unable to utilize the rights afforded to them under the New York State Labor Law to recover back pay. The Committees heard from several groups, including the New York State Building & Construction Trades Council, 32BJ SEIU, The Business Council of New York State, Inc., The Legal Aid Society, and Make the Road New York in an effort to discuss various barriers that remain with regard to recovering employees’ lost wages and explore additional measures that may be necessary to hold employers accountable for wage theft violations.

▪ OUTLOOK FOR 2019 ▪

For the 2019 Legislative Session, the Assembly Standing Committee on Labor will remain steadfast in its commitment to advancing legislation that strengthens and protects the health, safety, and viability of New York State's robust workforce.

In 2019, the Committee will continue to advocate for the rights of low-income workers and ensuring that unscrupulous employers are held accountable for abuses of the New York State Labor Law, including wage theft violations. In recent years, New York State has taken great strides to combat wage theft as well as empower employees to report fraud and recover back pay; however, wage theft is still a significant issue for many workers, particularly those in low-wage occupations. In the upcoming legislative session, the Committee will remain dedicated to protecting the rights afforded to employees, including the right to minimum wage, in order to support working families and prevent the further erosion of basic labor protections.

Along the same line, the Committee will also carry on the fight to eliminate pay inequities for women and minorities throughout the state. In New York, it is an illegal employment practice to pay employees different wages based on their gender. However, in reality, jobs traditionally held by women, as well as minorities, continue to be systematically undervalued in the marketplace, despite such jobs requiring the same levels of education, skills, and responsibilities. In light of the continuing wage gap, it is clear that today's laws are still insufficient and do not adequately protect women and minorities against wage discrimination. As a result, the Committee will continue to push for stronger equal pay laws to ensure that all employees are treated fairly in the workplace.

Further, the Committee remains dedicated to establishing a statutory definition of "public work" projects to ensure that all laborers on such projects receive their lawful wages and supplements. Additionally, as always, the Committee will continue to monitor the State's workers' compensation system in order to ensure that workers will continue to have access to the rights and benefits promised to them.

As evidenced by this report, the 2018 Legislative Session held much success, and the Committee is eager to build on that momentum. The Committee looks forward to seeing the implementation of legislation chaptered this year, along with the first full year of implementation of Paid Family Leave, and continuing to serve the working people of New York State.

APPENDIX A

2018 SUMMARY SHEET

**Summary of Action on All Bills Referred to the
New York State Assembly Standing Committee on Labor**

Total Number of Committee Meetings Held: 5

	Assembly Bills	Senate Bills	Total Bills
Bills Reported Favorable To:			
Codes	8	0	8
Judiciary	0	0	0
Ways and Means	4	0	4
Rules	6	0	6
Floor	7	0	7
Total	25	0	25
Committee Action			
Held for Consideration	18	0	18
Defeated	0	0	0
Enacting Clause Stricken	9	0	9
Remaining in Committee	206	5	211
Bills Reference Changed To:			
Total	0	0	0

APPENDIX B

CHAPTER LAWS OF 2018

CHAPTER NUMBER	ASSEMBLY BILL (SPONSOR)	SENATE BILL (SPONSOR)	DESCRIPTION
11	A.8932 (Hevesi)	S.7283 (Robach)	Amends Chapter 469 of the Laws of 2017 to provide for conditional renewal notices to workers' compensation policyholders.
38	A.8931 (Bronson)	S.7323 (Murphy)	Amends Chapter 461 of the Laws of 2017 to ensure the proper debarment of contractors in New York State that have also been debarred at the federal level.
40	A.8930 (Bronson)	S.7325 (Phillip)	Amends Chapter 458 of the Laws of 2017 to establish an online database for workforce development funding programs.
119	A.10970 (Cahill)	S.8929 (Golden)	Requires the New York Black Car Operators' Injury Compensation Fund, Inc. to continue providing workers' compensation coverage for certain transportation network company (TNC) drivers.
330	A.11020 Rules (Epstein)	S.8757 (Hannon)	Extends provisions of law providing rights and protections to healthcare professionals that volunteer overseas to fight the Ebola virus.
368	A.10615 (Titus)	S.8834 (Young)	Extends provisions of law that allow employers to make deductions from employees' wages for certain services.
457	A.11026 (Espinal)	S.8653 (Murphy)	Extends provisions of law that establish the qualifications and procedures for the registration of agents authorized to represent claimants or employers in proceedings before the Unemployment Insurance Appeal Board.

APPENDIX C

BILLS VETOED IN 2018

VETO MEMO	ASSEMBLY BILL (SPONSOR)	SENATE BILL (SPONSOR)	DESCRIPTION
354	A.2023-A (Bronson)	S.6666 (Amedore)	Would establish a fee schedule for the care and treatment of injured employees by licensed or certified acupuncturists.
372	A.10639-A (Morelle)	S.8380-A (Funke)	Would authorize employees to utilize Paid Family Leave for bereavement time due to the death of a family member.

APPENDIX D

PASSED ASSEMBLY IN 2018

ASSEMBLY BILL	SPONSOR	DESCRIPTION
A.566-A	Jaffee	Would prohibit employers from accessing information regarding the reproductive health care decisions of employees or their dependents without written consent and from taking any discriminatory or retaliatory personnel action against an employee on the basis of such decisions.
A.1396-B	Zebrowski	Would allow for the care and treatment of injured employees by occupational therapy assistants.
A.2164-C	Bronson	Would provide for the establishment of a wage data clearinghouse in New York State.
A.2565	Steck	Would eliminate a provision of law that limits workers' rights by requiring employees to give up other causes of action in order to bring a whistleblower claim against their employer.
A.4696	Titus	Would enact the New York State Fair Pay Act to establish that paying different wages between employees who work equivalent jobs on the basis of sex, race, or national origin is an unlawful employment practice.
A.5498-A	Bronson	Would establish a definition for "public work."
A.5757	Benedetto	Would extend whistleblower protections to employees who disclose the illegal business activities of their employers.
A.5815-B	Titus	Would establish guidelines and standards for the inspection and maintenance of elevators and the licensing of individuals authorized to perform such work.
A.6153	Cusick	Would expand the hours and conditions for which 16 and 17 year-olds may be employed as lifeguards or aquatic supervisory staff.
A.6797-A	Woerner	Would establish a fee schedule for the care and treatment of injured employees by massage therapists.
A.10535	Zebrowski	Would allow for the care and treatment of injured employees by physical therapy assistants.
A.11028	Jean-Pierre	Would establish a presumption for compensation upon the death of an injured employee due to an opioid overdose.