

Testimony of Kendra Hems

On Behalf of

Trucking Association of New York

Before the

**New York City Council
Committee on Transportation
May 5, 2020**

Regarding

COVID-19 Relief Package: Premium Pay for Essential Workers (Int. 1918), Just Cause Discharge from Employment (Int. 1923) and Expansion of the Earned Safe and Sick Time Act (Int. 1926)

I would like to thank Chairman Miller and the rest of the committee members for the opportunity to submit testimony.

For over 85 years, the Trucking Association of New York (TANY), a non-profit trade group, has represented the trucking industry in New York, advocating for the industry at the local, state and federal levels. We provide educational programs to our membership, which enhance their safety and maintenance efforts and offer numerous councils and committees to meet the diverse needs of our membership. TANY comprises over 600 member companies from New York, Canada, every border state, and other states across the country and is the exclusive New York affiliate of the American Trucking Associations (ATA).

In the midst of the COVID-19 crisis, professional truck drivers along with our healthcare workers, law enforcement and other essential personnel are on the frontlines of this pandemic. Professional drivers are working overtime to ensure that critical deliveries of food, water, toiletries, pharmaceuticals and medical supplies get to healthcare facilities, businesses, and consumers in this time of need. However, even though certain segments of the trucking industry have seen growth due to this increased demand for these goods, other segments are struggling to keep their doors open. While we certainly understand the intent of the package of bills introduced, we have serious concerns about the additional financial and administrative burdens it will place on companies during a time when they are doing everything they can to stay in business and keep their employees employed.

We have seen record drops in consumer spending just in the first three months of 2020. As an example, clothing sales have dropped 36 percent, motor vehicles and parts are down 33 percent, restaurant and bar sales are down 30 percent. The most recent Empire State Manufacturing Survey, conducted between April 2 and April 10 shows that the General Business Conditions Index has plummeted 57 points to negative 78.2. This is the lowest level in the history of the survey by a wide margin. To give a reference point, during the depths of the Great Recession from 2007 – 2009 the Index was at negative 34.3.

For the trucking industry, this equates to a cratering of demand and it is incredibly difficult to find freight. Rates have dropped significantly as companies fight to get what little freight is available. Unless you are a company dedicated to hauling groceries or durable goods such as toiletries and cleaning supplies, you are struggling to make ends meet and keep your doors open.

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With respect to Int. 1918, we are dismayed that the Council would seek to mandate a “premium pay” for essential workers at a time like this. Companies are already struggling to keep the employees they have and a requirement for premium pay would make that nearly impossible. Even as revenues have dropped to unprecedented levels, companies are expending unbudgeted funds to obtain critical and necessary personal protective equipment such as masks and hand sanitizer to keep employees safe. Our member companies are fighting for their survival. Without exaggeration, an increase in their payroll costs resulting from a premium pay mandate would force many of them to close down completely. There is simply no way for them to absorb this additional financial burden.

With regards to Int. 1923, the type of just cause requirement that is proposed would substantially disrupt the way many of companies conduct their business. Int. 1923 seeks to require companies to implement lengthy and rigorous processes to discharge, suspend or reduce an employees' hours. Additionally, this bill creates a private right of action for employees, which will result in costly attorney fees and a long drawn out court process that many small operators will not have the means to endure. Given the demands we as an industry are trying to meet in the middle of a pandemic, it is inappropriate to saddle the trucking industry with an onerous and burdensome regulation. Companies are doing everything they can, adjusting their models and shifting operations where possible, to keep their businesses open and to keep their workers employed.

Finally, we have very serious concerns with Int. 1926, which would expand coverage under the Earned Safe and Sick Time Act. This legislation would change the presumption of employment to what is often referred to as the “A, B, C” test. In the trucking industry, that is largely dependent on the use of independent contractors, it is impossible to meet the “B” prong of the test which requires “the person performs labor or services that are outside the usual course of the hiring entity’s business”. It was for this very reason that the trucking industry worked closely with labor to pass the New York State Commercial Goods Transportation Industry Fair Play Act. The Act went into effect in 2014 and created a new standard for determining whether a driver of commercial vehicles who transports goods is an employee or independent contractor. We would ask that the Council consider amending the proposed legislation to honor the definition of a “separate business entity” included in the Fair Play Act to ensure that true independent contractors are not unduly classified as employees.

In closing I would like to stress that the trucking industry is committed to ensuring the protection and wellbeing of their employees. We ask that rather than create a divide between employers and employees, that we work together to support our critical businesses so that they can continue to provide much needed jobs. Passage of the above referenced legislation would only serve to put crippling administrative and financial burdens on companies that are hanging on by a thread, resulting in many of them being forced to close their doors.

We look forward to working with the Council on this issue.

Thank you.

Trucking Association of New York