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Department of Financial Services Hearing: 2016 Workers' Compensation Rate Filing Request

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The New York State Workers' Compensation System was designed as a simple bargain after one of the worst tragedies for American workers—the Triangle Shirtwaist Factory Fire. In 1914, New York State passed legislation to ensure that hurt workers would automatically be granted compensation; and employers would pay in order to fund it.

I am here to speak on behalf of the New York Committee for Occupational Safety and Health (NYCOSH) and the Workers Protection Coalition. The New York Committee for Occupational Safety and Health (NYCOSH) has worked to extend and defend every person's right to a safe and healthy workplace, including the protection of the workers' compensation system. The Workers Protection Coalition is fighting for a fair and just Workers Compensation System for all injured workers in New York State. The coalition is comprised of a broad group of individuals and organizations, including injured workers, the health and legal community, labor affiliates, and workers' rights advocates.

Today, I am speaking in opposition to the New York Compensation Insurance Rating Board's request to increase the Lost Cost Filing for October 1, 2016 by 9.3%. The CIRB proposal is based on the premise that the costs of workers' compensation are continuing to rise, and that as a result, employers must pay more as well.¹

Real cost savings to the workers' compensation system can be found by addressing the issue of misclassification. Every day, low wage workers in New York State are misclassified as independent contractors. This misclassification costs \$6 billion a year.

¹ NYCIRB R.C. 2412, 6/15/16; loss cost filing available at: http://www.nycirb.org/2007/depts/actuary/LC_Filing_10_1_16.pdf

In the construction industry alone, this cost is estimated to be a half billion dollars in New York City.²

However, misclassification is not limited to the construction industry. NYCOSH's healthy nail salons campaign confirms that many employers evade paying workers' compensation premiums by underreporting payroll. These unscrupulous employers then intimidate and misinform workers about whether they have a right to workers compensation when they are sick or injured. As a practical matter, this means that these workers, mostly low wage, immigrant workers, and unaware of their rights, are exploited in order for employers to keep their premiums low. This story repeats itself in many low-wage industries.

A report from the National Employment Law Project (NELP) also found that intimidation and lack of information is a serious issue for workers, and as a result, the workers' compensation system is not functioning for workers in the low-wage labor market. "Of the workers in our sample who experienced a serious injury on the job, only 8 percent filed a workers' compensation claim... When workers told their employer about the injury, 50 percent experienced an illegal employer reaction—including firing the worker, calling immigration authorities, or instructing the worker not to file for workers' compensation... About half of workers injured on the job had to pay their bills out-of-pocket (33 percent) or use their health insurance to cover the expenses (22 percent). Workers' compensation insurance paid medical expenses for only 6 percent of the injured workers in our sample."³

² District Attorney, New York County, *Report of the Grand Jury of the Supreme Court, State of New York, First Judicial District, Issued Pursuant to Criminal Procedure Law Section 190.85 Subdivision (1)(c)*, available at: <http://manhattanda.org/sites/default/files/Workers%20Comp%20GJ%20Report.pdf>

³ National Employment Law Project, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, available at: <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>

Another key area of misclassification is the on-demand economy, or the so-called “gig” economy. The on-demand economy is characterized by companies which use apps or online portals in order to connect customers with workers with short term jobs. While this sector of the economy is small, it has increased exponentially in the past few years and is likely to continue growing. Because many of these companies classify their workers as independent contractors, they evade paying workers compensation premiums and also shift the cost burden towards those employers who seek to play by the rules.⁴

Rather than addressing the issue, raising insurance rates will have the effect of increasing the costs for the good employers, and pushing marginal employers towards more misclassification and worker exploitation. Raising costs to employers would be justified if the services to workers increase along with them. However, while workers are seeing a reduction in benefits, and fewer of them are able to access workers compensation at all, raising costs does nothing more than overburden the current system without providing a concurrent benefit to workers.

We are here today because we believe that the focus should be on New York’s workers, who urgently need a strong and effective workers compensation insurance system, which includes respect for the human rights of injured and ill workers, just and timely compensation, quality health care, an accessible process, justice for low wage workers, and freedom from retaliation. Thank you for the opportunity to testify and we look forward to continuing to work on this critical issue.

⁴ National Employment Law Project, *Policy Brief: On Demand Workers Should be Covered by Workers Compensation*, available at: <http://www.nelp.org/content/uploads/Policy-Brief-On-Demand-Covered-Workers-Compensation.pdf>