

NEW YORK STATE COUNCIL OF CHURCHES

2022 LEGISLATIVE ASK

LABOR RIGHTS

THEOLOGICAL AND ANTI-RACIST RATIONALE

Guided by our faith traditions, we seek to respect the inherent dignity of each of our sisters and brothers with whom we live in community on this earth. We recognize that much of the richness of our economy developed over time is due to the hard work of slaves whose uncompensated labor generated massive wealth. Moreover, low wage workers, many of whom were/are persons of color and undocumented/documentated immigrants, have become unwitting philanthropists to business. The pandemic has been especially hard on these workers many of whom were classified as “ESSENTIAL” and were forced to work without protective gear and the vaccine. They became infected, were among the hospitalized, and many died. Families suffered without income and loss of breadwinners. All people have the right to a dignified and respectable life, which includes the means to obtain necessities, such as food, clothing, shelter, education, healthcare, safe environment and economic security. Since all workers have a right to rest or leisure, they should be able to work a reasonable amount of time in order to provide for themselves and their families.

Legislative Request Principles:

- The economy exists for the people and not the people for the economy.
- It is immoral for us to steal wages from working people
- People need good working conditions and must not be asked to work unreasonable hours.
- When employers underpay their workers or worse engage in wage theft, they effectively ask the government to carry more of the cost for supporting these employees as they must rely more and more on the safety net. For example, under paid people end up needing SNAP and deeper housing subsidies. Many become more vulnerable to homelessness and incarceration raising adding to great government cost and subsidizing businesses which pay low wages.

State Legislative Requests:

Excluded Worker Fund ([A9037/S8165](#)) establishes worker unemployment insurance for workers who ordinarily do not qualify because of their immigration status. Presently, the bill is in the Finance Committees of both the Assembly and the Senate.

Still Excluded: There are many thousands of undocumented immigrant workers across New York State who lost income due to COVID but are still not getting any government help. The Excluded Workers Fund allowed those who were able to receive funding to get back to a more normal life after a year of pain and loss. However, according to information gathered by the Fund Excluded Workers Coalition, there remain gaps in our safety net system that shut out many of New York’s most vulnerable workers, especially, black, brown, and immigrant workers in precarious low-wage industries.

We are supporting a proposal which would add \$3 Billion to replenish Excluded Workers Fund and to make it permanent in the 2022-2023 State Budget. These monies will:

- Cover anyone who loses their job and are unable to access unemployment insurance because of their immigration status;
- Pay domestic workers and day laborers who are excluded from benefits because of their work class;
- Compensate self-employed workers like street vendors or house painters who face adverse events. Special consideration will be given to making sure people who should get unemployment insurance, such as misclassified workers, do get regular unemployment insurance.

The success of the Excluded Workers Fund (EWF) let our communities survive and recover from the pandemic. Working families across New York were able to finally pay down debt, address medical needs, buy school supplies, put food on the table, and have the freedom to leave abusive partners and unsafe working conditions. Yet the \$2.1 billion only covered a fraction of the total eligible workers. Adding \$3 billion to the fund will make it easier for all workers who could be eligible for the fund to get access to it.

While many workers received life-changing support from the EWF, tens of thousands of New Yorkers were left out because just nine weeks after opening applications, the Department of Labor closed applications for the fund following surging demand that depleted the full \$2.1 billion allocated. The DOL has estimated that 75,000 applicants were denied due to insufficient funds. Outside of NYC, community organizations did not have enough time to hire staff, complete sufficient outreach, and assist workers with applications. The EWF absorbed the pitfalls of other programs, and served a larger population than anticipated. Workers who should have had access to unemployment or Pandemic Unemployment Assistance, but didn't know they qualified and thus didn't apply for them, successfully applied for EWF. Workers who would have been eligible under the first iteration of the EWF, but were denied due to outstanding policy issues. People paid off the books, workers not listed on their lease or utility bills, and New Yorkers affected by Hurricane Ida who struggled to apply.

For more information go to WWW.fundexcludedworkers.org

We are invited to **sign on a letter calling on New York State to help these essential but still excluded workers. You can read the letter [here](#) (which is geared to Long Islanders) but can be adapted for your region. To add your name to the letter, please send an email Richard Koubek, at rkmicahli@gmail.com with your name, title and congregation.**

A Permanent Fix: And to get a permanent fix, *we are also calling for enactment of the "Excluded No More" bill that would open New York's Unemployment Insurance to all excluded cash workers* - documented and undocumented immigrants and even US citizens - who are self-employed cash workers such as housekeepers or landscapers or day laborers, but who cannot receive unemployment compensation when they lose their jobs.

FARM WORKER OVERTIME

We strongly support the Farm Laborer Wage Board's ruling to lower the current 60-hour overtime threshold for farm laborers over a 10-year period, which would reach 40 hours by 2032. The threshold would be lowered by four hours per week every two years beginning in 2024

We are supporting the Governor's over time incentive credit of 130 million graduate over 10 years.

The board's decision will be sent to state Department of Labor Commissioner Roberta Reardon, who has the final say and could modify the recommendations.

According to the Times Union:

“In 1938, Congress agreed to the Fair Labor Standards Act, which established a federal minimum wage and the modern-day 40-hour work week. President Franklin D. Roosevelt brokered a deal with Southern Democrats to see the passage of his New Deal Era legislation by removing farm workers and domestic workers from those thresholds. It was not until the 80s that farm workers began becoming entitled to a minimum wage.”

Some farm owners argue that workers on visas, which make up a relatively low percentage of the overall workforce, wanted to work as many hours as possible and would leave the state if they could make more money elsewhere. A Cornell University study, which found similar outcomes, relied on convenience samples and small data collection; the university declined to release its data or surveys.

Labor rights groups argue that it's essential farm workers be given the right to have similar free time as the rest of the workforce. It also noted that if the hours were reduced to 40 per week before overtime kicks in, it could mean that farms would be more competitive to draw employees locally. The decision comes after lawmakers passed a "Farm Laborers Fair Labor Practices Act" in 2019. It created a 60-hour overtime threshold and the right to a day off. A concurrent lawsuit also granted farmworkers the right to organize

FAIR PAY FOR HOME CARE [A6329A/S5374A](#)

As faith leaders from across New York State, we urge you to end the home care crisis that is plaguing our communities. We are responsible for caring and supporting our community and congregants — and this includes their care outside our places of worship.

Our faith traditions teach that caring for others with love and kindness is a sacred way to serve. Those who do that holy work also deserve love and kindness, in the form of fair pay and working conditions that allow them to care for others while also caring for their own families.

Every day, we speak with members of our parishes, temples, mosques and synagogues who struggle to find home care. We also have home care workers among our congregants. We hear from aging adults who

are scared they will be forced into nursing homes because they cannot find home care workers. We hear from disabled people who are often unable to get out of bed or feed themselves because there are no home care workers to care for them. And we hear from family members and loved ones who fear for their grandparents, parents, and children because there are no home care workers to hire. Home care workers make it possible for our congregants and community members to join us in worship.

It's clear to us from our daily conversations that home care is nearly impossible to find — and the numbers reflect our experiences. A recent report found New York faces the [worst home care shortage](#) of all fifty states: 25% of home care clients are [unable to find home care workers](#), and nearly 20% of [home care positions are currently unfilled](#).

There is no question that home care workers are leaving the sector to find work elsewhere because the pay is far too low. Many of our congregations include home care workers, and those who have left the work as well — and we hear the same refrain: they love their jobs but cannot survive on the poverty wages. Home care workers perform valiant, tireless work — lifting aging adults in and out of bed, helping feed, clothe, and bathe them. Yet the state insists this work is worth just \$13.20 an hour in most regions of New York. Over 40% of homecare workers live in or near poverty due to chronically low wages, and [57% rely on public assistance](#). With so many home care workers living below the poverty line, we understand their desire to find employment elsewhere. We need you to act now, so these workers stop leaving.

As faith leaders, we urge you to show moral leadership and end the home care crisis. Including Fair Pay for Home Care (A6329A/S5374A) in the New York State budget is the logical solution — the Act would [wipe out the home care shortage](#) within five years, create [200,000 new jobs](#), and [pay for itself](#) by moving workers off of state programs like food assistance and other social services. Elected officials across the state, and across party lines, support Fair Pay for Home Care — because they know this crisis is threatening all New Yorkers.

During Covid-19, New Yorkers need home care now more than ever. And in the years to come, this demand will only grow as our population ages. Between 2021-2040, New York State is projected to grow by 3% —but the [65-and-over population will grow by 25%](#), while the number of adults over age 85 will grow by 75%.

As faith leaders, we have been heartened to hear your voice support for women, immigrants, people of color, and communities that have been ignored for far too long. We urge you to match these powerful words with action and fund Fair Pay for Home Care now.

SWEAT SECURING WAGES EARNED AGAINST THEFT BILL ([S2762/A766](#))

Presently, we are seeing a statewide crisis in wage theft. It is estimated that in New York, in a given year, workers endure about a billion dollars in lost wages. Wage theft is a crime that has been largely ignored or flouted. That means countless workers are paid under the minimum wage and/or don't receive overtime pay. Many are not paid for all the work they do. Others have their tips misappropriated by their bosses. When workers file complaints or lawsuits, they often cannot collect on those judgments because their employers have shut down their businesses or transferred their assets to avoid paying. SWEAT will allow workers to freeze the employer's assets and collect their pay. Several industries in New York oppose passage of the legislation; they say workers lie about their wages. We need to support our workers in securing their hard earned, just wages.

WAGE THEFT IS A SERIOUS PROBLEM - AND SWEAT OFFERS A STRONG REMEDY WITHOUT HARMING LAW-ABIDING EMPLOYERS

An estimated \$1 billion of wages stolen from workers in New York State each year. In 2015, the state Department of Labor announced that it recovered \$30.2 million for victims of wage theft in NYS.¹ This was a mere 3% of the total wage theft. Most employees do not come forward against law-breaking employers because they fear retaliation, and because it is widely known that actually recovering your stolen wages is extremely unlikely.

THE WAGE LIEN, A TOOL FOR COLLECTING OWED WAGES, SIMPLY EXPANDS EXISTING MECHANIC'S LIEN

Summary of Provisions of Bill A766/S2762

By the Secure Wages Earned Against Theft Coalition (SWEAT)

Legislation introduced by Assembly Member Linda B. Rosenthal and Senator Jessica Ramos provides essential tools to victims of wage theft whose employers may seek to evade responsibility by dissipating corporate or personal assets to frustrate collection of a judgment.

Expand the Lien Law to Provide a Remedy to More Employees

The bill would allow workers from all industries to utilize liens against an employer's property to ensure payment of any court judgment or order by the New York Department of Labor for wage violations. The Lien Law already provides liens for workers in the construction industry (mechanic's liens) for non-payment of wages arising out of the improvement of real property.

This bill uses the existing legal framework of mechanic's liens to include claims against the property of any employer who fails to follow state and federal wage-hour laws. To obtain the lien, the employee would have to provide a detailed factual statement about the claims. The ability to file a lien will reduce the likelihood that employers will dissipate their assets during litigation or a government investigation. The lien would be valid for one year and could be extended during the pendency of litigation or investigation by the New York Department of Labor or Attorney General. After the lien is filed, an employer may challenge the validity the lien by forcing the employee to initiate a court action or a Department of Labor investigation within 30 days of the employer's demand, or requesting a court to vacate the lien if it is invalid on its face.

Modify the Standard that Courts Use to Determine Whether to Hold an Employers Assets During Litigation.

Current New York law allows a judge to "attach" a defendant's assets during the pendency of litigation. A court order of attachment holds the assets so the owner cannot transfer them without court approval. It is a critical tool to prevent employers from disposing of property after being sued and before a court renders a judgment.

However, New York's court practice rules currently impose on employees, who are not provided access to their employer's financial information—an unduly high burden to obtain attachment. The current standard requires the employee to show that the employer has an “intent to defraud” the employees by transferring or hiding property. Under judge-made precedent, proving “intent to defraud” is almost impossible under these circumstances, and experience shows that employers who have successfully defeated motions for attachment have then proceeded to transfer their assets during litigation. This bill would adopt the standard currently in place in Connecticut allowing plaintiffs to obtain an attachment if they are likely to succeed with their claims.

Remove Unnecessary Roadblocks that Make it Difficult to Hold the Largest Owners of Privately Held Corporations Liable for Wage Theft

While the ten largest shareholders of privately held corporations and the ten largest owners of limited liability companies can be held personally liable for wage theft, existing laws make it unnecessarily difficult for workers to hold the owners liable. Although current law requires employees to give notice to the owners within 180 days of the end of their employment, the law provides no mechanism for the employees to learn the identity of the owners. In addition, current law requires an employee to get a final judgment against the corporate entity, which then must fail to pay the judgment, before the employee can even begin a case against the individual owners. The requirement of two successive lawsuits is inefficient and unaffordable for low-wage workers. This bill removes these unnecessary hurdles by providing that wage theft victims can pursue remedies against the largest owners of non-publicly traded business corporations and LLCs at the same time that they pursue remedies against the corporate entity without advance notice.

Similar to the existing Lien Law provisions that allow workers to obtain a mechanic's lien, SWEAT, contains numerous protections for Employers who could be subject to liens.

- An Employee's application to create the lien (notice of lien) must be a detailed, sworn statement of the facts and circumstances that give rise to the claim.
- If the lien appears invalid on the face of the documents filed, the Employer can immediately contest the lien's validity.
- The Employer also can dispute the lien by sending a notice to the Employee stating that she must either file a foreclosure action or an action to obtain judgment in 30 days. If the Employee doesn't do either, the Employer can discharge the lien.
- The Employer can post a bond to eliminate the lien.
- If a Court determines that a lien is willfully exaggerated, the lien is void.

Answers to common employer challenges to SWEAT

Won't SWEAT encourage Employees to file frivolous lawsuits?

No. The requirements of the lien application include details about the wage claim means Employees will be prepared for litigation before filing liens. If a lien is shown to be willfully

exaggerated, it will be declared void. SWEAT just creates a new step to ensure an Employee can collect on claims once the claims are proven.

Those who discredit workers' wage claims, calling their lawsuits frivolous, are actually trying to divert attention from the fraudulent claims and contempt of court that countless scofflaw employers commonly use to avoid responsibility for stolen wages--with no consequence.

What about the reports of repeat plaintiffs in the catering industry?

Wage theft is chronic in some industries, particularly the hospitality industry. Often, the violations involve the mis-appropriation of tips.

A. The law is clear that if an employer imposes a service charge or administrative fee that is not meant to be a tip for the employee, the employer must provide written notice of this to customers.

B. Employers and third party services are increasingly cutting into employee gratuities by implementing various fees for service. If they violate the above provisions of the labor law, the employee has every right to protect their tips.

C. Employees hired by third-party companies often work for multiple employers on a temporary basis. When they face wage theft, the employers are responsible for unpaid wages.

Does SWEAT create Liability for More Parties?

No. The labor laws already determine who can be held liable for wage theft, and it is only persons with significant control over the terms and conditions of other employees' jobs. The Business Corporation Law and Limited Liability Company Law already provide that the ten largest owners of privately held business corporations and limited liability companies can be held personally liable. SWEAT only reduces unnecessary hurdles for workers to access these remedies.

Will SWEAT make it impossible for a business to get credit?

No. If an employer cannot pay the wage claim, it can post a bond to lift the lien while the wage claim action is pending.

SWEAT will create additional costs and burdens on employers because even if the employer prevails in the lawsuit, it will have to undertake additional costs to have the lien removed.

Not true. An employer will not incur costs to remove the lien if the employer defeats the wage claim in court. Section 11 of SWEAT amends Section 17 of the Lien Law such that with an employee lien, "the lien will be automatically extinguished if, after a dismissal with prejudice of

the wage claims on which it is based, the lienor fails to file a notice of appeal within the prescribed period to file a notice of appeal.” *See Proposed Section 17(2)(d) of the Lien Law.*

Will SWEAT decrease the number of investors that businesses can turn to, because the investors may not want to risk their assets or a lien in the event an employee claims that wages were not properly paid?

No. Investors of certain companies are already potentially liable for judgments. SWEAT does not create any new liability for anyone. SWEAT does not create an opportunity to get a lien against an investor’s property unless the investor was so involved in running the company that they would be deemed an “employer” within the meaning of the labor laws.

SWEAT will give unions too much leverage in any negotiations with the employer because unions could threaten to bring wage claims and file liens against employer property.

Not so. Unions can already threaten to bring wage claims if warranted. But if the claims are not warranted, there really is no leverage, as liens without basis can be discharged.

Won’t SWEAT increase bankruptcies by employers and individuals in order to get rid of liens?

No. Most employers try to resolve claims without having to file for bankruptcy if they can, and would do the same under SWEAT. If an employer is on the verge of bankruptcy, the employee wage lien will help ensure the employee actually gets paid for unpaid wages.

Will SWEAT affect employers that comply with the law and pay all wages due and keeping accurate records?

No. In fact, SWEAT helps honest businesses because it holds accountable the scofflaw businesses that make it difficult for law-abiding businesses to compete. If a law-abiding employer is served with a baseless wage lien, the employer can promptly file a verified petition and proof of payment of all wages owed to have the lien discharged.

The SWEAT bills passed in both houses in the 2019 legislative session but were not signed by former Governor Cuomo. We are asking the Legislature to bring the bills to vote as soon as possible so our low wage workers are able to claim their just wages for the work they do.

In her Budget Proposal, Governor Hochul indicated that she intends to propose legislation to increase criminal penalties for employers who knowingly or intentionally commit wage theft violations. We welcome such penalties as a complement to the provisions of the SWEAT bill. It is important to stress, however, more proper funding of government agencies charged with enforcing existing and proposed laws is required for enforcement to be effective.

24 HOUR CAMPAIGN [A3145/S359](#)

Many New Yorkers depend on in-home care for aging relatives and other family needs. Too often the general public is unaware of their working conditions and their wages.

A home care worker shared her story:

“66-year-old Lai Yee Chan’s aching body reminds her of the 22 years she has worked as a home care attendant for the Chinese Planning Council, including a grueling marathon of 24-hour shifts that could last five days at a time. The shifts were demanding, forcing her to be confined to her charges’ homes, attentive to every need at any time. Countless days spent indoors left her bones brittle from lack of sunlight and the vital vitamin D it brings. The years of inconstant sleep gave her chronic insomnia and caused her eyesight to deteriorate. Yet, with three children to support, and her husband quitting his job to watch them, she feared asking for a more reasonable work schedule. At the time, because I had to support my family.” Working 24 hours destroy one’s health and inevitably affects the entire family. Often workers were assigned to multiple 24-hour shifts in a row keeping them away from their families. Immigrant workers who reported to authorities about the hour violations were threatened with deportation.

Legislation in this session seeks to place limits on the maximum amount of hours a home care aide may be required to work without voluntary consent to such an assignment. The 24 hour shift will split to a maximum of two 12 hour shifts.

ENFORCE HOME CARE WORKER WAGE PARITY LAW

Legislators must also take action to ensure that the Home Care Worker Wage Parity Law be enforced to protect homecare workers from further wage theft. This law requires that agencies comply with the labor law in order to receive state funding. For those agencies that continue to refuse to comply with the law, legislators should withhold state funding and work to ensure that patient care is not interrupted while at the same, justice is done for homecare workers