

**Testimony of Acting Commissioner Sandra Abeles
New York City Department of Consumer and Worker Protection**

**Before the Committee on
Consumer Affairs and Business Licensing**

**Hearing on
Protections for Delivery Workers and
Introductions 2163, 2288, 2289, 2294, 2296, 2298, 2311**

June 8, 2021

Introduction

Good afternoon Chair Ayala and members of the Committee on Consumer Affairs and Business Licensing. I am Sandra Abeles, Acting Commissioner of the Department of Consumer and Worker Protection, or DCWP and I am joined today by Steven Ettannani, our agency's Executive Director of External Affairs. We are also joined by our colleagues from the Department of Transportation (DOT), Vincent Maniscalco, Assistant Commissioner of Highway Inspections and Quality Assurance, and Miranda Alquist, Assistant Director of Legislative Affairs. Chair Ayala it is a pleasure to see you again, and I look forward to working with you and members of the committee on these significant issues impacting New York's delivery workers.

I have been with the agency since 2014, and prior to stepping into my current role, served as the First Deputy Commissioner. Before joining DCWP, I worked at the New York State Department of Labor enforcing labor standards and ensuring the health and safety of public employees, and at the Attorney General's office in the Civil Rights Bureau protecting our immigrant communities from fraud.

That's why I joined DCWP, because I consider our mission of protecting consumers and workers, an essential part of ensuring equity and justice in our city. The agency licenses about 59,000 businesses and individuals in approximately 50 different categories. We enforce consumer protection, business licensing, and workplace laws that serve New Yorkers throughout the City and offer programming that increases access in our city to free financial services for New Yorkers.

Protecting New Yorkers

DCWP's Office of Labor Policy and Standards (OLPS) enforces our city's workplace protections, including NYC's Paid Safe and Sick Leave and Fair Workweek laws, and administers the Freelance Isn't Free Act to protect freelancers' right to get paid, as well as conducts vital education and outreach to workers and businesses on their rights and responsibilities.

Throughout the pandemic, DCWP received thousands of complaints and inquiries about workers' rights in New York City. We have investigated and brought successful enforcement

actions against employers that violated the rights of essential workers, even up to the point of illegal firings. We have also adapted throughout the pandemic to focus our available tools and resources on the most pressing concerns for workers, including providing referrals on critical economic support, developing new resources to help workers navigate reopening, and prioritizing swift resolution of complaints to ensure workers can access their sick leave and receive any compensation to which they are entitled.

Another major step our city is taking to protect our city's workers is the passage and implementation of ground-breaking "just cause" protections for tens of thousands of essential workers in our fast-food industry. For too long, workers in this industry have faced arbitrary firings, at times dismissed for no reason at all. Just cause, as a new frontier in workers' rights, will bring greater stability and equity to our city's fast-food workers by ensuring there are disciplinary processes in place before a worker is terminated.

Legislation

Turing toward the legislation at hand today, I would like to take a moment to recognize the incredible efforts and sacrifices made by delivery workers during one of the most difficult times in this city's history. Delivery workers helped carry this city through an unprecedented, ongoing public health crisis. When many of us were isolated in our homes or caring for loved ones, delivery workers were among the essential workers who kept going to work every day ensuring that New Yorkers could have access to meals and other goods without having to leave home. And, while many industries shrank, the number of workers doing deliveries through third-party apps has increased. To that end, DCWP supports protections for these workers. We have worked closely with the partners that Council has engaged with and are always encouraged to see that workers' rights are at the forefront of conversations in the city. We look forward to working with Council on these important bills to ensure they will provide meaningful protections to app-based delivery workers while also making sure they are enforceable once passed.

Introduction 2288 – Insulated Food Delivery Bags

Introduction 2288, which requires a third-party food delivery service to provide insulated food delivery bags for each of its bicycle operators at the company's expense, would be under the purview of DOT. The Administration supports the intent of this legislation to reduce financial burdens on workers and to ensure food is properly stored.

Delivery cyclists are under significant pressure when traveling far and fast throughout the city to deliver our food. Improving their working conditions also enhances safety on the city's streets, helping keep these cyclists and all New Yorkers safe.

Introduction 2298 – Bathroom Access for Delivery Workers

Introduction 2298 would require food service establishments that utilize delivery workers to provide those workers with access to the toilet facilities, provided that in doing so there is no risk to health and safety standards. The Administration supports the intent of this legislation which is consistent with existing employee rights to bathroom access under the federal Occupational

Safety and Health Act, and extends similar protections to app-based delivery workers. There will likely be challenges in enforcement when determining whether a violation has occurred based on information offered by the worker or the business. Therefore, it will be a priority to develop clear and understandable standards for workers and businesses and for the agency to be able to assess violations. Ultimately, our city's delivery workers deserve a right to bathroom access.

Introductions 2289 – Maximum Distance and Other Travel Restrictions for Delivery Workers

Introduction 2289 would allow a third-party delivery worker to specify to their food delivery service the maximum distance the worker will travel and their restrictions on traveling over bridges or through tunnels. This bill directly addresses a significant safety concern of workers, and we support its intent.

Introduction 2294 – Study of Third-Party Delivery Worker Conditions and Determining a Minimum pay per Trip

Introduction 2294 would require DCWP to commission a study of working conditions for third-party delivery workers, as well as determining minimum per trip payments for these workers to be established by rule. While DCWP does not have information on the inner workings of the industry or staff required to develop minimum pay rates, we look forward to discussing how this would work with Council and other stakeholders to ensure it translates into real benefits for delivery workers.

Introduction 2296 – Standards of Payment and Navigational Resources

Introduction 2296 would require DCWP to establish standards for payment for third-party delivery workers and establish a program to provide real time assistance to delivery workers in disputes with third-party service platforms. DCWP supports the intent of this legislation to ensure delivery workers are properly paid and looks forward to working with Council on this bill.

These bills establish a new administrative framework, with a significant investment, for this group of workers. Currently, DCWP lacks the expertise to effectively regulate this industry, which operates through a highly sophisticated and constantly changing technology. Additionally, the industry itself continues to adapt very quickly to the market demand for delivery services in the midst of the pandemic, which could mean they are also capable of evading regulations if enforcement is not carefully constructed.

To address these concerns, the agency will need to work closely with Council and stakeholders representing our city's delivery workers, restaurants, and other industry experts. Similar to other laws the City has implemented, stakeholders can assist the agency in understanding how this industry operates and help develop standards of protection for delivery workers. And, these stakeholders could work with the agency to develop recommendations on an ongoing basis, to ensure that we as a city are taking necessary steps in the short term to protect workers, while we analyze these technology platforms, and also set the most appropriate standards for the industry.

The structure for Introduction 2294 provides an example of what this approach could look like, ensuring DCWP can gather the needed expertise to set up enforceable standards that are

responsive to working conditions in this fast-changing industry and allowing the city to protect and enhance the rights of these delivery workers for years to come.

Introduction 2163 – Restaurant Surcharge

This legislation would permit restaurants to impose a surcharge of up to 15%, in addition to the stated price of individual items, provided that a restaurant appropriately discloses the surcharge to its consumers and provides their tipped workers with an hourly cash wage that is not less than the minimum wage set by the State for New York City.

The Administration supports the intent of this bill, and we look forward to further discussing with the Council. DCWP has long advocated for an end to the State’s two-tiered wage system. Ultimately, to cure the serious equity gaps in current wage and hour law, action must be taken by the State to eliminate the two-tiered wage system for tipped workers, which is why we have called on the Governor many times to eliminate this system for restaurant workers.

Introduction 2311

Lastly, Introduction 2311 would require third-party delivery apps to share customer information with the restaurants with whom those customers are placing orders. Unfortunately, this legislation was only recently added to today’s agenda and the Administration is still reviewing its language and impact.

A final concern with implementing any new enforcement contemplated in these bills, is our current work implementing Just Cause protections and other new offices. We will certainly need additional resources to ensure we implement any new mandates effectively though it is too soon to tell exactly what resources would be required.

Conclusion

We welcome the Council’s efforts to improve the lives of vulnerable workers in our City. At the present time, when many employers are experiencing a labor shortage, we hope that these efforts and our continued partnership can demonstrate that we must increase wages and improve benefits so that these workers can continue to be a part of the economic recovery in New York City.

This Administration has continuously advocated alongside thousands of workers, for a \$15 minimum wage, and groundbreaking legislation, such as “just cause” protections, which bring stability to the lives of so many essential workers. This also includes our agency’s priority to bring the city’s Consumer Protection Law into the 21st century, Introduction 1622, with commonsense penalties to protect consumers from predatory corporations, and tools to protect consumers conducting transactions over the internet and in languages other than English.

As always, we value the Council as our partner in ensuring that workers’ rights are a priority for the City, with sound and resourced protections for our workers. Effective enforcement, whether on behalf of consumers or workers, depends on a well calibrated regulatory structure that deters the most harmful activity, so that breaking the law in our city is not just a cost of doing business.

Thank you for the opportunity to testify and I look forward to any questions you may have.