

**National Employment
Law Project**

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March 31, 2008

Thank you, Chairperson Rivera, and Council Members Mendez and Gioia, for inviting me to testify today. My name is Raj Nayak, and I am an attorney at the National Employment Law Project – the new home of the Brennan Center’s Economic Justice Project. Together with my Brennan Center colleague Eric Lane, we advised community groups and City Council staff in developing this proposal, the Responsible Restaurant Act (“RRA”).

Today, I will tell you more about why we need the RRA and how it would work. I will also explain how this law is rooted in New York City’s core authority to decide when to grant business licenses –the same authority that the City Council has relied upon to enact similar laws before. Finally, I will outline some other key benefits of the RRA.

I. Protecting Workers and Responsible Restaurant Owners

New York is America’s restaurant capital. The restaurant industry is a key part of our economy, providing jobs for more than 165,000 New Yorkers and serving millions of patrons each week. But too many restaurants are making a practice of cutting costs by violating basic employment laws.

A. Evidence of Pervasive Employment Law Violations

Recent research has found that employment law violations are pervasive throughout New York’s restaurant industry. In *Unregulated Work in the Global City*, a 2007 report on New York City’s low-wage economy, researchers from NELP found that intense competition in the restaurant industry has led to frequent workplace violations, especially given the lack of union presence and worker voice in the industry. Our report recounts an interview with an employer who acknowledged that overtime violations are a systemic problem: “At plenty of places there is no such thing as overtime [pay].” Worse, workers routinely reported being unpaid for work that they had already completed, or as one group described:

“On payday, we finish work at 10:30 and they started making us wait one to two hours just to tell us there’s no money. If you work 12 hours and you’re tired, and then you have to wait until 1 or 2 in the morning, and for no money, it’s terrible. Then the next week we’d just get one week’s pay. Many workers were scared and just left.”

Other surveys of restaurant workers provide some indication of the pervasiveness of these violations. The Restaurant Opportunities Center of New York (ROC-NY) published the results of one such survey in their landmark 2005 report, *Behind the Kitchen Door*. Of the 530 workers surveyed, the study found that most (59%) experienced overtime violations, and a significant

number (13%) earned less than minimum wage – then just \$5.15 per hour. The study also found a significant racial and ethnic disparities between the workers who held the industry’s lower-paying jobs – mainly workers of color, and particularly immigrants of color – and those who occupied the higher-paying positions, who were mainly white workers. A full 33% of workers also reported experiencing “verbal abuse” based on their race, immigration status, or language.

B. Effects of Violations on Workers and Responsible Restaurants

These employment law violations both harm workers and undermine responsible restaurant owners. Restaurants are looking to cut costs to compete in a competitive industry, but too many are going too far and paying their workers less than the law requires. Most of these restaurants are taking the chance that they will not get caught. And even when they do, they simply account for the fines that result as a cost of doing business.

These business practices undermine New York City’s workforce and its economy. Restaurant workers deserve to be paid at least what the law requires. And responsible restaurant owners struggle to compete against restaurants that have adopted a business practice of cutting costs by violating the law. Responsible restaurants should not be placed at a competitive disadvantage simply because they play by the rules.

C. Strengthening the Restaurant Industry with the RRA

By passing the RRA, New York City will take an important step toward protecting both workers and responsible restaurant owners. The RRA is not intended to shut down restaurants or take away important restaurant jobs. In fact, this proposal would be unlikely to require the direct review of more than a handful of restaurants annually, since very few of New York City’s restaurants have been found by a court or administrative agency to have violated these employment laws.

Instead, the RRA will still send a strong signal to the industry that compliance with basic employment laws is not optional, and will encourage more restaurants take basic employment laws more seriously. In this way, the RRA will help level the playing field for responsible restaurant owners who are placed at an unfair competitive disadvantage for playing by the rules today.

II. The RRA: An Efficient Process for Reviewing Restaurants’ Employment Law Violations

The RRA builds efficiently upon the Health Department’s existing system for regulating restaurant operating permits. Even though the law will have a significant impact on the city’s restaurant industry, it will only require the Health Department to review a handful of restaurants each year.

A. Creating a Process for Informing the Health Department’s Decision

The RRA will enhance the process for reviewing whether to grant or renew a restaurant’s operating permit, by ensuring that the city takes into account not just health code violations, but also a restaurant’s record of employment law compliance. Under the RRA, there will be three steps to that process, each of which is designed to give the Health Department additional information with

minimal burden to the agency:

First, restaurants will be asked to **disclose** their employment law violations when applying for or renewing their operating permits. Importantly, restaurants need only disclose violations when a court or administrative agency has issued a final judgment that they have violated the law. And while the RRA will send a strong signal across the city's restaurant industry that complying with employment laws is not optional, NELP's research suggests that only a handful of restaurants each year receive the sorts of final judgments or agency orders that would lead to direct review by the Health Department.

Second, the Health Department will **post on their website** a list of the disclosures that they receive. The public may then submit written comments regarding those disclosures. So, for example, where a restaurant has failed to disclose its employment law violations, the public will have the opportunity to call them to the Health Department's attention.

Third, if a restaurant has a clear record of violating the law, the Health Department will **hold a hearing** to gather more information. This hearing also gives restaurants the chance to provide context for the violations and explain any steps they have taken to improve their business practices.

In the end, the Health Department will make an informed decision on whether to grant or deny a restaurant's operating permit, or to suspend it while the restaurant takes steps to improve its business practices. But the Health Department is at no time required to conduct original research. The onus is on restaurants and the public to inform the Health Department's decision. As a result, if this process is timed properly, the Health Department's existing permitting schedule will not be delayed.

B. Building on the Health Department's Existing Practices

The Health Department is the sole agency currently charged with issuing and renewing restaurant operating permits in New York City, so it is the natural agency to enforce the RRA. Other state and federal agencies – like the federal and state labor departments and federal, state, and local human rights agencies – may collect fines and damages from employers who violate these laws. But only the Health Department controls restaurant operating permits and has the authority to ask a restaurant to cease operations.

In fact, the Health Department already considers whether applicants are complying with other laws before granting restaurant operating permits – for example, if they are current on their child support payments. It is our understanding that the Health Department has also committed to asking all applicants whether they carry workers' compensation insurance required by law – which is analogous to asking applicants about their compliance with other important employment laws.

Indeed, the city has an important interest in ensuring the integrity of the permitting process by denying permits to applicants who harm their workers or undermine responsible restaurant owners by routinely violating employment laws. But at present, there is no process for the city to consider an applicant's employment law violations when deciding whether to grant or renew a restaurant's operating permit.

III. Based on the City's Well-Established Authority to License Local Businesses

Because the current city restaurant licensing law already requires the Health Department to take into account legal violations when considering license renewals, the RRA does not actually establish any new requirements for New York City's restaurants. Instead, it creates a process to guide the health department's consideration of these violations when reviewing renewal applications. The city council and the mayor have, in fact, enacted similar laws over the years to promote legal compliance in other industries.

The RRA is rooted in the city's well-established legal authority to license local businesses. As noted, the New York City Health Code already grants the Department of Health ample authority to deny, suspend, or revoke the operating permits of restaurants that violate the law. Section 81.5(a) of the Health Code requires that all restaurants be maintained and operated in compliance with the Health Code and "all other applicable federal, state and city laws, rules and regulations." In addition, New York courts have long held that cities in New York State have the implicit authority to deny business permits to applicants who lack good character, for example, as evidenced by its record of violating the law. The RRA simply creates a formal process by which the city can exercise its authority.

The city has already enacted similar laws regulating the licensing in other industries. For example, New York City's waste carting law establishes a process to review a wide array of each applicant's legal violations. The law provides that "after notice and the opportunity to be heard," a license can be denied for any applicant who lacks "good character, honesty and integrity." It allows the city to consider nearly any of an applicant's business-related violations in making that determination, including even pending indictments or civil actions. A federal appeals court has upheld the waste carting law in the face of a constitutional challenge, and state courts routinely affirm the trade waste commission's licensing decisions as well. Similar laws establish formal processes for regulating licenses for fish market operators and pushcart vendors, too.

IV. Other Key Benefits of the RRA

The RRA is designed to create minimal burdens for the Health Department.

- The RRA does not require the Health Department to seek out information about each applicant's record of violating the law. **Restaurants themselves will be required to disclose this information** to the Health Department, and members of the public may submit additions or corrections if they believe that the information disclosed is incomplete or inaccurate.
- The Health Department **already collects similar information** to determine whether applicants are current on their child support payments, and the agency has committed to collecting information on whether they carry workers compensation insurance. The RRA would simply require the agency to add a similar question to its application to ask if any court or administrative agency has found that the applicant violated these basic employment laws.
- Restaurants will only be required to disclose legal violations where a **court or administrative**

agency has issued a final judgment that they have violated the law. While the RRA will send a strong signal across New York's restaurant industry that complying with the law is not optional, **only a handful of restaurants** each year receive the sorts of final judgments or agency orders that would actually lead to review under this law.

- Studies by researchers from the NELP and ROC-NY have found **pervasive violations** of these laws across New York City's restaurant industry – but **very few restaurants** actually face legal action under these laws.
 - In fact, NELP has searched the LEXIS database for all New York state and federal court cases involving New York City restaurants with minimum wage or employment discrimination violations in 2007. NELP found **only one reported judgment** against a restaurant for these violations during that time period.
 - While no such search can be exhaustive, it is indicative of how **few restaurants have the type of judgments** that may lead to review under the RRA.
 - Nonetheless, the RRA will still **send the signal throughout the restaurant industry** that the City seriously considers violations of these laws – and that it will protect the responsible restaurant owners who already follow the law.
- The Health Department is **only required to hold a hearing only if the applicant has a demonstrated record of violating these laws** – that is, where a court or administrative agency has found that they have violated the law.

Many responsible restaurant owners support the RRA.

- Responsible restaurant owners – and in fact the vast majority of restaurant owners in New York City – **will not be harmed** by this law because no court or administrative agency has found that they have violated the law.
- In fact, many responsible restaurant owners support this law because it **levels the playing field**, encouraging the City to take action against restaurants that depend on violating the law as a business practice.

The RRA includes protections for restaurants reviewed under this law.

- Neither the bill's proponents nor restaurant workers want to close restaurants and take away restaurant jobs.
- In fact, applicants who disclose a record of such violations have the **opportunity for a hearing** at which they can submit testimony, provide additional context, and explain any steps that they have subsequently taken to improve their compliance with the law.
- This law **never requires the Health Department to take any specific action to revoke or deny an applicant's permit**; on the contrary, it **recognizes the agency's discretion** in deciding

whether to grant or renew an applicant's operating permit and to decide which restaurant owners are the most egregious violators.

- In effect, the burden is on any challenger to explain why a restaurant *should not* receive a permit.

The RRA is supported by a diverse coalition of community groups, policy advocates, and labor allies.

- The New York City Restaurant Industry Coalition is calling for enactment of this new law. Its members include the Restaurant Opportunities Center of New York, the National Employment Law Project, the New York Immigration Coalition, Make the Road New York, United Food and Commercial Workers (UFCW) Local 1500, the New York Committee for Occupational Safety and Health (NYCOSH), and the Community Development Project of the Urban Justice Center.
- The National Employment Law Project advised the City Council in designing the legislation and provided legal and policy support for the campaign.

Conclusion

Thank you again for your time and for the opportunity to speak today. I would be happy to answer any questions you have about this proposal, either today or in the future.

Additional Resources

ANNETTE BERNHARDT, ET AL., UNREGULATED WORK IN THE GLOBAL CITY: EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY (2007), *available at* <http://www.brennancenter.org/globalcity/>

RESTAURANT OPPORTUNITIES CENTER OF NEW YORK, BEHIND THE KITCHEN DOOR: PERVASIVE INEQUALITY IN NEW YORK'S THRIVING RESTAURANT INDUSTRY (2005), *available at* <http://www.urbanjustice.org/pdf/publications/BKDFinalReport.pdf>.

Other New York City Responsible Licensing Laws:

- N.Y. City Code § 16-509 (waste cart license)
- N.Y. City Code § 17-317 (pushcart vendor permit)
- N.Y. City Code § 22-216 (fish market licenses)

Please contact Raj Nayak at the National Employment Law Project with any further questions about this proposal: (312) 399-9904 (cell) or rnayak@nelp.org.

Exhibit A: About the Responsible Restaurant Act

Promoting Good Jobs in New York’s Restaurant Industry:

The Responsible Restaurant Act

Lead Sponsors: Council Members Eric Gioia and Rosie Mendez

New York City is America’s restaurant capital. Whether it’s in Union Square or Jackson Heights, our multitude of great restaurants makes New York one of the world’s foremost food destinations. And the restaurant industry is a key part of our economy, providing jobs for more than 165,000 New Yorkers and serving millions of patrons each week. That’s why it’s so important to ensure that our restaurants act responsibly and follow the law.

The Problem: Too many restaurants are cutting costs by violating basic employment laws.

⇒ Research shows that many restaurants pay less than the minimum wage and don’t pay overtime—and some discriminate in hiring and promotions.

⇒ This undermines New York City’s workforce and its economy, and is unfair to the majority of responsible restaurants that are playing by the rules.

The Solution: New York City can reverse this trend through the **Responsible Restaurant Act**.

The Responsible Restaurant Act builds upon the City’s existing legal authority to deny or temporarily suspend a restaurant’s permit for good cause, including its established record of violating the law. Specifically:

- (1) It creates a process to help the City decide whether to grant or renew a restaurant’s operating permit, including consideration of its record of employment law violations; and
- (2) It provides the City more information about a restaurant’s history of employment law violations:
 - Restaurants will disclose their employment law violations when applying for or renewing an operating permit;
 - The public may submit written comments regarding a restaurant’s record of complying with employment laws; and
 - The City may also hold a public hearing to gather more information – especially for restaurants with a clear record of violating these basic employment laws.

By enacting the Responsible Restaurant Act, New York can make clear that compliance with basic employment laws is not optional and help to promote a strong restaurant industry.

For more information on the Responsible Restaurant Act, please contact Raj Nayak at the National Employment Law Project: 212-274-0579 or rnayak@nelp.org.

Exhibit B: Application for Restaurant Operating Permit

The Health Department already asks restaurant applicants about their compliance with other laws – for example, whether they are current on their child support payments.

See page 3 of the Restaurant Operating Permit application.

IF YOU ARE NOT REGISTERED TO VOTE WHERE YOU LIVE NOW, WOULD YOU LIKE TO APPLY TO REGISTER TO VOTE HERE TODAY?

YES NO

Applying, or declining to apply, to register to vote will not effect the amount of assistance that you will be provided by this agency. If you would like help in filling out the voter registration application, we will help you.

APPLICATION FOR PERMIT

FALSIFICATION OF ANY STATEMENT MADE HEREIN IS AN OFFENSE PUNISHABLE BY A FINE OR IMPRISONMENT OR BOTH. (N.Y.C. ADMINISTRATIVE CODE 1151-9.0)

FOR OFFICE USE

FOR OFFICE USE

CAMIS NUMBER		PERMIT NUMBER	
DOCUMENT NUMBER		TYPE	NUMBER
0		H	
REASON FOR APPLICATION	APPROVAL STATUS	FEE AMOUNT	APPLICATION DATE
CODE N - NEW PERMIT A - AMEND T - TERMINATE W - REACTIVATE L - REISSUE SAME NO.	<input type="checkbox"/> 1. APPROVED <input type="checkbox"/> 2. PENDING <input type="checkbox"/> 3. DISAPPROVED	DOLLARS CENTS	MO DAY
		BORO ESTAB. TYPE DIVISION DISTRICT	DATE PERMIT ISSUED MO DAY

NAME OF PERMIT ►

THE UNDERSIGNED MAKES THE FOLLOWING STATEMENTS IN ACCORDANCE WITH PROVISIONS OF THE HEALTH CODE:

IMPORTANT: Please type or print legibly using capital letters. Allow spaces between completed words or numbers. Standard abbreviations are permitted. All sections must be completed. Section G is to be completed by all temporary food applicants.

SECTION A - DATE EXPECTED TO OPEN	SECTION B - CHECK DAYS CLOSED / ENTER TIMES	SECTION C - NUMBER OF SEATS
MO / DAY / YEAR	<input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUES <input type="checkbox"/> WED <input type="checkbox"/> THURS <input type="checkbox"/> FRI <input type="checkbox"/> SAT	
	OPENING TIME CLOSING TIME	

SECTION D - NAME, ADDRESS AND TELEPHONE NUMBER OF ENTITY TO WHICH PERMIT IS TO BE ISSUED

READ CAREFULLY: Enter the Corporate name and location of business establishment. If not incorporated, enter your name(s) and location of business establishment.

NAME OF CORPORATION, PARTNERSHIP, PARTNERS OR INDIVIDUAL OWNER (Last Name First)

TRADE NAME/DBA TELEPHONE NUMBER (AREA CODE)

BUILDING NUMBER STREET PREMISES LOCATION (FLOORS, STORE #, BOOTH #)

CITY OR TOWN STATE ZIP CODE

SECTION E - MAILING ADDRESS IF DIFFERENT FROM PERMITTED ESTABLISHMENT'S ADDRESS (INCLUDE APARTMENT #, P.O. BOX #)

STREET ADDRESS

CITY OR TOWN STATE ZIP CODE

SECTION F - E.I.N. NUMBER	SECTION G - EVENT DATE (Temporary Food Applicants Only)	RAIN DATE
	FROM TO	FROM TO

OCSE DOCUMENT NUMBER

CHILD SUPPORT CERTIFICATION

NYC OFFICE OF CHILD SUPPORT ENFORCEMENT

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

PLEASE PRINT IN BLOCK LETTERS WITHOUT TOUCHING THE SIDES OF THE BOXES (SEE EXAMPLES ABOVE AND RIGHT)

0 1 2 3 4 5 6 7 8 9

THIS FORM MUST BE FULLY COMPLETED BY APPLICANT FOR APPLICATION TO BE VALID

Last Name _____

First Name _____

Social Security _____ - _____ - _____ **Date of Birth** MM / DD / YY

Home Address _____

City _____ **State** _____ **Zip** _____

CERTIFICATION PURSUANT TO GENERAL OBLIGATIONS LAW SECTION 3-503(2)

I, _____, being duly sworn, make the following statement:

(Choose 1 or 2, and put an "X" in the box in front of whichever is appropriate)

1. I am not under a court or administrative order to pay child support. OR
2. I am under an obligation to pay child support. My child support account number is (if applicable) _____:

(If you chose #2, Put an "X" in front of the applicable statement)

- A. I do not owe arrears equal to 4 months or more of child support payments.
- B. I have arrears equal to 4 months or more of child support payments, and one of the following statements applies to me (check the appropriate boxes):
- I am making payments by income execution or by court agreed payment/repayment plan or by a plan agreed to by the parties.
 - My child support obligation is the subject of a pending court proceeding.
 - I am currently in receipt of Public Assistance or Supplemental Security Income. My case number is _____
- C. I have arrears equal to 4 months or more of child support payments and none of the above statements in "B" apply to me.

I hereby do solemnly swear that the information provided by me in this certificate is true and accurate to the best of my knowledge. I acknowledge that this statement is under oath.

Sworn before me on this _____ day _____ X _____
of _____, 2000 _____ Signature

Notary Public, State of New York

Date

THE INTENTIONAL SUBMISSION OF FALSE WRITTEN STATEMENTS FOR THE PURPOSE OF FRUSTRATING OR DEFEATING PAYMENT OF SUPPORT IS PUNISHABLE PURSUANT TO SECTION 175.35 OF THE PENAL LAW. PERSONS WHO ARE FOUR MONTHS OR MORE IN ARREARS IN CHILD SUPPORT MAY BE SUBJECT TO SUSPENSION OF THEIR BUSINESS, PROFESSIONAL AND/OR DRIVERS LICENSE

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

- Information verified, or status of case unknown to OCSE Information is at variance with OCSE records.

Verifying Section & Supervisor: _____ Date: ___/___/___

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Exhibit C: Other Laws

The New York City Health Code already requires that restaurants be operated in compliance with federal, state, and city laws, rules, and regulations – including employment laws:

§ 81.05 Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

(a) An operator of a food service establishment or non-retail food processing establishment shall construct, equip, furnish, maintain and **operate such establishment in compliance with this Article and all other applicable federal, state and city laws, rules and regulations.**

* * *