

January 3, 2018

New York State Department of Labor  
State Office Campus Building 12  
Albany, NY 12240

Re: Amendment to call-in requirements of the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142 at §§ 142-2.3 & 3.3)

The Buffalo Niagara Partnership is the area's regional chamber of commerce and privately-funded economic development organization. On behalf of our members who employ more than a quarter of a million people in the Buffalo Niagara region, thank you for this opportunity to submit comments regarding the call-in requirements of the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142 at §§ 142-2.3 & 3.3).

The Partnership is opposed to new employer mandates that would place rigid and inefficient scheduling requirements, as well as onerous and punitive fines for compliance errors, on employers of every type and size across New York. Our state has earned a reputation as one of the most difficult places to own and operate a business anywhere in the United States. Imposing new employer mandates, despite their intentions, is not the way to make New York more welcoming to employers, business owners and entrepreneurs.

The Department of Labor's goal of increasing fairness for workers is an admirable one. However, the Partnership is concerned that adopting a one-size fits all approach will make it impossible for some employers to comply with requirements of the regulation. Many businesses are ruled by unpredictability associated with seasonal demand, market conditions and weather patterns. While appreciative of the inclusion of an "Act of God" exclusion to the regulation, the Partnership does not believe this fully recognizes the impact that weather can have on employee scheduling. Weather events that do not raise to the level of declared states of emergency can still have a profound impact on staffing needs. Rain, snow and cold temperatures can all necessitate changes in staffing. These changes often cannot be predicted 24 hours let alone 14 days in advance of a shift. Similarly, the Partnership would ask the Department to define the term "Act of God" to ensure that events such as equipment failure would qualify under the exemption. This is in keeping with the spirit of the exemption and would prevent employers from being penalizing for events out of their control.

The Partnership would also request the Department to consider real-world, industry-specific scheduling challenges when finalizing this regulation. Differences in industry can lead to inefficiencies when trying to apply a one-size fits all approach. The scheduling demands for businesses in the manufacturing industry for example, where traditionally orders are only received a few days to a few hours prior to when they are needed by the customer, make it impossible to set employee schedules more than a few days in advance of a scheduled shift.

The Partnership would ask the Department to consider the impact of this proposal on small employers as well. Employer mandates, such as those found in the proposal, impact small employers more acutely than large employers who have more resources to deal with these mandates. Considering the unequal impact that this regulation would have on small employers, the Partnership would propose an exemption for businesses and organizations with less than 50 employees. This exemption would correspond with the one provided to small employers on a host of federal and state regulations. These small business exemptions exist because there is a universal recognition that these mandates and their cost of compliance has a serious impact on small employers. Our regional economy is built on the success of our small, independent employers who in many cases do not have formal human resource or administrative departments dedicated to navigating and complying with the growing litany of employer mandates.

Again, thank you for the opportunity to provide comments to the Department of Labor as the Department continues to examine scheduling practices in New York State. The Partnership remains hopeful the Department will carefully examine the hardship these proposals will have on employers and reevaluate the need for yet another mandate which will certainly compromise the competitiveness of New York businesses. Increasing the already heavy regulatory burden on New York employers is not the solution to curbing isolated scheduling abuses or creating a state that is truly open for business.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dottie Gallagher-Cohen', with a stylized flourish at the end.

Dottie Gallagher-Cohen  
President & CEO