



We serve you



February 9, 2009

Hon. M. Patricia Smith
Commissioner
New York State Department of Labor
W. Averell Harriman State Office Campus
Albany, New York 12240

Re: New York Wage Watch

Dear Commissioner Smith:

The Department of Labor's January 26, 2009 press release announcing New York Wage Watch causes great concern among the trade associations signing this letter and, through us, to each of the thousands of individual member businesses and employers we represent throughout New York State.

On first blush, it would appear that the Department has sanctioned "community groups" to enforce the state's complex and complicated labor laws - statutes and procedures that today are enforced by professionals who have dedicated their careers to learning the intricacies those laws purposefully contemplate. To this end, we think New York Wage Watch steps well over the boundaries of even the most constructive collaborations with community groups and advocates.

To give quasi-enforcement capabilities to certain, seemingly hand-selected constituencies sets a troubling precedent that could spread among the spectrum of state agencies. We wonder how such an effort can create an atmosphere of anything other than vigilantism where every honest employer will have a legitimate

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concern for the preservation of his or her rights as a taxpaying business owner in the state of New York. The image painted by the Department in its January 26 release is of a posse of activists, duly deputized by the weighty imprimatur of the Department, demanding access to any employer in the state whom they have chosen either at random, by will, or by prejudice. The February 2, 2009 editorial in the New York Post ("Vigilante Labor 'Justice'") illustrated well this concern shared among our collective memberships (copy attached).

We are troubled that groups so empowered would be guided less by objectivity than agenda. Some, we fear, would mistake their status as Watch groups for an all-access pass to the records of any business they may choose to 'watch.' And we harbor the legitimate concern that participants may take advantage of their new status by staging publicly-funded press events created to embarrass without cause any employer whom they choose.

In short, as we understand it from the January 26 release, New York Wage Watch promises an unprecedented and unwarranted intrusion on New York's employer community.

We think it entirely fair and appropriate that the Department's Division of Labor Standards conduct investigations in either a proactive manner or in response to specific complaints. As you know, many of us signing this letter represent organizations which have long supported the work of the Division, including public support for state budget lines increasing the number of Labor Standards investigators. And many of us have a demonstrable record of partnership with your Department in promoting, educating, and ensuring wage and hour compliance among our members.

We write today, then, to ask that you meet with us to explain exactly how New York Wage Watch will operate. We have several questions aside from our pervading concern that no business groups were, to our knowledge, invited to participate either in the "pilot" program announced on January 26 or in the discussions crafting the program. Among them:

- What specific rules and regulations apply to the conduct and scope of authority of groups selected as Watch participants? What are the criteria for groups seeking certification as Watch participants?
- What safeguards are in place to ensure that the rights of employers will be protected - including those comprising private property access - when Watch participants engage with employees?
- Will Watch participants be reacting to complaints, or will they, instead, be canvassing workplaces asking employees if they have specific or general complaints against their employers?
- What steps will the Department of Labor employ to ensure that Watch participants stay within the boundaries established by the Department? Will aggrieved employers have redress against the Department in the event of demonstrable misconduct by Watch participants?

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- What specific statutory authority does the Department employ to "provide ordinary people with a formal and systemic role in the fight against wage theft"? Can the Department implement such a program without first fulfilling the public notice and public comment provisions of the State Administrative Procedure Act? The employer community was given no advance notice of the Watch, nor was it given opportunity for input.
- How will New York Wage Watch be funded?

These are fundamental questions that many of our members small and large now are asking, alarmed as they are by press reports generated by the January 26 Department announcement and by the content and tone of the press release itself. Because the Department failed to include us in any briefing outlining the program prior to or concurrent with the public Watch launch, we are unable at this time to ameliorate our members' concerns or disabuse any assumptions they are making.

We hope a meeting with you at your earliest opportunity will shed some light on the Department's intentions and goals for New York Wage Watch. Without that opportunity, we and our members only can assume that the program is little more than a dangerous deputizing of groups looking for a platform to harass, infiltrate, and publicly embarrass the taxpaying employers that fuel this state's economic engine. We hope that is not the case.

We look forward to meeting with you soon.

Sincerely,



James R. Sherin
President and CEO
Retail Council
of New York State



Rick J. Sampson
President and CEO
New York State
Restaurant Association



James S. Calvin
President
New York Association
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Michael E. Rosen
SVP & General Counsel
Food Industry Alliance
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Scott Wexler
Executive Director
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cc: Hon. David Paterson
Governor

Hon. Susan John
Chair, Assembly Committee on Labor

Hon. George Onorato
Chair, Senate Committee on Labor

Carmine Ruberto
Director, Division of Labor Standards