



Testimony before the New York State Department of Labor
Proposed Rules on Predictive Scheduling
October 17, 2017

Good Morning and thank you to Governor Cuomo and Commissioner Reardon for convening this public hearing. My name is Nelson Eusebio and I'm the Director of Government Relations for the National Supermarket Association (NSA). The NSA is a trade association that represents the interest of independent supermarket owners in New York and other urban cities throughout the East Coast, Mid-Atlantic region and Florida. In the five boroughs alone, we represent 400 stores that employ over 15,000 New Yorkers.

Some quick background on our industry – beginning in the late 1970s, supermarket entrepreneurs began opening stores in areas abandoned by the large chains, as they were economically depressed and mostly in communities of color. These men and women had the vision and the commitment to fill a vacuum in those communities, at a time when the term “food desert” had not even been coined. Currently, many NSA members continue to serve those areas by offering healthy foods and full service supermarkets.

I'm here today to testify on ‘just-in-time’ or ‘on-call’ scheduling, although it's tough to understand exactly how the rules will impact the independent supermarket industry without seeing the specifics, I'll speak to the general scheduling practices in our industry. With that being said, I hope that once the rules are released, there will be another opportunity to discuss the proposed rules in more detail.

NSA supports the Governor's and the Department of Labor's efforts to protect the New York workforce, particularly those who have a history of being taken advantage of. Though we fear that when not applied correctly, this policy could end up hurting the very people you're trying to protect.

In general, on-call scheduling has never been a problem in the supermarket industry because most of our staff is long-term employees with regularly scheduled work calendars. However, there is a small segment of the industry that is part-time hires, many of which are students, who have less predictable schedules. This is not to say we engage in ‘on-call’ scheduling, in fact, we do not but there are cases where schedules are determined a week in advance or unpredictable circumstances, such as an employee calling in sick, cause last minute changes. We find that this set up works well when taking into account the needs of the employees and stores alike.

I can only speak to laws that have passed in other municipalities such as New York City that impact not only on-call scheduling practices but also worker flexibility. If



the supermarket industry is required to schedule two or more weeks in advance, penalized for switching the schedule when demand or circumstances change and /or not allowed to give employees consecutive opening and closing shifts, it will only serve to hurt our employees and have the following consequences:

1. Managers will be forced to cut back the number of part-time employees
2. They will schedule fewer employees per shift
3. Lastly, they will have no choice but to offer less schedule flexibility

We understand that this is neither the intention of the Department of Labor nor the goal of the proposal but fear that it will lead to unintended consequence. Essentially, by including the supermarket industry in a set of rules that aren't addressing an issue in their industry, we feel it will create an entirely different set of problems and negatively impact our businesses, employees and community.

We ask that the Department of Labor work separately with the supermarket industry to create rules that are relevant or exclude the supermarket industry altogether.

Thank you for your time and I'm happy to answer any questions.