Littler | Workplace Policy Institute

Littler Mendelson, P.C.
815 Connecticut Avenue, NW
Suite 400
Washington, DC 20006

Testimony of Michael Paglialonga of Littler Mendelson's Workplace Policy Institute

My name is Michael Paglialonga, and I'm joined today by my colleague Michael Weber, to speak to you today on behalf of Littler Mendelson's Workplace Policy Institute. By way of background, WPI facilitates the employer community's engagement in legislative and regulatory developments that affect their workplaces and business strategies. WPI harnesses the deep subject matter expertise of Littler, the largest law firm in the world with a practice devoted exclusively to the representation of employers in employment and labor law matters. Littler's clients range from new and emerging businesses to Fortune 100 companies throughout the country and around the world, including numerous clients in the hotel and hospitality industry. We appreciate the opportunity to provide the Committee with the benefit of our, and our clients' experience. By way of my own background, prior to joining Littler in 2022 I spent 15 years working in Counsel's Office at the New York State Department of Labor—holding the positions of First Deputy Counsel and Acting General Counsel during my tenure with the Department.

The goal of my testimony today is to briefly provide you with a high-level overview of the legal flaws in the present bill; flaws that promise to commit the City and hotel industry to years of litigation and operational uncertainty. In short, the proposed Bill is cannot be adopted as drafted. While termed as licensing requirements, the Bill's provisions cross the line into areas of Labor and Employment law which are preempted by State and Federal Law.

The Bill is preempted by the National Labor Relations Act as the bill impermissibly changes the balance of power between employees and employers and encourages unionization.

The National Labor Relations Act (NLRA) governs private-sector labor relations throughout the United States. The NLRA was adopted by Congress to act as a uniform set of standards and rules for union organizing and collective bargaining throughout the entire country. And while state and local governments are permitted to adopt public safety protections which impact the workplace, the NLRA preempts laws which have the clear intent of changing the balance of power between unions and employers.

The present ordinance tacitly encourages unionization in two ways. First, the Bill provides an exemption to hotels with collective bargaining agreements from certain portions of the Bill's licensing requirements. The effect of this exemption is not clear, but the intent to advantage unions and encouraging unionization is obvious. Second, the Bill would require the direct employment of certain employees—effectively collecting all workers under one roof for easier organization into collective bargaining units.

These provisions of the Bill are publicly supported by the Hotel Trades Council for clear reasons: they attempt to meddle with the balance of power established by the NLRA and mandate unionization. No rationale or legitimate basis for these bills exists apart from promoting unionization. Even the Bill's sponsor (Council Member Menin) stated that the bill is "addressing a consumer safety and workers' rights issue in one bill", clearly demonstrating the intentions.

The Bill would violate the Equal Protection Clause of the New York and U.S. Constitutions.

In general, the Equal Protection Clauses of the New York and U.S. Constitutions require the government to treat like people alike. The government may treat people differently in some circumstances, but the difference in treatment must reasonably (or "rationally") relate to a legitimate public purpose.

Under the guise of employee and public safety, the Bill mandates direct employment of certain "core employees" who provide housekeeping, work at the front desk or provide front service at a hotel. No rationale or basis can be discerned from this requirement, or the distinctions amongst types of employees—there is simply no basis to believe that workers employed by a hotel will work any safer than workers employed by a third party. In fact, the Bill even excludes security staff from being considered a "core employee", while at the same time the Bill would mandate 24/7 security staffing.

The Bill would violate the Contracts Clause of the U.S. Constitution

The Contract Clause of the US Constitution prohibits laws which have the effect of substantially impairing contracts without a legitimate public purpose.

The direct-employment requirement in the present bill would forbid a hotel from contracting out portions of their operations, such as desk service or housekeeping. As we all know, many hotels have contracts to perform those services with third parties, and this provision would not effectively preclude such a practice. The Bill was amended recently to permit contracts in effect on or after September 14, 2024, so long as such contracts are of a fixed duration. However, the Bill would require that contractors notify "affected employees" that upon termination of the agreement that they "shall be offered employment by the hotel operator". The bill goes further, and requires that contractors without an agreement must notify "affected employees" that they "must be offered employment by the hotel operator" no less than 15 days before the effective date of this law.

No legal justification exists for this mandate—this Bill would require that the same employees be offered employment by another entity. In no way does this shift relate in any way to any legitimate purpose.

The Bill is preempted by the Occupational Safety and Health Act (OSHA) and the New York State Right to Know Law, as provided in Section 876 of the New York Labor Law.

As you know, the present bill attempts to require that hotel operators provide employees with information on chemicals in the worksite. This provision, while appealing on its face, is preempted by federal and State law and should not be enacted into law.

OSHA preempts local and State laws regulating occupational safety and health issues. In *Gade v. National Solid Waste Management Ass'n*, 505 U.S. 88 (1992), the Supreme Court invalidated

an Illinois state law imposing training and licensing requirements more stringent than those contained in an analogous OSHA standard. OSHA has adopted a nationwide Hazard Communication Standard to address the risks of hazardous chemicals in the workplace. See, 29 CFR 1910.1200. OSHA's Hazardous Communication Standard establishes uniform requirements to make sure that the hazards of all chemicals produced or used in U.S. workplaces are evaluated, and that this hazard information is transmitted to affected employers and exposed employees in a consistent and clear manner. 29 CFR § 1910.1200(a)(l).

Further, Article 28 of the New York Labor Law sets forth New York's Right to Know Law which requires employees be provided with training and information on chemicals in the workplace. New York has adopted this law as part of New York's OSHA State Plan, which vests the New York State Department of Labor with OSHA enforcement over public employers in New York State. The present bill ignores the limitations of Federal law which require the adoption of an OSHA State Plan for a safety and health regulation to be valid, as well as the preemptive effective State law on the City in Article 28 of the New York Labor Law.

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Neither the City, nor the Hotel Industry, would benefit from the legal challenges that would ensue if the present Bill was passed. Rather, this Bill would benefit special interests at the expense of the City's taxpayers in defending the inevitable lawsuits, while casting the Hotel Industry into unnecessary chaos.

I welcome any questions you have and thank you for your time.