



The Women's Legal Defense and Education Fund

March 8, 2024

Memorandum in Support of the Nail Salon Minimum Standards Council Act (S1800/A378)

For over five decades, Legal Momentum, the Women's Legal Defense and Education Fund, has been at the forefront of using the law to advance gender equality for women in the workplace. Since 2017, our *Women Valued* initiative has taken an intersectional approach to women's economic empowerment and workplace equality that prioritizes the unmet needs of the most underserved women through targeted legal education and advocacy. Based on this expertise, we submit this memo in support of S1800(Ramos)/A378(Bronson). Nail salon workers, who are predominantly immigrant women, continue to face exploitative workplace conditions where they are underpaid, face unpredictable hours and scheduling, and are susceptible to a range of workplace hazards. Yet because of these vulnerabilities, nail salon workers often are unable to challenge workplace conditions individually because they fear retaliation. By creating a forum for workers, employers, and government to come together to set industry-wide standards, this bill will create a New York nail salon industry where workers' rights and health are better protected.

This proposed legislation will establish an industry council of workers, small business owners, and government representatives to recommend new labor standards for nail salons across New York State, including standards for health and safety, working conditions, scheduling, and wages. In addition, the bill creates a separate committee of experts to study the industry and recommend new fair minimum pricing for nail services in order to combat the race to the bottom among nail salons to offer the lowest prices—which often comes at the expense of worker safety and well-being.

New York State's gender pay gap is particularly stark among women of color, driven in part by occupational segregation by gender and race and the systemic undervaluing of the work of women of color.¹ The nail salon industry exemplifies this trend; nail salon work is overwhelmingly performed by immigrant women of color, both in New York and around the nation.² Nail technicians (e.g., manicurists and pedicurists) make up the vast majority New York's nail salon industry workforce, with about 85% identifying as women.³ Among these workers, 73% identify as Asian or Pacific Islander and 21% identify as Hispanic or Latinx.⁴ As of 2022, there were at least 3,781 nail salons in New York, most of which are small businesses with 5 or fewer nail technicians.⁵ Hyper-competition among these businesses pushes down prices, which pressures employers to keep their labor costs as low as possible.⁶ In this context, despite nail techs' organizing successes in the last several years,⁷ nail technicians face exploitative conditions on the job. Nail technicians earn low wages,

with many experiencing minimum wage and overtime violations; are routinely misclassified as independent contractors; are denied lunch breaks; lack any benefits and/or paid time off; contend with discrimination and harassment; and more.⁸

In addition, unsafe conditions are an everyday reality in nail salons, where exposure to known toxic chemicals in glues, polishes, removers, and other products puts the largely women workforce at increased risk of harm to their reproductive health, as well as other illnesses like cancer and asthma.⁹ A 2022 survey conducted by the New York Committee for Occupational Safety and Health revealed disturbingly higher prevalence of reproductive health issues among nail techs, including finding they are more likely to experience severe pain with menstruation, complications during their pregnancies, and birth defects in their children.¹⁰

These kinds of exploitative and unsafe working conditions should not be the norm in any industry. Workers in the nail salon industry cannot make ends meet when their wages are stolen or when they are denied paid time off when they fall ill.¹¹ They are often single mothers and/or sole breadwinners for their families, and must regularly make tough financial choices between housing, food and other necessities.¹² For communities of color—particularly the AAPI and Latina women who perform the overwhelming majority of work in our state’s nail salons¹³—these issues threaten the ability to build healthy and thriving communities across the state of New York.

Additionally, despite rampant abuses in the industry, nail salon workers face challenges in speaking out.¹⁴ Faced with high levels of economic insecurity and limited alternative job opportunities, workers fear retaliation, like being fired or having their hours reduced, if they assert their rights, especially when acting individually.¹⁵ As a result, these workers are less likely to challenge workplace violations by voicing their concerns to employers or filing a wage or discrimination claim, resulting in ongoing exploitation.¹⁶ Nail salon workers need alternative tools to address these vulnerabilities across employers and to push for fair working conditions and pay.

Sectoral approaches are particularly useful in industries where there are high number of small businesses with no one employer or small group of employers controlling the industry—as with the New York nail salon industry.¹⁷ New York State has the power to create a just and sustainable nail salon industry through the Nail Salon Minimum Standards Council Act by setting industry-wide standards consistent with workers’ rights, health, and safety. The nail salon industry must undergo systemic change, and its business model cannot depend on cutting corners on workers’ rights.

Legal Momentum urges the passage of this bill, which would help close gaps in protection for many women workers who are particularly susceptible to workplace abuses and improve the lives of tens of thousands of workers in the nail salon industry across New York State.

¹ See *The Gender Pay Gap in the Pandemic Era*, N.Y. Dep't of Lab. (Mar. 14, 2023), <https://nysdolreports.com/gwg/2023-gwgreport/>; Ashley Jardina, et al., *The Limits of Educational Attainment in Mitigating Occupational Segregation Between Black and White Workers* 4-5, 29-30 (Nat'l Bur. Econ. Rsch. Working Paper No. 31641, 2023), https://www.nber.org/system/files/working_papers/w31641/w31641.pdf. In New York, compared to every dollar a white, non-Hispanic man earns, Black women earn 66 cents, Latina women earn 59 cents, Native American women earn 54 cents, and Asian women earn 86 cents. *The Wage Gap, State by State*, Nat'l Women's L. Ctr. (Mar. 5, 2024), <https://nwlc.org/resource/wage-gap-state-by-state/>. These figures are based on full-time, year-round work; for part-time and part-year workers, the pay gap is even more extreme. *Id.*

² Zoe West, et al., ILR Worker Inst., *Unvarnished: Precarity and Poor Working Conditions for Nail Salon Workers in New York State* 5 (2022), https://nyhealthynails.org/wp-content/uploads/2022/04/CORNELL_NailSalonWagesRept_FIN.pdf; UCLA Lab. Ctr., *Nail Files: A Study of Nail Salon Workers and Industry in the United States* 23-24 (2018), https://www.labor.ucla.edu/wp-content/uploads/2018/11/NAILFILES_2019jan09_FINAL_5a.pdf.

³ West et al., *supra* note 2, at 5.

⁴ *Id.*

⁵ West, *supra* note 2, at 3.

⁶ *Id.* at 57-58.

⁷ Press Release, NYCOSH, *Long Awaited Ventilation Regulations in Nail Salons to be Implemented October 4, 2022* (Oct. 5, 2022), <https://nycosh.org/2022/10/long-awaited-ventilation-regulations-in-nail-salons-to-be-implemented/> [hereinafter NYCOSH]; Michael M. Grynbaum, *New York Nail Salons Now Required to Post Workers' Bill of Rights*, N.Y. Times (May 29, 2015), <https://www.nytimes.com/2015/05/30/nyregion/new-york-nail-salons-workers-bill-of-rights.html>.

⁸ West et al., *supra* note 2, at 14, 27-29, 33-37, 40-41, 43-45; Chabeli Carrazana, *New York's Nail Salon Workers Have Spent Years Feeling Silenced. They're Ready to Fight Back*, The 19th (May 16, 2022), <https://19thnews.org/2022/05/new-york-nail-salon-workers-overhaul-industry/>; Steve Wishnia, *Most NY Nail Salon Workers Are Being Ripped Off, New Report Finds*, Labor Press (Feb. 19, 2020), <https://www.laborpress.org/most-ny-nail-salon-workers-are-being-ripped-off-new-report-finds/>.

⁹ *Id.* at 41-43; Amir Khafagy, *Nail Salon Workers Say Proper Ventilation Can Protect Their Reproductive Health*, Documented (Oct. 12, 2022), <https://documentedny.com/2022/10/12/nail-salon-reproductive-health-baby-pregnant-ventilation/>; Grace X. Ma, et al., *Characterizing Occupational Health Risks and Chemical Exposures Among Asian Nail Salon Workers on the East Coast of the United States*, 44 J. Cmty. Health 1168 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6913878/>; Sarah Maslin Nir, *Perfect Nails, Poisoned Workers*, N.Y. Times (May 8, 2015), <https://www.nytimes.com/2015/05/11/nyregion/nail-salon-workers-in-nyc-face-hazardous-chemicals.html>.

¹⁰ NYCOSH, *supra* note 7.

¹¹ See West et al., *supra* note 2, at 37-38, 40-41, 50-52.

¹² See *id.* at 37-38.

¹³ *Id.* at 5.

¹⁴ See *id.* at 45-48, 52.

¹⁵ See *id.* at 45-49, 52-53.

¹⁶ See *id.* at 52-54.

¹⁷ *Id.* at 58-59; Ken Jacobs, et al., *State and Local Policies and Sectoral Labor Standards: From Individual Rights to Collective Power* 23-25, 27 (Inst. For Rsch. On Lab. & Emp. Working Paper No. 104-21, 2021), <https://irle.berkeley.edu/wp-content/uploads/2021/07/State-and-Local-Policies-and-Sectoral-Labor-Standards-WP-104.pdf>; Kate Andrias & Brishen Rogers, *Rebuilding Worker Voice in Today's Economy* 26-30 (2018), <https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Rebuilding-Worker-Voice-201808.pdf>; Kate Andrias, *The New Labor Law*, 126 Yale L.J. 2, 78-79 (2016), https://www.yalelawjournal.org/pdf/a.2.Andrias.100_sa4cc96k.pdf.