



**REPORT BY THE CRIMINAL JUSTICE OPERATIONS COMMITTEE,
CRIMINAL COURTS COMMITTEE AND LABOR & EMPLOYMENT COMMITTEE**

PROPOSAL TO REQUIRE PAYMENT OF JURORS BY EMPLOYERS

The right to a jury of one's peers is the cornerstone of the criminal justice system, and yet in New York State the loss of wages by a juror means wide swaths of the population cannot serve. Any lawyer who has attempted to pick a jury in New York has heard jurors explain that they would be willing to serve but cannot because their employer will not pay them, meaning they would not be able to make their rent payments or put food on their tables. Even employees of large corporations frequently report that they will not be paid, despite the minimal impact paying an employee's wages during actual jury service would have on a corporation's profit margin. It is a detriment to defendants and the system as a whole to allow perpetuation of a status quo in which almost all hourly workers must either be excused from jury service or risk their own financial security because employers are not required to pay jurors' wages.

This is not true throughout the country. Alabama law requires that all employers pay any full-time employee their full compensation for the length of the jury service and forbids employers from deducting time spent in jury service from the employee's annual or sick leave time.¹ Similarly, Tennessee requires employers with more than five employees to continue to pay all employees their full wage during jury service, so long as the employee has been working for the employer for more than six months. It further requires that the employer excuse the employee from night shift or morning work that would require employees to work full time and be jurors simultaneously.²

In contrast, New York requires only that employers with ten or more employees pay their employees \$40 per day during jury service, and even that paltry amount must be paid only for three days. The burden of jury service for New Yorkers thus falls exclusively on the employee, a disservice to the criminal justice system which operates most fairly and equitably with a robust and diverse jury pool. It is time to shift the burden of this important civic duty so it may be shared by both jurors and their employers.

¹ Alabama Stat. 12-16-8.

² Tenn. Stat. 22-4-106.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

The New York City Bar Association calls on the New York State legislative to amend Judiciary Law §519 as described in Appendix A so as to require employers to (1) pay employees their regular wages during jury service if the employer employs twenty-five or more persons, (2) excuse jurors from night shift work, and (3) forbid the reduction of any leave time for serving on a jury. In addition, we call for an amendment to the powers of the Labor Commissioner to allow for the investigation of any violations of this act.

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APPENDIX A

STATE OF NEW YORK

2019-2020 Regular Sessions

AN ACT to amend the judiciary law and labor law to require payment of jurors by employers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 519 of the judiciary law is amended to read as follows:

2 Right of juror to be absent from employment. (a) Any person who is summoned
3 to serve as a juror under the provisions of this article and who notifies his or her
4 employer to that effect prior to the commencement of a term of service shall not, on
5 account of absence from employment by reason of such jury service, be subject to
6 discharge or penalty. An employer who employs fewer than twenty-five people on a
7 regular basis or who has employed the person subject to jury service for less than six
8 months may, however, withhold wages of any such employee serving as a juror during
9 the period of such service; provided that an employer who employs more than ten
10 employees shall not withhold the first forty dollars of such juror's daily wages during the
11 first three days of jury service. **【Withholding of wages in accordance with this section**
12 **shall not be deemed a penalty.】** Violation of this section shall constitute a criminal
13 contempt of court punishable pursuant to section seven hundred fifty of this chapter.

14 (b) If an employer employs more than twenty-five (25) people, and an employee
15 summoned for jury service has worked for said employer for more than six (6) months,
16 then:

17 (1) Two weeks prior to the commencement of a term of jury service or promptly
18 upon receiving notice if notice is not received more than two weeks prior to the
19 commencement of a term of service, any employee shall exhibit the summons to the

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1 employee's immediate superior, and the employer shall thereupon excuse the employee
2 from employment for each day the employee's service as a juror in any court of the
3 United States or this state exceeds three (3) hours.

4 (2) If an employee summoned for jury duty is working a night shift or is working
5 during hours preceding those in which court is normally held, the employee shall also be
6 excused from employment as provided by this section for the shift immediately preceding
7 the employee's first day of service. After the first day of service, when the person's
8 responsibility for jury duty exceeds three (3) hours during a day, the person whose
9 circumstances fall within the parameters of this subdivision (a)(2) shall be excused from
10 the person's next scheduled work period occurring within twenty-four (24) hours of that
11 day of jury service. Any question concerning the application of this subdivision (a)(2) to
12 a particular work shift or shifts shall be conclusively resolved by the trial judge of the
13 court to which the employee has been summoned.

14 (3) Notwithstanding the excused absence as provided in subsection (b)(2), the
15 employee shall be entitled to the employee's usual compensation received from such
16 employment or the regular non-tipped minimum wage, whichever is higher; however, the
17 employer has the discretion to deduct the amount of the fee or compensation the
18 employee receives for serving as a juror. Moreover, no employer shall be required to
19 compensate an employee for more time than was actually spent serving

20 (4) If the estimated term of service for the juror is longer than four weeks, the
21 employer may petition the judge to excuse the juror from service due to undue hardship
22 for the employer. The trial judge's determination as to such matter shall be final. This
23 subsection will not release an employer from the requirements of this section.

24 (5) An employee may not be required or requested to use any type of accrued paid
25 or unpaid leave for the period of jury service.

26 (c) No employer shall discharge or in any manner discriminate against an
27 employee for serving on jury duty if the employee, prior to taking time off, gives the
28 required notice pursuant to subsection (a);

29 (d) Any employee who is subjected to an adverse action because the employee
30 has taken time off to serve on jury duty is entitled to reinstatement and reimbursement for
31 lost wages and work benefits caused by such acts of the employer, and an additional

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1 amount as liquidated damages, unless the employer proves a good faith basis for
2 believing that its underpayment of wages was in compliance with the law. Liquidated
3 damages shall be calculated as no more than one hundred percent of the total amount of
4 wages found to be due.

5 (e) For the purposes of this section, “employer” includes, but is not limited to, the
6 state of New York or any local government.

7 § 2. Section 196 (1)(a), (1)(c), (2) and of the labor law is amended to read as follows:

8 1. In addition to the powers of the commissioner specified in other sections of
9 this chapter, the commissioner shall have the following duties, powers and authority:

10 a. He or she shall investigate and attempt to adjust equitably controversies
11 between employers and employees relating to this article, or article five, seven, nineteen
12 or nineteen-A of this chapter, and article 519 of the Judiciary Law.

13 c. He or she may institute proceedings on account of any criminal violation of
14 any provision of this article, or article five, seven, nineteen or nineteen-A of this chapter,
15 and article 519 of the Judiciary Law.

16 2. Nothing in this section shall be construed as requiring the commissioner in
17 every instance to investigate and attempt to adjust controversies, or to take assignments
18 of wage claims, or to institute criminal prosecutions for any violation under this article or
19 article five, seven, nineteen or nineteen-A of this chapter, or article 519 of the Judiciary
20 Law, but he or she shall be deemed vested with discretion in such matters.

21 § 3. This law shall take effect ninety days after enactment.