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Testimony of Michael Roland, Bureau of Labor Standards, Maine Department of Labor
Neither For Nor Against LD 553, An Act To End At-Will Employment
To the Joint Standing Committee on Labor and Housing
Public Hearing, Wednesday, March 24, 2021

Greetings, Senator Hickman, Representative Sylvester and members of the Joint Standing Committee on Labor and Housing. I am Mike Roland, Director of the Bureau of Labor Standards at the Maine Department of Labor (Department).

The Bureau of Labor Standards works with businesses to continually improve workplace safety, health and workplace rights. Our programs include Division of Workplace Safety and Health, SafetyWorks, the Wage and Hour Division and the Technical Services Division.

While the Department sympathizes with the sponsor's apparent interest in promoting job security and preventing unfair termination, I am here today to speak on behalf of the Department neither for nor against LD 553, "An Act to End At-Will Employment."

This bill proposal would prohibit an employer from firing an employee without cause. Any termination would have to take place after a 3-step progressive discipline policy is applied and providing notice of termination.

The proposal would limit flexibility that many employers rely on to adjust to changes in market conditions. There is no provision for economic downturn or other unavoidable business problems; the impact on employers and the economy during a crisis (such as a pandemic or a weather event) could be disastrous.

Maine and federal laws already prohibit or restrict wrongful termination under a variety of circumstances, including protected concerted activity, whistleblower protections, protections from retaliation under some statutes and various kinds of discrimination. Collective bargaining agreements and written or implied contracts may also partially constrain termination.

The bill would put Maine out of conformity with federal law and all but one other state (to our knowledge no other state has similar legislation now pending). The only such general restriction on termination currently is the "Montana Wrongful Discharge Employment Act" of 1987. There, at will employment is formally permitted only during a (6-month) probation period, and afterwards "good cause" for termination is required. However, the Montana law does allow an employer to unilaterally alter the terms of employment, including the wage, and "Interruption of business" is also a valid cause for termination. Furthermore, it is not administered by any state agency, and instead relies for enforcement on civil redress through the courts.

In addition, we have several concerns about implementation of the statute as written:

- Responsibility for enforcement is unclear, as is whether a private right of action is available to employees.
- We are uncertain how we would fashion the required model policy and conduct outreach and education regarding the statute.
- Some sections and definitions, such as the size of a covered employer, are unfamiliar and may prove difficult to interpret.

For many of these reasons, unless as in Montana enforcement is solely through private action, we anticipate there would be a significant cost to the Department to implement and enforce this statute.

The Wage & Hour Division currently has 5 Labor & Safety Inspectors who are responsible for enforcing Maine's labor laws for more than 40,000 Maine employers covering more than 35,000 square miles and investigated about 1,400 cases in the last three years. We estimate that to effectively enforce this law will require additional inspectors to handle the additional complaints that W&H will receive as well as additional staff to perform outreach and education.

Thank you for your time and attention. I would be happy to answer any questions you may have now or at a future work session.

The Maine Department of Labor is committed to serving Maine workers and businesses by helping employers recruit and train a talented workforce, providing workers with skills needed to compete in our economy, assisting individuals when jobs are lost, aiding people with disabilities reach career goals, ensuring safe and fair workplaces for people on the job and providing research and analysis of employment data to support job growth.