

Testimony of Nate Cloutier

Before the Joint Standing Committee on Labor and Housing
February 6, 2024

In Opposition to LD 372, “*An Act to Increase Enforcement and Accountability for Wage and Hour Violations*”

Senator Tipping, Representative Roeder, and distinguished members of the Joint Standing Committee on Labor and Housing: My name is Nate Cloutier, and I am here today on behalf of HospitalityMaine representing more than 1,300 restaurant and lodging operators of all sizes across the state. HospitalityMaine opposes LD 372, “*An Act to Increase Enforcement and Accountability for Wage and Hour Violations*.”

“[2022] was the first full year the Bureau of Labor Standards’ Wage and Hour Division was expanded to include a Director, Chief Inspector, eight Inspectors and one Field Investigator, and an Assistant Attorney General who was committed entirely to the work of the Bureau.”

“We also believe that more broadly publicizing our enforcement efforts has begun to bear fruit. Interest and attendance at our Wage and Hour Compliance classes has skyrocketed, and inquiries about employment law from both workers and employers have increased. Employers knowing that they may not only be subject to penalties and payment of back wages for noncompliance, but that their violations may appear on our webpage or in the media, seems to lead to more willingness to work with us to settle any complaints that may arise.”

“While we believe that compliance with employment law is improving, we understand that we must continue to learn from the data and use it to guide our future efforts.”

“Despite our efforts, wage theft remains a real and serious problem in Maine. Though **we know that the vast majority of employers operate in full compliance with employment law**, violations frequently do occur. **Once notified, most employers correct their practices willingly and quickly**. But when violations are systemic, willful or recurring, they harm law-abiding employers and workers alike.”

These are quotes from former Director Mike Roland in the Introduction of “Annual Report on Wage and Hour Complaints and Violations in 2022. Maine Department of Labor, Bureau of Labor Standards, Wage and Hour Division February 2023 Report.”

The Sponsor’s Amendment to LD 372 would allow the director to order any employer, officer, agent, or other person who violates any provision of chapter 7 or chapter 15 to pay unpaid wages determined to be due, as well as an additional amount equal to twice the amount of unpaid wages as liquidated damages and a reasonable rate of interest. It also would authorize MDOL to supervise the payment of wages, damages, and interest on behalf of the employee.

My question to the Committee is simple: What has changed?

As of February 2023, the Department's position was that "Once notified, most employers correct their practices willingly and quickly." The Department's authority to pursue civil action to recover forfeitures is now inadequate? Now, the Department wants to broadly and ambiguously institute "reasonable interest" and codify supervisory authority of any payments made to employees. Mortgage interest rates are 7.5% and credit card interest rates are north of 20%. As has been pointed out in the past, interest, to some, is predatory and disproportionately harms the financially disadvantaged, or in the case of employers, small businesses.

Our concern with the premise of this legislation is the same in other legislation being considered in this committee today. This legislation only perpetuates the presumption of bad actors. Last year, this committee passed, very quickly, one of the largest employee programs in state history. Our questions that the program could encounter abuse by employees or self-employed individuals were largely dismissed, and our concerns were criticized for not supporting employees. I can't speak for all organizations, but the employers I talk with by and large lead with the presumption that employees will address their employment with good intentions. We respectfully ask you to do the same of employers. The cost of running a business is at an all-time high. Red tape creates confusion. Mistakes happen. But in the Department's own words, most issues are resolved readily and speedily. Should the Department pursue bad actors? Absolutely. Because, as the Department said, it harms law abiding employers and workers alike. However, this legislation only saddles employers trying to do the right thing with the threat of higher costs.

Our organization holds an annual Expo for individuals in the hospitality industry. It's attended by hundreds annually. We have consistently invited BLS to hold a seminar related to wage and hour enforcement as a feature of the event. It is always well-attended and the feedback from participants is overwhelmingly positive. Our members appreciate the proactive educational approach, not the threat of heavy-handed penalties and enforcement, which discourages existing employers and sends negative signals to prospective business.

We urge you to please vote ought not to pass on LD 372. Thank you, and I would be happy to answer any questions you may have.