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To: Sen. Mike Tipping and Rep. Amy Roeder, co-chairs
Members, Committee on Taxation

From: David R. Clough, State Director in Maine

Re: LD 2184 – Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards

This statement is on behalf of the thousands of small business owners in Maine who are members of the National Federation of Independent Business. NFIB members are located throughout Maine and are engaged in a wide range of business activities. They collectively provide paychecks to about 30,000 families and represent the backbone of communities and the State of Maine.

LD 2184 proposes legislative adoption of changes in how civil monetary penalties for labor law violations will be calculated and administered. The legislation also proposes that the Bureau of Labor Standards annually assess and report on its effectiveness in enforcing Maine labor laws. NFIB submitted comments during the rulemaking process, focusing on the calculation of penalty reductions and on “good faith” criteria used to further determine an appropriate penalty.

The proposed final rules address NFIB’s concern about penalty multipliers that are tied to tiers of employer sizes. We accept the responsiveness to our concerns.

We continue to have questions about the 4-factor definition of “good faith” that requires an employer to demonstrate “remorse” by posting notice of the particular labor law violations and explaining any changes made in response to the violations. The final version is an improvement over what had been proposed. However, we are concerned that the “remorse” paragraph could create unintended legal trouble if a small employer has not carefully and artfully worded the expected written explanation. Paragraph three covers steps that an employer makes to “satisfy the Director that a repeat violation is unlikely to occur.” The “good faith” paragraph could be eliminated or reserved for special circumstances where, for example, an employer has a history of labor law violations.

NFIB did not comment on other aspects of the proposed rules.

Thank you for being mindful of Maine small business owners and how they help make our state prosper.