

TESTIMONY OF MAINE EMPLOYMENT LAWYERS ASSOCIATION IN OPPOSITION TO LD 960

My name is Chad Hansen. I am an attorney with Employee Rights Group and here on behalf of the Maine Employment Lawyers Association (MELA). MELA is the largest organization of civil rights lawyers in Maine with about 75 member attorneys who represent employees in labor and employment matters across the state as at least 2/3 of their practice. I have been practicing labor and employment law for 19 years here in Maine.

MELA opposes LD 960. It would be harmful to Maine employees in two ways. First, it would create a carve out from the Rules of Civil Procedure and allow a defendant in a discrimination case to disregard Rule 8, disregard Rule 15, disregard Rule 16 and raise a defense of damages caps at any stage of the case, including after trial, even if there is no good cause for the delay and even if the late assertion of the defense causes significant prejudice to the plaintiff. This would lead to unjust results for plaintiffs and would give defendants an incentive not to plead this defense since there is a strategic advantage to waiting until after discovery and trial to raise as the plaintiff would not know to prepare for the defense.

LD 960 would also severely limit the damages juries and judges can award under the Maine Human Rights Act. The bill indicates that a plaintiff who recovers damages under state and federal statutes is receiving a "double recovery". This is not in fact the case and this is not the way that damages are awarded in these cases. A jury hears the evidence and then issues a verdict with a single amount for compensatory damages and a single amount for punitive damages. The jury is not made aware of the damages caps. Post trial, the court then applies the damages provisions in the statute and allocates the jury's award to the different claims. So, there is no "double recovery," just a jury communicating the total amount that it believes should be awarded for the various categories of damages.

It has been the law in the First Circuit since 1994 that when an employer-defendant violates both federal and state laws, the court should allocate an unspecified verdict on damages to the various claims in a way that maximizes the plaintiff's recovery and effectuates the jury's verdict. *Sanchez v. Puerto Rico Oil Co.*, 37 F.3d 712, 725 (1st Cir. 1994), *Rodriguez-Torres v. Caribbean Forms Mfr., Inc.*, 399 F.3d 52, 66 (1st Cir. 2005). Therefore, this bill would change settled law as it has existed for almost thirty years.

As Brian Bell testified, the impact of this law in his case would be to give a Fortune 500 company a 40% discount on the amount a Maine jury determined was appropriate.

This would mean that in many cases, an employer would not be required to pay any damages at all in connection with a violation of the Maine Human Rights Act. The Maine Legislature passed the MHRA to protect Mainers from discrimination and retaliation and to this end provided that discriminatory practices should be reviewed and corrective actions taken to prevent discrimination in the future. 5 M.R.S. Sec. 4552. This bill is at odds with the purpose of

the Act. In many cases this bill would remove any consequences for employers who violate the Act and in this way take the teeth out of the Act.

By significantly reducing and in many cases removing the consequences for violating Mainers rights under the Act, this bill would harm Maine workers and all those who rely on Maine workers. For these reasons, MELA respectfully requests that the Committee vote that LD 960 "ought not to pass."