

TESTIMONY OF MAINE EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF LD 1423

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary. My name is Chad Hansen. I am an attorney with Employee Rights Group and am 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.

The damages caps set out in the Maine Human Rights Act ("MHRA") for employment discrimination and retaliation are outdated. This undercuts the purpose of the MHRA which is to protect Mainers from harassment, discrimination and retaliation through investigation, litigation, and when a jury finds a violation, for corrective actions to be taken to prevent discrimination in the future. 5 M.R.S. §4552. A jury's ability to award money damages is the most effective corrective action.

The original MHRA caps, which are still in place for the tiers for employers with less than 100 and less than 200 employees, were based on caps set out in the 1991 Civil Rights Act and so are based on a value of the dollar from over 30 years ago. LD 1423 would essentially just adjust those 1991 caps to account for inflation. The higher tiers for employers with less than 300 and more than 500 employees have not been updated for over 15 years and are also obsolete and out of touch. By way of example, over these same decades top CEO compensation has skyrocketed at multiple times the rate of inflation while the damages caps stayed the same.¹ The outdated caps send the message that employees rights are not a priority in Maine.

Mainers who are subjected to unlawful harassment, discrimination and retaliation by their employers are limited in their recovery by the caps regardless of how much harm was caused by the unlawful acts. Keep in mind that juries are not made aware of these caps. Juries listen to the evidence and if they conclude that discrimination or retaliation has occurred then the jury is asked to determine the appropriate amount of compensatory damages to compensate the victim for the harm caused and punitive damages if the jury concludes that the plaintiff has proven, by clear and convincing evidence, that the employer acted with malice or reckless indifference.

As things stand, an employee who was subjected to horrendous sexual harassment in the workplace that derails their life and causes lasting suffering may be limited to a \$50,000 award, even if a jury concludes that more is appropriate. An employee who is discriminated against and fired after decades working for the same employer and is unable to find comparable work for the rest of their working life and suffers significant anxiety and depression as a result may nonetheless be limited to a \$50,000 award for their suffering regardless of what a jury says. Attorneys for employees see these negative consequences of the obsolete caps play out frequently. We also see employers who are repeat offenders who are clearly not motivated by the damages available to take steps to eliminate harassment and discrimination in the workplace. We see Fortune 500 companies who are unmoved by the worst case scenario of a \$500,000 compensatory and punitive damages award because they earn that amount every minute.

¹ <https://www.epi.org/publication/ceo-pay-in-2021/>

Most cases that arise under the MHRA are resolved through negotiations before they go to trial and these obsolete caps have a real and significant impact on where and how the cases resolve. In this context, LD 1423 is sorely needed in order to make the MHRA relevant and to permit Maine jurors more say in how to address and eliminate discrimination in the workplace.² The updates set out in LD 1423 will help to keep the MHRA relevant and give Mainers and their advocates more agency to address and correct civil rights violations in Maine.

We ask that the committee vote that LD 1423 ought to pass.

² Maine is out of synch with its New England neighbors. In New Hampshire, Vermont, Massachusetts, and Rhode Island, the state anti-discrimination laws have no caps at all. Connecticut's anti-discrimination law has no caps on compensatory damages.