



Janet T. Mills
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
45 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0054

Laura A. Fortman
COMMISSIONER

**Testimony of Dr. Jason Moyer-Lee,
Bureau of Labor Standards, Maine Department of Labor
In opposition to
LD 2149, An Act to Exempt Seasonal Volunteer Ski Patrollers and
Seasonal Volunteer Ski Ambassadors and Hosts at Ski Areas from the
Minimum Wage Laws
To the Joint Standing Committee on Labor and Housing Public
Hearing, 1/23/2024**

Senator Tipping, Representative Roeder, and members of the Joint Standing Committee on Labor and Housing. I am Dr. Jason Moyer-Lee, Director of Labor Standards at the Maine Department of Labor (“the Department”). I submit this testimony on behalf of the Department in opposition to LD 2149, “An Act to Exempt Seasonal Volunteer Ski Patrollers and Seasonal Volunteer Ski Ambassadors and Hosts at Ski Areas from the Minimum Wage Laws” (“the Act”). In brief, we do not believe that the Act accomplishes its proponents’ objectives, it risks creating a dangerous precedent, and its supporters have not met the high threshold we believe is necessary to remove a class of workers from the protective scope of Maine’s employment laws. As such, we oppose this bill.

It appears that LD 2149’s supporters wish the law to recognize a class of “volunteer employee”, to whom employment laws are inapplicable. For example, literature circulated in support of LD 2149 states:

Under the U.S Fair Labor Standards Act (FLSA), there is a long-standing exemption from minimum wage laws for seasonal employers that authorizes the use of volunteer ski patrollers. This federal law exempts seasonal businesses – such as those that operate less than seven months a year, or those that earn most of their revenue in six months of operations – from federal minimum wage laws. See 29



Janet T. Mills

GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
45 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0054

Laura A. Fortman
COMMISSIONER

U.S.C. § 213(a)(3). Nineteen states have adopted this FLSA seasonal recreation exemption from their own state minimum wage laws, providing state and federal laws allowing the use of volunteer ski patrollers.

However, U.S.C. § 213(a)(3), the federal statute referred to above, does not authorize the use of volunteer ski patrollers. It simply exempts certain recreational businesses from federal minimum wage and overtime requirements. Similarly, LD 2149 would not permit the use of volunteer ski patrollers; rather, it would simply exempt certain employed ski patrollers, ski ambassadors, and hosts from minimum wage and paid overtime requirements under Maine law. It would still be unlawful for employers to treat such employees as unpaid volunteers. Such employers would therefore still have to comply with numerous employment statutes.

26 M.R.S. § 629(1) states:

1. Work without compensation; return of compensation. A person, firm or corporation may not require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, oral, written or implied, that a part of such compensation should be returned to the person, firm or corporation for any reason other than for the payment of a loan, debt or advance made to the person, or for the payment of any merchandise purchased from the employer or for sick or accident benefits, or life or group insurance premiums, excluding compensation insurance, that an employee has agreed to pay, or for rent, light or water expense of a company-owned house or building. This section does not apply to work performed in agriculture or in or about a private home.

Pursuant to this statute, employers must pay employees for work performed. Further, pursuant to other Maine employment statutes, they must pay them "at regular intervals not to exceed 16 days"¹ and employers must keep records of these payments as well as of the hours the employees worked.² Unless ski employers benefitted from a separate exemption to other employment statutes – such as those providing for paid family medical leave,³ limits on mandatory overtime,⁴ equal pay,⁵ or earned paid leave,⁶ for example – they would also have to

¹ 26 M.R.S. § 621-A(1).

² 26 M.R.S. § 622.

³ 26 M.R.S., Chapter 7, Subchapter 6-C (§ 850-A to § 850-R).

⁴ 26 M.R.S. § 603.

⁵ 26 M.R.S. § 628.

⁶ 26 M.R.S. § 637.



Janet T. Mills

GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
45 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0054

Laura A. Fortman
COMMISSIONER

comply with these, notwithstanding the provisions of LD 2149. In short, if this bill seeks to render unpaid ski patrollers, ski ambassadors, and hosts at ski areas "volunteer employees" in the eyes of Maine law, and as such exempt them from employment statutes, the bill does not achieve its objective. This does not mean all ski patrollers, ski ambassadors, and hosts are employees. They must fall within the definition of employee in Maine law, as construed by the Maine courts. It would be open to a ski employer to make a case that an unpaid ski patroller is an independent contractor, performing unpaid work. But if the ski patroller was caught by the definition of employee in Maine law, then employ laws would apply.

What LD 2149 would actually do is exempt certain ski patrollers, ski ambassadors, and hosts at ski areas from Maine's minimum wage and paid overtime laws. These laws are set out in Title 26, Chapter 7, Subchapter 3, and they apply to "employees", defined as "any individual employed or permitted to work by an employer" but which exempts nine categories of workers. Since 1959, Maine's minimum wage law has served as a bedrock statute of employment protection for low-paid workers. Exemptions from it are a serious matter. Ski patrollers, ski ambassadors, and hosts at ski areas who fall within the definition of "employee" in Maine law, are currently protected by this minimum wage statute. LD 2149 seeks to remove that protection from them. Unless a compelling case can be made for removing a class of workers from the protective scope of this foundational statute, the Department opposes such a measure. Such a compelling case has not been made. A compelling case would need to overcome the Department's concerns that exempting this class of employees would be detrimental to them, that it would be detrimental to those ski patrollers who depend on the job for a living and who do not consider themselves employees, and that the exemption would set a precedent upon which other industries would base petitions for yet further exemptions from minimum wage law.

Beyond the policy considerations discussed above, the Department also raises technical concerns with LD 2149, as currently drafted. The terms "seasonal volunteer ski patrollers" and "seasonal volunteer ski ambassadors and hosts" are undefined. If this bill were to proceed in some form, it is important that the terms denoting classes of workers exempt from this law are clearly understood by workers, employers, and the Department. Otherwise, it may lead to unnecessary litigation or require the Department to issue rulemaking defining the terms.