

Testimony of Nate Cloutier

Before the Joint Standing Committees on Appropriations & Financial Affairs and Labor and Housing

LD 2214, *"An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund, and Other Funds and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2024, and June 30, 2025"*

March 4, 2024

Senators Rotundo and Tipping, Representatives Sachs and Roeder, and distinguished members of the Joint Standing Committees on Appropriation & Financial Affairs and Labor and Housing: My name is Nate Cloutier, and I am here today on behalf of HospitalityMaine representing restaurant and lodging establishments of all sizes across the state. HospitalityMaine is providing comment regarding line 0159, "Regulation and Enforcement" and line 0161, "Safety Education and Training Programs" within LD 2214, the supplemental budget.

**Line 0159, Regulation and Enforcement** – Reclassifies 3 positions within the Maine Department of Labor (MDOL) that are currently 100% Safety Education and Training Programs based. It changes one position to 100% Regulation and Enforcement program based and changes two positions to 50% Regulation and Enforcement program based each.

**Line 0161, Safety Education and Training Programs** – Reclassifies 3 positions within MDOL that are currently 100% Safety Education and Training Programs based. It changes one position to 100% Regulation and Enforcement Program based and changes two positions to 50% Regulation and Enforcement program based each.

To begin, we believe that all workers should receive the wages that are rightfully owed to them. We know we are not alone in this sentiment.

We are concerned about the departure from education and outreach-based enforcement that is evidenced in the supplemental budget and peripheral legislation (LDs 372 and 2184) this session. The changes in LD 2214 result in a 200% reduction in positions that have been historically dedicated to early, proactive outreach and education— a long-standing, strong deterrent to potential wage and hour violations. Our concerns are mainly with the symbolic shift in department-employer relations that accompanies these appropriations.

It's important that when the department is proposing budgetary shifts such as these that it's doing so because it's rooted in substantial evidence. Moreover, if a transition to a department that will now rely heavily on "strategic enforcement" should occur, the onus should be with the department to explain in detail the methodologies that will be used to effectively utilize this form of deterrence. For example, as resources and staff time surrounding education and outreach are deallocated, what metrics and data will the department use to determine which industries and which businesses should be investigated without allegations or complaints, as will be the case with strategic enforcement? And what steps will the department take to ensure these decisions are made fairly? We do not feel these questions have been adequately answered in the waning weeks of the second legislative session to warrant the changes in this and associated legislation.

Education and outreach have been long recognized by MDOL as the primary tools in effectively fostering compliance and preventing violations in the workplace. These approaches serve as a proactive means to inform both employers and employees about their rights and obligations under existing law.

By promoting awareness and understanding, we create an environment where all involved are more likely to voluntarily comply with the law.

Diverging from education and outreach-based enforcement is a step in the wrong direction for several reasons:

- Education is instrumental in preventing violations before they occur.
- Investing in prevention is often more resource-efficient than responding to violations after they've occurred.
- Education fosters a culture of compliance. This promotes a positive relationship between the bureau and employers, creating an atmosphere of cooperation rather than confrontation.

Strategic enforcement relies on assumptions about which industries are most likely to have bad actors. These investigations are initiated without specific complaint or allegation and may unintentionally harm businesses that are in compliance but become subject to unnecessary scrutiny. We understand strategic enforcement, in conjunction with LD 2184, to mean that MDOL no longer sees employer-department settlements (which often have multi-year commitments) as sufficient deterrents. We also understand that through this legislation the department will adjust how it assesses fines by starting with the maximum amount possible. In the department's testimony in LD 2184, it said, "it must be costly to break the law". We disagree with a blanket statement. Employers that commit wage and hour violations are by and large not nefarious, and leading with maximum penalties for unintentional and first-time violations as a means of deterrence serves no one. These are important factors for consideration in legislation that will result in increased employer-department interactions.

The department has stated the reallocation is necessary because of a fear of retaliation, among other reasons. The good news is that in 2023 the Bureau of Labor Standards received a total of 6,934 queries related to wage and hour issues. That means that the Bureau received 26.67 outside interactions per business day last year. Those interactions are from workers and businesses alike, no doubt, but that statistic tells me that existing enforcement championed by the department is resulting in no shortage of department interaction.

Maintaining a strong emphasis on education and outreach-based enforcement is crucial for fostering compliance, preventing violations, and cultivating a positive relationship between regulators, employers, and employees. While it is important to adapt enforcement strategies to evolving challenges, a thoughtful and evidence-based approach should be prioritized over a shift to assumptions-driven strategic enforcement.

Our organization holds an annual Expo for individuals in the hospitality industry. It's attended by hundreds. 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 a proactive educational approach and believe these positions should remain in place. Any diversion discourages existing employers and likely sends concerning signals to prospective businesses.

Thank you, and I would be happy to answer any questions you may have.