



MAINE AFL-CIO

A Union of Unions Standing for Maine Workers

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Testimony of Maine AFL-CIO Executive Director, Matt Schlobohm, to Support and Improve L.D. 2273, “An Act to Establish a State Minimum Hourly Wage for Agricultural Workers”

Senator Tipping, Representative Roeder and members of the Labor & Housing Committee, my name is Matt Schlobohm. I’m the Executive Director of the Maine AFL-CIO. We represent 40,000 working people in the state of Maine. We work to improve the lives and working conditions of our members and all working people. I also served on the stakeholder group that worked through these issues and led to the bill before you. I want to publicly appreciate both Departments for their diligent efforts and fellow stakeholder group members for thoughtful consideration of these issues.

We testify in support of this bill as it will provide coverage for farmworkers under our state minimum wage law and offer a strong recommendation that it be improved in three ways:

1. Farmworkers should have a private right of action, as other Maine workers do if they are not paid the minimum wage.
2. Farmworkers should be offered rest breaks after six hours.
3. Farmworkers should have statutory limits on forced overtime. Specifically, they should not be forced to work more than 160 hours in a consecutive two-week period.

The bill before you is a good step and a good start and it needs to be improved. Incorporating the three changes above will take an important, positive and modest step in the direction of not once again reproducing second class status under the law for farmworkers - a problem that has plagued us for more than 90 years.

Why We Support Extending State Minimum Wage Protections to Farmworkers

Farmworkers perform one of the most essential functions in our society. Their labor puts food on our tables. In addition to struggling with some of the lowest wages in the country,¹ farmworkers work in one the most dangerous sectors in the economy² with one of the highest fatal injury rates. Agricultural workers are vulnerable to sexual abuse,³ extreme heat waves,⁴ toxic pesticides and accidents with heavy machinery. Whether it's raking blueberries or working in the seafood, poultry, dairy or egg industries, power imbalances

¹ <https://www.epi.org/blog/the-farmworker-wage-gap-continued-in-2020-farmworkers-and-h-2a-workers-earned-very-low-wages-during-the-pandemic-even-compared-with-other-low-wage-workers/>

² <https://www.cdc.gov/niosh/topics/aginjury/default.html>

³ <https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/>

⁴ <https://www.pbs.org/newshour/health/farmworkers-are-dying-in-extreme-heat-few-standards-exist-to-protect-them>

related to immigration status and language barriers are a regular part of the lives of many agricultural workers in Maine.

The Maine AFL-CIO supports farmworkers in Maine having the same minimum wage coverage and protection that other Maine workers enjoy because it is the right thing to do; it is supported by Maine farmworkers themselves; it will provide a shred more economic security and rights and it takes an important historical step forward.

During the stakeholder group process, as a means to get greater input from the farmers and farmworkers most directly impacted by this legislation, two subcommittees were formed. The Farmworker subcommittee sought feedback from Maine farmworkers themselves. Through good outreach work, that subcommittee spoke directly with 73 workers, had other farmworkers fill out a survey, met with workers in an organizational context and all total reached 80-90 farmworkers to get their input.⁵ From that outreach, there was near universal support for extending the minimum wage to farmworkers (universal support of those spoken with and 98% of the 59 workers who completed a survey) and many felt that it should be a higher minimum wage. These 80 - 90 workers, nearly all of whom reported earning above state minimum wage, shared the following reasons for strengthening the minimum wage for Maine farmworkers:

- It's hard physical labor
- The importance of agriculture to society
- To compensate for lack of benefits and rights

We agree and that's why we support and ask you to strengthen this bill.

We recognize that farming is incredibly difficult work, that the economics of farming, especially family farming, are very challenging and that farmers work incredibly hard in Maine to scratch out an existence. That is all true and it is also true that workers should have a fundamental right to a minimum wage. There is no justifiable reason for farmworkers to be excluded from this basic employment standard. We can take this step forward and we will be better for it.

Strengthening the Bill By Providing Farmworkers Access to Defend their Rights

The intended impact of raising the legal minimum wage for farmworkers in Maine would be to guarantee that all farmworkers make at least the same minimum wage as other workers in Maine. To fully achieve this goal, farmworkers need access to the same legal framework to enforce wage and hour laws that other Maine workers have access to around payment of the minimum wage. It is on this point that we strongly recommend that the committee improve the bill by including a private right of action so that farmworkers can fully protect their wage and hour rights.

As proposed in this bill, farmworkers would rely solely on the Department of Labor as the means to effectively enforce their right to the minimum wage. Other workers have private recourse to defend their wage and hour rights. While the statewide minimum wage and recordkeeping provisions are important steps forward, legislators should follow the same process of enforcing farmworker wage and hour laws as we follow for enforcing wage and hour laws for other workers.

Traditionally, we've relied on a shared public private enforcement paradigm for the enforcement of employment laws. State and federal departments of labor and attorney generals enforce workplace standards

⁵ See Appendix 19 of the Farmworker Subcommittee Report (Meeting Six Materials)

and may seek wages owed workers when the law is broken, but there has always been a recognition that public entities were not designed to be the primary or sole mechanism for enforcement. Private enforcement is essential. That's why a private right of action is common in Maine employment law and found among other places in:

- Maine wage and hour laws (unpaid wages/cessation of employment, minimum wage, overtime);
- The Maine Human Right Acts;
- Maine Severance Pay law;
- Maine equal pay law;
- Maine Family and Medical Leave requirements;
- and failure to provide notice for reasons of termination.

One obvious reason that we should have a public private framework to ensure that we follow the law is the sheer math - and staffing - of relying solely on public enforcement. Consider the following data points.

2023 ratio of Maine DOL wage & hour investigative staff to Maine workforce⁶

State	Number of investigators	Workforce	Number of businesses	Number of workers per investigator	Number of businesses per investigator
Maine	8	656,200	61,427	82,025	7,678

Under a system where each wage and hour investigator is responsible for more than 82,000 workers you clearly need both public and private enforcement of the law. It is also worth noting that having a private right of action for farmworkers to seek minimum wages owed them would surely result in a very small number of annual cases. But for the workers impacted it is their life, economic security and dignity at stake. Having public and private enforcement also makes the system fairer for every single business who is playing by the rules. Once again, we see no reason to deny farmworkers the same rights other workers enjoy.

Similarly, we encourage the committee to improve the bill by including the requirement to be offered a rest break after six hours of work and protections from forced overtime hours. Most Maine workers cannot be forced to work more than 160 hours in a consecutive two-week period. Under the bill as drafted a farmworker could be disciplined or fired for refusing to work more than 160 hours in a two-week period. That's the equivalent of working nearly 11.5-hour days for 14 days straight.

On Compromise

Throughout this public hearing and the discussion to follow there will be lots of discussion about what constitutes a compromise and what has and has not been included. It is worth putting the bill before you in a context to point out that from a worker perspective even an improved and amended bill with the three improvements noted above is a deep compromise. Consider that:

- For nearly 90 years, agricultural workers have been excluded from many of our most essential and basic economic rights and protections - the minimum wage, overtime, the right to organize, concerted

⁶ These numbers are from the 2023 Maine Annual Report on Wage and Hour Complaints and Violations in 2023 (Feb. 2024). See footnote 27 DOL said in Feb 2024 | here: <https://www.maine.gov/labor/bls/docs/2023/wagehouraction/2023WageandHourReport.pdf> Maine DOL indicated there were 656,200 nonfarm wage and salary jobs as of February 2024: <https://www.maine.gov/labor/cwri/news/release.htm>

activity protections and much more. That has contributed to generational inequality that has made building wealth much more difficult. We should not lose sight of that fact.

- With this bill we are taking one small step forward, but farmworkers would continue to be denied many employment rights that other workers in Maine enjoy.
- It is worth noting that this bill, at the request of farmers, is housed in a different section of statute in essence to ensure that any future economic improvements in the primary section of law do not automatically extend to farmworkers.

To be clear, with strengthened enforcement provisions, the bill before you is a positive step and a good start. It is long past time for Maine to take this action. LD 2273 is a step towards updating our employment laws to reflect the hard work farmworkers do. We encourage you to support an amended and strengthened version of LD 2273.