

**TESTIMONY OF MAINE EMPLOYMENT LAWYERS ASSOCIATION
IN SUPPORT OF LD 607
AN ACT TO RESTORE OVERTIME PROTECTIONS FOR MAINE WORKERS**

My name is Jeffrey Neil Young. I am an attorney with Solidarity Law and practice in Cumberland. I serve as an Executive Board member of the National Employment Lawyers Association (NELA), and vice-president of the Maine Employment Lawyers Association (MELA). NELA is the largest organization of civil rights lawyers in the country with about 4,000 national and affiliate attorney members. 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 66.66% of their practice.

MELA supports the enactment of LD 607, An Act to Restore Overtime Protections for Maine Workers. The proposed statute would help restore balance to overtime protections for salaried workers who may be making as little as \$36,000 per year, or roughly \$18/hour, and would gradually raise the threshold to about \$56,000 in 2023, or about \$28/hour. When adopted, the salary exemption was intended to cover bona fide white-collar workers, not low-income workers who happen to be salaried.¹ The exemption is meant to cover employees who perform executive, administrative, or professional functions.²

In the 1970's, more than 60% of workers salaried workers qualified for overtime pay. Adjusted for inflation, the salary threshold today would be about \$50,000 nationally. Because the federal salary threshold has been changed only once, in 2004, and was not then adjusted for inflation, that means that the percentage of salaried workers earning overtime has now shrunk to about 20% here in Maine. Studies have shown that salaried workers on average work about 49 hours per week, meaning that they are working for free for 9 hours per week!

The salary threshold, or "white collar exemption, was designed to deny overtime to white collar workers with high enough salaries, important enough responsibilities, and sufficient bargaining power to make overtime unnecessary. Clearly that is no longer the case when individuals earning as little as \$18/hour are denied overtime protections.

In 2016, the Obama administration sought to rectify this problem by proposing to provide overtime for 60% of salaried workers based on the lowest paid census region, the South, in the United States, where the 40th percentile of workers earned \$47,000. In Maine, that number as of 2020 was \$51,000. The Obama revisions never were put into place when a federal district judge in Texas issued an injunction.³

Maine, of course, does not always act in concert with the federal government when it comes to wage and hour law. Our current minimum wage of \$12.15/hour is almost \$5 higher

¹ Report of the Minimum Wage Study Commission Volume IV, pp. 236 & 240 (June 1981).

² 81 Fed. Reg. at 32400.

³ *Nevada v. U.S. Dept't of Labor*, 275 F. Supp. 3d 795 (E.D. Tex. 2017).

than the federal minimum. When the Reagan administration scrapped an anticipated increase to the federal threshold in 1981, Maine upped its own overtime threshold instead. Again, in 1999, Maine implemented a still higher standard for overtime protections when the federal government didn't act. In 1999, Maine's threshold was effectively \$15,450, almost twice the federal limit of \$8,060. Maine's threshold was going to rise to \$18,750 before the federal government updated its threshold in 2004.

According to the Maine Center for Economic Policy, increasing the salary exemption as proposed by LD 607 would result in overtime protection for about 9500 lower wage Maine workers. About 70-75% of these low wage salaried employees work in the private sector, especially in financial services and big retail stores like Walmart—employers that clearly can afford to pay overtime.

MELA would contend that the proposed legislation does not go far enough. Washington State recently enacted an \$83,000 salary exemption which will take effect in 2028 through gradual annual increases to the threshold,⁴ and legislation is pending in Massachusetts to do much the same thing.⁵

MELA recognizes that of course not all salaried workers are employed by larger employers and that Maine has many small employers. To ensure that smaller employers are not so severely impacted, the Committee might consider a two-tier salary exemption, one for smaller employers—say with 25 employees or less—and one for larger employers—more than 25 employees. MELA also suggests that the Committee index the exemption to ensure that it keeps up with inflation.

⁴ <https://www.wagehourblog.com/2020/07/articles/wage-and-hour-policies/washingtons-revised-white-collar-overtime-exemption-rules-now-in-effect/>

⁵ <https://malegislature.gov/Bills/192/SD475>