Statement of Chris Laughton, Director of Knowledge Exchange, Farm Credit East, to the

Maine Legislative Committee on Labor and Housing

April 7, 2021

Issue

The Maine Legislative Document No. 1022 / HP 760, "An Act to Make Agricultural Workers and Other Workers Employees under the Wage and Hour Laws" would require the mandatory payment of time-and-one-half for overtime hours worked by agricultural workers.

About Farm Credit East

Farm Credit East is a credit and financial services cooperative serving seven Northeast states. We are owned by our customers who operate farming, fishing and forest product businesses throughout the region, including more than 850 customers in Maine. We have approximately $750 million in loan commitments to Maine farming, fishing, and forest products enterprises, and are the largest source of credit for these natural resource-based businesses in the Northeast. In addition to credit, we provide a number of services to our customers, including tax preparation, payroll, consulting, benchmarking, recordkeeping, and crop insurance.

Our extensive involvement in agriculture gives us insight into the economics and operations of Maine farms, and how farmers might have to adjust to not only mandatory overtime compensation, but numerous other laws and regulations that affect the employment of workers on farms in Maine.

Series of Laws that Impact Maine Farms

Our first comment is that overtime pay does not exist in a vacuum for farm employers. The issue of overtime for farm workers comes on top of a series of other laws and regulations that have increased the cost to employ workers in Maine, even as farm revenues have lagged. One of these is a series of increases in the minimum wage.

Since 2017, the minimum wage in Maine has increased by 35% from $9.00 to $12.15 per hour. Most farm commodity prices have increased by substantially less than that, and many have remained flat.

For farmers who utilize the H-2A guest worker visa program, they must pay at least the "Adverse Effect Wage Rate" for their workers. This rate has also increased significantly from $12.38 in 2017 to $14.99 in 2021, an increase of 21%. In addition to these wage rates which continue to increase, payroll taxes also increase accordingly, as they are based on a percentage of wages. Worker's compensation costs have increased significantly as well. These are just a few of the increased costs that farm employers in Maine have had to absorb.

While these other wage costs may be outside the purview of this proposed legislation, it's important to recognize that the impact of overtime pay comes not on its own, but on top of these other increases which have combined to make it significantly more expensive to employ workers in Maine.

Our view is that this issue is not a matter of farmers vs. farmworkers in a zero-sum game. Ultimately it is essential for both farmers and their workers to have a robust and profitable farm sector in Maine. After all it is farm earnings that provides the money for both farmers and farmworkers to earn a living and support the economy in Maine. It is therefore important that Maine work toward a business climate favorable to agriculture, both for farmers, and those who work in the agricultural sector.

Ag Labor in Maine

According to the USDA National Agricultural Statistics Service, nationwide, farm labor accounts for 12% of total farm expenses. In Maine, hired labor costs amount to 24% of total farm expenses.[1] For Maine farms producing fruit, labor is 34% of total farm expenses.

Farm labor is also more expensive in Maine than in other parts of the country. As of October 17, 2020 (the most recent data available), national average wages for all hired farm workers came to $15.65 per hour. In the "Northeast I" region, which includes Maine, that average comes to $16.06 per hour.[2]

Maine farms directly employ 13,440 workers, and among farms with hired workers, the average number of workers per farm is 6.

Farm Revenues

While the cost to employ workers in Maine has increased substantially in recent years, farm revenues have not increased at the same rate during this period.

According to the USDA Economic Research Service (ERS), overall farm gross cash receipts for the state of Maine have decreased by 7% between 2015 and 2019 (the last year for which data was available).

When labor costs increase, there are three ways the cost is absorbed:

Option 1: The cost may be passed onto consumers;
Option 2: The cost may be mitigated by cutting back on employees' hours, benefits or rate of pay;
Option 3: Or, the cost may come out of the farm's net earnings.

Because many farmers in Maine are producing commodities where prices are set by national or global market forces and influenced by supply and demand in those markets, the ability of farmers to pass these increased costs onto consumers is limited. That primarily leaves options 2 and 3. Many farmers will use both of these tactics to deal with increased labor costs. Option 2, cutting back on employee numbers, hours, benefits, or rate of pay, is less than ideal because it harms the workers the legislation is intended to benefit. In addition, labor is an essential component to most sectors of Maine agriculture, many of which are labor intensive.

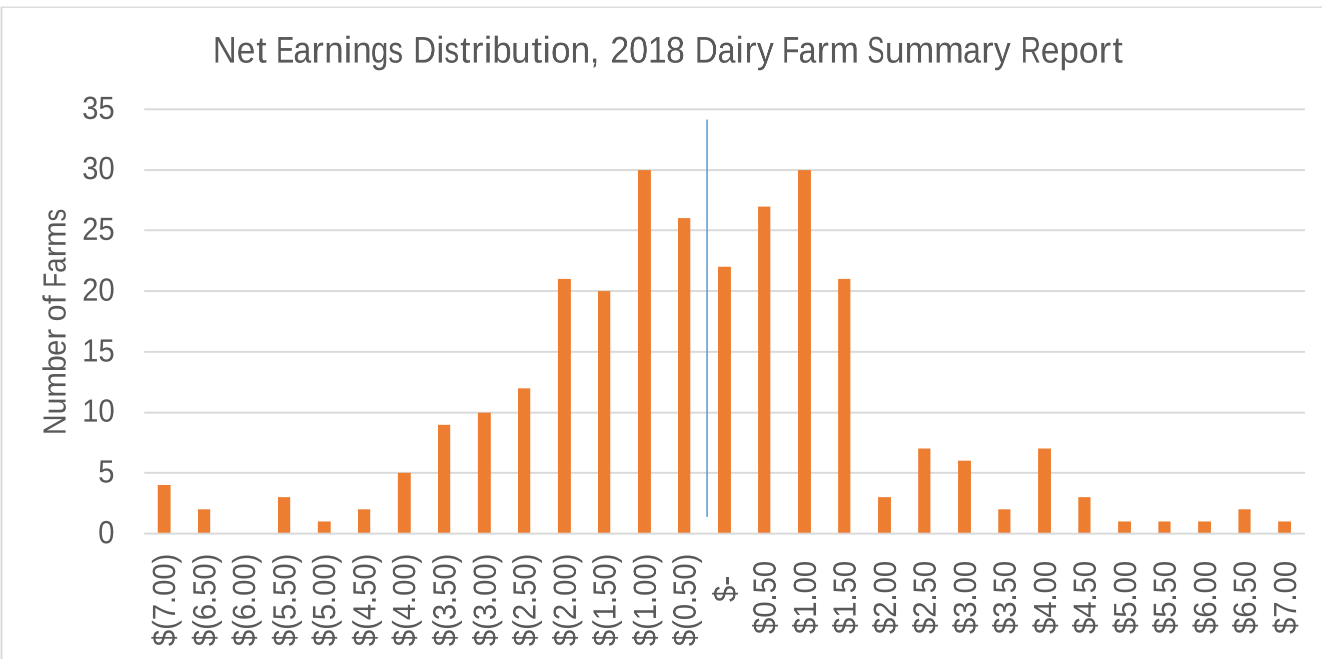
[1] USDA Census of Agriculture, 2017
[2] USDA NASS Farm Labor Report, February 2021

Option 3 is another way the impact will be absorbed. This may not seem like a problem until we consider that many farms in the state are not in a position to absorb this cost.

Agriculture is a major industry in Maine, accounting for $3.6 billion in economic impact to the state each year and supporting more than 27,000 jobs, both on and off the farm, according to a 2020 study by Farm Credit East and the University of Connecticut.[3] Farming, commercial fishing, and forestry are key components of rural Maine and the state's working landscape. While these numbers may be impressive, it is important to realize that most of this economic activity does not flow to the bottom line of farms.

At any given point in the economy, the profitability of businesses in most industries will look something like a bell-shaped distribution curve. [4] While the legislation would impact all sectors of Maine agriculture, let us provide an example from dairy, as it is one with the most available data.

Figure 1:



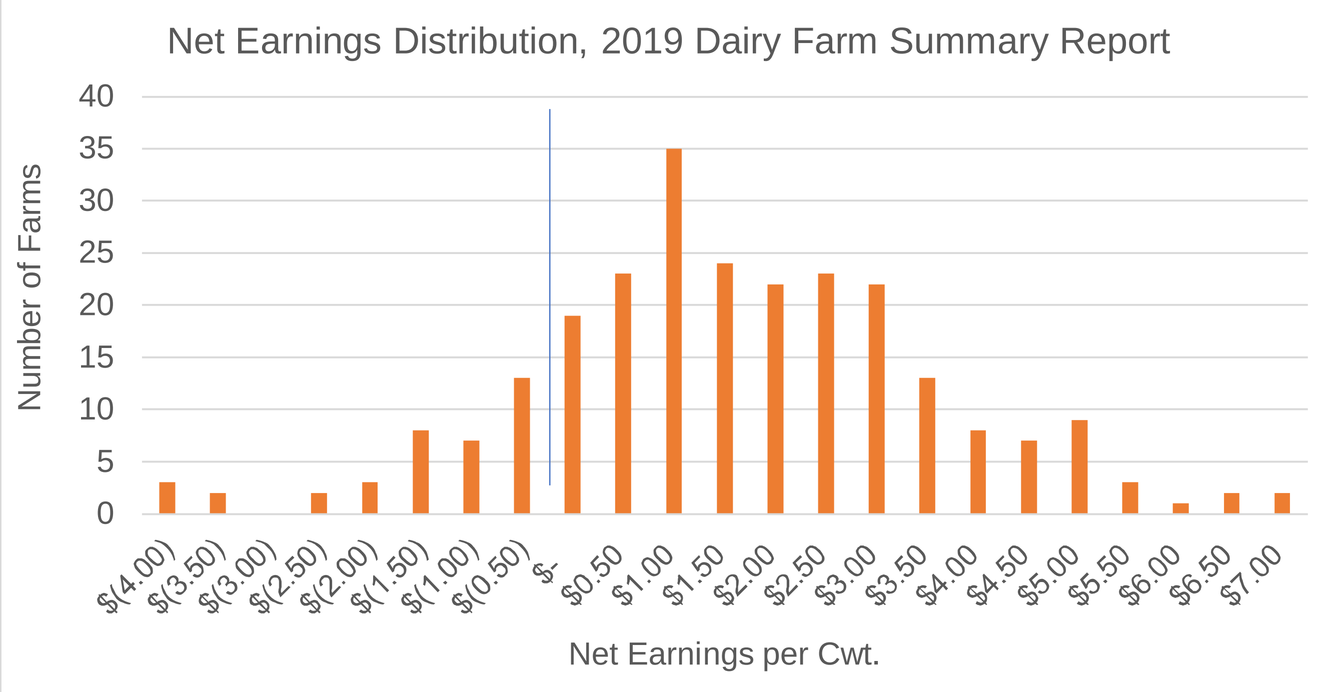
Source: Farm Credit East, 2018 Northeast Dairy Farm Summary

---

[3] https://www.farmcrediteast.com/knowledge-exchange/Reports/2020%20Northeast%20Economic%20Engine

[4] Dairy Net Earnings Distribution, data taken from the 2018 and 2019 Northeast Dairy Farm Summary, published by Farm Credit East, 2019 and 2020.

Figure 2:



Source: Farm Credit East, 2019 Northeast Dairy Farm Summary

Figures 1 and 2, above, show the distribution of farms in Farm Credit East's Northeast Dairy Farm Summary by net earnings per hundredweight of milk produced, for calendar years 2018 and 2019. Each bar indicates the number of farms with earnings in the 50-cent increments listed above. There are a few key things to note in these charts. One is that in both years, the range of net earnings were broad – while many farms cluster around the average net earnings for that year, some farms had more robust earnings, and conversely, others had substantial losses. The thin vertical blue lines indicate breakeven on each chart. While 2019 was a better year financially, with more farms having positive net earnings, there were still a number of farms with losses. In 2018, a majority of farms lost money. The farms to the left of the breakeven line on these charts are likely to exit the industry over time, if they are unable to substantially adjust their operations.

While there are a small number of dairy farms in the region earning solid returns, many are only modestly profitable, and there are a number of farms that are losing money and facing significant financial stress, including some that go out of business each year.

What will the impact be of requiring overtime pay for farm workers? Farmers are a resilient, cautiously optimistic group. Many will find a way to work through this as they have worked through any number of challenges. There are a number of marginally profitable farms in the state, however, that could go out of business, and the number that do go out of business will increase the more the state increases their costs.

USDA Census show farms exiting the ag industry

The USDA conducts a census of agriculture every five years. In this report, it compiles data points about farms and agriculture. A notable statistic is that between the 2012 and 2017 censuses, 82 individual dairy farms in Maine, or 23% of the total number of dairy farms, exited the industry. These exits have nothing to do with the proposed legislation, as they predate it, but this background is critical to consider. If labor costs (and other costs) continue to increase, beyond the rate at which milk prices increase, the rate at which dairy farms exit the industry could accelerate.

Across all sectors, Maine agriculture is shrinking. Between 2012 and 2017, the number of farms in Maine declined by 573, from 8,173, to 7,600, a 7% decline. The amount of active farmland in Maine declined by 146,000 acres over that same period, roughly 10% of the total.[5]

The agricultural industry in Maine overall will survive. But some individual farms will not. There will be some farms for which these increasing labor costs will be the difference between staying in business, and the need to exit. There will be others that will curb investment in their businesses, reducing the size and scope of their operations, including reliance on labor, rather than investing in property and equipment. Furthermore, there will be some members of the next generation of farmers who will decide to pass on taking over their family business, seeing little incentive to continue a marginally profitable enterprise.

Mandatory overtime would contribute to the decline in the number of farms in the state's agricultural sector. It will contribute to the tipping point of farms who make the tough decision to discontinue their operations and go out of business. Some farms will decide to change their operations to something less labor-intensive and shift to another form of agriculture. This could mean selling their dairy herd and transitioning into hay or forage production or shifting from a more labor-intensive crop to one like corn or hay that can be mechanically harvested. Indeed, we can see this shift already occurring. According to the USDA Census of Agriculture, between 2012 and 2017, Maine farmers harvested 635 fewer acres of fruits (a particularly labor-intensive sector), or 18% fewer acres. While there are multiple factors driving this trend, increased labor cost is one of them.

Higher labor costs can also have an impact on beginning farmers. At Farm Credit East, we have a number of programs to support beginning farmers and are proud to have many beginning farmers as customers. One of the biggest constraints in a small farm's development is often when the farm grows to the point at which the farmer and family members can no longer do all the work and they begin hiring employees.

[5] USDA Census of Agriculture

The high cost of labor in Maine is a deterrent to the growth and expansion of these small farms. Increasing labor costs will only make this a more difficult hurdle.

The exception of farms from overtime

It is worth considering why farms were exempted from paying overtime in the first place. Farms are not like factories where you can add or subtract shifts and precisely schedule work. Farms need to work in accordance with nature's schedule. This means some weeks with very long hours, and others with fewer. When crops are ready to be harvested, they need to be harvested. A farmer does not have the option of delaying the harvest to accommodate a 40-hour work week or other schedule.

In addition, the prices that farmers receive for their products do not increase because they have to pay overtime. An apple orchard is going to receive a certain price per pound for their apples regardless of what they might want to charge or what it costs to produce them. They can't decide to receive one and a half times the price per pound because they were produced by workers receiving time-and-one-half. Even for farms that are directly marketing to consumers and have some ability to set their own prices, they are limited in their pricing power by what other retail outlets are charging. There is a limit to what consumers will pay, and that is heavily influenced by the costs of production in competing states and countries which may have lower labor costs.

Farmworker Income and Well-Being

It is essential to consider the impact of the overtime law on its intended beneficiaries, the farmworkers.

Earlier, I stated that there are really only three ways for increased labor costs to be absorbed by the system:

- passing them along to consumers,
- cutting back on employee hours, benefits, or rates of pay,
- or a reduction in net farm income.

While net farm income will likely be impacted, farmers will also, out of necessity, adjust their business models and labor utilization to control costs. This may mean reducing some employee's hours, benefits, or rates of pay, and in some cases, eliminating positions entirely.

For many farmworkers, their hours (and subsequent earnings) fluctuate significantly depending on the time of year, and even from week-to-week. The saying "make hay while the sun shines" was coined for a reason. Inclement weather one week may reduce a worker's hours below 40 one week, and crop and weather conditions in another week may result in a surge of hours available to that worker. Many farm workers rely on these surge periods to increase their earnings.

While the time-and-one-half rate of overtime may appear to offer increased earnings to workers, and while it has in some cases, evidence shows it is often the case that farms will manage schedules to limit hours in order to manage costs, which may result in limiting the earning potential of some farm workers.

The community of farm workers is a diverse one. It includes the farmers themselves, members of farmers' extended families, people from the local communities, workers who may be new Americans, some of whom migrate from farm to farm depending on work available, and those on temporary work visas, such as H-2A. Accordingly, their goals and desires vary. For some, they wish to work as many hours as possible, to maximize their earnings during a limited work season. These workers may find such opportunities limited because farmers cannot justify the time-and-one-half rate in the face of stagnant market prices for their products. Some will get second jobs, and work for other employers (at straight time), and others may just have to accept a reduction in their earning potential.

I would urge the committee to consider, in a balanced way, the interests and concerns of farmers as well as farmworkers, particularly with a recognition that the interests of farmworkers will vary, and that while some may potentially benefit from overtime pay requirements, others may see it as limiting.

Contact Information

Chris Laughton
Director of Knowledge Exchange
Farm Credit East, ACA
860-741-4380

Chris.laughton@farmcrediteast.com