



May 21, 2021

To: Sen. Craig Hickman and Rep. Michael Sylvester, co-chairs
Members, Committee on Labor & Housing

From: David R. Clough – Maine State Director

Re: LD 1711 – An Act To Enhance Enforcement of Employment Laws

This statement in opposition to LD 1711 is made on behalf of the thousands of small business owners throughout Maine who are members of NFIB. They collectively provide jobs and paychecks to about 30,000 people and help form the economic backbone of their communities and the state.

LD 1711 proposes a 6-page, 2,400-word new subchapter in Title 26 titled “Private Enforcement of Employment Laws” that would create significant lawsuit exposure for the tens of thousands of small businesses in Maine.

- Most small employers do not have a human resources department or professional.
- Almost 75% of all litigation against businesses nationally involve employment disputes, and over 40% of those lawsuits are filed against smaller employers (15-100 employees), according to a blog posting by Margaret Jacoby of MJ Management Solutions, Inc.
- “Employment-related lawsuits are often even more costly for small businesses than consumer lawsuits,” writes Ms. Jacoby.
- Litigation costs could be substantial to the small business even if the lawsuit is dropped by the plaintiff.

As stated in a 2005 “Impact of Litigation on Small Business” report for the U.S. Small Administration, Office of Advocacy (summary attached):

“The impact of litigation on businesses goes well beyond the purely financial impact of legal fees and damages. Most small business owners are invested personally in their businesses; litigation causes not just financial loss, but also substantial emotional hardship, and often changes the tone of the business.”

We are not aware of clear and compelling information that Maine labor law enforcement is woefully inadequate or that there is an urgent need for the private enforcement of employment laws.

Thank you for being mindful of the NFIB members and the interests of small business owners.



Small Business Research Summary

Advocacy: the voice of small business in government

Purpose

Litigation costs, unlike other costs of doing business, are seldom estimated on an annual basis. This research attempts to shed light on how small business fares under the constraint of litigation and calculates annual litigation costs.

Overall Findings

- Litigation is costly to small business owners both in time and money.
- It modifies the way they do business.
- Litigation causes emotional hardship within small firms.

Highlights

- The impact of litigation on businesses goes well beyond the purely financial impact of legal fees and damages. Most small business owners are invested personally in their businesses; litigation causes not just financial loss, but also substantial emotional hardship, and often changes the tone of the business.
- Many of the small businesses surveyed tried to settle their case prior to trial, but with mixed results. Those surveyed explained that the main reason why settlement failed was that the opposing party refused to meet and negotiate, preferring to go to court. Small business owners indicated they would go to great lengths to stay out of court, which was their major motivation for settlement; an indication that there is a hidden cost to the threat of litigation.
- Financial impacts were mentioned by most study participants. Legal costs for actual litigation ranged from \$3,000 to \$150,000 with approximately one-third of those providing a response under \$10,000. Small business owners felt they had to “recoup” these losses by cutting operating expenses, acquiring new customers or expanding their services to existing customers. Raising prices was not an option, as it would put them at a competitive disadvantage.
- Most companies used business assets to pay the damages. However, in the case of employee complaints, insurance covered some of the damages. Owners mentioned that the payment of damages nearly put them out of business, which affected them for a long period of time as they worked to rebuild the business and recoup their losses.
- Small business owners who were surveyed became more wary of employees and customers as a result of their litigation experience.