



# **MAINE AFL-CIO**

**A Union of Unions Standing for Maine Workers**  
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## **Testimony of Maine AFL-CIO Legislative & Political Director, Adam Goode, in Support of L.D. 1711 "An Act To Enhance Enforcement of Labor Laws"**

Senator Hickman, Representative Sylvester and members of Labor & Housing Committee, my name is Adam Goode. I'm the Legislative and Political 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. We testify in support of LD 1711.

### **Context: Widespread Violations of Workers' Rights**

I think we all agree that we want workplace laws and rights followed and enforced. When we enact an earned paid leave law or a higher minimum wage or basic standards protecting workplace health and safety or preventing discrimination, it is our shared expectation that the law be followed, that those rights be enforced and that we have the tools to ensure compliance.

This is particularly important with workplace rights and protections because most of us spend the majority of our waking hours alive at work. The rules of the workplace shape our livelihoods, our survival and our wellbeing.

Unfortunately, violations of workplace rights are all too commonplace. This is true across the board - wage theft, misclassification, health and safety violations, workplace discrimination, sexual harassment in the workplace, overtime violations and more. To take the example of wage theft: in the ten most populous states alone, 2.4 million workers lose \$8 billion annually to minimum wage violations.<sup>1</sup> Nearly one in five low wage workers are paid less than the minimum wage.<sup>2</sup> A 2014 study found that nationally nearly 90% of fast-food workers suffered some sort of wage theft on the job.<sup>3</sup> Similar troubling trends persist in all the other realms of workplace protections noted above. Thus, it is essential that we have robust, effective systems of enforcement.

### **A Crisis in Enforcement**

Traditionally, we've relied on a shared public private enforcement paradigm. State and federal departments of labor and attorney generals enforce workplace standards and may seek wages owed to workers when the law is broken, but there was always a recognition that public entities were not designed to be the primary or sole mechanism for enforcement. Private enforcement is essential.<sup>4</sup> 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

<sup>1</sup>David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers Paycheck's Each Year*, Economic Policy Institute, May 2017.

<sup>2</sup>Ibid.

<sup>3</sup>Catherine Ruckelhaus et al, National Employment Law Project, *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work*, May 2014.

<sup>4</sup>One point that highlights the critical role of private enforcement is that in 2015 and 2016, the top 10 private wage and hour class action settlements exceeded the combined total wages recovered by all state and federal agencies. (Economic Policy Institute 2017)

pay law, Maine Family and Medical Leave requirements and failure to provide notice for reasons of termination. It is also why class actions where all workers impacted by systemic wrongdoing are a critical component of private enforcement. Increasingly, both public and private enforcement options are not a viable option for workers.

To illustrate the crisis in public enforcement in Maine, consider the following data points<sup>5</sup>

1. 2018 ratio of Maine DOL wage & hour investigative staff to workforce

State	Number of investigators	Workforce	Number of businesses	Number of workers per investigator	Number of businesses per investigator
<i>Maine</i>	5	616,707	53,437	154,177	13,359

2. Decline in budget and staffing (all staff, not just Wage & Hour) at Maine DOL since 1977, while workforce has increased.

From 1977 to 2017, the number of full-time DOL employees decreased from 702 to 552, meaning total agency staffing decreased by 21 percent. Similarly, the DOL's budget decreased by 59 percent from 1977 to 2017 (when adjusting for inflation).

At the same time, Maine's workforce continued to grow, and was 61 percent larger in 2017 than in 1977 (growing from 387,800 to 622,700 nonfarm workers). If Maine's DOL had merely kept up with the state's growing workforce, it would have 1,130 full-time employees today—and that would not accommodate the increased need due to the corporate assault on private enforcement. Instead, full-time DOL employees decreased by 21 percent.

### **The Rise in Forced Arbitration and the Private Enforcement Crisis**

At the same time that we've been underfunding and short-staffing public enforcement agencies, corporations and the courts have gutted private enforcement. This has happened through the ubiquitous spread of forced arbitration provisions in employment contracts and a series of damaging court decisions. Workers are now routinely required to sign forced arbitration provisions to get a job. These provisions give away our right to challenge violations and injustice in court, instead directing workers to an employer dominated, individual (not class) based system of private decision making with no public record and no public accountability. Others who testify today will paint a fuller picture of the process of forced arbitration and its many downsides.

Two points are critical. First, force arbitration is the new normal. **By 2024, more than 80 percent of private-sector, nonunion workers will be denied their day in court by forced arbitration clauses.**<sup>6</sup> That means the vast majority of private sector workers in Maine and around the country will be denied a fundamental right that we hold dear and will lack a critical recourse for justice if their rights are violated. We cannot overstate how dangerous this trend is for workers and for ensuring a culture of compliance.

The purpose of forced arbitration clauses is to suppress legal claims and avoid corporate accountability. The impacts of the rise of forced arbitration are profound. First, it dramatically undermines the private right of action framework that much of our current enforcement paradigm is based on. Second, it removes workers ability to have their day in court and to pursue class actions which are typically the most effective and viable

<sup>5</sup>Center for Popular Democracy and Economic Policy Institute, "Unchecked Corporate Power: Forced Arbitration, the enforcement crisis, and how workers are fight back," May 21, 2019.

<sup>6</sup>Ibid.

means to address systemic violations (most arbitration clauses prohibit class actions). Third, it means the vast majority of workers simply will not pursue justice. Finally, it places a massive enforcement responsibility with the Maine Department of Labor, in its dramatically understaffed and underfunded capacity.

The combination of the crisis in public and private enforcement of our workplace rights and laws creates a culture of non-compliance and undermines the very marrow of democracy. It leads to indignity for working people and resentment of a system where the rules are rigged.

### **LD 1711 & Expanding Public Enforcement**

LD 1711 comes forward with a solution to the enforcement crisis so that we can uphold the most basic bargain that your rights will be protected and that the law will be followed. LD 1711 brings forward a time honored, successful, innovative model to significantly expand public enforcement capacity in a budget responsible way that generates resources for our Department of Labor to fulfill its core mission. It's a model built on workers direct experience, knowledge and courage to literally blow the whistle on corporate wrongdoing and demand justice in Maine's state interest.

Here's the basics of how this would work. Let's say that you and your co-workers are routinely required to work extra time, unpaid off the clock. Under LD 1711:

- You file a complaint with the Maine Department of Labor for unpaid wages.
- MDOL can investigate your claim and can resolve it through the administrative process.
- If MDOL does not have the capacity or decides not to resolve the claim, the whistleblower may bring a suit to collect penalties — not damages — on behalf of the state and impacted workers.
- If a judge finds that the corporation broke the law and imposes a penalty, most of the penalty goes to the MDOL for enforcement with a portion going to the whistleblowers.

In this process, the state retains oversight and can monitor proceedings, intervene later in the process, weigh in on settlements and disqualify an attorney if acting inappropriately. This is an urgently needed solution to provide workers with the basic ability to protect and enforce their rights and to create a culture of compliance.

I hope you will give this proposal thoughtful consideration and wholehearted support.

<sup>1</sup>David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers Paycheck's Each Year*, Economic Policy Institute, May 2017.

<sup>2</sup>Ibid.

<sup>3</sup>Catherine Ruckelhaus et al, National Employment Law Project, *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work*, May 2014.

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