

Testimony in Support of LD 1711, “An Act To Enhance Enforcement of Employment Laws”

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Good afternoon Senator Hickman, Representative Sylvester, and members of the Joint Standing Committee on Labor and Housing. My name is James Myall, and I’m a policy analyst at the Maine Center for Economic Policy. I’m here before you to testify in support of LD 1711, “An Act To Enhance Enforcement of Employment Laws.”

The COVID-19 pandemic, which has infected almost 67,000 Mainers and claimed the lives of more than 800, has highlighted the risks Mainers face every day in the workplace, and the lack of recourse many workers have against employers who flout safety guidelines or wage and hour laws. LD 1711 would help address our lack of state capacity and give workers another avenue to seek justice.

LD 1711 would allow private attorneys to pursue workers’ rights cases on behalf of the state. Since private attorneys are far more numerous than state investigators, this would effectively increase the capacity to enforce laws without the expense of hiring more state employees. As a result, this would increase accountability for employers and put them on notice that violations of the law will no longer be overlooked.

COVID-19 Reveals Poor Conditions of Workplace Safety

The last year has revealed just how vulnerable low-wage workers can be if their employers do not prioritize workplace safety, and how underfunded state agencies can struggle to hold employers accountable for putting their workers at risk.

There is growing evidence for occupational risk of exposure to COVID-19, especially among the low-paid workers who have the least ability to advocate for themselves against a potential bad employer.

A national review of COVID-19 cases and deaths through September 2020 found hundreds of thousands of cases among nursing home workers, and workers in the food industry.ⁱ Additional studies at the state level have found similar results. In California,ⁱⁱ Massachusetts,ⁱⁱⁱ and Washington,^{iv} COVID-19 deaths among workers were not only concentrated in health care, agriculture, and food processing, but also in retail, restaurants, warehousing, and maintenance.

There is less available data for cases and deaths among workers in Maine, but it is reasonable to presume workers here face similar risks.

Workers' Safety Depends on State Oversight Which is Currently Absent

As they are currently constructed, staffed, and funded, the agencies tasked with ensuring the safety of Maine workers simply cannot exercise adequate oversight. The federal Occupational Health and Safety Administration, and its state partners, received almost 37,000 COVID-19 related complaints between April and September 2020 – yet only investigated 3.6 percent of those cases (none of which was in Maine).^v

At the state level, too, Maine's health and safety infrastructure seems unable to adequately enforce COVID-19 guidelines. To date, enforcement has largely relied on complaints made by members of the public to the state's Department of Economic and Community Development. As of December 17, 2020, just 65 of the state's 50,000 businesses (0.1 percent) had been disciplined for violations of COVID-19 regulations – an implausibly small number.^{vi} While these cases have sometimes resulted in fines or the suspension of business licenses, none of these cases have included compensation for workers who have been exposed.

State enforcement agencies remain under-resourced to investigate workplace complaints of all types. Over the past 50 years, the state's capacity to investigate workplace complaints, including those about worker safety, has been cut in half.

In 2018, the Department of Labor's Wage and Hour Division, which is tasked with enforcing most of Maine's labor laws, had one inspector for every 100,000 private-sector workers in the state, and conducted just 1,154 investigations.^{vii} By contrast, in 1972, the equivalent division had one investigator for every 55,000 private-sector workers and conducted almost 7,500 inspections.^{viii}

With such limited capacity at state or federal agencies, workers remain vulnerable to abuse.

LD 1711 Offers a Solution

A similar law in California, the Private Attorneys-General Act (PAGA) has been successful in empowering workers.^{ix} In addition to holding employers accountable for safety violations, it has returned millions of dollars of lost wages to victims of wage theft, and blocked the ability of corporations to impose unfair arbitration agreements on workers.

MECEP's *State of Working Maine 2019* report found that Maine workers report thousands of instances of discrimination and wage theft which currently go unaddressed.^x The COVID-19 pandemic adds another layer of potential problems, especially for workers we have collectively deemed "essential" but who continue to receive low wages and few protections.

COVID-19 represents a pressing current risk to Maine workers. Yet even without a global pandemic, thousands of Mainers are exposed to workplace hazards every day, from health and safety risks to wage theft by employers. In 2021, we must take the opportunity to correct this, and to restore justice to working Mainers whose rights are being violated.

I urge you to vote "ought to pass" on LD 1711. Thank you. I'll be happy to take any questions.

Notes

ⁱ https://aflcio.org/sites/default/files/2020-10/DOTJ2020_Final_100620_nb.pdf

ⁱⁱ <https://www.medrxiv.org/content/10.1101/2021.01.21.21250266v1.full>

ⁱⁱⁱ <https://onlinelibrary.wiley.com/doi/10.1002/ajim.23227>

^{iv} <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/data-tables/IndustrySectorReport.pdf>

^v https://aflcio.org/sites/default/files/2020-10/DOTJ2020_Final_100620_nb.pdf

^{vi} <https://www.pressherald.com/2021/01/02/over-60-maine-businesses-now-cited-for-violating-covid-19-rules/>

^{vii} http://lldc.mainelegislature.org/Open/Rpts/hd4973_m2m35_2019.pdf

^{viii} https://digitalmaine.com/cgi/viewcontent.cgi?article=1250&context=bls_docs

^{ix} https://www.populardemocracy.org/sites/default/files/PAGA%20Report_WEB.pdf

^x <https://www.mecep.org/blog/proposed-whistleblower-law-will-help-restore-workers-right-to-hold-bad-bosses-accountable/>