

Testimony before the Maine Joint Standing Committee on Labor and Housing
February 6, 2024

Terri Gerstein
Director, NYU Wagner Labor Initiative
NYU Robert F. Wagner Graduate School of Public Service
Terri.gerstein@nyu.edu

To:

Chair Michael Tipping, Chair Amy Roeder, and Members of the Committee
Joint Standing Committee on Labor and Housing
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

RE: LD 372 and LD 2184

Dear Chair Tipping, Chair Roeder, and Committee Members,

Thank you for the opportunity to provide testimony regarding LD 372 and LD 2184. I provide this testimony in my personal capacity. I am the Director of [NYU Wagner Labor Initiative](#),¹ at the NYU Robert F. Wagner Graduate School of Public Service. In this position, among other things, I help state and local government agencies increase their capacity to enforce worker protection laws. Previously, I directed the [State and Local Enforcement Project](#)² at the Harvard Center for Labor and a Just Economy. From 1999 through early 2017, I enforced workplace laws in New York, including as Labor Bureau Chief in the New York State Attorney General's Office, and as a Deputy Commissioner overseeing wage and hour enforcement in the New York State Department of Labor.

Noncompliance with workplace laws has been described as a "rational" profit-maximizing decision made by unethical employers in response to low enforcement rates and deficient penalties. Scholars who have analyzed employer costs and benefits of noncompliance find that such "employers will not comply with the law if the expected penalties are small either because it is easy to escape detection or because assessed penalties are small."³ A broader way of understanding this calculus is that labor law compliance is a product of the likelihood of detection and the seriousness/severity of consequences if detected.

Currently, for many employers, the likelihood of detection is exceedingly small, and the consequences of detection are insufficient. Federal enforcement resources are grossly insufficient,⁴ and state resources typically are similarly inadequate for the task.⁵ In addition, the likelihood of detection is further decreased by the unlikelihood of complaints by many vulnerable workers.

LD 372 and LD 2184 would both have a positive impact on deterring and addressing wage-related violations by employers in Maine.

LD 372

LD 372 would allow the Director of Labor Standards to order employers to pay unpaid wages, liquidated damages, and interest, instead of the current situation in which a lawsuit must be filed to achieve these results. This change would streamline enforcement, leading to swifter and more certain recovery of back wages for workers. It also would help avoid the inefficiency and burden on government resources of requiring litigation in order to seek back wages in every case where an employer does not voluntarily pay. Overall, this shift would help provide redress for workers, deter employer violations by creating more certain consequences, and by so doing, also level the playing field for law-abiding employers.

In a number of other states, the labor commissioner/department or its equivalent have the authority to order unpaid wages without having to file a lawsuit. This is the case in Illinois,⁶ Massachusetts,⁷ and New York,⁸ for example. (All of these statutory schemes ensure due process by providing for the opportunity for a hearing and appeals.) LD 372 would make Maine wage enforcement far more effective.

LD 2184

LD 2184 would also address some serious shortcomings in current Maine law. By raising statutory penalties, it would create greater deterrence for employers. Returning to the formula that compliance is a function of the likelihood of detection and severity of consequences, the current penalties in Maine are too small to deter violations.

In addition, by creating a streamlined and more clear system for adjustment of penalties based on key factors, LD 2184 would establish a more transparent and predictable system for enforcement. Also, the bill's emphasis on proactive enforcement is in line with the leading thinking on strategic labor enforcement in the United States.⁹

Finally, I commend the provision of the bill that requires the Director to produce an annual report about the Bureau's enforcement activities, analyzing effectiveness. This annual review will ensure that the Bureau identifies areas of strength and areas for improvement, and that the Bureau continues to respond to new developments in workplaces, in the economy and in the field of labor enforcement.

Thank you.

¹ <https://wagner.nyu.edu/impact/initiatives/labor-Initiative>

² <https://clje.law.harvard.edu/state-and-local-enforcement-project/>

³ Ashenfelter, Orley, and Robert S. Smith. 1979. "Compliance with the Minimum Wage Law." *Journal of Political Economy* 87, no. 2 (1979): 333–350. <https://www.journals.uchicago.edu/doi/10.1086/260759>

⁴ <https://www.epi.org/publication/testimony-prepared-for-the-u-s-senate-committee-on-the-judiciary-for-a-hearing-on-from-farm-to-table-immigrant-workers-get-the-job-done/#epi-toc-14>;
<https://www.npr.org/2023/03/05/1161192379/hundreds-of-migrant-children-work-long-hours-in-jobs-that-violate-child-labor-la>

⁵ <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644>;
<https://www.populardemocracy.org/sites/default/files/CPD%20Whistleblower%20Enforcement%20Report%20Full%20Nov%202023.pdf>

⁶ 820 ILCS 115/11, available at <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2402&ChapterID=68>

⁷ Massachusetts General Law - Part I, Title XXI, Chapter 149, Section 27C,
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter149/Section27C>

⁸ New York Labor Law § 218, <https://www.nysenate.gov/legislation/laws/LAB/218>

⁹ Weil, D. (2018). Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change. *Journal of Industrial Relations*, 60(3), 437-460. <https://doi.org/10.1177/0022185618765551>