

Agricultural Worker Minimum Wage Committee

Meeting Notes

Monday, November 13, 2023 1:00 pm – 3:30pm

DHHS HQ, Room Maine A and B Conference Room, 109 Capitol Street, Augusta

- **Opening remarks by Co-Chair Agriculture, Conservation and Forestry Deputy Commissioner Nancy McBrady and alternate co-Chair Jason Moyer-Lee, Department of Labor**
- **Members Present**
 - Jason Moyer-Lee, Alternate to Department of Labor Commissioner Laura Fortman (Chair)
 - Department of Agriculture, Conservation and Forestry Deputy Commissioner Nancy McBrady (Chair)
 - The Speaker of the House of Representatives or her designee
 - Thom Harnett (Alternate)
 - The President of the Senate or his designee
 - Sen. Mike Tipping (Alternate) (Remote)
 - A representative of the Maine Farm Bureau
 - Penelope Jordan (Remote)
 - A representative of the Maine Potato Board
 - Jeannie Tapley
 - A representative of the Wild Blueberry Commission
 - Eric Venturini
 - A representative of the Maine Dairy Industry
 - Heath Miller
 - A representative of the Maine Organic Farmers and Gardeners Association
 - Heather Spalding (Remote)
 - A representative of the Passamaquoddy Wild Blueberry Co.
 - Holli Francis (Remote)
 - A representative of the Maine AFL-CIO
 - Matt Schlobohm
 - A representative of Pine Tree Legal Assistance Farm Worker Unit
 - Mike Guare
 - A representative of the Maine Center for Economic Policy
 - Arthur Phillips
 - A representative of a statewide organization dedicated to supporting farmworkers and immigrants Downeast

- Juana Rodriguez, Mano en Mano
 - A representative of a statewide land trust dedicated to protecting farmland and supporting farmers
 - Shelley Megquier
- **Review of working agreements and agenda by Facilitator Jo D. Saffeir, Special Assistant to the Commissioner of Agriculture, Conservation and Forestry and Committee Members**
- **Report-out of Agricultural Worker Feedback and Farmer Listening Sessions**
 - Reports from subcommittees (Find the session report-outs on the [Committee website](#))
 - Questions and additions from Subcommittee & Committee members
 - Farmer sessions:
 - Penny Jordan: Wants to emphasize the varying characteristics of agriculture. Seasonality varies based on geographic locations, and it also is based on the types of crops that are grown. All of these dynamics may sound simple, but as you take each aspect, Penny believes we need to drill down and understand how compensation can work, relative to those characteristics.
 - Sen. Tipping: Asked about specific policy concerns, from farmers, as it relates to sub chapter 3.
 - Heath Miller: In speaking about youth labor in the dairy industry, mentioned youth labor less utilized. He did reference the occasional outreach to farmers regarding family members and neighbors asking if they can help, but this is not widespread, like in other agricultural sectors, such as blueberries.
 - Thom Harnett: Expressed concern over the portions of the farmer report-back related to a future bill containing the mandatory payment of overtime to farmworkers. Thom does not want the specter of potential future legislation to hamper the task spelled out by the Executive Order: to establish a minimum wage for farm workers.
 - Deputy Commissioner McBrady: Clarified that at every instance someone mentioned the payment of overtime, or other future bills, it was noted that these were not mentioned in the Executive Order as “on the table” of options to recommend. She did not, however, censor anyone expressing these concerns.
 - Heath Miller: Spoke in support of the process mitigating concerns not outlined in the Executive Order.
 - Arthur Phillips: Asked a clarifying question regarding piece rate changes due to yield.

- Sen Tipping: Asked whether there was any new information or concerns brought to the surface during the farmer listening sessions.
 - Deputy Commissioner Brady: Many folks who participated talked about wanting to find a different way moving forward that is separate and distinct from Title 26.
- Penny Jordan: Wanted to reinforce that what she heard in these sessions is that farms are paying well above the state minimum wage, sometimes \$18-\$22. Many farmers mentioned that they already pay minimum wage, so why is this committee looking to implement a minimum wage that is already being met?
- Heath Miller: Reminded the Committee of the small scale of most farms, the lack of policy/legislative staff to voice their concerns. He explained that farmers perhaps felt more comfortable in the subcommittee setting.
- Matt Schlobohm: Found the subcommittee process tremendously helpful in providing a snapshot from both farmers and farmworkers. Matt unpacked the notion that we (the committee) are making farmworkers employees under subchapter 3, and pushed back on that notion, explaining that these workers are employees under many other labor laws. Matt also asked a clarifying question regarding the concerns from farmers about subchapter 3, asking if this was a symbolic opposition.
- Thom Harnett: asked a clarifying question regarding the proposed piece rate exemption vs. the proposed cultural piece rate exemption.
- Sen. Tipping: Asked whether there was any conversation around why people didn't understand that agricultural workers are already employees, and why that would be easier to implement overtime protections in the future. He went on to ask whether or not there was a concern of the enforcement of minimum wage, under the Department of Labor?
 - Penny: clarified that these concerns, from her perspective, don't lie in a fear of the Department of Labor enforcement. Penny suggests pulling out that section to look at compensation strategies for agricultural workers while recognizing the unique dynamics of the industries.
- Farmworker sessions:
 - Jeannie Tapley: Asked whether the subcommittee was able to speak with workers in Aroostook County.

- Penny Jordan: Asked what number of employees might have been H-2A. Penny also asked about what sized farms were represented by workers, and whether they were year-round or seasonal operations.

- **Committee Discussion**

- Penny Jordan: Penny heard a similar message from both subcommittees, that agriculture is different and that maybe compensation should be looked at differently. She suggested that we should examine compensation outside of labor laws.
- Mike Guare: Mike heard one distinct difference from the two groups, in that workers suggested a higher minimum wage than the state minimum wage.
- Thom Harnett: Thom heard from employers that they already pay minimum wage or higher, both because of the competitive labor market and that workers deserve that. There seems to be agreement on paying the minimum wage.
- Matt Schlobohm: seems to be universal agreement on the notion that there are larger issues at play for farmers and feels a deep solidarity with small-scale farmers who are dealing with tough economic forces.
- Jo D. framed the next section of conversation on the options to implement a minimum wage for agricultural workers.
 - Proposal 1: all elements of the former bill that passed the legislature. Minimum wage, limits on mandatory overtime and that rest breaks must be offered.
 - Proposal 2 (proposed by Penny Jordan): to create an agricultural compensation law that addresses minimum wage, with differences based on sector type – such as seasonal vs. year-round, time sensitivity, etc.
 - Penny advocated for some sort of committee or board to further look at strategies for compensating agricultural workers.
 - Proposal 3 (noted by Matt Schlobohm): sectoral bargaining utilizing a tripartite structure of farmworkers, farmers and the state to set standards on an industry-by-industry basis. This would create a flexible pay floor for workers, with a sector-specific approach.
 - Proposal 4 (proposed by Eric Venturini): pay workers the state minimum wage under Title 26 Sec. 664, building in a piece rate exemption and a youth wage exemption.
 - Proposal 5 (proposed by Jeannie Tapley): pay workers minimum wage but locate the new statute outside of subchapter 3. This proposal includes exemptions from limits on mandatory overtime and rest breaks.
 - Proposal 6: Paying a higher wage than the state minimum wage.

- **Public Input**
 - Sen. Timberlake: Has heard that farmers want to be kept out of labor law. He suggests paying a minimum wage but advocates for a piece rate exemption and youth rate exemption. Reminded the Committee that most farmers like him are struggling, and that no one is getting rich from it. He advises that these proposals need some additional work, and he would not agree to any of them at this time.
 - Nolan Thompson: Nolan asked a clarifying question regarding overtime. Asked “who can work 160 hours in a two-week period?”
 - Julie Ann Smith: Speaking on behalf of the Maine Farmers Coalition, she noted her members were unable to participate in the subcommittee process. Claimed there was not enough time to get her members' participation. From her perspective, there are still many farmers and farmworkers who have been left out. She also mentioned that agriculture is the only sector that allows workers under 14 years old.
- **Discussion of Next Steps**
- **Closing Remarks from Commissioner Fortman, Deputy Commissioner McBrady and Committee Facilitator Jo D. Saffair**
 - DOL and DACF will work to get summary out ASAP. Committee members can send in reactions and any additional proposals to Dillon Murray of DOL.
- **Meeting Adjourned**