

December 11, 2023

Laura Fortman
Commissioner of the Maine Dept. of Labor
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Nancy McBrady
Deputy Commissioner of the Maine Dept. of Ag., Conservation and Forestry
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Re: Agricultural Workers Minimum Wage Committee Draft Recommendation Options

Dear Commissioner Fortman and Deputy Commissioner McBrady,

The intention of this letter is to express the Maine agricultural community's dissatisfaction with the recommendations put forward, and to suggest two additional options that represent the input received from farm employers during the employer listening sessions.

First, we acknowledge that in the formation of this committee, all sides have come to the table. Agricultural sectors agreed to participate in good faith and have indicated a willingness to compromise. That willingness is demonstrated by our acceptance of the possibility of an agricultural minimum wage. We indicate acceptance of this possibility, even as new data shows that on average, farmers pay themselves less per hour (\$14.23) than they pay their farm workers (\$15.57).¹

On October 16th, the Committee met and decided to create subcommittees. Each subcommittee was charged with organizing and setting up opportunities for input from a) farm employers and b) farm employees. Both sub-committees presented their findings back to the committee on November 13th. At that time, the farm employee subcommittee indicated that farm employees felt they should be classified differently than other "employees" under state law, and that specifically, they sought a higher-than State minimum wage. This idea received no "dots" during a subsequent dot exercise led by JoD on November 27th. Nonetheless, this suggestion was included as a recommendation (Option 5) in the *Agricultural Worker Minimum Wage Committee – DRAFT Recommendation Options*. Unfortunately, the input from the farm employer subcommittee was not included in any of the 5 options put forward by the co-chairs.

During the farm employer listening sessions, while farm employers generally agreed they could support an agricultural minimum wage, the following concerns were shared repeatedly. It is also worth noting that these concerns have been raised by agricultural groups in legislative committees, a prior LD 398 working group, and in many other venues over the past year plus:

- Agriculture is a dynamic, diverse set of industries with different crops, products, markets and scales that is wholly dependent on seasonality and is at the whim of the weather. To account for these differences, an agricultural minimum wage law should not be placed in the same section of statute (26 MRS, Chapter 7, sub-chapter 3) as other state labor provisions, and should not carry the same riders.

¹ Camoine Associates. 2023. MTI Industry Sector Assessment. Prepared for the Maine Technology Institute. Funded by the Office of Business Development & Maine Jobs & Recovery Plan. October, 2023.
<https://www.mainetechnology.org/docs/MTI-Industry-Assessment-Final-Report-DECD.pdf>

- An agricultural minimum wage should include an exemption for piece rate work. A single participant suggested that the exemption could be cultural, otherwise there was no mention of tying that exemption to tribal affiliation.
- Many farm employers urged the committee to include a lower youth minimum wage to allow farms to give young, less-productive workers opportunities to learn the business and foster their development and sense of responsibility.

In addition to these specific suggestions, farm employers repeatedly raised the following points:

- Farmers are typically paying well above the state minimum wage, have high employee retention rates (up to 95% was mentioned), and posed the question, “What problem are we trying to solve?”
- Mandatory overtime will not work for Maine agriculture due to the high labor need during peak season when getting the crop in is a make-or-break for seasonal farms. Farmers were concerned that proponents would push overtime and other related legislation onto farmers next.
- Farmers repeatedly pointed to the larger issue at hand. They all would like to pay their employees even more than they already do, but they are already paying their employees more than they pay themselves. Consumers don’t fully value the true cost of food, and in most instances farmers are price takers not price makers. They consistently pointed to a need for other policy or societal support that would increase the sustainability and viability of farming in Maine.

Agriculture should not be viewed like any other industry and policy should reflect that. To best summarize the input received from both sub-committees in a single phrase, we all believe that there should be more money in agriculture.

None of the five options presented to the Committee on December 11th for consideration are acceptable to the Maine farming community; none of the options represent the needs or the concerns of the producers which they clearly voiced in the employer listening sessions. We are disappointed that those voices were not represented in the options presented.

We kindly suggest that the co-chairs consider this additional option for report-out to the Governor, which would then be the only option that accounts for the input we heard from farmers.

- Apply the state minimum wage to farm workers but incorporate this language into statute outside of Subchapter 3.
- Apply only the state minimum wage to farm workers, without any of the riders included in Subchapter 3.
- Include two exemptions to a state minimum wage for farm workers, both of which are similar to current exemptions under the Fair Labor Standards Act (29 CFR §780.300 13(a)(6):

Exemption for Piece Rate Workers

Agricultural workers are exempt from State minimum wage requirements if such worker is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment. (Revised from Fair Labor Standards Act 29 CFR §780.300 13(a)(6).)

Youth Exemption

Agricultural workers are exempt from State minimum wage requirements if such worker is sixteen years of age or under. All workers will be subject the (FLSA) minimum age standards for agricultural employment. (Revised from Fair Labor Standards Act 29 CFR §780.300 13(a)(6).)

Thank you for your time and consideration of this request.

Sincerely,

Holli Francis

Product Manager of the Passamaquoddy Wild Blueberry Company

Penny Jordan

Representative of the Maine Farm Bureau

Heath Miller

Treasurer of the Maine Dairy Industry Association

Jeannie Tapley

Assistant Executive Director of the Maine Potato Board

Eric Venturini

Executive Director of the Wild Blueberry Commission of Maine