

# **Agricultural Workers Minimum Wage Committee**

## **Meeting Notes**

**All-Virtual meeting, Monday, October 2, 2023, 1:00pm – 3:00pm**

**Zoom Link: <https://mainestate.zoom.us/j/86802231722>**

**Website: <https://www.maine.gov/labor/mwaw/>**

- **Opening remarks by Co-Chairs Labor Commissioner Laura Fortman, and Agriculture, Conservation and Forestry Deputy Commissioner Nancy McBrady**
- **Members Present**
  - 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
    - Speaker Talbot Ross
    - Thom Harnett (Alternate)
  - The President of the Senate or his designee
    - Sen. Mike Tipping (Alternate)
  - A representative of the Maine Farm Bureau
    - Penelope Jordan
  - 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
  - A representative of the Passamaquoddy Wild Blueberry Co.
    - Holli Francis
  - 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
    - Sean Douglas, Mano en Mano
  - A representative of a statewide land trust dedicated to protecting farmland and supporting farmers
    - Annie Watson, Maine Farmland Trust, on behalf of Shelley Megquier
- **Review of working agreements and agenda by Facilitator Jo D. Saffair, Special Assistant to the Commissioner of Agriculture, Conservation and Forestry and Committee Members**
- **Data request discussion**
  - The Maine Department of Labor presented data and statistics showing how many employers participated in the H-2A program and how many workers they requested, broken down by crop type.
    - Also included are charts showing the trend in employer participation from 2016 – now, as well number of requested workers. There is an additional chart focused on potatoes.
  - The Department of Agriculture, Conservation and Forestry presented the 2017 Census of Agriculture, produced by the United States Department of Agriculture every 5 years.
- **Technical Presentations**
  - Implications of a Minimum Wage – housing, meals, transportation, recordkeeping, limits on mandatory overtime, rest breaks by Assistant Attorney General Anne Macri
  - Agricultural Workers Minimum Wage: a basic framework for the legislation by Commissioner Fortman
- **Committee Discussion**
  - Arthur Philips, *Committee member* – (in relation to the data provided by MDOL) asked if there is there a way to distinguish the difference between requested workers and workers who come through the state monitor advocate, or any way to discern how many are ultimately granted.
    - Commissioner Fortman – unfortunately, that is not information that is provided to the Maine Department of Labor. The state monitor advocate also works for MDOL, so we would have that information, if it were available.
  - Thom Harnett, *Committee member* – (in relation to the data provided by MDOL) asked about the reasons why a request for H-2A workers would go unmet – is it because of a shortage of H-2A workers, or is it determined that some employers don't qualify.
    - Commissioner Fortman – MDOL will follow up on this question, at a later meeting.

- Penny Jordan, *Committee Member* – Asked about an employer’s obligation, under federal law, to treat non H-2A workers doing the same job, the same as H-2A workers.
- Thom Harnett, *Committee Member* – asked a question about “primary benefit” language in the technical presentation, as it relates to an employer’s ability to provide housing for their employees. In particular, his question is regarding the determination of who the primary beneficiary is, in the scenario that an employer keeps housing that is in close proximity to the workplace.
- Penny Jordan, *Committee Member* – Asked about agricultural employers providing housing due to the competitive labor market, and who in that case would be determined to be the “primary beneficiary”.
  - Penny offered to the Committee that it think about the housing credit, and the possibility that a housing credit used to offset the wages of an employee would bring the real wage that employee receives, below the state minimum wage. Suggested the formula change to create a floor that the real wage cannot exceed.
- Mike Guare, *Committee Member* – asked for clarification on what aspects of the definition of “wage” already apply to farmworkers.
  - Assistant Attorney General Anne Macri – Clarified that no, the definition of “wage” is in subchapter 3, of which workers employed in agriculture, are exempt.
  - AAG Macri also clarified that if the housing facility provided by an agriculture employer is substandard, the employer may not take a credit for housing against the wage paid to the employee.
- Thom Harnett, *Committee Member* – Asked for clarification of the differences between the federal and state definitions for the credits available to farmers.
  - AAG Macri clarified that there is not a substantial difference.
- Juana Rodriguez, *Committee Member* – asked for clarification around the implications of meals, housing and transportation credits, and whether or not the presentation given by AAG Macri shows what currently exists, or what would exist under subchapter 3.
  - AAG Macri – clarified that it’s essentially the same: federal law allows taking credits for meals, lodging and other facilities, and the determination comes back to the question of who the primary beneficiary is, whether it’s voluntary and whether the cost is reasonable. So, it’s the same structure and same determining “test,” between state and federal law. The difference is who can enforce it.
- Eric Venturini, *Committee Member* – asked about MDOL access to records under Sec. 622, and the differences in the requirements under Sec. 665.
- Mike Guare, *Committee Member* – clarified that federal law already requires the record keeping provisions outlined in both Sections 622 and 665.

- Matt Schbolohm, *Committee Member* – asked for clarification on the phrase “consecutive two-week period,” as it relates to the limits on mandatory overtime.
  - Penny Jordan, *Committee Member* – asked about the concept of creating a new, separate chapter or law, dedicated specifically to agricultural workers.
  - Heather Spalding, *Committee Member* – Appreciated Penny raising the broader question, but noted proponents of the bill in the first legislative session did not want to carve out a new set of standards for employees of agriculture. She does agree that this is an essential sector that provides critical resources for a healthy, functioning society. Referenced Jenni Tilton-Flood raising concerns over the health of the farming economy in Maine. Heather would like to come at it from a different angle, and does not want to carve out farm workers, but ensure they are treated equally, as well as making sure farm business plans are solvent,
    - Commissioner Fortman: Wanted to note that we will be digging into this issue in much further detail, in coming Committee meetings. Asked Committee Members to think about what elements should be included in the recommendations to the Governor.
  - Eric Venturini, *Committee Member* – Asked for clarification around removing the ag worker exemption and what implications that may have on MDOL’s access to employment records.
    - **MDOL to look into this more, and report back its findings to the Committee.**
  - Sen. Mike Tipping, *Committee Member* – asked if the Mills administration supports the other protections contained in subchapter 3. Is hoping to hear more definitive information on this.
  - Commissioner Fortman, *Committee Chair* – asked the Committee to send in specific questions, similar to fellow Committee Member Eric Venturini’s question about the exemption in subchapter 3. This will be helpful as the Committee digs into the details and recommendations for Governor Mills to consider.
- **Public Input**
    - Jenni Tilton-Flood – wants clarification on the exemption from subchapter 3. If the exemption were removed, this would apply to what sized employers? Is there a threshold? Is there an exemption for family members? Suggests that, moving forward, if there are any employer thresholds contained in whatever changes are being discussed, that the threshold be explicitly stated in the discussion. Would also like more information, as it relates to the record keeping requirements.
      - AAG Anne Macri: there is no employer size exemption. There is a separate exemption for family members, with language including “for family members who are dependent upon and reside with the employer” which is more focused on household members.
    - Sean Douglas – noted in an example of using the credits against the federal minimum wage, and how an employee could be making below the federal

poverty line if their employer utilizes these exemptions. In his example, Sean lays out an employer who utilizes \$.25 worth of credits per work hour, making the employee's effective hourly wage \$7. If you multiply \$7 x 40hrs/week, then multiply that number to a annual wage, that comes out to \$280 a week, or \$14,560 a year. That is \$20 below the 2023 federal poverty level guideline for a household of one.

- He also notes that Migrant and Seasonal Farm Workers (MSFW) are required to maintain a "home base" while travelling for work. He uses the example that he sees at Mano en Mano: MSFWs who live in Florida but travel up and down the East Coast doing agricultural work – those workers are required to keep a home base, so when an employer utilizes the credit for housing, it effectively lowers the wage of the MSFW while they are also required to pay to keep their own housing. He argued that while agriculture may be unique by comparison, the workers still need to survive and live in the same economy as everyone else.
- Timothy Sorber – mentioned how hard it is for farms to recruit workforce. He suggests that the State of Maine treat farm workers like every other worker. He also mentions the competitive labor market currently, and wonders how to stay competitive when places like McDonald's have raised their own wages. He says that farmworkers being exempt from both overtime and the minimum wage goes completely against getting new people into agriculture.
- Nolan Thompson – asked about healthcare and the minimum wage formula. Nolan presented the situation of an agricultural employee who becomes ill or exhausted while working overtime. If the employer pays out healthcare, can they use the time the employee spent to recover, as a credit?
- **Discussion of Next Steps**
  - Committee decided that the next meeting, on October 16<sup>th</sup>, will include two presentations on piece rate.
  - The Committee took a straw poll on what format the next meeting will be (in-person, Remote, hybrid). The Committee ultimately decided to hold the next meeting virtually.
  - The Committee also discussed having evening listening session, so that farm employers and farm employees have a better opportunity to attend. This would happen after fall harvest, later in the year.
- **Closing Remarks from Commissioner Fortman, Deputy Commissioner McBrady and Committee Facilitator Jo D. Saffeir**
- **Meeting Adjourned**