

# **Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers**

Co-Chairs' Report  
February, 2024

Laura Fortman, Commissioner  
Maine Department of Labor

Nancy McBrady, Deputy Commissioner  
Maine Department of Agriculture,  
Conservation & Forestry

Table of Contents

- Section 1. INTRODUCTION ..... 3
- Section 2. FORMATION OF THE COMMITTEE ..... 4
- Section 3. DATA GATHERING AND ANALYSIS ..... 5
  - A. 2017 USDA Census of Agriculture ..... 5
  - B. H-2A Data ..... 6
  - C. Minimum Wage Data ..... 6
  - D. Summary of Minimum Wage Data ..... 8
  - E. Piecework Data ..... 8
  - F. National Piece-rate Regulatory Analysis ..... 9
- Section 4. REVIEW OF WAGE AND EMPLOYMENT LAW AND REGULATIONS ..... 10
  - A. Federal Wage and Hour Laws ..... 10
  - B. State Minimum Wage and Employment Law ..... 10
  - C. Summary of Review of Wage and Employment Regulations ..... 12
- Section 5. STAKEHOLDER INPUT, PRIORITIZATION, AND EFFORT TO ACHIEVE CONSENSUS ..... 12
  - A. Subcommittee Creation ..... 13
  - B. Committee Process of Reviewing Potential Options ..... 14
  - C. Committee Prioritization ..... 15
  - D. Co-Chair Recommended Draft Options at the Final Meeting ..... 16
- Section 6. FINAL RECOMMENDATION ..... 18
  - A. Recordkeeping ..... 18
  - B. Higher Minimum Wage ..... 19
  - C. Youth Rate ..... 19
  - D. Mandatory Overtime ..... 19
  - E. Rest Breaks ..... 20
  - F. Piece-rate ..... 21
  - G. Location of the Statute ..... 22
  - H. Summary of Recommendation ..... 23
- Section 7. CONCLUSION ..... 24
- LIST OF APPENDICES ..... 25

## Section 1. INTRODUCTION

During the 1<sup>st</sup> Special Session of the 131<sup>st</sup> Legislative Session, L.D. 398, *An Act to Make Agricultural Workers and Certain Other Workers Employees Under the Minimum Wage Law and to Allow Such Workers to Engage in Certain Concerted Activity*, was introduced. This bill sought primarily to require limits to mandatory overtime and that agricultural employees be subject to laws that set a minimum wage and overtime rate.

The public hearing for L.D. 398 drew robust attention and numerous testimonies both in support of and in opposition to the bill as written and resulted in a divided report from the Committee on Labor and Housing, with the majority voting Ought to Pass. As the bill progressed through the legislative process, a later amendment sought to define various terms, such as “agricultural workers” and “agricultural labor.” It also specified that agricultural employees must be paid the state minimum wage and gave employees of agricultural employers the right to engage in certain concerted activity, among other modifications. A Senate amendment in the final hours before the legislature adjourned for a recess removed the provisions relating to certain concerted activity and paid overtime. The legislature subsequently passed the amended version of L.D. 398.

Although there was an attempt to hold stakeholder meetings as L.D. 398 proceeded through the legislature, some agricultural representatives in attendance expressed concern over the timing and pace of the discussion on the bill, which coincided with the height of spring and early summer agricultural activities. This made it difficult for those representative agricultural groups and their boards, many of which were primarily comprised of farmers, to engage. These particular groups also raised concerns over the need to understand better how such proposed changes would impact the agricultural sector and whether the proposed definitions conflicted with other existing statutory language. At the core of their concern was that this discussion needed more time for everyone to fully understand the implications of altering the current agricultural compensation rate and structure.

After careful consideration, and while conveying strong support for a minimum wage for agricultural workers, in a veto letter dated July 18, 2023, Governor Mills expressed both her reluctance and need to veto L.D. 398 due to various concerns she had regarding both process and the potential for unintended consequences from this legislation. In the letter, she committed to convening a stakeholder group process to explore questions pertaining to L.D. 398 more fully and make recommendations for a Governor’s bill to be introduced in the 2<sup>nd</sup> Special Session of the 131<sup>st</sup> Legislature.

Soon thereafter, Governor Mills issued an Executive Order (EO) 1 FY 23/24 titled *An Order Establishing a Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers*.<sup>1</sup> This EO directed the commissioners of the Department of Labor (DOL) and the Department of Agriculture, Conservation and Forestry (DACF), or their designees, to convene a committee for this purpose (also called the Agricultural Workers Minimum Wage Committee). The EO defined the membership of the committee and charged it with “develop[ing] legislation for introduction in the second session of the 131<sup>st</sup> Legislature that will implement a minimum wage for agricultural workers, identify the impacts the bill will have through other laws interconnected with Federal and State wage and hour laws, and ensure the full range of impacts are thoroughly understood by both agricultural employers and their workers.”

---

<sup>1</sup> Appendix 1: EO 1 FY 23/24 ([Meeting One Materials](#)).

This report summarizes the process, findings, and corresponding recommendations resulting from the convening of the Agricultural Workers Minimum Wage Committee.

## Section 2. FORMATION OF THE COMMITTEE

The Committee met seven times between September 2, 2023, and December 11, 2023. Meetings were facilitated by Jo D. Saffair, Special Assistant to the Commissioner of DACF. All Committee meetings were open to the public. Meetings lasted between two and three hours and were a mix of in-person (with a virtual option) and purely virtual. The typical meeting included presentations from Committee members and/or other interested parties, discussion, and an opportunity for public comment. All Committee meeting materials and video recordings of the meetings were then posted on the Committee's dedicated website: <https://www.maine.gov/labor/mwaw/>.

The Committee members were:

Commissioner of the Department of Labor, or her designee, as Co-chair

- Commissioner Laura Fortman

Commissioner of the Department of Agriculture, Conservation and Forestry, or her designee, as Co-chair

- Deputy Commissioner Nancy McBrady

The Speaker of the House of Representatives or her designee

- Speaker Rachel Talbot Ross
- Thom Harnett (alternate)

The President of the Senate or his designee

- Senate President Jackson
- Sen. Mike Tipping (alternate)

A representative of the Maine Farm Bureau

- Penelope Jordan (Jordans Farm)

A representative of the Maine Potato Board

- Jeannie Tapley (Assistant Executive Director)

A representative of the Wild Blueberry Commission

- Eric Venturini (Executive Director)

A representative of the Maine Dairy Industry

- Heath Miller (Green Valle Farm)

A representative of the Maine Organic Farmers and Gardeners Association

- Heather Spalding (Deputy Director)

A representative of the Passamaquoddy Wild Blueberry Co.

- Darren Paul (General Manager)
- Holli Francis (alternate)

A representative of the Maine AFL-CIO

- Matt Schlobohm (Executive Director)

A representative of the Pine Tree Legal Assistance Farm Worker Unit

- Mike Guare (Attorney)

A representative of the Maine Center for Economic Policy

- Arthur Phillips (Economic Policy Analyst)

A representative of a statewide organization dedicated to supporting farmworkers and immigrants Downeast

- Juana Rodriguez Vasquez, Mano en Mano (Executive Director)
- Sean Douglas, Mano en Mano (alternate)

A representative of a statewide land trust dedicated to protecting farmland and supporting farmers

- Shelley Megquier, Maine Farmland Trust (Policy Director)

The Committee Co-Chairs created a “Working Agreements” policy document intended to guide the Committee’s work.<sup>2</sup> This was adopted unanimously by the Committee at its first meeting. The document included a number of guidelines for expected behavior and methods of participation, as well as the following statement:

*The Committee’s work will be guided by an aspiration to achieve consensus. Decisions regarding the final summary, findings, and recommendations will be made by the Co-Chairs with input from Committee members and will be submitted to the Governor by the Co-Chairs on behalf of the Committee.*

The Committee’s work effectively followed two phases. In the first phase, which includes the first four meetings from September 5<sup>th</sup> through October 16<sup>th</sup>, the Committee focused on providing relevant data and information to members and the public. As discussed below, this ranged from a review of Maine agricultural data and minimum wage statistics to presentations from the Maine Department of Labor and the Attorney General’s Office on wage and hour law and regulation. The second phase of the Committee’s work focused on gathering farm employer and farmworker perspectives and understanding committee members’ priorities while aiming to work towards potential consensus-based policy recommendations.

### Section 3. DATA GATHERING AND ANALYSIS

The EO mandated the Committee to “[g]ather data, to the extent practicable, on wages and benefits currently paid to agricultural workers, including migrant workers.” Sources of information the Committee reviewed included the following:

#### *A. 2017 USDA Census of Agriculture*

The US Department of Agriculture conducts a “Census of Agriculture” every five years, collecting data on farms, production, and employment. The latest census available during this Committee process was from 2017 (results of the 2022 Census are projected to be published in February 2024). Although dated, it is one of the most comprehensive data sets available regarding agricultural topics. Deputy Commissioner McBrady presented high-level, Maine-based census information on September 2, 2023, including:<sup>3, 4</sup>

- 7,600 Maine farms (96% family-owned)<sup>5</sup>

---

<sup>2</sup> Appendix 2: Working Agreements ([Meeting One Materials](#)).

<sup>3</sup> Appendix 3: [Maine Agricultural Overview](#) (September 2, 2023).

<sup>4</sup> Appendix 4: 2017 USDA Census of Agriculture Maine State Profile ([Meeting One Materials](#)).

<sup>5</sup> Since the Committee convened, the 2022 Agricultural Census has been released, updating this number to 7,036 farms.

- Most Maine farms are small:
  - 41% (3,122) had less than \$2,500 in sales
  - 9% had sales of \$100,000 or more
- 29% of Maine’s farms hire labor (representing 2,230 farms)
  - 13,440 farmworkers hired
  - 2,191 of hired farmworkers were migrant workers
- 9,314 of the workers worked fewer than 150 days in the year
- Labor costs represented 25% of farm costs
- In 2017, the average net income per farm was \$16,958.

### *B. H-2A Data*

DOL staff provided data on the number of H2-A employers in Maine and the number of workers they had requested (the number actually employed is unavailable).<sup>6</sup> The federal H-2A program allows employers who anticipate a shortage of domestic workers to temporarily bring foreign workers to the U.S. to perform agricultural labor or services. In Maine, H-2A employees have been requested for the following: broccoli, wild blueberries, apples, potato, hay, sugar maple, tomato, greenhouse/nursery, Christmas trees, tobacco, evergreens, and poultry. In addition:

- The number of participating employers has increased significantly in recent years, from 39 in 2018 to 101 in 2022.
- The number of requested H-2A employees has also increased, from 509 in 2018 to 1521 in 2022.
- The increase in requested workers was particularly marked in the potato industry, growing from 6 in 2022 to 98 in 2023.
- The minimum wage paid to H-2A workers (known as the Adverse Effect Wage Rate and governed by federal law) in 2023 was \$16.95 (excluding housing).

There are fewer specific data on the type and number of agricultural workers in the state. The 2017 USDA Census reports that 2,230 farms hired 13,440 workers (9,314 of which worked 150 or fewer days). Aroostook, Hancock, Cumberland, York, and Penobscot Counties saw 1,000 or more hired workers. There was a total of 108 farms that reported hiring 2,191 migrant workers (defined as a farm worker whose employment required travel that prevented the worker from returning to their permanent place of residence the same day).<sup>7</sup> Conversely, 4,090 farms had 9,807 unpaid workers. This last data point reflects the majority of farms in Maine that have sales under \$2,500 and rely on unpaid family members for their labor needs.

### *C. Minimum Wage Data*

USDA’s National Agricultural Statistics Service (NASS), in conjunction with the US Department of Labor, conducts the Farm Labor Survey quarterly to estimate employment and wage levels for directly hired farm and ranch workers in the US (excluding Alaska). The Survey relies on data collected in one week of each quarter, and the Farm Labor Report provides the survey on a regional basis. Maine is part of Northeast Region I, which includes Connecticut, Massachusetts, New Hampshire, New York, Rhode Island, and

---

<sup>6</sup> Appendix 5: Agricultural Worker Minimum Wage Committee Meeting 1 Data Requests - Information compiled and provided by Maine Department of Labor ([Meeting Three Materials](#)).

<sup>7</sup> Appendix 6: 2017 USDA Agricultural Census – various data tables ([Meeting Three Materials](#)).

Vermont. Data disaggregated to the state level is not available. USDA's New England State Statistician presented to the Committee on November 13, 2023.<sup>8</sup>

The November 22, 2023, NASS Farm Labor Report (reporting on October 2023 data) indicated that for Northeast Region I:<sup>9</sup>

- Field workers earned an average of \$18.69/hour;
- Livestock workers earned an average of \$17.93/hour; and
- Gross wage rate for all workers combined was \$19.10/hour.

US DOL's Bureau of Labor Statistics estimates employment and wage levels annually. The data is available on a statewide level. As of May 2022:<sup>10</sup>

- The median hourly wage for "Farmworkers and Laborers, Crop, Nursery, and Greenhouse" was \$18.55; and
- The median hourly wage for "Farmworkers, Farm, Ranch, and Aquacultural Animals" was \$17.31.

The University of Maine Cooperative Extension and the Maine Vegetable and Small Fruit Growers Association conducted a joint, one-month, state-wide survey on wages and benefits for farms and farmworkers in March 2021.<sup>11</sup> The small sample size (86 farms) that responded reported that:

- Farms either had no employees (47%) or were small employers; none of them employed more than 20 people year-round, and less than 11% of them employed more than 20 people at the peak of the season.
- The survey results indicated average hourly wages by type of farmwork, by level of experience of the farmworker, and by geographic region. The averages exceeded the then-state minimum wage of \$12.15 per hour in all instances.
- The survey results provided a range of hourly wages paid according to the same categories. For multiple categories, the low end of the pay range fell below the then-state minimum wage. Entry-level farm laborers' low end of the pay range was \$8.00 per hour, and experienced farm laborers in Southern Maine were earning \$9.00 per hour at the low end of the range.

The Maine Technology Institute's October 2023 Sector Assessment also provided minimum wage data for agriculture.<sup>12</sup> It reported that 3,115 farmers, ranchers, and other agricultural managers were employed in Maine with median hourly earnings of \$14.23. There were 2,410 farmworkers and laborers (crop and nursery) reported, with median hourly earnings of \$15.57 (higher than employers).

---

<sup>8</sup> Appendix 7, NASS Ag Labor Survey/Farm Labor Report Presentation, Pam Hird, New England State Statistician, October 16, 2023 ([Meeting Five Materials](#)).

<sup>9</sup> See <https://downloads.usda.library.cornell.edu/usda-esmis/files/x920fw89s/v405tw18s/dn39zk84n/fmla1123.pdf>

<sup>10</sup> See [https://www.bls.gov/oes/current/oes\\_me.htm](https://www.bls.gov/oes/current/oes_me.htm)

<sup>11</sup> Appendix 8: Maine Farmer Resource Network, [2021 Maine Farm Worker Compensation Survey](#)

<sup>12</sup> See <https://www.mainetechnology.org/docs/MTI-Industry-Assessment-Final-Report-DECD.pdf>

#### *D. Summary of Minimum Wage Data*

Data available from the aforementioned reports indicate that most agricultural workers in Maine are being paid at or above the minimum wage. This information was also supported by comments made by farm employers and farm employees during the subcommittee process described later in this report.

#### *E. Piecework Data*

Piecework (also referred to as piece rate) was also a core topic of discussion during the Committee process. The October 16, 2023, meeting focused on piecework, with a presentation by Committee members Eric Venturini and Holli Francis and another by Scott Cotnoir, DOL Bureau of Labor Standards.

Piece-rate workers are workers who, rather than being paid for the amount of time they work, are paid for the amount of work they do on a per-unit basis. According to the Maine Farmer Resource Network, an estimated 10% of Maine agricultural workers are paid at a piece rate. Sectors using piece rate include wild blueberries, strawberries, apples, broccoli, and peas.

In Eric Venturini's and Holli Francis' presentation,<sup>13</sup> they stated that piecework can increase earning potential because workers can make more money in less time. They described that piecework also ensures that "producers are paying for harvested product, not just time spent in the field." Piecework allows wild blueberry rakers to "work at their own pace and minimizes the need for constant oversight and supervision" and maximizes hand rakers' efficiency. They advised that rakers themselves choose their start times based on preference, and the supervisors tally the number of boxes filled. They reported that standard pay ranges from \$2.75-\$3.00 a box, and with an average per-box harvest time of ten (10) minutes, this equates to ~\$16.50/hour. In the 2023 harvest, Eric and Holly reported, rakers were paid an average of \$955 per person using the piece rate. Had they been paid at the state minimum wage, they would have averaged \$755 in gross wages. The highest piece-rate earner earned \$7,327 (an average of 95 boxes/day), while the lowest paid earned \$55 gross (20 boxes).

The presentation on piecework also focused on the tradition and cultural value of piecework in wild blueberry harvesting. A slide in the presentation stated that it is a tradition of the Wabanaki Tribes to travel to hand-rake wild blueberries and that the Passamaquoddy Wild Blueberry Company employs members of the Passamaquoddy, Penobscot, Mi'kmaq, and Maliseet tribes as rakers each year: "Many come to partake in the millennia-old tradition, spend time with their families, enjoy communal living . . . Elders join the tradition for a day or two, sharing stories and memories in the field with the next generation."

As presented by Eric and Holli and repeated throughout the process through public comment, many employers in the wild blueberry industry particularly recommend an exemption to the state minimum wage for piecework employees. Without a piece work exemption, for instance, the Passamaquoddy Wild Blueberry Company stated it would "impose a strict quota/raker to ensure productivity over tradition" and "wouldn't hire the less productive employees."

The presentation also included a case study on Welch Farm in Roque Bluffs. Owner Lisa Hanscom estimated that if she had to pay state minimum wage as the floor for piece rate, she would not be able to hire 50% of her workers. The question was asked at multiple Committee meetings whether data was

---

<sup>13</sup> Appendix 9: Piecework and the Maine Wild Blueberry Industry presentation ([Meeting Five Materials](#)).



available that could quantify the extent of piece-rate workers who would be impacted by a potential minimum wage increase; however, members were unable to provide information on the number of agricultural workers this would potentially impact.

Scott Cotnoir, Director of the Wage and Hour Division at the Maine Department of Labor, explained that piece rate is currently used in the following sectors: “[m]anufacturing; call centers; writing/translation services; truck driving; data entry; cleaning; garment; and manufacturing.” These sectors are still required to comply with federal and state minimum wage laws.<sup>14</sup>

Within Maine agriculture itself, there are already some laws imposing a minimum wage on piece rate. For example, those farm employers to whom the Fair Labor Standards Act is applicable must ensure that workers earn at least the federal minimum wage, whether or not they are paid on a piece-rate basis. Similarly, those farm employers employing H2-A workers must ensure that these workers are earning at least the (higher) H2-A minimum wage, whether or not they are earning on a piece-rate basis. The employer simply needs to ensure that when the total wages earned in the pay period are averaged out over the number of hours worked, the worker is earning no less than the minimum wage. If they are not, the farm employer needs to pay the difference between the piece rate wages earned and what the employee would have earned working the same amount of time at the minimum wage rate.

Extending minimum wage legislation to employers using piece rate would not impose new timekeeping requirements on them, nor would it automatically convert piece rate workers’ wages into an hourly (minimum) wage. As discussed below, various state and federal laws already require farm employers to record farmworkers’ working hours and rates of pay.

#### *F. National Piece-rate Regulatory Analysis*

Committee Member Mike Guare provided a memo to the Committee reviewing federal and state law applicable to piecework.<sup>15</sup> The Fair Labor Standards Act (FLSA) contains two piecework-related exemptions.

First, 29 U.S.C. § 213(a)(6)(C) applies to:

any employee employed in agriculture ... (C) if such employee (i) 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, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year[.]

In essence, the exemption only applies to workers who commute daily from their homes to their work. And a worker may not be exempted unless they worked fewer than 13 weeks the year before.

Second, 29 U.S.C. § 213(a)(6)(D) applies to:

any employee employed in agriculture ... (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand

---

<sup>14</sup> Appendix 10: Maine Employment Law presentation by Director Scott Cotnoir, Maine DOL ([Meeting Five Materials](#)).

<sup>15</sup> Appendix 11: Submitted Analysis by Mike Guare of Pine Tree Legal Assistance: Piece-Rate Exemptions from Minimum Wage Coverage for Farm Workers in the United States ([Meeting Seven Materials](#)).

harvest laborer, 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, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece-rate as employees over age sixteen are paid on the same farm[.]

The memo noted that creating an exemption any wider than the existing FLSA exemptions would make Maine an outlier compared to other states with agricultural minimum wage laws. Of the 29 states that have state minimum wage laws applicable to farmworkers, 12 have adopted the FLSA exemptions. 13 have adopted no piecework-related exemptions. The remaining states adopted some version of one or more FLSA exemptions or provided a broader exemption limited to small employers. No state in the country has a limitless exemption for agricultural piecework.

## Section 4. REVIEW OF WAGE AND EMPLOYMENT LAW AND REGULATIONS

### *A. Federal Wage and Hour Laws*

The FLSA established a federal minimum hourly wage. It currently is \$7.25/hour. The FLSA does not provide for entitlement to overtime pay for farmworkers. 29 U.S.C. § 213(b)(12)-(13).<sup>16</sup>

In addition to the minimum wage provisions of the FLSA, there are other federal labor laws that apply to at least some farms and farmworkers. For example, the Migrant and Seasonal Agricultural Worker Protection Act sets out requirements on recordkeeping and payment of wages, among other things. 29 U.S.C. Chapter 20. Further, those employers who rely on H2-A workers – i.e., non-immigrant workers for seasonal or temporary agricultural work as authorized by Section 218 of the Immigration and Nationality Act – must comply with a suite of legal requirements, including provisions on recordkeeping, minimum wage, and housing, among others. 8 U.S.C. § 1188. In Maine in 2023, the Adverse Effect Wage Rate for the H2-A program was over \$2 per hour higher than the state minimum wage and is over \$3 more in 2024.

### *B. State Minimum Wage and Employment Law*

Title 26, Chapter 7, Subchapter 3, establishes the obligation of employers to pay Maine minimum wage. Additionally, it provides for overtime after 40 hours of work in one week to be paid at a higher rate. 26 M.R.S. §664. It also includes the requirement to keep true and accurate records of the hours worked by each employee and the wages paid, as well as the requirement to provide employees with a wage payment statement that shows the date of the pay period, the employee’s hours worked, total wages earned and itemized deductions. 26 M.R.S. §665. Employers are not permitted to contract out these requirements. 26 M.R.S. §672.

The Maine minimum wage law currently exempts farmworkers from minimum wage and overtime pay requirements. 26 M.R.S. § 663(3)(a). The 2023 Maine minimum wage was \$13.80/hr. It rose to \$14.15 on January 1, 2024.

---

<sup>16</sup> The origins of farmworkers’ exclusion from minimum wage coverage are rooted in labor law legislation from the 1930’s. Political compromises made in 1938 to gain support from legislators, primarily representing segregated Southern states, resulted in farmworkers and domestic workers – characterized by a predominantly Black labor force - being excluded from coverage under various New Deal laws, including entitlement to minimum wage and overtime pay under the FLSA.

There are two other employment rights which, although they are not found in Subchapter 3, are affected by the subchapter's definition of "employee." First, employees have a right to be offered the opportunity of a 30-minute rest break (may be unpaid) for every six hours worked. 26 M.R.S. § 601. The employee does not need to actually take the break; they just need to have the opportunity to do so. This right applies to employees as defined in Subchapter 3. So, it does not currently apply to farmworkers. The second right concerns a limit on mandatory overtime. Section 603 prohibits an employer from compelling a worker to work more than 160 hours in a two-week period. The employer may offer the worker the opportunity to work more than these hours, and the worker may accept. But if the worker does not accept, they may not be compelled. Farmworkers are also exempt from this provision. 26 M.R.S. § 603(3)(D).

Title 26, Chapter 7, Subchapter 2: Wages and Medium of Payment, requires employers to pay workers what they are owed and on time, maintain records of workers' hours and pay, not discriminate in pay on the basis of sex or race, and provide workers with earned paid leave, among other things. 26 M.R.S. §§ 621-A et seq. All of these obligations apply to farm employers. This is because the laws apply to "employees" and "employers," and unless there is a specific exemption, farmworkers tend to be "employees," and farm employers are "employers."

The Maine Department of Labor (DOL) presented to the Committee the terminology relevant to agriculture in federal and state employment law. This covered H2-A workers, migrant and seasonal farmworkers under the Migrant and Seasonal Agricultural Worker Protection Act and the definition used in the state minimum wage law.<sup>17</sup>

DOL's Wage and Hour Division presented the employment laws that already apply to farms and farmworkers, the Division's investigation and enforcement processes, and the legal effects of removing the exemption for farmworkers in Subchapter 3.<sup>18</sup> The presentation highlighted that the Bureau of Labor Standards regularly conducts employment law compliance courses. This presentation underscored that removing the farmworker exemption from Subchapter 3 has no effect on any area of law outside of Subchapter 3 other than the exceptions of rest breaks and mandatory overtime, as explained above.

Assistant Attorney General Anne Macri presented on Subchapter 3 and the effect of removing the exemption for farmworkers.<sup>19</sup> This built upon the Wage and Hour Division presentation and went into more detail – including by providing hypothetical examples – on the calculation of minimum wage, employer credits for the provision of board and lodging, as well as the statutory provisions on rest breaks and mandatory overtime.

John Rhode, Executive Director of the State of Maine Workers' Compensation Board, presented to the Committee on the applicability of worker compensation laws to agriculture.<sup>20</sup> Removing the exemption from Subchapter 3 has no legal effect on the applicability of workers' compensation. In other words, farm

---

<sup>17</sup> Appendix 12: DOL Agricultural Worker Definitions presentation, September 25, 2023 ([Meeting Two Materials](#)).

<sup>18</sup> Appendix 13: Maine Employment Law, DOL Bureau of Labor Standards Wage and Hour presentation by Director Scott Cotnoir ([Meeting Three Materials](#)).

<sup>19</sup> Appendix 14: Eliminating the Exemption: Subchapter 3 Compliance presentation by AAG Anne Macri ([Meeting Four Materials](#)).

<sup>20</sup> Appendix 15: Workers Compensation and Agriculture presentation by Executive Director John Rhode ([Meeting Three Materials](#)).

employers must provide workers' compensation to their agricultural workers regardless of whether or not they become employees for the purpose of minimum wage.

Laura Boyett, Director of the Bureau of Unemployment Compensation, also presented on the applicability of unemployment compensation to farms and farmworkers.<sup>21</sup> Removing the exemption from Subchapter 3 has no direct legal effect on the applicability of unemployment compensation. Farm employers must provide unemployment compensation to their agricultural workers regardless of whether or not they become employees for the purpose of minimum wage.

The legal implications of the potential removal of the farmworker exemption from Subchapter 3 was a regular topic of discussion in Committee meetings, both among Committee members and with public commenters. The Bureau of Labor Standards, which administers Maine's minimum wage law, was on hand throughout the Committee process to provide information. Similarly, the Assistant Attorney General assigned to the Bureau attended Committee meetings and was regularly called upon to answer questions on the law, explain the legal nuances, and clarify legal matters.

### *C. Summary of Review of Wage and Employment Regulations*

After reviewing the various component parts of current state wage and hour regulations, the practical effect of removing the existing exemption of farmworkers from the applicability of Subchapter 3 can be summarized as resulting in the following:

- 1) Individuals employed in agriculture would be covered by the requirements of Subchapter 3 (including receiving the state minimum wage rate and employers being subject to recordkeeping).
- 2) Those individuals employed in agriculture would also be covered by additional laws:
  - a. § 601 Rest Breaks – requires that employees must be given the opportunity to take a 30-minute break (may be unpaid) after working 6 hours unless certain exceptions apply
    - i. Emergency in which there is a danger to property, life, public safety, or public health.
    - ii. Does not apply to any place of employment where there are fewer than three employees on duty at any time and where the nature of the work allows frequent, paid breaks of a shorter duration.
  - b. § 603 Limits on Mandatory Overtime – Employers may not require employees to work more than 80 hours of overtime in any consecutive 2-week period (*voluntary* overtime is not limited).

## **Section 5. STAKEHOLDER INPUT, PRIORITIZATION, AND EFFORT TO ACHIEVE CONSENSUS**

With the first phase of the Committee process focused on existing wage and hour legal and regulatory frameworks, the second phase was dedicated to understanding stakeholders' views and seeking common ground toward narrowing the universe of possible legislative recommendations.

---

<sup>21</sup> Appendix 16: Unemployment Coverage & Agricultural Workers presentation by Bureau Director Laura Boyett ([Meeting Three Materials](#)).

### *A. Subcommittee Creation*

As the Committee work progressed, the Co-Chairs determined that there was a need for further input from the agricultural community. To facilitate the collection of employer and employee input, the Co-Chairs created two subcommittees, as permitted under Part III of the EO.<sup>22</sup> The Governor also agreed to extend the timing of the EO beyond December 1, 2023, to accommodate the collection of this additional information.

The Farm Employer Subcommittee was chaired by DACF Deputy Commissioner Nancy McBrady and consisted of those Committee members representing farm employers (Penelope Jordan of the Maine Farm Bureau, Jeannie Tapley of the Maine Potato Board, Eric Venturini of the Wild Blueberry Commission, Heath Miller of the Maine Dairy Industry Association, and Holli Francis of the Passamaquoddy Wild Blueberry Co). The Farmworker Subcommittee was chaired by DOL Director of Labor Standards Jason Moyer-Lee and included those Committee members with direct experience representing farmworkers (Mike Guare of Pine Tree Legal Assistance and Juana Rodriguez of Mano en Mano). The Subcommittees reported back their findings at the November 13th meeting. That meeting and the remaining two meetings were used to discuss the views of farm employers, farmworkers, and Committee members and to try to narrow down possible legislative options while reflecting as many of the members' top priorities as possible.

A key element of gathering agricultural community feedback was confidentiality. Subcommittee listening sessions were limited to members of the subcommittees and any support staff, the stakeholders, and/or the stakeholders' representatives. The information shared in these sessions was also confidential and/or anonymous, and key themes and messages were to be reported back to the full Committee and the public at a high level. At the listening sessions, the subcommittees were to:

- Provide a brief overview of the committee process to date and the charge of the Executive Order.
- Ask participants whether they support legislation making minimum wage applicable to agricultural workers and why.
- Request ideas or suggestions regarding how to apply (or not) minimum wage to agricultural workers.
- Request participants to share (if comfortable) if they pay or are paid the state minimum wage.

The Farm Employer Subcommittee held three in-person/virtual listening sessions in Machias, Presque Isle, and Augusta and received input from 31 farmers. Among the key messages summarized at the November 13, 2023, meeting was:<sup>23</sup>

- Farm employers are generally paying at least the minimum wage.
- Some farm employers, particularly in wild blueberries, requested that piece-rate wages be exempt from future state minimum wage legislation.
- Some farm employers requested an exemption in the future law to allow for a youth wage (e.g., to be able to pay minors less than the minimum wage).

---

<sup>22</sup> Appendix 17: *Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers: Subcommittees*, correspondence emailed to Committee Members October 17, 2023.

<sup>23</sup> Appendix 18: Agricultural Workers Minimum Wage Committee Farm Employer Subcommittee Summary ([Meeting Six Materials](#)).

- Some farm employers requested that any future minimum wage legislation be located outside of Subchapter 3 of Chapter 7 so that any future changes to Subchapter 3 would not automatically apply to farms and farmworkers.
  - Underpinning this request was the assertion that agriculture is highly variable and different from most other industries (e.g., weather-dependent, different crops and scales of farms, live animals, perishability, and other unique attributes).
- Although it was stressed that paid overtime was not a consideration in the EO, most farm employers still expressed concern about the risks of requiring farmers to pay overtime rates.
- Some farm employers questioned the need for legislation given that most farmers pay at or above the minimum wage, and some have high employee retention rates.
- Some farmers also commented that larger issues that impact the long-term sustainability of farms are at play. Farmers pay workers first and often pay them more than they pay themselves. Other support is necessary to enhance farm sustainability.

The Farmworker Subcommittee held several meetings, including six on-farm visits, to speak to the workers without the employer present. Additionally, several workers filled out a brief survey. In total, the Subcommittee received input from 80-90 farmworkers across different types of employment (H2-A, migrant worker, and local workers) and across different crops. The key messages from this input were:<sup>24</sup>

- Nearly all – but not all – of the farmworkers reported already earning at least the state minimum wage.
- Farmworkers overwhelmingly support a minimum wage law.
- Farmworkers largely thought the minimum wage for farmworkers should be higher than the minimum wage for other workers. This was to reflect the physically demanding nature of the job, the importance of agriculture to society, and the lack of other employment rights and benefits.

### *B. Committee Process of Reviewing Potential Options*

The Committee discussed the subcommittees' findings at the meeting on November 13, 2023, and members began making suggestions about possible legislation. During this facilitated discussion, six broad themes emerged:

- 1) Reproduce L.D. 398, i.e., remove the current exemption for farmworkers in Subchapter 3 (and reinsert an exemption for overtime pay), which would result in the minimum wage, recordkeeping requirements, limits on mandatory overtime, and requirements to offer rest breaks. The option included a potential consideration of a limited exemption to the limits on mandatory overtime in cases of emergency.
- 2) Penelope Jordan of the Maine Farm Bureau suggested creating an agricultural worker compensation law that would adapt to the nuances of different agricultural sectors. She also suggested bringing people together, with the aid of facilitation, to create rules or laws unique to agriculture.

---

<sup>24</sup> Appendix 19: Farmworker Subcommittee Report ([Meeting Six Materials](#)).

- 3) Matt Schlobohm of the Maine AFL-CIO, in part responding to idea #2 above, suggested sectoral bargaining, which would bring together farm employer, farmworker, and state representatives and could set a compensation floor with flexibility for different sectors of agriculture.
- 4) Eric Venturini of the Wild Blueberry Commission of Maine suggested that minimum wage entitlement for farmworkers be included in Subchapter 3 but in Section 664 (instead of removing the exemption in Section 663) and that exemptions be allowed for piece-rate and youth workers.
- 5) Jeannie Tapley of the Maine Potato Board suggested extending minimum wage to farmworkers in Title 26; however, this new statute should be located outside of Subchapter 3. She also suggested that the statute should not include entitlement to mandatory overtime limits or voluntary rest breaks.
- 6) Reflecting input gathered by the Farmworker Subcommittee, farmworkers should receive a higher minimum wage than other workers.

### *C. Committee Prioritization*

The six options discussed above, although mutually incompatible, collectively reflected the input gathered from farm employers, farmworkers, Committee members, and members of the public. The next step was to understand from Committee members which components were most important to them. The Co-Chairs' objective was to incorporate as many priority elements from all sides as possible while remaining consistent with the terms of the EO.

At the November 27, 2023, Committee meeting, Assistant Attorney General Anne Macri reviewed options 4 and 5, i.e., addressing minimum wage entitlement in new sections of law other than Subchapter 3. DOL Director of Labor Standards Jason Moyer-Lee also presented the outline of a proposal that sought to address options 2, 3, and 6: a Maine Farmworker Compensation Board. The legislative scheme of the Board was loosely modeled on the Maine Agriculture Bargaining Board. The Board proposal proved unpopular with Committee members.

The Committee then conducted a facilitated prioritization exercise. Facilitator Jo D. Saffair broke out the elements of the different proposals on a large piece of paper. Committee members were given three dots that they could assign to their top priorities for inclusion in future legislation. They could use the dots on three different elements or use more than one dot on the same element. The result of this exercise is reflected in the appendices.<sup>25</sup> The elements garnering the most interest were the location of the statute, a piece-rate exemption, and a youth wage. Including the statute within Subchapter 3 received four top priority dots. However, ensuring the statute did not reside within Subchapter 3 received six priority dots. The piece-rate exemption was a similar story; including an exemption from minimum wage requirements for piece work received three top priority dots. Ensuring there was no exemption received eight priority dots. The proposition of a separate (lower) youth wage commanded four top-priority dots in favor and six against.

The level of the minimum wage (equivalent to the minimum wage for other workers vs. a higher minimum wage for farmworkers) was not a top priority for any Committee member. Neither was the inclusion or exclusion of voluntary rest breaks. Meanwhile, recordkeeping requirements received one top priority dot

---

<sup>25</sup> Appendix 20: Minimum Wage Prioritization Exercise Photograph.

in favor, and the Maine Farmworker Compensation Board received one top priority dot against. Finally, the inclusion of a limit on mandatory overtime received three top priority dots in favor. Excluding the mandatory overtime limit was a top priority for no one.

Having established the universe of possibilities and viable suggestions, the Co-Chairs focused on the most important elements and solicited input from Committee members on which of these elements were top priorities for them. The aspiration to achieve consensus remained. The Co-Chairs informed the members that they would review the prioritization results and draft a few potential proposals for further consideration. They committed to sending the proposals in advance of the final Committee meeting. The final meeting would serve as an opportunity for members to provide their views on the draft proposals. The Co-Chairs would then consider these views before making their final recommendation to the Governor.

#### *D. Co-Chair Recommended Draft Options at the Final Meeting*

In advance of the final meeting, the Co-Chairs crafted five potential legislative options, set out in Table 1 below, and provided to the Committee via email on December 7, 2023.<sup>26</sup>

Option 1 consisted of reproducing L.D. 398. Having provided a longer and more in-depth analysis of L.D. 398's provisions through the Committee's work, reintroducing it remained a viable option.

Option 2 contained all the elements of L.D. 398 but located them in a newly created Subchapter 2-B. Locating the statute outside of Subchapter 3 was a common request from farm employers; it received more top-priority dots than any of the other employer positions. Setting out minimum wage obligations for agriculture in new Subchapter 2-B would buffer farm employers from future expansion of rights and obligations in Subchapter 3. Although future legislators could always amend the new Subchapter 2-B, they would have to do so with the specific intention of only affecting farm employers and farmworkers.

Option 3 also reflected the contents of L.D. 398 – either in Subchapter 3 or in the new Subchapter 2-B – but included a “cultural exemption” from the obligation to pay minimum wage for piece work. A piecework exemption was one of the most debated topics throughout the Committee process. A broad exemption was strongly opposed by multiple Committee members; they placed more top-priority dots opposing this than on any other element in the prioritization exercise of November 27, 2023. To seek consensus, Option 3 was proposed as a narrower option. It would apply only to tribal members working in the blueberry industry for companies owned or controlled by members of the Wabanaki Nations.

Option 4 was the same as Option 3 but included a youth rate. The desire of some employers for a sub-minimum wage rate for minors arose at the Committee and Farm Employer subcommittee levels and in some public comments. Farm employers are not unique in making this request. Employers in other sectors have also requested such an exemption. The arguments in favor are similar: inexperienced minors are less productive, but they can learn important life lessons and develop a work ethic, among other skills.

Although no youth minimum wage rate exists in Maine law, there is a slight nuance: “Members of the family of the employer who reside with and are dependent upon the employer” are exempted from

---

<sup>26</sup> Appendix 21: Agricultural Workers Minimum Wage Committee – DRAFT Recommendation Options ([Meeting Seven Materials](#)).



Subchapter 3, including minimum wage requirements. 26 M.R.S. § 663(3)(J). This would also apply to farmworkers if they were included in Subchapter 3.

Under current state law, minors under the age of 14 may be employed in agriculture (not in contact with hazardous machinery or hazardous substances). 26 M.R.S. § 771. With the exception of school lunch programs and parent-owned businesses, agriculture is the only sector in which children under the age of 14 are allowed to work. In attempting to thread the needle of not setting a precedent for a youth wage which other industries may then seek, while responding to the concerns of some farm employers, Option 4 proposed a youth wage for 12 and 13-year-olds only. To monitor its implementation, Option 4 also proposed a new requirement that these minors obtain work permits and work limited hours.

Option 5 sought to incorporate the principal feedback obtained from farmworkers: a minimum wage without exemptions and at a higher rate than other sectors. Option 5, therefore, is the same as Option 1 (or Option 2 if it were to be housed in a different subchapter), except with a higher wage rate.

At the Committee's final meeting on December 11, 2023, the members were asked to comment on which of the options they could accept (if any). Of the 13 Committee members present (excluding the Co-Chairs), eight stated they could live with at least one of the options in its present form. Several indicated they could live with more than one of the options, e.g., Shelley Megquier of Maine Farmland Trust indicated that she could live with Options 1 and 2, though her preference would be a modified Option 4. Similarly, Matt Schlobohm of the AFL-CIO said he could live with Options 2 or 5 but that his preference was Option 1.

Five Committee members representing agricultural interests (Penelope Jordan of the Maine Farm Bureau, Jeannie Tapley of the Maine Potato Board, Eric Venturini of the Wild Blueberry Commission, Heath Miller of the Maine Dairy Industry Association, and Holli Francis of the Passamaquoddy Wild Blueberry Company) stated they could not live with any of the options. Instead, they provided a letter putting forth a new Option 6, the key elements of which were:<sup>27</sup>

- Extend the state minimum wage to farmworkers via a statute located outside of Subchapter 3.
- Not extend the limit on mandatory overtime, the voluntary rest break provision, and recordkeeping requirements.
- Remove the requirement to pay minimum wage to a piece-rate worker if the worker "is employed as a hand harvest laborer" and working "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."
- Exempt all youth aged 16 or under from minimum wage.

According to these Committee members, Option 6 was the only viable option for them. However, Option 6 did not represent the universal view of farm employers, as noted by Committee member Heather Spalding of MOFGA. It was also not supported by all agriculturally related members of the Committee.

Given the Committee's three-month process of analysis, discussion, and prioritization, in forging their final recommendation, the Co-Chairs have attempted to craft a way forward that meets the mandate of the EO, addresses as many stakeholder concerns as possible, and does not undermine the careful balancing of interests currently reflected in Maine's employment laws.

---

<sup>27</sup> Appendix 22: Letter to Commissioner Fortman and Deputy Commissioner McBrady re Agricultural Workers Minimum Wage Committee Draft Recommendation Options, December 11, 2023.

## Section 6. FINAL RECOMMENDATION

This section sets forth the considerations and reasoning for the various elements of the proposed final recommendation. The Co-Chairs have concluded that while no one option commands consensus among the Committee members, the recommendation outlined in this report reflects at least some of the top priorities of all members and satisfies the EO mandate.

### *A. Recordkeeping*

Pursuant to Subchapter 3, Maine employers must keep true and accurate record of the hours worked by employees and the wages paid, retain the records for at least three years, and provide each employee with a statement of wages showing the pay period, hours, total earnings, and itemized deductions. 26 M.R.S. § 665(1). In many laws outside of Subchapter 3, farm employers are already required to keep records; however, paystubs are not required. 26 M.R.S. § 622.

As discussed earlier, recordkeeping was not a top priority for most Committee members during our prioritization process. However, Option 6 – in the letter from agricultural Committee members – sought to remove recordkeeping requirements from future legislation. **The Co-Chairs determined that recordkeeping needs to be included for two reasons.** First, it is the method of verifying compliance with the law. Second, most farm employers are already required to comply with some form of recordkeeping, so any additional administrative burden is likely minimal.

Recordkeeping is necessary to make the law operational. In instances where there is a dispute about compliance, records provide a valuable aid in resolving the dispute. The requirement to provide farmworkers with a paystub allows them to understand their pay calculation and verify that they have been paid minimum wage. Requiring a minimum wage without recordkeeping could increase administrative investigations or litigation.

Various federal laws also impose recordkeeping requirements on employers. The FLSA requires non-exempt farm employers to record an extensive amount of information, including employees' working hours, wages, date of payment, and any deductions from pay. Employers are not required to provide pay stubs to employees. 29 U.S.C. § 211(C) and 29 C.F.R. § 516.2. Like Subchapter 3, the FLSA requires payroll records to be preserved for three years. 29 C.F.R. § 516.5(a).

Under the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA), farm employers employing either migrant or seasonal agricultural workers must also record hours, wages, number of piecework units (if piecework is used), hours worked, total pay period earnings, deductions, net pay, and itemized statements. They must hold pay records for three years. 29 U.S.C. Ch. 20, 29 U.S.C. § 1821(d), and 29 U.S.C. § 1831(c).

Those employers employing H2-A workers must also comply with recordkeeping provisions, including tracking hours and pay, maintaining these records for three years, and providing pay statements containing information similar to the FLSA and MSAWPA above. 20 C.F.R. §§ 655.122(j), 655.167(c)(5), and 20 C.F.R. § 655.122(k).

In sum, recordkeeping is not a new requirement for Maine's farm employers; all of them are already subject to at least one of the abovementioned laws. However, the Subchapter 3 recordkeeping provision is important because it requires issuing pay statements to workers not covered by federal laws. Further,

MDOL cannot enforce federal recordkeeping requirements. **As a result, the recordkeeping provisions of Subchapter 3 should be extended to farm employers.**

### *B. Higher Minimum Wage*

As mentioned above, farmworkers' key message was that they largely supported a higher minimum wage. It is a suggestion that we do not dismiss lightly. Indeed, some of the farmworkers' reasoning has force; they are doing vital work, and the labor is often physically demanding. Further, many farm employers already pay a higher minimum wage if they employ H2-A workers. However, the Co-Chairs decline to recommend a higher minimum wage for farm workers for the following reasons.

First, it departs significantly from the mandate of the EO, which instructed the Committee to use L.D. 398 as a basis for discussion. The minimum wage proposed by L.D. 398 was the same as that in Subchapter 3. The Committee's role was principally to provide clarity and analysis of L.D. 398's implications, not to depart from it radically. Second, to the extent that modifications are recommended to L.D. 398 (as described below), those should be as close to a consensus position as possible. The proposition that the minimum wage should be higher for farmworkers received no support from farm employers. **For these reasons, the Co-Chairs recommend that the minimum wage level for farmworkers be identical to the minimum wage level in Subchapter 3.**

### *C. Youth Rate*

Throughout this process and this report, many farm employers voiced their desire and rationale for a youth wage. However, some also noted that employing youth was not of real interest to them. Even if there was a youth rate, the extra supervision required made the prospect unattractive. The proposition has commanded broad support from Maine's business community for essentially the same reasons. However, this administration's position has always been that a minimum wage should be a floor below which no worker falls. The Co-Chairs were also concerned about the extent to which a youth wage would depart from L.D. 398 and the EO's mandate. L.D. 398 made no provision for a youth wage. Although the EO merely referred to "a minimum wage for agricultural workers," Maine law has no minimum wage with a lower rate based on age.

One of the proposed recommendations provided to the Committee on December 11, 2023, for its consideration was Option 4, a youth wage provision limited solely to those under 14 in agriculture. However, Committee members did not endorse this, and feedback was that a higher age cap (~16) was preferred.

Ideally, there would be more evidence of the usefulness of a sub-14 youth wage before departing from this Administration's past practice of supporting a single minimum wage for all ages. **While a youth wage – for children under 14 – was considered, the Co-Chairs decline to recommend it.**

### *D. Mandatory Overtime*

Agriculture is labor intensive and can require significant bursts of prolonged activity, often associated with important events such as planting and harvesting, and can be complicated by weather, ground conditions, and pest pressure, among others. Given these challenges, there can be times when significant labor must be dedicated to tasks that could mean the difference between salvaging a season or a total crop loss. If a law were to limit farmworkers' mandatory overtime hours, some farm employers fear this may lead to situations where profound losses would be sustained.

Under current law, from which individuals employed in agriculture are exempt, “An employer may not require an employee to work more than 80 hours of overtime in any consecutive 2-week period.” 26 M.R.S. § 603(2). An employee who *chooses* to work more than 80 hours of overtime in a 2-week period may do so.

There appears to be general agreement across the agricultural sector that farmworkers seek, and farm employers generally offer, as many hours as workers can get. It seems unlikely that scenarios will arise very often where farm employers offer more hours to farmworkers, and farmworkers choose not to accept them. Hence, from DACF’s perspective, it is feasible to contemplate not applying this limitation to agriculture at all; whereas DOL **recommends that the 160-hour limit remains in law, with a limited exception, as described below.**

There may be rare occasions when unforeseen circumstances arise when the 160-hour limit could prove incredibly costly for farm employers. This does not mean that the risk of these circumstances should be borne solely by farmworkers. A balance is required. Current law already sets out a number of limited, narrow exemptions from the requirements of the mandatory overtime provision, including: “[w]ork performed in response to an emergency declared by the Governor . . .” and “[t]hose employees whose earnings are derived in whole or in part from sales commissions . . .” 26 M.R.S. § 603(3)(A), (C). Most of the exemptions listed in the statute are irrelevant to farm work. **Co-Chair Fortman, therefore, proposes the following exemption:**

This section does not apply to . . . An agricultural employee who works for an employer experiencing a severe and lasting disruption to its operations, including but not limited to extreme or persistent weather events, that prevent timely planting, harvest, or other comparable disruption. Notwithstanding this paragraph, a worker may not be required to work beyond the mandatory overtime limits for more than four consecutive weeks.

### ***E. Rest Breaks***

In considering whether to extend the existing statutory provision on rest breaks to farmworkers, it is important to consider the nature of agricultural work and how it may differ from other sectors. The ebb and flow of agricultural work can be driven by many variables, including those that can disrupt planned timeframes. One committee member raised a hypothetical situation where an equipment malfunction required unanticipated downtime for several hours and questioned whether a rest break would still be required after that long period of farmworker inactivity. They were worried the rest break requirement would cause further costly delays. However, in looking closely at the statute, Co-Chair Fortman believes it is flexible enough to accommodate agricultural work.

26 M.R.S. § 601 states:

In the absence of a ... written employer-employee agreement providing otherwise, an employee ... may be employed or permitted to work for no more than 6 consecutive hours at one time unless the employee is given the opportunity to take at least 30 consecutive minutes of rest time, except in cases of emergency .... This rest time may be used by the employee as unpaid mealtime, but only if the employee is completely relieved of duty.

There is also a small business exception for those who employ fewer than three employees, and the work allows frequent paid breaks of a shorter duration during the workday.

The statute does not require workers to take a break; they merely must be offered one and may take it if they choose. The voluntary rest breaks can be waived per a written agreement between the employer and employees. There is also no requirement that the worker take a break at the same time every day or that the worker be allowed to choose when they take their break. The rest breaks are voluntary, and the statute is flexible. The exemption for small businesses may be beneficial for small farms. DACF is aware that this is not an issue with strong consensus within the agriculture business community for either requiring or not requiring rest breaks, but that there is a universal understanding that rest breaks are an important element of decent working conditions for all workers. **DOL recommends that the rest breaks provision be included in proposed legislation.**

#### *F. Piece-rate*

Whether to provide for an exemption from the requirement to pay minimum wage for piece workers was one of the more difficult issues the Committee faced. Wild blueberry employers consistently and repeatedly requested a piece-rate exemption throughout this process. A key rationale for a piece-rate exemption concerned farmworkers, who some employers said were working for cultural rather than pecuniary reasons. Employers said that these workers spanned tribal traditions and young and older members of rural communities who help with the harvest and wild blueberry fresh pack line work. However, employer opinion regarding piecework was not entirely homogenous. Not all agricultural sectors utilize piece rates with their farmworkers. For instance, piece rate is not used in the potato or dairy industries.

The question presented is whether to extend the state minimum wage to piece-rate work, supplanting the current federal minimum wage as the floor. Under this model, the employer must ensure that when the total wages earned in the pay period are averaged over the number of hours worked, the worker is earning no less than the minimum wage. If they are not, the farm employer needs to increase the payment to reach the minimum wage. This would be the case if the minimum wage were to increase to the state minimum wage rate.

Extending minimum wage legislation to agricultural piece-rate employers would not impose new timekeeping requirements on them. As discussed above, various state and federal laws already require farm employers to record farmworkers' working hours and rates of pay.

In some cases, piece-rate farm employers would not have to pay workers at least \$14.15 per hour to comply with minimum wage law. The law allows for a credit for those employers providing board/lodging for the benefit of the employee. The credit is equivalent to the employer's reasonable cost, which includes the actual cost to the employer, any maintenance, and a rate of depreciation (in the case of lodging). For example, if a farmworker were provided with lodging, which worked out to a value of \$2 per hour, the worker would only need to clear \$12.15 per hour.

The Committee considered the possibility of an exemption for piece-rate workers, particularly Options 3 and 4, which would have provided a tribal cultural exemption. But these options were rejected by the Committee. Eric Venturini and Holli Frances jointly proposed a blanket exemption from minimum wage for

all piecework.<sup>28</sup> By the end of the Committee process, the piecework exemption put forth in Option 6 was somewhat narrower:

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.

This wording is narrower as it only applies to hand-harvest laborers and because it attempts to discourage an agricultural sector from converting to piece-rate merely to benefit from the exemption.

The FLSA contains two piecework-related exemptions. One of these exemptions is specifically for youth. However, the Co-Chairs do not recommend a youth wage and do not consider the FLSA youth piece-rate exemption further here.

The other FLSA exemption is of more interest for present purposes. 29 U.S.C. § 213(a)(6)(C) applies to:

any employee employed in agriculture ... (C) if such employee (i) 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, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year[.]

This wording is similar to the exemption proposed in Option 6, except that it is narrower for two reasons. First, it does not apply to migrant workers but to workers who commute daily from their homes. Second, a worker is only exempt if they worked fewer than 13 weeks the year before.

There is another reason for considering the FLSA proposals: proposing an exemption any wider than the FLSA exemptions would make Maine an outlier compared to other states with agricultural minimum wage laws, as noted previously.

In summary, piece rate was the primary topic that made Committee consensus impossible to achieve in the time available. For the large number of farmworkers already earning above minimum wage, making minimum wage mandatory will not currently affect them. However, piece-rate workers are a subset of Maine farmworkers who may earn below minimum wage. The objective of the EO was to develop a proposal that ensures a minimum wage for agricultural workers, and a piece-rate exemption doesn't accomplish that goal. **As a result, the Co-Chairs decline to recommend a piece rate exemption.**

### *G. Location of the Statute*

A core concern of many farm employer Committee representatives was the location of statutory provisions regarding minimum wage and farm workers. As previously discussed, the minimum wage and paid overtime provisions in Maine law are set out in Subchapter 3 of Chapter 7 of Title 26 of the Maine Revised Statutes. Although the provisions on rest breaks and limits on mandatory overtime depend on the definition of employee in Subchapter 3, they are set out elsewhere, in Subchapter 1-a of Chapter 7. The risk that concerns these farm employers is real: at some point, the legislature could amend Subchapter 3

---

<sup>28</sup> See Appendix 12.

with the intention of creating a new right for all workers – with a concomitant cost for all employers. The legislature may do this without explicitly considering the uniqueness of agriculture, its weather-dependent seasons, its perishable products and the welfare of its livestock, its importance to society, and its struggle to compete with more productive agricultural regions across the country with larger populations and different climates. If future employment legislation that has a major effect on agriculture is proposed, farm employers would prefer it to be specific and intentional. By placing the farmworker minimum wage statute in a separate, stand-alone subchapter for agriculture, any change to Subchapter 3 would not automatically affect farms. To extend the changes to farms, the legislature would have to make an intentional choice by also amending the farmworker minimum wage subchapter.

Establishing an agricultural minimum wage statute in a different subchapter does not prevent a future legislature from amending it. However, its separate location requires a legislature to carefully consider the issues and how any amendment would affect this vital sector. Any future amendments would have to be pursued intentionally and thoughtfully. As Co-Chairs, we believe this is fair, and as such, we recommend it. **The farmworker minimum wage statute should largely reproduce the contents of Subchapter 3 but in a new Subchapter 2-B, entitled Agricultural Employee Minimum Wage and Related Provisions.**

**Co-Chair Fortman further recommends that the rest break and mandatory overtime provisions of Subchapter 1-a be included in this new Subchapter 2-B.** Although it is more straightforward from a legislative drafting perspective to simply tweak Subchapter 1-a such that it no longer relies on the agricultural worker exemption in Subchapter 3, doing so would pose a similar danger. If, at some point, the legislature were to amend these provisions in Subchapter 1-a, it may do so without explicitly considering the potential ramifications for farms.

In line with the recommendations of this subchapter, no language changes to Subchapter 3 would occur.

#### *H. Summary of Recommendation*

The Co-Chairs jointly recommend:

- State minimum wage at the same level as other workers.
- Recordkeeping identical to other employers.
- Statute location in a new Title 26, Chapter 7, Subchapter 2-B.

DOL further recommends:

- Offer of rest breaks identical to other workers.
- Limits on mandatory overtime, with an agriculture-specific exemption in exceptional circumstances.

In addition, the Co-Chairs make two further recommendations.

First, we recommend that if the proposals becomes law, DOL design guidance materials specifically for the agricultural sector that set forth key elements of the law, explain how DOL will construe the law, and draw on the extensive record, hypotheticals, and scenarios of this committee process to make clear how this law applies to agriculture.

Second, we recommend continued investment and policy support of Maine’s agricultural community. Throughout this process, we have heard of the ongoing challenges facing Maine farms and threatening

their continued viability. Extreme weather events, climate change, rising feed, fertilizer, and other input costs, supply chain disruptions, inflation, interest rates, the increased cost of land, PFAS, and ongoing workforce challenges are just some of the strong headwinds our producers face. This is compounded by the fact that US consumers don't fully value – or pay for – the true cost of food, and in most instances, farmers must accept prices set by third parties and cannot set them for themselves (i.e., dairy, potato, wild blueberries).

## Section 7. CONCLUSION

This Committee's process commenced in early September 2023 with an aspiration to achieve consensus. Although Committee consensus was ultimately elusive, the Co-Chairs believe that a responsive compromise on most areas of proposed policy is attained with this recommendation. The recommendation incorporates critical elements from advocates, farmworkers, and farm employers. For farmworkers and advocates, the following recommendations reflect feedback on voluntary rest breaks, and limits on mandatory overtime (with agriculture-related exceptions). For farm employers, the entire statute will have its own subchapter to help insulate it from future amendment by default, and the limits on mandatory overtime may have an exemption that recognizes the uniqueness of agriculture. Also, these recommendations will not impose minimum wage changes on most farm employers (only 29% employ hired farm labor, according to the 2017 USDA Agricultural Census).

As Co-Chairs, we thank our fellow Committee members and facilitator Jo D. Saffair for a job well done, their commitment to this process, their constructive engagement over the past several months, and their sincere desire to do what is best for Maine's agricultural sector and all those who make a living from it.



## LIST OF APPENDICES

Appendix 1: EO 1 FY 23/24 (Meeting One Materials).

Appendix 2: Working Agreements (Meeting One Materials).

Appendix 3: Maine Agricultural Overview (September 2, 2023).

Appendix 4: 2017 USDA Census of Agriculture Maine State Profile (Meeting One Materials).

Appendix 5: Agricultural Worker Minimum Wage Committee Meeting 1 Data Requests - Information compiled and provided by the Maine Department of Labor (Meeting Three Materials).

Appendix 6: 2017 USDA Agricultural Census – various data tables (Meeting Three Materials).

Appendix 7, NASS Ag Labor Survey/Farm Labor Report Presentation, Pam Hird, New England State Statistician, October 16, 2023 (Meeting Five Materials).

Appendix 8: Maine Farmer Resource Network, 2021 Maine Farm Worker Compensation Survey.

Appendix 9: Piecework and the Maine Wild Blueberry Industry presentation (Meeting Five Materials).

Appendix 10: Maine Employment Law presentation by Director Scott Cotnoir, Maine DOL (Meeting Five Materials).

Appendix 11: Submitted Analysis by Mike Guare of Pine Tree Legal Assistance: Piece-Rate Exemptions from Minimum Wage Coverage for Farm Workers in the United States (Attached; see also Meeting Seven Materials).

Appendix 12: DOL Agricultural Worker Definitions presentation, September 25, 2023 (Meeting Two Materials).

Appendix 13: Maine Employment Law, DOL Bureau of Labor Standards Wage and Hour presentation by Director Scott Cotnoir (Meeting Three Materials).

Appendix 14: Eliminating the Exemption: Subchapter 3 Compliance presentation by AAG Anne Macri (Meeting Four Materials).

Appendix 15: Workers Compensation and Agriculture presentation by Executive Director John Rohde (Meeting Three Materials).

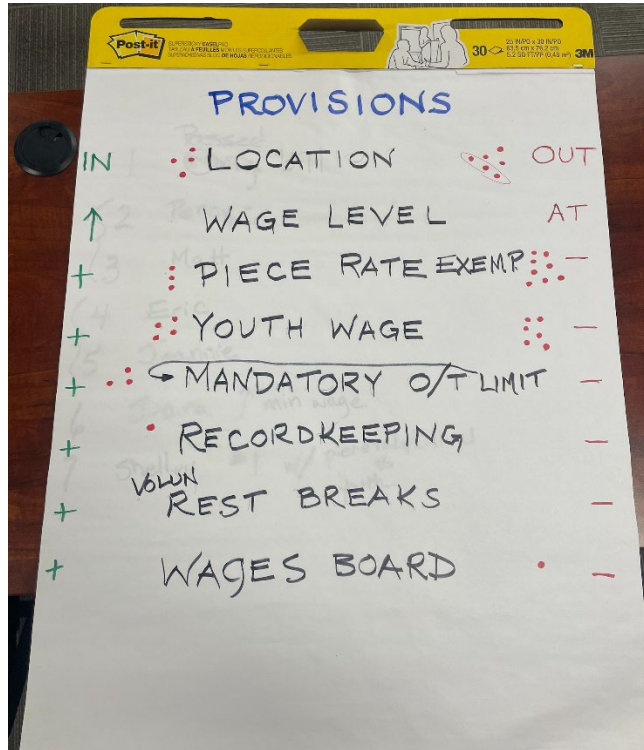
Appendix 16: Unemployment Coverage & Agricultural Workers presentation by Bureau Director Laura Boyett (Meeting Three Materials).

Appendix 17: *Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers: Subcommittees*, correspondence emailed to Committee Members October 17, 2023. (Correspondence)

Appendix 18: Agricultural Workers Minimum Wage Committee Farm Employer Subcommittee Summary (Meeting Six Materials).

Appendix 19: Farmworker Subcommittee Report (Meeting Six Materials).

Appendix 20: Minimum Wage Prioritization Exercise Photograph



Appendix 21: Agricultural Workers Minimum Wage Committee – DRAFT Recommendation Options (Meeting Seven Materials).

Appendix 22: Letter to Commissioner Fortman and Deputy Commissioner McBrady re Agricultural Workers Minimum Wage Committee Draft Recommendation Options, December 11, 2023 (Public Comments).

Appendix 1: Executive Order (next page)



Office of  
The Governor

No. 1 FY 23/24  
DATE July 23, 2023

**AN ORDER ESTABLISHING A COMMITTEE TO DEVELOP AND IMPLEMENT A  
MINIMUM WAGE BILL FOR AGRICULTURAL WORKERS**

**WHEREAS**, Maine's agriculture sector fuels our economy, contributing more than \$3.6 billion in economic impact, employing over 27,000 people, and supporting approximately 1.3 million acres of farmland; and

**WHEREAS**, Maine's agricultural workers, including farmers and farm workers, are the foundation for a vibrant food system that ensures the availability of high-quality farm products year-round; and

**WHEREAS**, all those who make their living in the agricultural sector deserve fair wages for their labor; and

**WHEREAS**, L.D. 398, *An Act To Make Agricultural Workers and Other Related Workers Employees Under Wage and Hour Laws*, was passed by the 131<sup>st</sup> Legislature; however, due to concerns about its potential scope, terminology, and potential unintended consequences, the bill was vetoed;

**WHEREAS**, legislation implementing a minimum wage bill for agricultural workers should be enacted with a clear understanding of the resulting impacts on State or Federal labor, employment, and other relevant laws;

**NOW, THEREFORE**, I, Janet T. Mills, Governor of the State of Maine, pursuant to Me. Const. Art V, Pt. 1, §§ 1 & 12, do hereby Order as follows:

**I. ESTABLISHMENT AND PURPOSE**

The Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers is hereby established. The purpose of the Committee is to develop legislation for introduction in the second session of the 131<sup>st</sup> Legislature that will implement a minimum wage for agricultural workers, identify

the impacts the bill will have through other laws interconnected with Federal and State wage and hour laws, and ensure the full range of impacts are thoroughly understood by both agricultural employers and their workers.

The Committee shall:

- A. Identify what State or Federal labor laws and regulations may apply to seasonal and full-time farm workers if deemed employees for the purpose of minimum wage payment, including but not limited to unemployment requirements, independent contractor status, recordkeeping, piecework compensation, overtime maximum limitations, wage calculation and housing, and other relevant employment-related criteria;
- B. Review terminology in State law and regulation related to agricultural labor and agricultural workers and its application, if any, related to minimum wage legislation;
- C. Identify other topical issues of concern related to minimum wage and agricultural employment that can be readily analyzed as necessary;
- D. Gather data, to the extent practicable, on wages and benefits currently paid to agricultural workers, including migrant workers; and
- E. Identify any guidance from the Department of Labor necessary to assist employers regarding a proposed minimum wage bill.

## **II. Membership**

The Co-Chairs of the Committee shall be the Commissioner of Department of Agriculture, Conservation and Forestry and the Commissioner of Department of Labor, or their designees. The Attorney General is requested to provide legal assistance to the Committee, within available resources. The following are invited to be on the Committee:

1. The Speaker of the House of Representatives or her designee;
2. The President of the Senate or his designee;
3. A representative of the Maine Farm Bureau;
4. A representative of the Maine Potato Board;
5. A representative of the Wild Blueberry Commission;
6. A representative of the Maine Dairy Industry;
7. A representative of the Maine Organic Farm Gardeners Association;
8. A representative of the Passamaquoddy Wild Blueberry Co.;
9. A representative of the Maine AFL-CIO;
10. A representative of the Pine Tree Legal Assistance Farm Worker Unit;
11. A representative of the Maine Center for Economic Policy;
12. A representative of an statewide organization dedicated to supporting farmworkers and immigrants Downeast; and
13. A representative of a statewide land trust dedicated to protecting farmland and supporting farmers.

### **III. Proceedings**

The Departments shall co-chair, set the agenda for, and schedule the Committee meetings. The Committee may conduct its work in part by using subcommittees to be established at the discretion of the co-chairs. The Committee shall meet as often as necessary to complete its duties. The Committee shall seek feedback from interested parties in a manner that accommodates time constraints and seasonal considerations affecting individuals' ability to participate.

To the extent practicable, all meetings shall be open to the public and held in locations determined to by the Committee, or will be held virtually, but the proceedings of the Committee are not otherwise "public proceedings" within the meaning of 1 M.R.S. § 402(2)(F). The Department of Agriculture, Conservation and Forestry and the Department of Labor shall staff the Committee as resources permit.

### **IV. Recommendations**


The Committee shall submit a summary of its assessment process, findings, and any corresponding recommendations to the Governor on or before December 1, 2023, after which the authority of this Executive Order shall dissolve.

### **V. Compensation**

Members of the Committee shall serve without compensation.

### **VI. Effective Date**

The Effective Date of this Order is July 25, 2023.

  
Janet T. Mills, Governor