

**Maine Legislature
Joint Committee on Labor and Housing
Testimony of Michael Guare on L.D. 1251, H.P. 0912,
“An Act to Make Agricultural Workers and Other Workers Employees under the Wage
and Hour Laws”
April 3, 2019**

Senator Bellows, Representative Sylvester and Members of the Committee:

My name is Michael Guare. I am very happy to be here today and I thank you for the opportunity. I am an attorney at Pine Tree Legal Assistance and for the past 20 years I have been working in our Farmworker Unit providing legal representation to farmworkers in Maine.

I would like to take this opportunity to provide the Committee with some background and statistical information in support of Representative Harnett’s testimony.

29 states (including Maine) and DC have a state minimum wage which is higher than the federal minimum wage, although a few are conditional: for example, Montana allows employers to pay a salary of \$635 a week in lieu of minimum wage and Minnesota also excludes certain salaried workers; Nevada allows payment of the federal minimum wage if the employer provides health insurance and Ohio, New York and Arizona only require payment of the state minimum wage if the employer’s annual gross or payroll is over a certain amount)

Of those 29 states, only 7 (one of which is Maine) completely exclude farmworkers from their state minimum wage – but in Maine, there is an exception to the general exclusion, that is, workers who are employed by an egg-processing facility with more than 300,000 laying birds are entitled to the state minimum wage – otherwise, farmworkers are not.

The other 6 states which completely exclude farmworkers are Alaska, Delaware, Michigan, Nebraska, Vermont and West Virginia.

The 22 states which have a minimum wage higher than the federal minimum wage and which cover farmworkers account for 56.5% of all farm cash receipts for all crops in the United States (USDA, Economic Research Service, Cash Receipts by State, Commodity Ranking and Share of U.S. Total, 2017) (the most recent year for which these statistics are available). In other words, farmworkers are protected by a state minimum wage, higher than the federal minimum wage, in over half of the agricultural crop industry in the United States.

In most of the 22 states which include farmworkers there are partial exclusions ranging from very minor to fairly substantial, which illustrates that there are a number of ways by which small farms or farm employers with specific needs can be exempted or partially exempted from minimum wage coverage; for example:

- California’s minimum wage statute calls for phased-in increases which began in 2017 and are to continue until the level of \$15.00 is reached for all farmworkers by 2023; however, any of those annual increases can be suspended by the governor if certain negative economic criteria are met

- several states apply all or some of the agricultural exemptions under the Fair Labor Standards Act (the most significant of those is the 500 man-day exemption, which exempts employers who did not utilize more than 500 man-days of agricultural labor in any quarter during the prior calendar year from paying the federal minimum wage; that translates very roughly to approximately 7 full-time employees)
- some states exclude farmworkers from state minimum wage protection if the employer falls below another specified threshold, such as a certain number of employees, a certain annual gross or a certain amount of payroll
- a few state allow an exclusion from minimum wage protection if the employer pays a salary or, in the case of Nevada, if the employer provides health insurance
- a few states exclude farmworkers in certain crops from minimum wage protection; for example, Hawaii excludes coffee harvesters and New Mexico excludes dairy workers

Most farm workers are covered by the federal minimum wage provisions of the Fair Labor Standards Act unless, as I mentioned, they work for employers who are small enough to trigger the 500 man-day exemption or one of the other handful of exemptions from the minimum wage requirement in the Fair Labor Standards Act. However, no farmworkers are covered by the overtime provisions of the Fair Labor Standards Act. Unless protected by a state law, farmworkers never get overtime pay, no matter how long and how hard they work.

Fewer states extend the protections of their overtime laws to farmworkers than extend their minimum wage laws to farmworkers. California, Hawaii, Maryland and Minnesota do. Those 4 states account for 25.6% of all farm cash receipts for crops in the United States, most of that in California.

How these states have extended overtime protection to farmworkers shows us how it can be done in a way that eliminates or minimizes the perceived economic hardship on employers that I suspect you will hear about from the opponents of this bill. For example, California is phasing-in overtime protection for farmworkers over a very long time: for larger employers the phase-in has begun but will not reach the 8-hours-a-day, 40-hours-a-week standard until 2022 and for smaller employers the phase-in will not even begin until 2022 and will not be complete until 2025. As with the increases in the minimum wage for farmworkers, any of the annual increases in overtime coverage can be suspended if certain negative economic criteria are met.

The other states' laws are in place, but have exclusions: in Minnesota, overtime is only required for hours in excess of 48 in a week and exempts sugar beet workers if their piece rate earnings average a certain amount which is not time-and-a-half but is higher than the state minimum wage. In Maryland, overtime is only required for all farmworkers after 60 hours in a week and between 40 and 60 hours a week, there are a number of exclusions. In Hawaii, there are a number of exclusions from any overtime protection and an employer can also, for each employee, choose any 20 weeks in a year for which overtime need not be paid until after 48 hours in a week.

In sum, Maine can enact minimum wage and overtime protections for farmworkers, as have many other states, and take responsible steps to mitigate any adverse effects of those benefits which there might be.

Thank you.

Michael Guare
Pine Tree Legal Assistance
Farmworker Unit
115 Main Street, Second Floor
Bangor, ME 04401
(207) 400-3283 (direct dial)
(207) 942-8323 (FAX)
mguare@ptla.org