

**Testimony of  
Peter M. Gore**

**On Behalf of the Maine State Chamber of Commerce**

**In Opposition to**

**LD 225, An Act Regarding the Treatment of Vacation Time upon the Cessation of Employment  
February 10, 2021**

Senator Rafferty, Representative Sylvester and members of the Joint Standing Committee on Labor and Housing, good morning, my name is Peter Gore. I am the Executive Vice President at the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses here to speak to you in opposition to **LD 225, An Act Regarding the Treatment of Vacation Time upon the Cessation of Employment**.

LD 225 appears to propose requiring Maine employers to pay all accrued but unused vacation upon termination of employment – regardless of the employer’s policy. To my knowledge, only 7 other states in the country mandate some version of this from their employers. We are opposed to Maine becoming the fifth.

Currently in Maine, employers can require a use it or lose it vacation policy. Section 626, in MRSA Title 26 makes it clear that Maine law does not create a right to paid vacation time unless the employer’s policies and practices provide for it. In Maine, an employer can offer *at their own discretion to their employees*, a combination of, or as a standalone benefit; vacation time, sick time, PTO time, and/or is *required* to offer Maine’s recently enacted Earned Paid Leave time, capped at 40 hours a year. Including the EPL – again, which is similarly required by DOL rule to be paid to the departing employee - the “cashing out” of the remaining benefits upon the cessation of employment is governed by the employer’s employment policies or any employment agreement. If an employer allows for it, then vacation time takes the status of wages earned and the employee is entitled to receive the unused time as remuneration. If the employment policy caps the amount of time that can be cashed out, or disallows for cashing out the benefit, then they may receive only a portion, or even none at all. This has been consistently upheld in the courts for more than 30 years, and most recently in the First Circuit Court of appeals in January of 2021.

The net effect of the passage of LD 225 could be higher, and perhaps significantly higher cost of doing business here in Maine, hitting our small businesses particularly hard, as they continue to struggle in this pandemic environment and its aftermath. As I indicated to you

earlier, employers are not required to offer vacation or sick time beyond the recently enacted EPL law. I can tell you that the additional costs associated with the EPL law, and the increases in the minimum wage have been reported to us as an organization as creating financial challenges for many small rural employers. If companies are required to cash out any extra vacation benefits they currently offer beyond ELP, then I can tell you they will simply stop providing those benefits.

Furthermore, there are absolutely no guardrails associated with this cash out provision. In other words, an employer could be required to cash out an employee discharged for misconduct, including theft, assault, or any other violation of workplace policy, even if their policies say otherwise.

Lastly, the bill creates a conflict between regular vacation/PTO pay and Maine's newest EPL law. Current DOL rules rely on this same section of Maine law when it comes to cashing out any unused, but accrued leave. In other words, if an employer's workplace policy or employment agreement allows the cashing out of unused vacation time, it also allows for the cash out of unused EPL time. However, if the employer's policy does not allow such a cash out, then the employer is required to keep the unused/accrued leave on their books for a year, in case the employee returns to their former employer. LD 225 would supersede this, requiring the employee who returns to their previous employer, to begin the accrual process all over again. Thus bringing needless confusion and uncertainty to Maine small business.

Maine small businesses are currently challenged as never before. Adding to that challenge by increasing the cost of doing business here by enacting an out of step employment policy will not assist them in meeting these challenges. Passage of LD 225 will add new and unplanned for costs for certain employers, and result in fewer, truncated leave benefits for certain employees. Vacation time is provided to workers so that they can take time off, to be with friends and family, for rest and relaxation so that they can return to the workplace refreshed and productive. It is not intended to be a resignation bonus. As such, we are strongly opposed to the passage of LD 225, and urge you to give it a unanimous ought not to pass report. Thank you for the opportunity to provide you with our concerns, I would be pleased to answer any questions you may have.