



TESTIMONY OF MEAGAN SWAY, ESQ.

Ought to Pass

LD 1703, An Act to Amend the Maine Equal Pay Law by Prohibiting Pay Discrimination Based on Race

JOINT STANDING COMMITTEE ON LABOR AND HOUSING

May 16, 2023

Senator Tipping, Representative Roeder and members of the Joint Standing Committee on Labor and Housing, greetings. My name is Meagan Sway, and I am Policy Director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we urge you to support LD 1703.

This bill makes a simple but important addition to the Maine Equal Pay Law: it prohibits unequal pay on the basis of race, just as unequal pay has long been prohibited on the basis of sex. As Maine Department of Labor Commissioner Laura Fortman noted earlier this year, when Governor Mills proclaimed March 14, 2023 National Equal Pay Day in Maine, “The difference between median earnings for men and women in Maine who worked full-time, year-round in 2021 was nearly \$10,000. And while women in general have had to work until half-way through March to earn what men already earned in 2022, the reality is even starker for women of color.”¹ Women in Maine who work full-time are paid 83 cents on the dollar compared to men—already a concerning statistic. But Black women in Maine are paid just 65 cents for every dollar paid to white men; Hispanic women are paid just 69 cents on the dollar; and Native American women are paid only 67 cents on the dollar.²

While Maine has long recognized the need to eradicate the gender pay gap, the Maine Equal Pay Law says nothing about the equally concerning race pay gap. As a recent report from the Maine Center for Economic Policy found, “People of color are paid less than white Mainers, even with the same education. Closing this wage gap would restore more than \$214 million in annual wages.”³ The race pay gap in Maine, like the gender pay gap, cannot be explained by individual factors like education or experience. And existing discrimination laws, which impose a heavy

¹Press Release, Mar. 14, 2023,

https://www.maine.gov/labor/news_events/article.shtml?id=10611090#:~:text=According%20to%20the%20United%20States,round%20in%202021%20was%20%249%2C991

² Status of Women in the States, a project of the Institute for Women’s Policy Research, March 2018 Fact Sheet, <https://statusofwomensdata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-maine.pdf>

³ <https://www.mecep.org/wp-content/uploads/2020/11/State-of-Working-Maine-2020.pdf>, a p.14.

burden on the employee to prove discriminatory intent, have proven insufficient to close the race-based wage gap.⁴

Unequal pay on the basis of race has devastating consequences for working Mainers and their families. Mainers of color are twice as likely to experience food insecurity as compared to white Mainers; they are much more likely to have trouble paying for health care; and poorer children are more likely to struggle in school.⁵ Income disparities for Mainers of color fall particularly harshly on Black immigrant communities.

With this bill, Maine has the opportunity to prioritize fair pay for working people of color. In recent years, the fight for equal pay has shifted to the state level—over a dozen states, including Maine, have recently enacted or strengthened state equal pay laws.⁶ And several states have recently amended their laws just as these bill would: to prohibit race-based wage differences, in addition to sex-based differentials.⁷

Maine was a trailblazer when it enacted the Maine Equal Pay Law in 1949 – 14 years before the federal Equal Pay Act was passed. And Maine has continued to revisit and strengthen its Equal Pay law in recent years. We urge you to continue that trend by making this simple, but critical, addition to the law’s protections, and urge that you vote *ought to pass*.

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⁴ Proving discriminatory intent is particularly challenging in pay discrimination cases, because workers generally have very limited information about employers’ compensation decisions.

⁵ *Id.* at p. 15.

⁶ Nat’l Women’s L. Ctr, *Progress in the States for Equal Pay*, (Sept. 20, 2022), <https://nwlc.org/resource/progress-in-the-states-for-equal-pay/>; Orly Lobel, *Knowledge Pays: Reversing Information Flows and the Future of Pay Equity*, 120 COLUM. L. REV. 547, 567 (2020).

⁷ *See, e.g.*, Alabama Equal Pay Act, 2019 Ala. Laws 519 (HB 223); California Equal Pay Act, Labor Code 1197.5 & 432.2; Hawaii Equal Pay Act, Haw. Rev. State 387-1; Ohio Equal Pay law, Ohio Rev. Code. Ann 4111.17; *see generally* <https://www.law.uci.edu/centers/pay-equity-project/images/50-state-law-chart.pdf>.