

Agricultural Workers Minimum Wage Committee Meeting
September 25, 2023, 1:00 – 3:30 p.m.
DMR Marquardt Building, Room 118, 32 Blossom Lane, Augusta

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

Committee Web Page: <https://www.maine.gov/labor/mwaw/>

Desired Outcomes - By the end of this meeting, we will have:

- Reminded ourselves of the Working Agreements guiding the Committee’s work
- Grounded all Committee discussion on direct relevance to the Governor’s Executive Order
- Learned from and discussed presentations on existing employment laws applicable to agricultural employers
- Provided an opportunity for public input

What	When
Opening Remarks – McBrady, Fortman Review of Working Agreements and Agenda Review - Saffair	1:00 - 1:10
Presentations: Existing Maine Employment Laws that Cover Agricultural Employers	
Wage and Hour Scott Cotnoir, Director, Wage and Hour Division Anne Macri, Deputy Attorney General	1:10 – 2:10
Workers Compensation John Rohde, Executive Director, Maine Worker’s Compensation Board	2:10 – 2:25
Unemployment Insurance Laura Boyett, Unemployment Compensation Bureau Director	2:25 – 2:40

Break	2:40 – 2:50
Questions and Discussion	2:50 – 3:15
Public Input	3:15 – 3:25
Concluding Remarks – McBrady, Fortman Next steps; next meeting; meeting feedback - Saffeir	3:25 – 3:30

Agricultural Workers Minimum Wage Committee Membership

Committee Co-Chairs

- Commissioner Laura Fortman, Maine Department of Labor
- Deputy Commissioner Nancy McBrady, Maine Department of Agriculture, Conservation and Forestry

Committee Membership

1. The Speaker of the House of Representatives or her designee
 - Speaker Talbot Ross
 - Thom Harnett (alternate)
2. The President of the Senate or his designee
 - Senate President Jackson
 - Sen. Tipping (alternate)
3. A representative of the Maine Farm Bureau
 - Julie Ann Smith
4. A representative of the Maine Potato Board
 - Jeannie Tapley
5. A representative of the Wild Blueberry Commission
 - Eric Venturini
6. A representative of the Maine Dairy Industry
 - Heath Miller
7. A representative of the Maine Organic Farmers and Gardeners Association
 - Heather Spalding
8. A representative of the Passamaquoddy Wild Blueberry Co.
 - Darren Paul
 - J.D. Newell (alternate)
 - Holli Francis (alternate)
9. A representative of the Maine AFL-CIO
 - Matt Schlobohm
10. A representative of the Pine Tree Legal Assistance Farm Worker Unit
 - Mike Guare
11. A representative of the Maine Center for Economic Policy
 - Arthur Phillips
12. A representative of a statewide organization dedicated to supporting farmworkers and immigrants Downeast
 - Juana Rodriguez, Mano en Mano
 - Sean Douglas, Mano en Mano (alternate)
13. A representative of a statewide land trust dedicated to protecting farmland and supporting farmers
 - Shelley Megquier, Maine Farmland Trust

Agricultural Workers Minimum Wage Committee

Working Agreements

The *Committee to Develop and Implement a Minimum Wage Bill for Agricultural Workers* established by Executive Order 1 23/24 is an advisory committee. Discussions and deliberations will be conducted in accordance with the Working Agreements determined by the co-Chairs in consultation with the members of the Committee. In accordance with those Working Agreements, Committee members will strive to achieve a common understanding of the subjects and outcomes of the Committee's work, including the resulting final summary of its assessment process, findings, and any corresponding recommendations to the Governor. 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.

- Meetings will start and end on time.
- When meetings are held in person, Committee members will make every effort to attend in person to maximize learning, communication, and collaboration.
- Cameras will remain on during virtual meetings to facilitate communication and understanding.
- Meeting materials will be shared in advance of meetings with sufficient time for review.
- Come prepared, having read meeting materials and completed assignments.
- Be present and engaged.
- Strive for equal airtime, enabling all to participate fully.
- Listen with curiosity and an openness to learning and understanding.
- Adopt a creative problem-solving orientation.
- Name the tension, kindly.
- Humor is welcome.



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 131st 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 131st 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

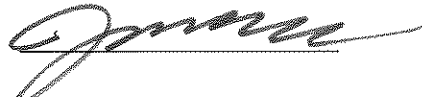
The Committee shall submit a summary of its assessment process, findings, and any corresponding recommendations to the Governor on or before December 1, 2023, after which the authority of this Executive Order shall dissolve.

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

Agricultural Worker Definitions

H2-A WORKERS

MIGRANT AND SEASONAL AGRICULTURAL WORKERS

MAINE RESIDENT AGRICULTURAL WORKERS



Why Start Here?

- Foundational to subject matter of this Committee
- Future topics will address whether and how different types of ag workers are impacted
- Important to use terms accurately and consistently

H2-A Worker

Any temporary foreign worker who is lawfully present in the United States and authorized by DHS to perform **agricultural labor or services** of a **temporary or seasonal nature** pursuant to [federal immigration law].

29 CFR 501.3(a)

H2-A – Agricultural Labor means all services provided ...

ON A FARM TYPES OF SERVICES

- Stock
 - Dairy
 - Poultry
 - Fruit
 - Fur-bearing animals
 - Truck farms
 - Plantations
 - Ranches
 - Nurseries
 - Ranges
 - Greenhouses and similar structures
 - Orchards
- Cultivation of soil
 - Raising or harvesting any agricultural or horticultural commodity, including livestock, bees, poultry and fur-bearing animals and wildlife
 - Operations, management, conservation or improvement
 - Of a farm
 - Of farm equipment and tools
 - Production or harvesting of any agricultural commodity, as well as processing or delivering an agricultural or horticultural commodity to market, storage or a carrier (limited to commodities that the farm operator has produced at least 50% of)
 - **Does not include commercial canning or freezing**

H2-A – Temporary or Seasonal Nature

Seasonal Nature: tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.

Temporary Nature: where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

Migrant and Seasonal Agricultural Workers

- Migrant or Seasonal Agricultural Worker - an individual who is employed in **agricultural employment** of a **seasonal or other temporary nature**, and
 - Migrant – required to be absent overnight from his permanent place of residence.
 - Seasonal Agricultural Worker - not required to be absent overnight from his permanent place of residence:
 - Some additional criteria for seasonal workers on the type of work that qualifies
- Certain workers do not qualify:
 - immediate family member of an agricultural employer or a farm labor contractor
 - H2-A workers or workers on other employer-sponsored visas

29 CFR 500.20(p) & (r)

MSAW – Agricultural Employment

Relies on FLSA and IRS definitions, in addition to “the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.”

- IRS definition – very similar to H2-A

29 CFR 500.20(e)

FLSA definition of agriculture

- “Farming in all its branches” including
- cultivation and tillage of the soil
- Dairying
- the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities
- the raising of livestock, bees, fur-bearing animals, or poultry
- any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

MSAW – Seasonal or Other Temporary Basis

Seasonal Basis – where the employment is ordinarily “performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year. “

Temporary Basis – where the worker is employed “for a limited time only or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.”

Seasonal/Temporary **do not** include the employment of foremen or supervisors if they are effectively year-round workers. It also does not apply to workers who are effectively year-round workers if they are living at their permanent place of residence and are not primarily employed to do field work.

H2-A versus MSAW – what's the difference?

H2-A – significant process and requirements in advance of hiring the worker, as well as obligations that apply on hiring and during employment

MSAW – no process required in advance of hiring the worker, but obligations that apply on hiring and during employment

Maine Resident Agricultural Workers

The “agricultural labor” definition under 26 MRS 1043(1) is nearly identical to the H2-A definition, with minor differences.

Section 663(3)(A) exempts “Any individual employed in agriculture” as defined in 1043(1) from all of Subchapter 3, Minimum Wages. Individuals employed in fishing and seafood processing are also exempted from Subchapter 3 under 663(3)(G)*.

*This is not anticipated to change as a result of any proposed legislation.

Additional Questions:

Contact Melissa Harvey, Director of Job Services
Migrant Seasonal Farmworker Program
Foreign Labor Program (H2-A, H2-B)
Melissa.Harvey@maine.gov

Addition Resources :

<https://www.dol.gov/agencies/whd/agriculture>

<https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>

<https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system>