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# ANNUAL REPORT ON WAGE AND HOUR COMPLAINTS AND VIOLATIONS IN 2023

Maine Department of Labor, Bureau of Labor Standards

Wage and Hour Division

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## 1. Introduction

The Bureau of Labor Standards presents this report to the Legislature in compliance with 26 M.R.S. § 673. The report provides information on the extent of wage and hour complaints and violations. This is the seventh such annual report the Bureau has submitted.

While most employers comply with labor law, we wish to make a few general points on why labor law enforcement is important. Permitting employment law to be violated with no consequence can be devastating for the workers who are deprived of their rights. While throughout this report we discuss violations in terms of statistics and measures of compliance, for the worker it may mean the inability to pay their rent because they were not paid in full, it could mean a child becomes permanently injured because they were working in a hazardous job, and it could mean a woman suffers the demeaning indignities of doing the same work as her male colleagues but receiving less pay for it. The human impact of these frequent occurrences must not be taken lightly. Whether these violations occur inadvertently or intentionally, they negatively impact the worker, are unlawful, and must be stopped.

At the same time, when violations occur, law-abiding employers can come under extreme competitive pressures. If a law-abiding employer cannot compete with illegality, it creates enormous pressure to disobey the law, especially when the costs of so doing are effectively nonexistent. Lindsay Bourgoine, the Director of Policy and Government Affairs for ReVision Energy – a company with over 480 employees in New England – recently testified to this effect before the Labor and Housing Committee:

As a worker-focused company, we have long recognized that the creation of employment laws and rules for businesses can often put good actors at a disadvantage if there is not accountability for those who do not adhere to those regulations. For that reason, we have advocated for a focus on ensuring the resources necessary for effective enforcement. Therefore, we support legislation that streamlines resolution for affected parties, as it promotes stronger accountability for offending parties and ultimately levels the playing field.<sup>1</sup>

Nate Cloutier, on behalf of HospitalityMaine, put the point more succinctly: “Should the Department pursue bad actors? Absolutely. Because, as the Department said, it harms law abiding employers and workers alike.”<sup>2</sup>

The Bureau presumes that most employers will attempt to comply with the law. We do not operate under a presumption that employers are bad actors unless it is based on evidence. Being strategic and evidence-based

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<sup>1</sup> Bourgoine, L. (2024). *Testimony on LD 372, An Act to Increase Enforcement and Accountability for Wage and Hour Violations and LD 2184, Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards*. February 6.

<sup>2</sup> Cloutier, N. (2024). *Testimony of Nate Cloutier, Before the Joint Standing Committee on Labor and Housing, February 6, 2024, In Opposition to LD 372, “An Act to Increase Enforcement and Accountability for Wage and Hour Violations”*. There are also often secondary effects of employment law violations, on poverty and the state more generally. As Professor Daniel J. Galvin has written:

A lower incidence of minimum wage noncompliance has also been shown to be associated with lower rates of poverty, less reliance on social programs (like food stamps), higher state tax revenues, and a more level playing field for law-abiding employers in competitive industries.

Galvin, D. (2024). *Testimony in Support of LD 372*.

in our investigations reduces the likelihood that compliant employers will spend time and effort responding to our investigations.

This year's report follows a different format from previous years. As will be seen below, we focus more on the extent to which we are achieving economy-wide compliance with labor laws, and do not focus exclusively on how well we address the investigations we undertake. If our effectiveness is viewed through the prism of how well we address individual complaints, then although there is room for improvement (more on which below) we are making a big difference in individual workers' lives. We are recovering wages for workers which would most likely go unpaid, and we are helping employers learn how to improve their compliance efforts. Our staff's professionalism and experience shows in their results. At the same time, statute requires us to strive for economy-wide compliance. We have been shifting our focus increasingly in this direction as we recover from the pandemic years. And when one looks at the extent to which we can achieve economy-wide compliance with employment laws, we – like many enforcement agencies – still have much work to do, both in terms of improving our use of existing tools as well as in terms of seeking new tools. This year's report sets this out in greater detail.

The report is structured as follows: in Section 2 we will set out the broader context of labor law violations and enforcement in Maine. Section 3 provides annual aggregate data on wage and hour violations, Section 4 provides data for 2023 at a higher level of granularity, and Section 5 will conclude.

## 2. Violations and Enforcement Context

The Bureau's core enforcement mandate is set out at 26 M.R.S. § 42, which (materially) states:

The Director [of Labor Standards] shall cause to be enforced all laws regulating the employment of minors; ...all laws regulating the payment of wages; and all laws enacted for the protection of the working classes.

With the tools currently at our disposal, we cannot effectively "cause to be enforced all laws". Most employers will comply with employment laws. This may be for a variety of reasons, for example, a desire to do the right thing, to treat employees fairly, to avoid litigation, or to avoid the reputational consequences of breaking the law, among others. Other employers will not comply with employment laws, and the Bureau is tasked with addressing this issue.

In a 2018 article in the *Journal of Industrial Relations*, Professor David Weil, the former Administrator of the Wage and Hour Division of the US Department of Labor, set out some of the key elements of "strategic enforcement", which he defined as: "[using] the limited enforcement resources available to a regulatory agency to protect workers as proscribed by laws by changing employer behavior in a sustainable way."<sup>3</sup>

These elements include, among other things, proactively investigating rather than just responding to complaints, setting priorities for which industries to focus on, using all the enforcement tools at the disposal of the agency, conducting effective outreach to employers (including by communicating effectively how the agency would interpret its statutes), conducting effective outreach to workers, communicating strategically, and

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<sup>3</sup> Weil, D. (2018). "Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change." *Journal of Industrial Relations*, 0(0) 1-24. Citation at p1.

providing adequate internal training. For the last several years, the Bureau of Labor Standards has been moving towards strategic enforcement. The pandemic greatly complicated these efforts, but – as will be discussed below – our efforts in this area have recently accelerated. Although strategic enforcement is not the topic of this report – the topic is complaints, investigations, and violations – in order to put the data in this report in its broader context, we do touch on some core key concepts, in particular the use of enforcement tools. In the coming months we aim to communicate other aspects of our developing strategic enforcement approach.

One key component of effective enforcement is employers knowing the law. We have thus in the past expended significant resources on outreach and education. For example, the Wage and Hour Division provided 34 public classes in 2022 and 30 in 2023. There were hundreds of attendees each year. Additionally in 2023, Labor Standards inspectors staffed booths and answered questions at summits with thousands of attendees. Sometimes the management and supervisors of an employer are required to attend compliance classes as part of a settlement agreement. Further, we offered another five ad-hoc classes in 2022 and 14 in 2023 with 91 attendees in 2022 and another 206 in 2023. The ad-hoc classes are typically organized by advocacy groups for underserved populations such as New Americans and migrant and seasonal farmworkers. We have also spent much time responding to individual inquiries about wage and hour issues and how we enforce the law. Of the 11,327 calls and emails the Maine Department of Labor’s Customer Service Unit received in 2023, Wage and Hour Inspectors screened 6,019 calls and 915 emails for 6,934 total queries.

Another element of strategic enforcement is understanding where violations are occurring and focusing our enforcement efforts accordingly. Undertaking investigations only in response to complaints is not strategic. To the contrary, it is ineffective and not a good use of resources, because the workers who are willing and able to file complaints are often not representative of the workers whose rights are most often violated. In response to one study demonstrating this phenomenon, Professor Daniel J. Galvin noted:

This discrepancy suggests that other factors—fear of retaliation, deportation, or job loss; insufficient knowledge of one’s rights; lack of union representation; and other considerations—likely influence the decision to complain at least as much as the violation itself. Whatever the reason, it is clear that the complaint process is riddled with false negatives.<sup>4</sup>

Professor David Weil, the former Administrator of the Wage and Hour Division of the US Department of Labor – who speaks with several years of both practical and academic experience on the topic – made a similar point:

The problem is that workers, particularly those who are vulnerable and more likely to be subjected to violations of the law, are unaware or more commonly reluctant to exercise those rights because of fear of reprisal or, in worst-case scenarios, dismissal. In the case of the WHD, it takes an average of 130 violations of overtime provisions to elicit a single worker complaint[.]<sup>5</sup>

The “worst-case scenarios” were not unusual; as Professor Weil went on to point out: “In a study of low-wage workers in three major US cities, in 2008, 43% of workers who had actually complained about a workplace issue in the previous 12 months reported some form of employer or supervisor retaliation.”<sup>6</sup>

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<sup>4</sup> Galvin, D.J. (2016). ‘Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance’. *Perspectives on Politics*, Vol. 14, No. 2. Citation at p327.

<sup>5</sup> Weil, D. (2018). “Creating a strategic enforcement approach to address wage theft: One academic’s journey in organizational change.” *Journal of Industrial Relations*, 0(0) 1-24. Citation at p8. Internal reference removed.

<sup>6</sup> Weil, D. (2018). “Creating a strategic enforcement approach to address wage theft: One academic’s journey in organizational change.” *Journal of Industrial Relations*, 0(0) 1-24. Citation at p9. References omitted.

Indeed, an employment lawyer with several years' experience representing low-paid workers in Maine recently shared an example of a case where workers were intimidated out of acting on the violations they suffered:

I recently had to close out a case involving other workers who were very seriously mistreated and underpaid - in one worker's case, the only pay received was being housed in a place that had, among many other problems, no running water or electricity. The reason I had to close this case was that the workers were so frightened by the many threats - both verbal and physical, once with a forklift - which the employer had made during the course of employment that they feared actual violent retaliation by the employer if they made any complaints. One of them even decided not to pursue a workers' comp claim for fear of the employer.<sup>7</sup>

Similarly, KT Trenbeath, who has spent nearly 10 years working in the restaurant industry, recently testified to the extent of unreported violations there:

As a labor organizer, I've also heard innumerable stories about workplace violations in the restaurant industry: harassment, grossly unsafe working conditions, a comfortability with wage theft so pervasive that folks have reported their bosses openly admitting to them that they steal tips from employees they don't like because they know they'll face no repercussions. Nearly all of these violations go unreported, primarily due to fear of retaliation. We all know people, both personally and from stories told, who started getting harassed, had their shifts cut, or were fired altogether because they spoke out against the management or owner of the place they were working. It's also understood that even if one of us were to reach out to the Department of Labor or Better Business Bureau, the likelihood of any actionable change being accomplished is very low.<sup>8</sup>

These are the sorts of workers who get left behind when we rely on workers' willingness and ability to file a complaint before we enforce the law.

Over the last several years, the Bureau has been attempting to shift away from a mostly complaint-based model of enforcement toward a more strategic and proactive model. The COVID-19 pandemic made this nearly impossible, but our 2021 report stated we would be using new resources "with greater strategic purpose" by, among other things, "targeting our inspections more effectively" and "pursuing egregious violators more forcefully."<sup>9</sup> Our 2022 report used similar language. The 2022 report also pointed out that while "larger, more complex and more time-consuming" investigations in cases concerning more vulnerable workers was bearing results, the report also stated that "we must continue to learn from the data and use it to guide our future efforts."<sup>10</sup>

Over the last several months, we have dug into the evidence a bit more – both from our internal data as well as academic literature and external sources – and the picture is unsettling. We have adopted a formal triage system

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<sup>7</sup> Guare, M. (2024). *Testimony of Michael Guare, Pine Tree Legal Assistance, In Support of L.D. 2184: "Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards"*.

<sup>8</sup> Trenbeath, KT. (2024). *Testimony re: LD 273 and LD 2184*.

<sup>9</sup> Maine Department of Labor. (2022). *Annual Report on Wage and Hour Complaints and Violations in 2021*. February. Citation at p1.

<sup>10</sup> Maine Department of Labor. (2023). *Annual Report on Wage and Hour Complaints and Violations in 2022*. February. Citations at pp1-2.

for incoming complaints, through which we expand some complaint investigations to include an entire workplace where we have reason to believe there will be multiple violations, we prioritize some complaints – such as some allegations of child labor or missing wages for low-paid workers – for quicker action, and some complaints we do not take forward at all, for instance higher-paid workers who can rely on a private right of action instead. And yet, we are barely scratching the surface. There are entire industries, or subsectors of industries, where experience tells us compliance is the exception. There are workplaces where experience tells us an investigation would likely produce multiple violations, but we do not take it forward because we are caught up investigating other workplaces which will likely produce even more violations.

It is also crucial to look beyond anecdotal evidence and our own institutional experience; these are both biased toward complaint-dependent data. Generating reliable estimates of violations where no one has complained can be challenging. Moving forward the Bureau will be developing a methodology for this purpose and conducting annual assessments to determine which violations are occurring and where. Some studies, in particular at the national level, have already been conducted to assess the level of minimum wage noncompliance. These studies – as well as the US Department of Labor<sup>11</sup> - have often relied on the federal government's Current Population Survey's Merged Outgoing Rotation Groups (CPS MORG) data to compare worker reported wage payments to applicable minimum wage levels.<sup>12</sup> The picture these analyses produce is shocking. As one analysis of the data for 2013 stated:

[A]n estimated 16.9 percent of low-wage workers experienced a minimum wage violation in 2013. Those workers worked on average 32 hours per week and earned an average hourly wage of \$5.92. Had they earned their state's minimum wage, they would have earned, on average, an hourly wage of \$7.68, which means they lost 23 percent of their income (\$1.76 per hour). While an estimated income loss of 23 percent may seem high, it is actually toward the lower end of other published estimates.<sup>13</sup>

Another study, using the same data source for the ten most populous states for the years 2013-2015, found that around 17% of low-paid workers were being paid less than their entitlement to minimum wage, averaging around \$3,300 per year per worker.<sup>14</sup> <sup>15</sup> And in Maine, one analysis – using the same data source – estimated wage theft of around \$30 million from minimum wage workers in 2017.<sup>16</sup> By contrast, in that same year, we

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<sup>11</sup> See: Weil, D. (2018). "Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change." *Journal of Industrial Relations*, 0(0) 1-24.

<sup>12</sup> For a discussion of this data set, see: Galvin, D.J. (2016). 'Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance'. *Perspectives on Politics*, Vol. 14, No. 2. At pp330-331.

<sup>13</sup> Galvin, D.J. (2016). 'Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance'. *Perspectives on Politics*, Vol. 14, No. 2. At p331.

<sup>14</sup> Cooper, D. & Kroeger, T. (2017). *Employers steal billions from workers' paychecks each year*. Economic Policy Institute. May 10. [Employers steal billions from workers' paychecks each year: Survey data show millions of workers are paid less than the minimum wage, at significant cost to taxpayers and state economies | Economic Policy Institute \(epi.org\)](https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/).

<sup>15</sup> For a discussion of some of these studies, see: Hallett, N. (2018). 'The Problem of Wage Theft'. *Yale Law & Policy Review*, 37: 93, at pp98-102.

<sup>16</sup> Myall, J. (2021). *Wage theft costs workers millions. This bill would help workers get what they're owed*. MECEP. March 17.



identified 36 instances of minimum wage violations,<sup>17</sup> and were able to recover only \$8,329 owed to workers.<sup>18</sup> On these numbers, we recovered less than 0.028% of minimum wages owed to workers in 2017.

To be clear, we do not suggest that most employers are breaking the law. Far from it. What we do say, based on anecdotal evidence, institutional experience, academic studies, and publicly available governmental wage data, is that far more labor law violations are occurring than we are able to enforce. In other words, there are far more workers who need protection than we are able to protect. This reinforces our need to deploy our existing tools as effectively as possible and to seek the new tools we need.

The third key component of effective enforcement that we emphasize here is the deterrent effect: it must be costly to break the law. When an employer assesses the enforcement risks associated with violating employment laws, there are two key considerations: 1) the (perceived) likelihood of an enforcement action against them; and 2) the financial consequences if an enforcement action is taken.<sup>19</sup> Terri Gerstein, Director of the NYU Wagner Labor Initiative, and a national expert on state and local labor law enforcement – recently summarized some of the scholarship on this point:

Noncompliance with workplace laws has been described as a “rational” profit-maximizing decision made by unethical employers in response to low enforcement rates and deficient penalties. Scholars who have analyzed employer costs and benefits of noncompliance find that such “employers will not comply with the law if the expected penalties are small either because it is easy to escape detection or because assessed penalties are small.” A broader way of understanding this calculus is that labor law compliance is a product of the likelihood of detection and the seriousness/severity of consequences if detected.<sup>20</sup>

On both of these measures, our deterrent effect has been non-existent in past years. Let’s start with the likelihood of inspection. In the past we have used the term “inspection” loosely; it encompassed anything from an outreach visit to an employer where we offered to answer any questions and checked to see if they had the correct posters displayed, to a phone call to an employer to check that they had paid an individual worker correctly, to a full employer audit, examining their pay records, interviewing workers, and searching for other violations. In the past, complaint-based inspections have tended to be more thorough whereas what we have termed “random” or “directed” inspections tended more towards informal outreach. This is not a strict rule; some complaint-based inspections involved no site visit or examination of records, and some directed inspections were more comprehensive. And this trend has started to shift. But for past years, complaint-based inspections serve as a rough proxy for a more searching investigation for violations. In 2023 we resolved 190 complaint-based investigations. Given the number of employer establishments we regulate, this means a business can expect an investigation from us roughly once every 323 years.<sup>21</sup> If one treats the inspections in

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<sup>17</sup> Our records indicate 36 violations in cases which include minimum wage violations. Because of how the data is classified, we cannot say if each of these violations was for minimum wage; but every minimum wage violation is included in this number.

<sup>18</sup> As in the preceding footnote, not all of this money was necessarily for minimum wage violations, but all of the wages we recovered for minimum wage purposes is included in this sum.

<sup>19</sup> Most employers are unlikely to have perfect information on the likelihood of inspection or on the expected penalty, even though this information is publicly accessible. What matters is the *perceived* likelihood of inspection and the expected penalty (whether or not the expectation is realistic). But for the sake of simplicity and for present purposes, we will assume that employers are operating under perfect information and perceptions are reality.

<sup>20</sup> Gerstein, T. (2024). *Testimony before the Maine Joint Standing Committee on Labor and Housing* (Re: LD 372 and LD 2184). February 6. Footnote omitted.

<sup>21</sup> 61,427 business establishments divided by 190 inspections in 2023 is equal to 323.3. This is a rough estimate based on how long it would take to inspect every employer in the state.

which we received and analyzed wage records as a proxy for the most thorough search for employer violations, the likelihood of inspection reduces to once every 375 years.<sup>22</sup> Even if one includes non-inspection interactions as “inspections” – on the off chance that we witness a minor doing hazardous work, or an employer openly admits to underpaying workers – the number is still shockingly low: roughly once every 104 years.<sup>23 24</sup>

The 0.31% chance that a business establishment will be investigated in a given year is not offset by the consequences for those business who are investigated and found to be in violation. In 2023 the average penalty we collected per violation was \$0.39.<sup>25</sup> If one considers the deterrent effect in the context of minimum wage, as discussed above, we collected \$17,998 in penalties in 2017. This was the total cost for an estimated \$30 million in wage theft from minimum wage workers. In 2023 the total minimum wage penalties collected was \$250.

When one multiplies the cost to an employer of violating the law (expected penalty of \$0.39 per violation) by the likelihood of being investigated (0.31%), the result reveals the true deterrent: one penny per violation in 2023.<sup>26</sup>

There is another metric which helps put the data in this report in its broader context. This is the amount of time that it takes to resolve a complaint from a worker in a case where we find violations. Table 1, below, provides this data for complaints received in 2022. Because many of the complaints received in 2023 have not yet been resolved, 2022 provides a better picture. The average complaint, which resulted in a finding of violations, took 183 days – roughly six months – to resolve. But nearly 40% of these complaints were not resolved in the first six months; seven percent were not even resolved in the first year. And these numbers are an underestimate; in the past we have tracked cases from when they were allocated to inspectors rather than from when they were received by the Bureau. There can be a lag between those two steps of several days or more. These data reflect not only the fact that we have one inspector for every 7,678 regulated employers in the state,<sup>27</sup> but also that a lack of cooperation and compliance from employers consistently delays the resolution of cases. It has been common in the past for inspectors to have to request records from the same employer multiple times, for example.

The data in Table 1 demonstrates multiple things. First, even those cases that we resolve result in detriment to the worker. When an employer unlawfully detains a worker’s wages, and the worker has to wait for six months to get the money back, that can have a severe financial impact on the worker and their family. Given that we

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<sup>22</sup> 61,427 business establishments divided by 164 such inspections in 2023 is equal to 374.55.

<sup>23</sup> 61,427 business establishments divided by 589 “inspections” (146 focused inspections, 157 random inspections, and 286 complaint-based inspections) is equal to 104.29.

<sup>24</sup> One can easily tweak the numbers; one may choose the number of registered businesses rather than establishments, one may control for repeat inspections, or one may disaggregate by industry. Either way, the conclusion is the same: it is extremely unlikely that a business will be inspected by the Wage and Hour Division.

<sup>25</sup> Total penalty amount of \$4,150 divided by 10,693 violations. These data are for cases opened and resolved in 2023. As some cases are outstanding, both the number of violations and the total penalty amount will increase.

<sup>26</sup> The low penalties have many explanations: in the past we have often cited an employer with a warning rather than imposing a penalty, in other cases we have imposed penalties but then waved them or greatly reduced them through a settlement agreement, we have also imposed penalties which employers have outright refused to pay (and which we were unable to collect), and by virtue of both statute and rulemaking, our penalties were extremely low to begin with. At the time of writing, we have proposed a series of rulemaking amendments to increase the penalty amounts we may impose, via *Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations*. As these rules are major substantive, they are currently before the Legislature. In the past few months, we have also ceased issuing citations without penalties.

<sup>27</sup> This is based on eight inspectors and 61,427 establishments (sites) in the state as of 2<sup>nd</sup> quarter 2023.

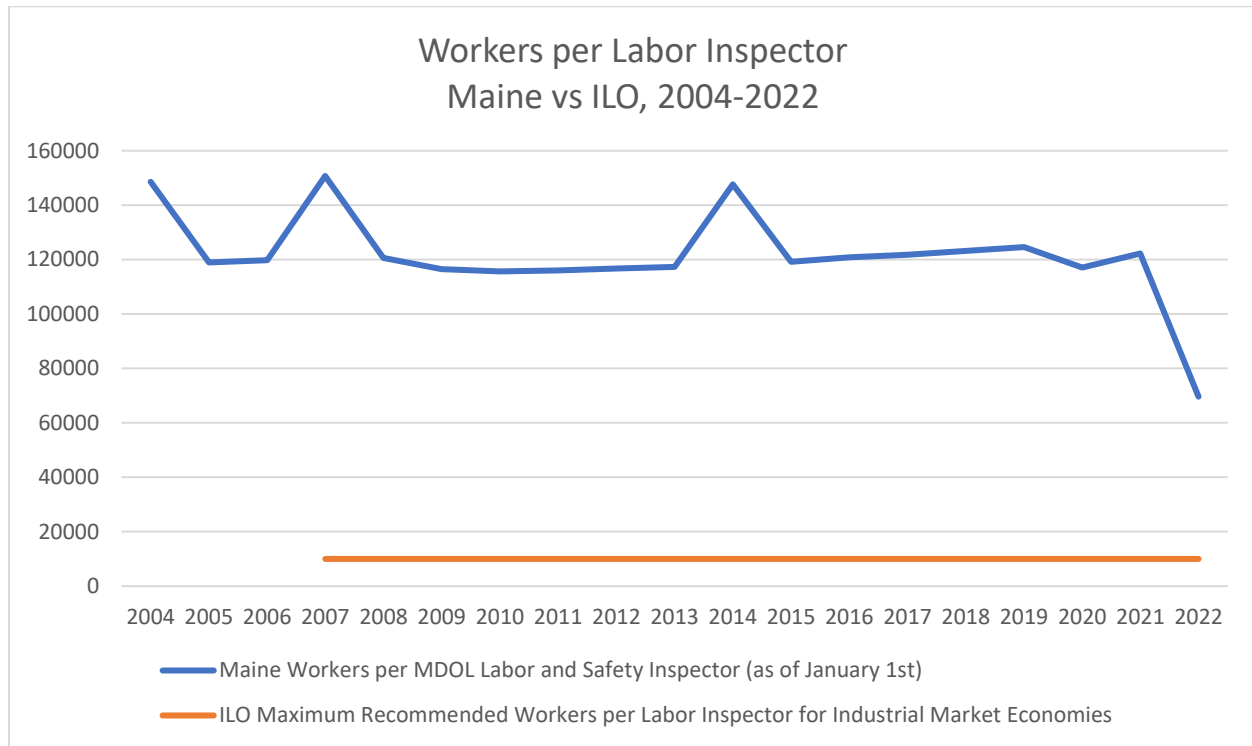
are not always able to get all the money back, and that the total wages we recover in any given year never exceeds the total wages unlawfully detained (i.e., on average we do not recover liquidated damages), the effect of a resolved wages case is that the worker provides an interest-free loan to the employer at a loss. This means that a greater deterrent effect, more compensation for the worker, and more capacity for investigations are all needed. Second, the time lag is demonstrative of the caseload of alleged violations with which we deal. Even in a largely complaint-based model in which we are scratching the surface of undetected violations (see above), our capacity is overburdened. Third, it reinforces the need to accelerate the shift towards a more strategic use of resources. Given the load of undetected cases, and how long it takes us to resolve an individual case, it is more effective for us to focus on cases with a higher probability of resulting in violations.

*Table 1: Resolution Time for Complaint Cases with Violations, 2022*

Year in	2022
No Final Agency Action Within 30 days	93.0%
Not resolved in first 90 days	71.8%
Not resolved in first 6 months	38.0%
Not resolved in first year	7.0%
Average	183 Days

There is one final metric worth highlighting as a way of completing the enforcement landscape. This is the number of wage and hour inspectors per employee in the state. The current figure is one inspector for every 69,177 employees (see Figure 1, below). By contrast, the International Labour Organization (ILO), a specialized agency of the United Nations – of which the United States is a founding member – recommends a ratio of one inspector for every 10,000 workers for industrial market economies. Maine’s inspectors therefore bear the weight of almost seven times the recommendation. Before receiving three additional inspectors in 2021, we were at over ten times the recommended level. The addition of these inspectors is not immediately clear in the case and violations data. The fact that they came on board at the end of the pandemic makes comparisons harder. But some of this increased capacity has gone into more outreach and education efforts (which don’t show up in violations data). Some of the capacity has also gone into quality more than quantity; the trend in recent years is to try and do more thorough investigations. Further, we closed down a number of cases in the past year that had been opened for more than a year – a task it would have been difficult to achieve without a few extra hands on deck.

Figure 1: Ratio of Wage and Hour Inspectors to Employed Population



Above we have outlined the broader context of extensive labor law violations, limited enforcement capacity and lack of deterrent effect. This is not to suggest we should give up and go home. In the small minority of violations that the Wage and Hour Division encounters, our enforcement actions can make a life-changing difference to the workers involved. Recovering just \$200 in owed wages for a full-time minimum wage worker, for example, represents over a third of their weekly income. Between 2017 and 2023 we recovered \$2,689,739 in owed wages for workers. While this is a drop in the bucket compared to the total wages owed to workers in the state, it was undoubtedly highly significant to those workers who received this money. We do not provide the exposition above to illustrate the futility of our actions, but rather to put in context the sections that follow.

### 3. Wage and Hour Annual Aggregate Data

26 M.R.S. § 673, the statute pursuant to which this report is produced, (materially) states:

The report must also provide, in regard to violations of the wage and hour laws under this chapter, annual aggregate data on the number of complaints filed, number of resolutions of complaints and total amount of fines collected.

Table 2, below, sets out this information. However, this information alone does not tell one much about the bigger picture. For example, not all complaints filed allege a violation over which we have jurisdiction. Other



complaints we may choose not to investigate given our scant resources and our increasing focus on low-paid workers and minors in hazardous occupations. Similarly, the total fines collected does not reflect the total fines imposed. As a final example, a subset of violations in any given year result from investigations that the Wage and Hour Division initiated, rather than from a complaint. Table 3, therefore, provides additional information to put the data from Table 2 in its broader context. Among other things, the data in Table 3 confirms how unreliable complaints are as a representative sample of violations. Between 2017 and 2023, only 45.9% of investigated complaints resulted in violations.<sup>28</sup> Of course, if these numbers were representative of the broader economy, most observers would consider 45.9% of employers violating the law to be an extraordinarily high number. But, these numbers do not purport to represent the broader economy. At the same time, given the extent of undetected violations outlined in the preceding section, the best use of our resources is to direct them towards cases where they are most likely to result in violations. In proactive investigations we would aim for that 45.9% figure to be much higher.

*Table 2: Aggregate Data 2017-2023: Complaints, Resolutions, Fines Collected*

	2017	2018	2019	2020	2021	2022	2023
Complaints Received	344	336	314	216	245	283	286
Resolved* Complaints	344	336	314	214	240	278	247
Complaint Penalties Paid	\$8,273	\$16,100	\$16,888	\$21,410	\$68,605	\$5,430	\$4,150

\*Includes complaints we decide not to pursue, those with no violations and issued final agency action. Some complaints for which we issued penalties may have outstanding penalties due.

<sup>28</sup> If one were to average out the total number of violations from complaints, the typical investigated complaint results in 81 violations.

Table 3: Additional Data on Violations, 2017-2023

Item	2017	2018	2019	2020	2021	2022	2023	Grand Total
Complaints Received	344	336	314	216	245	283	286	2,024
Resolved Complaints	344	336	314	214	240	278	247	1,973
Resolved Complaints Investigated*	306	305	285	198	216	173	190	1,673
Resolved (Investigated) Complaint Cases w/ Violations	104	124	145	97	115	79	104	768
% Resolved (Investigated) Complaint Cases w/ Violations	34.0%	40.7%	50.9%	49.0%	53.2%	45.7%	54.7%	45.9%
Resolved Complaint Case Violations	218	253	46,325	9,215	7,720	4,764	8,426	76,921
Resolved Non-Complaint Case Violations	254	128	859	39	1,139	743	2,267	5,429
Total Resolved Case Violations	472	381	47,184	9,254	8,859	5,507	10,693	82,350
Total Resolved Cases w/ Wages Owed	148	150	170	100	136	90	111	905
Total Resolved Cases w/ Workers Owed	437	372	1,062	806	294	753	500	4,224
Total Resolved Cases Wages Owed	\$334,602	\$346,663	\$722,369	\$352,576	\$508,168	\$551,950	\$785,020	\$3,601,349
Total Resolved Cases Wages Paid	\$227,858	\$256,691	\$424,325	\$247,669	\$433,528	\$509,741	\$589,927	\$2,689,739
Total Resolved Cases w/ Penalties Assessed	69	32	18	8	27	10	6	170
Total Resolved Cases Penalty Amount Assessed	\$27,985	\$58,900	\$24,700	\$32,835	\$279,430	\$24,711	\$4,150	\$452,711
Total Resolved Cases Penalty Amount Paid**	\$17,998	\$22,825	\$18,638	\$21,410	\$85,155	\$24,712	\$4,150	\$194,888
% Paid	64.3%	38.8%	75.5%	65.2%	30.5%	100.0%	100.0%	43.0%
Penalty Paid Per Total Resolved Cases Violation***	\$38.13	\$59.91	\$0.40	\$2.31	\$9.61	\$4.49	\$0.39	\$2.37

\*Resolved complaints investigated refers to those resolved complaints for which we opened investigations. Some complaints we do not open investigations. This may be because the allegation concerns a matter over which we do not have jurisdiction, or because we decide not to take the case, among other things.

\*\*Note that penalties paid may be lower than those assessed due to settlement agreements, an employer's refusal to pay, or an employer paying in installments.

\*\*\*Total amount of penalties collected divided by total number of violations.

## 4. Wage and Hour Data 2023

26 M.R.S. §673 states:

The report must include the following specific information regarding complaints received by the department regarding each violation of the wage and hour laws under this chapter for which the department has taken final action:

- A. Industry;
- B. Fines sought by the department;
- C. Fines collected by the department; and
- D. Length of time between the filing of the complaint and final resolution.



Table 4, below, provides the information required by the statute. However, as a snapshot of the Division's total enforcement activity, the picture one gleans from Table 4 is incomplete. This is because some non-complaint investigations have resulted in violations and penalties. Therefore, Table 5, below, provides similar data for non-complaint-based violations.

*Table 4: Complaint-based Violations Data by Industry, 2023*

Industry Group	Resolved Complaints	Complaint Violations	Wages Due	Wages Paid	Penalties Assessed	Penalties Paid	Average Days to Final*
11.Agriculture, Forestry, Fishing and Hunting	3		\$1,847	\$1,847			286
22.Utilities	2	245	\$169,346	\$210,964			172
23.Construction	17	2,414	\$292,848	\$49,384			147
31-33.Manufacturing	12	23	\$10,604	\$10,550	\$200	\$200	98
42.Wholesale Trade	4						145
44-45.Retail Trade	27	982	\$50,470	\$51,502			151
48-49.Transportation and Warehousing	15	85	\$15,656	\$8,816			143
51.Information	1						259
52.Finance and Insurance	2	1	\$256	\$256			5
53.Real Estate and Rental and Leasing	1	12	\$8,887	\$8,887			67
54.Professional, Scientific, and Technical Services	8	8	\$811	\$821			107
56.Administrative and Support and Waste Management and Remediation Services	19	480	\$12,766	\$15,860			149
61.Educational Services	9	579	\$4,366	\$4,366			177
62.Health Care and Social Assistance	45	252	\$97,736	\$102,791	\$200	\$200	135
71.Arts, Entertainment, and Recreation	6	119	\$1,785	\$1,785			108
72.Accommodation and Food Services	64	3,134	\$99,727	\$104,735	\$3,750	\$3,750	146
81.Other Services (except Public Administration)	6	85	\$14,953	\$14,953			183
92.Public Administration	6	7	\$2,389	\$2,389			35
<b>Grand Total</b>	<b>247</b>	<b>8,426</b>	<b>\$784,447</b>	<b>\$589,906</b>	<b>\$4,150</b>	<b>\$4,150</b>	<b>140</b>

\*Note that average days to final is lower in the most recent year where some recent cases span multiple years. (I.e. they are still accumulating time.)

Table 5: Non-complaint Violations Data by Industry, 2023

Industry Group	Final Inspections	Violations	Wages Due	Wages Paid	Penalties Assessed	Penalties Paid	Average Days to Final*
11.Agriculture, Forestry, Fishing and Hunting	5						
23.Construction	4						14
31-33.Manufacturing	6						
42.Wholesale Trade	2						
44-45.Retail Trade	113	2,200					6
48-49.Transportation and Warehousing	2						
51.Information	2						
52.Finance and Insurance	1						
54.Professional, Scientific, and Technical Services	6						
55.Management of Companies and Enterprises	1						
56.Administrative and Support and Waste Management and Remediation Services	4						
61.Educational Services	2	1					202
62.Health Care and Social Assistance	9						
71.Arts, Entertainment, and Recreation	6						
72.Accommodation and Food Services	133	59	\$552	\$0			97
81.Other Services (except Public Administration)	4	7	\$22	\$22			119
<b>Grand Total</b>	<b>300</b>	<b>2,267</b>	<b>\$574</b>	<b>\$22</b>			<b>52</b>

\*Note that average days to final is lower in the most recent year where some recent cases span multiple years. (I.e. they are still accumulating time.)

It is important to emphasize that Table 4 does not tell us the extent of unlawful behavior in different industries. It only tells us a story about those workers who are willing and able to complain to the Department of Labor about unlawful behavior. As explained above, there are multiple reasons why the most vulnerable workers, suffering the highest number of violations, are the least able or willing to bring complaints. Our case data tells us nothing about how many of them there are or how widespread these sorts of violations are.

Table 5 paints a slightly broader picture by accounting for a limited number of violations which have resulted from our own investigation, rather than in response to a complaint. However, given that most of these “investigations” were more outreach visits, that the average employer can expect an investigation from the



Wage and Hour Division roughly once every 323 years, and that we have not yet developed a methodology to study where violations are occurring across different industries,<sup>29</sup> the data in Table 5 cannot be read as representative of where violations are occurring across the state either.

## 5. Conclusion

In 2023 we built upon efforts in previous years to shift increasingly toward strategic enforcement and a more effective use of our resources. In the last few months, we have accelerated this push: we introduced a formal triage process to prioritize complaints and identify strategic investigations, we have initiated more company-wide audits, we stopped issuing citation letters with no penalty, we have enforced statutes in more robust ways, we have initiated a rulemaking process to increase the fines we can impose and which would require us to become more evidence-based and transparent in our enforcement actions, and we have testified in support of a bill which would increase our powers to obtain wages owed to workers. The effect of most of these efforts do not show up in 2023 data. In the coming months we will also focus on the other elements of strategic enforcement. Among other things, we will be working with employer groups to understand from them the most effective form of guidance and how best to communicate our interpretations of the statutes we administer. We will increasingly shift towards a more proactive and less reactive approach to enforcement. And so far as our proactive enforcement actions are concerned, we will work to develop our evidence base to ensure we are focusing our efforts on employers likely to have violations.

In this year's report we have in particular heeded the call of last year's report to "continue to learn from the data and use it to guide our future efforts."<sup>30</sup> In doing so, we have provided a more comprehensive picture of the violations and enforcement landscape in the state. And the picture is concerning . In order to meet our mandate of "caus[ing] to be enforced all laws regulating the employment of minors...all laws regulating the payment of wages; and all laws enacted for the protection of the working classes,"<sup>31</sup> we must further accelerate the change toward strategic and evidence-based enforcement. In short, we must use the tools at our disposal as effectively as possible and seek new ones when they prove insufficient. The result to which we aspire is no more than what employees deserve, law-abiding businesses need to compete fairly, and the statute mandates: full compliance with Maine's employment laws.

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<sup>29</sup> So doing is part of our proposed rulemaking currently before the Legislature: *LD 372, An Act to Increase Enforcement and Accountability for Wage and Hour Violations* and *LD 2184, Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards*

<sup>30</sup> Maine Department of Labor. (2023). *Annual Report on Wage and Hour Complaints and Violations in 2022*. February. Citations at pp1-2.

<sup>31</sup> 26 M.R.S. § 42.