March 12, 2025

In Opposition to LD 799, "*An Act to Report Gender Wage Gaps*"

Senator Tipping, Representative Roeder, and distinguished members of the Joint Standing Committee on Labor, my name is Christine Cummings, and I am here today on behalf of 29 associations and organizations representing thousands of employers across nearly every sector of Maine's economy. We appreciate the intent behind LD 799 and agree with the goal of establishing wages based on criteria such as skill, experience, and productivity. However, we must respectfully oppose this legislation due to serious legal, practical, and operational concerns that could result in unintended consequences for both employers and employees.

Under LD 799, beginning this year, employers with at least one employee in Maine and at least 250 employees nationwide would be required to submit annual reports detailing:

- The number of male, female, and nonbinary employees;
- The median hourly equivalent rate of pay for each gender category; and
- The "gender wage gap," calculated by dividing the median hourly equivalent rate of male employees by that of female employees.

Beginning September 1, 2026, the Bureau would publish these reports online, including employer names, and forward summarized findings to the Legislature's committees of jurisdiction. Employers would be required to retain the data for at least one year and could face civil penalties of up to $1,000 for violations.

Legal and Compliance Concerns

LD 799 raises significant legal uncertainties for employers by mandating the collection and disclosure of gender identity information. The Maine Human Rights Act (MHRA) prohibits employers from inquiring about an individual's sex or gender identity unless it is directly relevant to a bona fide occupational qualification. While MHRA specifically restricts such inquiries during pre-employment, extending such requirements into ongoing employment settings creates potential conflicts with existing law.

Furthermore, LD 799 overlaps with federal laws, including Title VII of the Civil Rights Act and Equal Employment Opportunity Commission (EEOC) regulations. Unlike EEOC reporting requirements, which keep wage data confidential, LD 799 mandates public disclosure. Requiring businesses to categorize employees by gender and report pay disparities could lead to claims of discrimination or privacy violations.

For example, Title VII prohibits employment discrimination based on sex, gender identity, and other protected classes. If an employer inadvertently misclassifies an employee's gender or if

employees feel pressured to disclose their gender identity, it could give rise to claims of discrimination or privacy violations. Additionally, if public wage reports suggest disparities that federal agencies later determine do not constitute violations, businesses could still face reputational harm and unnecessary legal challenges.

Privacy and Employee Relations Concerns

The requirement to request gender identity information on an annual basis could disrupt employer-employee relationships. Many employees may be uncomfortable disclosing or repeatedly confirming their gender identity, and the bill does not specify how employers should handle refusals to disclose this information. Additionally, the legislation does not account for individuals who identify outside of a male-female-nonbinary framework.

Despite LD 799's prohibition on reporting personally identifiable information, the public nature of these reports creates privacy risks. In smaller organizations or specific job roles, it may be possible to infer individual wages or gender identities, leading to unintended privacy breaches.

Furthermore, public disclosure of gender-based wage data without adequate context could create internal workplace tensions. Employees who see wage data without full understanding of its underlying factors may mistakenly perceive discrimination, leading to unnecessary grievances, turnover, or disputes. Employers would then be forced to allocate resources toward explaining and defending these figures rather than focusing on substantive workforce improvements.

Added Potential for Misleading or Misinterpreted Data

LD 799 does not account for several key variables that influence wage structures, including:

- Job role and responsibilities;
- Experience and tenure;
- Education and certifications;
- Performance and productivity metrics; and
- Geographic variability.

By only reporting median hourly wages by gender, the bill could produce misleading conclusions. Median figures do not account for workforce composition, such as the distribution of senior executives versus entry-level employees. A company with a higher proportion of part-time or seasonal workers in one gender category could appear to have a pay gap when, in reality, no disparity exists.

The publication of incomplete or misleading data could result in reputational harm to businesses, even when wage differences stem from legitimate, non-discriminatory factors rather than

systemic inequities. Unlike federal reporting requirements, LD 799 lacks safeguards to ensure accurate interpretation of wage disparities.

Maine employers are committed to ensuring fair compensation. However, we once again see a piece of legislation that looks to regulate the employer-employee relationship without any real benefit for either party. Instead, it creates yet another layer of compliance and continues to make Maine a more expensive place to do business. LD 799 presents substantial legal risks, new administrative challenges, and privacy concerns, all while relying on a reporting methodology that could produce incomplete or misleading data.

For these reasons, we respectfully urge the Committee to vote Ought Not to Pass on LD 799. Thank you for your time and consideration.

Sincerely,

1. Associated Builders and Contractors of Maine
2. Associated General Contractors of Maine
3. Bangor Region Chamber of Commerce
4. HospitalityMaine
5. Maine Auto Recyclers Association
6. Maine Automobile Dealers Association
7. Maine Bankers Association
8. Maine Campground Owners Association
9. Maine Forest Products Council
10. Maine Golf
11. Maine Grocers and Food Producers Association
12. Maine Hospital Association
13. Maine Jobs Council
14. Maine Motor Transport Association
15. Maine Pellet Fuels Association
16. Maine Staffing Association
17. Maine State Chamber of Commerce
18. Maine Tourism Association
19. Maine Water Utilities Association
20. Manufacturers Association of Maine
21. Mid-Maine Chamber of Commerce
22. Native Maine Produce
23. NFIB Maine
24. Portland Regional Chamber of Commerce
25. Professional Logging Contractors of the Northeast
26. Retail Association of Maine
27. Retail Lumber Dealers Association of Maine
28. Sheridan Construction
29. Ski Maine