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BY EMAIL AND HAND DELIVERY

Safiya Khalid, Committee Clerk
Cross Office Building, Room 202
Augusta, Maine 04330
Safiya.khalid@legislature.maine.gov

**TESTIMONY OF JEFFREY NEIL YOUNG
NEITHER IN SUPPORT OF NOR AGAINST LD 1345
AN ACT TO ENSURE A FAIR WORKWEEK**

My name is Jeffrey Neil Young. I am a partner in the law firm of Johnson, Webbert & Young, an executive Board member of the National Employment Lawyers Association (NELA), and vice-president of the Maine Employment Lawyers Association (MELA). NELA is the largest organization of civil rights lawyers in the country with about 4,000 national and affiliate attorney members. MELA is the largest organization of civil rights lawyers in Maine with about 75 member attorneys who represent employees in labor and employment matters across the state as at least 66.66% of their practice. I myself have been practicing labor and employment law for 35 years, the last 30 years here in Maine.

MELA supports the enactment of a fair scheduling bill but as currently written neither supports nor opposes LD 1345, An Act to Ensure a Fair Workweek. Several important studies on the impact of scheduling practices which LD 1345 would limit are scheduled to be released in the next few months. In addition, MELA believes that the bill needs significant changes as to its scope and penalties for violation. For that reason, MELA supports tabling the bill until the next legislative session.

That being said, legislation is desperately needed to address the relatively recent phenomenon of just in time scheduling. How many of you have teenagers or college students who work in the retail or hospitality industry? How many of you have friends or relatives who work for local supermarkets or large chain stores like Wal-mart, Target, and the like.

If you do have family or friends who work in these industries, in these types of establishments, then you are probably familiar with their so-called “just in time” scheduling practices. Those practices ostensibly place employees on work schedules

but can be changed by the employer at the last minute before an employee reports to work or even once the employee already has reported. In some instances, employees who are scheduled to work have to call in or check their schedule on line before reporting to work to see if they should still report; in other instances, a manager may call and tell the employee not to report. And even if the employee does report, the employer may send the employee home early for lack of work or the employer may require unexpected overtime.

In effect, these employment practices place employees in a permanent stand-by status. An employee never truly knows when s/he will be working. Parents—especially single moms—wind up not knowing whether to arrange day care or expend money for day care that is not needed. Students who depend on work to pay for the expense of a college education can't be sure they will earn enough money to allow them to remain in school.

Union contracts typically limit, if not prohibit altogether, such “just in time” scheduling practices. Where permitted, the employer typically is required to pay a minimum “call in” pay of a fixed number of hours, or to pay premium pay—time and one-half or double time.

At least one state, Oregon, and several municipalities, including San Francisco, Philadelphia, and New York City, have enacted fair scheduling bills to ensure that both employers and employees can rely upon work schedules absent extenuating circumstances. Legislative committees in other states, including Connecticut and Washington, have advanced similar bills, and a hearing was scheduled in Massachusetts on such a bill just this week.

Several weeks ago, a California court held that under that state's wage and hour laws individuals who had to call in two hours prior to their scheduled start were entitled to hourly pay at potential considerable cost to employers who thought the employees were not due any pay.¹ And the New York State Labor Department has considered—although it no longer plans to do so—issuing regulations governing just in time scheduling.

MELA believes that passing a fair scheduling law in the next legislative session will benefit both employers and employees. Employers will benefit from certainty as to potential wage and hour liability to employees who are required to call in, and employees will benefit from knowing that they have more certain hours of work. MELA hopes that a bill addressing these and other fair scheduling issues can be given the careful consideration that it deserves in the next session.

¹ *Ward v. Tillys, Inc.*, 31 Cal. App. 5th 1167, 243 Cal. Rptr.3d 461 (Cal Ct. App. Feb. 4, 2019).

Safiya Khalid, Committee Clerk

April 9, 2019

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Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Neil Young". The signature is written in a cursive style with a large, prominent 'J' and 'Y'.

Jeffrey Neil Young