

MAINE STATE LEGISLATURE

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September 5, 1947

To the Unemployment Compensation Commission
Re: "Three Consecutive Weeks"

Subsection (3) of subsection (c) of section 7 of the Unemployment Compensation Law is a new section which was added to the law by virtue of the enactment of section 4 of chapter 375 of Public Laws 1947. This section reads as follows:

"For the purposes of subsection (1) of subsection (c) of section 7, the experience rating record of the most recent subject employer shall not be charged with benefits paid to a claimant whose work record with such employer totalled 3 consecutive work weeks or less but in such case the most recent subject employer with whom claimant's work record exceeded 3 consecutive work weeks shall be charged if such employer would have otherwise been chargeable had not subsequent employment intervened."

When this section of the law was originally drafted, it provided for the equivalent of a two weeks working period. When initially proposed, at a meeting of the Commission's advisory council, there was substantial agreement that employers should be given a reasonable length of time in which to try out new employees before becoming chargeable as the most recent subject employer with benefits paid to such employees, should it be found that they were not capable of doing the work for which employed. The only real discussion with respect to this section was as to what constituted a reasonable length of time for the trial period. So far as the merits of the section itself are concerned, it was clearly the understanding of the advisory council and of the legislative committee that the fundamental purpose of the section was to permit a trial period within which, if an employee is discharged, the employer would not become chargeable for experience rating purposes with benefits paid to such individual subsequent to his discharge.

Although the foregoing intention does not appear in the subsection as finally enacted into law, it would seem to be clear that the section should be applied so as to give effect to that intention, provided the words as used in the enactment are susceptible to such a meaning without resorting to subtle and forced constructions and giving them their most natural and most obvious import.

Although subsection (n) of section 19 of the Unemployment Compensation Law defines "week" as such period or periods of seven (7) calendar days as the Commission may by regulation prescribe, and although the Commission has, by Regulation I A. 4, prescribed that a "week" means the calendar week commencing with Sunday and ending with the following Saturday, it appears to be clear that in the enactment of subsection (3) of subsection (c) of section 7 that the employer's working pattern is the measure of time rather than the statutory or regulatory defined term "week". Subsection (3) of subsection (c) of section 7 refers to the claimant's "work record" and to "consecutive

work weeks". The phrase "consecutive work weeks" appears in the section on two different occasions and obviously is a phrase to be construed as a phrase and not in the isolated sense of the word "week" when used in referring to a period of seven calendar days.

The exact question is - what constitutes "three consecutive work weeks"?

Every employer has his own working pattern or program. For many employers, as it true of the state itself, a week constitutes five 8-hour days. The mere fact that many employers, if not most, use five 8-hour days as a work week does not mean that other employers may not adopt other patterns that constitute a work week. An employer may use five 8-hour days as a work week for some of his employees, and use some other pattern for other employees who are engaged in other types of work. In some departments or units of an employer's business, three longer days may constitute a work week for the employees involved.

The section to be construed refers to a claimant's "work record" with his "employer" for "consecutive work weeks". The conclusion would seem to be irresistible that in each case wherein this section is involved in connection with the chargeability of benefits for experience rating purposes, the work week schedule of the employer who alleges that a claimant's services were for a period of less than "3 consecutive work weeks" should be the measure of that which defines the term "work week". It should be equally clear that in any particular case, the employer's work week schedule should be the schedule of employment for the person claiming benefits in the category of work which that claimant was hired to perform.

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