

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

June 23, 1953

To L. C. Fortier, Chairman, Maine Employment Security Commission
Re: Amendments to Employment Security Law effective 1953.

This office has been asked for an interpretation of Chapter 327, P. L. 1953, entitled "An Act Relating to Benefits for Total Unemployment under Employment Security Law," amending Section 13, subsection II, of the Revised Statutes of 1944, Chapter 24, as repealed and replaced by Section 1 of Chapter 430, P. L. 1949, which provides a new benefit schedule which increases the "weekly benefit amount" in amounts varying from 50 cents to \$2.00 and raises the minimum qualifying annual wage from \$300.00 to \$400.00. These changes are retroactive to April 1, 1953, whereas the amendment does not become effective until August 8, 1953.

The first question you raise is: "The majority of claimants will be eligible for increased weekly benefit amounts, and consequently, for increased available benefits for the benefit year *"retroactive to April 1, 1953."*

"Could the determinations or redeterminations in such cases possibly be legally made at the earliest possible date, say June 15, 1953, in view of the fact that advancing the date of such determinations or redeterminations from the effective date of the amending statute, August 8, 1953, to such earlier date can in no way affect the final entitlement of such claimants?"

Answer. It is our opinion that it is possible for you to determine or re-determine such cases at any time prior to August 8th, but that it is not possible to pay claims on the basis thereof until the effective date of this chapter, which is August 8, 1953.

The second question you raise is: "The second part of the amendment becoming effective August 8, 1953, as of April 1, 1953, raises the minimum qualifying wage from \$300.00 to \$400.00, and makes it necessary to re-determine all claimants who have previously been determined eligible on the basis of 1952 wages of from \$300.00 to \$399.99, finding such claimants not eligible for benefits. The question arises as to whether or not overpayments shall be established against those claimants who were previously determined eligible under Section 13, II, and in effect until August 8, 1953, with qualifying wages of less than \$400.00, the amendment (Chapter 327) becoming law on August 8, 1953, even though the amendment reads 'on and after April 1, 1953.'"

This question is partially answered by an opinion of this office dated July 1, 1947, with which we are in accord. The one point not specifically raised nor answered at that time was in regard to overpayments. It is our opinion that it would not be in keeping with the intent and purpose of the Unemployment Compensation Law as a whole to attempt to collect, from employees, overpayments made under the law as it exists now and will remain until August 8, 1953, which are determined to be overpayments due to an amendment passed with a retroactive provision. Furthermore, the following rule has been applied by the courts to various cases similar to this one:

"Statutes which create new liabilities in connection with past transactions should not be given retroactive operation."

The third question you raise is: "In many cases where a claimant has been disqualified under Section 15 of the law his maximum benefit amount has

been reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount.

"The Commission's Regulation 9, M, states that the weekly benefit amount to be used in disqualification is the weekly benefit amount in effect for the actual week of disqualification.

"The question arises as to whether we should redetermine the amount of disqualification for all such cases subsequent to April 1, 1953, applying the new benefit schedule which becomes effective August 8, 1953."

In our opinion the answer is, "Yes," for substantially the same reasons as stated in answer to Question 2.

Under Chapter 326, P. L. 1953, approved May 6, 1953, entitled, "An Act Relating to Benefits for Partial Unemployment under Employment Security Law," amending Section 13, subsection III, R. S. 1944, Chapter 24, as repealed and replaced by Section 1 of Chapter 430, P. L. 1949, which provides a new schedule of deductions for partial unemployment, this schedule is effective retroactive to April 1, 1953, whereas the amendment becomes law on August 8, 1953, and you raise the following question.

"Was it the intent of the Legislature that the Commission review all partial claims filed prior to August 8, 1953, the effective date of this legislation — (a) setting up overpayments or by effecting adjustments, as the case may be, or (b) should this schedule be applied after August 8, 1953, only?"

"If answer to (a) is yes, a further question arises as to whether or not the Commission would be carrying out the intent of the Legislature by effecting redeterminations involving this schedule of deductions at an earlier date, say June 15, 1953. Would any overpayments resulting therefrom be collectible under any circumstances?"

It is our opinion that the answer to (a) is, "No." The Commission should not attempt to collect payments made under the present law which on August 8, 1953, because of an amendment which is retroactive, are in excess of the then rate of payment. This would violate the intent of the law as referred to in answer to Question 2 above. This new schedule should be applied to the law retroactive to April 1, 1953 but no attempt should be made to collect the overpayments, if any.

ALEXANDER A. LaFLEUR

Attorney General

June 25, 1953

To Ronald W. Green, Chief Warden, Sea and Shore Fisheries

Re: Penalties under Section 131 of Chapter 34, R. S., as revised

We have been asked for a written opinion relative to Section 131, Chapter 34, R. S., as amended. It appears that there are three questions relative to said section which are treated separately as follows:

"If a person is the holder of licenses issued under Sections 111, 113, 114 and 115 and is arrested for having short lobsters and appeals after being found guilty in municipal court, must the Commissioner suspend all licenses?"