

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

July 17, 1958

To Cyril M. Joly, Chairman, Industrial Accident Commission

Re: Vacation Pay

You have requested our opinion "as to the effect, if any, of the amendments to the Labor Law, Chapter 94 of P. L. 1957 on the Workmen's Compensation Law as to the method of determining average weekly wages." You indicate more specifically that Section 2, IX, B, Chapter 31, R. S. 1954, is the section of the Workmen's Compensation Law about which you inquire.

Chapter 94 of the Public Laws of 1957 amends Section 50 of Chapter 30, R. S. 1954. The particular amendment to which you refer provides that,

"Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment shall have the same status as wages earned."

Section 50, Chapter 30, R. S. 1954, provides for the time of payment of wages. It requires that wages be paid weekly and it requires that any wages due an employee at the termination of his employment be paid to him within a reasonable time after he demands payment. The only effect of the amendment in regard to vacation pay is to require that any such pay due the employee upon termination of his employment shall be paid to him, with any other wages due at the time, within a reasonable time after payment is demanded.

Chapter 30, R. S. 1954, is a chapter of the statutes creating the State Department of Labor and Industry. The chapter legislates, among other things, with respect to employment and conditions of employment. Section 50 of this chapter sets forth the law in regard to the payment of wages. The amendment of Section 50 of Chapter 30, R. S. 1954, does not by inference, imagination, strained interpretation, or in any other reasonably conceivable way affect the provisions of Section 2, IX, B, Chapter 31, R. S. 1954.

Chapter 31, R. S. 1954, is known as "The Workmen's Compensation Act" and provides for compensation of employees for accidental personal injury received in the course of employment. Subsection IX of Section 2 of this Act sets out the methods of computing average weekly wages for the purposes of the Act. This Act, and this section of it, are separate and distinct from Chapter 30, R. S. 1954, and neither one affects or has any effect upon the other. Section 2, IX, B, reads in part as follows:

"In case such employment or occupation had not so continued for said 200 full working days, the 'average weekly wages, earnings, or salary' shall be determined by dividing the entire amount of wages or salary earning therein by the injured employee during said immediately preceding year, by the total number of weeks, *any part of which the employee worked*, during the same period; . . ."

I have italicized in the above quoted section the phrase which is the real basis of your question. In your request for an opinion you outline your own interpretation of this section and this phrase. In our opinion your interpretation is correct. The italicized phrase should not be so narrowly construed as to require it to mean, as to this section, the actual performance of physical labor, but, rather, a period of time during which the employee was employed. Thus, a person might be absent from his place of employment on vacation, sick leave, or for some other cause, perform no labor, do no work, but still receive a week's wages, be employed

for that period of time and, within the meaning of the section in question, have "worked" for that period of time.

FRANK F. HARDING  
Attorney General

July 18, 1958

To Ronald W. Green, Commissioner of Sea and Shore Fisheries (for forwarding by him to Clerk of Courts)

Re: Costs in Short Lobster Cases

You ask, with respect to the trial of a short-lobster case in the Waldo County Municipal Court, who is responsible for the witness fee submitted by a constable who was a witness in the case.

You state that under the new rule costs are not taxed, and the fine, if paid, goes to the Commissioner of Sea and Shore Fisheries, and you also inquire if that bill should be paid by the Commissioner direct to the witness.

The Commissioner does not pay such witnesses.

We would draw to your attention Section 114 of Chapter 38 of the Revised Statutes of 1954, as amended. This section imposes a fine of \$5 for each short lobster. Thus, in the present case, the respondent, having had three short lobsters in his possession, would be liable to a fine of \$15.

Section 114 also provides that the court may, in its discretion, add to the fines provided a sum not to exceed \$10 on each complaint, to be included in any fine imposed to cover said costs, without taxing such costs and without reference to such costs.

Such \$10 sum was added to the present case, and plus the amount of the fine made up the \$25 imposed. It therefore appears to me that such costs as are due and owing as a result of such a case should come from the \$10 assessed.

JAMES GLYNN FROST  
Deputy Attorney General

July 18, 1958

To Michael A. Napolitano, State Auditor

Re: Assessment on Patients at Pineland Training Center

We have your memo inquiring as to the legality of Pineland Training Center's charging \$1 a week against each gainfully employed patient on trial visit and under the supervision of the Center. No such charge would be made against persons receiving less than \$5 per week.

In each such case the individual on trial visit is visited periodically by a member of the psychiatric social service of the Center.

It is our opinion that a charge can properly be made against the patient in such a case. The amount of the charge, however, is not for our determination.

Under both Sections 5 and 144 of Chapter 27, R. S. 1954, authority is granted to make a proper charge against patients of the Center for care, etc.