

MAINE STATE LEGISLATURE

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Maine Employment Security Commission

~~STANDARD FORM NO. 64~~

~~LEGAL COUNSEL NO. 145~~

FOR: The Commission

FROM: Legal Department

SUBJECT: Opinion - Re- Section 15, III, ".....or if an employer is unable to contact a former employee at last known or given address, for purpose of recall to employment..."

This is in reply to your recent request for an interpretation of the above-quoted portion of Section 15, III of the law.

It is my opinion that the Legislature, when amending the law, did not intend or mean to infer that an individual should be required to sit by his telephone during all the hours of a working day awaiting a possible recall to employment and especially considering the fact that Section 14, III of the law provides in part, "...and in addition to having complied with subsection II is himself actively seeking work...." (Theoretically, if the above were not true, an individual, in case of a three shift employer, would be required to be within hearing of his telephone 24 hours per day.)

This particular subsection contains the words "at last given address" and makes no mention of telephone use. There are instances wherein an individual has no telephone and no near neighbors with a phone who might, in turn, contact him. He has complied with the law by making his address known to the former employer. The obvious method of contact would be via mail. It is, however, my opinion that use of the telephone, if a number is available, may be an adequate method of attempt to "contact a former employee for purpose of recall to employment" but as each individual case must be decided on its own merits the frequency and number of telephone calls, the reason or reasons why there was no reply by the individual called, should be weighed and considered in the process of assembling facts for the purpose of rendering a decision.

Commission Regulation 9, II, C provides, in part, "...or when an employer is unable to contact a former employee at last known or given address for purpose of recall to employment, the employing unit shall, immediately, notify the nearest office of the commission as to the details of the offer and refusal or attempted recall," (underlining mine).

The regulation, properly promulgated and never challenged, provides that the employing unit shall cite the details of an attempted recall.

In the interest of justice such details must be weighed against details on the part of the "former employee."

/s/ Milton L. Bradford
Milton L. Bradford
Assistant Attorney General

Dated: March 13, 1962