

MAINE STATE LEGISLATURE

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August 3, 1965

Madge E. Ames, Director of W. and C.
Labor
Phillip M. Kilmister, Assistant

Department of Labor and Industry
Attorney General

We have received your memorandum of July 14, 1965 in which you inquire as to interpretations which might apply to Title 26, § 663, subsection F-1, M.R.S.A. (1964) which refers to student exemption under our minimum wage law. The statutory language under consideration provides that an employer need not pay the minimum hourly wage rate established by our Legislature to the following individuals:

Title 26, § 663, 3, F-1. "Any individuals who do not replace regular employees of any business and who are under the age of 19 and are regularly enrolled in an educational institution or are on vacation therefrom;
. . ."

In essence, you have asked the following question in reference to the construction of the above-quoted statutory provision.

QUESTION:

Are students exempt unless an employer actually dismisses, lays off, or discharges an adult and replaces him with a student under 19 years of age; or must the employer give evidence that he has made every effort to recruit adult employees, before employing students, in order to avoid payment of the minimum wage to the latter?

Although both parts of the question are answered in this opinion, it should be stated that the construction of the statutory language under consideration, is not limited to the alternatives as set forth in the question itself. I have therefore taken the liberty to mention additional problems of employment which might arise, and which would necessitate a construction of Title 26, § 663, 3, F-1 for their solution.

The prerequisites for exemption under the terms of "F-1" are cumulative and not separable. To be exempt, a youthful worker must meet three conditions, to wit: he must be a student, he must not replace a regular employee, and he must not have attained the age of 19 years.

Should an employer displace, lay off, or discharge a regular employee and replace said employee with a student under the age of 19, the latter would be entitled to payment of the minimum wage. The student employee would be outside the limits of exemption status simply because of the fact that he has replaced a regular employee. The same result would obtain if the employer were to hire a student under the age of 19 to replace an employee who retires or resigns from his regular employment. Furthermore, it is not essential that a regular employee cease working for his employer. Let us suppose that a regular employee is promoted to a new position and his previous position is assumed by a student employee under 19 years of age. The latter would be entitled to payment of the minimum wage.

It is not the reason for replacement which governs whether or not an employer must pay the minimum hourly wage rate; it is the act of replacement itself!

The fact that a youthful employee must be under the age of 19 years and a student in order to be exempt from minimum wage coverage requires no further elaboration. It might be well to mention however, the situation where a student under 19 year of age is hired by an employer and does not replace another employee. Such a youth is clearly exempt under the terms of subsection "F-1." However, upon the attainment of age 19, if still in the employ of said employer, the youth would be entitled to payment of the minimum hourly wage rate.

The purpose of our minimum wage law establishes the guidelines for the interpretation of its provisions.

Title 26, § 661: Declaration of Policy

"It is the declared public policy of the State of Maine that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered."

The minimum wage law should receive a liberal construction as regards beneficiaries so that it may accomplish its purpose. As a corollary to this widely accepted view, it logically follows that statutory exemptions or exclusions of workers from minimum wage coverage should be strictly construed against the employer.

In spite of the need to construe exemptions strictly in order to exclude as few workers as possible from minimum wage payment, such exemptions cannot be ignored.

The right of an employer to hire employees who are exempt from coverage under our minimum wage law, is as clear as the obligation of an employer to pay said minimum wage to those workers entitled to same under our statute. Furthermore, in hiring new employees, an employer need not give preference to those prospective employees who are entitled, by statute, to payment of the duly established minimum hourly wage rate.

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PMK/sll