

MAINE STATE LEGISLATURE

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Maine Employment Security Commission

INTER-OFFICE MEMORANDUM

Date: November 1, 1967

To: Roy U. Sinclair, Chairman

Office: _____

From: Frank A. Farrington, Assistant Attorney General

Office: _____

Subject: Legal Opinion - Section 1082, Subsection 13 - Maine Employment Security Law
(Your memorandum of October 27, 1967)

FACTS: In order to determine what benefits a claimant for unemployment compensation may be entitled to receive it is essential that the Maine Employment Security Commission obtain information relative to the wages paid to such claimant in insured employment.

Prior to October 7, 1967, Section 1082, subsection 13 of the Maine Employment Security Law (Title 26, Chapter 13, MRSA 1964) gave the Commission authority to prescribe regulations for filing payroll reports by employing units within the state, and provided penalties for failure to file such reports within the time stated by the regulation. It read as follows:

"13. Regulations for filing payroll reports; penalty. The commission may prescribe regulations for the filing of payroll reports for the employing units in the State and the failure on the part of any employing unit to file the payroll reports within the time stated by the regulation of the commission shall render the employing unit liable to a penalty of \$10, unless the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by other unavoidable accident which shall excuse the employing unit from said penalty."

By virtue of this authority, the Commission - for some years - operated under a regulation requiring annual filing of reports of wages paid to all employees during each calendar year. Then, for a time, quarterly filing of reports of wages paid to all employees during each calendar quarter was required.

Still more recently, the prescribed regulation called for quarterly reports, and in addition required that every employing unit, upon request of the Commission, furnish quarterly payroll information applicable to any former or present employee who filed a request for determination of his insured status.

Chapter 398 P. L. 1967, effective October 7, 1967 (quoted below) repealed the above-quoted Section 1082, subsection 13 and replaced it with a new subsection 13.

"13. Filing payroll reports; penalty. Every employing unit shall furnish the commission or its authorized representative, upon request, and in accordance with the form prescribed by the commission, quarterly payroll information applicable to any present or former employee who files a request for determination of his insured status. Such reports of base period wages will be due within 7 days of the date the request is mailed by the commission or its duly authorized agent and the failure on the part of any employing unit to file the payroll information within said time shall render the employing unit liable to a penalty

of \$10, unless the delay was occasioned by the illness of the person in charge of records of the employing unit or by other unavoidable accident which shall excuse the employing unit from said penalty. In addition any employing unit which has received and failed to respond timely to 3 successive requests without justifiable excuse shall furnish the commission a payroll report for each quarter showing the name of each person employed by such employing unit at any time during the quarter, his social security account number and the total wage paid to him, except that the amount of wages in excess of \$4,000 per quarter need not be reported."

QUESTION:

Your memorandum asks for an opinion on a series of questions, viz:

1. May the Commission allow an employer, who closes his operations for seasonal or other reasons or who experiences a mass layoff, to furnish advance quarterly wage reports covering all of the employer's employees in lieu of individual wage reports requested by the Commission upon the initiation of requests for insured status determinations by persons currently or previously employed by the employer?
2. If advance quarterly wage reporting is allowable, should this be implemented by regulation, by operating procedure, or by some other medium?
3. If a single form, providing for the multiple listing of the names of applicants for insured status determinations, is used in requesting wage information for several present or former employees, is the employer liable, should the form be returned late, for a single penalty of \$10 or is he liable for a \$10 penalty for each of the individuals listed for whom wage information was requested?
4. If it is held, in the answer to item 3, that the employer is liable for a \$10 penalty for each of the listed individuals for whom wage information was requested, would each name listed -- following the first--be considered to constitute "successive requests" and, if so, would failure without justifiable cause on the part of the employer to respond timely on a multiple-listing form, such as that described in question 3, subject him to the mandatory quarterly payroll reporting requirement?

ANSWER:

1. No
2. Question No. 1, answered in the negative. No answer to No. 2 is necessary.
3. Employer liable for a \$10 penalty for each individual listed.
4. Each name after the first one listed would not constitute a "successive" request.

OPINION:Question No. 1.

The old Section 1082, subsection 13, gave the Commission specific authority to make regulations relative to the filing of payroll reports. There was no other provision in the statute for obtaining the necessary information.

This gave the Commission an opportunity to exercise its discretion as to how it should secure the information. That it exercised that discretion is indicated by the foregoing brief recitation of the history of its requirements for furnishing it.

Section 1082, subsection 2 of the Maine Employment Security Law (first paragraph) provides:

"2. Regulations. The Commission shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper reasonable regulations as required by this chapter. Such regulations shall become effective 10 days after a certified copy has been filed with the Secretary of State and notice of filing shall be published in the state paper."
(Emphasis supplied)

The quoted section authorizes adoption of regulations "as required by this chapter."

In various sections of the Maine Employment Security Law, there are provisions requiring adoption of regulations by the Commission, for example:

Section 1082, subsection 7 - keeping work records.

Section 1191, subsection 1 - payments of benefits,

Section 1192, subsection 2 - registration for work.

Section 1194, subsection 1 - filing of claims for benefits.

Section 1221, subsection 1 - due date for payment of contributions.

Section 1251, subsection 2 - relative to seasonal employment.

Until October 7, 1967, Section 1082, subsection 13 could have been included in the foregoing list.

It is my opinion that since that date the Commission has not had authority to make regulations determining how payroll information is to be obtained or to exercise discretion as to how the information may be obtained.

The law itself now determines the method of obtaining the information, namely, on request of the Commission when a request for determination of insured status is filed.

It is beyond the Commission's authority to obtain the information in any other way, whether it be by regulation or otherwise.

Question No. 3.

The content of the new Section 1082, subsection 13 indicates that the Commission's requests for wage information are to be relative to an individual "present or former employee who files a request for determination of his insured status."

The provision for assessment of a penalty for late return of the requested information has reference to such an individual request.

It is my opinion that: a multiple listing of names by the Commission, on one request form, does not alter the fact that there is a request for each individual listed; and that a penalty should be assessed for late return of the wage information for each of the individuals for whom it was requested.

Question No. 4.

Black's Law Dictionary, Fourth Edition, defines "successive" as:

"Following one after another in a line or series".

Webster's, Seventh New Collegiate Dictionary defines it as:

"Following in succession or serial order following each other without interruption".

The last sentence of Section 1082, subsection 13 reads:

"In addition any employing unit which has received and failed to respond timely to 3 successive requests without justifiable excuse shall furnish the commission a payroll report for each quarter showing the name of each person employed by such employing unit at any time during the quarter, his social security account number and the total wages paid to him, except that the amount of wages in excess of \$4,000 per quarter need not be reported."

It is my opinion that the statute has reference to requests which are successive as relates to the time the requests are made, rather than to a list in which one name follows another; and that a multiple listing is a simultaneous request for information relative to each individual on the list.

FAF:s

cc - Mr. Cote
Mr. George