

MAINE STATE LEGISLATURE

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March 13, 1968

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Labor and Industry

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"Cessation of Employment Statute."

FACTS:

Title 26, Section 626 of the Revised Statutes of Maine provides that "any employee, leaving his or her employment, shall be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid." An employer who fails to make payment within a reasonable time is subject to a criminal penalty by way of a fine of "not less than \$25 nor more than \$50." You have asked the following three questions relative to this statute:

QUESTIONS:

(1) May remuneration in the form of a salary or commission be included within the meaning of the above-designated statute?

(2) May the statute be interpreted to include expenses due an employee and incurred by him in accordance with an agreement, written or oral, previously entered into by the employer and agreed to by the employee?

(3) May the statute be interpreted to include monies due under the terms of a contract to perform specified work? For example, a home owner contracts with a painter to paint his house. The work is completed and when payment is demanded the home owner refuses to pay on the basis that the work is, in his opinion, unsatisfactory.

ANSWERS:

(1) Yes.

(2) Yes.

(3) No.

OPINION:

In an opinion rendered by this office under date of July 2, 1964 we held that the broad terminology of the above-cited statute, then designated as R. S. 1954, Chapter 30, section 50-A, meant that "all forms of compensation due the employee at the end of his employment shall be paid in full."

The statute does not provide specifically that "wages" of an employee must be paid in full within a reasonable time after demand therefor by an employee. Were this the case, it would be necessary to determine that salary and commission constitute a form of wages and therefore are payable pursuant to the terms of the statute. There is a split of authority among the various jurisdictions, but a majority of the courts have held that "salaries" and "commissions" do constitute "wages."

"Terms 'wages' and 'salary' are for all practical purposes synonymous and mean sum of money periodically paid for services rendered, though in good usage word 'salary' suggests more important services and larger compensation than 'wages'." Flamm v. City of Passaic, 14 N. J. Misc. 362, 184 A. 748.

"The word 'wages' has upon occasion been broadly defined as compensation for services rendered by an employee to his employer including commissions earned in selling the employer's goods." 44A Words and Phrases, Wages, p. 67; Webster's Third International Dictionary (Unabridged) p. 2568; State v. Weatherly, 168 S. W. 2d 1048.

Even if a court were to determine that salary and commissions do not constitute wages, payment of same is mandatory under the terms of the above-quoted statute. 26 M.R.S.A. § 626 provides that employees "shall be paid in full" that which is owed them. This includes salary, commissions, and even reimbursement for expenses incurred by an employee pursuant to agreements made with his employer governing the terms of his employment.

Of prime importance is the fact that we are dealing with a penal statute however and the broad terminology must, if possible, be strictly construed. The legislature cannot carte blanche designate that a criminal penalty be imposed upon an employer and at the same time, through lack of specificity of description, leave to the imagination the type of action or nonaction to be penalized.

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We answer question numbered three in the negative and do not believe that the legislature intended by the terms of 26 M.R.S.A. § 626 to impose a criminal penalty upon a party to a contract who fails to make final payment because of a bona fide belief that the contract he has executed has not been fully performed by the other party. Independent contracts for work and services ironed out by the parties thereto constitute something more than the establishment of an employer-employee relationship, and there is a wide range of common law remedies available to either party when the other party to a given contract commits a breach thereof.

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