

MAINE STATE LEGISLATURE

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Labor and Industry
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Computation of number of employees of a business enterprise

SYLLABUS:

One who works for her spouse on a volunteer basis and who does not expect or claim any pay for the work performed, other than possible support derived from the other spouse's profits in the business, must be counted as an employee of the business for purposes of determining whether or not non-relatives employed in the business enterprise are entitled to minimum wage coverage.

FACTS:

From your memorandum of June 3, 1968 and the attached correspondence from Norman Minsky, Esquire of Bangor, Maine, it is clear that a difference of opinion exists as to the applicability of minimum wage coverage of employees of a certain business. 26 M.R.S.A. § 662 as amended by P. L. 1965, c. 410, § 1 provides that employers employing 4 employees or more in any day of the week are subject to the provisions of our minimum wage law and the statutory language provides that in computing the number of employees, persons otherwise exempt from the minimum wage law shall be counted. It is stated factually that a husband operates a service station as a sole proprietorship and employs 3 full-time regular employees. The wife works for the husband in his business enterprise but does not receive, or expect to receive, compensation for her services. It is the contention of the sole proprietor that he employs only three employees and that his wife's services are gratuitous and should not be considered as employment so as to constitute the number of employees as four, and therefore subject his business enterprise to the provisions of the minimum wage law.

QUESTION:

Should a wife who does not receive compensation for her services, be counted as an employee in her husband's business, within the meaning of 26 M.R.S.A. § 662?

ANSWER:

Yes.

OPINION:

Minimum wage laws are to be liberally construed so as to benefit those for whom said laws were enacted. By the same token, exemptions from coverage are to be strictly construed.

Since a husband's wife, who works in his business enterprise, is not an employee subject to minimum wage coverage (26 M.R.S.A. § 663, subsec. J), the amount of wages, if any, paid to her, is irrelevant.

26 M.R.S.A. § 663 subsection 3 defines employee in the following terms:

"3. Employee. 'Employee', any individual employed or permitted to work by an employer but the following individual shall be exempt from this subchapter except as provided in section 662", (emphasis supplied)

The spouse of an employer who works for no compensation falls within the broad definition of "employee" as quoted above. The legislature has not stated that the payment of wages is a condition precedent to the establishment of an employer-employee relationship within the terms of the minimum wage law.

26 M.R.S.A. § 662 as amended by P.L. 1965, c. 410, § 1 reads as follows:

"Employers employing 4 employees or more in any day of the week are subject to this subchapter for that week, and in the count of employees there shall be included all employees, including those otherwise exempt under section 663, subsection 3." (Emphasis supplied)

Section 663, subsection 3, paragraph J states:

"Members of the family of the employer who
reside with and are dependent upon the employer;"

The above-quoted statutory language clearly evinces an intention on behalf of the Legislature to grant minimum wage coverage to those employees of small business concerns who fortuitously work for employers who employ few or no other employees entitled to the payment of minimum wages and overtime compensation.

In other words, the Legislature has stated that an employee who works in a small business (one employing 4 or more employees) shall not be denied minimum wage and overtime payment, merely because one or more of his fellow employees are relatives of the employer, and are exempt from minimum wage and overtime coverage.

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PMK/p