

# MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 27, 1968

To Madge E. Ames, Director, Minimum Wage Dept. Labor & Industry

From Phillip M. Kilmister, Assistant Dept. Attorney General

Subject Vacation pay for waitresses

SYLLABUS:

Duly established minimum hourly wage rates do not govern the determination of vacation compensation.

FACTS:

It is stated in your memorandum under date of August 14, 1968 that a waitress is paid a certain amount of cash wages plus her meals, the combined value of which amounts to payment of \$1.40 per hour for a 40 hour work week. In another instance a waitress is paid a certain cash amount, is given meals, and declares a certain amount of tips which she receives so that her total weekly wage equals the duly established minimum wage rate. There is an agreement between the employer and said waitresses which provides for vacation pay, however there is no express provision which states that vacation pay shall equal the amount of normal weekly wages.

QUESTION:

Must vacation pay be founded upon duly established minimum wage rates?

ANSWER:

No.

OPINION:

An employer is not required by law to provide any vacation compensation to his employees either under the Fair Labor Standards Act or the State of Maine Minimum Wage Law.

"A vacation with pay is in effect additional 'wages'. It involves a reasonable arrangement to secure the well being of employees and the continuance of harmonious relations between employer and employee. "Textile Workers Union of America, C.I.O. v. Williamsport Textile Corp. (D.C. Pa.), 136 F. Supp. 407-408.

The only mention of the term "vacation pay" in our minimum wage law appears in 26 M.R.S.A. § 623 and provides in part as follows:

August 27, 1968

"Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment shall have the same status as wages earned."

The above-quoted statutory language simply means that vacation pay earned by an employee must be paid in full by the employer in the same manner as wages, and nothing more.

26 M.R.S.A. § 626 entitled "Cessation of Employment" reads as follows:

"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 paid. Whoever violates any of the provisions of this section shall be punished by a fine of not less than \$25 nor more than \$50." (emphasis supplied)

Sections 623 and 626 of Title 26 of the Revised Statutes when read together clearly evince a legislative intent that employers shall make full payment of all wages, including vacation pay, due employees upon the expiration of employment. There is no provision that said wages, including vacation compensation, must conform to minimum wage standards.

In the two examples which you have cited in your memorandum it is stated that one waitress works 40 hours a week and is paid \$51.00 in cash wages and \$5.00 per week for meals for a total of \$56.00 for a 40 hour work week. Another waitress works 40 hours per week for a total weekly wage of \$56.00 which includes \$40.00 in cash wages, \$5.00 in meals, and \$11.00 in tips. The employer wishes to know if he must pay a total of \$56.00 in cash wages to each waitress as vacation pay or a lesser amount, excluding credit for meals and tips.

The intention of the parties as set forth by the terms of their employment contract will determine the amount of vacation pay payable under any given contract. We do not rule upon the amount of cash wages owed as vacation pay to the above-described employees. We hold only that vacation pay need not conform in amount to minimum wage rates established by the legislature.

s/ Phillip M. Kilmister  
PHILLIP M. KILMISTER  
Assistant Attorney General

PMK: vbw