

MAINE STATE LEGISLATURE

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NEW JS QB
Maine Employment Security Commission

INTER-OFFICE MEMORANDUM

Date: June 25, 1969

To: James C. Schoenthaler, Chairman

Office: _____

From: Frank A. Farrington, Assistant Att'y. Gen'l.

Office: _____

Subject: Whether Bonus Payments are to be Considered as Vacation Pay

SYLLABUS:

Bonus payments made under a longstanding plan, without regard to vacation periods, do not constitute vacation pay.

FACTS:

Your inter-office memorandum dated June 24, 1969, requests a legal opinion as to whether bonus payments, made under conditions described in certain material attached to your memorandum, are to be considered as vacation pay. The employer involved will be referred to herein as Corporation "A."

Your memorandum states that this is "very important in that countless other establishments can rely on the Unemployment Compensation Fund to pay for vacation, as they could issue bonuses instead of vacation pay."

There seems to be no connection between "other establishments" and the question asked with relation to the specific situation discussed in the material attached to your memorandum. This opinion will, therefore, be restricted to that situation.

Since 1941 Corporation "A" has had a bonus plan in operation under which employees receive payments in June, October, and December of each year. Payments are based on \$10 for each year of service plus until 1969 an extra \$50 paid in December. The payments are not related to any specific week or period. In 1969 the extra \$50 is to be paid in June, instead of December, for the convenience of the company. For example, an employee hired in 1967 received in 1968 (two years service) three \$20 payments plus \$50 extra in December, for a total of \$110.00. An employee hired in 1948 (21 years of service) three payments of \$210.00 plus \$50 extra in December, for a total of \$680.00. A maximum of \$890.00 (28 years of service) is in effect.

Persons hired after July 1, 1968, do not qualify for the plan, a decision reached in that year of which employees were informed on June 18, 1968, but those hired after July 1, 1968, do qualify for a paid vacation program, the vacation to be taken when the plant closes during the first week of July of each year, computed at 2% of the average straight time earnings for a year. Employees hired before July 1, 1968, continue on the bonus program.

June 25, 1969

QUESTION:

Are bonus payments, as described, to be considered as vacation pay?

ANSWER:

No.

OPINION:

It is assumed that the question is asked to aid in reaching a decision as to whether Section 1193, subsection 5, paragraph A of the Employment Security Law governs. That section of the law, so far as applicable, provides that an individual shall be disqualified for benefits:

"5. Receiving remuneration. For any week with respect to which he is receiving, is entitled to receive or has received remuneration in the form of:

"A. Dismissal wages or wages in lieu of notice or terminal pay or vacation pay;" (emphasis supplied).

There is nothing in the information available to indicate that the bonus payment plan being considered has ever had any relation to vacation periods. Payments have always been made during the months mentioned. The only perceptible difference in 1969 is the fact that the extra \$50 payment is to be made in June, for convenience of the corporation, instead of in December. The plan has been in operation for a considerable number of years.

Bonus payments made under the plan herein discussed should not be considered as vacation pay within the meaning of Section 1193, subsection 5, paragraph A of the Maine Employment Security Law.

This opinion applies only to the facts involved in the material attached to your memorandum.

FAF:e

cc - Mr. Cote

Mr. George