

MAINE STATE LEGISLATURE

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Maine Employment Security Commission

INTER-OFFICE MEMORANDUM

Date: September 22, 1969

To: James C. Schoenthaler, Chairman

Office: _____

From: Frank A. Farrington, Assistant Attorney General

Office: _____

Subject: Penalties in Connection with Late Filing of Quarterly Wage Reports

SYLLABUS:

There is no statutory provision for assessment of a penalty by Maine Employment Security Commission if an employer fails to furnish quarterly wage reports when required to do so as a result of having failed three times, without justifiable excuse, to respond timely to requests for wage information under the provisions of Section 1082, subsection 13 of the Maine Employment Security Law (Title 26, Chapter 13 M.R.S.A., as amended).

FACTS:

Your memorandum of September 16, 1969, asks a series of questions in regard to the right of the Commission to assess penalties, and in regard to its right to initiate action against an employer to furnish required quarterly payroll reports. Section 1082, subsection 13 of the Maine Employment Security Law reads as follows:

"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 wages paid to him, except that the amount of wages in excess of \$4,000 per quarter need not be reported. (Underlining mine.)

"Notwithstanding the foregoing, the commission shall accept upon request by any employing unit quarterly payroll information relative to former and present employees of such requesting employing unit, except that the amount of any individual's wages in excess of \$4,000 per quarter need not be reported, on such forms and at such times as the commission shall hereafter prescribe, and the failure on the part of any such employing unit to file payroll information within the time stated by the regulation of the commission shall render such 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 such employing unit or by other unavoidable accident which shall excuse such employing unit from said penalty."

Section 1082, subsection 7 of the law provides that employing units shall keep true and accurate work records which shall be open to inspection at any reasonable time and as often as necessary, and authorizes the Commission to require from employing units such reports with respect to persons employed by it as the Commission deems necessary for affective administration of the law. It has a provision for punishment by fine or imprisonment, or both, for violation of any provision of the subsection.

Section 1051, subsection 2 has similar provisions for punishment of those who willfully fail or refuse to furnish reports required under the law.

Section 1051, subsection 3 provides:

"3. Willful violation of chapter or regulation. Any person who shall willfully violate any provision of this chapter or any regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200 or by imprisonment for not more than 60 days, or by both."
(Underlining mine.)

QUESTIONS:

1. Can the Commission apply a penalty for failure of an employer to furnish quarterly wage reports required when such employer has "failed to respond timely to 3 successive requests without justifiable excuse?" (Section 1082, Subsection 13).
2. If the answer to question number 1 is affirmative, what would be the amount of such penalty? (Would it be \$10 for each quarterly period required to be covered by the base period payroll reports, or would the total penalty be \$10?)
3. If the answer to question number 1 is affirmative, can the penalty determined to be assessable be assessed for failure to furnish the required payroll reports on a timely basis--i.e., within 15 days following the mailing of the notice by the Commission of failure to respond to 3 successive individual wage requests?
4. If the answer to question number 1 is negative, would Section 1082, Subsection 7, apply insofar as instituting action against an employer who fails to furnish quarterly payroll reports after having failed to respond timely to 3 successive individual wage requests?
5. Can the Commission apply a penalty for untimely filing of a quarterly payroll report required for a calendar quarter subsequent to the five calendar quarters initially required of employers who have been notified of the initial requirement in accordance with Regulation 5, IV?
6. If the answer to question 5 is affirmative, what would be the amount of such penalty?
7. If the answer to question 5 is negative, would Section 1082, Subsection 7, apply insofar as initiating action against an employer for failure to furnish required quarterly payroll reports timely?

ANSWERS:

Question 1. No

REASONS:

Section 1082, subsection 13 provides that an employing unit is liable for a \$10.00 penalty for late filing of wage information requested in regard to an individual who files a request for determination of his insured status. It then provides for compulsory filing of quarterly payroll reports after 3 successive failures to respond timely to individual wage requests without justifiable cause. There is no provision for an administrative penalty in this portion of Section 1082,13, for failure to file the quarterly reports.

The statute then requires acceptance by the Commission of quarterly payroll reports upon request of an employing unit and provides for a \$10 penalty if such reports are not subsequently filed on time.

While it would be reasonable, in fact logical, to impose a penalty for late filing of quarterly reports by those required by operation of law to file them, the fact is that the statute does not provide for it.

It should be noted, however, that continued individual requests can be made, the requirement for filing quarterly reports being in addition to the individual requests.

Question 2. - No answer required, question No. 1 having been answered in the negative.

Question 3. - Same as 2.

Question 4. - A qualified yes.

REASONS:

Section 1082, subsection 7 could be the basis for court proceedings for violation of the requirement that work records be kept open for inspection. The authority of the Commission to require reports does not seem applicable, as the reports are required by the terms of the statute in the situation being considered.

However, it seems that Section 1051, subsections 2 and 3 would be more applicable in a situation where it could be said that failure to file the reports is willful.

Furthermore, the Commission's right to subpoena records is always available to obtain the needed information.

Question 5. - No.

REASONS:

Regulation 5, IV contains no provision for assessment of a penalty for late filing in accordance with its terms, and rightly so. Commission authority to adopt regulations does not extend to establishment of an administrative penalty by regulation, in circumstances where no penalty is provided for in the statute.

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Question 6. - No answer required, question 5 having been answered in the negative.

Question 7. - A qualified yes.

REASONS:

See Reasons for answer to question 4.

cc - Mr. George
Mr. Cote