

MAINE STATE LEGISLATURE

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December 7, 1972

Joseph E. A. Cote, Commissioner
James J. George, Sr., Commissioner

Employment Security Commission

George C. West, Deputy

Attorney General

SYLLABUS:

Employers subject to the provisions of the Employment Security Law for the first time on January 1, 1972, are to pay contributions at the rate of 2% until such time as a rate computed under said experience rating provisions is applicable to them.

FACTS:

Section 1221, subsection 4, paragraph A of the Employment Security Law (T. 26, c. 13, M.R.S.A. 1964, as amended) provides as follows:

"A. The standard rate of contributions shall be 2.7%. No contributing employer's rate shall be varied from the standard rate unless and until his experience rating record has been chargeable with benefits throughout the 36-consecutive-calendar-month period ending on the computation date applicable to such year; provided, that with respect to the rate year beginning July 1, 1972, and each rate year thereafter, the rate of any contributing employer who has not been subject to this chapter for a sufficient period of time to meet the 36-month requirement may be varied from the standard rate if there shall have been a lesser period throughout which his experience rating record has been chargeable with benefits, but in no case less than the 24-consecutive-calendar-month period ending on the computation date applicable to such year; provided, further, that beginning January 1, 1972, and with respect to each rate year thereafter each contributing employer newly subject to this chapter shall pay contributions at the rate of 2% until such time as his experience rating record has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending on the computation date applicable to such year, and for rate years thereafter his contribution rate shall be determined in accordance with subsections 3 and 4." (Underlining supplied)

QUESTIONS:

No. 1. Whether employer "A" who was found subject to the Employment Security Law in June of 1968, whose account was set up as of June 6, 1968, and who paid contributions at the rate of 2.7% for the years 1968, 1969, 1970, and 1971, would be entitled, as a "newly subject" employer, to a reduced rate of 2% in accordance with the quoted section of the law.

No. 2. Whether employers found subject to the Employment Security Law in 1969, 1970, and 1971, who had earlier paid contributions at 2.7%, would qualify as "newly subject" employers entitled to the 2% rate as of January 1, 1972.

ANSWERS:

1. No.

2. No.

OPINION:

The answer to both questions depends upon the meaning of the words "newly subject to this chapter" in § 1221, sub-§ 4, paragraph A, as quoted above. The statutes contain no definition of the words. Hence, we must look at the legislative intent to see what they mean. Employers are persons subject to the contribution plan of Title 26 M.R.S.A. Chapter 13.

First, we find that prior to the enactment of P.L. 1971, Chapter 538 any employer was an employing unit who employed 4 or more individuals during certain parts of the year. 26 M.R.S.A. § 1043, sub-§ 9, paragraph A.

Second, we find that P.L. 1971, C. 538, § 4 added paragraph A-1 to § 1043, sub-§ 9 by defining on and after January 1, 1972 an employer as one employing one or more individuals during certain parts of the year (also a minimum amount in a calendar quarter). In short, the above-cited section added new individuals eligible for unemployment compensation.

Third, we find that the 1971 public law in § 3 amended § 1043, sub-§ 9, paragraph A so that employers on or after January 1, 1956 "and prior to January 1, 1972" who employed 4 or more individuals during certain parts of the year was a contributing employer.

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Fourth, we find the amendment to § 1221, sub-§ 4, paragraph A still continued the standard rate of 2.7% and provided experience rating based on a 36-consecutive-calendar-month period but allowed a 24-consecutive-calendar-month period if the employer had not been subject to the unemployment law for 36 months.

Expressed in terms of P.L. 1971, C. 538, § 38 (26 M.R.S.A., § 1221, sub-§ 4, paragraph A) many employers became "newly subject to this chapter" on January 1, 1972. The word "Chapter" refers to Title 26, Chapter 13. See 1 M.R.S.A. § 71, sub-§ 11. These contributing employers were to start paying contribution at the rate of 2%. They would continue at that rate

"until such time as his experience rating record has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending on the computation date applicable to such year. . . ."

Hence, to answer your two questions we must conclude that employers subject to the Employment Security Law in 1968, 1969, 1970 and 1971 are not "newly subject to this chapter" and thus entitled to the standard rate of 2%. Their standard rate would be 2.7%.

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Deputy Attorney General

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