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February 20, 1976

Harold S. Noddin, Director

Bureau of Labor

David Roseman, Assistant

Attorney General

P.L. 1975, Chapter 519 (L.D. 646)

You have asked, in your memo of February 2, 1976, three questions concerning the effect L.D. 646 (L.D. 646 as amended by Committee Amendment A was enacted as P.L. 1975, Chapter 519) has on several sections of Title 26 of the Maine Revised Statutes. P.L. 1975, Chapter 519 entitled "An Act Relating to Occupational Safety and Health in Public Employment," amends certain sections of Chapters 1, 3, 5 and 6 of Title 26 M.R.S.A. It may be said generally that pursuant to the provisions of P.L. 1975, Chapter 519, certain occupational safety and health laws of this State will, after the effective date of the Act, be made applicable to persons employed in a workplace provided by the State, state agency, county, municipal corporation, school district or other public corporation or political subdivision [hereinafter referred to as public employees], and will no longer be applicable to persons employed in what is commonly referred to as the private sector. With the exception of "courtesy, advisory inspections," P.L. 1975, Chapter 519 will become effective July 1, 1977. See Section 19 of Chapter 519. Courtesy, advisory inspections are to be provided by the Bureau of Labor during the period following October 1, 1975, and before July 1, 1977. See Section 18 of Chapter 519. The Statement of Fact to Committee Amendment A to L.D. 646 indicates that these courtesy, advisory inspections are to be provided to those workplaces in which there are public employees.

From your memo and our discussion on February 9, 1976, I understand your questions to be as follows: (1) Between the present time and July 1, 1977, are the provisions of Chapter 6 of Title 26 M.R.S.A. applicable to the private sector? The answer to this question is a qualified "yes." Chapter 6 of Title 26 M.R.S.A. deals with occupational safety and health. P.L. 1975, Chapter 519 repeals and replaces one section of Chapter 6 and amends several other sections of Chapter 6. According to the terms of P.L. 1975, Chapter 519, however, these statutory changes will not become effective until July 1, 1977. "It is the rule that a statute passed to take effect at a later date speaks from the time it becomes operative, and not from the time of its passage." Longview Co. v. Lynn, 108 P.2d 365, 373 (Wash., 1940); City of Detroit v. General Foods Corporation, 197 N.W.2d 315 (Court of Appeals of Michigan, 1972).

"[W]here the Legislature passes an act to amend a statute then existing, the latter remains in full force during the time between the passage of the amendatory act and the time when it becomes effective." People v. Righthouse, 72 P.2d 867, 868 (Cal., 1937).

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Furthermore, ". . . when the time for taking effect is postponed, . . . repealing clauses in an act do not take effect at a different time from the act as a whole, though expressed in the present tense [citation omitted]" County School Board of Fairfax County v. Town of Herndon, 75 S.E.2d 474, 477 (Va., 1953); State v. Williams, 90 N.E. 754 (Ind., 1910). Therefore, the present statutory provisions of Chapter 6 will remain in effect until July 1, 1977; and under the present statute, the provisions of Chapter 6 are applicable to the private sector.

The above analysis must be qualified, however. Pursuant to the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. [OSHA], the federal government has wide power to promulgate occupational safety or health standards. The statute expressly provides that any State agency may assert jurisdiction under a State law over any occupational health or safety issue to which no federal standard is in effect (29 U.S.C. § 667(a)). However, ". . . [29 U.S.C. § 667(a)] is read as preventing any State agency . . . from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued. . . ." 29 Code of Federal Regulations § 1901.2. Thus, the answer to your first Question is that to the extent there has been no federal pre-emption, the provisions of Chapter 6 of Title 26 M.R.S.A. may be made applicable to the private sector between the present time and July 1, 1977.

(2) Between the present time and July 1, 1977, is a person in charge of a private sector factory, workshop, construction activity or other industrial establishment required by 26 M.R.S.A. § 2 to file a report of death or serious physical injury? The answer to this question is "yes." The reasons given in answer to Question #1 are applicable here. The amendment to 26 M.R.S.A. § 2, which will make the above reporting requirement applicable only to those persons in charge of a workplace in which there are public employees, will not become effective until July 1, 1977. Until that date, the present statutory provision will remain in effect. See e.g. People v. Righthouse, supra. The present statute requires private sector reporting of deaths or serious physical injury.

It should also be noted that there is nothing in OSHA, nor in the federal regulations adopted pursuant thereto, that would qualify the answer to Question #2.

(3) The answer to your third Question is affirmative. (This answer is qualified, however, to the extent that there is federal preemption under OSHA.) The reasons are set forth in Answers #1 and #2 above.

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