

MAINE STATE LEGISLATURE

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26 MRSAs 1192

Employment Security; Search for work Requirement
Unemployment Compensation; Search for work requirement

STATE OF MAINE

Inter-Departmental Memorandum Date June 24, 1977

Emilien A. Levesque, Commissioner

Dept. Commission

John W. McCarthy, Asst. Atty. Gen.

Dept. Employment Security Commission

From _____

Subject Waiver of Active Search Requirement for Claimants Employed by

Kennebec River Pulp & Paper Co.

FACTS:

On March 29, 1977, the Kennebec River Pulp & Paper Co. mill in Madison closed, putting approximately 340 employees out of work. The Employment Security Commission has been informed there have been ongoing negotiations with several prospective buyers, and as of June 21, 1977, the Commission is given to understand serious negotiations are continuing between the present owners and a prospective buyer or group of buyers. Because of the delicate balance of such negotiations, the Commission has not been made privy to the name of the buyer, the precise status of the negotiations or the liklihood of immediate reemployment of the former employees in the event a sale takes place. Many of the employees are presently collecting unemployment benefits.

ISSUE:

Does the Employment Security Commission have the power to waive the requirement, under § 1192(3) of the Maine Employment Security Law that unemployment benefit claimants actively seek work where the claimants are unemployed because their employer has gone out of business, but it is anticipated the business will be purchased by a new owner and reopened?

ANSWER:

Yes. However, it is necessary that the Commission find either 1) that compliance with the requirement be oppressive and inconsistent with the provisions of the employment security law or 2) that claimants are involved in a mass temporary layoff, or 3) that claimants have a continuing job attachment with assurance of resumption of employment.

REASON:

Title 26 M.R.S.A. § 1192(3) provides, in part, that:

"An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

3. He is able to work and is available for work at his usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business for which his prior training or experience shows him to be fitted or qualified; and in addition to having complied with subsection 2 is himself actively seeking work in accordance with the regulations of the commission;...."

June 24, 1977

Thus, § 1192(3) provides that a claimant must actively seek work in a manner prescribed in the regulations of the Commission.

Regulation 9-0 of the Maine Employment Security Commission provides:

"The commission may waive the requirement that claimants must be actively seeking work when it finds that compliance with this requirement would be oppressive and would be inconsistent with the provisions of the employment security law, and, in addition, this requirement may be deferred for the following classes of claimants:

1. Claimants involved in a mass temporary lay-off;
2. Claimants for partial benefits;
3. Claimants involved in a strike, lockout, or other labor dispute, who have not requalified in accordance with section 1193, subsection 4; paragraph C of the employment security law;
4. Claimants who have a continuing job attachment with assurance of resumption of employment."

The regulation governs the issue at hand. The general criterion for when the Commission may waive the requirement of an active work search is when the requirement would be oppressive and inconsistent with the employment security law. The regulation specifies that there are at least two additional classes of claimants for whom the requirement may be waived, namely, those involved in a mass temporary layoff and those who have a continuing job attachment with assurance of resumption of employment.

Ultimately, it is up to the Commission to make a factual determination as to 1) whether the instant case involves a mass layoff that is temporary or 2) whether the claimants have a job attachment and are assured of a resumption of employment, or 3) whether compliance would be oppressive to the claimants and inconsistent with the policy of the Employment Security Law.

The requirements of regulation 9-0 are not conjunctive. Should the Commission determine that the situation coincides with any one of the three requirements listed above, then it would not be abusing its discretion to waive the requirement of an active work search.

In sum, the Commission has the power to waive the active work search requirement if it can make a finding that the facts comply with any one of the three criteria outlined in Commission Regulation 9-0. A legal determination that a given set of facts is adequate to support a Commission decision to waive the active search requirement cannot be made unless the facts supporting such a decision are provided in detail.

JWM:er