

MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN
ATTORNEY GENERAL

5/11/77



Unclassified Employees work conditions

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

September 19, 1977

To: Emilien A. Levesque, Commissioner, Department of
Manpower Affairs

From: Joseph E. Brennan, Attorney General

Re: Recording Work Time Compensation and Sick Leave
of Unclassified Employees.

This responds to your request for advice dated September 8, 1977, posing several requestions regarding keeping of records of time spent working and of vacation and sick leave of unclassified employees. You have posed four questions:

QUESTION 1: Are gubernatorial appointments to the Employment Security Commission regarded as unclassified employees?

ANSWER:

We answer in the affirmative.

The Employment Security Commission is established pursuant to the provisions of 26 M.R.S.A. § 1081. The Commissioner of Manpower Affairs serves on the Employment Security Commission ex officio. The other members are appointed by the Governor. 5 M.R.S.A. § 711-3 provides that heads of departments and members of boards and commissions required by law to be appointed by the Governor are considered members of the unclassified service. The unclassified service thus includes the membership of the Employment Security Commission.

QUESTION 2:

Is the Employment Security Commission or the Department of Manpower Affairs required to keep a daily or weekly record of hours worked by individual members of the Employment Security Commission?

ANSWER:

We answer in the negative. The compensation of members of the Employment Security Commission, other than the Commissioner of Manpower Affairs, is specified by 2 M.R.S.A. § 7-2 at an annual rate of \$20,475. Where such annual rates are set and compensation thus does not relate to the days or weeks of work, there is no requirement for recording the hours actually worked by individual members of the Employment Security Commission.

QUESTION 3:

Is the Department of Manpower Affairs or the Employment Security Commission required to keep a daily/weekly record of sick leave and annual leave taken by individual members of the Employment Security Commission?

ANSWER:

We answer in the affirmative, for the period subsequent to the period June 14, 1976. By the provisions of P. & S.L. 1975, Chapter 147, Part E, the Legislature enacted 5 M.R.S.A. § 16. Section 16, among other provisions requires departments to establish vacation and sick leave policies for unclassified employees and to keep records regarding vacation and sick leave of unclassified employees. Section 16 became effective June 14, 1976. It is explained in greater detail in the opinions of July 5, 1977, to Robert J. Stolt, Commissioner of Personnel, and September 14, 1977, to T. R. Trott of the Maine Law Enforcement and Criminal Justice Planning Agency, copies of which are attached hereto.


QUESTION 4:

Are the individual members of the Maine Employment Security Commission required to report their hours of work, sick leave, and annual leave to the Department of Manpower Affairs or the Employment Security Commission or others under Maine laws or personnel rules?

ANSWER:

As indicated above, sick leave and annual leave, but not work hours, must be recorded by the employing agency. This recording may be achieved either by Commission members reporting to the agency or agency personnel observing and recording the annual leave and sick leave of Commission members, or a combination of both. 5 M.R.S..A. § 16 requires that annual leave and sick leave be recorded and allows the departments some flexibility in the methods of reporting and recording.

I hope this information is helpful.


JOSEPH E. BRENNAN
Attorney General

JEB/ec
Enclosure
cc: Robert J. Stolt
O. W. Siebert