

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date March 13, 1978

To Emilien A. Levesque, Commissioner Dept. Manpower Affairs  
From Patricia M. McDonough, Asst. Atty. Gen. Dept. Attorney General  
Subject - Municipalities As Seasonal Employers -

## FACTS:

Amendments by the Legislature in 1977 to the Employment Security Law (26 M.R.S.A., § 1041 et seq.) extended coverage for unemployment compensation benefits to all state and local employees. Several municipalities who experience great seasonal fluctuations in their employment have requested a hearing for the purpose of determining whether they are engaged in seasonal industries.

## ISSUE:

Whether a municipality which employs on a year-round basis, can be engaged in a seasonal industry?

## ANSWER:

Yes.

## REASON:

Title 26 M.R.S.A., § 1251(1), provides, in part:

Seasonal Industry. As used in this section the term "seasonal industry" means an industry in which, because of the seasonal nature thereof it is customary to operate only during a regularly recurring period or periods of less than 40 weeks in a calendar year.

As a result, an employer must have a seasonal activity or industry before such an employer can acquire seasonal classification status for those seasonal employees employed by it.

"Industry" is defined in Black's Law Dictionary to mean:

Any department or branch of art, occupation, or business conducted as a means of livelihood or for profit; especially one which employs much labor and capital and is a distinct branch of trade.

Nothing in the statute indicates that an employer cannot be classified as seasonal unless his entire business operation is seasonal. There is no limiting language in the statute such as "exclusively," "primarily," "substantially all" or any other language which limits the classification. Nothing in the statute prevents an employer from being both a seasonal and non-seasonal employer.

March 13, 1978

In City of Columbus, Recreation and Parks Dept. v. Bd. of Rev. - Ohio App.2d - (March 15, 1977); 8 CCH Unemploy. Ins. Rpt., Ohio, ¶ 9000, 9088, the court found that an employer may be engaged in more than one industry within the meaning of the statute and that some of the industries may be seasonal and others non-seasonal. The court found that the Parks and Recreation Department operated several industries some of which were seasonal in nature and others which were non-seasonal in nature.

Therefore, if a municipality is engaged in an industry which cannot be continuous or carried on throughout the year, and this is due to seasonal or climatic reasons, then that municipality may be engaged in a seasonal industry. Layman v. State Unemploy. Comp. Comm. 117 P.2d 974 (Ore. 1941).

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