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Unemployment; part time Education related employees
26 M.R.S.A. § 1192 (7)

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March 23, 1978

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

From: Patricia M. McDonough
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Subject: Application of Title 26 M.R.S.A., § 1192 (7)

FACTS:

In 1977, the Legislature amended the Employment Security Law so as to extend coverage for unemployment compensation to employees of state and local governments. Title 26 M.R.S.A., § 1192, subsection 7 (A) (B) and (C), provides that individuals who perform services for an educational institution shall not be paid unemployment compensation benefits during periods of school vacations if they have received a written reasonable assurance that they will be returning to their employment following such vacation periods.

ISSUE:

Whether individuals, such as school crossing guards, bus drivers, and cafeteria workers, who are not directly employed by or responsible to an educational institution, may be considered as performing services for an educational institution within the meaning of Title 26 M.R.S.A., § 1192-7 (A), (B) and (C), and thereby denied unemployment benefits for periods of school vacations?

ANSWER:

No.

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REASON:

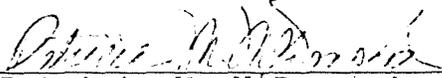
Section 1192 (7) of the Employment Security Law (26 M.R.S.A., § 1192 (7)) provides that individuals who perform services for an educational institution shall not be paid unemployment compensation benefits for periods of school vacations if they have received written reasonable assurances that they will be returning to their jobs following such vacation periods. Those individuals employed directly by the school departments such as teacher aides, teacher assistants, and clerical personnel are clearly covered by this section as they perform services for an educational institution.

However, there are many individuals who perform services that are connected with educational institutions but who are not employed by or responsible to the educational institution. In many municipalities, the school-crossing guides are hired, paid and controlled by the Police Department. Many school cafeteria workers are employed by private concerns who have contracts with the school department to provide food services. In some areas, school bus drivers are not employed by the school department, but rather by the municipality itself. Individuals in this category are not performing services for an educational institution, but rather for the department or concern which employs them. There is no employment relationship between the school and the employee -- the employee is hired, controlled, and paid by someone other than the school. These individuals perform services in an educational institution but not for the educational institution.

The statutory language concerning denial of benefits to individuals performing services for an educational institution was enacted pursuant to federal mandates. The U.S. Department of Labor issued Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566 to aid the states implementing the federally required changes in their statutes. In Supplement # 1 to the Draft Language and Commentary issued in December, 1976, the U.S. Department of Labor stated that individuals who work in an educational institution but are employed by an employing unit other than the educational institution are not performing services for an educational institution (see attachment).

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Therefore, individuals who are not employees of the educational institution cannot have Section 1192 (7) applied to disqualify them for unemployment benefits during periods of school vacations. Their eligibility for benefits must be determined under other applicable provisions of the Employment Security Law.



Patricia M. McDonough

PMM:er

cc/w attachment

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

between-terms denial, cont.

8. Question:

Some States employ individuals to provide school lunch programs in schools. These are State employees, not employees of the school. Would the between-terms denial apply?

Answer:

No. The optional between-terms denial of section 3304(a)(6)(A) applicable to nonprofessional school employees applies to services for an educational institution (other than an institution of higher education). The employees described would be employees of the State working in but not for the educational institution. Therefore, between-terms and reasonable assurance would not be applicable to those employees.

Those provisions would not apply to any individual who works in an educational institution but who is employed by an employing unit other than the educational institution. The entitlement to benefits of such workers should be determined by other applicable provisions in the State law.