

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

April 12, 1985

Senator Judy C. Kany
State House Station #3
Augusta, Maine 04333

Dear Senator Kany:

You have asked the following question: "Does the Maine Wage Assurance Fund, established by Title 26 M.R.S.A. § 632, require payment of claims filed by former employees of a bankrupt corporation where such claims are based solely on unpaid vacation time, severance pay or retirement pay?"^{1/} For the following reasons, it is the opinion of this office that the Legislature did not intend to include vacation time, severance pay, or retirement pay within the meaning of "wages" under 26 M.R.S.A. § 632.

^{1/} Since the date of your opinion request, a complaint against the Bureau of Labor Standards has been filed in Kennebec County Superior Court pursuant to 5 M.R.S.A. § 11001 et seq., M.R. Civ.P. 80B and 42 U.S.C. § 1983 for the Bureau's refusal to pay vacation benefits to a former employee of Waldo Shoe Company under 26 M.R.S.A. § 632. The case is entitled Seeley v. McDonough, No. CV-85-170 (Me.Super.Ct., Ken.Cty., filed Apr. 5, 1985).

26 M.R.S.A. § 632(1) provides:

There is established a Maine Wage Assurance Fund to be used by the Bureau of Labor Standards within the Department of Labor for the purpose of assuring that all former employees of employers within the State receive payment for wages for a maximum of two weeks for the work they have performed. The Legislature intends that payment of earned wages from the fund be limited to those cases when the employer has terminated his business and there are no assets of the employer from which earned wages may be paid, or when the employer has filed under any provision of the Federal Bankruptcy Act.

The Wage Assurance Fund is a non-lapsing, revolving fund of \$100,000, appropriated from the General Fund by the Legislature, which was established to protect employees who are not paid wages as a result of an employer's insolvency. The Fund assures a former employee of up to two weeks' wages for work performed. It is administered by the Bureau of Labor Standards, which investigates all requests for payment from the Fund by obtaining evidence of the employer's insolvency and by reviewing payroll records to determine the amount owed to the employee. During 1984, the Bureau of Labor Standards used the Fund to pay \$13,381.37 to 14 former employees of insolvent employers.

The provisions of the Wage Assurance Fund state that the fund will be used to pay employees "for wages ... for the work they have performed." There is no indication from the legislative history or the language of the statute that the Legislature intended to reimburse employees from State funds for benefits such as vacation pay, severance pay, or retirement pay.

I. Vacation and Retirement Pay.

The section on the Wage Assurance Fund does not define the term "wages," nor does the subchapter "Wages and Medium of Payment," which contains the provisions on the Wage Assurance Fund, have a general definitional section which would clarify the term for the purpose of the Wage Assurance Fund. However, because reimbursement under the fund is limited to "wages ... for work ... performed," it does not appear that the Legislature intended to reimburse employees for vacation time

or pension benefits.^{2/}

In other provisions of the subchapter on "Wages and Medium of Payment," the Legislature has defined wages to include benefits other than "wages ... for work ... performed" when it has determined that a broader definition is necessary to protect Maine workers. For example, the Legislature defined the phrase "wages earned" in 26 M.R.S.A. § 629 to include vacation pay and other benefits in cases where the employee is claiming wages from the employer under the Bankruptcy Code.^{3/} The intent of the Legislature in defining "wages earned" in this section to include vacation pay and other benefits was to give the benefits "priority" in an employee's claim against the employer in a bankruptcy proceeding. See L.D. 542, Statement of Fact (108th Legis. 1977); Committee Amend. to L.D. 542, No. H-643 (108th Legis. 1977). See also 2 Legis.Rec. 1966 (1977) (comments of Representative Bustin); 2 Legis.Rec. 1869 (1977) (comments of Senator Pray).

Although the provisions in the Wage Assurance Fund were enacted subsequent to the definition of "wages earned" in 26 M.R.S.A. § 629-A, the provisions on the Wage Assurance Fund do not incorporate or refer to the phrase "wages earned." By limiting the fund to reimbursement of claims for "wages ... for work they have performed," the Legislature decided to reserve the fund for situations in which employees have worked for the employer and received no wages as a result of the employer's insolvency. It did not intend to provide relief for benefits such as pension or vacation pay.

^{2/} Federal law provides some protection for employee's pension benefits under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq.

^{3/} This section provides that:

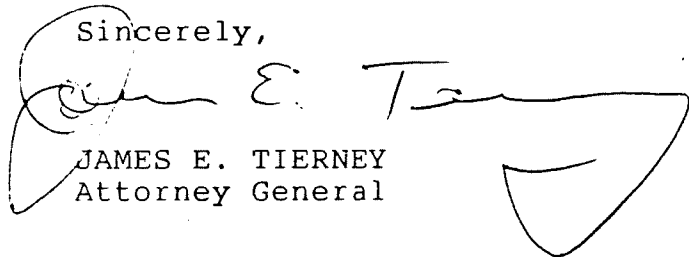
Whenever a person ceases to be employed because of the insolvency of his employer, if in claiming from the employer wages earned but not yet paid to him, the term "wages earned" shall include all fringe benefits earned by the employee that were considered in the employment contract, including plans for retirement, insurance, health care and vacations.

II. Severance Pay.

The Legislature did not intend for the State to compensate employees for severance pay claims against their employer under 26 M.R.S.A. § 632-(1). Rather, the Legislature, through the severance pay law, created a legal obligation on the part of employers who relocate or terminate a covered establishment to pay severance pay to certain eligible employees. 26 M.R.S.A. § 625-B. The purpose of the severance pay law is to provide relief to a community when a large employer relocates or terminates its business in the area. See Shapiro Bros. Shoe Company, Inc. v. Lewiston-Auburn Shoe Producers Association, 320 A.2d 247, 254 (Me. 1974); see also 3 Legis.Rec. at 4093 (1973) (Comments of Senator Farley). Under the terms of the Severance Pay Law, severance pay does not constitute wages, but "shall be in addition to any final wage payment to the employee." 26 M.R.S.A. § 625-B(2) (emphasis added). Because severance pay is not compensation for work performed, the phrase "wages ... for work they have performed" in 26 M.R.S.A. § 632(1) was not intended to include severance pay.^{4/}

I hope the foregoing answers your request. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

^{4/} Two cases have been filed in federal court challenging the severance pay law: Corbett Enterprises, Inc. v. Ewing, No. 83-0020-B (D.Me., filed Feb. 1, 1983) and Marcal Paper Mills, Inc. v. Ewing, No. 83-0264-B (D.Me., filed July 2, 1984).