

Coal Mines, What Employees to Have Certificates. Engineers, Attendance of at Top and Bottom of Mine.

The provisions of this law requires an engineer to be in attendance at his engine at all times when any workmen are underground. Signal men or top and bottom men are required to be kept at the top and bottom of the shaft at such times as men are being hoisted.

December 4, 1914.

Hon. John Sanderson,
State Coal Mine Inspector,
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date the 30th of November, submitting the following questions:

1. "Is it necessary for an assistant mine foreman, and the night foreman to have passed the necessary examination and be in possession of a certificate of competency before they can hold these positions?"
2. "Is it necessary that the operators shall keep the engineer in constant attendance at his engine when there are men underground?"
3. "Is it necessary for the company to keep a man at the bottom of the shaft to attend to giving signals when the mine is not being operated, but there are men in the mine engaged in repair work?"

The provisions applying to the first question above, are those of Section 73, Chapter 120, Laws of 1911, which are as follows:

"In order to secure efficiency in the coal mines, the operator or superintendent shall employ a competent and practical foreman; said mine foreman shall have passed an examination and obtained a certificate of competency as required by this Act, and said mine foreman shall devote the whole of his time to his duties at the mine when in operation.

The mine foreman or his assistant shall visit and examine every working place in the mine at least each alternate day while the miners of such places are or should be at work and shall examine and see that each working place is secured by timbering so that the safety of the mine is assured; he shall see that a sufficient supply of timbers and material is always on hand at the working places in compliance with this Act.

When the mine foreman is personally unable to carry out the requirements of this Act as pertaining to his duties, on account of sickness or of other unavoidable conditions, a competent person shall be appointed to act in his place. The said person so appointed shall possess a certificate of competency; either as mine foreman or mine examiner as provided for in this Act, or shall receive a permit to act as such from the State Coal Mine Inspector's office within thirty days after taking charge.

Whenever such mine foreman, his assistant or assistants, shall have an unsafe place reported to him or them, he or they shall order and direct that the same be placed in a safe condition and until such is done no person or persons shall enter such unsafe place except for the purpose of making it safe."

This section requires the operator to employ a competent and practical foreman. His duties are, as shown by the act, to visit and examine every working place in the mine at least every alternate day while the miners of such places are, or should be at work. The language used in this section implies that an assistant may be employed, but it does not expressly require this, nor is any thing said in the Section concerning the qualifications of an assistant in case one be employed. The provision that the mine foreman shall visit and examine the working places of the mine on alternate days is expressive of the intent of the legislature. It is a fair presumption from the language used, that it was not intended that the mine be examined each day or shift by a person holding a certificate. Since the law does not positively or expressly provide that the foreman shall have an assistant, nor prescribe his qualifications in the event he is employed, and manifestly does not contemplate that there shall be a certificated man on each shift, we must conclude that neither the assistant foreman, or the night foreman is required to be the holder of a certificate, this apparently being required of the foreman, or according to the definition given in the act in Section 104 "person who is charged with the general direction of the underground work, or both the underground work and the outside work of any coal mine, and who is commonly known and designated as mine boss."

What is said in paragraph 3 of this section refers to the person appointed to fill the place of the regular foreman, when the latter is incapable of performing the duties required—one who takes his place as a new man would, performing his duties and exercising his authority. It, therefore, does not apply to persons who merely assist a mine foreman in his duties, and who does not exercise his authority.

In answer to the second question, I will say that Section 100 of the law provides in part as follows:

"A hoisting engineer on any shaft, slope or drift, at any mine, shall be in constant attendance at his engine during working hours, when there are workmen underground."

You state in your letter that it is the practice of the company to allow the night engineer to go off at 4:30 a. m., and the day engineer to begin at 6:30 a. m., leaving the mine without an engineer for two hours, during which time, the only two men underground are the pump man and the stable man. The provisions of the law in this regard seem to be very general, and to require the engineer to be on duty at all times when there are workmen underground. The term "workmen," I assume, includes every class of men who would have work to do in the mine, whether they be miners, machine men, repair men or any other class that might be employed therein.

Requirements as to the keeping of a man at the bottom of the shaft to attend to giving signals, is covered by Section 89, as follows:

OPINIONS OF THE ATTORNEY GENERAL

"At every shaft operated by steam or other power, the operator must station at the top and bottom of such shaft, a competent man, charged with the duty of attending to signals, preserving order and enforcing rules, during the carriage of the men on cages."

This would seem to require a signal man at the bottom and top of the shaft at such times only as men are being hoisted, or as stated in the law "during the carriage of men on cages."

Yours very truly,

D. M. KELLY,

Attorney General.