**Workmen's Compensation—Hazardous Occupation—Payroll.**

Employers, a part of whose employees are engaged in hazardous work, are required to report their entire payroll to the compensation board where such employers have elected to come under the compensation act.

A mercantile company conducting a meat shop in connection with a general store is engaged in a hazardous occupation and must report its entire payroll where it elects to come under the compensation act.

A corporation organized to reclaim and settle land under the provisions of the Carey act is required to report its entire payroll where any of its employees are engaged in hazardous occupations and where it elects to come under the compensation act.

Jerome G. Locke, Esq., December 31, 1924.
Chairman, Industrial Accident Board,
Helena, Montana.

My dear Mr. Locke:

Your letter was received in which you state that recent payroll audits by your auditing department have disclosed that in two instances employers under the provisions of plan No. 3 of the compensation act reported on payrolls only such employees as are actually engaged in hazardous occupation.

One of the firms in question operates a general mercantile establishment employing from twenty-five to thirty employees. As a part of this establishment it conducts a meat department and reports only the employees of this department.

The other employer is the Valier-Montana Land & Water Co. which is primarily engaged in operating an irrigation and land settlement company under the provisions of the Carey act. However, in connection therewith it operates a lumber yard and employs mechanics such as blacksmiths, carpenters, etc., and all of these operations are included under one head. This company employs in the neighborhood of seventy-five people in various departments, a number of whom are engaged in office work, but in reporting its payrolls to the board it has reported only those employees actually engaged in so-called hazardous occupations.

You state that it has been the board's interpretation of section 2847 that an employer engaged in any of the hazardous occupations referred to in this section is required to include all of his employees and is not allowed to segregate in his report those employees engaged in hazardous occupations reporting those only and eliminating those engaged in non-hazardous occupations.

Section 2847, R. C. M. 1921, referred to, provides as follows:

> "This act is intended to apply to all inherently hazardous works and occupations within this state, and it is the intention to embrace all thereof in the four following sections, and the works and occupations enumerated in said sections are hereby declared to be hazardous, *and any employer having any workmen engaged in any of the hazardous works or occupations herein listed shall be considered as an employer engaged in hazardous works and occupations as to all his employees.*"

The italicized portion of the foregoing was added as an amendment by the session laws of 1919.

This section, as amended, apparently means what it says and the purpose of the amendment was to preclude any doubt as to the intention of the legislature to include in the act all of the employees engaged in an occupation where a part of them were engaged in hazardous work.

In the case of In re Cox (Mass.) 114 N. E. 281 the court said:

> "It is clear from those provisions that the act is not designed to be accepted in part and rejected in part. If an employer becomes a subscriber he becomes a subscriber for all purposes as to all branches of one business with respect to all those in his service under any contract of hire. All the terms of the act are framed upon the basis that the employer is either wholly within or altogether outside its operation. There is no suggestion or phrase warranting the inference that there can be a divided or partial insurance.
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> "The practical administration of the act renders it highly desirable that a single rule of liability should apply throughout

any single business. Otherwise difficult and troublesome questions often might arise as to liability or non-liability dependent upon classification of employees and scope of their duties. Litigation as to the line of demarcation between those protected by the act and those not entitled to its benefits would be almost inevitable. Instead of being simple, plain and prompt in its operation, such division of insurance would promote complications, doubts and delays."

While I do not undertake to say that an employer engaged in two separate and distinct lines of business, one of which is hazardous and the other non-hazardous (where the employees are entirely separate and the business separately conducted) would be liable to all his employees it is my opinion that where the employers are engaged in conducting a single enterprise such as a mercantile establishment, or such as the Valier-Montana Land & Water Co. all of the employees should be included in the payroll where any of them are engaged in hazardous occupation.

There may be some question as to whether handling meat in the meat shop is a hazardous occupation. However, they would seemingly be included under class 6 of section 2990, R. C. M. 1921, which designates work in food stuffs, fruits, edible oils or vegetables, not otherwise classified, as among the occupations covered by the act.

Very truly yours,

L. A. FOOT,
Attorney General.