

No. 363

**WAGES—EMPLOYER AND EMPLOYEE—
PAYDAY, notice thereof**

- Held: 1. Every employer of labor must notify his employees as to a definite date when wages become due and payable;
2. Such notice may be given in writing personally to each employee when he commences work, or by posting notice in a conspicuous place, or—in lieu thereof—may provide in a collective bargaining agreement the dates when wages shall become due and payable;
3. No employer is relieved from this duty, unless he has entered into a collective bargaining agreement, which agreement contains a provision setting a definite date for payment of wages.
4. Failure to pay on the date set by personal notice, by posting, or by agreement, or within five days thereafter, constitutes a violation of the law.

February 25, 1942.

Mr. John Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have requested my opinion on the following questions:

"If an employer and employees have a signed collective bargaining agreement, containing conditions of employment etc., will the failure on the part of the employer to pay wages at the time specified in the agreement or within five (5) days thereafter subject the employer to criminal penalty specified in Section 3085, as amended by Chapter 169, of the Laws of 1941?

"2. Will a criminal charge against a defendant stating that the defendant withheld wages due to his employee or his employees for a longer period than five (5) days after the same became due and payable be borne out by proof of the fact that the defendant failed to pay at the time specified or within five (5) days thereafter according to a signed agreement with his laborers, so as to avoid the contention of variance between the charge and the proof?

"3. If the employer is a mining partnership and has failed to pay laborers at the times required by law should not all members of the partnership be named as defendants in a criminal action?"

Sections 3084, 3085 and 3086, Revised Codes of Montana, 1935, were enacted as sections one, two and three of Chapter 11, Laws of 1919, and were carried into the Revised Codes of 1935 without change. The first change in these sections occurred by Chapter 169, Laws of 1941. Prior to this amendment, Section 3084 read as follows:

"Semi-monthly payment of wages. From and after June 1, 1919, every employer of labor (except agricultural labor), whether a person, copartnership, or corporation, in the state of Montana, shall pay to his employee the wages earned each and every fifteen days in lawful money of the United States, or checks on banks convertible into cash on demand full face values thereof, and all such wages shall be due and payable, and shall be paid by such persons, copartnership, or corporation not later than the fifth and twentieth day of each calendar month for all such wages earned up to and within five days of the date of such payment; provided, however, that if at such time of payment any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter; provided further, that this act shall not affect any person, copartnership, or corporation, foreign or domestic, who shall have already established, and shall continue to maintain, a semi-monthly or weekly pay-day."

Chapter 169, *supra*, amends Section 3084, by adding a new paragraph reading as follows:

"Each employer, or an authorized representative of the employer, shall on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month or yearly basis and date of paydays. Such notification shall be in writing to each employee or the posting of notice in a conspicuous place. The provisions of this Section shall not apply in respect to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received and hours to be worked, or to employers engaged in agriculture or stockraising, provided, however, such employers shall conform with the provisions of Section 3086."

It will be noted this provision in no way changes the original provisions of Section 3084, and might well have been enacted as a separate section. It merely provides every employer, if demanded, shall notify each employee, before he commences work, as to the rate of wages to be paid and the dates of pay days. It provides such notice may be given either in writing personally, or by posting in a conspicuous place. It makes an exception to this requirement in the following words:

"The provisions of this Section shall not apply in respect to an employer who has entered into a signed collective bargaining agreement when such agreement contains conditions of employment, wages to be received and hours to be worked . . ."

Strictly interpreted, this provision relieves an employer of giving notice as to dates of pay days, either personally or by posting, if he has entered into a collective bargaining agreement, providing for conditions of employment, wages to be received and hours to be worked.

Obviously, the object and purpose of this amendment are to require the employer to set a definite date when wages become due and payable, so that it may be determined whether or not an employer is violating the provisions of the law requiring payment of wages semi-monthly, and providing a penalty for non-payment within the time fixed by the statute. If we interpret the language of this paragraph strictly, the requirements of the first part of the paragraph could be avoided. I do not think the legislature intended any such result.

A reasonable construction of a statute must be adopted. (*State v. Mills*, 81 Mont. 86, 261 Pac. 885). And where the language of a statute is not clear, the courts in construing it will consider the effect and consequences which would follow its determination. (*State v. Board of Commissioners of Cascade County*, 89 Mont. 37, 296 Pac. 1.) The fundamental purpose of the law must be kept in view and every section of the act read with such purpose in mind. (*State v. Duncan*, 55 Mont. 376, 177 Pac. 248.)

Giving the law a reasonable interpretation, and keeping in mind the fundamental purpose of the law, it is clear the legislature by this amendment gave the employer three methods by which the date of pay day could be fixed, viz., (1) by personal written notice to each employee, (2) by posting notice, or (3) by agreement. It must be done in either one of these ways, and if one is adopted, the others may be dispensed with. Therefore, if the agreement method is adopted, such agreement must contain the date of pay day. In arriving at this conclusion, I am aware the amendment, in providing what the agreement shall contain, does not say it shall contain the date of pay day. However, our Supreme Court has said:

"The general design and purpose of the law is to be kept in view and the statute given a fair and reasonable construction with a view to effecting its purpose and object, even if it be necessary, in doing so, to restrict somewhat the force of subsidiary provisions that otherwise would conflict with the paramount intent."

In re Wilson's Estate, 56 Pac. (2nd) 733, 102 Mont. 178, 196;

Citing: 25 R. C. L., p. 1013, Sec. 253;

Bowers v. Smith, 111 Mo. 45, 20 S. W. 101.

Your first and second questions must, therefore, be answered in the affirmative.

As to your third question: The amendment contains definitions of words and phrases used in the act. Within the definition of "employer" are included partnerships. Therefore, if a partnership is the employer, it is subject to the act, and consequently subject to the penalties for violation of its provisions. As a partnership is composed of individuals, a prosecution under the provisions of this act should be brought against the members thereof, and all members should be named in the complaint.

Whether the date of pay day be set by personal notice, by posting, or by agreement, failure to pay on the date so set, or within five days thereafter, constitutes a violation of the law.

It is well to note here the act provides for payment of wages "semi-monthly." Webster's International Dictionary, 2nd edition, defines the term as "coming or made twice in a month, something done or made every half month." See also 57 Corpus Juris, page 121, for definition of the term "Semi" and "Semi-annually." It would therefore appear the wages should be paid every half month, that is, every fifteen days, as nearly as possible. It is likewise well to note the date of pay day should be definite. In the agreement you submit with your request, I note the provision for pay day reads "On or before the fifth day and the twentieth day of each month." This is indefinite, and may lead to confusion in determining whether or not the employer has violated the act by paying within five days of the date of pay day.

It is therefore my opinion:

1. Every employer of labor must notify his employees as to a definite date when wages become due and payable;
2. Such notice may be given in writing personally to each employee when he commences work, or by posting notice in a conspicuous place, or—in lieu thereof—may provide in a collective bargaining agreement the dates when wages shall become due and payable.
3. No employer is relieved from this duty, unless he has entered into a collective bargaining agreement, which agreement contains a provision setting a definite date for payment of wages;
4. Failure to pay on the date set by personal notice, by posting, or by agreement, or within five days thereafter, constitutes a violation of the law.

Sincerely yours,

JOHN W. BONNER
Attorney General