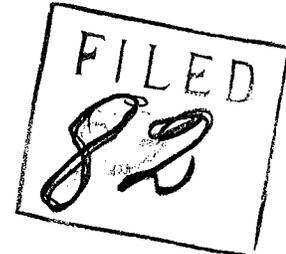


ELECTIONS: VOTING: WAGES: Employee whose working day ends at 4:30 P.M. is entitled to full day's pay when employer dismisses him from work 3:30 P.M. election day.

FILED 82

June 14, 1954



Honorable Bernard "Doc" Simcoe
State Representative
Callaway County
Route #1
Fulton, Missouri

Dear Mr. Simcoe:

We render herewith our opinion based upon your request of May 24, 1954, which request reads as follows:

"I am writing requesting an opinion on section 129.060, chapter 129, of R.S. Mo. or Senate Bill 235 which we passed last session.

"There are two unsettled questions that have come out of Senate Bill 235. First, if an employee requests a leave of absence from work prior to election, both the employee and the company agree in good faith that the designated 3 hours shall be from 4 P.M. to 7 P.M. on election day, with the 30 minutes from 4 to 4:30 being the employees working time, and the company shall compensate him for the above 30 minutes mentioned.

"However, on election day the company stops this employees working day at 3:30 P.M. instead of 4:30 P.M. as usual, or at 4 P.M. as previously agreed to. Is the employee entitled to 30 minutes compensation?

"Second, if an employee and the company participate in Section 129.060 in good

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faith, stopping at 4 P.M. to cast his vote, considering 30 minutes of compensation and 2 and 1/2 hours of his own time after the usual working day is concluded. Due to the large number of employees to ring out their time cards, the last few employees ring out at 4:04 P.M. Does the company have the right to dock them for 4 minutes of their allotted 30 minutes, paying for only 26 minutes instead of their promised 30 minutes?"

Section 129.060, Mo. R. S. Cumulative Supplement, 1953, S.B. 235 67th General Assembly referred to in your letter reads as follows:

"* * *Any person entitled to vote at any election held within this State, or any primary election held in preparation for such election, shall, on the day of such election be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of three hours between the time of opening and the time of closing the polls for the purpose of voting; and any absence for such purpose shall not be sufficient reason for the discharge of or the threat to discharge any such person from such services or employment; and such employee, if he votes, shall not, because of so absenting himself, be liable to any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages; provided, however, that request shall be made for such leave of absence prior to the day of election, and provided further, that this section shall not apply to a voter on the day of election if there be three successive hours, while the polls are open, in which he is not in the service of his employer.

"The employer may specify any three hours between the time of opening and the time of closing the polls during which such

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employee may absent himself as aforesaid. Any person or corporation who shall refuse to any employee the privilege hereby conferred, or who shall discharge or threaten to discharge any employee for so exercising the privilege, or who shall subject the employee to a penalty or reduction of wages because of the exercise of such privilege, or who shall directly or indirectly violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$500.00."

We assume that the regular working day of the employee ends at 4:30 P.M. Prior to the day of election, as provided in the above section, the employee has requested three hours leave for the purpose of voting. The employer has designated the period from 4:00 P.M. to 7:00 P.M., (the hour of the closing of the polls) as the three hour period for the employee to vote. Thirty minutes of that time would, of course, fall within the regular working day of the employee and under the requirements of the above-quoted statute, the employer would be required to pay the employee his regular compensation for that thirty minute period. On election day, however, the employer dismisses the employee for the day at 3:30 P.M. Your question in that case is whether the employee is entitled to thirty minutes compensation.

The argument of the employer against the payment of such compensation would be that the employee from 3:30 P.M. until 7:00 P.M. a period of more than three hours was "not in the service of his employer", and that therefore Section 129.060, supra, is not applicable.

We do not believe that the statute would permit the use of any such device by an employer indirectly to violate the provisions of said section. This would be accomplishing by indirection what the statute prohibits being done directly, i.e., the making of a deduction, on account of the employee's absence, from his usual salary or wages. The statute provides that any person or corporation "who shall directly or indirectly violate the provisions of this section", shall be deemed guilty of a misdemeanor.

However, there is some question whether the employee is entitled to thirty minutes compensation or whether he would

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be entitled to compensation for the period from 3:30 P.M. to 4:30 P.M. in the situation which you have outlined. By dismissing the employee for the day at 3:30 P.M., one hour before the end of his usual working day, we believe that the employer could be held to have designated the period from 3:30 P.M. to 6:30 P.M. as the statutory three hour voting period. This is the employer's privilege under the statute. The statute says:

"The employer may specify any three hours between the time of opening and the time of closing the polls during which such employee may absent himself as aforesaid.* *"

Therefore, the employee would be entitled to pay for the hour between 3:30 P.M. and 4:30 P.M.

In answer to your second question, contained in the last paragraph of your request, we do not perceive any basis upon which the employer could deduct from the employee's wages four minutes' compensation from 4:00 to 4:04 P.M. There would evidently be no question about the employer's liability for wages up to the time at which the time clock was punched at 4:04 P.M. The statute, Section 129.060, supra, then, would require him to pay compensation for the additional twenty-six minutes. The employer in this instance is receiving the benefit of four minutes of the employee's labor for which in this situation he would be required to pay, even though he did not actually receive it.

CONCLUSION

It is the opinion of this office that:

1) Where an employee prior to the date of an election has requested of his employer that he have three hours on election day in which to vote, the employee's usual working day ending at 4:30 P.M. under a contract of employment, express or implied, and the polls closing at 7:00 P.M., and the employer dismisses the employee from his day's work at 3:30 P.M.; the employee is entitled to one hour's wages for the period from 3:30 P.M. to 4:30 P.M.

2) Where an employee being entitled to quit work at 4:00 P.M. in order to have three hour period in which to vote

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on election day, actually punches the time clock at 4:04 P.M., his employer is not entitled to deduct from his wages four minutes' compensation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General