

LABOR: Construction of Section 5082, R. S. 1939, relative to the payment of discharged employees, and 5080 relative to the payment for discharge of employees.

March 16, 1943

Honorable Orville S. Traylor
Commissioner of Labor
Jefferson City, Missouri



Dear Sir:

In answer to your request for an official opinion from this office, in reference to the payment of wages of employees of corporations, we are submitting the following:

Your request consists of three questions.

I

Your first question reads as follows:

"Must a firm pay a discharged employee the day he is discharged, or may that firm avail themselves of a seven day waiting period?"

Section 5082 R. S. Missouri, 1939, reads as follows:

"Whenever any corporation doing business in this state shall discharge, with or without cause, or refuse to further employ any servant or employee thereof, the unpaid wages of any such servant or employee then earned at the contract rate, without abatement or deduction, shall be and become due and payable on the day of such discharge or refusal to

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longer employ; and such servant or employee may request in writing of his foreman or the keeper of his time to have the money due him, or a valid check therefor, sent to any station or office where a regular agent is kept; and if the money aforesaid, or a valid check therefor, does not reach such station or office within seven days from the date it is so requested, then as a penalty for such non-payment the wages of such servant or employee shall continue from the date of the discharge or refusal to further employ, at the same rate until paid: Provided, such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time." (Italics ours.)

This section first declares that whenever any corporation doing business in this State shall discharge, with or without cause, or refuse to further employ any employee, the unpaid wages shall become due and payable on the day of such discharge or refusal to longer employ. This provision in the first part of Section 5082, supra, is unambiguous, is in plain language, and there is no question but that the wages are due on the date of the discharge. Since the wages are due and are not paid, the employee may bring an action against the corporation for his wages, upon the refusal of the corporation to pay him at the time of his discharge. When the wording of a statute is unambiguous, it needs no construction. It was so held in the case of State v. Thatcher, 92 S. W. (2d) 640, l. c. 643, where the court said:

" * * * First, because the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied."

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Since the first part of Section 5082, supra, declares the wages due and payable on the day of such discharge, it cannot be said that the corporation can delay payment of the wages.

Section 5082, supra, also contains a second provision, of which an employee may take advantage, that is, he may request, in writing, of his foreman, or the keeper of his time, to have the money due him, or a valid check therefor, sent to any station or office where a regular agent is kept, and, if the corporation does not send the money within seven days from the date it is so requested, then, as a penalty for such non-payment, the wages of the employee shall continue from the date of the discharge, or refusal to further employ, at the same rate until paid, for a period of not more than sixty days, unless an action therefor shall be commenced within that time. This alternative is not mandatory on the part of the employee, but he may request that it be sent by check to another regular agent of the company.

It may be assumed that it was the intention of the legislature that if a person was discharged by a corporation and intended to go to another city for employment, it would be better if he should request the check to be mailed within seven days to the other city than to bring an action within the city where he was discharged.

CONCLUSION

It is, therefore, the opinion of this department that whenever any corporation doing business in this State shall discharge, with or without cause, or refuse to further employ, any servant or employee thereof, the unpaid wages, of any such servant or employee, then earned, at the contract rate without abatement or deduction, shall become due and payable on the date of such discharge or refusal to longer employ, and the employee upon such refusal may immediately file suit for the recovery of his wages.

It is further the opinion of this department, that the seven-day waiting period is for the benefit of the employee and not the corporation by which he has been employed. For that reason the corporation cannot avail itself of a seven-day waiting period.

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II

Your second question reads as follows:

"If a firm discharges an employee, and the paying office is in a distant city, can that firm avail itself of the seven day waiting period, or must it pay at once, or continue employee on payroll until payment is made?"

In answer to this question, we refer you to our holding in answer to your first question.

In your second question you also inquire:

" * * * can that firm avail itself of the seven day waiting period, or must it pay at once, or continue employee on payroll until payment is made?"

Under our conclusion of the first question, we have held that the firm cannot avail itself of the seven-day waiting period and must pay at once. Relative to continuing the employee on the payroll until payment is made, we hold that that is not the law, as set out in Section 5082, supra. It was so held in the case of Quinn v. T. M. Sayman Products Co. 296 S. W. 198, where the court said:

"The instructions given on behalf of the plaintiff, concerning which defendant assigns error here, proceed upon the theory that under the statute plaintiff, if employed by the week, was entitled to recover by way of damages wages at the contract rate for the entire week commencing March 16th, less 56 cents paid by defendant, though he was discharged for cause, and that,

if defendant failed to pay plaintiff such wages within 7 days after request in writing so to do, plaintiff was entitled to recover by way of penalty wages at the contract rate from the date of his discharge until paid. The giving of these instructions shows a wrong construction of the statute on the part of the learned trial court. Obviously, the statute imposes a penalty, upon the discharge of an employee only for failure to pay the wages of such employee then earned at the contract rate, and not for failure to pay the wages which he would have earned if he had been permitted to continue in the service to the end of the definite period of time for which he was employed. It will be observed that the statute imposes the penalty though the employee be discharged for cause. The penalty is not imposed for discharging the employee, but for failing to pay the wages then earned at the contract rate. It is inconceivable that the statute intends to impose upon an employer a penalty for discharging an employee for cause, which would be the necessary result of the construction placed upon the statute by the learned trial court as shown by the instructions given for plaintiff. Such a construction of the statute would render it unconstitutional, and it is a settled rule of construction that a statute must be so construed, if so it may be consistent with its language, that it will not impinge upon constitutional guarantees. Moreover, this statute, being penal in its character, must be strictly construed." (Underscoring ours.)

In the above quotation we have underlined that particular part which specifically states that the penalty imposed is not for failure to pay the wages which would have been earned had the employee been permitted to continue in the service to the end of the definite period of time for which he was employed, but for failing to pay

the wages after receiving a notice requesting his wages.

This case also held that this statute being penal in its character must be strictly construed. Also, in the case of Alexander v. Allison, 224 S. W. 51, par. 4, the court, in construing this section said:

"The error in submitting to the jury the question of damages for failure to pay plaintiff the wages due, under the provisions of the Laws of Missouri of 1913, p. 175, was cured by the verdict. We have already stated that plaintiff did not prove a demand in writing, and the instructions should not have permitted the jury to find for more than the wages due. The jury, however, found only for the amount due, and defendant was not harmed by the error."

CONCLUSION

It is, therefore, the opinion of this department, that if a firm discharges an employee, and the paying office is in a distant city in this State, the firm cannot avail itself of the seven-day waiting period, and must pay at once, unless the employee requests in writing to his foreman, or the keeper of his time, that the money due him be sent to any station or office where a regular agent of the corporation is kept in this State.

It is further the opinion of this department, that unless the written request, as above set out, is made, the employee does not continue on the payroll until after the seven days have expired from the serving of the written notice above set out, and then he continues on the payroll, from the date of his discharge or refusal to further employ, at the same rate until paid, for a period not to exceed sixty days.

It is further the opinion of this department, that where the employee does not make the request in writing as above set out, he does not continue on the payroll, and

does not receive the benefit of the sixty days' wages from the time of his discharge, but merely has an action against the corporation for the actual wages due him at the time of his discharge.

III

Your third question reads as follows:

"If an employee voluntarily leaves his employment, can he demand immediate payment, except his pay within seven days, or may the employer make him wait until the next regular payday?"

The section applicable to this question is Section 5080 R. S. Missouri, 1939, which reads as follows:

"All corporations doing business in this state, which shall employ any mechanics, laborers or other servants, shall pay the wages of such employees as often as semimonthly. Such corporations shall either, as a part of the check, draft or other voucher paying the wages or separately, furnish the employee at least once a month a statement showing the total amount of deductions for the period."

And, Section 5081 R. S. Missouri, 1939, which reads as follows:

"Any corporation violating section 5080 of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than five hundred dollars, for each offense."

Under the above sections all business corporations doing business in this State shall pay the wages of their employees semimonthly, and, under Section 5081, supra, it is a misdemeanor if the corporations do not pay the wages of their employees semimonthly.

In a careful search of the statutes we do not find any law which allows an employee to sue a corporation for wages due him before the next regular payday. As described in Section 5080, supra.

Section 5080, supra, was held constitutional in the case of *Smith v. Townley Mfg. Co.*, 218 S. W. 870, par. 1-2, where the court said:

"The first paragraph of plaintiff's petition alleges that defendant is a Missouri corporation, and hence plaintiff's rights must be determined by the provisions of the 1911 act, supra.

"The above act of 1911 was held to be constitutional by our court in banc in *State v. Railroad*, 242 Mo. 339, 147 S. W. 118, and *State v. Railroad*, 242 Mo. 380, 381, 147 S. W. 130."

It was also held constitutional in the case of *The State v. Missouri Pacific Railway Company*, 242 Mo. 339, l. c. 375, where the court said:

"Any law which would really prevent the defendant from operating its railroad as a common carrier, or which would render it impossible for such road to be operated so as to yield a return on the money invested in its construction or equipment, would doubtless be void; but after full consideration of all the facts and issues presented in this case, we are of the opinion that the semi-monthly payment

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law applicable to all corporations, is an appropriate and necessary police regulation; and there is no sound reason why it should prove injurious to defendant or other corporations in our State."

CONCLUSION

It is, therefore, the opinion of this department, that if an employee voluntarily leaves his employment he cannot demand immediate payment, but must wait until the next regular payday.

Respectfully submitted

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APPROVED BY :

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