

June 30, 1943

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

Dear Sir:

Your request for an opinion, dated June 18, 1943, has been referred to the writer for answer. Your request concerns the construction and application of a statute, Section 10175, Missouri, R. S., 1939, which provides as follows:

"The employees of the operators of all manufacturing, including plate-glass manufacturing, operated within this state shall be regularly paid in full of all wages due them at least once in every fifteen days, in lawful money, and at no pay day shall there be withheld from the earnings of any employee any sum to exceed the amount due him for his labor for five days next preceding any such pay day. Any such operator who fails and refuses to pay his employees, their agents, assigns or anyone duly authorized to collect such wages, as in this section provided, shall become immediately liable to any such employee, his agents or assigns for an amount double the sum due such employee at the time of such failure to pay the wages due, to be recovered by civil action in any court of competent jurisdiction within this state, and no employee, within the meaning of this section, shall be deemed to have waived any right accruing to him under this section by any contract he may make contrary to the provisions hereof."

The writer assumes that by your request you desire an analysis of this section and an example or illustration of how it would apply to the facts you state in your request.

The first sentence of said section reads:

"The employees of the operators of all manufacturing, including plate-glass manufacturing, operated within this state shall be regularly paid in full of all wages due them at least once in every fifteen days, in lawful money, and at no pay day shall there be withheld from the earnings of any employee any sum to exceed the amount due him for his labor for five days next preceding any such pay day."

The first clause of this sentence merely means that once every fifteen days the employer shall pay the employee all the money due to said employee for work performed, prior to the day of payment, but even then five days earnings may be withheld by the employer--manufacturer. The last clause of the above quoted sentence seems to have been the cause of difficulty. A probable reason of that clause is that in the past manufacturers had withheld certain amounts to cover breakage or penalties of one nature or another. Apparently, the withholdings of salaries by the manufacturer--employer were of such an amount as to burden the employee, so the Legislature deemed it advisable to limit such withholdings, possibly as an exercise of its police power, and consonant with the spirit of the entire section. The last clause in no way establishes the time limit upon what day the salary is to be paid. It merely limits the amount of wages due the employee that the manufacturer--employer may withhold, at any pay day.

You state in your request:

"Several large companies take seven or eight days after the close of their work week to figure up the amount due and to draw up the checks. They have advised us that they pay once a week, and if it is necessary to pay within the five day period, considerable extra help would be required."

Applying Section 10175 to the situation quoted from your letter above, it is the opinion of this office that the Section works as follows. The companies of which you speak pay every week, but take seven or eight days to draw up the checks. Let us apply the Section and the facts you state to the past month of June for illustration. Let us assume that the company pays on Saturday. "any other day would be the same", that would be the dates of the 5th, 12th, 19th, and 26th. If on the 12th they pay for the week's work completed prior to the 12th, in other words,

for work done from the 6th of June to the 12th of June, but take 8 days to draw up the checks the company would actually be paying on the 20th of June, for the work done from the 6th to the 12th of June. The time elapsed from June 6th to June 20th is fourteen days, clearly within the statutory limit of fifteen days. The five day period of which you speak is merely the sum that may be withheld by the employer--manufacturer from the earnings of the employee on the 20th of June. For example, if the employee earns two dollars a day, on June the 20th, when payment of wages is made, not more than ten dollars (\$10.00) may be withheld from his earnings of fourteen dollars (\$14.00), assuming the employee works a seven day week. In other words, the five day period of which the statute speaks is not an attempt to set the date of payment but is a limitation on the amount the employer--manufacturer may withhold on any pay day.

In your letter you write:

"The employers in one company now pay on Friday of each week for work performed subsequently to the preceding Sunday. They wish to change their pay day to the following Monday, as their experience in other states shows that paying on the following Monday eliminates up to 75% of the absenteeism. This, however, would mean that they would be withholding six or seven days' pay, as their work week begins on Monday. The federal regulations require that they pay double time for the seventh consecutive day which, in their particular case is Sunday, and their experience shows that Sunday is the hardest day for them to have a full working force. The changing of the beginning of their work week to Wednesday in order to comply with Section 10175 on the "fifth day", therefore, would not help solve their problem of absenteeism on Sunday."

There the company pays on Friday, "for work performed subsequently to the preceding Sunday." In other words, they pay on June 25th for work done between the 21st and 25th. That is within the fifteen day limit for payment provided by Section 10175. If said company wishes to pay on the following Monday, by our example June 28th, such payment would still be within the fifteen day period set up by statute.

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CONCLUSION

(1) Once every fifteen days the company must pay the employee all wages due him whether earned during the fifteen days prior to the date of payment or before. (2) The company at the date of payment may withhold, at any pay day, five days wages, or less. (3) The five day period of which the statute speaks is merely a limitation on the amount of wages that may be withheld on any pay day, and in no way should be construed as establishing a time limit for a payment of wages.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

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