



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

August 30, 1974

The Honorable Jackie St. Clair
Commissioner,
Texas Dept. of Labor and Standards
Sam Houston Building
Austin, Texas

Opinion No. H- 388

Re: Required time of payment
of wages under Art. 5155,
V. T. C. S.

Dear Commissioner St. Clair:

You have requested our opinion on the meaning of Article 5155, V. T. C. S., which provides in pertinent part:

Each person . . . employing one (1) or more persons . . . shall pay each of its employees the wages earned by him or her as often as semimonthly, and pay to a day not more than sixteen days prior to the day of payment.

The specific situation giving rise to your inquiry involves a corporation which proposes to adopt a new pay schedule. The proposed pay schedule would include a two week pay period beginning and ending on Sunday evening. Payday would be the Friday following the end of the pay period. Assuming for clarity of illustration that a pay period begins on a Sunday which is the first day of the month, the last day of the pay period would be Sunday the fifteenth. Payday would be Friday the twentieth.

As we understand it this plan meets the law's requirement that payment be made at least semi-monthly. Your question is whether the requirement that the employer "pay to a day not more than sixteen days prior to the day of payment" mandates that payment be made within sixteen days of the day wages are earned or merely within sixteen days of the end of a pay period. If the former is correct, the proposed payment schedule is improper; if the latter represents the correct interpretation of the law, the payment schedule is permissible.

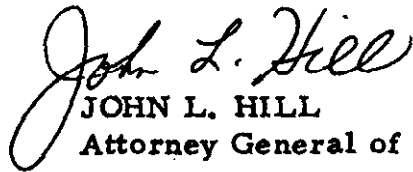
Statutes prescribing the time for payment of wages are found in most of our fifty states. However, judicial decisions construing the Texas statutory language or similar provisions in our sister states are rare or non-existent. We have examined the operation of similar statutes in other states; see, e.g., N.Y. Labor Law, Sec. 196 (repealed 1966, now found in substance at Sec. 191); Kan. Rev. Stat., Sec. 337.020; Mass. Gen. Laws, c. 149, Sec. 148; American Mutual Liability Insurance Co. v. Commissioner of Labor, 163 N. E. 2d 19 (Mass. 1959); U.S. Reduction Co. v. Nussbaum, 6 CCH Labor Cases, P. 61,202 (Ind. App. Ct. 1942); and we have examined the legislative history of Texas law; see generally, Dallas Morning News, Jan. through Feb., 1911, Jan. through Feb., 1915; Texas Senate Journal, 32nd Leg., p. 210 (1911). These are helpful in construing the language but do not provide clear or direct authority for any interpretation. They do suggest that Article 5155 requires payment from the first day of the pay period "to a day not more than sixteen days prior to the day of payment," thus permitting an employer to withhold wages for as long as sixteen days after the end of a pay period. If they were the only aids to construction we would be inclined to adopt that interpretation.

However, we have been informed that your department has utilized and enforced a consistent and long standing interpretation that the statute requires wages to be paid within sixteen days after they are earned. Where a statute is ambiguous or uncertain a court will ordinarily uphold a long standing interpretation given the statute by the agency charged with its administration. Calvert v. Kadane, 427 S.W. 2d 605 (Tex. 1968); Shaw v. Strong, 96 S.W. 2d 276 (Tex. 1936) (Critz, J., concurring); Franklin Fire Ins. Co. v. Hall, 247 S.W. 822 (Tex. 1923); State v. Houston Oil Co. of Texas, 194 S.W. 422 (Tex. Civ. App. --Austin 1917, writ ref'd.). Since the statute is unclear and since there has been no direct judicial construction of the statutory language, we believe the departmental construction would be approved. Therefore, the payment plan about which you have inquired would be invalid.

S U M M A R Y

Wages must be paid at least as often as semi-monthly and within sixteen days of the day they are earned.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee