

ordinance electing to come under the Act at a time sufficiently prior to the election date to enable the chief of the fire force to hold the nominating convention five days prior to the election.

In my opinion, the provisions of section 22 of the Act do not preclude the passing of such ordinance prior to the effective date of 12 o'clock (midnight), December 31, 1937. This provision does not render the Act invalid.

State, ex rel., Nojdl v. Bowman, 199 Ind. 436;

Lautenschlager v. Walgamott, 80 Ind. App. 198.

This is necessary to give effect to sections 15 and 31 (the emergency sections) of the Act, for an interpretation precluding such would not give effect to these two sections which are necessary for an orderly operation of all the provisions of the Act in view of the purpose of the Act and objects to be accomplished.

Therefore, the ordinance may be passed immediately or at a later date as the circumstances of the particular city prescribe.

LABOR, DIVISION OF: Wages, when must be paid. Discharged employes, when wages must be paid. (Salaries).

July 8, 1937.

Mr. Thomas R. Hutson,
Commissioner of Labor,
Division of Labor,
405 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of July 2 asks two questions.

The first query which you propose is relative to the construction of section 40-101. That section is as follows:

"Every person, firm, corporation or association, their trustees, lessees, or receivers appointed by any court whatsoever doing business in this state shall pay each employee thereof at least twice each month, if requested, between the first and tenth and between the fifteenth and twenty-fifth of each month inclusive, the amount due such employee and such payment shall be

made in the lawful money of the United States or by negotiable check, draft or money order and any contract to the contrary shall be void. Such payment shall be made for all wages earned to a date not more than ten (10) days prior to the date of such payment; Provided, That nothing herein shall be taken to prevent payments being made at shorter intervals than herein specified nor to repeal any law providing for such payments; Provided, however, That should any employee voluntarily leave his employment, either permanently or temporarily, such employer shall not be required to pay such employee any amount due such employee until the next usual and regular day for payment of wages, as established by such employer; And, provided, further, That in the event such employee leaves his employment voluntarily, and without his whereabouts or address being known to such employer, such employer shall not be subject to the provisions of section two (Sec. 40-102) of this Act, unless and until ten (10) days have elapsed, after such employee has made a demand for such wages due him, or has furnished such employer with his address, where such wages may be sent or forwarded to him. (Acts 1933, Ch. 47, Sec. 1, p. 371.)”

Burns Indiana Statutes Annotated, 1933, Sec. 40-101.

The section as you see provides that an employee, if he requests it, shall be paid at least twice each month, once between the first and tenth, and second between the fifteenth and twenty-fifth. It is further provided that the payment shall be made in the lawful money of the United States or by negotiable paper and that any other contract to the contrary is void. The Act also sets out that payment shall be for all wages earned not more than ten days prior to the date they are paid. The Act then makes several provisions, among them these:

First: Payments may be made at shorter intervals if desired.

Second: Any employee who voluntarily leaves his employment shall not be entitled to receive his pay until the next regular pay day.

Third: That if an employee leaves voluntarily his employment and his whereabouts are unknown, the employer will not be subject to the penalties of ten per cent of the amount due as liquidated damages in addition to the regular wage until after ten days have elapsed after an employee has made a demand and submitted his address where the wages may be sent.

Your second question is: How soon after an employee is discharged must an employer pay him the wages which are due?

The decisions throughout the country are somewhat in conflict but the better rule seems to be that in the absence of a contract between the employer and employee as to when wages shall be paid, that the employer is allowed a reasonable time after such discharge to do the necessary accounting and make the payment of the wages due. Obviously, what would constitute a reasonable time would depend in a measure upon the type of work being done by the employee. That is to say, if one were engaged in piece work and a lot of bookkeeping were involved, more time would be necessary for the employer to calculate the wages due than if an employee were employed by the day. In the average situation, one who is employed would be employed on the basis of a contract, whether it be oral or written and it is my opinion that if the custom of the employer were to pay his employees on the first and fifteenth of every month and an employee were to be discharged between those dates, that the employer would be justified in waiting until the following regular pay day.

The rule of law as laid down in a well reasoned case is to the effect that the wrongful conduct of an employer does not accelerate the date when payment is due on a contract of employment. Thus then when one is employed, it is my opinion that there would be read into the contract the custom and practice of the employer to pay at certain periods and if such employee were discharged between those periods, it would be reasonable that the employer demand that he wait until the succeeding pay day for the compensation which was due him.