

U.S. DEPARTMENT OF LABOR  
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS  
WASHINGTON, D.C. 20210

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FEB 16 1970

Equal Pay Provisions of the Fair Labor Standards Act

24 AB 706.4  
24 AB 706.5

This is in further reference to your letter of January 6, 1970, in which you request an opinion in behalf of a client as to whether, under the equal pay provisions of the Fair Labor Standards Act, a wage differential as between certain porters and maids employed by a hospital can be justified on the basis of differences in skill and effort.

The application of the equal pay standard has to be determined in each case by applying the terms and provisions of the Act to the full factual situation. On the basis of the information you provide, and with the understanding that the job descriptions and work schedules of the employees in question are accurate, we would not be prepared to assert a violation of the equal pay provisions with respect to the maids and the porter-supervisor or senior porter.

It would seem, however, that the jobs of maid and porter or porter-critical area are, in this instance, equal for equal pay purposes. Skills must be measured in terms of the performance requirements of the job. The fact that some of the duties assigned to workers of one sex may require less skill than those necessary for the job as a whole does not warrant a conclusion that the job classifications do not require equal skill within the meaning of the statute. Thus, even though the maids spend a portion of their time performing different tasks from those performed by the porters, the maids' jobs appear to require, in general, the same skills as those required by the porters when compared over a full work cycle. (See Interpretative Bulletin, Part 800, sections 800.125 and 800.126.)

With respect to the question of effort, a general standard to determine equality of jobs cannot be considered under the Act solely on the basis of a percentage of time. Consequently, a finding that one job requires employees to expend greater effort for a certain percentage of their working time than employees performing another job, would not of itself establish that the two jobs do not constitute equal work. The fact that the porters spend a portion of their time exerting greater physical strength does not in our opinion justify a differential where the

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continuation by the maids of their regular duties involves an equal or greater amount of effort, although of a different kind, than is exercised by the men during the occasional lifting or carrying. (See Interpretative Bulletin, Part 800, sections 800.127 and 800.128.)

It should be noted that this opinion is given solely on the basis of the facts as stated, and would not necessarily apply in other situations which might appear to raise a similar question.

Your attention is also directed to page 1 of the enclosed leaflet concerning the application of the Fair Labor Standards Act to hospitals. Hospital employees covered under the Act as a result of the 1966 Amendments, unless specifically exempt, became subject to a \$1.45 minimum wage beginning February 1, 1970.

If you have any further questions, you may find it convenient to get in touch with our Area Office in Jackson, Mississippi, where we have people who would be pleased to explain this matter to you in greater detail. If you would like to take advantage of this service you should telephone or write to our Area Director Joseph C. Massey, 675 Milner Building, 210 South Lamar Street, Jackson, Mississippi 39201, Telephone: 948-2349. That office is in a better position to ascertain the necessary facts and will be pleased to assist in any way possible.

Sincerely,

~~ROBERT D. MORAN~~  
Robert D. Moran  
Administrator

3 Enclosures