

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

24 AB 703.23
24 AB 703.3

This is in further reference to your letter of March 26, 1970, in behalf of a client, concerning the application of the equal pay provisions of the Fair Labor Standards Act.

The situation you describe involves a central warehouse which services a chain of retail stores. Men and women are employed in the warehouse, performing the same type of work for the same rate of pay. The merchandise handled in the warehouse is both light and heavy and is contained in small and large packages. Large merchandise is sometimes packed in unwieldy boxes. The men work singly at all times whereas the women operate in teams of two to handle large packages.

You state that considering "the output of the women working in pairs, it appears that each man does work equivalent to that of 1-1/3 to 2 women." You would like to know whether in these circumstances a wage rate differential is permissible.

The general position of this office with respect to an employer's "system" for measuring earnings by quantity or quality of production is set forth in Interpretative Bulletin, Part 800, section 800.144, a copy of which is enclosed.

In connection with the particular circumstances outlined in your letter, however, your attention is directed to the fact that a wage differential between all men and all women employees in an establishment, who are otherwise performing equal work, cannot be defended on the ground that the average production of women as a group is not as much as the average production of men as a group.

To group employees solely on the basis of sex for comparison purposes under the Equal Pay Act necessarily rests on the assumption that the sex factor alone may justify a wage differential -- an assumption clearly contrary to the terms and purpose of the statute. Such a practice would penalize all employees of one sex without regard to the production of any one individual of either sex. (The principle involved is analagous to that discussed in Interpretative Bulletin, Part 800, section 800.151.)

Since questions concerning the application of the equal pay provisions must be considered in the light of the particular facts in each employment situation, if you wish additional information, please get in touch with our Regional Director, Mr. Frank B. Mercurio, 907 U. S. Parcel Post Building, 341 Ninth Avenue, New York, New York 10001. That office is in a better position to ascertain the necessary facts and will be pleased to assist in any way possible.

It should also be noted that wage classification systems which treat men and women employees differently and which designate certain jobs as "male jobs" and other jobs as "female jobs" may contravene Title VII of the Civil Rights Act of 1964. (See Interpretative Bulletin, Part 800, section 800.114.) For further information on this point, you may wish to get in touch with the Equal Employment Opportunity Commission, 1800 G Street, NW., Washington, D. C. 20506.

Sincerely,

ROBERT D. MORAN

Robert D. Moran
Administrator

Enclosure