

U. S. DEPARTMENT OF LABOR  
Wage and Hour Division  
Washington, D. C. 20210

August 25, 1970



24 AB 706.5  
24 AB 706.1  
24 AB 703.22  
24 AB 701.4

This is in further reference to your letter of June 22, 1970, in which you request an opinion in behalf of two hospital clients (designated as "A" and "B") as to whether a wage differential between certain maids, porters and custodians or floor maintenance men is in compliance with the equal pay provisions of the Fair Labor Standards Act.

In discussing the questions raised in your letter, it should be noted that since the equal pay provisions apply on an establishment basis employees cannot be compared for equal pay purposes if they are not employed within the same establishment (see Interpretative Bulletin, Part 800, section 800.103). With this fact in mind, we have the following comments.

Hospital "A" Employees

As we understand the situation, the maids at Hospital "A" are primarily engaged in wet and dry mopping floors (and occasional scrubbing of tile floors and vacuuming of carpets); emptying waste baskets and replacing the liners; refilling paper and soap dispensers; dry dusting and wet wiping furniture and fixtures; making beds, cleaning beds including springs, wheels, cables; cleaning restrooms; emptying and cleaning ashtrays; polishing metal surfaces and generally keeping clean the patients' rooms. The maids' secondary duties include vacuuming drapes; cleaning air vents; dusting and wet mopping stairwells; acid cleaning toilet bowls and urinals and miscellaneous other tasks.

The porters' duties involve primarily the transporting of bulk trash or linen throughout the hospital and replacing bags on frames or containers. Secondary duties performed by the porters involve cleaning trucks and containers used to transport the trash within the hospital, policing the trash area, moving furniture and equipment, breaking up boxes and delivering the ice truck to various areas.

The hospital also employs custodians whose primary duties involve operating 19 or 24 inch automatic floor machines to buff or polish the floors, dust and wet mopping floors, scrubbing corridors and wet stripping and refinishing floors. The custodians' secondary duties include dust and wet mopping floors prior to spray buffing, shampooing carpets and transporting linen and trash.

In Hospital "A", the starting rate for porters is \$25 a month higher than that for maids, and the starting rate for custodians is \$40 a month higher than the starting rate for maids. The maids are female. The porters and custodians are male.

#### Hospital "B" Employees

In the case of Hospital "B", the maids perform essentially the same duties as the maids at Hospital "A".

The porters are primarily responsible for maintaining the hallway floor areas (via daily mopping, both wet and dry, and with daily spray buffing using power machines), cleaning the floors of rooms vacated by patients with power equipment, moving the furniture and dusting and washing walls at a higher level necessitating the use of a ladder. The porters also move beds from room to room, and otherwise handle equipment such as mattresses; pick up trash from the floors and take it to a dumpster, and deliver linen from a central Linen Supply Room to the individual floor.

A third group of Hospital "B" housekeeping personnel, floor maintenance men, perform essentially the same duties as the porters.

You state that in Hospital "B" maids and porters have the same starting rate. The floor maintenance men start at a much higher rate. Elsewhere in your letter you state that "for certain reasons largely due to seniority" the floor maintenance personnel receive a higher wage than that paid to a porter.

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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 of the employees in question are accurate, it is our opinion that the jobs of maid, porter and custodian at Hospital "A" appear to be equal within the meaning of the statute. It would also appear that the jobs of maid, porter and floor maintenance man at Hospital "B" are equal for purposes of the equal pay provisions of the Fair Labor Standards Act. However, to the extent that seniority is the basis for the higher wages paid to floor maintenance personnel in Hospital "B", a wage differential may be justified on that ground. (See Interpretative Bulletin, Part 800, section 800.144.)

In arriving at this determination, we have taken into consideration the fact that all the jobs described primarily involve cleaning or house-keeping duties of one kind or another; that the skills and responsibilities are equal; that differences only in the kind of effort required to be expended in performing the jobs in question do not justify wage differentials (Interpretative Bulletin, Part 800, sections 800.127 and 800.128);

and, most importantly, that recent Appellate Court decisions have established the principle that jobs need only be "substantially equal" to permit job comparisons under the Equal Pay Act. (Shultz v. Wheaton Glass Company, 421 F.2d 259 (C.A. 3), cert. denied 38 Law Week 3452 (May 18, 1970); Shultz v. American Can Company, 424 F.2d 356 (C.A. 8), (March 30, 1970).

You are also referred to Interpretative Bulletin, Part 800, section 800.123, which emphasizes that the amounts of time which employees spend in the performance of different duties are not the sole criteria, and that a general standard to determine equality of jobs cannot be set up solely on the basis of a percentage of time.

You should also be aware of the possibility that segregation of jobs by sex may constitute a violation of Title VII of the Civil Rights Act of 1964, where the terms and provisions of that statute otherwise apply.

If you have any other questions about the equal pay provisions, we would suggest that you get in touch with our Area Director Clem J. Denicke, 1527 Federal Office Building, 51 S. W. 1st Avenue, Miami, Florida 33130, Telephone: 350-5767. That office is in a better position to ascertain the necessary facts and will be pleased to assist you in any way possible.

Sincerely,

/s/ Robert D. Moran

Administrator