

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WASHINGTON, D.C. 20210

January 15, 1973

24 AB 703.5  
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DEPARTMENT OF LABOR  
UNITED STATES OF AMERICA  
P. D.

This is in further reference to your letter of September 20, 1972, requesting our opinion regarding the application of the Fair Labor Standards Act as it pertains to certain remuneration and reimbursement policies of . The "Wage Scale" booklet enclosed with your letter describes these policies. You ask specifically, with reference to the Act's equal pay provisions, about certain payments or allowances which may be paid in addition to the "monthly basic wage."

In discussing the above wage policies in terms of compliance with the equal pay provisions of the Act, it is my understanding that you are familiar with the principles and circumstances under which the requirements of Section 6(d) are applicable. My comments assume, therefore, situations in which there are jobs of men and women employees within an establishment to which the equal pay standard applies.

From the information you have provided, it appears that the same basic salary is paid to all employees within each job classification without regard to their sex. In addition to the basic salary, employees also receive a "living allowance" and certain medical expense and medical insurance payments or benefits and, under certain circumstances, scholarship grants for their children. The level of these payments made in addition to the basic salary (or in the case of scholarship grants, the matter of qualification for such payments) is determined on the basis of whether or not an employee is classified as "head of family". Briefly, an employee with "head of family" status receives larger payments and allowances in addition to the basic salary than does one without such status. Furthermore, the bases upon which "head of family" status is conferred upon men employees differ from those which determine such status for women employees. For example, if a man is employed who has a wife (employed or not) he is given "head of family" status. A woman employee with a husband is given "head of family" status, however, only if her husband is both unemployed and unemployable.

Insofar as compliance with the equal pay provisions is concerned, whether or not a violation would result from these pay practices and policies involves consideration first of what constitutes wages for this purpose under the Act. In this connection, it is our view that the "living allowance" is remuneration for employment and must be included as a part of the total wages for the jobs of men and women employees being compared for equal pay purposes. The Equal Pay Act likewise requires that medical expenses and tuition for dependents must be paid to employees of both sexes under the same conditions and in equal amounts.

Secondly, consideration must be given to whether or not the differential in total wages which may result for a man and woman employee with the respective status of "head of family" and "not head of family" would be attributable to a "factor other than sex", I do not believe so. Clearly, the bases upon which men and women employees are granted "head of family" status are determined by their sex. Accordingly, a wage differential resulting from the "head of family"/"non head of family" status granted a man and woman employee because of these different criteria would result in a violation where the equal pay provisions were otherwise applicable.

The policy of making pay differentials based on "head of family" or "principal wage earner" status results in equal pay violations when the inevitable effect of the policy is to pay women less than men performing equal work. In other words, a plan which operates to exclude most married women while bearing no relationship to the requirements of the job or the individual's performance on the job could hardly be said to be based on a factor other than sex. Such a plan may also contravene Title VII of the Civil Rights Act of 1964. For further information about Title VII, you may wish to consult the Equal Employment Opportunity Commission at 1800 G Street, N.W., Washington, D. C. 20506.

In addition to the above regarding the equal pay provisions, the pay policies outlined on pages 4 through 6 of your "Wage Scale" need to be taken into account in determining compliance with respect to those employees who are subject to the Act's overtime pay requirements. Section 7(e)(2) of the Act provides that the "regular rate" upon which overtime pay is computed shall not be deemed to include reimbursement for expenses where an employee incurs expenses on his employer's behalf or for his benefit or convenience. Reimbursement of such expenses is not included in the regular rate if the amount of the reimbursement reasonably approximates the expenses incurred. However, any reimbursement or payment made to the employee for normal, everyday expenses incurred by the employee for his own benefit, such as the rent subsidy or homeowner's allowance included in the "living allowance", may not be excluded from the regular rate. Similarly, the telephone and utilities allowance would not be excludable from the regular rate. The principles pertinent to the application of Section 7(e)(2) are discussed in sections 773.216 and 778.217 of Interpretative Bulletin, Part 778.

The special administrative and executive area travel allowance and reimbursed travel would be excludable from the regular rate under Section 7(e)(2) provided the criteria referenced in the above paragraph are set. The amounts paid for automobile insurance and depreciation would be excludable from the regular rate if the employee uses his private car during his workday in his employer's behalf as distinguished from home to work travel, and if the amount paid reasonably approximates the expense. Medical insurance would not be included in the regular rate under Section 7(e)(4) of the Act, as explained in sections 778.214 and 778.215 of the Bulletin.

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We hope that this information has been helpful to you. If you have any other questions, please do not hesitate to let us know.

Sincerely,

/s/ Ben P. Robertson

Ben P. Robertson