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24 AB 706.5

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



February 28, 1974

This is in further reply to your letter of January 18, 1974, with enclosure, in which you request an opinion in behalf of a maintenance contractor client, concerning the application of the Equal Pay Act.

Your client has been the successful bidder for a contract with a hospital and plans on hiring its predecessor's employees as well as assuming its collective bargaining agreement. You state that the collective bargaining agreement in question provides for two (2) job categories: Janitorial Cleaner-Light, and Janitorial Cleaner-Heavy. All light cleaning jobs are now performed by females and heavy cleaning jobs are performed by males. The collective bargaining agreement provides job descriptions for each of the jobs. You ask whether the specified distinctions are sufficient to lawfully justify a wage differential under the Equal Pay Act.

According to the job descriptions, the functions of Janitorial Cleaner-Light are dusting up to 6' heights, sweeping, using dry mop, operation of light vacuum equipment; finger print removal and/or spot removal on walls and door spotting (up to 5'8" from floor); collecting trash and removing it to a designated area to be disposed of by Janitorial Cleaner-Heavy employee; cleaning and sanitizing of bathroom fixtures; replacement of lavatory expendables and washing of bathroom partitions; washing and polishing of office furniture by hand; spot mopping of hard or resilient tile flooring using household type mop (12 ozs. or under) but only where entire floor does not require mopping; spot cleaning of carpet by hand, but only where entire carpet does not require cleaning; emptying and wiping out of ash trays; washing and/or maintaining waste baskets after first cleaning; and other related light duties necessary to perform.

According to the job description, the functions of Janitorial Cleaner-Heavy are all work performed under the classification "Janitorial Cleaner-Light" plus the regular and customary performance, as primary duties of: Operation of high-pressure machinery such as steam hoses, etc.; use of heavy wet mops (in excess of 12 ozs.); operation of heavy vacuums of the commercial type; machine stripping and waxing of floors; operation of power floor-scrubbing machines; machine buffing; cleaning and washing overhead lights, light fixtures, or ceilings; high project work involving scaffolds and/or ladders; machine shampooing of carpeting; venetian blind washing; snow removal; grounds work; lifting of heavy objects; wall washing in its entirety; incinerating or baling of trash; hand scrubbing of GI trash cans; and other related duties necessary to perform.

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. The equal pay standard is not dependent on classifications or job titles but rather on actual job requirements and performance. Jobs need only be "substantially equal," not "identical," to permit job comparisons under the Act. Thus, the fact that a "heavy" cleaning classification contains an additional listing of duties would not of itself establish that the two jobs do not constitute equal work. See Interpretative Bulletin, Part 800, sections 800.119-123.

To justify a finding of unequal effort the extra physical effort expended must be substantial and performed over a considerable portion of the work cycle. It should also be noted that if all women and some of the men performing a particular type of job do not perform the additional tasks, and some men do, payment of a higher wage rate to all of the men than to the women would constitute a prohibited wage differential if the equal pay provisions otherwise apply. See section 800.128.

Further, a finding that some employees must expend greater effort for a certain portion 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 all "heavy" cleaners spend a portion of their working time exerting greater physical effort does not in our opinion justify a differential where the continuation by the "light" cleaners of their duties involves an equal or greater amount of effort, although of a different kind than that which is exercised by the "heavy" cleaners. See sections 800.127 and 800.128.

If you have any further questions, you may find it convenient to get in touch with our Area Office at Room 836, 870 Broad Street, Newark, New Jersey 07102, telephone: (201) 645-2279, where we have people who

3

would be pleased to explain this matter to you in greater detail. That office is in a better position to ascertain the necessary facts and will be pleased to assist in any way possible.

Sincerely,

/s/ Warren D. Landis

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosure

WH-257

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