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



OFFICE OF THE ADMINISTRATOR

12 August 1974

This is in reference to your letter of February 28, 1974, with enclosures, and subsequent letter of May 22, 1974, requesting an opinion on behalf of one of your clients, a bank, as to whether the payment of wages in accordance with a specific training program limited exclusively to veterans would result in violations of the Equal Pay Act.

Your letter states that the employer in question has initiated a training program for junior bank managers under the "Jobs for Veterans" program. The bank training program outlines in detail the various departments in which the trainee will be employed and a list of the duties in each department. The wage scale which is received by the management trainee is higher than wages paid to some of the employees in the departments wherein the veteran will be trained. You further state that the employer has and is employing veterans as management trainees, all of whom are males and that the bank has no policy of discrimination and would consider the employment of a female veteran for a management trainee position. It appears that the Veterans Administration provides a monthly allowance to supplement the starting rates of the veteran trainees. The employer in question has actively sought management trainees through the state employment service and has also employed a veteran under this program who contacted the bank directly.

You state that since the proportion of female veterans is small, there appears to be little likelihood that a female veteran would apply or be referred to the bank as a management trainee. You ask whether the bank may continue to participate in the program without fear of a violation of Section 6(d) absent the employment of a female veteran.

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The bank's participation in the "Jobs for Veterans" program is, of course, unaffected by the Equal Pay Act and the ensuing discussion should in no way be construed so as to discourage the employer's continued participation. Under certain circumstances a bona fide training program may support a wage differential under the Equal Pay Act. (See Interpretative Bulletin, Part 800, Section 800.148.) A training program is not bona fide, however, unless it is open to both sexes; has a definitive form and content (whether in writing or otherwise); there is a more or less fixed beginning point; a specified course of activity or regimen (including both study and practical on the job training); a reasonable progression from simple tasks and operations to more difficult and complicated procedures, and some kind of ascertainable termination point with ultimate advancement to a higher position dependent only on the completion of the training program. These requirements were established by the courts in the First National Bank in Orange, 61 LC Par. 32,269, 19 WH Cases, 300 (ED Tex. 1969), First Victoria National Bank, 420 F. 2d 648 (C.A. 5, 1969), Security National Bank of Sioux City, 460 F. 2d 57 (C.A. 8, 1972), and Behrens Drug Co., 475 F.2d 1041 (C.A. 5, 1973), cert. denied, 414 U.S. 822 cases. Although there is not enough information in your correspondence to determine if the training program in question would meet the other requirements mentioned above, it would appear that your client's primary concern in this instance is whether his proposed program, if limited exclusively to veterans, and if there were no other separate training program available to non-veterans, including women, could be considered to meet the criterion of being available to both sexes.

Where an employer maintains a policy of considering only individuals from a particular classification which contains predominantly members of one sex for participation in a training program and if this training program is the only program and the clear result of such policy is to effectively exclude members of the opposite sex, we would not consider such a program to be one that is open to both sexes and any resultant wage differential may be in violation of the Equal Pay Act. In a recent decision under Title VII of the Civil Rights Act, the court held that the practice of hiring disadvantaged veterans and other persons who are worthy of employment because of special handicaps is not a valid defense to a charge of sex discrimination Meadows v. Ford Motor Co., 5 EPD Par. 8468, 7 EPD Par. 9103 (WD Ky. 1973).

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We hope that the above discussion has sufficiently responded to your inquiry. If you have any further questions please do not hesitate to get in touch with us again.

Sincerely,

/s/ Betty Southard Murphy
Betty Southard Murphy
Administrator
Wage and Hour Division

Enclosure

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