

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

24 AB706.7

P.D.

24 AB 703.9

July 11, 1975

This is in reply to your letter of April 24, 1975, with enclosures, concerning Senate Bill 121 recently enacted by the State legislature of West Virginia. The effective date of the State Law is July 1, 1975. This legislation established minimum pay scales for certain school employees.

Specifically, you are concerned about a section of the bill which provides that those employees whose employment is for a period of more than three and one-half hours a day are to be paid at least the amounts indicated in a State minimum pay scale. The minimum monthly pay for each employee whose employment is for a period of less than three and one-half hours a day is to be at least one-half the amount indicated in the pay scale.

You cite a situation where a female bus driver is currently paid \$4.62 per hour and works five hours per day for a total of \$23.10 per day and a male bus driver is paid \$4.62 per hour and works 8 hours per day for a total daily compensation of \$36.96. You interpret the State law to require that both employees in such a case will have to be paid a total daily compensation of \$36.96 even though this will provide a higher hourly rate for the five hour worker and you ask whether this would be a Wage and Hour violation. You state that both male and female employees are involved in like situations.

Although not specifically stated in your letter, we assume that your inquiry is with reference to the equal pay provision of the Fair Labor Standards Act (the Federal Wage and Hour law). This provision prohibits sex discrimination in the payment of wages to men and women performing equal work. The application of the equal pay standard has

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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 on the assumption that there are both men and women in the full-time classification, no violation of the equal pay provision would arise in a case where the same wages are paid to those who work less than an 8 hour day as are paid to those who actually work 8 hours provided all employees in each classification are treated equally regardless of sex. On the other hand a question would arise if there is discrimination on the basis of sex in the assignment of schedules or if for any other reason the actual hours of work are affected in any manner on the basis of the sex of the employees.

In similar circumstances we would not be prepared to assert a violation of the equal pay provisions where employees who are classified "part time" work varying hours and receive a guarantee of one half the base salary. Nor would payment of a higher guarantee to employees who work "full time" than those who work "part time" result in a violation where the difference in working time is the basis for the pay differential, and the pay practice is applied uniformly to both men and women. See Interpretative Bulletin, Part 800, section 800.150.

If you have any other questions about the equal pay provisions, you may wish to get in touch with our Area Office at 22 Capitol Street, Suite 100, Charleston, West Virginia 25301, telephone (304) 343-6181, Ext. 448.

Sincerely,

Signed

Warren D. Landis  
Acting Administrator  
Wage and Hour Division

Enclosures

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