

NINE-HOUR LAW:
MISSOURI FAIR EMPLOYMENT
PRACTICES ACT:
WOMEN EMPLOYEES:

The Missouri Fair Employment Practices
Act does not negate nor supplant the
Nine-hour Law and related statutes.

NOTE: This opinion when sent out
should always be accompanied
by Op. No. 231 - 1971.

OPINION NO. 82
(504 - 1966)

January 31, 1967



Honorable William Baxter Waters
State Senator - 17th District
Missouri Senate - Majority Floor Leader
First National Bank Building
Liberty, Missouri

Dear Senator Waters:

This is in response to your recent request for an official
opinion of this office.

The question posed in your letter deals with the potential
conflict among existing Missouri statutes with respect to indivi-
dual employment opportunities between the sexes.

The Sections involved include the so-called Nine-hour Law
which is Section 290.040, Section 292.040 which prohibits minors
and women from working around certain types of machinery, Section
293.060 which specifies that women shall not be employed in or about
mines and Section 564.680 which specifies that no girl under the age
of 18 years shall be permitted to be engaged in carrying telegraphic
dispatches or in the messenger service. (All of the foregoing are
RSMo., 1959)

The seeming inconsistency between the foregoing Missouri Statu-
tes and the Missouri Fair Employment Practices Act can be resolved
through interpretation of paragraph 8 of Section 296.020 RSMo., 1965
Supp., which reads in part as follows:

"(8) Notwithstanding any other provision of this
chapter, it shall not be an unlawful employment
practice because of sex to differentiate in em-
ployment, compensation, terms, conditions or
privileges of employment between male and female
employees if such differences are otherwise re-
quired or permitted by the laws of this state, or
by the provisions of Section 703 of the federal
Civil Rights Act of 1964, as amended, or by the
provisions of Section 6(d) of the federal Fair
Labor Standards Act of 1938, as amended; . . ."

The foregoing paragraph 8, clearly states that if differentiation on the basis of sex is required by state law it is not an unlawful employment practice. Prior opinions of this office have given a restrictive interpretation to the nine-hour law, and in view of such restrictive interpretation it is clear that the nine-hour law does not conflict with the Missouri Fair Employment Practices Act. Chapter 296 RSMo., 1965 Supp., prohibits discriminatory treatment based upon sex in employment matters, but also expressly recognizes that special treatment based on sex in regard to employment is not to be considered discriminatory if other laws require or permit it. The Missouri statutes mistaken by some to be in conflict with the Missouri Fair Employment Practices Act are not drafted so as to be discriminatory towards women. On the contrary these laws are designed to protect women. Hence women are not being provided with unequal treatment but rather they are given special treatment. This special treatment is not inconsistent with the provisions of paragraph 8, Section 296.020 RSMo., 1965 Supp.

Therefore, if a woman is refused employment, promotion or over-time work because the job is one of the types covered by Sections 290.040, 292.040, 293.060, or 564.680 RSMo., 1959, in industries covered by those laws and in fact the employment would run contrary to the terms of those laws the employer will not have violated the Missouri Fair Employment Practices Act.

It must be clearly understood that the laws hereinbefore mentioned must be the real reason for denial of the employment opportunity and it is our understanding that the Human Rights Commission contemplates close examination of each situation in order to determine that the employment is in fact covered by said laws.

Early in this opinion it was mentioned that prior Attorney Generals' opinions narrowly construed the nine-hour law. Such narrow construction facilitates the satisfaction of the requirements of the potentially conflicting statutes considered in this opinion. A brief review of these opinions is in order at this time. It is to be noted that our research uncovers no Missouri court decisions interpreting the language of the nine-hour law. The establishments to which Section 290.040 RSMo., 1959, applies are:

" . . . any manufacturing, mechanical, or mercantile establishment, or factory, workshop, laundry, bakery, restaurant, or any place of amusement . . . or by any person, firm or corporation engaged in any express or transportation of public utility business, or by any common carrier, or by any public institution, incorporated or unincorporated, . . . "

In a previous opinion of this office dated February 6, 1940 to Mr. Earl Shackelford, Commissioner of Labor dealing with the term "mercantile establishments" it was concluded that a nursery did not come within the definition of a mercantile establishment merely because it sold produce. In a letter from the Attorney General dated

Honorable William Baxter Waters

August 21, 1941 to Mr. George N. Davis, Prosecuting Attorney of Macon County, this office advised that female employees of a hotel did not fall within the purview of the nine-hour law because a hotel would not come within the meaning of a factory, workshop, bakery, place of amusement, manufacturing or mercantile establishment.

In an opinion dated April 17, 1953 to Mr. L. L. Duncan, Director, Division of Industrial Inspection, this office stated that female employees of state hospitals in Missouri did not come within the provisions of Section 290.040.

This office ruled in a letter dated July 25, 1951 to Mr. L. L. Duncan, Director, Division of Industrial Inspection, that Section 290.040 does not apply "... to industrial nurses employed by manufacturing and mercantile establishments, where the work done by such nurses is to render first aid work, render professional service of medical or surgical nature under the direction of a physician, and maintain medical and clerical records."

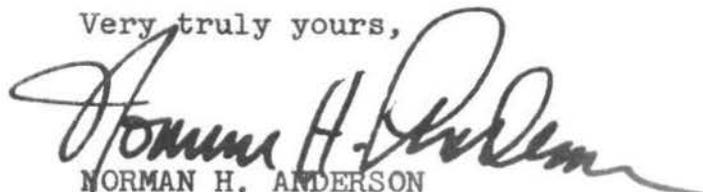
It is clear from the foregoing mentioned opinions that this office has consistently taken a restrictive approach towards Section 290.040 the so-called nine-hour law. It is our opinion that the legislature was not unaware of the restrictive opinions of this office at the time the Missouri Fair Employment Practices Act was enacted. By specifically excepting differentiations in employment as required or permitted by the laws of this state from Chapter 296 RSMo., 1965, the legislature intended for the pre-existing law regarding the protection of employed females to go unaltered.

CONCLUSION

Therefore it is the opinion of this office that Chapter 296, RSMo. 1965, does not negate nor supplant the provisions of Section 290.040, 292.040, 293.060, and 564.680, RSMo., 1959.

The foregoing opinion of which I hereby approve was prepared by my Assistant, Mr. Jerome Wallach.

Very truly yours,


NORMAN H. ANDERSON
Attorney General