

NINE HOUR LAW:
FEMALE EMPLOYEES-FEMALE LABOR:

Female employees of a business office of a construction company fall within the purview of Section 290.040, RSMo Supp. 1967, prohibiting certain establishments from employing female labor for a longer period than nine hours in one day or fifty-four hours in one week.

OPINION NO. 171

February 8, 1968



Mr. George W. Flexsenhar, Director
Division of Industrial Inspection
Department of Labor and Industrial
Relations
Broadway State Office Building
P. O. Box 449
Jefferson City, Missouri 65101

Dear Mr. Flexsenhar:

This is in response to your letter of January 15, 1968, requesting an opinion of this office regarding the question of whether a business office of a construction company is within the types of establishments prescribed in Section 290.040, RSMo Supp. 1967.

Section 290.040, RSMo Supp. 1967, reads as follows:

"1. Hours of labor of female employees. No female shall be employed, permitted, or suffered to work, manual or physical, in any manufacturing, mechanical, or mercantile establishment, or factory, workshop, laundry, bakery, restaurant, or any place of amusement, or to do any stenographic or clerical work of any character in any of the diverse kinds of establishments and places of industry, herein described, or by any person, firm or corporation engaged in any express or transportation or public utility business, or by any common carrier, or by any public institution, incorporated or unincorporated, in this state, more than nine hours during any one day, or more than fifty-four hours during any one week; * * *" (Emphasis ours)

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The wording of the statute clearly prohibits the employment of females in the enumerated types of businesses for a longer period than nine hours during any one day and more than fifty-four hours during any one week.

In order for the statutes to be applicable, a business office of a construction company must fall within one of the following types of establishments: manufacturing, mechanical or mercantile establishment, factory, workshop, express, transportation or public utility business, common carrier or public institution.

A well-settled rule of statutory construction is stated in State ex. inf. Conkling, ex rel. Hendricks v. Sweaney, 270 Mo. 685 loc. cit. 692. " * * * That the expression of one thing is the exclusion of another."

Before the employees of a business office of a construction company can be within the application of Section 290.040, RSMo Supp. 1967, they must be found within its terms.

A construction company is clearly not a "factory", "workshop" or "express, transportation, or public utility business". Neither is it a "common carrier" or "public institution". In order for Section 290.040, RSMo Supp. 1967, to be applicable, a construction company must be found to be a "manufacturing, mechanical or mercantile establishment".

Many Attorney General opinions have exempted a category of female employees for one reason or another. In past opinions, it was concluded that a nursery did not come within the definition of mercantile establishment merely because it sold produce; also this office concluded 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 factory, workshop, bakery, place of amusement, manufacturing or mercantile establishment.

Additional categories of employment construed to be outside the purview of Section 290.040 are employees in private nursing homes, nurses employed by manufacturing and mercantile establishments and female employees of state hospitals. At the same time, females employed in a restaurant, laundry or snack shop operated in connection with an educational institution were held to be within the "nine-hour" law.

It is a general rule that a state statute limiting the hours of employment should be liberally construed to effect its object to protect the health of employees and promote the general welfare; and an exception or exemption should be strictly construed. C.J.S., Master and Servant, § 15, p. 98.

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The terms "manufacturing, mechanical or mercantile establishments" when considered together constitute a broad category.

Lilley vs. Eberhardt, 37 S.W.2d 599, held that a paving company was a "manufacturing establishment" under a statute requiring safeguarding of machinery. The court stated that the term included any place where machinery is used for manufacturing purposes and that the highway with the portable machine shop constituted a manufacturing place.

In Henderson v. Heman Const. Co., 199 S.W. 1045, the court was again concerned with the interpretation of a highly remedial statute. The court held that the defendant, a company engaged in the construction of a viaduct at the intersection of Chouteau and Jefferson Avenue in St. Louis across the tracks of several railways, fell within the terms "manufacturing, mechanical or other establishments" in a statute requiring guards on machinery. The court said on page 1049:

"* * * This defendant was undoubtedly engaged in a branch of manufacturing or mechanical work and its appliances used were as much included within this law as if they had been housed and covered up and all under roof. It was engaged in a manufacturing and mechanical enterprise requiring the use of machinery. While its working plant was not under cover or in a building, its plant, as located and used, was 'established,' whether temporarily or permanently is immaterial, at a certain place to carry on certain work, in the doing of which machinery was used, and all the machinery so used was of the 'establishment'. That being so, it was within the law.* * * "

In Tatum v. Crescent Laundry Co., 201 Mo.App. 97, 208 S.W. 139, 142, the court was concerned with another remedial statute requiring guards on machinery in certain types of establishments. The court construed the terms "manufacturing, mechanical and other establishments" to include a laundry. In that case, "mechanical" was defined as "a term of very broad meaning and is defined by the Century dictionary as pertaining to mechanics or machinery. A mechanical establishment is broad enough. . .to cover almost any plant or place where machinery is set up and operated."

It should be noted that Section 290.040, was revised in 1913 to include "any stenographic and clerical work of any character in any of the divers kinds of establishments and places of industry herein described." Therefore, there can be no distinction between the operators of equipment in the establishment and the office employees.

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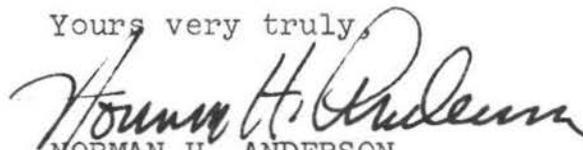
In light of the purpose of Section 290.040, RSMo Supp. 1967, in promoting the welfare of female employees working in certain types of establishments, and the broad language of that statute, it is the opinion of this office that female employees of a business office of a construction company fall within the purview of Section 290.040, RSMo Supp. 1967.

CONCLUSION

Therefore, the opinion of this department is that female employees of a business office of a construction company fall within the purview of Section 290.040, RSMo Supp. 1967, prohibiting certain establishments from employing female labor for a longer period than nine hours in one day or fifty-four hours in one week.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Steve Weber.

Yours very truly,


NORMAN H. ANDERSON
Attorney General