

LABOR: Section 290.060, RSMo, dealing with
FEMALE LABOR: the employment of pregnant women,
has been superseded by 42 U.S.C.,
§ 2000e-2(a) and 29 C.F.R., § 1604.2(b) and employers are no
longer required to comply with such statute.

OPINION NO. 288

December 21, 1973

Mr. Edwin Pruitt, Jr., Chairman
Missouri Commission on Human Rights
314 East High Street
Jefferson City, Missouri 65101



Dear Mr. Pruitt:

You have asked for an official opinion as to whether Section 290.060, RSMo has been superseded by Title 29 C.F.R., § 1604.2(b). Further, you have referred me to the cases of Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824), and Public Utilities Commission of California v. United States, 355 U.S. 534 (1958).

Section 290.060, RSMo, provides:

"It shall be unlawful for any person, firm or corporation to knowingly employ a female or permit a female to be employed in any of the divers kinds of establishments, places of industry, or places of business specified in section 290.040, within three weeks before or three weeks after childbirth. Any person, firm or corporation who shall violate this section shall be deemed guilty of a misdemeanor."

42 U.S.C., § 2000e-2(a), provides:

"(a) Employers. It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

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(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

42 U.S.C., § 2000e-12(a), provides:

"(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title [42 USCS §§ 2000e-2000e-17]. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act."

20 C.F.R., § 1604.2(b) (1), provides:

"(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception."

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We refer you to Attorney General Opinion No. 287, addressed to you, which covered the same issues, i.e., the force and effect of the Code of Federal Regulations and the question of federal supremacy. The reasoning on the question at issue here is the same as that for Opinion No. 287. Section 290.060 has been superseded by Title 29 C.F.R., § 1604.2(b) and 42 U.S.C., § 2000e-2(a).

CONCLUSION

It is the opinion of this office that Section 290.060, RSMo, dealing with the employment of pregnant women, has been superseded by 42 U.S.C., § 2000e-2(a) and 29 C.F.R., § 1604.2(b) and employers are no longer required to comply with such statute.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Anne E. Forry.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General