

**OPINION
70-188**

August 14, 1970 (OPINION)

Mr. J. M. Glaser

Deputy Commissioner

Labor Department

RE: Labor - Females - Hours Limited

This is in reply to your letter of August 6, 1970, wherein you inquire as to an interpretation of a provision contained in Section 34-06-06 of the North Dakota Century Code. You ask the following question:

Our question is particularly with regard to the wording, which prohibits the employment of females for longer than six days in any one week. In your opinion does the statute intend that females should have a day off after any six days of work or does it mean that females may be required to work more than six consecutive days provided those days occur in different calendar weeks?"

Section 34-06-06, insofar as it is relevant to the question raised, reads as follows:

HOURS OF LABOR FOR FEMALEs LIMITED - EXCEPTION.

Notwithstanding any other provision of this chapter or any standard, rule, or regulation issued thereunder, it shall be unlawful to employ any female within this state in any manufacturing, mechanical, or mercantile establishment, or in any hotel or restaurant, or in any telephone or telegraph establishment or office, or in any express or transportation company, for more than eight and one-half hours in any one day, or for more than six days, or for more than forty-eight hours in any one week. * * * ." (Emphasis is ours)

You will note that the above-underlined phrase "or for more than six days" is separated from the phrase "or for more than forty-eight hours in any one week" by the interposition of a comma. The first phrase, therefore, could be read as a limitation distinct and apart from the second phrase. If such interpretation were given to the statute, it would appear then the section would prohibit the employment of females for more than periods of six days.

It would appear that the most recent amendment to Section 34-06-06 of the North Dakota Century Code occurred in the enactment of Chapter 153 of the Session Laws of 1939. The phrase in question, as most recently enacted into law by that chapter, is found as follows:

* * * or more than six (6) days or more than forty-eight hours in any one week. * * * ."

It is to be noted that a comma does not appear after the phrase "or

more than six days" in the above-quoted statute. Therefore, it would appear that the above phrase must be interpreted as reading "or more than six days. . .in any one week."

The comma separating the phrases in question appeared for the first time in Section 34-0606 of the Revised Code of 1943; and since the Revised Code of 1943 was enacted in its entirety into law, it could be assumed that this curious comma was intended to be inserted. However, an examination of the code revisor's notes for the Revised Code of 1943 indicates that the comma in question did not appear in Section 34-0606 as found therein. Therefore, it can only be concluded at this time that the mysterious appearance of the comma in the final draft of the Revised Code was due to a typographical error. So be it. We must, therefore, conclude that the term "six days" does not stand alone but means six days in any one week, and the question at this point necessarily must concern itself with an interpretation of what is meant by the work "week" as it is found in the legislative enactment.

Under Chapter 1-01 of the North Dakota Century Code, entitled "General Principles and Definitions," we find the word "week" at Section 1-01-33. This section, in part, reads as follows:

* * * The word 'week' shall mean seven consecutive days * * *
."

By construing the work "week" in the statute under discussion to mean a period of seven consecutive days, we arrive at a conclusion that a female may not be employed for more than six days in any period of seven consecutive days without being provided with one day of rest from such employment within such period.

An examination of Section 34-06-06 of the North Dakota Century Code indicates that the import of this section, read in its entirety, is to promote the health and well-being of female employees within the state by placing a statutory restriction on the number of hours a female may be required to work in any one day, and the number of hours and days a female may work in any one week. This view of the intent of the statute in question was also expressed by the North Dakota Supreme Court in the case of State v. Ehr, 221 N.W. 883 (1928). Section 34-06-06 of the North Dakota Century Code is essentially the same insofar as the provision before the court at that time is concerned.

In view of the fact that the apparent purpose of the statute under consideration is to promote the health and well-being of female employees, it is our opinion that Section 34-06-06 of the North Dakota Century Code prohibits the employment of females for more than six days in any period of seven consecutive days; and, therefore, the word "week", as used in this section, refers to any period of seven consecutive days, and not specifically to a "calendar week."

HELGI JOHANNESON

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