

MAINE STATE LEGISLATURE

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May 20, 1948

To Marion Martin, Commissioner of Labor and Industry
Re: Section 25, Chapter 25, R. S. 1944

I have your memo of May 14th in which you ask the following questions:

"1. Is it mandatory that women employed more than six hours in any workshop, factory, manufacturing or mechanical establishment, mercantile establishment, store, hotel, restaurant, laundry, telegraph office, express or transportation company and telephone exchanges employing more than three operators, must have one hour's rest period? This hour not necessarily to be all in one period."

The statute provides that no female shall, except in case of emergency or extraordinary public requirement, be employed or permitted to work more than six hours continuously at one time in any establishment . . . in which three or more females are employed, without an interval of at least one hour. Your question does not use the word "continuously" as provided by statute. Quoting further from said statute: "except that such female may be so employed for not more than 6½ hours continuously at one time if such employment ends not later than 1:30 o'clock in the afternoon and if she is then dismissed for the remainder of the day."

In your form letter dated May 5th, directed to the attention of general managers of industries, you state in the third paragraph thereof, "This means, therefore, that any plant that works on more than a 6 1/2 hour day, that allows one-half hour lunch period, is not living up to the law."

That paragraph does not follow the wording of the statute, as it does not contain the word "continuously." If the industries employ a female on an eight-hour day basis and said female works four hours in the forenoon, has a half-hour lunch period, and works four hours in the afternoon, the employer would not be working said employee more than six hours continuously. The first part of Section 25, you will note, does not use the words "rest period". It uses this language "without an interval of at least 1 hour." That means that where they work a female more than six hours continuously and do not allow an interval of at least one hour, this would be a violation of the law.

"2. If it is necessary for the one hour interval, does the final sentence of this section, beginning with the word 'provided', give to the Commissioner of Labor and Industry authority to rule on the manner of the adjustment of this hour interval?"

My answer to Question 2 is in the affirmative.

"3. If this section giving the Commissioner certain authority does apply to the one hour interval, rather than being confined to the thirty minute consecutive rest period, does it go to the extent that the Commissioner may rule that one-half hour only is necessary and the one hour rest period may be cut to thirty consecutive minutes?"

My answer to Question 3 is that the authority of the Commissioner under the statute relates to the one-hour interval and the thirty-minute consecutive rest period, and in my opinion it permits the Commissioner to rule that one-half hour only is necessary, and if the one-hour interval is included, that may be distributed by agreement under the authority of the Commissioner.

"4. The exception to the one hour rest period for those working six hours continuously, namely;- that a female may be employed six and one-half hours continuously, applies only when that female ends her employment at 1:30 in the afternoon and is then dismissed for the remainder of the day, does it not?"

My answer to Question 4 is that the female may be employed six and one-half hours continuously, provided her employment ends at 1:30 in the afternoon and she is then dismissed for the remainder of the day. The thirty-minute consecutive rest period applies to an establishment on a shift period of more than six and one-half hours, but there are very few industries which work a female continuously for more than six and one-half hours without a rest period. The whole gist of this statute is to prevent the employer from working the female employee more than six and one-half consecutive hours on any one shift without any such rest period, which was happening during the war, when this statute was enacted under the provisions of Chapter 324 of the Public Laws of 1941.

"5. The thirty minute consecutive rest period applies only to plants operating on a shift basis of more than six and one-half hours, does it not? In other words, if they are working on a six-hour shift basis, the rest period may be divided up in fifteen minute, or any other interval, basis without approval of such an arrangement by the Commissioner. Does this mean that if a plant does not operate on a shift basis, in that it has only day employment, that the rest period of thirty consecutive minutes is not required, or is a daily operating plant considered to be working on a one shift basis and this section of the law, therefore, applicable to them?"

I do not know just what the legislature had in mind when they spoke of shift basis, except that they did not intend that any female should work more than six and one-half hours continuously without a rest period of not less than thirty consecutive minutes on each shift. In actual practice there is a forenoon shift and an afternoon shift, and there is a day shift and a night shift. It seems to me that you should be concerned only with violations of law where a female is permitted to work for more than six hours

continuously at one time without an interval of at least one hour. Therefore if employers work females for four hours, give them thirty minutes for lunch, which would comply with the law, and then work them four hours more and allow them to go home thirty minutes earlier, they would not be working females six hours continuously, and therefore would not be violating the law.

You said in your memo that I ruled that any plant working over six hours in any one day must give a one hour's rest period, even though this rest period might not be taken consecutively.

I beg to state that I did not make any such ruling. I told you on the telephone in answer to your question that if any employer permitted a female employee to work for more than six hours continuously at one time in any one factory in which three or more females were employed, without an interval of at least one hour, he would be violating the law, except that he could work the female six and one-half hours continuously at one time if such employment ended not later than 1:30 in the afternoon and she was then dismissed for the remainder of the day. That was the gist of my conversation with you on the telephone, and it was not in the nature of a ruling; it was a citation of the statute.

For some reason, in your form letter to the industries, in the third paragraph, you left out the word "continuously" and stated that any plant that works on more than a six and one-half hour day and allows one-half hour lunch period and no additional rest period, is not living up to the law.

The statute does not say more than a six and one-half hour day; it simply says more than six and one-half hours continuously at one time, and I think your memo to the industries is in error as to the interpretation of the statute.

I was very much disturbed when Mr. Ambrose of the Goodall Mills called me and said that you had told him on the telephone that I had made such a ruling.

This seems to me to be an administrative matter for your department; inasmuch as the declaration of peace has not been signed, you have authority to approve the breaking up of the one-hour interval or the thirty-minute consecutive rest period, when an agreement is entered into between the employer and the employee to that effect.

As I stated in my memo to you of May 18th, in the construction of the statutes, it is the obvious intent rather than the literal import which is to govern; and the word "continuously" used in Section 25 relating to hours of work should not be ignored in arriving at the meaning and intent of the legislature.

Ralph W. Farris
Attorney General

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