

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

August 31, 1973

Madge E. Ames, Acting Director

Labor & Industry

Charles R. Larouche, Asst.

Attorney General

Effect of C. 347, P.L. 1973, (Human Rights Sex Amendment) on T. 26, §§731-735 (Female employment).

This replies to your Memorandum of August 14, 1973, in which you ask what effect chapter 347, P.L. 1973, "An Act to Prevent Sex Discrimination under Human Rights Act" may have upon 26 M.R.S.A. §§ 731-735 (female employment provisions.) The answer to that question is that on the effective date of the Act (Oct. 3, 1973) this Act becomes operative as an implied repeal of 26 M.R.S.A. §§ 731-735.

26 M.R.S.A. § 731, 733 and 734 restrict the employment opportunity of women by limiting the length of hours in which they can work. 5 M.R.S.A. § 4571, as amended by Chapter 347, P.L. 1973, provides:

"The opportunity for an individual to secure employment without discrimination because of race, color, sex, religious creed, age, ancestry or national origin is recognized as and declared to be a civil right."

Sections 731, 733 and 734 of Title 26, clearly reduces the opportunity for employment of women and hence, such provisions are in direct conflict with the above-quoted provision of C. 347, P.L. 1973. Even though implied repeals are not favored in the process of legal construction, yet, since they are in clear and irreconcilable conflict, the Legislature must be taken by this subsequent legislation to have intended to repeal these prior statutory provisions.

26 M.R.S.A. §§ 732 and 735 require an employer to afford certain privileges to females which are not afforded to males, i.e., a thirty minute rest period and a seat. However, 5 M.R.S.A. § 4572, as amended by C. 347, P.L. 1973, provides that:

"A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, religion, country of ancestral origin or age, or because of any such reason to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, or in the recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or

has reasonable cause to know, discriminates against individuals because of their race or color, sex, religion, age or country of ancestral origin; ... " (Emphasis supplied.)

The above-quoted amendment, prohibiting discrimination as to conditions or privileges of employment on account of sex applies equally to males as well as females.

Accordingly, it is clear that 26 M.R.S.A. §§ 731-735 will be repealed by implication on October 3, 1973.

CRL/mf

NOT A FORMAL OPINION