Opinion No. 190.

Labor, Payment of—Employees, Male and Female.

Held: (1) The payment of salaries, wages or compensation to female employees which are less than those paid to male employees for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of any kind or description is a violation of the law.

(2) The division of labor is charged with the duty of enforcing the provisions of Section 3090, Revised Codes of Montana, 1935, and you are correct in requiring the distinction between female and male employees for the sole purpose of wage fixing be abandoned.

August 7, 1946.

Mr. Albert H. Kruse
Commissioner of Agriculture,
Labor and Industry
State Capitol
Helena, Montana

Dear Mr. Kruse:

You have asked if you are correct in requiring the distinction between female and male employees for the sole purpose of wage fixing be abandoned. You advise me as follows:

"Recent investigation by this department has disclosed, in our opinion, that a large number of employers may be in violation of Section 3090 of the Montana Codes. This section pertains to equal pay for female employees performing similar work as male employees.

"Further inquiry into this situation discloses the facts that collective bargaining agreements between employers and employee groups have contained a distinction for female and male employees. The basis for weekly pay, for instance, for a clerk is decided partly by the fact that the clerk is either a female or male prospective. It would seem that such an agreement, in the absence of occupational evaluation, attempts to abrogate the letter of the law. Are we correct in requiring that the distinction between female and male employees for the sole purpose of wage fixing be abandoned?"

Section 3090, Revised Codes of Montana, 1935, was enacted as Chapter 147, Laws of 1919, and re-enacted as Section 3090, Revised Codes of Montana, 1921, and carried into the 1935 Codes, without change, under the same section number. It provides as follows:

"It shall be unlawful for any person, firm, state, county, municipal, or school district, public or private corporation, to employ any woman or women in any occupation or calling within the state of Montana for salaries, wages, or compensation which are less than that paid to men for equivalent service or for the same amount or class of work, or labor in the same industry, school, establishment, office, or place of any kind or description."

The statute is very broad and covers all classes of employment both of private industry and public works. Its provisions are clear and unambiguous. The purpose and intent of such statutes are to prevent the exploitation of woman workers, and the evil sought to be eradicated is discrimination against women.

While several states have similar statutes, a careful search discloses few instances where the courts have passed upon the provisions of the statute. The leading case seems to be General Motors Corporation v. Read, 294 Mich. 538, 293 N. W. 751, also reported in 130 A. L. R. 429, with note to the decision at page 436. The Michigan statutes is in part as follows:

"Any employer of labor in this state, employing both males and females in the manufacture or produc-

tion of any article, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female engaged in the manufacture or production of any article of like value, workmanship and production a less wage, by time or piece work, than is being paid to males similarly employed in such manufacture, production or in any employment formerly performed by males, shall be guilty of a misdemeanor . . ."

The statute was attacked on its constitutionality on the grounds it was uncertain, arbitrary, confiscatory, discriminatory and a denial of equal protection. Objection was made specifically to the word "similarly" as used in the statute on the ground that it was uncertain and ambiguous.

While the wording of the Michigan statute is somewhat different from ours the meaning is the same. It is therefore interesting to note what the court said about the use of the word "similarly" as used in the Michigan statute:

"The first objection is that the phrase 'males similarly employed' is indefinite. We do not think so. The word 'similarly' has a definite meaning and as used in this statute means substantially alike. This phrase simply means that the employer shall not, because of her sex only, pay a woman employee less than it pays a man employee for doing work of substantially the same character, quality and quantity. The standard so set is clear and unambiguous."

Concerning the objection the statute is arbitrary and confiscatory, the court said:

"The claim that the statute is arbitrary and confiscatory is unsupported either by a consideration of the effect of the statute or of the allegations of the bill of complaint. There is nothing arbitrary about the statute on its face and there is no allegation of a state of facts which would make it arbitrary. The statute seeks to prevent the exploitation of woman workers and adopts a reasonable means to do so."

Continuing, the court said:

"The law applies a uniform standard to all employers subject to its provisions. The law does not endeavor to set the same wages for all women employees, but rather it seeks to provide the same wage conditions for women as for men, and necessarily the differences in pay of men will be reflected in the wage scale for women."

As pointed out, our statute is plain and unambiguous. It makes it unlawful to employ any woman or women in any occupation or calling within the state for salaries, wages, or compensation which are less than those paid to men for equivalent services. The adjective "equivalent" as used in our statute is defined by Webster as "equal in value; virtually or in effect identical." It would therefore seem there would be no difficulty in classifying equivalent services of males and females under the wording of our statute.

I do not hesitate to state that, in my opinion, a discrimination in the payment of wages between male and female employees based only on difference in sex is clearly a violation of the law.

Section 3635, Revised Codes of Montana, 1935, provides the division of labor of the department of agriculture, labor and industry "shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, protection of employees . . ."

It is therefore my opinion: (1) The payment of salaries, wages or compensation to female employees which are less than those paid to male employees for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of any kind or description is a violation of the law; (2) The division of labor is charged with the duty of enforcing the provisions of Section 3090, Revised Codes of Montana, 1935, and you are correct in requiring the distinction between female and male employees for the sole purpose of wage fixing be abandoned.

Sincerely yours,

R. V. BOTTOMLY,
Attorney General