MINUTES

LABOR & MANAGEMENT COMMITTEE - NEVADA STATE LEGISLATURE - 58TH SESSION

FEBRUARY 18, 1975

The meeting was called to order by Chairman Banner at 9:35 A.M.

MEMBERS PRESENT: Mr. Barengo
Mr. Benkovich
Mr. Getto
Mrs. Hayes
Mr. Moody
Mr. Schofield
Mr. Chairman

MEMBERS ABSENT: None

ALSO PRESENT: (Speaking guests)
Mr. Stan Jones - Nevada State Labor Commissioner
Assemblyman Jean Ford
Mr. Robert F. Guinn - Nevada Motor Transport Association and Nevada Franchised Auto Dealers Association
Mr. Bob Alkire - Nevada Mining Association - Kennecott Copper Corporation
Mr. Clint Knoll - Nevada Association of Employers
Mr. Gino Menchetti - Deputy Attorney General
Mr. Raymond D. Bohart - Federated Employers of Nevada
Mr. R. E. Cahill - Nevada Resort Association
Mr. John Gianotti - Harrah's
Mr. Speaker (Keith Ashworth)

The purpose of this meeting was to discuss the following bills:

A.B. 219: Makes certain provisions on wages, hours, and working conditions apply uniformly to employees without regard to sex.

A.B. 256: Increases minimum wage for employees in private employment.

The Chairman first called for the proponents of A.B. 219.

The first speaker was Mr. Gino Menchetti from the Attorney General's office. He first gave some background on litigation which took place affecting some of the statutes that will be affected by AB 219. On December 28, 1973, the U.S. Attorney General filed a complaint stating that NRA 609.030 and NRS 609.110 thru 609.180 were in violation of Title 7 of the Civil Rights Act of 1964 because those statutes required different terms and conditions of employment for females than for males. These laws should be made applicable to men. Judge Thompson will review this matter the 1st of March in light of any legislation that is passed by that time. Menchetti said he felt Judge Thompson was inclined to rule them unconstitutional but he apparently wants to give the Legislature a chance to rectify the matter first. Whatever is done about this bill, he said, the major concern from a legal standpoint would be whatever requirements or benefits are made for men should be equally provided for for women.

Mr. Barengo wondered at Menchetti's comment that these statutes were unconstitutional since the ERA is just now in the process of ratification.

Mr. Menchetti's reply was that under the Civil Rights Act of 1964, Title 7 provided if you have different provisions for men and women the law would be deemed invalid under this Act.

Chairman Banner asked what would happen if this bill does not pass. Mr. Menchetti said if nothing is done, he thought the judge would rule these statutes unconstitutional and that the U.S. Attorney General would come back on the basis of that suit and move that the remaining statutes are unconstitional.

Mr. Banner asked if Menchetti felt this bill would meet the requirements of this suit. Mr. Menchetti felt it would.

Assemblyman Ford then spoke for the bill. She said this measure is designed to remove the inequities listed in the Federal suit against the State of Nevada as well as other sections of law not involved in legal action. She said the goal of this piece of legislation is to humanize working conditions for all and to provide a minimum standard of decency particularly for those who are not represented by collective bargaining. For further detail on Mrs. Ford's testimony, please see the attached. She added that there would be one amendment to this bill that she thought would be applicable and that was to remove agricultural workers for any requirements for overtime.

Mr. Getto commented to Mrs. Ford that he thought perhaps the wording in Section 11, Line 4 should read "equal amount of work" rather than equal work. He thought this especially for employment requiring physical labor. Mrs. Ford replied that Section 11 has been taken verbatum from NRS 609.280 which this Legislature passed in 1969. That it was not new language. Mr. Getto then asked where the $1.00 figure came from in Section 5 regarding food. Mrs. Ford said this was an increase from what it was before which was 35 to 45 cents per day.

Mr. Jones who is the Nevada State Labor Commissioner, then spoke saying that in the estimation of the Labor Commission, AB 219 will have a significant impact on the employment opportunities of Nevada women and men as well. Not to extend these protective labor laws would be a return to the situation in the 1930's. He felt the Federal Court would rule that the protective labor laws are unconstitutional. He used basketball terminology in reference to AB 219 saying it was a four-corner defense 1. Overtime 2. Rest Periods 3. Lunch breaks 4. Seats. He felt this bill was a foundation of job decency and also said to extend these protective labor laws to all employees would have a minimal impact on employers but to fail to extend these laws would have a tragic impact on 50% to 65% of the State's work force. He went on to say there are in excess of 95,000 female workers in Nevada's work force and 70% to 80% of these would be severely affected by actions on AB 219. Female workers comprise over 37% of the total work force in Nevada which is approximately 260,000 and he said he was not aware of one single person among these 260,000 who objected to the extention of these minimal protective laws. He concluded by saying that protective labor laws connected with the employment of human bodies in any industry is essential to the welfare of the workers and the industrial peace of the State of Nevada.

Mr. Getto asked Mr. Jones if he felt AB 219 in its present form is the only answer to the suit. Mr. Jones said he did feel it answered the questions of the suit.

Mr. Getto then went on to say that he did not understand the statement that this bill would have very little affect on employers but would have a great affect on the employee. Mr. Jones replied that 70% to 80% of those who will be affected by these protective labor laws are already complying with them and so this would have little affect on them. If AB 219 is not passed, he had little doubt what the decision of the Federal Court would be and then those employers who are already complying to these provisions for employees would retrench from them and this would drastically affect the employees.

Mr. Getto said he was concerned about Section 7, 1A regarding 40 hour work weeks. There are some industries such as mining that work 5 days back to back and then the employees get 4 days off. If this bill were passed, the employer would have to pay overtime and this would certainly affect the employer. Mr. Jones said that he felt these types of "agreements" between employer and employee were not always voluntary and often are conditions of employment or continued employment even though the employee does not really want to participate in this type of arrangement. Mr. Getto then asked if Mr. Jones thought this particular language in Section 7 must be left in the bill in order to meet the mandate of the Federal Government. Mr. Jones said that he thought that whatever is done with this bill, this particular provision should be in there in some form or another.

Opponents to AB 219 then spoke. The first gentleman was Mr. Knoll of the Nevada Association of Employers. He said that as an employers group, they had no quarrel with anyone over Title 7 of the Federal Act. But he went on to say that AB 219 provides some tremendous costs for employers. He then called the committee's attention to Section 5 regarding a $1.00 food allowance. He said historically in the State of Nevada employers could apply meal offset costs to the minimum age requirement. In the past it has been $1.50 per day but now this bill for some reason lowers it to $1.00 just when the cost of food is even higher.

Under Section 7 regarding more than 40 hours in any consecutive calendar days, there is a tremendous difference between 7 consecutive days and a work week because under the Wage and Hour law, you may work an employee back to back as long as you do not work more than 40 hours in the prescribed work week. Many workers prefer to work a 5 day back to back work week. He thus suggested that the language at the very least be changed to read "work week". He said the same thing applies to Section B for 8 hours in any 24 hour period. This would mean at shift changes for around the clock operations overtime would have to be paid. So, the language here should read "work day" rather than 24 hours.

Under Subsection 2A of Section 7 regarding executives and administrators, how do you determine who is an executive or an administrator. In his interpretation, the language "consent to perform" means that the law is encouraging supervisors, as such, to negociate with their employers as to what their responsibilities are going to be and this

would mean that unless a supervisor consented to work excessive hours to get the job done, the employer would be in violation of the law. 33

Mr. Knoll went on to say he had another objection regarding seats. He said there were circumstances when this just can't be done. But, if this must be in the bill, it should be changed to say seats in designated work areas. He went on to say that this bill deliverately omits the very thing we have had for years and that is the section that says "In the event exemptions are provided under Federal law, they shall apply".

Mr. Getto referred to Section 9 asking if it was customary procedure to have the employer provide uniforms in the State of Nevada and also to provide cleaning. Mr. Knoll said the addition to this bill is for the additional responsibility to provide cleaning. This would have an impact and we don't really feel it should be the responsibility of the employer to provide cleaning.

Mr. Speaker (Keith Ashworth) then spoke on AB 219. His concern was in Section 5 pertaining to the $1.00 per day for food. He said he felt this language should be changed to read "the value of the food shall be computed at no more than the actual cost of the employer". He added that with inflation, who knows what a dollar will be in two years before the Legislature convenes again.

Mr. Guinn then rose to make known his opposition to the bill. He said he wanted to emphasis the need for doing something to preserve the exemptions that exist under Federal law. But he said he was very concerned about Mr. Jones' statement that this bill would not have a major impact. He said under Federal law truck drivers, their helpers and mechanics are exempt from overtime provisions. This bill would require 1 1/2 pay after 40 hours and this would definitely have an impact and this would increase the cost of labor by about 20% and and in view of the fact that about 60% of the cost of driving a truck is labor, you would be talking about around 12% increases in freight rates. We also want exemption for auto dealers for their salesmen, partsmen and mechanics.

Mr. Ray Bohart representing the Federated Employers of Nevada then spoke in opposition to the bill. He said he was in agreement with most of AB 219 as it seemed to be a duplication of the Fair Labor Standards Act in many aspects. However, he agreed with Mr. Ashworth regarding the $1.00 per day for food wording that this language should be changed to "the actual cost of the meal or meals furnished by the employer as an offset". Under Section 7, 1A, rather than 7 consecutive days, this should apply to a 40 hour "work week" because of the necessity for some to work back to back. Under Section 7, 1B, he said they were totally opposed to any form of state regulations of daily overtime at premium rates. He said there should be a new Item 3 under Section 7 to provide that employees who are subject to the jurisdiction of the Fair Labor Standards Act of 1935 as amended but exempted from the maximum hour provisions of Section 7 of that Act shall also be exempted from the maximum hour provisions of the provisions of the NRS Chapter 8, Section 7. Under Section 8.3, he said they do not fully understand this relating to chairs as they have an ongoing program of motivation of employees to get them off

the seats and don't quite understand the intend here but are certainly opposed to providing further deterents to work activity. We would be opposed to Section 8.3 in its entirety. He then spoke about uniforms and said a specific definition of uniform was needed. In conclusion, he said that he thought the bill as proposed would require an augmentation and an increase in the budget of the State Labor Commissioners office. Prior to any formal action by the committee, he suggested determining what additional costs are going to be incurred under this particular law. 34

Mr. Robbins Cahill then spoke. He commented on the section regarding seats and said it would create a problem in supplying seats for crap tables and for the pit areas. He also felt a better definition of uniform was needed.

Mr. Alkire representing Kennecott Copper Corporation said it was absolutely absurd to say this bill would have not significant affect upon industry - particularly the mining industry. With the economy as it is, we just don't believe this is the time to make increases for industry.

Mr. John Gianotti representing Harrah's was last to speak at this meeting. He too agreed this bill would be costly to the employer. He felt the bill much to specific and needed to have some flexibility. He was opposed to the wording in Section 7 regarding the consecutive work days because of the back to back working situation. He too questioned how you determine just what a uniform is. And, under Section 8.3 regarding chairs, he felt this would be very troublesome in the gaming industry.

Chairman Banner then stopped the meeting and advised the guests that it would be continued on Thursday, February 20, at 9:30 A.M.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Joan Anderson, Secretary

ASSEMBLY

AGENDA FOR COMMITTEE ON Labor & Management

Date Feb. 18, 1975 Time 9:30 a.m. Room 336

Bills or Resolutions to be considered	Subject	Counsel requested*
A.B. 219	Makes certain provisions on wages, hours and working conditions apply ~~informly~~ uniformly to employees without regard to sex.	

*Please do not ask for counsel unless necessary.

ASSEMBLY

AGENDA FOR COMMITTEE ON Labor & Manafelic

29

Date Feb., 18, 1975 Time 9:30 a.m. Room 336

Bills or Resolutions to be considered	Subject	Counsel requested*
A.B. 256	Increases minimum wage for employees in private employment.	

ADDITION TO PREVIOUS AGENDA

/lm

*Please do not ask for counsel unless necessary.

7421

DATE February 18, 1975 LABOR & MANAGEMENT COMMITTEE

LEGISLATION TO BE CONSIDERED: _____

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PLEASE PRINT LEGIBLY

Only those persons who have registered below will be permitted to speak. All persons wishing to present testimony will please sign in below, stating their name, who they represent, and whether they wish to speak for or against the matter to be considered by the committee. Witnesses with long testimony on matters before the committee are encouraged to present their information in writing and make oral summary limiting it to five minutes or less. If you wish to speak more than five minutes please contact the committee chairman or the committee secretary. Questions from other than committee members are not in order and are not allowed. No applause will be permitted.

FOR

NAME	REPRESENTING
~~Russ Karsten~~	~~Hansen Mechanical~~
~~John Madole~~	~~Assoc. Gen. Contr.~~
Stan Jones	Nev. State Labor Commissioner
~~Glen Ford~~	Assembly #15

AGAINST

NAME	REPRESENTING
Russ KARSTEN	HANSEN MECHANICAL
JOHN MADOLE	ASSOC. GEN. CONTRS.
STAN WARREN	NEVADA BELL
X Robert F Guinn	Nevada Motor Transport Assn. Nevada Franchised Auto Dealers Assn.
+ Bob ALKire	Nevada Mining Assn. Kennecott Copper Corp.
~~Wallie Warren~~	SPR, SNB, NNB, NBA
~~[illegible]~~	~~[illegible]~~
CLINT KNOLL	Nevada Association of Employers
GINO DEL CARLO	WALLIE WARREN

Issued by Assemblyman Jean Ford and Assemblyman James Banner

FACT SHEET AND BACKGROUND INFORMATION ON A.B. No. 214

Summary: Making certain provisions on wages, hours and working conditions apply uniformly to employees in private employment without regard to sex.

In 1964, Congress passed the Civil Rights Act including Title VII prohibiting discrimination in employment on account of race, color, religion, national origin, and sex.

In 1965, the Nevada Legislature passed NRS 613 prohibiting discrimination in employment practices (including compensation, hiring, firing, working conditions) on account of an individual's race, color, religion, sex, age, physical or visual handicap, national origin.

In 1969, the Nevada Legislature passed NRS 609.280 prohibiting wage discrimination in private employment on account of sex and clearly adopting a policy of "equal pay for equal work."

In spite of the passage of these and other similar acts, there has remained in Nevada law a set of conflicting statutes contained in Chapter 609 regarding wages, hours, and working conditions of female employees. These are similar to laws passed in many states in the 1930's in reaction to situations where women were being subjected to particularly low wages, long hours, and hazardous working conditions. With the passage of the above-mentioned laws and general improvement in minimum working standards for all employees, special legislation for women only is no longer necessary and in fact is in direct violation of this body of law passed in recent years.

Also in 1969, the Equal Employment Opportunity Commission of the U.S. Department of Labor, which is charged with the enforcement of Title VII, stated its Guidelines: ". . .State laws and regulations

(such as NRS 609), although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect."

The Commission declared that since state protective labor laws conflict with Title VII, they cannot be used as a defense in refusing full employment rights to women.

In the 1970-1972 Biennial Report of the Nevada Labor Commission, it was reported that the U.S. Department of Justice had advised the State that our retention of Chapter 609 could be construed as a "pattern of practice of resistance" to compliance with Title VII. Labor Commissioner Stan Jones at that time recommended legislation to make the provisions of NRS 609 applicable to all employees saying: "The Nevada Legislature must recognize that all employees require the same employment conditions within the protective framework of our Labor and Industrial Relations Laws. Failure to meet this acknowledgment will hasten the federal-state confrontation in courts . . ."

The 1970 Report of the Governor's Commission on the Status of Women in Nevada also recognized the conflicts in our law and recommended extension of benefits in Chapter 609 to men.

In 1971, the Senate Labor Committee introduced S.B. 360 to carry out Mr. Jones' recommendations. However, the bill died in committee.

In the 1973 Legislative Session, S.B. 270, with the same proposal, was introduced by Senator Helen Herr and 14 additional senators. However, the final action was to amend out of the bill

all provisions except an increase and equalization in the minimum wage, leaving the discriminatory provisions on hours and working conditions intact, as well as a probationary period of 90 days when a woman may be paid less than the minimum wage.

In December 1973, the U.S. Department of Justice filed a complaint against the State of Nevada (U.S. -v- Nevada) alleging that certain Nevada statutes (in Chapter 609) require employers doing business in the State to establish and observe conditions of employment for females which are not required for males, and impose an obligation on employers. The U.S. claims that these requirements of law are in direct conflict with Title VII of the Civil Rights Act of 1964 and, therefore, should be declared legally unenforceable. At a hearing in December, 1974, a state deputy attorney general stated that legislation would be submitted at the 1975 session to remove those sections of NRS 609 which refer solely to females and to incorporate into Chapter 608 certain sections of 609 in order to extend benefits equally to men and women. Judge Thompson in Reno ruled that he would withhold judgment in the case until March 1, 1975. Presumably, his decision will depend upon what legislative action is taken by that time.

Explanation of Bill

This measure is designed to remove the inequities listed in the Federal suit against the State of Nevada as well as other sections of law not involved in legal action.

Its goal is to humanize working conditions for all and provide a minimum standard of decency particularly for those who are not represented by collective bargaining.

The specifics of the bill have been developed under the

principles laid down by the EEOC Guidlines, last revised in April, 1972, which state that state laws which prohibit or limit the employment of women--in certain occupations, for more than a specified number of hours per day or week, etc.--conflict with and are superseded by Title VII. Accordingly, these "protective" labor laws cannot be used as a reason for refusing to employ women.

The guidelines state that where State laws require minimum wage and overtime pay for women only, an employer not only may not refuse to hire female applicants to avoid this payment, but must provide the same benefits for male emplcyees. Similar provisions apply to rest and meal periods and physical facilities.

This bill makes certain minimum working conditions regarding meal periods, rest periods, seats, and uniforms applicable to both men and women. It provides for payment of time and one-half for overtime work in excess of 8 hours in one day or 40 hours in one week with certain exceptions. It repeals prohibitions on working over a certain number of hours a day and the less-than-minimum wage probationary period. All violations by employers are a misdemeanor.

What has happened in other states with similar "protective laws?" In 1964, 40 states and the District of Columbia had maximum daily or weekly hours laws for women in specified occupations or industries. By 1973 all states but one (Nevada) had repealed the law or modified enforcement in light of Title VII of the Civil Rights Act of 1964. Laws were repealed by state legislatures in 15 states and greatly modified in 3 others. In 22 states administrative rulings or attorney general opinions have stated that laws are superseded by Title VII. In 8 states, federal courts or state supreme courts have

ruled similarly. Working conditions have been treated a variety of ways, with some states repealing certain provisions and extending others or providing for exemptions in certain areas.

What will happen if existing inequities in Nevada law are not resolved this Legislative Session? History of legal action in other states shows that, in general, the courts are hesitant to extend a law originally passed to "protect" females since this would be judicial legislation. It is more likely that the Court would consider eliminating or nullifying the laws found to be in conflict with Title VII.

The Legislature does not have the limitations of the Court which can only look at the narrow and specific questions brought before it. The Legislature has the opportunity and responsibility to carefully examine as many aspects of our law as it feels necessary in this instance and repeal some, extend others and provide limiting conditions where felt to be reasonable and desirable as long as they are not applied solely to those of one sex.

It is clear that the Nevada Legislature is in a much better position to resolve this legal question than the Federal courts and we hope that this proposed change in Nevada law is the vehicle for its solution.

NEVADA LEGISLATIVE COUNSEL BUREAU
OFFICE OF RESEARCH BACKGROUND PAPER

1975 No. 6

WOMEN AND PROTECTIVE LABOR LAWS

Background

In the late 1960's and the 1970's a controversy has arisen over laws which were originally designed to protect women in the labor force from exploitation by employers. Laws establishing minimum wages, maximum hours and special working conditions for women were passed in the spirit of the progressive movement in the early part of the twentieth century in reaction to turn of the century factories and shops where women were subjected to low wages, long hours and hazardous working conditions. In 1908, the U.S. Supreme Court upheld a state law limiting women's working hours to 10 per day. Hailed as a landmark case for the use of sociological data (known as the Brandeis Brief), Muller v Oregon opened the door for additional state legislation to protect the working woman. Almost 70 years later, the same kinds of laws once upheld as progressive are now being attacked as discriminatory.

Arguments--Pro and Con

Those people who favor repealing laws which establish certain conditions of work for women argue that employers may use requirements such as overtime pay laws as an excuse not to hire women. It is claimed that these laws require employers to make stereotyped judgments about women as a class instead of appraising each female employee on her own merits. Frequently, jobs which call for weightlifting or call-ups during the night are denied to all women, regardless of individual abilities and preferences. Finally, those persons opposed to "protective" labor laws for women point out that anytime employment of women is made more burdensome to employers, female job opportunities will be limited.

Women who wish to retain protective labor laws argue that the women who need them most cannot fight for better conditions for themselves since they are not represented by labor unions. They state that most women want to work short hours on schedules because these conditions also meet their needs as wives and mothers. In their view, eliminating laws regulating working

hours and other conditions for women would force women to work overtime and consequently endanger their health and disrupt the family relationship.

Federal Civil Rights and State Protective Labor Laws

Title VII of the Civil Rights Act of 1964 as amended in 1969 and 1972 prohibits discrimination in employment on the grounds of race, color, religion, national origin and sex. The Title VII provision makes unlawful such things as firing or refusing to hire on the basis of sex, discrimination by labor unions on the basis of sex, refusal by employment agencies to refer for employment on the basis of sex, publishing advertisements which indicate a preference for employment on the basis of sex, or discriminating in training or apprenticeship programs on the basis of sex. An exception is made for occupations where sex is a bona fide occupational qualification, such as actor or actress. The law covers private employers with 15 or more employees, as well as state and local governments. Excluded from this civil rights act are the federal government (whose employees are protected against sexual discrimination by an executive order), U.S. government-owned corporations, certain District of Columbia employees, Indian tribes and bona fide private membership clubs.

Obviously, there is a basic conflict between Title VII of the Civil Rights Act of 1964 and state protective labor legislation for women. In 1969 the Equal Employment Opportunity Commission, which administers Title VII, revised its guidelines pursuant to the law stating that: "The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect." The commission declared that since state protective labor laws conflict with Title VII, they cannot be used as a defense for refusing full employment rights to women.

Thus the way has been paved for overturning or modifying state protective labor laws primarily on the grounds of conflict with the federal civil rights law. In fact, federal courts or state supreme courts in eight states have ruled that their state laws conflict with Title VII. Twenty-two states have issued administrative rulings or attorney general opinions that state hours laws for women do not apply to employers covered under Title VII. Encouraged in some instances by court action, state legislatures in 15 states (including Arizona, Colorado, Montana and Oregon) repealed their maximum hours law for women. Texas and Utah modified their laws by making extended overtime hours for women

voluntary. North Carolina made the state's limit on working hours equally applicable to men and women not covered under the Fair Labor Standards Act. California and Washington empowered their industrial welfare commissions to set hours and working conditions for all employees, not just women and minors.

Nevada Protective Labor Law

The Women's Bureau of the U.S. Department of Labor cites Nevada as the only state which continues to enforce the law setting maximum hours of work for women and overtime payment after an 8-hour day or a 48-hour week. Four other states (Illinois, Kentucky, Michigan and Ohio) continue to enforce state laws providing for maximum hours for women in those cases where Title VII does not apply (employers with 14 or fewer workers).

Chapter 609 of the Nevada Revised Statutes deals with working conditions for women and minors and in most instances is typical of protective labor law. It does not apply to state or local government workers, agricultural or domestic workers. The intention of the law is set forth in NRS 609.030, section 1, which states that ". . . it is the sense of the legislature that the health and welfare of female persons required to earn their livings by their own endeavors require certain safeguards as to hours of service and compensation therefor." NRS sections 609.010 to 609.180 protect women in the labor force in the following ways: limiting female workers to an 8-hour day and a 6-day week, and in certain temporary instances where overtime is permitted requiring time and a half overtime pay; requiring a meal period and two 10 minute rest periods during the day; requiring employers to provide suitable seats for female employees; requiring an employer to furnish all special uniforms; and requiring an abstract of the minimum wage/maximum hour law to be posted wherever females are employed. It should be noted that some items of chapter 609 such as minimum wage levels are the same as provisions for men set out in NRS Chapter 608;* most provisions, however, do not afford the same protections for men as for women.

At the end of 1973, the United States Government filed a complaint against the State of Nevada (U.S. v Nevada) alleging that certain Nevada statutes require employers doing business in the state to establish and observe conditions of employment for females which are not required for males and impose an obligation on employers. The U.S. claims that these requirements of law

*Further note that wage discrimination on the basis of sex is prohibited by NRS 609.280.

are in direct conflict with Title VII of the Civil Rights Act of 1964 and, therefore, should be declared legally unenforceable. Filing statements in Nevada's defense, a state deputy attorney general pointed out that both the attorney general's office and the state department of labor enforce certain provisions of the law in question equally, regardless of the actual text of the law. He further stated that legislation would be submitted at the next session of the legislature which would remove those sections of NRS Chapter 609 which refer solely to females and to incorporate into chapter 608 certain sections of chapter 609 in order to extend benefits equally to men and women. In 1974, the federal district judge in Reno ruled that he would withhold judgment in the case until March, 1975. Presumably, his decision will depend on what legislative action is taken by that time.

Some Alternatives to Protective Labor Laws for Women

In response to the belief that concerns still exist about questions of fatigue, health, family responsibilities and personal needs for both working men and women, the Women's Bureau of the U.S. Department of Labor offers the following suggestions:

1) Require premium pay for overtime for women and men as one way of deterring excessive hours of work (19 states have laws to this effect).

2) Set hours limits for men and women (North Carolina does by law and California and Washington empower their industrial welfare commissions to do so).

3) Make overtime voluntary.

SUGGESTED READING
(Available in Research Library)

Women's Bureau of the U.S. Department of Labor. A Working Woman's Guide to Her Job Rights, Washington, 1974.

Women's Bureau of the U.S. Department of Labor. Laws on Sex Discrimination in Employment, Washington, D.C., 1973.

Women's Bureau of the U.S. Department of Labor. "State Hours Laws for Women: Changes in Status Since the Civil Rights Act of 1964," Washington, D.C., 1974.

See attached Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex.

MLL/ 1-15-75

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e–12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, Part 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Sec.

AUTHORITY: The provisions of this Part 1604 issued under sec. 713(b), 78 Stat. 265, 42 U.S.C. sec. 2000e–12.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this Part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(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.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex 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.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A Seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703 (e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Effective date. This revision shall become effective on the date of its publication in the FEDERAL REGISTER (4-5-72).

Signed at Washington, D.C., this the 31st day of March 1972.

WILLIAM H. BROWN III,
Chairman.

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DATE: Feb. 14 1975 LABOR & MANAGEMENT COMMITTEE

LEGISLATION TO BE CONSIDERED: A.B. 50

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Only those persons who have registered below will be permitted to speak. All persons wishing to present testimony will please sign in below, stating their name, who they represent, and whether they wish to speak for or against the matter to be considered by the committee. Witnesses with long testimony on matters before the committee are encouraged to present their information in writing and make oral summary limiting it to five minutes or less. If you wish to speak more than five minutes please contact the committee chairman or the committee secretary. Questions from other than committee members are not in order and are not allowed. No applause will be permitted.

FOR

NAME	REPRESENTING

AGAINST

NAME	REPRESENTING