

Opinion No. 54-6025

October 19, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. W. Burrell State Labor Commissioner State Capitol Santa Fe, New Mexico

{*489} Receipt is acknowledged of your letter dated October 8, 1954, in which you request an opinion as to whether an employer is in violation of Sections 57-401 and 57-407, N.M.S.A., 1941 Compilation, where {*490} payroll records show that a female employee has worked for a continuous period of seven days, or more, eight hour days. These seven days were not worked wholly during a regular designated work week of seven days, Sunday through Saturday, established by the employer, but rather they were worked during a portion of two regular designated work weeks.

The pertinent language of both Sections 57-301 and 57-407 reads as follows:

"No female shall be employed in any industrial or mercantile establishment, hotel, restaurant, cafe or eating house; or in any laundry, or in any office as a stenographer, clerk, bookkeeper or in any other clerical position; or in any place of amusement; or in any telephone or telegraph office, within the state more than eight (8) hours in any one (1) day of twenty-four (24) hours, nor more than forty-eight (48) hours in any one (1) week of seven (7) days."

The above language is mandatory. The intention of the Legislature is clear that female employees are to get one day of rest, at least, every week, not every two weeks, or whenever it suits the employers or is convenient to the employee. These sections, above quoted, specifically prohibit female employees other than those specifically exempted therein, from working more than eight hours in any twenty-four hour period, and more than forty-eight hours in any one week of seven days.

Section 469 of Volume 31, Am. Jur., page 1065, under heading of "Labor", subheading "Waiver of Statute; Overtime Work", says:

"Inasmuch as statutes limiting hours of employment of women are not intended for the benefit of the employees only, but are for the protection of the public health, the benefit of the statute may not be waived by the employee, and any agreement for overtime work is contrary to public policy and is unenforceable."

The pertinent part of Section 464 of Volume 31, Am. Jur., page 1063, under heading of "Labor", subheading "Maximum Number", reads as follows:

"For example, courts have upheld the validity of statutes establishing a maximum of eight hours per day for women employed in hospitals, hotels, and mercantile and mechanical establishments."

It is, therefore, our opinion that any employer who works a female employee in a hotel, restaurant or cafe more than forty-eight hours in any one week of seven days, without a rest period of at least one day per week, is violating Sections 57-401 and 57-407 of the New Mexico Statutes Annotated, 1941 Compilation.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General