

STATE OF MAINE  
Department of Personnel

July 8, 1975

PERSONNEL BULLETIN 4.2

To: All Agency Heads

Subj: Layoff and Redistribution of Duties - Avoiding Unlawful Discrimination

- I. PURPOSE - The purpose of this memorandum is to expand upon a point discussed at a recent Cabinet meeting and to re-emphasize departmental responsibility in avoiding unlawful discrimination resulting from layoff and redistribution of duties.
- II. GENERAL - It is an unfortunate fact that the current economic downturn has resulted in some financial constraints for State Government which have necessitated a limited number of layoffs in various State agencies. It is imperative that any such layoffs, and the consequent reassignment of duties previously performed by employees who are laid off, not result in unlawful discrimination. Any such unlawful discrimination could result in legal action which could cost considerable sums and distort the State's pay plan.

In reassigning functions previously performed by employees who must be laid off, valid distinctions between classifications must be retained. In the event that distinctions between classifications become blurred, your agency may be subject to legal action to upgrade the lower-paying classification to the level of compensation received by individuals in the higher classification.

The Equal Pay Act of 1963, an amendment to the Fair Labor Standards Act, requires that male and female workers receive equal pay for work requiring equal skill, effort and responsibility and performed under similar working conditions. (29 U.S.C. 201 et seq., subsection 6 (d) (1).) That section further provides that "an employer who is paying a wage rate differential in violation of this sub-

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section shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee." (Emphasis added.) Thus, wage differentials based on sex must be eliminated by raising the pay of the lower-rated employees, not by reducing the pay of those paid the higher rate.

In addition to the equal pay provisions of the Fair Labor Standards Act, disparate pay for equal work is prohibited by other Federal and State legislation. Pursuant to Section 703(a) of Title VII of the Civil Rights Act of 1964, "it shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin..." The Act further provides that it is an unlawful employment practice for an employer to "limit, segregate, or classify his employees...in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee..." The Maine Human Rights Commission has been empowered by the Equal Employment Opportunity Commission to enforce the provisions of Title VII of the Civil Rights Act of 1964. And, the Maine Human Rights Act similarly provides that "it shall be unlawful employment discrimination...for an employer...to discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment..." (5 MRSA, Section 4572, subsection 1.A.) Finally, any reassignment of duties which results in unequal pay for equal work may be remedied in suits by private individuals under the Civil Rights Act of 1871 (42 U.S.C., Section 1983, et seq.), which provides for the protection of rights, privileges, or immunities secured by the Constitution and laws; including the Fourteenth Amendment to the Constitution of the United States, which makes it

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unlawful for a state to "deny to any person within its jurisdiction the equal protection of the laws," and such discrimination need not be founded upon race, color, sex, religion, age or country of ancestral origin.

Therefore, allow me to reiterate the necessity of maintaining valid distinctions in duties performed by employees of different classifications in order to avoid legal action which might result in the upgrading of lower classifications and accompanying increase in costs for Personal Services.

- III. RESPONSIBILITY - It shall be the responsibility of each department head to provide for distribution of this memorandum to first-line supervisors or those responsible for work assignments and to insure that its contents are understood and complied with.
- IV. INFORMATION - Questions concerning this memorandum and its application may be directed to Chief, Classification and Pay Division, Department of Personnel, State Office Building, Augusta, Maine, Tel: 289-2821.

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Director of Personnel

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