

1973 WL 27674 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 21, 1973

***1 Re: Head of Household Salaries Supplement No. 267—School—Teachers**

Dr. B. E. Morton, Jr.
Superintendent
School District No. 1
Williamston, South Carolina

Dear Dr. Morton:

Please excuse my delay in providing you with the opinion you requested, but I have been out of the State and have just recently returned to the office. Specifically, you requested an opinion as to whether School District No. One's \$200.00 'head of household salary supplement' was discriminatory on the basis of sex. The 'head of household' policy of School District No. One provides as follows.

For the purpose of administering the salary schedule of the District, people who qualify under the following rule are considered head of the household:

1. Married men; and
2. Married women with dependent children, whose only source of income is this District.

Title 7 of the 1964 Civil Rights Act, [42 U.S.C. Section 703\(a\)\(1\)](#), as amended, provides inter alia:

It shall be an unlawful employment practice for an employer to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's . . . sex . . .

As you are aware, Title 7 of the Civil Rights Act is administered and enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC has promulgated and published sex discrimination guidelines which are found in [29 C.F.R. Section 1604.1](#), et seq. Section 1604.9 of these guidelines provides in relevant parts as follows:

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits. (The term 'fringe benefits' would include your \$200.00 salary supplement.)

(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. (Emphasis added.)

(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. (Emphasis added.)

It is clear that any regulation or policy which denies benefits to female employees on the sole ground that they are not married is a prima facie violation of Section 703(a)(1) of Title 7. Furthermore, it is illegal to condition the payment of the \$200.00 to married women by requiring that they have dependent children and that their sole source of income be from the District. No such restrictions are placed on married men and therefore the policy is a prima facie violation of the Act in this regard.

*2 It should also be noted additionally that the Fair Labor Standards Act, [29 U.S.C. Section 206\(d\)\(1\)](#), commonly known as the Equal Pay Act, makes it illegal for an employer to discriminate 'between employees on the basis of sex or paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work on jobs, their performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions Applicable provisions of the Fair Labor Standards Act make it quite clear that a head of household supplement such as is currently paid by your school district would be classified as wages. Although the law is not quite as clear in this area as it is under the Civil Rights Act, it would certainly be arguable that your current policy is also violative of [29 U.S.C. Section 206\(d\)\(1\)](#), the Fair Labor Standards Act. In summary, therefore, it is the opinion of this office that your current policy pertaining to head of household salary supplements is illegal discrimination on the basis of sex.

I hope that this sufficiently answers the question which you posed, but if you require additional information please do not hesitate to call upon me.

Yours very truly,

Ellison D. Smith, IV
Assistant Attorney General

1973 WL 27674 (S.C.A.G.)

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.