

Opinion No. 39-3181

June 21, 1939

BY: FILIO M. SEDILLO, Attorney General

TO: Hon. Vincent J. Jaeger, Labor Commissioner, Santa Fe, New Mexico.

{*68} In your letter of June 19, 1939, you say "in my efforts to enforce Chapter 196, Section 1, Session Laws of 1939, I find some employers of female labor taking the stand that housekeepers, chambermaids, waitresses, etc., in hotels and eating houses are 'domestic labor' and therefore do not come under the statute. It is the contention of this department that such employees are not domestic labor. Also, that domestic labor is confined to a household servant and not an employee of any commercial establishment."

Section 1 of Chapter 196 of the 1935 Laws provides that no female shall be employed in any industrial or mercantile establishment, hotel, restaurant, cafe, or eating place within the state more than eight hours in any one day of twenty-four hours nor more than forty-eight hours in any one week of seven days.

Section 4 of Chapter 148, of the Laws of 1933, provides that Section 1 of Chapter 148 of the Laws of 1933, as amended by Section 1 of Chapter 196 of the Laws of 1939, shall not be construed to apply to those engaged as domestic servants.

" 'Domestic,' the word itself, in its derivation from 'domus,' a house, suggests its inherent purport. It is used as a direct antithesis of 'commercial' or 'industrial' and expresses some relation to house or home, and is not descriptive of the house or home itself. As a noun. One who receives wages and stays in the house of the person paying and employing him for his service or that of his family, such as valets, footmen, cooks, butlers, and others who reside in the house, a menial servant. As an adjective. Belonging to the home or household, concerning or relating to the home or family; of a house, or pertaining or belonging thereto, or to a household, home or family." 19 C.J. 387, Sec. 851.

Bouvier Law Dictionary, Vol. 1, p. 498, says:

"Domestics are those who reside in {*69} the same house with the master they serve."

In Cook vs. Dodge, 6 La. Anno. 276, p. 277, it was said:

"Servants or domestics are those who receive wages and stay in the house of the person paying or employing them for his service or that of his family; such as valets, footmen, cooks, butlers, and others who reside in the house."

It is my opinion that your contention is right, and therefore housekeepers, chambermaids, waitresses, etc., in hotels and eating houses are not domestic servants and do not come under Section 4, Chapter 148 of the Laws of 1933.