

§ 1620.15

payment of a higher wage rate to employees of one sex because of a difference in machines or equipment would constitute a prohibited wage rate differential. Where greater skill or effort is required from the lower paid sex, the fact that the machines or equipment used to perform substantially equal work are different does not defeat a finding that the EPA has been violated. Likewise, the fact that jobs are performed in different departments or locations within the establishment would not necessarily be sufficient to demonstrate that unequal work is involved where the equal pay standard otherwise applies. This is particularly true in the case of retail establishments, and unless a showing can be made by the employer that the sale of one article requires such higher degree of skill or effort than the sale of another article as to render the equal pay standard inapplicable, it will be assumed that the salesmen and saleswomen concerned are performing equal work. Although the equal pay provisions apply on an establishment basis and the jobs to be compared are those in the particular establishment, all relevant evidence that may demonstrate whether the skill, effort, and responsibility required in the jobs in the particular establishment are equal should be considered, whether this relates to the performance of like jobs in other establishments or not.

§ 1620.15 Jobs requiring equal skill in performance.

(a) *In general.* The jobs to which the equal pay standard is applicable are jobs requiring equal skill in their performance. Where the amount or degree of skill required to perform one job is substantially greater than that required to perform another job, the equal pay standard cannot apply even though the jobs may be equal in all other respects. Skill includes consideration of such factors as experience, training, education, and ability. *It must be measured in terms of the performance requirements of the job.* If an employee must have essentially the same skill in order to perform either of two jobs, the jobs will qualify under the EPA as jobs the performance of which requires equal skill, even though the employee

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in one of the jobs may not exercise the required skill as frequently or during as much of his or her working time as the employee in the other job. *Possession of a skill not needed to meet the requirements of the job cannot be considered in making a determination regarding equality of skill.* The efficiency of the employee's performance in the job is not in itself an appropriate factor to consider in evaluating skill.

(b) Comparing skill requirements of jobs. As a simple illustration of the principle of equal skill, suppose that a man and a woman have jobs classified as administrative assistants. Both jobs require them to spend two-thirds of their working time facilitating and supervising support-staff duties, and the remaining one-third of their time in diversified tasks, not necessarily the same. Since there is no difference in the skills required for the vast majority of their work, whether or not these jobs require equal skill in performance will depend upon the nature of the work performed during the latter period to meet the requirements of the jobs.

§ 1620.16 Jobs requiring equal effort in performance.

(a) *In general.* The jobs to which the equal pay standard is applicable are jobs that require equal effort to perform. Where substantial differences exist in the amount or degree of effort required to be expended in the performance of jobs, the equal pay standard cannot apply even though the jobs may be equal in all other respects. Effort is concerned with the measurement of the physical or mental exertion needed for the performance of a job. Job factors which cause mental fatigue and stress, as well as those which alleviate fatigue, are to be considered in determining the effort required by the job. "Effort" encompasses the total requirements of a job. Where jobs are otherwise equal under the EPA, and there is no substantial difference in the amount or degree of effort which must be expended in performing the jobs under comparison, the jobs may require equal effort in their performance even though the effort may be exerted

in different ways on the two jobs. Differences only in the kind of effort required to be expended in such a situation will not justify wage differentials.

(b) *Comparing effort requirements of jobs.* To illustrate the principle of equal effort exerted in different ways, suppose that a male checker employed by a supermarket is required to spend part of his time carrying out heavy packages or replacing stock involving the lifting of heavy items whereas a female checker is required to devote an equal degree of effort during a similar portion of her time to performing fill-in work requiring greater dexterity—such as rearranging displays of spices or other small items. The difference in kind of effort required of the employees does not appear to make their efforts unequal in any respect which would justify a wage differential, where such differences in kind of effort expended to perform the job are not ordinarily considered a factor in setting wage levels. Further, the occasional or sporadic performance of an activity which may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal effort. Suppose, however, that men and women are working side by side on a line assembling parts. Suppose further that one of the men who performs the operations at the end of the line must also lift the assembly, as he completes his part of it, and places it on a waiting pallet. In such a situation, a wage rate differential might be justified for the person (but only for the person) who is required to expend the extra effort in the performance of his job, provided that the extra effort so expended is substantial and is performed over a considerable portion of the work cycle. In general, a wage rate differential based on differences in the degree or amount of effort required for performance of jobs must be applied uniformly to men and women. For example, if all women and some men performing a particular type of job never perform heavy lifting, but some men do, payment of a higher wage rate to all of the men would constitute a prohibited wage rate differential if the equal pay provisions otherwise apply.

§ 1620.17 Jobs requiring equal responsibility in performance.

(a) *In general.* The equal pay standard applies to jobs the performance of which requires equal responsibility. Responsibility is concerned with the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation. Differences in the degree of responsibility required in the performance of otherwise equal jobs cover a wide variety of situations. The following illustrations in subsection (b), while by no means exhaustive, may suggest the nature or degree of differences in responsibility which will constitute unequal work.

(b) *Comparing responsibility requirements of jobs.* (1) There are many situations where one employee of a group performing jobs which are equal in other respects is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor. Suppose, for instance, that it is the employer's practice to pay a higher wage rate to such a "relief" supervisor with the understanding that during the intervals in which the employee performs supervisory duties the employee is in training for a supervisory position. In such a situation, payment of the higher rate to the employee might well be based solely on the additional responsibility required to perform the job and the equal pay provisions would not require the same rates to be paid to an employee of the opposite sex in the group who does not have an equal responsibility. There would clearly be no question concerning such a wage rate differential if the employer pays the higher rate to both men and women who are called upon from time to time to assume such supervisory responsibilities.

(2) Other differences in responsibilities of employees in generally similar jobs may require similar conclusions. Sales clerks, for example, who are engaged primarily in selling identical or similar merchandise may be given different responsibilities. Suppose that one employee of such a group (who may be either a man or a woman) is authorized and required to determine whether to accept payment for purchases by