

§ 1620.27

short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for his or her regular job is higher than the rate usually paid for the work to which the employee is temporarily reassigned, the employer may continue to pay the higher rate under the "red circle" principle. For instance, an employer who must reduce help in a skilled job may transfer employees to less demanding work without reducing their pay, in order to have them available when they are again needed for their former jobs. Although employees traditionally engaged in performing the less demanding work would be paid at a lower rate than those employees transferred from the more skilled jobs, the resultant wage differential would not constitute a violation of the equal pay provisions since the differential is based on factors other than sex. This would be true during the period of time for which the "red circle" rate is bona fide. Temporary reassignments may also involve the opposite relationship of wage rates. Thus, an employee may be required, during the period of temporary reassignment, to perform work for which employees of the opposite sex are paid a higher wage rate than that paid for the duties of the employee's regular job classification. In such a situation, the employer may continue to pay the reassigned employee at the lower rate, if the rate is not based on quality or quantity of production, and if the reassignment is in fact a temporary one. If, however, a piece rate is paid employees of the opposite sex who perform the work to which the employee in question is reassigned, failure to pay the reassigned employee the same piece rate paid such other employees would raise questions of discrimination based on sex. Also, failure to pay the higher rate to a reassigned employee after it becomes known that the reassignment will not be of a temporary nature would raise a question whether sex rather than the temporary nature of the assignment is the real basis for the wage differential. Generally, failure to pay the higher rate to an employee reassigned for a period longer than one month will raise questions as

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to whether the reassignment was in fact intended to be temporary.

§ 1620.27 Relationship to the Equal Pay Act of title VII of the Civil Rights Act.

(a) In situations where the jurisdictional prerequisites of both the EPA and title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 200e *et seq.*, are satisfied, any violation of the Equal Pay Act is also a violation of title VII. However, title VII covers types of wage discrimination not actionable under the EPA. Therefore, an act or practice of an employer or labor organization that is not a violation of the EPA may nevertheless be a violation of title VII.

(b) Recovery for the same period of time may be had under both the EPA and title VII so long as the same individual does not receive duplicative relief for the same wrong. Relief is computed to give each individual the highest benefit which entitlement under either statute would provide. (e.g., liquidated damages may be available under the EPA but not under title VII.) Relief for the same individual may be computed under one statute for one or more periods of the violation and under the other statute for other periods of the violation.

(c) The right to equal pay under the Equal Pay Act has no relationship to whether the employee is in the lower paying job as a result of discrimination in violation of title VII. Under the EPA a prima facie violation is established upon a showing that an employer pays different wages to employees of opposite sexes for equal work on jobs requiring equal skill, effort and responsibility, and which are performed under similar working conditions. Thus, the availability of a remedy under title VII which would entitle the lower paid employee to be hired into, or to transfer to, the higher paid job does not defeat the right of each person employed on the lower paid job to the same wages as are paid to a member of the opposite sex who receives higher pay for equal work.