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ABSTRACT

The following laws and order are explained in this pamphlet: (1) Equal Pay Act of 1963 (concerns prohibiting employers from paying workers of one sex less than workers of the other sex for equal work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions), (2) Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (concerns prohibiting discrimination based on sex, as well as on race, color, religion, and national origin, in hiring or firing; wages; fringe benefits; classifying, referring, assigning, or promoting; extending or assigning use of facilities; training, retraining, or apprenticeships; or any other terms, conditions, or privileges of employment), (3) Executive Order 11246, as amended by Executive Order 11375 (concerns requiring Federal contracts to include language by which contractors pledge not to discriminate against any employee or applicant for employment because of sex, race, color, religion, or national origin), and (4) Title IX of the Education Amendments of 1972, as amended (concerns prohibiting discrimination on the basis of sex in educational programs or activities which receive Federal funds). (WL)

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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

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BRIEF HIGHLIGHTS OF MAJOR FEDERAL LAWS AND ORDER
ON SEX DISCRIMINATION IN EMPLOYMENT

Equal Pay Act of 1963 (generally effective June 11, 1964)

This act prohibits employers from paying workers of one sex less than workers of the other sex within the establishment are paid for equal work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. It also prohibits labor organizations from causing or attempting to cause employers to violate the act. Employers may not reduce the wage rate of any employee in order to eliminate illegal wage differentials.

Differentials in pay based on a seniority or merit system, a system that measures earnings by quantity or quality of production, or any other factor other than sex are permitted.

The act was approved in 1963 as a part of the Fair Labor Standards Act (FLSA) and applies to most workers in both the public and private sectors, including executive, administrative, and professional employees and outside sales personnel.^{1/}

The Labor Department's Wage and Hour Division, which enforces the act, has officially interpreted its provisions to apply to "wages" in the sense of compensation for work done or hours of employment (including overtime) and employer contributions for most fringe benefits. The Supreme Court has upheld the position that jobs of men and women need be only "substantially equal"--not identical--for purposes of comparison under the law.

^{1/} A few categories of employees (such as those working in some small retail and service establishments) are specifically exempted from minimum wage and overtime requirements of the FLSA. On June 24, 1976, the U.S. Supreme Court declared unconstitutional provisions extending minimum wage and overtime coverage of the law to State and local government employees who are engaged in traditional governmental functions. It is the position of the Department of Labor that the decision does not affect application of the equal pay provisions of the FLSA to employees of State and local governments.

EO 10580

Further information on the Equal Pay Act and other provisions of the FLSA, as well as the Federal law against age discrimination in employment, is available from the field offices of the Wage and Hour Division or from:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, D.C. 20210

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972

Title VII prohibits discrimination based on sex, as well as on race, color, religion, and national origin, in hiring or firing; wages; fringe benefits; classifying, referring, assigning, or promoting; extending or assigning use of facilities; training, retraining, or apprenticeships; or any other terms, conditions, or privileges of employment.

Title VII covers employers of 15 or more employees, employment agencies, labor organizations with 15 or more members, and labor-management apprenticeship programs. In 1972, educational institutions and State and local governments were brought under coverage (also, enforcement procedures for the affirmative program of equal opportunity in Federal employment-- previously enunciated in Executive Order 11478--were substantially strengthened). Wholly owned Federal corporations and Indian tribes are totally exempt. Religious educational institutions or associations are exempt with respect to the employment of individuals of a particular religion in work connected with carrying on their activities. State and local elected officials, their personal staff, and policymaking appointees are excluded from the definition of "employee."

The Equal Employment Opportunity Commission (EEOC), which enforces title VII with respect to non-Federal employees, has issued "Guidelines on Discrimination Because of Sex." These guidelines bar, among other discriminatory acts, hiring based on stereotyped characterization of the sexes, classification or labeling of "men's jobs" and "women's jobs," and advertising under male or female headings.

The guidelines declare that State laws which prohibit or limit the employment of women conflict with and are superseded by title VII. On the other hand, where State laws require benefits such as minimum wage and overtime pay for women only, an employer not only may not refuse to hire female

applicants to avoid these payments but must provide the same benefits for male employees.^{2/}

Similar provisions apply to rest and meal periods and physical facilities, although if it can be proved that business necessity precludes providing these benefits to both men and women, the employer must not provide them to members of either sex. Also, the EEOC guidelines prohibit automatically excluding from employment an applicant or employee because of pregnancy.^{3/}

Further information is available from regional or district offices of the EEOC or from:

Equal Employment Opportunity Commission
Washington, D.C. 20506

Executive Order 11246, as amended by Executive Order 11375 (effective October 14, 1968)

This order requires Federal contracts to include language by which contractors pledge not to discriminate against any employee or applicant for employment because of sex, race, color, religion, or national origin. The contractor must further pledge to take affirmative action to ensure nondiscriminatory treatment. Such action must include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Some contracts of \$10,000 or less are exempt by regulation.

^{2/} Of the two appeals courts that have ruled on this policy position, one upheld and the other declared it an unconstitutional usurpation of State powers. The Supreme Court has refused to hear an appeal from the latter decision. It should be noted that most States which had minimum wage or overtime for women only have extended the benefit to men by amending the legislation. See State Labor Laws in Transition: From Protection to Equal Status for Women, Women's Bureau Pamphlet 15, 1976.

^{3/} On December 7, 1976, the U.S. Supreme Court in effect struck down a portion of the guidelines that required employers to treat pregnancy- and childbirth-related disabilities as other temporary disabilities are treated under health insurance or sick leave plans.

The Secretary of Labor, who has overall enforcement responsibility for the order, has assigned administrative authority to the Office of Federal Contract Compliance Programs (OFCCP).^{4/} In turn the OFCCP has delegated compliance responsibility to the various Federal agencies (such as the Department of Defense and General Services Administration), principally on the basis of industry classifications.

OFCCP has issued guidelines to standardize the compliance review procedure. The OFCCP has also issued guidelines for contractors to use in developing and maintaining written affirmative action programs. These must be developed by each prime contractor or subcontractor who has 50 or more employees and a service or supply contract of \$50,000, within 120 days from commencement of the contract.^{5/} The guidelines set out requirements for such matters as the utilization analysis of each job group at a facility, establishment of goals and timetables for correcting deficiencies in the utilization of women and minorities, internal and external dissemination of an equal employment policy, and management responsibility for implementing and monitoring the policy. They also suggest techniques to improve recruitment and increase the flow of female or minority applicants. Goals are not to be rigid and inflexible quotas which must be met but rather targets reasonably attainable by application of every good faith effort. Extensive revisions to the regulations and guidelines were proposed on September 17, 1976.

Sex discrimination guidelines issued by OFCCP forbid advertising under male and female classifications, basing seniority lists on sex, denying jobs to qualified applicants because of State "protective" laws, making distinctions between married and unmarried persons of one sex only, terminating employees of one sex only upon reaching a certain age, and penalizing women in their conditions of employment because they require time away from work on account of childbearing. A proposal to revise portions of these guidelines is pending.

The OFCCP has also issued an order on testing and other employee selection procedures (revised November 23, 1976), and guidelines on discrimination because of religion and national origin.

^{4/} The OFCCP also administers programs to assure equal employment opportunity to the handicapped and veterans.

^{5/} The OFCCP program to increase minority participation in construction has relied in great part on areawide plans--either imposed by OFCCP (e.g., the "Philadelphia Plan") or designed by contractors, craft unions, and minority organizations (the "hometown plans").

Further information is available from:

Office of Federal Contract Compliance Programs
Employment Standards Administration
U.S. Department of Labor
Washington, D.C. 20210

Title IX of the Education Amendments of 1972 (approved June 23, 1972),
as amended

Title IX prohibits discrimination on the basis of sex in educational programs or activities which receive Federal funds.

Educational institutions controlled by a religious organization are exempt if application of the law would be inconsistent with the religious tenets of the organization. Certain social fraternities and sororities and youth organizations are exempt with respect to membership practices, but not with respect to their educational programs that receive Federal funds. Private undergraduate colleges, nonvocational elementary and secondary schools, and public undergraduate schools which have been traditionally and continuously single-sex since their establishment are exempt with respect to their admission requirements but must treat all students without discrimination once they have admitted members of both sexes.

Each Federal agency empowered to extend financial assistance to an education program is directed to issue appropriate rules.

The Office for Civil Rights of the Department of Health, Education, and Welfare issued effectuating regulations as of July 21, 1975. These cover such matters as recruitment and admission of students, financial and employment assistance to students, access to course offerings and athletic programs, and housing as well as employment policies.

Regarding employment, the regulations state that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full time or part time, under any education program or activity which receives or benefits from Federal financial assistance. Giving hiring preference on the basis of attendance at one-sex institutions is specifically forbidden if it has the effect of perpetuating sex discrimination. Recipients are prohibited from making preemployment inquiry as to the marital status of applicants.

The regulations cover such additional matters as compensation; consideration for an award of tenure; application of nepotism policies; job assignments, classifications, and structure; granting and return from leaves of absence; leave to care for children or dependents; selection and financial support for training and for professional meetings; selection for tuition assistance and for sabbaticals and leaves of absence to pursue training; and employer-sponsored activities, including social or recreational programs.

Recipients are prohibited from applying any policy based upon whether an applicant or employee is the head of a household or the principal wage earner of a family. They are also prohibited from participating in pension or retirement plans that establish different optional or compulsory retirement ages based on sex or that otherwise discriminate in benefits on the basis of sex. Recipients are to treat pregnancy disabilities as other temporary disabilities are treated. In cases where the recipient does not maintain a leave policy or an employee has insufficient leave, the recipient is to grant a reasonable leave without pay and reinstatement.

Further information is available from regional offices of the Office for Civil Rights or from:

Office for Civil Rights
U.S. Department of Health, Education, and Welfare
Washington, D.C. 20201

Single copies of the following related publications are available without charge upon request to the Women's Bureau, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210:

A Working Woman's Guide to Her Job Rights. Revised 1975.
1975 Handbook on Women Workers.
Maternity Standards (reprint from the 1975 Handbook).
State Labor Laws in Transition: From Protection to Equal Status
for Women. 1976.
Publications of the Women's Bureau. January 1977.