803 KAR 1:025. Equal pay provisions, meaning and application.

RELATES TO: KRS 337.420-337.433

STATUTORY AUTHORITY: KRS 337.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.425 authorizes the Executive Director of Workplace Standards to issue administrative regulations appropriate to carry out the provisions of KRS 337.420 to 337.433. The function of this administrative regulation is to make available official interpretations of the Office of Workplace Standards with respect to the meaning and application of the equal pay provisions set forth in KRS 337.420 to 337.433.

Section 1. Application of Provisions in General.

(1) Application to employers. The prohibition against discrimination in wages on account of sex contained in KRS 337.423 is applicable to every employer who has two (2) or more employees employed within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year. The employer may not discriminate on the basis of sex against such employees in any establishment in which such employees are employed by paying them wages at rates lower than he pays employees of the opposite sex employed in the same establishment for work on jobs which have comparable requirements relating to skill, effort and responsibility. The law excepts from this general prohibition such differences between the wage rates pursuant to established seniority systems or merit systems which do not discriminate on the basis of sex. It is clear in KRS 337.423(2) that where a wage rate differential in violation of the provision is paid, the violation cannot be corrected by reducing the wage rate of any employee.

(2) Application to establishments.

(a) The prohibition against discrimination in wages on account of sex applies within the same establishment. It should be kept in mind, in determining an employer's obligations under the law, that employer and establishment as used in the statute are not synonymous terms. An employer may have more than one (1) establishment in which he employs employees. In such cases, there shall be no comparison between wages paid to employees in different establishments.

(b) Although not expressly defined in the law, the term establishment has a well settled meaning in the application of the statute's provisions. It refers to a distinct physical place of business rather than to an entire business or enterprise which may include several separate places of business. Each physically separate place of business is ordinarily considered a separate establishment.

(c) Application to employees. There must be compliance by the employer with the equal pay requirements within the same establishment in which employees are employed by him. The statute speaks of the employment of employees in the establishment rather than of their engagement in work there. The statute applies to all work performed in the establishment even if the work is performed away from the physical premises of the establishment in which they are employed.

Section 2. Meaning of Wage Rate. The term "wage rate" used in KRS 337.420(3) shall include all payments made to or on behalf of the employee as remuneration for employment. This shall include such payments referred to as fringe benefits. Thus, vacation and holiday pay, and premium payments for work on Saturdays, Sundays, holidays, regular days of rest, pension benefits, insurance benefits, and other fringe benefits paid as remuneration for employment must be considered in applying the equal pay provisions of the law. On the other hand, payments made by an employer to an employee which do not constitute remuneration for employment are not wages to be compared for equal pay purposes. Examples are payments related to maternity, and such reasonable payments for reimbursable expenses of traveling on the employer's business.

Section 3. Male Jobs and Female Jobs.

(1) Wage classification systems which designate certain jobs as male jobs and other jobs as female jobs frequently specify markedly lower rates for the female jobs. Because such a practice frequently indicates a pay practice of discrimination based on sex, where such system exists a serious question would be raised as to whether prohibited wage differentials are involved.

(2) The law was intended to eliminate sex as a basis for wage differentials between employees performing comparable work on jobs within the establishment, and if the rates paid for the same jobs are lower when occupants of the jobs are of one (1) sex than they are when the jobs are filled by employees of the opposite sex, such discrimination within the establishment is equally in violation of the statutory prohibition whether or not employees of both sexes are employed in such jobs at the same time. Accordingly, where an employee of one (1) sex is hired or assigned to a particular job to replace an employee of the opposite sex, comparison of the newly assigned employee's wage rate with that of the replaced former employee is required, whether or not the job is performed concurrently by employees of both sexes. For example, if a particular job which in the past has been performed by a male employee becomes vacant and is then filled by a female employee, it would be contrary to the equal pay requirement to pay the female employee a lower wage rate than was paid for the same job when performed by the male employee, even though employees of both sexes may not be performing the job at the same time. Payment of the lower wage rate in such circumstances is a prohibited wage differential. The same principle is involved if all employees of one (1) sex are removed from a particular job by transfer or discharge so as to retain employees of only one (1) sex in a job previously performed interchangeably or concurrently by employees of both sexes. If a prohibited sex-based wage differential had been established or maintained in violation of the law when the same job was being performed by employees of both sexes, the employer's obligation to pay the higher rate for the job cannot be avoided or evaded by the device of confining the job to members of the lower paid sex. Compliance with the law in such circumstances can be achieved only by increasing the wage rate to the higher rate paid for the job when performed by employees of the opposite sex.

Section 4. Inequalities in Pay That Raise Questions Under the Law. It is necessary to scrutinize with special care those inequalities in pay between employees of opposite sexes which may indicate a pattern of discrimination in wage payment that is based on sex. Thus, a serious question would be raised where such an inequality, allegedly based on a difference in job content, is in fact one on which the employee occupying the job purportedly requiring the higher degree of skill, effort, or responsibility receives the lower wage rate. Likewise, because the equal pay amendment was designed to eliminate wage rate differentials which are based on sex; situations will be carefully scrutinized where employees of only one (1) sex are concentrated in the lower grades of the wage scale, and where there does not appear to be any material relationship other than sex between the lower wage rates paid to such employees and the higher rates paid to employees of the opposite sex. Such concentrations in rate range situations may occur also where an employer follows a practice of paying a range of rates to newly hired employees. Differentials in entrance rates will not constitute a violation of the equal pay principle if the factors taken into consideration in determining which rate is to be paid each employee or applied equally to men and women. This would be true, for example, if all persons who have a parent employed by the firm are paid at the highest rate of the rate range whether they are men or women. However, if in a particular establishment all persons of one (1) sex tend to be paid at the lowest rate of the range and employees of the opposite sex hired to perform the same work tend to be paid at the highest rate of the range, and if no specific factor or factors other than sex appear to be associated

with the difference in pay, a serious question would be raised as to whether the pay practice involves prohibited wage differentials.

Section 5. Equality and Inequality of Pay in Particular Situations.

(1) Overtime work. Because overtime premiums are a part of wages for purposes of the equal pay provisions, where men and women receive the same straight-time rates for work subject to the equal pay standards, but the men receive an overtime premium rate of twice the straight-time rate while the women receive only one and one-half (1 1/2) times the straight-time rate for overtime, a prohibited wage rate differential is being paid. On the other hand, where male and female employees perform comparable work during regular hours but employees of one (1) sex only continue working overtime into another work period, work performed during this later period may be compensated at a higher rate where such is required by law or is the customary practice of the employer. However, in such a situation the payment of the higher rate to employees of one (1) sex for all hours worked, including the nonovertime hours when they are performing comparable work with employees of the opposite sex would result in a violation of the equal pay provisions. If male and female employees are performing equal work in the establishment during regular hours but only some of these employees continue working into an overtime period, payment of a higher wage rate for the overtime worked would not be in violation of the equal pay standard so long as it were paid for the actual overtime hours worked by the employees, whether male or female.

(2) Special assignments. The fact that an employee may be required to perform an additional task outside his regular working hours would not justify payment of a higher wage rate to that employee for all hours worked. However, employees who are assigned a different and unrelated task to be performed outside the regular workday may under some circumstances be paid at a different rate of pay for the time spent in performing such additional duty provided such rate is commensurate with the task performed. For example, suppose a male employee is regularly employed in the same job with female employees in the same establishment in work which requires comparable skill, effort, and responsibility, except that the male employee must carry money to a bank after the establishment closes at night. Such an employee may be paid at a different rate for the time spent in performing this unrelated task if the rate is appropriate to the task performed and the payment is bona fide and not simply used as a device to escape the equal pay requirements of the statute.

(3) Vacation or holiday pay. Since vacation or holiday pay is deemed to be remuneration for employment included in wages within the meaning of the law, if employees of one (1) sex receive vacation pay for a greater number of hours than employees of the opposite sex, a prohibited wage rate differential is being paid if their work is subject to the equal pay standard and the differential is not shown to come within any of the specified exceptions.

(4) Contributions to employee benefit plans. If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and women, no wage differential prohibited by the equal pay provisions will result from such payments, even though the benefits which accrue to the employees in question are greater for one (1) sex than for the other. The mere fact that the employer may make unequal contributions for employees of opposite sexes in such a situation will not, however, be considered to indicate that the employer's payments are in violation of the law, if the resulting benefits are equal for such employees.

(5) Commissions. The establishment of different rates of commission on different types of merchandise would not result in a violation of the equal pay provisions where the factor of sex provides no part of the basis for the differential. For example, suppose that a retail store maintains two (2) shoe departments, each having employees of both sexes,

that the shoes carried in the two (2) departments differ in style, quality, and price, and that the male and female sales clerks in the one (1) department are performing comparable work with those in the other. In such a situation, a prohibited differential would not result from payment of a lower commission rate in the department where a lower price line with a lower markup is sold than in the other department where the merchandise is higher priced and has a higher markup, if the employer can show that the commission rates paid in each department are applied equally to the employees of both sexes in the establishment for all employment in that department and that the factor of sex has played no part in the setting of the different rates.

Section 6. The Equal Pay for Equal Work Standard; Generally.

(1) The job concept in general. KRS 337.423 prohibits an employer from paying to employees of one (1) sex wages at rates lower than he pays employees of the opposite sex for comparable work on jobs described by the statute in terms of equality of the skill, effort, and responsibility required for performances and similarity of the working conditions under which they are performed. This descriptive language refers to jobs. In applying the various tests of equality to the requirements for the performance of such jobs, it will generally be necessary to scrutinize the job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. This will be true because the kinds of activities required to perform a given job and the amount of time devoted to such activities may vary from time to time.

(2) Effect of differences between jobs in general. The statute requires that jobs with comparable requirements should be compared in applying the equal pay for equal work standard. Jobs that require comparable skill, effort, and responsibility in their performance within the meaning of the law are usually not identical in every respect. Inconsequential differences in job content would not be a valid excuse for payment of a lower wage to an employee of one (1) sex than to an employee of the opposite sex if the two (2) are performing comparable work on essentially the same jobs in the same establishment.

(3) Job content controlling. Application of the equal pay standard is not dependent on job classifications or titles but depends rather on actual job requirements and performance. For example, the fact that jobs performed by male and female employees may have the same total point value under an evaluation system in use by the employer does not in itself mean that the jobs concerned are comparable according to the terms of the statute. Conversely, although the point values allocated to jobs may add up to unequal totals, it does not necessarily follow that the work being performed in such jobs is unequal when the statutory tests of the equal pay standard are applied. Job titles are frequently of such a general nature as to provide very little guidance in determining the application of the equal pay standard. For example, the job title "clerk" may be applied to employees who perform a variety of duties so dissimilar as to place many of them beyond the scope of comparison under the statute. Clearly, the equal pay standard would not apply where jobs require such substantially different duties, even though the job titles are identical.

(4) General guides for testing equality of jobs:

(a) What constitutes comparable skill, comparable effort, or comparable responsibility cannot be precisely defined. In interpreting these key terms of the statute, the broad remedial purpose of the law must be taken into consideration. The terms are considered to constitute three (3) separate tests, each of which must be met in order for the equal pay standard to apply. In applying the tests it should be kept in mind that comparable does not mean identical. Insubstantial or minor differences in the degree or amount of skill, or effort, or responsibility required for the performance of jobs will not render the equal pay standard inapplicable. On the other hand, substantial differences, such as those customarily associated with differences in wage levels when the jobs are

performed by persons of one (1) sex only, will ordinarily demonstrate an inequality as between the jobs justifying differences in pay. In determining whether job differences are so substantial as to make jobs unequal, it is pertinent to inquire whether and to what extent significance has been given to such differences in setting the wage levels for such jobs. Such an inquiry may, for example, disclose that apparent differences between jobs have not been recognized as relevant for wage purposes and that the facts as a whole support the conclusion that the differences are too insubstantial to prevent the jobs from being comparable in all significant respects under the law.

(b) In determining whether differences in job content are substantial in order to establish whether or not employees are performing comparable work, the amounts of time which employees spend in the performance of different duties are not the sole criteria. It is also necessary to consider the degree of difference in terms of skill, effort, and responsibility. These factors are related in such a manner that a general standard to determine comparability of jobs cannot be set up solely on the basis of a percentage of time.

Section 7. Comparable Skill.

(1) Jobs requiring comparable skill in performance. The jobs to which the equal pay standard is applicable are jobs requiring comparable skill in their performance. Where the amount or degree of skill required to perform one (1) job is substantially greater than that required to perform another job, the equal pay standard cannot apply even though the jobs may be comparable 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 (2) jobs, the jobs will qualify under the statute as jobs the performance of which requires comparable skill, even though the employee in one (1) of the jobs may not exercise the required skill as frequently or during as much of his working time as the employee in the other job. Possession of a skill not needed to meet requirements of the job cannot be considered in making a determination regarding comparability of skill. The efficiency of the employee's performance in the job is not in itself an appropriate factor to consider in evaluating skill.

(2) Comparing skill requirements of jobs. As an illustration of the principle of comparable skill, suppose that a man and a woman have jobs classified as typists. Both jobs require them to spend two-thirds (2/3) of their working time in typing and related activities such as proofreading and filing, and the remaining one-third (1/3) in diversified tasks, not necessarily the same. Since there is no difference in the skills required for most of their work, whether or not these jobs require comparable skill in performance will depend upon the nature of the work the employees must actually perform during this latter period to meet the requirements of the jobs. If it happens that the man, during the remaining one-third (1/3) of the time, spends twice as much time operating a calculator as does the woman who prefers and is allowed to do most of the copying work required in the office, this would not preclude a conclusion that the performance of the two (2) jobs requires comparable skill if there is actually no distinction in the performance requirements of such jobs so far as the skills utilized in these tasks are concerned. Even if the man were required to do all of the calculating work in order to perform his job, it is not at all apparent that the jobs would require substantially different degrees of skill unless it should appear that operation of that calculator requires more training and can command a higher wage than the typing and related work performed by both the man and the woman and that the work required to be done by the woman in the remaining one-third (1/3) of the time requires less training and is recognized as commanding a lower wage whether performed by a man or a woman.

Section 8. Comparable Effort.

(1) Jobs requiring comparable effort in performance. The jobs to which the equal pay standard is applicable are jobs that require comparable 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 comparable in all other respects. Effort is concerned with the measurement of the physical or mental exertion needed for the performance of a job. Where jobs are otherwise comparable under the statute, 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 comparable effort in their performance even though the effort may be exerted in different ways on the two (2) jobs. Differences only in the kind of effort required to be expended in such a situation will not justify wage differentials.

(2) Comparing effort requirements of jobs. To illustrate the principle of comparable 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 a comparable 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 (1) 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 place it on a waiting pallet. In such a situation, a wage rate differential might be justified 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. However, a serious question would be raised about the bona fides of wage differential if it is paid to a male employee who is otherwise performing comparable work with female employees on the basis that the male is required to do some heavy lifting, unless a similar distinction in wage rates is made in the establishment as between male employees only where some do heavy lifting and others do not. 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 of the men performing a particular type of job do not perform heavy lifting, and some men do, payment of a higher wage rate to all of the men than to the women would constitute a prohibited wage rate differential if the equal pay provisions otherwise apply.

Section 9. Comparable Responsibility. Jobs requiring comparable responsibility in performance. The jobs to which the equal pay standard applies are jobs in the performance of which comparable responsibility is required. 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 comparable jobs cover a wide variety of situations. The following illustrations, which are by no means exhaustive, may suggest the nature or degree of differences in responsibility which will constitute uncomparable work:

(1) There are many situations where one (1) employee of a group performing jobs which are comparable 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 he performs supervisory duties he is in training for a supervisory position. In such a situation, payment of the higher rate to him might well be based solely on the additional responsibility required to perform his 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 a comparable 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 (1) employee of such a group is authorized and required to determine whether to accept payment for purchases by personal checks of customers. The person having this authority to accept personal checks may have a considerable additional degree of responsibility which may materially affect the business operations of the employer. In this situation, payment of a higher wage rate to this employee would be permissible.

(3) On the other hand, there are situations where one (1) employee of the group may be given some minor responsibility which the others do not have but which is not of sufficient consequence or importance to justify a finding of unequal responsibility.

Section 10. Exceptions to Equal Pay Standards.

(1) The specified exceptions. KRS 337.423(1) provides two (2) specific exceptions to its general standard requiring that employees doing comparable work be paid equal wages, regardless of sex. Under these exceptions, where it can be established that a differential in pay is the result of a wage payment made pursuant to an established seniority system or merit increase system which does not discriminate on the basis of sex, the differential is expressly excluded from the statutory prohibition of wage discrimination based on sex.

(2) Establishing application of an exception. The facts necessary to establish that a wage differential has a basis specified in any of the exceptions are peculiarly within the knowledge of the employer. If he relies on the excepting language to exempt a differential in pay from the operation of the equal pay provisions, he will be expected to show the necessary facts. Thus, such a showing will be required to demonstrate that a payment of wages to employees at a rate less than the rate at which he pays employees of the opposite sex is based on a factor other than sex where it appears that such payments are for comparable work on jobs the performance of which requires comparable skill, effort, and responsibility.

(3) Sex must not be a factor in excepted wage differentials. While differentials in the payment of wages are permitted when it can be shown that they are based on an established seniority system or merit increase system, the requirements for such an exception are not met unless the factor of sex provides no part of the basis for the wage differential. If these conditions are met, the fact that application of the system for measuring earnings results in higher average earnings for employees of one (1) sex than for employees of the opposite sex performing comparable work would not constitute a prohibited wage differential. However, to come within the exempting provisions, any system or factor of the type described pursuant to which a wage rate differential is paid must be applied equally to men and women whose jobs require comparable skill, effort and responsibility.

(4) Establishing absence of sex as a factor. A showing that a wage differential is based on a factor other than sex, so as to be exempt from the statute, may sometimes be incomplete without a showing that there is a reasonable relationship between the amount of the differential and the weight properly attributable to the factor other than sex. To illustrate, suppose that male clerks who work forty (40) hours each week and female clerks who

work thirty-five (35) hours each week are performing comparable work on jobs the performance of which requires comparable skill, effort and responsibility. If they are paid weekly salaries for this work, a differential in the amounts could be justified as based on a difference in hours of work. But if the difference in salaries paid is too great to be accounted for by the difference in hours of work, as where the male clerks are paid ninety (90) dollars for their forty (40) hour week (equal to two (2) dollars and twenty-five (25) cents an hour) and the female clerks receive only seventy (70) dollars for their thirty-five (35) hour week (equal to two (2) dollars an hour), then it would be necessary to show some other factor other than sex as the basis for the unexplained portion of the wage differential. To illustrate further, a compensation plan which provides for a higher rate of commission, draw, advance or guarantee for sales employees of one (1) sex than for employees of the opposite sex would be in violation of the equal pay provisions of the statute unless the employer can establish that the differential in pay is pursuant to an established seniority system, merit increase system, or is based on any other factor other than sex. A compensation plan which provides for a "draw" based on a percentage of each employee's earnings during a specified prior period would not be in violation of the statute if the plan is applied equally to men and women. However, for all men to receive a higher draw, because it is the employer's experience that men generally earn more in commissions than women, would not be sufficient indication that the differential is based on a factor other than sex.

(5) Application of exceptions illustrated; in general. When applied without distinction to employees of both sexes, shift differentials, incentive payments, production bonuses, performance and longevity raises and the like will not result in equal pay violations. For example, in an establishment where men and women are employed on a job, but only men work in the night shift for which a night shift differential is paid, such a differential would not be prohibited. However, the payment of a higher hourly rate to all men on that job for all hours worked because some of the men may occasionally work nights would result in a prohibited wage differential. The examples in the following paragraphs illustrate a few applications of the exception provisions.

(a) Examples; "red circle" rates, in general. The term "red circle" rates describes certain unusual, higher than normal wage rates which are maintained for many reasons. An example of the use of a "red circle" rate might arise in a situation where a company wishes to transfer a long-service male employee, who can no longer perform his regular job because of ill health, to different work which is now being performed by women. Under the "red circle" principle the employer may continue to pay the male employee his present salary, which is greater than that paid to the women employees, for the work both will be doing. Under such circumstances, maintaining an employee's established wage rate despite a reassignment to a less demanding job, is a valid reason for the differential even though other employees performing the less demanding work would be paid at a lower rate, since the differential is based on a factor other than sex. However, where wage rate differentials have been or are being paid on the basis of sex to employees performing comparable work, rates of the higher paid employees may not be "red circled" in order to comply with the statute.

(b) Examples; temporary reassignments. For a variety of reasons an employer may require an employee, for a short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for his regular job is higher than the rate usually paid for the work to which he is temporarily reassigned, the employer may continue to pay him 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 a piece rate is paid employees of the opposite sex who perform the work to which the employer in question is reassigned, failure to pay that employee the same piece rate paid such other employees would discriminate on the basis of sex. Also, failure to pay the higher rate to the 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 for a period longer than one (1) month will raise questions as to whether the reassignment was in fact intended to be a temporary one.

(c) Examples; training programs. Employees employed under a bona fide training program may, in the furtherance of their training, be assigned from time to time to various types of work in the establishment. At such times, the employee in training status may be performing comparable work with nontrainees of the opposite sex whose wages or wage rates may be unequal to those of the trainee. Under these circumstances, provided the rate paid to the employee in training status is paid, regardless of sex, under the training program, the differential can be shown to be attributable to a factor other than sex and no violation of the equal pay standard will result.

(d) Examples; head of household. Sometimes differentials in pay to employees performing comparable work are said to be based on the fact that one (1) employee is head of a household and the other, of the opposite sex, is not. Accordingly, since the normal pay practice is to set a wage rate in accordance with the requirements of the job itself and since a "head of household" status bears no relationship to the requirements of the job or to the individual's performance on the job, the position of the Office of Workplace Standards is that they are not prepared to conclude that any differential allegedly based on such status is based on a factor other than sex within the intent of the statute.

(e) Examples; temporary and part-time employees. The payment of different wage rates to permanent employees than to temporary employees such as may be hired during the holiday season would not necessarily be a violation of the equal pay provisions even though comparable work is performed by both groups of workers. For example, no violation would result where payment of such a differential conforms with the nature and duration of the job and with the customary practice in the industry and the establishment, and the pay practice is applied uniformly to both male and female. Generally, employment for a period longer than one (1) month will raise questions as to whether the employment is in fact temporary. Likewise, the payment of a different wage to employees who work only a few hours a day than to employees of the opposite sex who work a full day will not necessarily involve noncompliance with the equal pay provisions, even though both groups of workers are performing comparable work in the same establishment. No violation of the equal pay standards would result if, for example, the difference in working time is the basis for the pay differential, and the pay practice is applied uniformly to both male and female. However, if employees of

one (1) sex work thirty (30) to thirty-five (35) hours a week and employees of the other sex work forty (40) to forty-five (45) hours, a question would be raised as to whether the differential is not in fact based on sex since different rates for part-time work are usually for workweeks of twenty (20) hours or less.

(3 Ky.R. 469; eff. 1-5-77; Am. 7 Ky.R. 833; eff. 6-3-81; TAm eff. 8-9-2007; Certified to be amended, filing deadline 8-26-2021.)