

## § 1620.26

can come into compliance only by raising the wage rate of the lower paid sex. The rate-reduction provision of the EPA prohibits an employer from attempting to cure a violation by hiring or transferring employees to perform the previously lower-paid job at the lower rate. Similarly, the departure of the higher paid sex from positions where a violation occurred, leaving only members of the lower paid sex being paid equally among themselves, does not cure the EPA violations.

### § 1620.26 Red circle rates.

(a) The term “red circle” rate is used to describe certain unusual, higher than normal, wage rates which are maintained for reasons unrelated to sex. An example of bona fide use of a “red circle” rate might arise in a situation where a company wishes to transfer a long-service employee, who can no longer perform his or her regular job because of ill health, to different work which is now being performed by opposite gender-employees. Under the “red circle” principle the employer may continue to pay the employee his or her present salary, which is greater than that paid to the opposite gender 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 equal work, rates of the higher paid employees may not be “red circled” in order to comply with the EPA. To allow this would only continue the inequities which the EPA was intended to cure.

(b) 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 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

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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 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