

§ 60-20.4

to perform, unless sex is a bona fide occupational qualification.

NOTE: In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.

(c) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or women a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

(f)(1) An employer must not deny a female employee the right to any job that she is qualified to perform in reliance upon a State "protective" law. For example, such laws include those which prohibit women from performing in certain types of occupations (e.g., a bartender or a core-maker); from working at jobs requiring more than a certain number of hours; and from working at jobs that require lifting or carrying more than designated weights.

(2) Such legislation was intended to be beneficial, but, instead, has been found to result in restricting employment opportunities for men and/or

41 CFR Ch. 60 (7-1-04 Edition)

women. Accordingly, it cannot be used as a basis for denying employment or for establishing sex as a bona fide occupational qualification for the job.

(g)(1) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female employee meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. The conditions applicable to her leave (other than the length thereof) and to her return to employment, shall be in accordance with the employer's leave policy.

(2) If the employer has no leave policy, childbearing must be considered by the employer to be a justification for a leave of absence for a female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits.

(h) The employer must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

(i) Nothing in these guidelines shall be interpreted to mean that differences in capabilities for job assignments do not exist among individuals and that such distinctions may not be recognized by the employer in making specific assignments. The purpose of these guidelines is to insure that such distinctions are not based upon sex.

§ 60-20.4 Seniority system.

Where they exist, seniority lines and lists must not be based solely upon sex. Where such a separation has existed, the employer must eliminate this distinction.