

Equal Employment Opportunity Comm.

§ 1603.304

the complaint may be dismissed pursuant to §1603.107 or any other grounds authorized by this part. A summary decision shall otherwise conform to the requirements of §1603.217.

§ 1603.217 Decision of the administrative law judge.

(a) The administrative law judge shall issue a decision on the merits of the complaint within 270 days after referral of a complaint for hearing, unless the administrative law judge makes a written determination that good cause exists for extending the time for issuing a decision. The decision shall contain findings of fact and conclusions of law, shall order appropriate relief where discrimination is found, and shall provide notice of appeal rights consistent with subpart C of this part.

(b) The administrative law judge shall serve the decision promptly on all parties to the proceeding and their counsel. Thereafter, the administrative law judge shall transmit the case file to the Office of Federal Operations including the decision and the record. The record shall include the complaint; the investigative file, if any; referral notice; motions; briefs; rulings; orders; official transcript of the hearing; all discovery and any other documents submitted by the parties.

Subpart C—Appeals

§ 1603.301 Appeal to the Commission.

Any party may appeal to the Commission the dismissal of a complaint under §1603.107, any matter certified for interlocutory review under §1613.213, or the administrative law judge's decision under §1603.216 or §1603.217.

§ 1603.302 Filing an appeal.

(a) An appeal shall be filed within 30 days after the date of the appealable decision or certification for interlocutory review, unless the Commission, upon a showing of good cause, extends the time for filing an appeal for a period not to exceed an additional 30 days.

(b) An appeal shall be filed with the Director, Office of Federal Operations, Equal Employment Opportunity Com-

mission, P.O. Box 19848, Washington, D.C. 20036, by mail or personal delivery or facsimile.

§ 1603.303 Briefs on appeal.

(a) The appellant shall file a brief or other written statement within 30 days after the appeal is filed, unless the Commission otherwise directs.

(b) All other parties may file briefs or other written statements within 30 days of service of the appellant's brief or statement.

(c) Every brief or statement shall contain a statement of facts and a section setting forth the party's legal arguments. Any brief or statement in support of the appeal shall contain arguments or evidence that tend to establish that the dismissal, order or decision:

(1) Is not supported by substantial evidence;

(2) Contains an erroneous interpretation of law, regulation or material fact, or misapplication of established policy;

(3) Contains a prejudicial error of procedure; or

(4) Involves a substantial question of law or policy.

(d) Appellate briefs shall not exceed 50 pages in length.

(e) Filing and service of the appeal and appellate briefs shall be made in accordance with §1603.209.

§ 1603.304 Commission decision.

(a) On behalf of the Commission, the Office of Federal Operations shall review the record and the appellate briefs submitted by all the parties. The Office of Federal Operations shall prepare a recommended decision for consideration by the Commission.

(b) When an administrative law judge certifies a matter for interlocutory review under §1603.213, the Commission may, in its discretion, issue a decision on the matter or send the matter back to the administrative law judge without decision.

(c) The Commission will not accept or consider new evidence on appeal unless the Commission, in its discretion, reopens the record on appeal.

(d) The decision of the Commission on appeal shall be its final order and shall be served on all parties.

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(e) In the absence of a timely appeal under §1603.302, the decision of the administrative law judge under §1603.217 or a dismissal under §1603.107 shall become the final order of the Commission. A final order under this paragraph shall not have precedential significance.

§ 1603.305 Modification or withdrawal of Commission decision.

At any time, the Commission may modify or withdraw a decision for any reason provided that no petition for review in a United States Court of Appeals has been filed.

§ 1603.306 Judicial review.

Any party to a complaint who is aggrieved by a final decision under §1603.304 may obtain a review of such final decision under chapter 158 of title 28 of the United States Code by filing a petition for review with a United States Court of Appeals within 60 days after issuance of the final decision. Such petition for review should be filed in the judicial circuit in which the petitioner resides, or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

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APPENDIX TO PART 1604—QUESTIONS AND ANSWERS ON THE PREGNANCY DISCRIMINATION ACT, PUBLIC LAW 95-555, 92 STAT. 2076 (1978)

AUTHORITY: Sec. 713(b), 78 Stat. 265, 42 U.S.C. 2000e-12.

29 CFR Ch. XIV (7-1-06 Edition)

SOURCE: 37 FR 6836, April 5, 1972, unless otherwise noted.

§ 1604.1 General principles.

(a) References to “employer” or “employers” in this part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Label—“Men’s jobs” and “Women’s jobs”—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in paragraph (a)(2) of this section.