

§ 1620.33

29 CFR Ch. XIV (7-1-07 Edition)

Employers Under the FLSA). The regulations of that part are adopted herein by reference.

(b) Every employer subject to the equal pay provisions of the Act shall maintain and preserve all records required by the applicable sections of 29 CFR part 516 and in addition, shall preserve any records which he makes in the regular course of his business operation which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment, and which may be pertinent to a determination whether such differential is based on a factor other than sex.

(c) Each employer shall preserve for at least two years the records he makes of the kind described in §1620.32(b) which explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment.

(Approved by the Office of Management and Budget under control number 3046-0019)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[46 FR 4888, Jan. 19, 1981, as amended at 46 FR 63268, Dec. 31, 1981. Redesignated at 51 FR 29819, Aug. 20, 1986]

§ 1620.33 Recovery of wages due; injunctions; penalties for willful violations.

(a) Wages withheld in violation of the Act have the status of unpaid minimum wages or unpaid overtime compensation under the FLSA. This is true both of the additional wages required by the Act to be paid to an employee to meet the equal pay standard, and of any wages that the employer should have paid an employee whose wages he reduced in violation of the Act in an attempt to equalize his or her pay with that of an employee of the opposite sex performing equal work, on jobs subject to the Act.

(b) The following methods are provided under sections 16 and 17 of the FLSA for recovery of unpaid wages: The Commission may supervise payment of the back wages and may bring

suit for back pay and an equal amount as liquidated damages. The employee may sue for back pay and an additional sum, up to the amount of back pay, as liquidated damages, plus attorney's fees and court costs. The employee may not bring suit if he or she has been paid back wages in full under supervision of the Commission, or if the Commission has filed suit under the Act to collect the wages due the employee. The Commission may also obtain a court injunction to restrain any person from violating the law, including the unlawful withholding by an employer of proper compensation. A 2-year statute of limitations applies to the recovery of unpaid wages, except that an action on a cause of action arising out of a willful violation may be commenced within 3 years after the cause of action accrued.

(c) Willful violations of the Act may be prosecuted criminally and the violator fined up to \$10,000. A second conviction for such a violation may result in imprisonment.

(d) Violation of any provision of the Act by any person, including any labor organization or agent thereof, is unlawful, as provided in section 15(a) of the FLSA. Accordingly, any labor organization, or agent thereof, who violates any provision of the Act is subject to injunction proceedings in accordance with the applicable provisions of section 17 of the FLSA. Any such labor organization, or agent thereof, who willfully violates the provisions of section 15 is liable to the penalties set forth in section 16(a) of the FLSA.

[46 FR 4888, Jan. 19, 1981. Redesignated at 51 FR 29819, Aug. 20, 1986]

§ 1620.34 Rules to be liberally construed.

(a) These rules and regulations shall be liberally construed to effectuate the purpose and provisions of this Act and any other Act administered by the Commission.

(b) Any person claiming to be aggrieved or the agent for such person may advise the Commission of the statute or statutes under which he or she wishes the Commission to commence its inquiry.

(c) Whenever the Commission is investigating a charge or allegation relating to a possible violation of one of the statutes which it administers and finds a violation of one or more of the other statutes which it administers, the Commission may seek to remedy such violation in accordance with the procedures of all relevant statutes.

[46 FR 4888, Jan. 19, 1981. Redesignated at 51 FR 29819, Aug. 20, 1986]

**PART 1621—PROCEDURES—THE
EQUAL PAY ACT**

Sec.

1621.1 Purpose.

1621.2 Definitions.

1621.3 Procedure for requesting an opinion letter.

1621.4 Effect of opinions and interpretations of the Commission.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended, secs. 10-16, 61 Stat. 84, Pub. L. 88-38, 77 Stat. 56 (29 U.S.C. 201 *et seq.*); sec. 1, Reorgan. Plan No. 1 of 1978, 43 FR 19807; E. O. 12144, 44 FR 37193.

SOURCE: 49 FR 31411, Aug. 7, 1984, unless otherwise noted.

§ 1621.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for issuing opinion letters under the Equal Pay Act.

§ 1621.2 Definitions.

For purposes of this part, the term *the Act* shall mean the Equal Pay Act the *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives.

§ 1621.3 Procedure for requesting an opinion letter.

(a) A request for an opinion letter should be submitted in writing to the Chairman, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, and shall contain:

- (1) A concise statement of the issues for which an opinion is requested;
- (2) A full statement of the relevant facts and law; and

(3) The names and addresses of the person(s) making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) Informal advice: When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in § 1621.4, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in § 1621.4 will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255.

[49 FR 31411, Aug. 7, 1984, as amended at 71 FR 26831, May 9, 2006]

§ 1621.4 Effect of opinions and interpretations of the Commission.

(a) Section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255, which applies to the Equal Pay Act of 1963, 29 U.S.C. 206(d), provides that:

In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment * * * if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation * * * or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only the following documents may be relied upon by any employer as a "ruling, approval or interpretation" or as "evidence of any administrative practice or enforcement policy" of the Commission within the meaning of the statutory provisions quoted above.

- (1) A written document, entitled "opinion letter," signed by the Legal Counsel on behalf of and as approved by the Commission;
- (2) A written document issued in the conduct of litigation, entitled "opinion letter," signed by the General Counsel on behalf of and as approved by the Commission;