

## Equal Employment Opportunity Comm.

## § 1620.2

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

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### § 1620.1 Basic applicability of the Equal Pay Act.

(a) Since the Equal Pay Act, 29 U.S.C. 206(d) (hereinafter referred to as the EPA), is a part of the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* (hereinafter referred to as the FLSA), it has the same basic coverage as the FLSA with two principal exceptions:

(1) The EPA applies to executive, administrative, and professional employees who are normally exempted from

the FLSA for most purposes by section 13(a)(1) of that statute, and

(2) The EPA covers all State and local government employees unless they are specifically exempted under section 3(e)(2)(C) of the FLSA.

(b) The EPA does not apply where the employer has no employees who are engaged in commerce or in the handling of goods that have moved in commerce and the employer is not an enterprise engaged in commerce or in the production of goods for commerce.

(c) Men are protected under the Act equally with women. While the EPA was motivated by concern for the weaker bargaining position of women, the Act by its express terms applies to both sexes.

(d) Most employees of the United States Government, as described in section 3(e)(2) (A) and (B) of the FLSA, are covered by the EPA. Accordingly, these interpretations and principles may generally be applied to Federal sector employment.

### § 1620.2 General coverage of employees "engaged in commerce."

(a) Like the FLSA, the EPA applies to employees "engaged in commerce." "Commerce" is broadly defined in section 3(b) of the FLSA. It includes both interstate and foreign commerce and is not limited to transportation across State lines, or to activity of a commercial character. All parts of the movement among the several States, or between any State and any place outside thereof, of persons or things, tangibles or intangibles, including communication of information and intelligence, constitute movement in "commerce" within the statutory definition. This includes those parts of any such activity which take place wholly within a single State. In addition, the instrumentalities for carrying on such commerce are so inseparable from the commerce itself that employees working on such instrumentalities within the borders of a single State, by virtue of the contribution made by their work to the movement of the commerce, are "engaged in commerce" within the meaning of the FLSA.

(b) Consistent with the purpose of the FLSA to apply Federal standards "throughout the farthest reaches of the

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channels of interstate commerce,” the courts have made it clear that the employees “engaged in commerce” include every employee employed in the channels of such commerce or in activities so closely related to such commerce as to be considered a part of it as a practical matter. Engaging “in commerce” includes activities connected therewith such as management and control of the various physical processes, together with the accompanying accounting and clerical activities. Thus, employees engaged in interstate or foreign commerce will typically include, among others, employees in distributing industries such as wholesaling or retailing who sell, transport, handle, or otherwise work on goods moving in interstate or foreign commerce as well as workers who order, receive, guard, pack, ship or keep records of such goods; employees who handle payroll or personnel functions for workers engaged in such activities; clerical and other workers who regularly use the mails, telephone, or telegraph for communication across State lines; and employees who regularly travel across State lines while working. For other examples, see 29 CFR part 776.

#### **§ 1620.3 General coverage of employees “engaged in \* \* \* the production of goods for commerce.”**

(a) Like the FLSA, the EPA applies to employees “engaged in \* \* \* the production of goods for commerce.” The broad meaning of “commerce” as defined in section 3(b) of the FLSA has been outlined in § 1620.2. “Goods” is also comprehensively defined in section 3(i) of the FLSA and includes “articles or subjects of commerce of any character, or any part or ingredient thereof” not expressly excepted by the statute. The activities constituting “production” of the goods for commerce are defined in section 3(j) of the FLSA. These are not limited to such work as manufacturing but include handling or otherwise working on goods intended for shipment out of the State either directly or indirectly or for use within the State to serve the needs of the instrumentalities or facilities by which interstate or foreign commerce is carried on. Employees engaged in any closely related process or occupation directly essen-

tial to such production of any goods, whether employed by the producer or by an independent employer, are also engaged, by definition, in “production.” Thus, employees engaged in the administration, planning, management, and control of the various physical processes together with the accompanying clerical and accounting activities are, from a productive standpoint and for purposes of the FLSA, “engaged in the production of goods for commerce.”

(b) Employees engaged in the production of goods for interstate or foreign commerce include those who work in manufacturing, processing, and distributing establishments, including wholesale and retail establishments that “produce” (including handling or working on) goods for such commerce. This includes everyone employed in such establishments, or elsewhere in the enterprises by which they are operated, whose activities constitute “production” of such goods under the principles outlined in paragraph (a) of this section. Thus, employees who sell, process, load, pack, or otherwise handle or work on goods which are to be shipped or delivered outside the State either by their employer or by another firm, and either in the same form or as a part or ingredient of other goods, are engaged in the production of goods for commerce within the coverage of the FLSA. So also are the office, management, sales, and shipping personnel, and maintenance, custodial, and protective employees who perform as a part of the integrated effort for the production of the goods for commerce, services related to such production or to such goods or to the plant, equipment, or personnel by which the production is accomplished.

#### **§ 1620.4 “Closely related” and “directly essential” activities.**

An employee is engaged in the production of goods for interstate or foreign commerce within the meaning of the FLSA even if the employee’s work is not an actual and direct part of such production, so long as the employee is engaged in a process or occupation which is “closely related” and “directly essential” to it. This is true whether the employee is employed by the producer of the goods or by someone else