be unlawful unless based upon a bona
fide occupational qualification.

§ 1604.8 Relationship of title VII to the
Equal Pay Act.

(a) The employee coverage of the pro-
hibitions against discrimination based
on sex contained in title VII is coexten-
sive with that of the other prohibitions
contained in title VII and is not lim-
ited by section 703(h) to those employ-
ees covered by the Fair Labor Stan-
dards Act.
(b) By virtue of section 703(h), a de-
fense based on the Equal Pay Act may
be raised in a proceeding under title
VII.
(c) Where such a defense is raised the
Commission will give appropriate con-
sideration to the interpretations of the
Administrator, Wage and Hour Divi-
sion, Department of Labor, but will not
be bound thereby.

§ 1604.9 Fringe benefits.

(a) “Fringe benefits,” as used herein,
includes medical, hospital, accident,
life insurance and retirement benefits;
profit-sharing and bonus plans; leave;
and other terms, conditions, and privi-
leges of employment.
(b) It shall be an unlawful employ-
ment practice for an employer to dis-
criminate between men and women
with regard to fringe benefits.
(c) Where an employer conditions
benefits available to employees and
their spouses and families on whether
the employee is the “head of the house-
hold” or “principal wage earner” in the
family unit, the benefits tend to be
available only to male employees and
their families. Due to the fact that
such conditioning discriminatorily af-
fects the rights of women employees,
and that “head of household” or “prin-
cipal wage earner” status bears no rel-
ationship to job performance, benefits
which are so conditioned will be found
a prima facie violation of the prohibi-
tions against sex discrimination con-
tained in the act.
(d) It shall be an unlawful employ-
ment practice for an employer to make
available benefits for the wives of male employees
which are not made available for fe-
male employees; or to make available
benefits to the husbands of female em-
ployees which are not made available
for male employees. An example of
such an unlawful employment practice
is a situation in which wives of male
employees receive maternity benefits
while female employees receive no such
benefits.
(e) It shall not be a defense under
title VIII to a charge of sex discrimina-
tion in benefits that the cost of such
benefits is greater with respect to one
sex than the other.
(f) It shall be an unlawful employ-
ment practice for an employer to have
a pension or retirement plan which es-
tablishes different optional or compul-
sory retirement ages based on sex, or
which differentiates in benefits on the
basis of sex. A statement of the Gen-
eral Counsel of September 13, 1968, pro-
viding for a phasing out of differentials
with regard to optional retirement age
for certain incumbent employees is
hereby withdrawn.

§ 1604.10 Employment policies relating
to pregnancy and childbirth.

(a) A written or unwritten employ-
ment policy or practice which excludes
from employment applicants or em-
ployees because of pregnancy, child-
birth or related medical conditions is
in prima facie violation of title VII.
(b) Disabilities caused or contributed
to by pregnancy, childbirth, or related
medical conditions, for all job-related
purposes, shall be treated the same as
disabilities caused or contributed to by
other medical conditions, under any
health or disability insurance or sick
leave plan available in connection with
employment. Written or unwritten em-
ployment policies and practices involv-
ing matters such as the commence-
ment and duration of leave, the avail-
bility of extensions, the accrual of se-
niority and other benefits and privi-
leges, reinstatement, and payment
under any health or disability insur-
ance or sick leave plan, formal or in-
formal, shall be applied to disability
due to pregnancy, childbirth or related
medical conditions on the same terms
and conditions as they are applied to
other disabilities. Health insurance