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Generally, the language “substantially similar” has been used in cases describing the standards under the federal Equal Pay Act. See, e.g., *Cullen v. Ind. Univ. Bd. of Trs.*, 338 F.3d 693, 698-99 (7th Cir. 2003) (the initial burden of proof carries with it the obligation to show that “(1) higher wages were paid to a male employee, (2) for equal work requiring **substantially similar** skill, effort and responsibilities, and (3) the work was performed under similar working conditions.” This was also the standard in California before SB358. See *Hall v. Cty. of L.A.*, 148 Cal. App. 4th 318, 323 (2007) (to prove a violation of the EPA “a plaintiff must establish that, based on gender, the employer pays different wages to employees doing **substantially similar** work under substantially similar conditions.”).

And the standards developed under the EPA are relevant to pay claims under Title VII, too. See *Gunther v. Cty. of Wash.*, 623 F.2d 1303, 1321 (9th Cir. 1979) (“Where a Title VII plaintiff, claiming wage discrimination, attempts to establish a prima facie case based solely on a comparison of the work she performs, she will have to show that her job requirements are substantially equal, not comparable, to that of a similarly situated male. **The standards developed under the Equal Pay Act are relevant in this inquiry.**”).

The EEOC guidance sheds some light on what a “composite of skill, effort, and responsibility” means under the federal EPA. See U.S. Equal Emp’t Opportunity Comm’n, Compliance Manual, Section 10: Compensation, *available at* <https://www.eeoc.gov/policy/docs/compensation.html> (providing that “[i]f the jobs to be compared share the same common core of tasks, consideration should be given to whether, **in terms of overall job content**, the jobs require substantially equal skill, effort, and responsibility and whether the working conditions are similar.”).

And courts interpreting the federal EPA have come to similar conclusions. See, e.g., *Conti v. Universal Enters., Inc.*, 50 F. App’x 690, 696 (6th Cir. 2002) (noting that to determine substantial equality “**an overall comparison of the work**, not its individual segments” is necessary) (quoting *Odomes v. Nucare, Inc.*, 653 F.2d 246, 250 (6th Cir. 1981)); *Hunt v. Neb. Pub. Power Dist.*, 282 F.3d 1021, 1030 (8th Cir. 2002) (“Whether two jobs are substantially equal ‘requires a **practical judgment on the basis of all the facts and circumstances of a particular case**’ including factors such as level of experience, training, education, ability, effort, and responsibility.”) (quoting *Buettner v. Eastern Arch Coal Sales, Co.*, 216 F.3d 707, 719 (8th Cir. 2000)); *Buntin v. Breathitt County Board of Education*, 134 F.3d 796 (6th Cir. 1998) (“[w]hether the work of two employees is substantially equal ‘must be resolved by the **overall comparison of work**, not its individual segments.’” *Id.* at 799 (citation omitted)).

California Pay Equity Task Force

For Purposes of Definitions Discussion

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*Discussion Draft

A plaintiff must show equality with more than one factor to succeed on a federal EPA claim. See, e.g., *Kellett v. Glaxo Enters., Inc.*, 66 Fair Emp.Prac.Cas. (BNA) 1071, 1075 (S.D.N.Y. 1994) (rejecting plaintiff's claim that her job was substantially equal to that of her supervisor, despite his greater responsibilities as fund manager); *Conigliaro v. Horace Mann School*, No. 95 CIV. 3555 CSH, 2000 U.S. Dist. LEXIS 556, at *20-*22 (S.D.N.Y. Jan. 19, 2000) (that plaintiff worked harder was irrelevant to whether she performed "substantially equal" work); *Atkinson v. Washington International Insurance Co.*, No. 92 C 8430, 1995 U.S. Dist. LEXIS 1865, at *41-*42 (N.D. Ill. Feb. 14, 1995) (plaintiff's supervisory duties over other employees did not make her job substantially equal to that of regional vice president, who had responsibility for revenue generation and sales as well as supervisory duties).

On the other hand, if one factor is not equal, plaintiff's claim will fail. See, e.g., *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1414-16 (9th Cir. 1988) (citing *Angelo v. Bacharach Instrument Co.*, 555 F.2d 1164, 1175-76 (3d Cir. 1977) ("differences in responsibility between two jobs [cannot] be offset by competing differences in the skill required so as to make the two jobs equal")).