



1 unequal pay. Because the EEOC did not allege any facts supporting a comparison  
2 between the attorneys' actual job duties, thereby precluding a reasonable inference  
3 that the attorneys performed "equal work," we AFFIRM.

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5 JULIE L. GANTZ (P. David Lopez, Lorraine C. Davis,  
6 and Daniel T. Vail, *on the brief*), Equal Employment  
7 Opportunity Commission, Washington, D.C., *for*  
8 *Plaintiff-Appellant*.

9  
10 ROSEMARY ALITO (George Peter Barbatsuly, *on the*  
11 *brief*), K&L Gates LLP, Newark, New Jersey, *for*  
12 *Defendant-Appellee*.

13  
14 DEBRA ANN LIVINGSTON, *Circuit Judge*:

15 Following a three-year investigation, the Equal Employment Opportunity  
16 Commission ("EEOC") filed suit against the Port Authority of New York and New  
17 Jersey ("Port Authority"), asserting that the Port Authority paid its female  
18 nonsupervisory attorneys at a lesser rate than their male counterparts for "equal  
19 work," in violation of the Equal Pay Act of 1963 ("EPA"), 29 U.S.C. § 206(d).<sup>1</sup> To  
20 support its claim that the attorneys performed "equal work," the EEOC pled broad  
21 facts concerning the attorneys' jobs (such as that the attorneys all have "the same  
22 professional degree," work "under time pressures and deadlines," and utilize both

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<sup>1</sup> The EEOC also asserted claims under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623, but the parties stipulated to the dismissal of those claims with prejudice and we do not consider them in this appeal.

1 “analytical” and “legal” skills) that are generalizable to virtually all practicing  
2 attorneys. The EEOC did not, however, plead *any* facts particular to the attorneys’  
3 actual job duties. Instead, the EEOC proceeded under a theory that, at the Port  
4 Authority, “an attorney is an attorney is an attorney” – that is, that the dozens of  
5 nonsupervisory attorneys working at the Port Authority during the relevant period  
6 (in practice areas ranging from Contracts to Maritime and Aviation, and from Labor  
7 Relations to Workers’ Compensation) were all doing equal work – and that, as a  
8 result, the EEOC was not required to detail similarities between the attorneys’ job  
9 duties (or other factual matter as to the content of the attorneys’ jobs) to state a  
10 plausible EPA claim.

11 Holding to the contrary, the district court granted the Port Authority’s motion  
12 for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). *See*  
13 *EEOC v. Port Auth. of N.Y. & N.J.*, No. 10 Civ. 7462 (NRB), 2012 WL 1758128, at \*6  
14 (S.D.N.Y. May 17, 2012). We conclude that the EEOC’s failure to allege *any* facts  
15 concerning the attorneys’ actual job duties deprives the Court of any basis from  
16 which to draw a reasonable inference that the attorneys performed “equal work,”

1 the touchstone of an EPA claim. Accordingly, the complaint failed to state a  
2 plausible claim for relief. We therefore affirm the judgment of the district court.

### 3 BACKGROUND<sup>2</sup>

4 In 2007, spurred by a charge of discrimination filed by a female attorney in the  
5 Port Authority's law department, the EEOC began an investigation into the Port  
6 Authority's pay practices. The Port Authority states that it cooperated with the  
7 investigation, a characterization the EEOC does not contest. In 2010, the EEOC  
8 issued a determination letter announcing its conclusion that the Port Authority had  
9 violated the EPA by paying its female attorneys at a lesser rate than its male  
10 attorneys. Specifically, the EEOC asserted that a comparison of the salaries of  
11 "similarly situated attorneys" revealed that "males were earning more than their  
12 female comparators, and in most instances by a wide margin." Moreover, according  
13 to the EEOC, "[a] review of the evidence indicate[d] that the pay disparity [was] not  
14 explained by . . . factors other than sex." The EEOC did not identify additional  
15 claimants, any comparators, or facts supporting its conclusion that the attorneys at

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<sup>2</sup> The following facts are taken from the EEOC's complaint and incorporated interrogatory responses, "which we assume to be true and construe in the light most favorable to the plaintiff." See *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 118 (2d Cir. 2013). Where necessary for context, this section also refers to the district court's order dismissing the EEOC's complaint, as well as transcripts of the proceedings before the district court.

1 issue were “similarly situated.” The determination letter offered conciliation  
2 discussions, which the Port Authority declined. The EEOC then initiated this suit.

3 The EEOC’s complaint alleges, essentially in sum, that the Port Authority  
4 violated the EPA because:

5 The Port Authority has paid and continues to pay wages to its non-  
6 supervisory female attorneys at rates less than the rates paid to male  
7 employees in the same establishments for substantially equal work for  
8 jobs the performance of which requires equal skill, effort, and  
9 responsibility, and which are performed under similar working  
10 conditions.

11 J.A. 11-12. The complaint charges that while nonsupervisory attorneys share the  
12 same job code, female attorneys are paid salaries “less than male attorneys having  
13 the same job code,” and that “[t]he disparity in pay cannot be attributed to factors  
14 other than sex.” J.A. 12. The Port Authority answered, and at a subsequent  
15 conference, the district court suggested its skepticism that the EEOC had adequately  
16 pled a claim, despite its access to evidence gathered during the three-year  
17 investigation. Accordingly, the district court ordered the Port Authority to serve  
18 and the EEOC to respond to interrogatories to elucidate “what [the EEOC’s] position  
19 is.”

1           In its responses to the Port Authority’s interrogatories, the EEOC identified  
2           fourteen female nonsupervisory attorneys as claimants as well as a host of alleged  
3           comparators for each claimant, with the claimants and comparators presented in a  
4           table comparing their dates of bar admission, dates of service with the Port  
5           Authority, salaries, and divisions. The EEOC asserted that the claimants’ and  
6           comparators’ jobs were substantially similar based on broad allegations that, *inter*  
7           *alia*, the attorneys served the same client, the Port Authority; there were no job  
8           descriptions differentiating between jobs; and the attorneys’ jobs all demanded a  
9           professional demeanor, compliance with rules of professional conduct, and  
10          familiarity with legal documents. The EEOC also provided allegations specific to  
11          the Port Authority to support its contention that the Port Authority understood the  
12          claimants’ and comparators’ jobs to be similar, including that the attorneys shared  
13          the same job code; the Port Authority’s attorney “maturity curve” – or chart for  
14          determining salaries – did not differentiate between practice areas or divisions when  
15          setting upper and lower limits for salaries, but instead relied on years of legal  
16          experience; the Port Authority used the same criteria – such as “decision making”  
17          and “interpersonal skills” – to evaluate the performance of all its nonsupervisory

1 attorneys; and the Port Authority did not invariably separate work by practice area,  
2 but instead assigned work across divisions, and sometimes moved attorneys  
3 between divisions or into consolidated divisions.

4 Finally, the EEOC asserted that the claimants' and comparators' jobs  
5 demanded substantially equal skill, effort, and responsibility, and were performed  
6 under similar working conditions – the statutory criteria underlying the equal work  
7 inquiry. As to skill, the EEOC alleged that the attorneys' jobs “do not require  
8 different experience, training, education, or ability,” and instead require:

9 the same professional degree and admission to the bar[;] . . .  
10 problem-solving and analytical skills to identify, research, analyze,  
11 evaluate, and resolve legal issues clearly and persuasively[;] . . . the use  
12 of professional judgment and legal skills to draft, review, and  
13 implement legal documents[;] . . . the ability to understand and comply  
14 with department, agency, and legal instructions and procedures[;] . . .  
15 the ability to consult with and provide legal advice to the same client,  
16 the Port Authority[;] . . . the ability to interact and consult with outside  
17 legal staff or other Port Authority attorneys on client matters[;] . . . the  
18 same degree of diligence and persistence[; and] . . . the ability to  
19 manage time, meet deadlines, and prioritize assignments.

20  
21 J.A. 60. As to effort, the EEOC alleged, without elaboration, that the attorneys' jobs:

22 require the same physical or mental exertion[;] . . . are performed under  
23 time pressures and deadlines[; and] . . . require the same  
24 problem-solving and analytical efforts, the same efforts to draft, review,  
25 and implement legal documents, the same efforts to consult with and

1 provide legal advice to the Port Authority, and the same efforts to  
2 interact and consult with outside legal staff or other Port Authority  
3 attorneys on client matters.  
4

5 J.A. 63-64. Concerning responsibility, the EEOC alleged that:

6 [C]laimants['] and comparators' jobs require the same degree of  
7 accountability and supervision[;] . . . are all non-supervisory and have  
8 substantially the same reporting structure and the same level of  
9 supervision[;] . . . are of equal significance to the [Port Authority; and]  
10 . . . require that the claimants and comparators be able to respond to  
11 and act on behalf of the General Counsel. All of the jobs are  
12 responsible for decisions that affect the Port Authority's rights and  
13 liabilities. The jobs require independent judgment and discretion  
14 subject to the same level of oversight and supervision[;] . . . require that  
15 supervisory and management staff remains informed of the status of  
16 matters[; and] . . . require the same responsibility to provide advice and  
17 respond to and represent the interests of the same client, the Port  
18 Authority.  
19

20 J.A. 64-65. Last, as to working conditions, the EEOC alleged that:

21 [A]ll of the claimants and comparators worked out of the same office,  
22 in a legal setting customarily used by attorneys, and none of the  
23 claimants or comparators were regularly exposed to different physical  
24 surroundings, including different elements such as toxic chemicals or  
25 fumes, or physical hazards in performing their job duties.  
26

27 J.A. 66. In sum – stating nothing about the actual *content* of the work done by the  
28 dozens of attorneys either within or across practice areas at the Port Authority – the  
29 EEOC's responses alleged, in conclusory fashion, that "all of the non-supervisory



1 attorney jobs in [the Port Authority's] law department are substantially equivalent  
2 and require the same skill, effort, and responsibility." J.A. 69.

3           Following the EEOC's filing of its responses, the Port Authority requested  
4 leave to move for judgment on the pleadings pursuant to Rule 12(c). At a conference  
5 on that request, the district court sought to confirm the basis of the EEOC's claim.  
6 First, the court expressed its confusion concerning the EEOC's selection of  
7 comparators, which it characterized as, "frankly, random." By way of example, the  
8 court noted that the EEOC had compared a female claimant who was admitted to  
9 the bar in 1978, joined the Port Authority in 1985, worked for the "Real Estate,  
10 Leases, and Environmental Law" department, and earned \$145,262, with a male  
11 comparator who was admitted to the bar in 1962, joined the Port Authority in 1994,  
12 worked for the "Commercial Litigation" department, and made \$147,498 – a  
13 difference of sixteen years legal experience and approximately \$2,000 salary. The  
14 EEOC defended its selection on the ground that each claimant and her comparators  
15 had no "more than ten years[']" difference in combined years of bar admission and  
16 service with the Port Authority. In the court's example, then, the male attorney's  
17 additional years of legal experience were offset by the female attorney's additional

1 years at the Port Authority. Finding that the comparisons nonetheless elided  
2 “extraordinary difference[s]” between the attorneys, the court inquired whether the  
3 EEOC’s theory for its claim was that the attorneys’ jobs were equal “regardless of  
4 the[ir] work,” that is, whether the EEOC’s theory was that “an attorney is an  
5 attorney is an attorney.” The EEOC agreed that it was, save for the caveat that the  
6 theory – for purposes of this claim – was limited to the Port Authority. In light of  
7 the EEOC’s “affirmative position that [Port Authority attorneys] are all the same,”  
8 the court granted the Port Authority leave to file its motion, which the Port  
9 Authority duly filed on September 28, 2011.

10 On the basis of the pleadings and the EEOC’s interrogatory responses, which  
11 were treated as a “functional amendment” to the EEOC’s complaint, the district  
12 court thereafter granted judgment in favor of the Port Authority. *Port Auth. of N.Y.*  
13 *& N.J.*, 2012 WL 1758128, at \*1 & n.2. In so ruling, the court first held that the  
14 EEOC’s complaint, “[s]tanding alone,” was “clearly insufficiently pleaded” as it did  
15 “nothing more than track the language of the statute.” *Id.* at \*4. The court next held  
16 that the EEOC’s interrogatory responses successfully pleaded that the claimants’ and  
17 comparators’ jobs entailed equal levels of responsibility, given the allegation that the

1 attorneys were all “nonsupervisory” and worked under “the same reporting  
2 structure and . . . level of supervision.” *Id.* However, the court also determined that  
3 the responses failed adequately to allege that the attorneys’ jobs required equal skill  
4 and effort, given that the EEOC’s reliance on “broad generalities about attorneys in  
5 general” – rather than “say[ing] anything about [the] Port Authority’s attorneys in  
6 particular” – described the work of “virtually any practicing lawyer” and thus did  
7 not amount to “a true comparison of the content of the jobs at issue.” *Id.*

8 Finally, the district court deemed the EEOC’s “an attorney is an attorney is an  
9 attorney” theory insufficient to support its claim. The court acknowledged that the  
10 EEOC had alleged four facts suggesting that the Port Authority treated the  
11 attorneys’ positions similarly: the claimants and comparators had the same job code;  
12 were paid within the bounds of an attorney “maturity curve” based on years of legal  
13 experience; were evaluated according to the same performance criteria; and were not  
14 inflexibly limited to distinct legal divisions. *Id.* at \*5. But the court concluded that  
15 these allegations did not touch upon the attorneys’ *actual* job duties and thus could  
16 not give rise to an inference that the attorneys’ jobs required “substantially equal”  
17 work. To reach this conclusion, the court first held that the shared job codes were

1 not entitled “any weight” because titles or codes “are not a reflection of job content.”

2 *Id.* Similarly, the court deemed the use of identical performance criteria to be  
3 insignificant given that the “blandly generic” criteria the Port Authority employed  
4 could be “used to evaluate different employees on different scales.” *Id.* Next, the  
5 court found that the movement of attorneys between divisions was inconsequential,  
6 as transfers would “only be asked of those who have the ability to satisfy the  
7 requirements” and that the consolidation of divisions was beside the point as it did  
8 not “speak to the actual content of the jobs.” *Id.* Last, the court found that the  
9 “maturity curve’s” reliance on years of legal experience to set permissible salary  
10 ranges compelled the conclusion that factors “other” than years of legal experience  
11 informed the selection of salaries within the predetermined ranges. *Id.* at \*6. As  
12 such, the court declared that the EEOC’s “bald assertion” that the “other” factor  
13 must be sex ignored not only potential differences in the attorneys’ job duties but  
14 also the “multitude of legitimate factors” that may have informed the attorneys’  
15 salaries. *Id.*

16 The district court concluded that it “strains credulity to argue that [the] Port  
17 Authority, which does not set wages based on a lockstep scale, does not factor into

1 its pay decisions the kind and quality of work its attorneys perform.” *Id.* Because  
2 the EEOC’s “allegations as a whole simply do not rise to the requisite level of facial  
3 plausibility,” the court granted judgment in favor of the Port Authority and  
4 dismissed the EEOC’s complaint. *Id.* This appeal followed.

## 5 DISCUSSION

### 6 A. Legal Standard

7 We review *de novo* a district court’s dismissal of a complaint pursuant to  
8 Federal Rule of Civil Procedure 12(c), employing “the same . . . standard applicable  
9 to dismissals pursuant to Fed. R. Civ. P. 12(b)(6).” *Morris v. Schroder Capital Mgmt.*  
10 *Int’l*, 445 F.3d 525, 529 (2d Cir. 2006) (internal quotation marks omitted). Thus, we  
11 accept all factual allegations in the complaint as true and draw all reasonable  
12 inferences in favor of the plaintiff. See *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493  
13 F.3d 87, 98 (2d Cir. 2007).

14 The pleading standard we employ in reviewing discrimination complaints is  
15 somewhat less settled, however. In *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002),  
16 the Supreme Court held that an employment discrimination complaint need not set  
17 forth “specific facts establishing a prima facie case of discrimination” to survive a

1 motion to dismiss and, instead, was subject only to the minimal standard required  
2 by Federal Rule of Civil Procedure 8, that a complaint provide “a short and plain  
3 statement of the claim showing that the pleader is entitled to relief,” *id.* at 508  
4 (quoting Fed. R. Civ. P. 8(a)(2)), such that it would “give the defendant fair notice  
5 of what the plaintiff’s claim is and the grounds upon which it rests,” *id.* at 512  
6 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). At the time, application of Rule 8  
7 was governed by the standard set forth in *Conley v. Gibson*, which instructs that a  
8 complaint should not be dismissed “unless it appears beyond doubt that the plaintiff  
9 can prove no set of facts in support of his claim which would entitle him to relief.”  
10 355 U.S. at 45-46.

11 That standard was abandoned by the Court’s later rulings in *Twombly* and  
12 *Iqbal*, which clarified the proper Rule 8 standard as being whether a complaint  
13 alleged “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl.*  
14 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007), such that a court could “draw the  
15 reasonable inference that the defendant is liable for the misconduct alleged,”  
16 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Contrary to *Conley*’s “no-set-of-facts”  
17 standard, which requires only that a complaint not *preclude* the viability of claims,

1 *Twombly* and *Iqbal* require that a complaint *support* the viability of its claims by  
2 pleading sufficient nonconclusory factual matter to set forth a claim that is plausible  
3 on its face. *See Twombly*, 550 U.S. at 555 (noting that a complaint offering “labels and  
4 conclusions” or “a formulaic recitation of the elements of a cause of action will not  
5 do”); *Iqbal*, 556 U.S. at 678 (noting that a complaint must demonstrate “more than a  
6 sheer possibility that a defendant has acted unlawfully”); *see also EEOC v. Concentra*  
7 *Health Servs., Inc.*, 496 F.3d 773, 777 (7th Cir. 2007) (comparing *Conley* with *Twombly*).  
8 In “retiring” *Conley*, *Twombly* reaffirmed *Swierkiewicz*. *See Brown v. Daikin Am. Inc.*,  
9 756 F.3d 219, 228 n.10 (2d Cir. 2014). However, it did so only insofar as *Swierkiewicz*  
10 “did not change the law of pleading, but simply re-emphasized that the use of a  
11 heightened pleading standard for [discrimination] cases was contrary to the Federal  
12 Rules’ structure of liberal pleading requirements.” *Twombly*, 550 U.S. at 570 (internal  
13 quotation marks and ellipsis omitted).

14 Since *Twombly* and *Iqbal*, *Swierkiewicz*’s continued vitality has been an open  
15 question in this Circuit. *See, e.g., Daikin Am. Inc.*, 756 F.3d at 228 & n.10. Specifically,  
16 uncertainty lingered as to whether *Twombly* and *Iqbal* overruled *Swierkiewicz* entirely,  
17 or whether *Swierkiewicz* survives only to the extent that it bars the application of a

1 pleading standard to discrimination claims that is heightened beyond *Twombly*'s and  
2 *Iqbal*'s demand for facial plausibility. We reject the first proposition. *Twombly*'s  
3 endorsement of *Swierkiewicz* mandates, at a minimum, that *Swierkiewicz*'s rejection  
4 of a heightened pleading standard in discrimination cases remains valid. See  
5 *Rodriguez-Reyes v. Molina-Rodriguez*, 711 F.3d 49, 54 & n.3 (1st Cir. 2013) (holding that  
6 *Swierkiewicz*'s "discussion of the disconnect between the prima facie case and the  
7 rules of pleading" remains "good law" after *Twombly* and *Iqbal*).

8           Instead, along with several of our sister circuits, we recognize that *Swierkiewicz*  
9 has continuing viability, as modified by *Twombly* and *Iqbal*. *Swierkiewicz* held only  
10 that discrimination complaints are subject to the requirements of Rule 8, a rule now  
11 guided by the Court's more recent holdings on the pleading standard. See  
12 *Rodriguez-Reyes*, 711 F.3d at 54 n.3 (stating that *Swierkiewicz*'s reliance on *Conley* "to  
13 describe the pleading standard . . . is no longer viable"); *Fowler v. UPMC Shadyside*,  
14 578 F.3d 203, 211 (3d Cir. 2009) (noting that *Swierkiewicz* was "repudiated by both  
15 *Twombly* and *Iqbal* . . . at least insofar as [*Swierkiewicz*] concerns pleading  
16 requirements and relies on *Conley*"). As such, we conclude that, while a  
17 discrimination complaint need not allege facts establishing each element of a prima



1     facie case of discrimination to survive a motion to dismiss, *see Swierkiewicz*, 534 U.S.  
2     at 510 (noting that the prima facie case requirement is an evidentiary standard), it  
3     must at a minimum assert nonconclusory factual matter sufficient to “nudge[] [its]  
4     claims’ . . . ‘across the line from conceivable to plausible’” to proceed, *Iqbal*, 556 U.S.  
5     at 680 (quoting *Twombly*, 550 U.S. at 570). With the proper standard set out, we turn  
6     to the adequacy of the EEOC’s complaint and interrogatory responses.

## 7     **B. The EPA Claim**

8             Congress passed the EPA in 1963 “to legislate out of existence a long-held, but  
9     outmoded societal view that a man should be paid more than a woman for the same  
10    work.” *Belfi v. Prendergast*, 191 F.3d 129, 135 (2d Cir. 1999). From the first, the EPA  
11    concerned equal pay for – emphatically – *equal* work. To that end, Congress rejected  
12    statutory language encompassing “comparable work” to instead mandate equal pay  
13    for “equal work on jobs the performance of which requires equal skill, effort, and  
14    responsibility, and which are performed under similar working conditions.” 29  
15    U.S.C. § 206(d)(1); *see Brennan v. City Stores, Inc.*, 479 F.2d 235, 238 (5th Cir. 1973)  
16    (quoting 109 Cong. Rec. 9197-98 (1963)). Thus, to prove a violation of the EPA, a  
17    plaintiff must demonstrate that “[1] the employer pays different wages to

1 employees of the opposite sex; [(2)] the employees perform equal work on jobs  
2 requiring equal skill, effort, and responsibility; and [(3)] the jobs are performed  
3 under similar working conditions.” *Belfi*, 191 F.3d at 135 (internal quotation marks  
4 omitted).

5 While the equal work inquiry does not demand evidence that a plaintiff’s job  
6 is “identical” to a higher-paid position, the standard is nonetheless demanding,  
7 requiring evidence that the jobs compared are “substantially equal.” *See*  
8 *Lavin-McEleney v. Marist Coll.*, 239 F.3d 476, 480 (2d Cir. 2001). To satisfy this  
9 standard, a plaintiff must establish that the jobs compared entail common duties or  
10 content, and do not simply overlap in titles or classifications. *See, e.g., Tomka v. Seiler*  
11 *Corp.*, 66 F.3d 1295, 1310 (2d Cir. 1995), *abrogated on other grounds by Burlington Indus.,*  
12 *Inc. v. Ellerth*, 524 U.S. 742 (1998). This focus on job content has been a constant in  
13 the context of the EPA. For example, the EEOC’s own regulations provide that  
14 “equal work” under the EPA is established not by reference to “job classifications  
15 or titles but . . . rather [by] actual job requirements and performance.” 29 C.F.R.  
16 § 1620.13(e). Similarly, the EEOC’s Compliance Manual states that “[j]ob content . . .  
17 determines the equality of jobs,” and “whether two jobs are substantially equal”

1 turns on “whether the jobs have the same ‘common core’ of tasks.” EEOC  
2 Compliance Manual § 10-IV(E)(2) (2000).

3 The EEOC’s regulations also define the statutory criteria underlying the equal  
4 work inquiry – equal skill, effort, and responsibility – by reference to actual job  
5 content. For example, equal skill is defined as including “such factors as experience,  
6 training, education, and ability,” as measured “in terms of *the performance*  
7 *requirements of the job*” at issue. 29 C.F.R. § 1620.15(a) (emphasis added). Equal  
8 effort, by turn, looks to “the measurement of the physical or mental exertion *needed*  
9 *for the performance of a job.*” *Id.* § 1620.16(a) (emphasis added). And equal  
10 responsibility turns on “the degree of accountability *required in the performance of the*  
11 *job, with emphasis on the importance of the job obligation.*” *Id.* § 1620.17(a) (emphasis  
12 added). In addition, the regulations illustrate these definitions by reference to  
13 fact-intensive examples that emphasize the centrality of job content to the equal  
14 work inquiry, such as supermarket employees who are either required to move  
15 heavy boxes or reorganize small merchandise, and sales clerks who are either  
16 entrusted to determine whether to accept personal checks or who are not so  
17 empowered. *See id.* §§ 1620.15-17.

1           This Court has similarly focused on the congruity and equality of actual job  
2 content between the plaintiff and comparator in weighing EPA claims. In *Tomka v.*  
3 *Seiler Corporation*, we stated that “job content and not job title or description” is the  
4 central concern of an EPA claim. 66 F.3d at 1310. Given this precept, we affirmed  
5 summary judgment in favor of a defendant on an EPA claim as to two of a plaintiff’s  
6 better-paid male co-workers, because the plaintiff had “set forth no specific facts to  
7 indicate that she performed substantially equal work” to those co-workers. *Id.*  
8 However, we vacated the judgment and remanded the claim insofar as it concerned  
9 four other better-paid male co-workers, because the evidence demonstrated that the  
10 plaintiff’s and her co-workers’ job “duties” were “identical” or “overlap[ped].” *Id.*  
11 at 1311. In *Fisher v. Vassar College*, we first vacated and then, sitting en banc,  
12 reversed a judgment in favor of the plaintiff pressing an EPA claim – despite the fact  
13 that she and her better-paid male co-worker were both professors at Vassar –  
14 because the plaintiff “never introduced evidence establishing that she and [and her  
15 co-worker] performed equivalent work.” 70 F.3d 1420, 1452 (2d Cir. 1995), *reheard*  
16 *en banc on other grounds*, 114 F.3d 1332 (2d Cir. 1997), *abrogated on other grounds by*  
17 *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000). And tellingly, in

1 *Lavin-McEleney v. Marist College*, we affirmed a judgment in favor of a  
2 professor-plaintiff bringing a similar claim – despite the fact that the chosen  
3 comparator and other statistical evidence compared salaries across departments –  
4 because the plaintiff offered “substantial evidence” that the comparisons “isolate[d]  
5 comparable positions [to] accurately capture[] equality of skill, effort, and  
6 responsibility.” 239 F.3d at 481; *see also Byrne v. Telesector Res. Grp., Inc.*, 339 F. App’x  
7 13, 16 (2d Cir. 2009) (summary order) (affirming summary judgment in favor of  
8 defendant, despite fact that plaintiff and better-paid male co-workers had same job  
9 title, because “[f]or purposes of an equal pay claim . . . a finding of substantial  
10 equality must be based on actual job content”).

11 To be sure, the bulk of these cases concerned whether the plaintiffs had  
12 proven their EPA claims following summary judgment or trial, not whether the  
13 plaintiffs had adequately pleaded their claims. Nonetheless, these cases as well as  
14 the EEOC’s regulations and Compliance Manual stand for a common principle: a  
15 successful EPA claim depends on the comparison of actual job content; broad  
16 generalizations drawn from job titles, classifications, or divisions, and conclusory  
17 assertions of sex discrimination, cannot suffice. At the pleading stage, then, a

1 plausible EPA claim must include “sufficient factual matter, accepted as true” to  
2 permit “the reasonable inference” that the relevant employees’ *job content* was  
3 “substantially equal.” *See Iqbal*, 556 U.S. at 678. Such factual allegations are  
4 necessary to provide “fair notice [to the defendant] of the basis for [the plaintiff’s]  
5 claims.” *Swierkiewicz*, 534 U.S. at 514. Yet, despite a three-year investigation  
6 conducted with the Port Authority’s cooperation, the EEOC’s complaint and  
7 incorporated interrogatory responses rely almost entirely on broad generalizations  
8 drawn from job titles and divisions, and supplemented only by the unsupported  
9 assertion that all Port Authority nonsupervisory attorneys had the same job, to  
10 support its “substantially equal” work claim. As such, the EEOC’s complaint was  
11 rightly dismissed.

12 First, the EEOC alleges in its complaint only that the Port Authority paid its  
13 female nonsupervisory attorneys less than its male nonsupervisory attorneys “for  
14 substantially equal work,” that these attorneys had “the same job code,” and that the  
15 disparity in pay “cannot be attributed to factors other than sex.” The EEOC’s bald  
16 recitation of the elements of an EPA claim and its assertion that the attorneys at issue  
17 held “the same job code” are plainly insufficient to support a claim under the EPA.

1     *See Twombly*, 550 U.S. at 555 (deeming a “formulaic recitation of the elements of a  
2     cause of action” insufficient to survive a motion to dismiss); *Tomka*, 66 F.3d at 1310  
3     (rejecting reliance on “job title or description” alone under the EPA).

4             Next, while the interrogatory responses provide some additional content to  
5     the EEOC’s complaint, these responses too are insufficient to support a “reasonable  
6     inference” of “substantially equal” work or to provide the Port Authority notice of  
7     the grounds for the EEOC’s claim. *See Iqbal*, 556 U.S. at 678; *Swierkiewicz*, 534 U.S.  
8     at 514. As outlined above, the EEOC alleged that the Port Authority required all of  
9     its nonsupervisory attorneys to have similar “experience, training, education, or  
10    ability,” bar admission, and the capacity to call upon “problem-solving and  
11    analytical skills” as well as “professional judgment.” However, such bland  
12    abstractions – untethered from allegations regarding Port Authority attorneys’ *actual*  
13    job duties – say nothing about whether the attorneys were required to perform  
14    “substantially equal” work. Thus, the EEOC’s complaint provides no guidance as  
15    to whether the attorneys handled complex commercial matters or minor slip-and-  
16    falls, negotiated sophisticated lease and financing arrangements or responded to  
17    employee complaints, conducted research for briefs or drafted multimillion-dollar

1 contracts. The EEOC asserts that such allegations are unnecessary because “all  
2 lawyers perform the same or similar function(s)” and that “most legal jobs involve  
3 the same ‘skill.’” Appellant’s Br. at 29. But accepting such a sweeping  
4 generalization as adequate to state a claim under the EPA might permit lawsuits  
5 against any law firm – or, conceivably, any type of employer – that does not employ  
6 a lockstep pay model. Without more, these facts cannot be read to raise the EEOC’s  
7 “substantially equal” work claim “above the speculative level.” See *Twombly*, 550  
8 U.S. at 555.

9 Nor does the EEOC’s table purporting to compare claimants and comparators  
10 bolster its claim. As the district court noted, the comparisons drawn appear  
11 superficially random, and rightly so: as the EEOC acknowledged, the table simply  
12 juxtaposes claimants and comparators whose “combined” bar admission and service  
13 dates are separated by no “more than ten years” – a full decade of difference in  
14 experience.<sup>3</sup> That the EEOC faulted the Port Authority for paying a male attorney

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<sup>3</sup> This ten-year range is not the table’s only shortcoming. The EEOC nowhere clarifies whether the attorneys cited in the table always worked in the same divisions since joining the Port Authority or even whether they have always worked in *legal* positions. For instance, the table indicates that several attorneys joined the Port Authority years before their admission to the bar.



1 only \$2,000 more in salary than his female co-worker with sixteen less years of legal  
2 experience only serves to underscore the paucity of support offered by the EEOC's  
3 selection of comparators. Moreover, the table includes multiple *male* attorneys who  
4 were paid more than their male co-workers with similar qualifications, undermining  
5 the EEOC's contention that sex alone informed the alleged pay disparities at the Port  
6 Authority. And while twelve of the EEOC's 338 identified pairs of claimants shared  
7 similar bar admission dates and years of service and worked in the same division  
8 at the same time, this allegation fails to demonstrate that all Port Authority attorneys  
9 perform "substantially equal" work.

10 Finally, the EEOC's theory that "an attorney is an attorney is an attorney"  
11 does nothing to assist its claim. As detailed above, such broad generalizations based  
12 on mere job classifications are not cognizable under the EPA. And while it is  
13 conceivable that the EEOC might have alleged facts supporting its contention that  
14 the attorneys' *job duties* were treated interchangeably, potentially giving rise to an  
15 inference that they performed "substantially equal" work, no such specific  
16 allegations can be found in the EEOC's complaint. *See Beck-Wilson v. Principi*, 441  
17 F.3d 353, 360-61 (6th Cir. 2006) (holding that evidence that jobs were "fungible"

1 could “support a prima facie case under the EPA” where plaintiffs established that  
2 defendant hospital “employed [predominantly female nurse practitioners] and  
3 [predominantly male physician assistants] interchangeably” and that “the basic  
4 duties of both [of those] jobs at the [hospital] c[ould] be performed by either [nurse  
5 practitioners] or [physician assistants]”). Rather, the EEOC’s more particularized  
6 allegations – that Port Authority attorneys had the same job code; were evaluated  
7 according to the same broad criteria; were paid according to the same “maturity  
8 curve”; and were not limited to distinct legal divisions – at most demonstrate that  
9 Port Authority attorneys were subject to the same human resources policies.

10 Job codes, again, say nothing of actual job duties and are thus peripheral to  
11 an EPA claim. The use of identical evaluative criteria such as “project  
12 management,” “communication,” “flexibility and adaptability,” and “attendance,”  
13 moreover, speaks only to the breadth of the standards used, not to whether the  
14 attorneys subject to evaluation face varying workplace demands. And, as the  
15 district court noted, the “maturity curve’s” reliance on years of legal experience to  
16 set salary *ranges* supports only the inference that factors *other than* legal experience  
17 – be it job content or any number of other criteria – informed the determination of

1 salaries within the curve. Finally, the transfer of attorneys between divisions  
2 supports the inference that some attorneys had multidisciplinary skill sets, not that  
3 all Port Authority attorneys were required to be so skilled. All told, the EEOC's  
4 allegations supporting its "an attorney is an attorney is an attorney" theory do  
5 nothing to elucidate the skills or effort demanded of the Port Authority's many  
6 attorneys and, thus, do nothing to support the EEOC's claim.

7         Simply put, the EEOC has not alleged a single nonconclusory fact supporting  
8 its assertion that the claimants' and comparators' jobs required "substantially equal"  
9 skill and effort. That the EEOC's failure to include such factual allegations followed  
10 a three-year investigation into the Port Authority's pay practices – an investigation  
11 conducted with the Port Authority's cooperation – is of some note. The  
12 determination of whether a complaint states a plausible claim for relief is "a  
13 context-specific task that requires the reviewing court to draw on its judicial  
14 experience and common sense." *Iqbal*, 556 U.S. at 679. Here, the EEOC had ready  
15 access to Port Authority documents and employees, including to the claimants  
16 asserting EPA violations, yet the EEOC failed – in fact, repeatedly rejected the need  
17 – to allege any factual basis for inferring that the attorneys at issue performed

1 “substantially equal” work. *See Pension Benefit Guar. Corp. ex rel. St. Vincent Catholic*  
2 *Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 723 (2d Cir. 2013)  
3 (concluding that the plaintiffs’ “imprecise pleading is particularly inappropriate .  
4 . . . where the plaintiffs necessarily ha[d] access, without discovery, to . . . specific  
5 information from which to fashion a suitable complaint”); *Concentra Health Servs.,*  
6 *Inc.*, 496 F.3d at 780 (“The rules do not require unnecessary detail, but neither do  
7 they promote vagueness or reward deliberate obfuscation. . . . A complaint should  
8 contain information that one *can* provide and that is clearly important . . . .”).  
9 *Compare Chepak v. Metro. Hosp.*, 555 F. App’x 74, 76 (2d Cir. 2014) (summary order)  
10 (vacating dismissal of EPA complaint where *pro se* plaintiff asserted she was paid  
11 less to do the “same job” as her male predecessor).

12         Given the foregoing analysis, the EEOC’s pleadings cannot be said to contain  
13 “enough fact[s] to raise a *reasonable* expectation that discovery will reveal evidence  
14 of illegal[ity].” *See Twombly*, 550 U.S. at 556 (emphasis added). Nor do the EEOC’s  
15 allegations, read as a whole and with every reasonable inference drawn in the  
16 EEOC’s favor, suggest “more than a sheer possibility” that the Port Authority  
17 violated the EPA. *Iqbal*, 556 U.S. at 678; *see N.J. Carpenters Health Fund v. Royal Bank*

1 of *Scot. Grp., PLC*, 709 F.3d 109, 121 (2d Cir. 2013) (“[C]ourts may draw a reasonable  
2 inference of liability when the facts alleged are suggestive of, rather than merely  
3 consistent with, a finding of misconduct.”). The EEOC has alleged, at most, that  
4 some female nonsupervisory attorneys were paid less than some male  
5 nonsupervisory attorneys at the Port Authority during the relevant period – and  
6 that, in other instances, the situation was reversed. The EEOC has not, however,  
7 plausibly pleaded that these pay differentials existed despite the attorneys’  
8 performance of “substantially equal” work, the only workplace ill addressed by the  
9 EPA. Without *any* nonconclusory allegations supporting such a claim, the district  
10 court did not err in determining that the EEOC’s complaint was properly dismissed.<sup>4</sup>

## 11 CONCLUSION

12 For the foregoing reasons, we **AFFIRM** the judgment of the district court.  
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<sup>4</sup> In so ruling, we do not address the question whether the EEOC must name all claimants prior to suit or whether the EEOC must allege facts supporting that each claimant performed “substantially equal” work to a higher-paid co-worker of the opposite sex. We hold only that where, as here, a plaintiff fails to allege any nonconclusory facts from which to infer that a *single* claimant performed “substantially equal” work to a higher-paid co-worker of the opposite sex, the plaintiff has failed to state a plausible claim for relief under the EPA.