

OVERVIEW OF THE *PAY EQUITY ACT*

prepared by

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP
474 Bathurst Street, Suite 300, Toronto, Ontario
T. 416-964-1115 F. 416-964-5895
www.cavalluzzo.com

and

FAY FARADAY
fay.faraday@faradaylaw.com
T. 416.389.4399

A. OVERVIEW OF THE ACT'S PURPOSE AND STRUCTURE

1. The *Pay Equity Act* was enacted in order to redress systemic sex-based wage discrimination in Ontario workplaces. The *Act* applies to all public sector employers and all private sector employers with more than ten employees, to all employees of these employers, and to their bargaining agents.

Preamble
Section 4(1) - purpose
Section 3 - application

2. The *Act* identifies the extent of sex-based wage discrimination by comparing compensation paid to female job classes with compensation paid to male job classes of similar value. Compensation includes wages and benefits.

Section 5.1, 1(1)

3. Pay equity is achieved through a process that is largely self-managed by the workplace parties. In unionized workplaces, the employer and bargaining agent negotiate to define the scope of the employer's establishment, select a gender neutral comparison system for

{C0180925.1}

evaluating jobs, evaluate the jobs, select appropriate job comparators, prepare the pay equity plan, and maintain the pay equity plan. In non-unionized workplaces, the employer prepares the pay equity plan but employees must have an opportunity to review the plan and recommend changes to the plan.

Sections 14, 15
Sections 21.8, 21.9
Sections 21.20, 21.21

4. Two administrative bodies have roles in enforcing the *Pay Equity Act*: the Pay Equity Commission, through its Review Officers, and the Pay Equity Hearings Tribunal.

5. Any contravention of the *Act*, including any disputes that arise out of negotiating or preparing a pay equity plan or any problems with enforcing the plan, can be the subject of complaints to the Pay Equity Commission. Complaints can be filed by an employee, group of employees, bargaining agent or employer. Complaints are investigated by the Commission's Review Officers who can order the parties to take such steps as are necessary to prepare or implement the plan.

Sections 22-24

6. If an employer or a bargaining agent fails to comply with an order made by a Review Officer under section 24, a Review Officer may refer the matter to the Hearings Tribunal.

Section 24(5)

7. Where a Review Officer makes an order under section 24, an employer or bargaining agent that has been named in an order may request a hearing before the Hearings Tribunal with respect to the order. Where the order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing.

Section 24(6)

8. Where the Review Officer decides not to deal with a complaint, the complainant may request a hearing before the Hearings Tribunal.

Section 23(3) and (4)

9. The Hearings Tribunal shall also hold a hearing if a Review Officer is unable to effect the settlement of a complaint and has not made an order under s. 24(3).

Section 25(1)(a)

10. The Hearings Tribunal conducts a new hearing into the complaint and has broad power to make such orders as are necessary to ensure compliance with the *Act*.

Section 25(2)

B. PREPARING A PAY EQUITY PLAN

11. A pay equity plan applies to an “establishment”. An establishment consists of all the employees of an employer in a “geographic division” which is generally a county, territory or regional municipality as described in the *Territorial Division Act*.

Section 1, definitions

12. Two or more employers and the bargaining agent or bargaining agents for their employees can, however, negotiate a broader scope for what will be considered the establishment. For example, the parties can agree to a central pay equity plan that covers multiple employers and multiple bargaining agents across two or more geographic divisions.

Section 2

Section 21.16

13. The parties must identify which jobs classes in an establishment are done primarily by women and which are done primarily by men. A “job class” is made up of positions with

similar duties and responsibilities, similar qualifications, are filled by similar recruiting procedures, and have the same compensation schedule, salary grade or range of salary rates. The workplace parties can negotiate the scope of positions which will constitute a job class.

Section 1, definitions
Sections 6(6)-(10)

14. A “female job class” is one in which 60 per cent or more of the members are female. A “male job class” is one in which 70 per cent or more of the members are male.

Section 1, definitions

15. The job classes are then evaluated using a “gender neutral comparison system”. This means that the value of the work is measured using a composite of the skill, effort, responsibility and working conditions required by the job.

Section 5(1)

16. The female job classes are then compared to male job classes of comparable value using the mechanisms identified in the *Act*. If the workplace is unionized, the comparison first takes place between male and female job classes within the bargaining unit. If there is no male job class of comparable value within the bargaining unit, the female job class is compared to a male job class of similar value anywhere else at the establishment. If the workplace is not unionized, the search takes place first between non-unionized jobs. If no male job of comparable value is found here, a non-unionized female job can be compared to male job classes in the bargaining unit.

Section 6(4), 6(5)

17. Where the compensation paid to a female job class is lower than that paid to its male comparator, pay equity is achieved by adjusting the female compensation so it is at least equal to the male compensation. The amount by which the female compensation must be increased to achieve pay equity is referred to as the “pay equity adjustment”.

Section 5.1(1)

18. Where the workplace is unionized, the workplace parties negotiate and sign documents known as “pay equity plans”. Where the workplace is not unionized, the employer is responsible for preparing the pay equity plan and employees are entitled to review and recommend changes to the plan.

Sections 14, 15
Sections 21.8, 21.9
Sections 21.20, 21.21

19. A pay equity plan includes information such as a description of the gender neutral comparison system that was used to evaluate jobs, the method of comparison used, and a list of the job classes which formed the basis of the comparisons. It also sets out the result of that comparison and identifies the extent to which the compensation for any female job classes must be adjusted to achieve pay equity. The plan also includes a schedule of when the pay equity adjustments will be paid out.

Sections 13, 21.6, and 21.18

20. Employers that were in existence before 1 July 1993 and that have pay equity plans are entitled to phase in their pay equity adjustments gradually. Each year, the employer must devote an amount equal to at least 1% of its annual payroll towards increasing the wages of those female job classes which are entitled to a pay equity adjustment. New employers that came into existence after 1 July 1993 are required to commence operations with compensation that is pay equity compliant.

Section 13(4),(5) and (6)
Section 21.10(3)
Section 21.22

21. In a unionized workplace, the pay equity adjustments required by a pay equity plan shall be incorporated into and form part of the relevant collective agreements.

Section 13(10)
Section 21.5(2)
Section 21.18(4)

22. After the pay equity plans are in place, the *Act* provides that pay equity must be “maintained”, that is the employer must maintain compensation practices that provide for pay equity and not allow the compensation gap to widen again.

Section 7

23. The *Act* permits parties to amend pay equity plans in response to changed circumstances. However, any amendment to the pay equity plan must be negotiated between the employer and the bargaining agent. If the parties are unable to agree to amendments, they must notify the Pay Equity Commission. If the workplace is not unionized, the employer can amend the plan and employees who disagree with the amendment are entitled to file an objection to the amendment with the Pay Equity Commission. In the event of a failure to agree or an objection, a Review Officer of the Pay Equity Commission will investigate and endeavour to effect a settlement or, if necessary, make an order deciding the outstanding issues.

Sections 14.1, 14.2, 15 and 16

C. METHODS OF COMPARISON

24. Not all workplaces are structured the same: some have both male and female job classes, others have few male job classes and some have no male job classes. Therefore the *Act* outlines three different wage comparison mechanisms which are tailored to suit different kinds of workplaces. These mechanisms are:

- i) job-to-job comparison (Part II);
- ii) proportional value comparison (Part III.1); and
- iii) proxy comparison (Part III.2).

1. Job-to-Job Comparison

25. Job-to-job comparison is used when a single establishment has both male and female job classes and the female job classes can be matched up with male job classes of equal or comparable value.

26. If a female job class is paid less than the comparable male job class, the compensation for the female job class must be raised so that it is at least equal to the compensation for the male job class.

Section 6

27. Employers using the job-to-job comparison method phase in pay equity incrementally. Each year, they must devote at least 1% of their annual payroll towards closing the gap. Public sector employers using this mechanism were required to close the entire wage gap by 1 January 1998.

Section 13(7)

2. Proportional Value Comparison

28. Proportional value comparison is used when an establishment has both female and male job classes but the job-to-job comparison method cannot be used because a female job class cannot be matched to a male job class of equal or comparable value.

Section 21.2

29. Under proportional value comparison, the female job class is compared to a “representative group of male job classes”. To establish this representative group, the male job classes are plotted on a graph which measures the wage rate on the vertical axis and the value of the job on the horizontal axis. A “male wage line” is constructed, either by drawing it free-hand on the graph or by using the statistical method called regression

analysis. The female job classes are then plotted on the graph. If they fall below the male wage line, the wage rate for the female job class must be increased by the amount necessary to bring it up to the male wage line.

Section 21.3

Pay Equity Commission, Step By Step to Pay Equity: Using the Proportional Value Comparison Method, pp. 12-17

30. Again the pay equity adjustments are phased in gradually. Each year the employer must devote at least 1% of its annual payroll towards closing the wage gap. Public sector employers using this method must close the entire wage gap by 1 January 1998.

Section 21.10(3)

3. Proxy Comparison Method

31. The proxy comparison method is set out in Part III.2 of the *Pay Equity Act*.

32. The proxy comparison method applies only to public sector employers which either have no male job classes or which do not have enough male job classes to construct a male wage line using the proportional value comparison method. The list of public sector employers which are subject to the *Act* is set out in the Schedule to the *Act*.

Schedule to the *Pay Equity Act*;

See also: Ontario Regulation 396/93

33. Before the proxy comparison method can be used, the employer must notify the Pay Equity Commission that it was unable to achieve pay equity using either the job-to-job or proportional value comparison methods. A Review Officer at the Pay Equity Commission must then investigate to confirm that the employer cannot use the job-to-job or proportional value methods and that the employer is a public sector employer eligible to use the proxy method. If these criteria are satisfied, the Review Officer issues a Proxy Order declaring the employer to be eligible to use the method. This employer is then known as a “seeking employer”.

Section 21.2(5)
Section 21.12

34. Under the proxy comparison method, the seeking employer is matched with a “proxy employer” which has already negotiated a pay equity plan. The “seeking employer” borrows wage and job value information from the “proxy employer” to conduct its job comparisons. The “proxy employer” is another public sector employer whose business is similar in nature to that of the seeking employer but which has male job classes. Which kind of organization will be used as the appropriate proxy employer in any particular case is designated in Ontario Regulation 396/93.

Schedule to Ontario Regulation 396/93

35. The seeking employer identifies its “key female job classes” which are the female job classes with the greatest number of employees or the female job classes whose duties are essential to the delivery of the service provided by the employer. The seeking employer then requests wage and job information from the proxy employer regarding its female job classes whose duties and responsibilities are similar to those of the key female job classes.

Section 21.11(1), definitions
Section 21.17

36. As indicated above, the female job classes at the proxy employer have already had their wages adjusted to achieve pay equity. Therefore, to achieve pay equity, the female job classes at the seeking employer are compared to similar female job classes at the proxy employer. For example, a health care aide at a nursing home is compared to health care aide at a home for the aged whose wages have already been adjusted to a pay equity rate.

Section 21.15

37. Proxy pay equity adjustments are calculated in two steps. Calculations for key female job classes are done first. The seeking employer’s key female job classes are compared with the female job classes at the proxy employer whose duties and

responsibilities are similar and pay equity is achieved by adjusting the seeking employer's key female job classes' compensation accordingly. Then, for the seeking employer's female job classes that are not key female job classes, pay equity is achieved by conducting a proportional value comparison using the pay equity job rates identified for the seeking employer's key female job classes.

Section 21.13
Section 21.15

38. Wage adjustments under proxy pay equity plans are retroactive to 1 January 1994.

Section 21.22(1)

39. Pay equity adjustments required under proxy pay equity plans are also phased in gradually. Each year the employer must devote at least 1% of its annual payroll towards closing the wage gap. However, unlike public sector employers using the job-to-job or proportional value comparison methods, there is no end date by which pay equity must be achieved under the proxy method. The pay equity adjustments will be phased in at a rate of 1% of payroll each year over as many years as are needed to close the gap.

Section 21.22(2)