

## A Trade Union Pay Equity Act Compliance Checklist

April 2010

Pay equity is a fundamental human right. Pay equity means employers must provide equal pay for work of equal value free from sex discrimination. Ontario's *Pay Equity Act* imposes a pro-active legal obligation on employers to establish and maintain pay equity in their workplaces and imposes an obligation on employers to bargain in good faith with unions on pay equity. Employers and bargaining agents are prohibited from bargaining for or agreeing to compensation practices that would contravene the obligation to establish and maintain pay equity.

How pay equity rights are implemented in your specific bargaining units, which Parts of the *Pay Equity Act* apply, and what specific legal issues may currently be arising for your bargaining units will vary based on a number of factors. Some key factors that can affect pay equity considerations in your bargaining units are:

1. whether your bargaining units are in the private sector or public sector;
2. the date that the employer's establishment began operations;
3. when the bargaining unit was certified;
4. whether the bargaining unit is predominantly female or whether it contains male job classes;
5. what stage of pay equity implementation your bargaining unit is at; and
6. what changes have been occurring in the workplace over time.

**The checklist which begins on page 4 is intended to help you diagnose what pay equity compliance issues may be arising in the establishments where your members work.** In a tough bargaining climate, trade unions need to be prepared to ensure they have met the legal obligation to implement, achieve and maintain pay equity. The questions on the checklist are organized around the following themes:

Part 1: Taking Stock and Getting Prepared

Part 2: Key Pay Equity Records and Achieving Pay Equity in Your Bargaining Units

Part 3: Maintaining Pay Equity in Your Bargaining Units

Ontario's pay equity law came into effect in 1988 but the process and the legal obligations to achieve and maintain pay equity are continuous. Pay equity is an on-going legal obligation. Some of the questions on the checklist relate to the historical record of how pay equity has been implemented in your bargaining units. Some of that information may go back many years. But this information remains very important because the specific way that pay equity was implemented in a particular bargaining unit provides the basis for assessing what current legal issues and rights may arise in that unit.

This introduction provides a brief overview of some key concepts under the *Pay Equity Act*.

The *Pay Equity Act* contains two fundamental obligations:

1. the obligation to **achieve** pay equity; and
2. the obligation to **maintain** pay equity.

### **Achieving Pay Equity**

“**Achieving**” pay equity refers to the first phase in pay equity implementation. It refers to the process by which practices of wage discrimination are initially identified and eliminated.

The *Pay Equity Act* came into effect on 1 January 1988. Wage gaps that existed as of 1 January 1988 were to be eliminated and new wage gaps were not allowed to be created. **Employers that were in existence on 1 January 1988** were provided with reasonable time frames within which to identify any discriminatory wages gaps in their workplaces and to gradually phase in the adjustments needed to eliminate those wage gaps. **Employers that began operations after 1 January 1988** were required to have pay equity compliant wages in place from the date they started up.

Pay equity is initially achieved by ensuring that all **female job classes** (60% or more women) in an establishment are paid at least as much as **male job classes** (70% or more men) of equal or comparable value. A **gender neutral comparison system** is the job evaluation tool which is used to measure job value based on a composite of the skill, effort, responsibility and working conditions required by the job. Female and male jobs of equal or comparable value can be compared using three different methodologies:

- \* the **job-to-job comparison method** compares a female job class directly with a male job class of equal or comparable value in the establishment;
- \* the **proportional value comparison method**, which was introduced in 1993, compares female job classes with a male wage line; and
- \* the **proxy comparison method**, which applies **only in the public and broader public sectors** and was also introduced in 1993, compares female job classes in predominantly female workplaces with comparators at specific public sector establishments that are identified in the applicable regulation.

If the appropriate comparison method indicates that a female job class is paid less than the appropriate comparator, pay equity is achieved by requiring the employer to make **pay equity adjustments** that bring the female job class’ wages to the level of the applicable male job, male wage line or proxy comparator.

Information about the pay equity process, including information about the gender neutral comparison system, the results of the comparisons, the pay equity adjustments that are required, the schedule for paying out adjustments, and so on, are set out in **pay equity plans**.

For employers that were in existence prior to 1988 (or prior to 1 July 1993 if they used either the proportional or proxy methods), pay equity adjustments were to be paid out in annual increments equal to at least 1% of payroll. In the public sector, pay equity adjustments were to be fully paid out by 1 January 1998. There is no legislated date by which pay equity must be achieved in the private sector and broader public sector which used the proxy comparison method. In these sectors, pay equity adjustments continue at the rate of at least 1% per year until the wage gap is closed.

Pay equity achievement and maintenance for broader public sector bargaining units that used the proxy comparison method has been complicated by the fact that the Government tried to eliminate the proxy method in 1996. This attempt to restrict pay equity rights was found to be unconstitutional in 1997 and proxy was restored. The Government then refused to fund proxy pay equity adjustments. This led to a second constitutional challenge which resulted in a settlement that flowed funding through to 2006. However, tracking pay equity funding and ensuring the receipt of pay equity funding in the proxy sector remains an ongoing challenge for these broader public sector workplace both in relation to the achievement and maintenance of pay equity.

### **Maintaining Pay Equity**

**“Maintaining” pay equity** has two meanings:

1. First, it means that once pay equity wage gaps have been identified in the achievement phase, those wage gaps are not allowed to widen; they must continue to narrow until they are closed.
2. Second, maintaining pay equity means that after pay equity has been achieved, new discriminatory wage gaps must not be allowed to re-open.

This means that during the achievement phase and after pay equity has been achieved, the job rate for female job classes must not fall behind

Concerns about whether pay equity has been maintained can arise in a wide variety of different ways. Each case must be assessed on its particular facts. Some of the most common scenarios giving rise to maintenance concerns include, but are not limited to:

- \* creation of new job classes
- \* changes in job duties
- \* sale of business and business restructuring, mergers, divestments
- \* collective bargaining agreements that affect wage rates or other compensation
- \* elimination of male job classes
- \* new bargaining unit certified

**Changed circumstances** that affect the appropriateness of the pay equity plan gives the union the right to give notice to bargain to the employer to negotiate amendments to the pay equity plan to ensure that pay equity continues to be secured in the workplace.

The checklist that follows is intended to help you track where your bargaining units are in the pay equity process and what issues may be arising that affect your members’ rights to pay equity.

### **Part 1: Taking Stock and Getting Prepared**

This section enables you to identify potential pay equity issues based upon the “key moments” and obligations under the *Act* as identified above. Taking stock and pulling together all background information is the first, and sometimes, one of the most critical steps for achieving and maintaining pay equity.

- private sector
- broader public sector - proxy sector
- Do all of your bargaining units have pay equity plans?

**Please review each section below that applies to your union's bargaining units.  
NOTE: section (iv) is relevant for ALL bargaining units.**

**(i) Private sector bargaining units organized prior to 1 January 1988**

Copies of pay equity plans for these bargaining units?

- What kind of pay equity plans are they?
  - job-to-job comparisons
  - proportional value comparisons
- Copies of the records with respect to the development of the pay equity plans?
  - information on wages and benefits for all job classes
  - gender neutral comparison system ("GNCS")
  - job descriptions
  - job questionnaires
  - job ratings
  - job comparisons
- What pay equity adjustments were paid out and when?
  - records of any other settlements or agreements that were reached?
  - records of any amendments to the pay equity plans?
  - who is responsible for maintaining these records?

**(ii) Public sector and broader public sector bargaining units organized prior to 1 January 1988**

Copies of pay equity plans for these bargaining units?

- What kind of pay equity plans are they?
  - job-to-job comparisons
  - proportional value comparisons
  - proxy comparisons
- Copies of the records with respect to the development of the pay equity plans?
  - information on wages and benefits for all job classes
  - gender neutral comparison system ("GNCS")
  - job descriptions
  - job questionnaires
  - job ratings
  - job comparisons
- What pay equity adjustments were paid out and when?
  - records of any other settlements or agreements that were reached?

- records of any amendments to the pay equity plans?
- who is responsible for maintaining these records?
- For your bargaining units that used the proxy comparison method:
  - what pay equity adjustments have been paid out?
  - what pay equity adjustments remain owing?
  - is the employer receiving pay equity funding to make pay equity adjustments?

**(iii) Bargaining Units Organized after 1 January 1988**

- When were your bargaining units certified?
- Before your bargaining unit was certified:
  - was the workforce previously non-unionized?
  - or had the workplace previously been unionized?
- Was a pay equity plan in place prior to your certification?
- If there was a pre-existing pay equity plan:
  - do you have copies of all relevant pay equity information used in developing the pre-existing pay equity plan? i.e. gender neutral comparison system, job information, job evaluation ratings, list of female and male job classes, lists of job comparators, outcomes of job comparisons
  - was it necessary to carve the bargaining unit out of a pre-existing pay equity plan?
  - were substantive changes needed to the pay equity plan to provide for pay equity?
  - was a new pay equity plan developed?
- If there was no pre-existing pay equity plan, was a pay equity plan signed after certification?
  - what kind of pay equity plan is it?
    - job-to-job comparisons
    - proportional value comparisons
    - proxy comparisons (public and broader public sectors only)
  - what pay equity adjustments were paid out and when?
    - records of any other settlements or agreements that were reached
    - records of any amendments to the pay equity plans
    - who is responsible for maintaining these records?
- What stage of pay equity implementation are your newly certified bargaining units at?
  - have you obtained information from the employer on the status of pay equity?
  - are they in the process of achieving pay equity?
  - has pay equity been achieved?
  - are they in the pay equity maintenance phase?

Employers that began operations after 1 January 1993 are required to have implemented pay equity immediately upon commencing operations.

- Did the employer commence operations after 1 January 1993?
- If so, did the employer commence its operations with pay equity compliant wages?
  - Did the employer conduct gender neutral job evaluations?
  - Did the employer appropriately identify, value and compare male and female job classes?
  - Has the employer provided you with disclosure of all relevant information relating to how it determined that its opening wages were pay equity compliant?

**(iv) FOR ALL BARGAINING UNITS**

Do your collective agreements contain a letter of understanding for local pay equity committees?

- Do these committees continue to be active in monitoring pay equity compliance?
- Have any of your units negotiated pay equity maintenance protocols?
  - are local committees involved in this?

As set out in the introduction, “**changed circumstances**” refers to the wide variety of changes that can occur in a bargaining unit which may make the existing pay equity plan no longer appropriate. These may include categories such as:

- the introduction of new job classes or changes to male comparator job classes;
- significant changes in skills, efforts, responsibilities or working conditions in your bargaining units;
- transactions related to a sale of business, merger, divestment or re-organization;
- interest arbitration awards that affect provisions related to compensation for specific job classes;
- collective bargaining agreements that affect wage rates or other compensation.
- What systems do you have in place to find out when there have been changed circumstances in the workplace?
  - Who do you contact to get this information?

**Part 2: Key Pay Equity Records and Achieving Pay Equity in your Bargaining Units**

Below is a list of documents and information that unions require to assist in tracking pay equity implementation and to ensure pay equity has been achieved for your bargaining units. These are also examples of the kinds of documents and facts that may need to be compiled in the context of making an application to enforce rights before either the Pay Equity Commission or Pay Equity Hearings Tribunal or responding to a complaint by an individual employee or group of employees.

- A copy of the Pay Equity Plan
  - copies of any amendments to the Pay Equity Plan
  - copies of all other agreements, settlements, or letters of understanding relating to pay equity since the time the Pay Equity Plan was developed
- A copy of the Gender Neutral Comparison System that was used to evaluate the job classes and develop the Pay Equity Plan including the job evaluation manual, any terms of reference negotiated with the employer and joint committee procedures.

- A complete list of the job classes in the bargaining unit (or at the establishment if the pay equity plan used comparators from outside the bargaining unit)
  - list of the female job classes and their rates of pay
  - list of the male job classes and their rates of pay
- Job descriptions for all the job classes
- Job questionnaires, ratings and rationale sheets for each of the job classes
- Information about the kind of comparison that was used to develop the Pay Equity Plan (i.e. job-to-job, proportional value or proxy comparisons)
  - the results of the comparisons
- If a workplace used the proxy comparison method to achieve pay equity:
  - a copy of the Notice of Inability to Achieve (which authorizes a workplace to use the proxy method)
  - identity of the proxy employer
  - information about the external proxy employer job classes that were used to develop the Pay Equity Plan
  - information about whether the employer is receiving proxy pay equity funding
- Schedule of pay equity adjustments owing under the Pay Equity Plan
  - the total amount of pay equity adjustments owed
  - the amount of pay equity adjustments that have been paid
    - total amount paid each year
    - pay equity adjustments for each job class
  - when they were paid
  - amount of pay equity adjustments still owing (if any) under the original Pay Equity Plan and dates and amounts still to be paid by job class
- Date pay equity was achieved (if it has been achieved)
- Information about and results from any prior complaints to the Pay Equity Commission/Pay Equity Hearings Tribunal

### **Part 3: Maintaining Pay Equity in Your Bargaining Units**

The obligation to maintain pay equity can arise from a range of different factual circumstances. Each case is unique on its facts but the circumstances can be divided into at least two general categories:

1. while still in the phase of achieving pay equity, making sure that the discriminatory wage gaps that have been identified do not widen; and
2. during and after the phase to achieve pay equity, making sure that no new discriminatory wage gaps are created.

This part of the checklist identifies some facts to consider and track when assessing if pay equity has been maintained. Other facts and/or documents may also need to be tracked depending on the particular circumstances in each workplace.

- Lists of which job classes in the workplace are female and which are male
- Copies of the wage schedules from all collective agreements since the pay equity plan was developed.
  - What non-pay equity collective bargaining/interest arbitration increases have been made?
    - Have appropriate changes be made to the pay equity target rate in light of collective bargaining/interest arbitration increases?
    - Have any wage gaps been created or widened between female job classes and male comparators as a result of collective bargaining/interest arbitration increases?
- Is there a pay equity maintenance protocol/memorandum of understanding at the workplace?
  - Is it in the collective agreement?
  - Is it in the pay equity plan?
  - Is it in a separate policy?
  - Is it an unwritten practice?
- Have any new job classes been created?
  - job descriptions of the new job class
  - gender predominance of the new job class
    - have new job classes been evaluated within the gender neutral job comparison system?
  - job questionnaire and rating of the new job class
- Have any male comparator job classes been eliminated?
- Has there been any significant change in the incumbency or the gender of existing job classes (ie have formerly female jobs become predominately male)?
- Have there been any significant changes in the duties of existing job classes (changes to effort, skill, responsibility and working conditions).
  - have the changed jobs been re-evaluated?
  - new job descriptions
  - new job questionnaires and ratings
- Has there been a new union certification?
  - was there a pre-existing pay equity plan?
  - is the pre-existing pay equity plan no longer appropriate in light of the certification?
- Restructuring or sale of a business?
  - is there a change in the scope of establishment?
  - is there a change in the scope of the bargaining unit?
  - are there pre-existing or multiple pay equity plans?
    - did they use different Gender Neutral Comparison Systems?
    - different methods for achieving pay equity?



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- has pay equity been achieved under the existing plans or is it still in process?
- new job classes?
- new female job classes and/or male comparators?
- Has pay equity been achieved for the post-sale business? This may involve re-visiting all the steps that are necessary to achieve pay equity in the first place.
  
- Proxy pay equity maintenance
  - Are there new job classes?
  - what information do you have about the original proxy comparator? Has the pay gap widened between the female job classes in the bargaining unit and the proxy comparator?
  - is the employer receiving funding for proxy pay equity?

**NOTE: For further information, contact Mary Cornish ([mcornish@cavalluzzo.com](mailto:mcornish@cavalluzzo.com)), Victoria Réaume ([vreaume@cavalluzzo.com](mailto:vreaume@cavalluzzo.com)), Fay Faraday ([ffaraday@cavalluzzo.com](mailto:ffaraday@cavalluzzo.com)), Jan Borowy ([jborowy@cavalluzzo.com](mailto:jborowy@cavalluzzo.com)), Ryan White ([rdwhite@cavalluzzo.com](mailto:rdwhite@cavalluzzo.com)), Andrew MacIsaac ([amacisaac@cavalluzzo.com](mailto:amacisaac@cavalluzzo.com))**