



Pay Equity Office

An Overview of Pay Equity in Various Canadian Jurisdictions

2018

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1: Introduction

The Canadian government and Provincial governments have enacted various forms of legislation and statutory mechanisms in the area of labour standards or human rights to address the problem of gender wage discrimination. Pay discrimination on the grounds of gender is prohibited by Human Rights legislation in British Columbia, Alberta, Ontario, Saskatchewan and equal pay for same or similar work is a requirement of employment standards legislation in Ontario, Manitoba, Saskatchewan, Yukon, Newfoundland and, North West Territories.

Pay equity – "equal work for work of equal value" is legally required in separate pay equity legislation for the public sector in Manitoba, Nova Scotia, New Brunswick and Prince Edward Island and for the public and certain private sectors in Quebec and Ontario. This document will provide an overview of these pieces of pay equity legislation. An overview of the Federal pay equity situation will also be provided.

2: Manitoba

2.1 Statute

[Pay Equity Act](#)

2.2 Summary of the Pay Equity Approach

Application

Public service employees and employers. Including public servants who work for certain "external agencies" and "crown entities"

Job Classes

A group of positions with the same or similar job duties, qualifications and same pay schedule.

Minimum size of a job class is 10 incumbents.

Gender Predominance

If 70% of the class are female or male it may be designated as a female or male – dominated job class.

For a large public sector employer [>500 employees] gender-predominance may be agreed by the workplace parties.

For smaller public sector employer [fewer than 500 employees] a different threshold for gender predominance may be established by regulation.

Purposes

The objects and purposes of the Pay Equity Act (PEA) are set out in [section 2]:

- To establish the principle of pay equity in Manitoba
- To inform employers, employees and bargaining agents within the public and private sectors of the principles and practices of pay equity.

Determination of Value

Criteria applied are a composite of:

- Skill
- Effort
- Responsibility
- Working Conditions

Pay Equity Act (PE) Planning/Agreement

A Pay Equity (PE) agreement is negotiated between the government and all the bargaining agents which represent its employees.

Unrepresented employees who are not in a bargaining unit are represented for PE bargaining by a person whom they elect as a representative.

Where the work place parties cannot reach agreement on the calculation and implementation PE by the legislated time limit, they may elect arbitration.

Filing Requirements

Negotiated PE agreements are filed with the executive director of the Pay Equity Bureau by specified dates.

Pay Equity (PE) Achievement

Where the employer adjusts compensation of female-dominated job classes to equal the average schedule or grade of pay that is equal to the average or projected average rate of pay of male dominated job classes, the employer will be deemed to have complied with pay equity.

2.3 Enforcement and Dispute Resolution

Administration

A member of the Civil Service Commission is designated to oversee the implementation of pay equity within the civil service and provide reports about the implementation of PE to the executive director of the Pay Equity Bureau.

For External Agencies

An external agency [designated hospitals and universities] is required to designate a "PE officer" who is responsible for overseeing the implementation of PE and for submitting reports to the executive director of the Pay Equity Bureau.

Orders

Where the workplace parties do not agree on the definition of job classes, job evaluation system or quantum and / or process for implementing wage adjustments, the dispute is referred to arbitration by the executive director of the Pay Equity Bureau or by the workplace parties. An order settling any of those issues may be issued by the arbitrator.

Complaints

Where a PE agreement has been negotiated but wage adjustments are not being paid as required, a complaint may be made to the Manitoba Labour Board.

Dispute Resolution

Where the workplace parties cannot negotiate a PE plan they have recourse to arbitration or may seek the assistance of the Manitoba Labour Board to resolve disputes about the elements of the PE process [viz. job evaluation; definition of job classes etc.].

2.4 Pay Equity Wage Adjustments

Public service employers are required to pay out pay equity adjustments up to a maximum of 1% of the previous year's payroll for four consecutive years.

3: New Brunswick

NOTE: Expanding pay equity to the private sector was an issue in the 2018 general election. The incumbent party committed to pass legislation to require pay equity implementation for local governments and in the quasi-public sector by 2020 and for large businesses in the private sector by 2022. Updates will be printed as appropriate.

3.1 Statute

[Pay Equity Act](#)

3.2 Summary of the Pay Equity Approach

The Pay Equity Act (PEA), 2009 replaced the 1989 PEA which was repealed April 1st, 2010.

Application

Public sector employers with 10 or more employees.

Job Classes

A classification of 10 or more employees with similar skills and responsibilities and who are in the same wage schedule.

Gender Predominance

Where 60% or more of the incumbents in a classification are female or male, it may be considered to be a female or male dominated class or where the job is traditionally associated with one gender it may be considered female or male dominant.

Purposes

To implement pay equity in the public sector and specified parts of the civil service by comparing the wages and value of the work performed between male and female dominated work classes performing work of similar value.

Determination of Value

Criteria applied are a composite of:

- Skill
- Effort
- Responsibility required
- Working conditions

Differences in pay between male and female job classes may still be permitted where the employer can show they do not discriminate on the basis of gender and arise out of the following:

- Formal seniority system
- Temporary developmental or training assignment leading to advancement
- Merit pay
- Red-circling of the position
- Wage inflation caused by temporary skills shortage and employer's need to recruit /retain employees with particular skills.

PE Planning/Agreement

Pay equity is to be negotiated between public sector employers and employees through a collective bargaining process that is separate from the negotiation of the main employment contract. The Act provides a timetable for completing this PE negotiation process.

Within 60 days after the passage of the amended PEA:

- workplace parties are required to begin meeting to disclose information
- establish the process for bargaining a pay equity agreement
- identify male and female-dominated classifications
- identify non-discriminatory job evaluation system
- agree on a way to apply job evaluation to determine inequities between male and female-dominated job classes which perform work of equal value within 12 months after the PEA takes effect [section 13(1)]

Workplace parties are required to enter into a PE agreement within 24 months.

The employer determines how pay equity compensation will be apportioned [section 13(3)] among employees in the female-dominated job classes.

Employer must give notice to the union and the notice prevails over collective agreement provisions.

Filing Requirements

Where a pay equity process was in place/completed before 2010, the employer is required to report on the specifics of the process to the director of the Pay Equity Bureau.

If the director is satisfied that the process would satisfy the requirements of the amended PEA, the process of PE implementation continues. If the director is not satisfied, then he/she may "provide advice to the employer with respect to achieving compliance." The employer is then required to get into compliance.

Within 25 months after the implementation of the PEA an employer is required to report to the Pay Equity Bureau on its progress toward achieving PE.

PE Achievement

Section 9 provides that the employer will have complied with PE when it adjusts its compensation practices so that female-dominated job classes are paid at a rate equal to the average or the projected average rate of pay for male-dominated classes performing work of equal or comparable value.

Maintenance

PEA requires maintenance of PE after it is achieved with a regular progress report to employees and the PE Bureau.

After pay equity is achieved, the employer is required to review its "pay equity compensation practices" and provide a report on them to the Pay Equity Bureau within 30 days after the review is complete.

The Pay Equity Bureau provides an annual report to the Minister about progress toward PE.

While bargained through a separate process, the agreed-upon PE salary adjustments are to be read as part of public sector collective agreements.

3.3 Enforcement and Dispute Resolution

Administration

The Pay Equity Bureau (PEB)

- Provides information to workplace parties
- Assists in the implementation / maintenance of PE
- Monitors employer progress toward achievement of PE
- Oversees the PE process
- Provides assistance to workplace parties not covered by the PEA

Orders

The PEB does not issue compliance orders but it does monitor compliance and provide compliance assistance to the workplace parties.

In addition to the employer's obligation to implement and maintain PE, the employer is also obliged to ensure that "employees affected by PE" are informed about the maintenance of PE from time to time.

Complaints

The PEA is not complaint driven but it does provide for the Pay Equity Bureau to monitor compliance and provide advice to employers about achieving PE.

Dispute Resolution

Where workplace parties cannot agree on a pay equity process an arbitrator may be appointed.

If the employees are represented by a trade union, the union and the employer split the costs of arbitration.

Where the employees are unrepresented, the employer pays the cost of arbitration.

3.4 Pay Equity Wage Adjustments

Limitations on the amount of payroll available for wage adjustments may be set out in regulations [section 30(a)].

4: Nova Scotia

4.1 Statute

[Pay Equity Act](#)

4.2 Summary of the Pay Equity Approach

Application

Public sector and specified parts of the Municipalities, Universities, Schools, Hospitals (MUSH) sector as well as certain employees of defined "public sector corporations".

Job Classes

A job class is a group of positions with the same classification title, same or like qualifications and same salary grade or range of salary rates.

Gender Predominance

A group of 10 or more employees with the same employer in the same classification where 60% are male or female as the case may be is determined to be a male or female-dominated job class.

Purposes

To increase the pay of employees in classes which are predominantly female where it is determined by the process set out in this Act that by reason of sex discrimination, those employees are paid less than they should be.

PE Calculation

Within twenty-one months of the beginning of the PE process, the employer and the employee representatives are required to apply the evaluation system and compare the value of the work of female and male dominated job classes in the same unit or another unit of the employer.

PE Planning/Agreement

A pay equity plan is negotiated between the workplace parties. Once the PE process begins, the parties are required to agree on a gender-neutral job evaluation process and the definition of the male and female-dominated job classes within the first six months of the pay equity process.

If they cannot agree within 6 months on these parts of the process, the PEC has the authority to decide these matters.

The employees are entitled to receive their PE wage adjustments within 24 months after the PE process begins [section 15(1)].

Filing Requirements

Negotiated PE agreements are to be filed with the Pay Equity Commission (PEC).

PE Achievement

Pay equity is considered to have been achieved in a female-dominated job class:

- In a workplace with one male-dominated job class, where the pay rate for the female-dominated class is equal to the pay rate of the male-dominated class which is performing work of equal value
- If the employer has 2 or more male-dominated classes performing work of equal value then PE is achieved when the female class is paid at least the lowest pay rate of the 2 male-dominated classes.
- If the employer has no male dominated class performing work of equal value but has two or more male-dominated classes with a previously higher pay rate, performing work of lower value, PE is achieved when the pay rate of the female dominated class is equal to the higher of the two male job classes performing work of lesser value.

4.3 Enforcement and Dispute Resolution

Administration:

The Pay Equity Commission:

- Receives and investigate complaints about the pay equity process
- Monitors PE implementation
- Settles matters that the workplace parties cannot negotiate
- Provides advice and assistance to workplace parties.

Orders

- The PEC may make a compliance order or direction and it is enforceable in the same way as a court order.

Complaints

- Employee representatives may report to the Commission at any time about the implementation of PE.

Dispute Resolution

Pay Equity Commission is authorized to make determinations about job class and evaluation where in its opinion the parties are not applying the evaluation in a timely manner [section 13(2)].

Where the parties cannot agree on job evaluation and definition of classes, the Pay Equity Commission has authority under the PEA to make a final and binding decision about job evaluation system

4.4 Pay Equity Wage Adjustments

Employees are entitled to receive PE wage adjustments within 24 months of the beginning of the PE process.

Workplace parties negotiate timing, quantum and allocation of wage adjustments over a period which shall not exceed 4 years.

Where agreement is not reached within 24 months, the Commission has authority to determine these matters within a further two months and it may order equal distribution of the wage adjustments owed over four years.

5: Ontario

NOTE: For more detailed information please see: [A Guide to Interpreting Ontario's Pay Equity Act.](#)

5.1 Statute

[Pay Equity Act](#)

5.2 Summary of the Pay Equity Approach

Application

The Act covers all employers in Ontario except for private sector employers with fewer than ten employees.

Job Classes

"Job class" means those positions in an establishment that:

- Have similar duties and responsibilities;
- Require similar qualifications;
- Are filled by similar recruiting procedures; and,
- Have the same compensation schedule, salary grade or range of salary rates [section 1. (1)].

Gender Predominance

"Female job class" means,

- A job class in which 60% or more of the members are female.
- A job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class [section 1. (1)].

"Male job class" means,

- A job class in which 70% or more of the members are male.
- A job class that a Review Officer or the Hearings Tribunal decides is a male job class, or a job class that the employer, with the agreement of the bargaining agent if any, decides is a male job class [section 1. (1)].

The Act requires employers to apply three criteria or tests to determine the gender of the job class [section 1. (1), and section 1. (5)]:

- Current incumbency
- Historical incumbency
- Gender stereotype of the field of work

Purposes

The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes [section 4.(1)].

Determination of Value

Criteria applied are a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed [section 5 (1)].

[Section 8. (1)] This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of:

- A formal seniority system that does not discriminate on the basis of gender;
- A temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
- A merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
- The personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or,
- A skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Permissible difference can also arise as a result of differences in bargaining strength [section 8. (2)].

PE Planning/Agreement

Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer [section 7. (1)].

Employers subject to Part II of the Act must:

- Prepare and post pay equity plan(s) according to the requirements in [section 13];
- Negotiate all aspects of the pay equity plan with their existing unions in establishments with bargaining agents [section 14]; and,

- Follow the process for accessing the Commission to resolve impasses in the negotiation process prior to the deemed approval of pay equity plans [section 16, and section 17].

PE Achievement

To meet the minimum requirements and to show that pay equity has been achieved, all employers covered by the Act **MUST** have carried out each of these activities for each of their establishments:

- Determine job classes, including the gender and job rate of job classes.
- Determine the value of job classes based on factors of skill, effort, responsibility and working conditions.
- Conduct comparisons for all female job classes using job-to-job, proportional value or proxy method (proxy is for public sector only and of limited application).
- Adjust the wages of underpaid female job classes so that they are paid at least as much as an equal or comparable male job class or classes.

Maintenance

Once pay equity is achieved, all employers subject to the Act are required to maintain pay equity for the employees in female dominated job classes. However, the Act does not stipulate specific procedures or schedules to follow for maintaining pay equity. The purpose of maintaining pay equity is to ensure that pay equity gaps that were closed are not re-opened or widened as a result of changes to job values and job rates and that new gaps are not created.

Maintaining pay equity is an ongoing process whereby employers must review job classes for changes in job rate, job value, duties and responsibilities as positions are added or eliminated. In a unionized environment, employers and unions are prohibited from agreeing to terms that, if implemented, would mean that the minimum requirements of the Act are not met.

5.3 Enforcement and Dispute Resolution

Administration

The PEA is administered by the Pay Equity Commission.

Orders

Review Officers have powers under the Act to make orders for compliance. An order is binding on the parties named in it.

Complaints

A complaint can be made to the Pay Equity Commission by:

- Any employer;
- Any employee (including former employees);
- Any group of employees; and,
- Any bargaining agent representing the employee or group of employees in a female job class [section 22. (1)].

Dispute Resolution

Review officers shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal [section 34 (2)].

If the parties fail to act on an order, the Review Officer may refer the matter to the Tribunal for enforcement [section 24. (5)]. Also, any party objecting to a Review Officer's Order or Notice of Decision may request a hearing before the Tribunal regarding the issue(s) in dispute [section 23. (4), and section 24. (6)].

In some cases, the parties may access the Tribunal directly where a Review Officer is unable to effect a settlement and has not issued an Order or a Notice of Decision.

5.4 Pay Equity Wage Adjustments

Employers subject to Part II of the Act who were required or chose to post a pay equity plan were allowed to phase in pay equity adjustments by set deadlines in an amount that is not less than the lesser of either 1% of the employer's total Ontario payroll costs of the previous year, or the amount required to achieve pay equity [section 13. (4)–(6)]. Public sector employers with employees on January 1, 1988 or July 1, 1993 that used either the job-to-job or proportional value comparison methods must have fully achieved pay equity by January 1, 1998.

Part II employers who did not meet their original deadline for posting a pay equity plan or achieving pay equity must pay any adjustments that are owed immediately. If an employer did not implement and achieve pay equity when it was required, that employer must determine the adjustment amounts based on the pay equity gaps that existed at the time their plans should have been posted. Retroactive payments should be calculated as if the adjustments were paid on time.

Rules for distributing the adjustments

The Act sets out rules for distributing adjustments among the female job classes. Employers were required to make payments such that:

- All female job classes due adjustments within a pay equity plan must receive an adjustment until pay equity is achieved for the job class [section 13. (2), and section 13. (5)].
- All incumbents of a female job class due adjustments must receive the same adjustment in dollar terms [section 9. (3)].
- Within a pay equity plan, the lowest paid female job class must receive a larger adjustment than the other job classes, or the complete adjustment [section 13. (3)].

The Act specifies that employers cannot reduce compensation for any position in order to achieve pay equity or to offset pay equity adjustments to female job classes [section 9. (1)].

6: Prince Edward Island

6.1 Statute

[Pay Equity Act](#)

6.2 Summary of the Pay Equity Approach

Application

Employers and employees in the public sector.

Job Classes

A group of positions involving duties and responsibilities so similar that it has the same or similar qualifications and same range of salaries is applied to all in the group.

Gender Predominance

Where 60% of a job class is male or female, it is accepted as a male or female-dominated job class.

In determining gender pre-dominance, the employer is also required to consider factors of historical incumbency, gender stereotypes and other factors as prescribed.

Purposes

Object of the Act is to redress systemic discrimination in wages paid for work by female-dominated job classes in the public sector.

Determination of Value

Value for purposes of the PEA is based on a composite of skill, effort, responsibility and working conditions.

Permissible differences between wages of male and female-dominated job classes include:

- Formal performance appraisal system communicated to employees which do not discriminate on the basis of gender
- Formal seniority system
- Skills shortage causing temporary inflation in wages.

Note: Where an employer asserts this "skills shortage" argument as justification for a wage differential between male and female job classes it must also provide additional information.

PE Planning/ Agreement

PEA sets out a 4 stage plan for negotiating the PE agreement:

1. Nine months after negotiations begin, parties required to agree to single gender neutral job evaluation plan or system and define the job classes to which it applies
2. Within 12 months after the end of stage 1, the parties are required to apply the evaluation system and determine PE adjustments.
3. Within 3 months after the end of stage 2 the parties agree on the allocation of PE adjustments and
4. No later than 24 months after the beginning of stage 1, PE adjustments are made until PE is achieved.

PEA [section 17(2)] also provides that PE bargaining must begin within 3 months after the Act comes into force for the public sector; within 15 months after the Act comes into force for the parts of the MUSH sector covered by the PEA.

Filing Requirements

The workplace parties are required to file a copy of the PE agreement with the Pay Equity Commissioner.

PE Achievement

PE is achieved when a public sector employer adjusts its compensation practices so that female dominated job classes are assigned a schedule or range of pay equal to the average or projected average range of pay for male-dominated job classes performing work of equal or comparable value.

6.3 Enforcement and Dispute Resolution

Administration

Pay Equity Bureau in the Department of Community Services, Seniors and Labour administers the act.

Orders

Pay equity officers employed by the Bureau may require production of documents, summon witnesses, enter workplaces and issue compliance orders.

Complaints

Prior to the achievement of pay equity, the Pay Equity Commissioner – the CAO of the Bureau, may hear complaints from public sector bargaining agents and employees about non-compliance or discriminatory conduct related to the PE process.

Dispute Resolution

Where the parties cannot reach a bargained pay equity agreement, arbitration may be ordered to break an impasse about the PE plan.

6.4 Pay Equity Wage Adjustments

PE adjustments are made annually to a maximum of 1% of total payroll until PE is achieved. The adjustments may however be higher where ordered by the Bureau if necessary to address a retroactive award.

7: Quebec

NOTE: On May 10, 2018, the Supreme Court of Canada (SCC) confirmed that certain sections of the Quebec Pay Equity Act regarding pay equity audits were invalid, inapplicable and unenforceable. The SCC agreed with the Quebec Court of Appeal's decision as well as that of the Quebec Superior Court and determined that sections 76.3, 76.5 and 103.1, paragraph 2, of the Act are discriminatory under section 15(1) of the Canadian Charter of Rights and Freedoms.

The SCC upheld the Quebec Superior Court's suspension of the declaration of invalidity, inapplicability and unenforceability. The Quebec legislature therefore has one

year to amend the Pay Equity Act. Updates will be made to this document as amendments to the legislation are passed.

7.1 Statute

[Pay Equity Act](#)

7.2 Summary of the Pay Equity Approach

Application

All employers with a minimum of 10 employees in the private and public sectors. Where an employer's work force grows to 10 employees over a year, it is required to comply with PEA starting January 1st of the following year.

Large employers [>100 employees] are required to develop a PE plan.

Job Classes

Members of a "job class" have.

- Similar duties
- Required qualifications
- Same salary scale.

Gender Predominance

As defined in [section 55] if a job class is 60% male or female it may be considered a male or female-predominant job class for pay equity purposes. Other criteria for determining gender predominance include:

- If the work is "commonly associated with men or women owing to gender-based stereotyping"; or,
- The difference between the representation of women in the class and women in the labour market generally is considered significant; or,
- The historical pattern of incumbency is predominantly one or the other gender.

Purposes

To "redress differences in compensation due to the systemic gender discrimination suffered by persons who occupy positions in predominantly female job classes".

Determination of Value

Every employer which has an annual average of 10 or more employees is obliged to compare jobs primarily held by women and those primarily held by men to determine that the value of these classes of jobs is determined in a gender – neutral way.

The evaluation system includes four factors:

- Qualifications required
- Responsibilities undertaken
- Physical/mental effort
- Working Conditions

PE Planning/Agreement

Planning requirements vary according to the size of the employer.

For an employer with 100 or more employees:

An enterprise-wide PE plan must developed by a pay equity committee, two-thirds of the committee shall represent employees and a minimum of 50% of the employee representatives must be women. Additional language in the Act requires the employee representatives to include representation from the male and female dominant job classes. If the employees or the trade unions that represent them do not agree on representation, then the employer must act alone to develop a PE plan for its employees.

For an employer with 50-99 employees:

The employer may choose to set up a PE committee. The employer and the trade unions representing its employees jointly establish a PE plan.

For an employer with fewer than 50 employees:

The employer is required to undertake a process to determine any compensation adjustments to ensure that employees in predominantly male and female job classes are paid the same remuneration for jobs of equal value compared through a gender-neutral evaluation.

Where the employer creates a PE plan, the PEA requires it to be filed with the Commission and to be posted publicly.

Filing Requirements

The Commission has the authority to require a report to be filed with it setting out the steps an employer has taken to implement and maintain PE. This includes the steps taken to complete a periodic PE compliance audit under [section 76(1)].

PE Achievement

Applicable employers (with more than 50 employees) are required to establish a pay equity plan.

Employers with fewer than 50 employees shall determine the adjustments in compensation required to afford the same remuneration, for work of equal value, to employees holding positions in predominantly female job classes as to employees holding positions in predominantly male job classes. The employer must ensure that the process does not discriminate on the basis of gender.

Maintenance

Since March 2011, employers which employ six or more employees in either private or public sector are required to submit an annual report certifying the size of the workforce and attesting to their fulfilment of their obligations under the Pay Equity Act [section 4 and regulations].

Employers who achieved pay equity under the former (1996) PEA regime will be subject to a pay equity audit every 5 years. The first audits were due to occur in 2010.

Employers who had fewer than 10 employees in 1996 and were excluded from the PEA at that time were required to re-calculate the size of their labour forces effective 2008.

7.3 Enforcement and Dispute Resolution

Administration

The PEA is administered by the Commission des normes, de l'équité, de la santé et de la sécurité du travail

Pay Equity Committees

The PEA provides for the establishment of pay equity committees to represent employees in the development of a pay equity plan.

Sector-Based PE Committees

The PEA requires the establishment of Sector-based PE Committees to provide advice and help with the development of PE plans by PE Committees or by employers [where they do not have a committee].

Reporting and Planning Obligations

If as a result of the application of the gender-neutral job evaluation system, a wage inequity is detected, the employer is obliged to adjust the pay of workers in female-predominant classes.

Quebec's PEA also includes annual reporting obligations for all legally registered employers of 6 or more employees in the private, public and par-public sectors including a requirement to attest compliance.

Employers are required to maintain information related to a pay equity plan until the plan has been completed.

Audit Process

Every five years after the date of the initial requirement to post a Pay Equity plan, the employer is obliged to conduct a PE audit [section 76(1)].

Where a PE plan had been completed and wage adjustments completed before March 12, 2009 – the required audit must be completed before December 31, 2010.

The employer is responsible for having the PE audit completed but also has discretion under [section 76(2)] to determine who shall conduct the PE audit [e.g. the employer, a pay equity audit committee, or jointly by the employer and certified associations].

The audit report is required to be publicly posted in the workplace for 60 days along with information about:

- PE process used in that workplace;
- Compensation adjustments;
- List of the predominantly female classifications entitled to compensation; and,
- The PE process used to calculate wage adjustments.

Within 60 days after the audit is posted, employees may seek additional information and or comment on the posted plan.

Complaints

An accelerated process was instituted in January 2011 to expedite the investigation of complaints from workers in female-predominant classes who assert that they are not receiving equal pay for work of equal value.

The Commission hears complaints. The Chair sitting with 2 commissioners may arbitrate a dispute over a pay equity plan.

Mediation/conciliation is available upon request of the parties. The investigator cannot act as a conciliator. The Commission has authority to initiate an investigation on its own motion without receiving a complaint.

Dispute Resolution

The Quebec Labour Relations Board hears and rules on disputes.

Sunset Review

The amended legislation requires a report to the Quebec legislature no later than May 28, 2019 about the implementation of the Act and the advisability of maintaining or amending it.

7.4 Pay Equity Wage Adjustments

Remedies

Financial penalties and fines are provided for in the Quebec legislation for employers which do not comply with the law and the regulations.

Penalties may be doubled for second or subsequent offences.

Unpaid wage adjustments are to be paid with interest.

Retroactivity

Where wage compensation is owed the maximum retroactivity period for the calculation of adjustments appears to be 5 years prior to the date a complaint was filed [section 103(1)].¹

Stakeholder Advice

The Act provides for the establishment of a Partners' Advisory Committee which will provide advice to the Minister about "the carrying out of this Act" [section 95(1)]. The

¹ As previously noted, the SCC that section 103.1, paragraph 2, of the Act is discriminatory under section 15(1) of the Canadian Charter of Rights and Freedoms. Updates will be made to this document as amendments to the legislation are passed.

committee is to be representative of both workers, represented and unrepresented, and employers.

Schedule of Wage Adjustments

Any wage adjustments required to achieve pay equity must be paid out within 4 years after the employer is subject to the PEA. Annual payments to employees must be equal. Where an employer cannot meet the 4 year timetable for paying out PE wage adjustments that are owed, the Commission may authorize an extension for payouts of a maximum of 3 more years.

8: Federal Model

NOTE: Please note that this information is current as of October, 2018. Updates will be made once the legislation has received Royal Assent.

8.1 Statute(s)

[Pay Equity Act \(as part of Bill C-86 First Reading\)](#)

8.2 Summary of the Pay Equity Approach

Application

This Act applies employers with 10 or more employees including the federal public service and political staff, federally regulated sectors, and federal contractors [section 6].

The governments of Yukon, the Northwest Territories, Nunavut, and Indigenous governing bodies that are employers are currently exempt, but the Act may apply to these groups at a later date by order of the Governor in Council [sections 10 and 11 (1)].

Job Classes

Positions are considered to be in the same job class if:

- (a) they have similar duties and responsibilities;
- (b) they require similar qualifications; and
- (c) they are part of the same compensation plan and are within the same range of salary rates [section 32].

Gender Predominance

A job class is considered to be a predominantly female job class if:

- (a) at least 60% of the positions in the job class are occupied by women;
- (b) historically, at least 60% of the positions in the job class were occupied by women; or
- (c) the job class is one that is commonly associated with women due to gender-based occupational stereotyping.

A job class is considered to be a predominantly male job class if:

- (a) at least 60% of the positions in the job class are occupied by men;
- (b) historically, at least 60% of the positions in the job class were occupied by men; or
- (c) the job class is one that is commonly associated with men due to gender-based occupational stereotyping

Purposes

The purpose of this Act is to achieve pay equity through proactive means by redressing the systemic gender-based discrimination in the compensation practices and systems of employers that is experienced by employees who occupy positions in predominantly female job classes so that they receive equal compensation for work of equal value, while taking into account the diverse needs of employers, and then to maintain pay equity through proactive means [section 2].

Determination of Value

The criterion to be applied in determining the value of the work performed is the composite of:

- the skill required to perform the work;
- the effort required to perform the work;
- the responsibility required in the performance of the work; and,
- the conditions under which the work is performed [section 42].

An employer, or pay equity committee, must exclude from the calculation of compensation any differences in compensation if the differences are based on any one or more of the following factors and those factors have been designed and are applied so as not to discriminate on the basis of gender:

- (a) the existence of a system of compensation that is based on seniority or length of service;

- (b) the practice of temporarily maintaining an employee's compensation following their reclassification or demotion to a position that has a lower rate of compensation until the rate of compensation for the position is equivalent to or greater than the rate of compensation payable to the employee immediately before the reclassification or demotion;
- (c) a shortage of skilled workers that causes an employer to temporarily increase compensation due to its difficulty in recruiting or retaining employees with the requisite skills for positions in a job class;
- (d) the geographic area in which an employee works;
- (e) the fact that an employee is in an employee development or training program and receives compensation at a rate different than that of an employee doing the same work in a position outside the program;
- (f) the non-receipt of compensation — in the form of benefits that have a monetary value — due to the temporary, casual or seasonal nature of a position;
- (g) the existence of a merit-based compensation plan that is based on a system of formal performance ratings and that has been brought to the attention of the employees; or
- (h) the provision of compensation for extra-duty services, including compensation for overtime, shift work, being on call, being called back to work and working or travelling on a day that is not a working day [section 46].

PE Planning/Agreement

Every employer must establish a pay equity plan in accordance with this Act in respect of its employees [section 12].

Every group of employers must establish a pay equity plan in accordance with this Act in respect of the employees of the employers in the group [section 13].

Employers must post a notice with some or all of the following requirements:

- Indicating that it is in a group of employers;
- Setting out its obligation to establish a pay equity plan, and to make all reasonable efforts to establish a pay equity committee for that purpose;
- Setting out the requirements for the committee's membership;
- Informing its non-unionized employees, if any, of their right to designate the committee members who will represent them; and informing its unionized employees, if any, that their bargaining agent will select the committee members who will represent the employees who are members of any bargaining unit represented by that bargaining agent; and,

- Informing the employer's employees of their right to designate the committee members who will represent the employees of all of the employers in the group of employers [section 14].

PE Achievement

Part 2 of the Act lays out the steps leading the establishment of a pay equity plan:

- Identify job classes
- Determine gender of job classes
- Determine value of work
- Calculate compensation
- Compare compensation
- Post the plan
 - An employer — or, in the case of a group of employers, each employer in the group — must post the final version of the pay equity plan no later than the third anniversary of the date on which the employer or the group of employers, as the case may be, became subject to this Act [section 55 (1)].
- Increase compensation
 - If a pay equity plan posted by an employer discloses differences in compensation between predominantly female job classes and predominantly male job classes or, if there are no pre dominantly male job classes, differences in compensation that are determined in accordance with regulations, the employer must increase the compensation that is payable to its employees who occupy positions in the predominantly female job classes for which an increase in compensation is required to be made under that pay equity plan [section 60].

Maintenance

An employer that has established a pay equity plan must update the version of the pay equity plan most recently posted [section 64] every five years [section 83].

Differences in in compensation as a result of any change must be identified [section 78] and the pay equity plan must be revised and changes made must be set out in a document [section 79].

The revised plan and documented changes must be posted along with a notice informing employees to whom the revised pay equity plan relates of their right to provide the employer — or, if a pay equity committee has been established, that committee — with comments on the documents...and the time within which and the manner in which

they may exercise that right [section 80]. Impacted employees have 60 days to provide comments to be taken into consideration by the employer or committee [section 82].

If a revised pay equity plan discloses differences in compensation identified, the employer must increase the compensation that is payable to its employees who occupy positions in the predominantly female job classes for which an increase in compensation is required to be made under that revised pay equity plan [section 88].

8.3 Enforcement and Dispute Resolution

Administration

The Pay Equity Commissioner's mandate is to ensure the administration and enforcement of this Act [section 104 (1)(a)].

The Pay Equity Act makes amendments to the Canadian Human Rights Act which establishes the Pay Equity Commissioner as a member of the Canadian Human Rights Commission. It also allows for officers and employees that support the Commissioner to be referred to as the Pay Equity Unit. It also provides that a Pay Equity Division must be established upon receipt of a complaint.

PE Committees

Employers with 100 or more employees and/or with unionized employees must make all reasonable efforts to establish a pay equity committee [section 16]. Other employers may voluntarily establish committees and must notify the Pay Equity Commissioner if they do so.

The committee must have a least three members and 50% must be women. As well, two thirds must represent the employees and one member must represent the employer. If applicable, there must be bargaining agent representation and non-unionized employee representation [section 19 (1)].

Reporting

Each employer that is subject to this Act must submit to the Pay Equity Commissioner an annual statement that contains the following:

- (a) the name of the employer;
- (b) the date on which the employer became subject to this Act;
- (c) an indication as to whether the version of the pay equity plan most recently posted was established or updated with or without a pay equity committee;
- (d) the number of employees employed by the employer on the last day of the year immediately before the year in which the annual statement is submitted;

(e) in respect of each pay equity plan that the employer is required to establish, the date of the version of the pay equity plan most recently posted;

(f) if applicable, in respect of each pay equity plan that the employer is required to establish, the number of predominantly female job classes for which an increase in compensation is required in accordance with the version of the pay equity plan most recently posted;

(g) for each of the job classes referred to in paragraph (f), if that paragraph applies;

(i) the amount, in dollars per hour, of the increase in compensation and the percentage of the increase in the compensation of that job class that the increase represents;

(ii) if applicable, the aggregate amount of all lump sums paid to its employees and all interest paid on those amounts;

(iii) the total number of employees occupying positions in that job class who are entitled to the increase and lump sum referred to in subparagraphs (i) and (ii); and,

(iv) among the employees referred to in subparagraph (iii), the total number of them who are women; and,

(h) any other information that is prescribed by regulation [section 89 (1)].

Annual statements must be submitted on or before June 30 [section 89 (3)].

Orders

The Pay Equity Commissioner has powers under the Act to make orders for compliance.

Complaints

Complaints may be made to the Pay Equity Commissioner within 60 days after the day on which they become aware of the alleged contravention, or become aware of certain behaviours of an employer or bargaining agent by:

- Employees;
- Employers; and,
- Bargaining agents.

Dispute Resolution

The Pay Equity Commissioner must attempt to assist the parties to settle what is appropriate to be settled [section 154]. The Commissioner may conduct an investigation [section 156].

At any stage after a notice of a matter in dispute is received, or a notice of objection or a complaint is filed, the Pay Equity Commissioner may refer to the Chairperson of the Canadian Human Rights Tribunal an important question of law or a question of jurisdiction which would, in the Pay Equity Commissioner's opinion, be more appropriate for the Tribunal to determine [section 162].

8.4 Pay Equity Wage Adjustments

For employers who posted their plan in accordance with 55 (1)², or for a group of employers, the increase in compensation required is payable on the day after the third anniversary of the date which the employer or group of employers became subject to this Act [section 61 (1)(a)(i) and (b)].

For employers who posted their pay equity plan in accordance with paragraph 94(1)(b)³, the increase in compensation required is payable on the day after the day that is 18 months after the date on which the employer became subject to this Act [section 61 (a)(ii)].

For employers who posted their pay equity plan in accordance subsection 57(2)⁴, the increase in compensation required is payable on the day after the day on which the employer posted the pay equity plan [section 62 (1)].

If the total amount of the increase, in dollars in respect to all employees, is more than 1% of payroll for the previous year, the employer may choose to phase in the increase

² An employer — or, in the case of a group of employers, each employer in the group — must post the final version of the pay equity plan no later than the third anniversary of the date on which the employer or the group of employers, as the case may be, became subject to this Act.

³ If, after the coming into force of this section, a person that carries out or operates a provincial business becomes an employer referred to in any of paragraphs 3(2)(e) to (i), and the person was, while carrying out or operating the provincial business, required to establish a pay equity plan under the laws of a province(b) if the employer becomes subject to this Act on a day that is on or after the day that is 18 months after the date on which this section comes into force, the employer must, despite subsection 55(1), post the final version of the pay equity plan no later than the day that is 18 months after the date on which the employer became subject to this Act.

⁴ If the Pay Equity Commissioner authorizes an extension, the employer — or, in the case of a group of employers, each employer in the group — must (a) post, as soon as feasible after obtaining the authorization, a notice indicating the date on which the extended period ends; and (b) despite subsection 55(1) and paragraph 94(1)(b), post the final pay equity plan within the extended period.

[section 61 (2)]. The longest possible timeline available to only certain employers is eight years.

If an employer fails to pay an amount to an employee when required the employer must pay to the employee interest on the amount. The interest is to be calculated and compounded daily on the amount, at the rate that is prescribed by regulation or calculated in a manner that is prescribed by regulation, for the period beginning on the first day after the day on which the amount was required to be paid and ending on the day on which the amount is paid [section 97 (1)].

If no regulations are made for the purpose of subsection (1), the rate of interest is the rate per annum that is the aggregate of 2% per annum and the bank rate in effect on the day in respect of which the interest is calculated [section 97 (2)].