

# Guideline # 13

## Pay Equity Adjustments

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### PAY EQUITY IMPLEMENTATION SERIES

The *Pay Equity Implementation Series* is designed to help employers, employees and bargaining agents to achieve pay equity and to understand their rights and obligations under the *Pay Equity Act, R.S.O. 1990, c. P7*, as amended (the *Act*). These guidelines do not restrict review officers of the Commission or the Pay Equity Hearings Tribunal in their interpretation of the *Act*. The series is published in a sequence that generally reflects the steps for implementing pay equity. (**Revised Summer 2002**).

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### SIGNIFICANCE

Pay equity adjustments are the increases required to the job rates of female job classes found to be underpaid after pay equity comparisons were made. Information about pay equity adjustments must be included in the pay equity plan.

Employers must follow the same basic rules for distributing pay equity adjustments among the female job classes that must be adjusted, for all three methods of comparison; job to job, proportional value and proxy comparison (required only in the public sector).

As with all aspects of pay equity, pay equity adjustments for union employees must be negotiated with the respective bargaining agent.

#### Rules for implementing pay equity adjustments:

- Adjustments are due from the mandatory first adjustment date for employers posting pay equity plans.
- Adjustments are due from the achievement date for employers who opted not to post plans.
- All female job classes due adjustments within a pay equity plan must receive an adjustment.
- All incumbents of a female job class being adjusted must receive the same adjustment.
- Within a pay equity plan, the lowest paid female job class must receive a greater adjustment than other job classes, or the complete adjustment.
- Employers who posted plans can phase in adjustments at the equivalent of 1% of their previous year's gross payroll each year. In the private sector this continues until pay equity is achieved. In the public sector, employers must fully implement all adjustments by 1998.

## EXPLANATION

### Mandatory First Adjustment Dates

All public sector employers and large employers in the private sector (those with 100 or more employees in 1987) were required to post pay equity plans. Smaller private sector employers (those with 10 to 99 employees in 1987) could opt to post pay equity plans, but must have done so by December 31, 1992. Employers who posted were able to phase in pay equity adjustments, spending a minimum of 1 per cent of the company's total Ontario payroll for each year before each pay equity adjustment was due, beginning on the mandatory first adjustment date. The mandatory first adjustment dates were as follows:

All public sector	January 1, 1990
<b>Private sector</b>	
<b># of Employees In 1987</b>	<b>First Adjustment Date</b>
500+	January 1, 1991
100 to 499	January 1, 1992
50 to 99	January 1, 1993*
10 to 49	January 1, 1994*

\* Refers only to employers who had posted a pay equity plan prior to December 31, 1993

**Small employers** (those with 10 to 99 employees in 1987) who did not post pay equity plans were not permitted to phase in adjustments and must achieve pay equity as follows:

<b>Size of Employer</b>	<b>Mandatory Achievement Date</b>
50 to 99 in 1987	January 1, 1993
10 to 49 in 1987	January 1, 1994

Employers who hired their tenth employee after January 1, 1988, are considered to be new employers and are not required to post pay equity plans. However, they must establish pay equity immediately, setting up compensation systems in their organization in such a way that they do not discriminate against female job classes.

All employers must make subsequent pay equity adjustments on each anniversary of the legislated first adjustment date until pay equity is achieved. However, public sector employers using either the job-to-job or proportional value comparison methods must fully achieve pay equity by January 1, 1998.

Employers who applied the **proportional value comparison method** to those female job classes that could not achieve pay equity by the job-to-job method of comparison are required to make the first adjustments resulting from proportional value comparisons on January 1, 1993 or the mandatory achievement date; whichever is later.

### Late Adjustments

Employers who posted plans on time were allowed to phase adjustments in each year until pay equity was achieved. The adjustment of employers that did not post pay equity plans or

achieve pay equity on time are due and owing now. These employers must determine what adjustments are due based on the wage gaps that existed at the time their plans should have been posted or developed.

### **Minimum Yearly Adjustments**

Employers required or opting to post plans were permitted to phase in pay equity adjustments. The *Act* specifies a minimum required to be paid for pay equity adjustments each year. Employers must spend the lesser of

- one percent of the employer's total payroll costs in Ontario in the previous year, or
- the amount required to achieve pay equity.

Public sector employers using either the job-to-job or proportional value comparison methods may be obligated to spend more than one percent of their previous year's payroll in one or more years to meet their 1998 deadline.

Private sector employers with fewer than 100 employees who chose not to post plans did not have the option of phasing-in adjustments. These employers had to achieve pay equity effective January 1, 1993 (for employers with 50 to 99 employees in 1987) or January 1, 1994 (for employers with 10 to 49 employees in 1987).

New employers who hired their 10<sup>th</sup> employee in Ontario after 1988 are required to achieve pay equity as of the date they hired their 10<sup>th</sup> employee.

### **Calculating One Percent of Payroll**

The minimum annual amount to be spent on pay equity adjustments is based on the employer's total payroll in Ontario for each previous year to the adjustment. Payroll includes but is not limited to all wages, salaries, overtime pay, shift differentials, commissions, and merit- or performance-based compensation. Some employers may make other forms of payment which may be appropriately included in payroll.

The one percent to be spent on pay equity applies only to compensation adjustments and cannot be spent on:

- Administrative costs of implementing pay equity;
- Increases in payroll taxes (such as UI or CPP); and,
- Maintenance costs, such as redressing the widening of established wage gaps, or achieving pay equity immediately for new female job classes.

An employer may be required to spend more than the required one percent if ordered to do so by a review officer to fix a contravention of the *Act*.

## Adjusting the Pay of Female Job Classes

Section 9(3), the *Act* states:

*Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms.*

The Pay Equity Hearings Tribunal concluded in **Gloucester (No.2)** P.E.R. 208, that, in some circumstances, it is acceptable to replace a wage grid for a female job class with the wage grid for its male comparator, particularly if both job classes are in the same bargaining unit.

Job rate includes all salaries or wages, payments and benefits. Consider all these components when adjusting job rates to achieve pay equity. Only ignore benefits if they are equally available and of equal value to both the female and male job classes.

## Distributing Pay Equity Adjustments

An employer can have more than one establishment (one for each geographic division in Ontario) and more than one pay equity plan (one for each bargaining unit and one for all other non-union employees).

The *Act* requires that each female job class that is entitled to an adjustment receive some adjustment each year until pay equity is achieved. It does not specify how an employer must allocate the one percent of payroll among the different pay equity plans, but the *Act* does set out some requirements for adjusting the compensation of job classes.

The female job classes with the lowest job rates in each pay equity plan must receive larger increases in dollar terms than other female job classes in the same plan until pay equity is achieved or until they are paid at least as much as the next lowest-paid female job class(es) in the same plan.

Pay equity adjustments can be distributed in a number of ways within each plan as long as, in all cases, the female job class with the lowest job rate receives more. Some ways an employer could decide, or negotiate, to distribute adjustments could be:

- Similar pay equity adjustments can be given to all female job classes requiring adjustments. The same adjustments in dollar terms are easiest to calculate.
- Larger pay equity adjustments can be given to the female job classes that require the largest adjustment.
- Larger pay equity adjustments can be given to the job classes with small discrepancies, since pay equity can be achieved quickly for these job classes and future distribution calculations will be made simpler.

Whichever distribution strategy is chosen, all of the one percent must be spent. If pay equity plans for an establishment were completed at different times, it is important to check that, in total, one percent has been spent each year on pay equity adjustments.

Employees who were in an affected female job class when a pay equity adjustment should have been made (the effective date) must receive appropriate payments even if they have left the job class or have left the organization by the time the adjustments are paid. If they have left the organization, a reasonable effort must be made to locate them, such as sending a registered letter to their last known address.

## Calculating Retroactive Adjustments

Employers, who did not post their plans on time, will now need to calculate what they would have owed employees in each year of the phasing in period. They should calculate their adjustments retroactively, *as if they had paid on time*, to determine the amount that is due and owing now.

Existing gaps as of the posting or required achievement date that subsequently increased need to be calculated separately and not as part of the 1% pay out of adjustments. The full amount of this widened gap must be paid out retroactively to the date the widening occurred.

Pay equity adjustments must form a regular part of wages, and are compounded in calculating retroactive obligations. Every adjustment must be folded into base rates and carried forward to be included into the next year's adjustments. Adjustments must be paid to all current and former employees for all hours worked in an affected job class.

### Example

Better Late Than Never Inc. (BLTN) had 175 employees in Ontario in 1987. It was required to post a pay equity plan on January 1, 1991, with their first adjustments due on January 1, 1992. In 1999, the company realized that it had not prepared a pay equity plan, and underwent the steps to do so, as if the plan were being prepared for its 1991 posting. The company discovered that there were wage gaps in 1991 affecting female job classes as follows:

<b>Female Job Class</b>	<b>Hourly Wage Gap (Required adjustment)</b>	<b># Incumbents</b>
Accounting Mgr.	\$1.30	1
Accounting Clerk	\$1.05	3
Secretary	\$0.90	3
Order Taker	\$0.98	24
Quality Control	\$0.78	12

The cost of pay equity adjustments totaled \$78,058.50. BLTN's 1991 payroll was \$6,125,000. Because BLTN only had to put an amount equal to one per cent of 1991's payroll toward 1992s pay equity adjustments, the company would now have to distribute \$61,250 in retroactive pay equity adjustments.

The company decided to distribute an adjustment of \$0.68 per hour to all job classes except the Order Taker, which was the lowest paid job class and received a larger adjustment of \$0.80 per hour. Having determined who filled those positions in 1992, BLTN calculated what it would have paid those employees and former employees. The company was now ready to calculate its retroactive payments for 1993.

With the first pay equity adjustments calculated and paid, the wage gap is narrowed by the amount of the pay equity adjustment. Wage gaps may not widen. Hence, every pay equity adjustment must be folded into prevailing rates. Every pay equity adjustment paid must therefore be applied to all subsequent rates.

For BLTN, the first step in calculating its retroactive obligations for 1993 is to continue to pay the \$0.68 and \$0.80 1992 pay equity adjustments into 1993. On top of this, the company must spend an amount equal to 1% of its 1992 payroll, or the amount required to achieve pay equity, towards further pay equity adjustments.

In 1993, BLTNs outstanding pay equity obligations were as follows:

<b>Female Job Class</b>	<b>Hourly Wage Gap</b>	<b># Incumbents</b>
Accounting Manager	\$1.30 - \$0.68= \$0.62	1
Accounting Clerk	\$1.05 - \$0.68= \$0.37	3
Secretary	\$0.90 - \$0.68 = \$0.22	3
Order Taker	\$0.98 - \$0.80 = \$0.18	24
Quality Control	\$0.78 - \$0.68 = \$0.10	12

\$7.91 per hour X 1950 hours = \$15,424.50 outstanding in pay equity adjustments.

BLTN's 1992 payroll was \$6,225,000, plus the \$61,250 added retroactively for pay equity adjustments, for a total of \$6,286,250. One percent of this (\$62,862) exceeds the amount required to achieve pay equity, so BLTN must calculate the remaining hourly gap and pay that amount to all current and former BLTN employees for their individual hours paid for 1993.

For the period 1994 to present, BLTN must add the amount of the wage gap to all hours paid for all incumbents in the female job classes where pay equity adjustments were owed.

## **RELEVANT SECTIONS IN THE ACT**

Subsection 1(1)	Defines compensation, job rate, private sector, and public sector.
Subsection 1(4)	Defines the method of determining number of employees.
Subsection 6(1)	Defines the achievement of pay equity using the job-to-job comparison method.
Subsection 9(1)	States that compensation cannot be reduced to achieve pay equity.
Subsection 9(3)	States all positions in a job class must receive the same adjustment in compensation in dollar terms.
Section 12	Requires comparisons of female and male job classes.
Subsection 13(2)	Requires adjustments to be shown in pay equity plans.
Subsection 13(3)	Requires the job class with the lowest job rate to receive the largest adjustment.
Subsection 13(4)	Requires first adjustments to total at least one percent of last year's
Subsection 13(5)	Requires subsequent adjustments at the anniversaries of the first legislated adjustment date must total at least one percent of payroll.
Subsection 13(6)	States that, except for retroactive payments or if ordered by the Tribunal, total payments do not have to be more than one percent of payroll.
Subsection 13(7)	States that pay equity in the public sector must be achieved by January 1, 1998.
Subsection 13(8)	Defines payroll to calculate the one percent.
Subsection 13(10)	States that adjustments must be incorporated into collective agreements.

Section 13.1	Describes the obligations of employers to make adjustments, when a business is sold.
Subsection 21.2(2)-(6)	States the requirements for job-to-job vs. proportional value adjustments.
Section 21.3	Describes when pay equity is achieved using the proportional value comparison method.
Subsection 21.5(2)	States that adjustments must be incorporated into collective agreements.
Subsections 21.10(l)-(3)	States the schedule for first adjustments and first payments, states that sections 13(3) to 13(8) apply regarding proportional value adjustments.
Subsection 16(6)	States that late adjustments must be retroactive.
Subsection 17(3)	States that late adjustments must be retroactive.

## REFERENCES:

*Pay Equity Implementation Series (Revised) - Guideline #3: Pay Equity Posting and Achievement Dates for Private Sector Employers*  
*Pay Equity Implementation Series (Revised) - Guideline #9: Gender Neutral Job Comparison*  
*Pay Equity Implementation Series (Revised) - Guideline #10: Which Job Classes to Compare*  
*Pay Equity Implementation Series (Revised) - Guideline #11: Determining Job Rate*  
*Pay Equity Implementation Series (Revised) - Guideline #14: Pay Equity Plans*  
*Glengarry Memorial Hospital (1991), 2 P.E.R. 153*  
*Lady Dunn General Hospital (1991), 2 P.E.R. 168*  
*Gloucester (No. 2) (1991), 2 P.E.R. 208*  
*Glengarry Memorial Hospital v Pay Equity Hearings Tribunal and Ontario Nurses Association (23 December 1993), (Ont. Div. Ct.) [unreported]*  
*Metro Toronto (No. 2) (1995) 6 P.E.R. 79*  
 "Questions and Answers," *Pay Equity Commission Newsletter, Vol. 2, No. 8, October 1989, p. 7.*

## For More Information:

We are here to help. We can answer your questions by e-mail at <mailto:Pecinfo.Pecinfo@ontario.ca> or by phone at (416) 314-1896, or toll-free at 1-800-387-8813. You can also register for a free seminar. Visit our website at <http://www.payequity.gov.on.ca/peo/english/seminar.html>

**All communications are confidential.**

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### The Pay Equity Commission

**This fact sheet is for information only, and is not intended to restrict Review Officers or the Pay Equity Hearings Tribunal in their determination of matters. Refer to the *Pay Equity Act* for exact interpretation.**

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