

# Guideline # 15

## Dispute Resolution I - Review Services

---

### 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**).

There are two guidelines dealing with two elements of dispute resolution: Review Services and hearings before the Pay Equity Hearings Tribunal. This guideline has been prepared by the Pay Equity Office and discusses the Pay Equity Hearings Tribunal. Guideline #15 deals with dispute resolution concerning Review Services.

---

### SIGNIFICANCE

The *Act* sets out processes for making complaints and resolving disputes that may arise in the course of establishing, implementing and maintaining pay equity. There are two guidelines dealing with the two phases of the dispute resolution process provided in the *Pay Equity Act*: Review Services and hearings before the Pay Equity Hearings Tribunal. This guideline deals with Review Services. Hearings before the Pay Equity Hearings Tribunal is the subject of Guideline #16.

The Pay Equity Commission is composed of the Pay Equity Office and the Pay Equity Hearings Tribunal, which are two independent bodies with distinct functions and powers. Any complaint, application or notice the Commission receives will be forwarded to the Review Services Branch of the Pay Equity Office.

A Review Officer will investigate and help the parties resolve the issues. If a settlement cannot be reached, the Review Officer has two options: issuing an order or a notice of decision. Any party objecting to a Review Officer's determination may request a hearing before the Pay Equity Hearings Tribunal.

## EXPLANATION

### **The Role of the Review Officer**

The role of the Review Officer is to investigate, mediate and, if necessary, order a resolution to the dispute. The Review Officer will contact the applicant to discuss the issue(s) involved, to clarify an issue or to suggest an approach.

If further action is needed, the Review Officer will meet with the applicant and respondent, jointly or separately, as appropriate. Joint meetings will usually be held at the employer's premises. Efforts will be made to arrange meetings with applicants at locations and times convenient for them. The specific needs of each applicant will determine the nature and extent of a review officer's involvement.

If a settlement cannot be effected a Review Officer may issue an order or notify the parties and the Tribunal (or in some cases only the complainant) that he/she will not be writing an order because the subject of the complaint is trivial, frivolous, vexatious or made in bad faith or is not within the jurisdiction of the Commission.

### **How to get Help to Resolve a Dispute**

To get help in dispute resolution, call, write, or submit an "Application for Review Services" form to the Case Manager at the Pay Equity Office. Forms are available from the Commission, Ministry of Labour district offices or at our website at <http://www.payequity.gov.on.ca>

Applications are accepted from anonymous applicants. All applications will be reviewed to ensure that they are complete before a Review Officer is assigned. Applicants whose identities are known may be contacted for more information or clarification.

A copy of the application form is attached to this guideline:

- *Part 1* requests information about the applicant. If the applicant is not an individual employee (and not anonymous), the name of the person to contact (such as a bargaining agent or agent acting for the employee) is required.
- *Part 2* requests information about the other party involved (the respondent, usually the employer), including a contact name.
- *Part 3* is intended to give the Commission some idea of the nature of the dispute. If the applicant is unsure which box to check, a brief description under "Other" will do. The exact basis for the application will be identified during the investigation.
- *Part 4* provides for the name and signature of the person submitting the form if the applicant is not anonymous.
- *Part 5* enables the applicant to request that his/her identity not be revealed to the respondents.

### **Keeping the Identities of Applicants Confidential**

Applicants for Review Services may keep their identity from the respondent in three ways:

- Applicants do not have to identify themselves on the application form or when they call the Commission. *No one* will know the applicant's identity. This is reasonable where a complaint is general, for example, where no pay equity plan has been posted. However, it can make investigation difficult or very limited in cases where review officers need more specific or detailed information.
- Applicants can identify themselves on the application form but ask that their identity not be revealed to the respondent. Review Officers take such confidentiality requests seriously. If a Review Officer feels that the investigation might reveal the applicant's identity, the Review Officer will not proceed without the applicant's permission.

- Applicants may use an agent to represent them at both the Review Services and Hearings Tribunal stages. Subsections 32(3) and (4) of the *Act* allow an employee or group of employees to appoint a person or organization to act as an agent before a Review Officer and/or the Hearings Tribunal, by submitting a written request. In this case, only the agent's identity will be known. Agents will replace employees as parties to the proceedings, and they may take any of the actions the *Act* allows employees.

### **Types of Disputes Investigated**

As a result of a complaint, objection or failure to post a pay equity plan, a Review Officer may:

- effect a settlement with the agreement of the parties;
- make an order to decide the outstanding issues;
- advise the parties and the Hearings Tribunal that an order will not be made; or
- decide not to consider the complaint because its subject matter is considered to be trivial, frivolous, vexatious or made in bad faith or because the complaint is not within the jurisdiction of the Commission.

The following section describes some of the types of disputes that Review Officers investigate.

#### **A. Complaints about the preparation of plans**

The *Act* establishes separate methods of preparing pay equity plans for a bargaining unit and for non-union employees. For the requirements for pay equity plans, see Guideline #14.

##### **1. *In a union setting, failure to agree on a pay equity plan or its amendments:***

- A failure to agree and to post a plan on time. Employer or bargaining agents notify the Commission, or apply for Review Services.
- A failure to agree within 120 days of an employer or union giving notice to bargain, on amendments to a plan after a change in circumstances in the establishment. Employer or bargaining agents may notify the Commission of the failure to agree.
- A failure to agree on an amended plan using the proportional value method by January 1, 1994, where it was required.

Negotiations between employers and bargaining agents may require third party assistance to deal with issues if bargaining has reached an impasse. Either party may request a Review Officer be appointed at any time prior to the mandatory posting date.

When a request is received, a Review Officer will be appointed to investigate and help the parties to reach a settlement. If a Review Officer is unable to effect a settlement between the parties, the officer may issue an order. If the officer determines that only the issues in dispute are to be addressed, the order will be made under subsection 24(l) and the parties will be directed to resume negotiations on the rest of the pay equity plan. In this case, the Review Officer will monitor the continued efforts of the parties until a plan is completed.

Alternatively, the Review Officer may order on all the remaining issues and provide a completed plan to the parties. This type of order is issued under subsection 16(2). The employer must post a copy of the plan that reflects the settlement or order. Review Officers may also notify the parties and the Hearings Tribunal that an order will not be made, or he/she may notify the complainant of a decision not to consider the complaint under the grounds listed in subsection 23(3).

**2. In a non-union setting, objecting to the plan:**

- A non-union employee covered by the plan may object to the plan by filing an "Application for Review Services" form, or by calling or writing to the Commission. Those who may file an objection are:
  - Employees who submitted comments to the employer but who found the plan was not changed, or not changed to their satisfaction.
  - Employees who have not submitted comments to the employer. This is an opportunity for those employees who do not want the employer to know that they have objections to the pay equity plan to file objections anonymously.

When a request is received, a Review Officer will be appointed to investigate and help the parties to reach a settlement. If a Review Officer is not successful in effecting a settlement, the officer will order under subsection 16(2). A plan that reflects the settlement or order must be posted in the workplace.

If any employees covered by the plan object to the plan that reflects the order, they have 30 days to request a hearing before the Tribunal. Similarly, any employee not party to a settlement may request a Tribunal hearing within 30 days of the posting of a plan that reflects a settlement reached with other employees.

If the 30-day period following the re-posting passes without objections being filed with the Commission, the plan is deemed approved by the Commission and must be implemented by the employer according to its terms. A subsequent complaint, under section 22 of the *Act*, if successful, might overturn the deemed approved status.

Subsection 9(2) states that no reprisal can be taken against employees who raise issues or make complaints about a pay equity plan. An employer who is alleged to have contravened this subsection must prove that a contravention has not occurred.

**B. Complaints about plans**

Complaints about implementing pay equity plans may be filed with the Commission at any time. The dispute resolution process is the same in both union and non-union settings for any of these complaints:

- A failure to implement a posted plan according to its terms, for example, by not making pay equity adjustments indicated in the plan.
- A complaint that a plan is inappropriate due to changed circumstances. At any time after a plan is deemed approved, a non-union employee, group of employees, employer or bargaining agent may file a complaint alleging that the plan is no longer appropriate due to changed circumstances. This type of complaint might arise from: a job class that has changed due to new technology, a newly created job class that could be used as a comparator, or a newly certified bargaining unit.

A complaint that pay equity is not being maintained. This may include a job class that has changed due to new technology, or a newly created job class that has not been evaluated. (Note that the Tribunal addressed the rights of a new bargaining agent and the represented employees in *St. Joseph's Villa* (19 August 1993) 0345-92 (P.E.H.T).

**C. Complaints about a contravention of the Act**

Some examples of possible contraventions are:

- a reduction in compensation in order to achieve pay equity
- a failure to achieve pay equity

- a failure to maintain pay equity
- a pay equity plan was not prepared (or negotiated) and posted
- an allegation of reprisal by the employer because the complainant has exercised his/her rights under the *Act*

In the complaints noted above, the following outcomes are possible:

- The Review Officer may effect a settlement between the parties.
- The Review Officer may decide not to consider a complaint because it is not within the jurisdiction of the Commission or because it is trivial, frivolous, vexatious or made in bad faith [subsection 23(3)].
- The Review Officer may make an order on the outstanding issue(s) [section 24 and subsection 16(2)].
- In some cases, the Review Officer may not effect a settlement and may decide not to make an order on the outstanding issue(s) [subsections 23(2),(4)].

### **When a Resolution Cannot Be Reached**

#### **Review Officers' Orders**

Orders vary depending on the nature of the dispute. In general, an order sets out the steps that the employer and bargaining agent, if any, must take to prepare or revise the plan, or to comply with the *Act*.

#### **Notices of Decision**

A Review Officer may issue a Notice of Decision because the subject of the complaint is:

- trivial, frivolous, vexatious or made in bad faith; or
- not within the jurisdiction of the Commission.

#### **A Hearing Before the Hearings Tribunal**

All orders are binding on the parties named in the orders. They can be varied or revoked as a result of either party filing an application requesting a hearing at the Pay Equity Hearings Tribunal.

If an order is not followed, the Review Officer may refer the matter to the Tribunal.

After the parties review the Review Officer's order or decision, a request for a hearing may be made to the Hearings Tribunal regarding the issue(s) in dispute.

## **RELEVANT SECTIONS IN THE ACT**

Subsection 1(1)	Defines Review Officer, states that a Review Officer may order that job classes are female or male job classes.
Subsection 6(7)	States that a Review Officer may decide that a series of job classes may be, treated as a group of jobs.
Section 16	Sets out the sequence of events when a Review Officer investigates: <ul style="list-style-type: none"> <li>• notice stating that an agreement has not been reached by an employer and a bargaining agent on a pay equity plan [subsection 14(6), section 21.201 or on amendments to a pay equity plan [subsection 14.1(3)]</li> <li>• notice of objection to a posted pay equity plan [subsection 15(7), section 21.21] or to amendments to a plan [subsection 14.1(6)]</li> <li>• notice that pay equity cannot be achieved by the job-to-job or proportional value comparison methods [subsection 21.2 (6),section 21.8, subsection 21.9 (3)].</li> </ul>

Section 21.12	Describes the Review Officer's role in investigating notices that an employer could not achieve pay equity using either the job-to-job or proportional value comparison methods.
Section 21.23	Describes the powers of Review Officers in relation to the proxy comparison method. Section 23 Sets out the sequence of events when Review Officer investigates: <ul style="list-style-type: none"> <li>• complaint that there has been a contravention of the Act, regulations or an order [subsection 22 (1)]</li> <li>• complaint that a pay equity plan is not being implemented according to its terms [subsection 22 (2)(a)]</li> <li>• complaint that a plan is no longer appropriate due to changed circumstances in an establishment [subsection 22 (2)(b)]</li> <li>• complaint concerning a notice that pay equity cannot be achieved using either the job-to-job or proportional value comparison methods.</li> </ul>
Section 24	Sets out the Review Officer's options after investigating complaints under section 23 or in response to contravention revealed from monitoring [subsection 34 (2)].
Subsection 32(l)	Lists the parties to a Review Officer's proceedings.
Section 34	Lists the powers of review officers.
Section 35.	Sets out the restrictions on Review Officers' powers of entry, details of acquisition and use of warrant, and that Review Officers may not be obstructed in the course of their duties.

## REFERENCES:

*Pay Equity Implementation Series (Revised) - Guideline #16: Dispute Resolution II - Pay Equity Hearings Tribunal Ontario Northland (1992), 3 P.E.R. 166 St. Joseph's Villa (1993), 4 P.E.R. 33*

## 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.

---

## 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.**

ISBN: 0-7794-9746-5