

# Guideline # 3

## Pay Equity Posting and Achievement Dates for Private Sector Employers

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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

**This guideline applies to private sector employers, their employees and unions representing employees in private sector workplaces.** All public sector employers are covered by the *Pay Equity Act* and have the same posting and achievement deadlines regardless of the number of employees.

The number of employees is important for private sector employers because it determines:

- whether they are covered by the *Act*;
- whether they are required to post a pay equity plan;
- when they were required to post pay equity plans;
- when they were required to begin pay equity adjustments; and,
- when some smaller employers, who chose not to post plans, had to achieve pay equity.

### EXPLANATION

#### The Number of Employees

The number of employees is the count of all an employer's employees in Ontario and determines coverage and deadlines for all of the employer's pay equity plans. For private sector companies in existence January 1, 1988, the number of employees is the average number of employees employed from January 1 to December 31, 1987.

## **Definition of an Employee**

Employees are all full-time, part-time, contract and casual employees, except students working during their vacation period. The actual number of persons employed, rather than full time equivalents must be counted. Employers should interpret “employee” broadly.

## **Determining the Number of Employees**

The average number of employees can be calculated in several ways. The method used must provide a *fair representation* of the actual number of employees and should recognize employment fluctuations throughout the year. For example, in a seasonal business where a large number of employees work only in June, July and August, an average based solely on January and December employment figures would not reflect the higher summer payroll. For employers whose workforces do not fluctuate, an average based on employees working in January and in December may be representative.

The following are some examples of ways of determining the average number of employees:

- Monthly: The sum of the number of employees on payroll for each month of the year, divided by 12.
- Quarterly: The sum of the number of employees on payroll at the end of each quarter, divided by four.
- Annually: The number of employees on the first payroll in January plus the number of employees on the last payroll in December divided by two.

Instead of calculating an average, an employer may choose to use the largest number of employees employed at any point during 1987.

## **Changes in Numbers of Employees Since January 1, 1988**

There are four principles that apply to changes in the number of employees since January 1, 1988:

- For employers in existence before January 1, 1988, the average number of employees during 1987 determines pay equity obligations and deadlines.
- Employers who came into existence after January 1, 1988 with 10 or more employees are required to achieve pay equity immediately. They cannot make pay equity adjustments in annual increments.
- Employers who start up with fewer than 10 employees are required to achieve pay equity as soon as their tenth employee is hired. They cannot make pay equity adjustments in annual increments.
- Employers covered by the Act remain covered regardless of subsequent changes in the number of employees.

**What employers are covered by the Act?**

The *Pay Equity Act* covers all private sector employers that had 10 or more employees as of December 31, 1987. Employers who started with fewer than 10 employees are covered as soon as the 10<sup>th</sup> one is hired.

**What employers are required to post pay equity plans?**

All employers with an average of 100 or more employees in 1987 were required to post pay equity plans. Employers with 10 – 99 employees could have chosen to post pay equity plans to realize the advantage of phasing in adjustments.

**What are the timeframes for employers required or choosing to post pay equity plans?**

Employers who posted pay equity plans are allowed to phase in adjustments each year by spending a minimum of 1% of the previous year’s payroll to fund pay equity adjustments. The mandatory dates for posting pay equity plans and for making first adjustments are based on the number of employees as follows:

**Posting and First Adjustment Dates**

<b>Average No. of Employees in 1987</b>	<b>Posting of Pay Equity Plans</b>	<b>First Pay Equity Adjustment Dates</b>
500 or more	January 1, 1990	January 1, 1991
100 to 499	January 1, 1991	January 1, 1992
50 to 99	January 1, 1992	January 1, 1993
10 to 49	January 1, 1993	January 1, 1994

Retroactive adjustments are calculated based on the first adjustment date regardless of when the plan was actually posted. There is no mandatory date for achieving pay equity in the private sector, except those employers with 10 to 99 employees who did not post pay equity plans must achieve immediately.

**What employers were not required to post pay equity plans?**

Employers with an average of 10 to 99 employees in 1987 were given the option of posting pay equity plans, but were not required to do so. These employers no longer have this option. They must achieve pay equity according to the timelines in the following chart:

<b>Average No. of Employees in 1987</b>	<b>Mandatory Achievement Date for Job to Job Plans</b>	<b>Mandatory Achievement Date for Proportional Value</b>
50 to 99	January 1, 1993	July 1, 1993
10 to 49	January 1, 1994	January 1, 1994

Employers who are late achieving pay equity must make adjustments retroactive to the mandatory achievement dates as shown above.

**New employers** and employers who hired their tenth employee after January 1, 1988, are not required to post pay equity plans. They must achieve pay equity immediately or on the day they hired their tenth employee. New employers who do not achieve pay equity on their start up date are required to make retroactive adjustments to this date.

## What are the proportional value timeframes?

Employers who were unable to find male job classes of equal value for all female job classes using the job-to-job method of comparison must use the proportional value method of comparison. Pay equity plans must be amended and reposted to show proportional value comparisons. The proportional value timeframes **for employers who posted** are based on the number of employees as follows:

<b>Average No. Of Employees in 1987</b>	<b>Posting of Amended Pay Equity Plans</b>	<b>First Pay Equity Adjustment Dates</b>
500 or more	January 1, 1994	January 1, 1993
100 to 499	January 1, 1994	January 1, 1993
50 to 99	January 1, 1994	January 1, 1993
10 to 49	January 1, 1994	January 1, 1994

Employers who did not post were required to achieve pay equity immediately and must make all adjustments retroactive to January 1, 1994.

## RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines employee, establishment.
Subsection 1(4)	Contains the method of calculating the number of employees in Ontario.
Section 3	Defines the size of employer based on the number of employees in order to determine whom the <i>Act</i> covers.
Section 11	Defines which employers must post pay equity plans.
Section 13	Sets out the details of preparing pay equity plans and scheduling pay equity adjustments.
Sections 18-21	Sets out the choices available to employers with 10 to 99 employees regarding posting pay equity plans.
Section 21.7	Specifies when an employer should post a pay equity plan using the proportional value comparison method.
Section 21.10	Sets out the schedule for first proportional value adjustments.

## REFERENCES:

*Pay Equity Implementation Series (Revised) - Guideline #2: Determination of Employer and Employee*

"Questions and Answers," *Pay Equity Commission Newsletter*, Vol. 1, No. 4, May 1989, p. 6.  
Wellington (No.3) (1999) 10 P.E.R.8

We are here to help. We can answer your questions by e-mail at [Pecinfo.Pecinfo@ontario.ca](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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