

Guideline # 8

Disclosing Information

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**).

SIGNIFICANCE

Employers and bargaining agents must negotiate and reach agreement on many issues when implementing pay equity. These issues include the definition of establishment, the gender of job classes, the calculation of job rate and the gender neutral comparison method. For effective negotiations, the parties must share certain kinds of information.

Employees inquiring into an employer's implementation of pay equity, or raising an objection or complaint under the *Pay Equity Act*, need relevant information to assess and/or pursue their interests. They must have sufficient information to make informed judgments about how pay equity was implemented for their jobs. Where a pay equity plan is required it should be posted in a prominent place, where affected employees can read it.

Employers who may want to involve employees in developing their pay equity plans, must provide them with sufficient information to participate effectively in the process.

EXPLANATION

Employees Represented by a Bargaining Agent

The *Pay Equity Act* requires that a pay equity plan be prepared for each bargaining unit in an establishment and that the employer and bargaining agent "negotiate in good faith and endeavour to agree" on the details in the plan.

The *Act* specifies the following items must be negotiated:

- the gender neutral comparison system;
- the pay equity plan;

- the establishment may include two or more geographic divisions;
- the gender of job classes (female, male, gender neutral)
- the value of the job classes;
- calculation of job rate; and,
- the amount and distribution of pay equity adjustments.

In *Cybermedix* (1990) 1 P.E.R. 41, the Pay Equity Hearings Tribunal ordered that any information related to implementing or maintaining pay equity must be disclosed to the bargaining agent. This may include information about job classes outside the bargaining unit.

The Tribunal made the following statements in the *Cybermedix* decision about the importance of disclosure:

For the parties to negotiate in good faith and endeavour to agree on the job comparison system and the pay equity plan, there must be disclosure of relevant pay equity information. Disclosure is required to foster rational and informed discussions and to enable the parties to move towards settlement. The parties must have sufficient information to intelligently appraise the other's proposals, to formulate their own positions in bargaining pay equity, and to fairly represent their members. The duty to disclose information for the purposes of bargaining collective agreements has long been established ... (paragraph 20)

In discussing the limits that may exist on information to be disclosed, the Tribunal said:

The information requested must be necessary to negotiate pay equity. The information must be rationally related to an issue or issues in pay equity bargaining. The information may be necessary to test the quality or impact of a decision in the pay equity bargaining process. (paragraph 22)

On the issue of disclosing information sequentially depending on the particular stage negotiations reached, the Tribunal said:

But, the sequential process is not the only way to bargain pay equity. Neither party can force the timetable of bargaining by refusing to disclose on outstanding issues. The timing of disclosure may depend upon the type of pay equity bargaining in which the parties wish to engage. Disclosure must be made when parties cannot agree on an issue without the information requested. Both parties are entitled to sufficient information to make informed choices at all stages of the process. (paragraph 24)

With both the job-to-job and proportional value comparison methods, if suitable male comparator job classes cannot be found within a bargaining unit, the search for potential male comparators must extend throughout the establishment.

In discussing disclosure of information about male job classes outside the bargaining unit, the Tribunal commented:

...the union is entitled to sufficient information necessary to negotiate the boundaries of job classes both inside and outside the bargaining unit.... Therefore, in order to define job class, and to identify and evaluate male job comparators, the [bargaining agent] is entitled to the compensation schedule, salary grade, or range of salary rates for all employees outside the bargaining unit. This information is also necessary to allow the Applicant to consider and possibly to propose a ... system of job comparison for this workplace. (paragraph 29)

In the *Cybermedix* case, the Tribunal ordered disclosure of job titles, gender composition, compensation schedules, salary grades or range of salary rates, and existing job

descriptions for all positions outside the bargaining unit. It declined to order disclosure of the names of the employees in these positions.

Tribunal decisions are made on a case-by-case basis. The facts in other cases can lead to different decisions.

Non-Union Employees

The *Act* also gives non-union employees the right to comment to the employer and to object to the Pay Equity Commission about how their employer has implemented pay equity. Where pay equity plans are required they must be posted where employees can read them. Where pay equity plans are not required, employees still have the right to inquire into/complain about employer's pay equity process. In either case, non-union employees must have access to information, which will allow them to understand how their job class was treated and to determine whether they have a valid objection or complaint.

In its decision **Port Hope** (1988-99) 9 P.E.R. 81, the Pay Equity Hearings Tribunal determined that non-union employees in female dominated job classes were entitled to male job data which was arguably relevant to their complaint. Such data includes, but is not limited to, the incumbency history, the job rates or wages over a period of time, the number of hours worked in the job class, and job content information.

When a review officer investigates an objection filed by a non-union employee or group of employees, the review officer has the right to request or order disclosure of information. This information is often shared with the employee to explain how pay equity was achieved.

When the issue is the subject of a hearing at the Tribunal, the Tribunal can require whatever disclosure it deems necessary.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines bargaining agent, collective agreement.
Subsection 1(2)	Specifies the standards to be met when posting documents.
Subsection 1(3)	Specifies who has a right to copies of the posted documents.
Section 2	Defines the right of the bargaining agent to negotiate the terms of centralized pay equity agreements.
Subsection 6(4)	Describes the requirement to make separate job comparisons for job classes inside a bargaining unit and for job classes outside a bargaining unit.
Subsection 6(8)	Defines the right of the bargaining agent to negotiate the group-of-jobs approach.
Section 7	Defines the obligation of the bargaining agent in establishing and maintaining pay equity.
Subsections 13(l)-(2)	Lists the required contents of pay equity plans.
Subsections 13.1(1)-(2)	Specifies the rights and obligations of the bargaining agent in negotiating a new pay equity plan with the sale of a business.
Section 14	Specifies the rights and obligations of the bargaining agent in negotiating the amendment of the pay equity plan.
Section 15	Specifies the rights and obligations of employers and non-union employees in preparing, posting, commenting on and objecting to pay equity plans.

REFERENCES:

Pay Equity Implementation Series (Revised) - Guideline #3: Pay Equity Posting and Achievement Dates for Private Sector Employers
Pay Equity Implementation Series (Revised) - Guideline #7: Determining the Gender Predominance of Job Classes
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 #14: Pay Equity Plans
Pay Equity Implementation Series (Revised) - Guideline #15: Dispute Resolution I - Review Services
Pay Equity Implementation Series (Revised) - Guideline #16: Dispute Resolution II - Pay Equity Hearings Tribunal
Cybermedix Health Services Ltd. (1989), 1 P.E.R. 41
Riverdale Hospital (No. 1) (1990), 2 P.E.R. 1
Kingston and Frontenac CA S. (1990), 2 P.E.R. 31
Gloucester (No. 1) (1991), 2 P.E.R. 52
Haldimand-Norfolk (No. 6) (1991), 2 P.E.R. 105
Liquor Control Board of Ontario (1991), 2 P.E.R. 193
Ontario Northland (1992), 3 P.E.R. 166
St. Joseph's Villa (1993), 4 P.E.R. 33
Port Hope Hydro, (1998) 9 P.E.R. 81

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.

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