

# PAY EQUITY

## Public Sector Restructuring

---

### Who is affected by the public sector restructuring?

Restructuring is widespread in the public sector. Some restructuring is mandated by legislation, such as school board mergers and the creation of the new City of Toronto. Other restructuring is mandated by Ministry programming changes, such as hospitals, municipalities other than Toronto, and Community Care Access Centres.

The *Public Sector Labour Relations Transition Act, 1997* (Bill 136) defines those employers affected by public sector restructuring as belonging to the following sectors:

- the municipal sector
- the New City of Toronto
- the New Toronto Hydro Electric Commission
- the school sector
- the hospital sector
- some other amalgamations

For pay equity purposes, public sector restructuring may involve the sale of business provision in section 13.1 of the *Act*. Any merger or dissolution described by Bill 136 is designated as a "sale of business" under the *Act*. The date of the "sale" under the *Act* is designated as the "changeover date" as defined by Bill 136. Mergers or dissolutions not covered by Bill 136 may also fall under the definition of a "sale of business" under the *Act*.

The sale of business provisions in the *Pay Equity Act* set out pay equity obligations following a "sale" and establish a process for meeting these obligations. Bill 136 refers to "predecessor" and "successor" employers, which are then designated as "sellers" and "purchasers" under the *Pay Equity Act*. We will use the terms "sale of business," "seller" and "purchaser" in this Fact Sheet.

---

### What are the employer's pay equity obligations when restructuring?

Section 7(1) and 7(2) of the *Act* requires that employers establish and maintain pay equity. Both sellers and purchasers must examine their pay equity plans after restructuring has occurred and determine whether each plan is still appropriate for the female job classes in their establishments. The purchaser is liable for any outstanding pay equity obligations of the seller, although the purchaser may enter into a merger or amalgamation agreement with the seller that designates all or some retroactive pay equity obligations to the seller. Neither the seller nor the purchaser can by agreement opt out of their obligations under the *Act*.

After the sale, the purchaser is bound by the seller's plan for those positions it keeps. A seller will continue to be bound by its plan if it continues as an organization and has employees. If an employer believes a plan is no longer appropriate because of the restructuring, it must prepare a new plan. Where there is a bargaining agent, the plan must be negotiated with the bargaining agent. The process for preparing new plans is outlined below.

---

### **If the seller had a pay equity plan at the changeover date, does the purchaser have to complete any outstanding adjustments?**

*When a purchaser obtains new job classes through restructuring, it is required to:*

- Complete any retroactive pay equity adjustments due to female job classes under the seller's plan; and,
- Continue implementing the plan until the purchaser develops a new plan, if necessary.

Retroactive adjustments may include any remaining amounts required to achieve pay equity under the job-to-job and proportional value plans. The deadline to achieve pay equity under these plans in the public sector was January 1, 1998. (There is no similar deadline for achieving pay equity for proxy comparison adjustments.)

---

### **What if a seller had not developed a plan prior to the date of sale?**

The purchaser becomes liable on the date of the sale (changeover date) for any outstanding pay equity obligations of the seller, which may include retroactive pay equity adjustments as far back as January 1990. Again, this will include the full amounts due under job-to-job and proportional value plans to comply with the January 1, 1998 deadline for achievement.

---

### **Must employers always develop new pay equity plans after a merger or restructuring?**

Not always. Employers need to review their pay equity plans to decide whether they are still appropriate for the female job classes in their respective establishments. If there are changes that result in a plan no longer being appropriate for the female job classes covered by the plan, then the employer, whether it is the seller (if they still exist) or purchaser, must develop a new pay equity plan.

A bargaining agent may trigger the development of a new pay equity plan if it believes that the plan is no longer appropriate because of the sale. As well, a non-union employee may file a complaint that a pay equity plan is no longer appropriate for a female job class as a result of the sale.

---

## **What changes might make a pay equity plan no longer appropriate as a result of a restructuring?**

*The following are some changes that might make a pay equity plan no longer appropriate:*

- The addition or subtraction of jobs from a pay equity plan;
- Changes in job duties or responsibilities that are sufficient to alter the value of jobs in a pay equity plan;
- Changes to the composition of the bargaining unit or non-union group;
- The gender neutral comparison system no longer adequately captures the work of male and female job classes, which may require either amending the gender neutral comparison system or selecting or negotiating a new gender neutral comparison system;
- Female job classes from a proxy pay equity plan are moved into an organization that was not required to use proxy comparison; those jobs may now achieve pay equity through job-to-job or proportional value;
- Female job classes are moved into an organization required to do proxy comparison from an organization that achieved pay equity using job-to-job or proportional value.

Remember that employers must have one plan for all non-union employees, and separate plans for each bargaining unit.

---

## **What is the deadline for preparing new plans?**

There is no deadline for preparing new plans after restructuring. However, where notice to bargain a new plan has been given, the time frames to reach agreement on a new plan apply as outlined in the chart below.

---

## **When is a new plan effective?**

If a new plan is required after restructuring, it is effective as of the date of the sale. If adjustments are required to establish pay equity for any female job classes, they must be paid out retroactive to the effective date of the plan.

---

## **Once a new pay equity plan is developed, do pay equity adjustments or pay equity rates have to be at least as much as they were in the previous pay equity plans?**

Not necessarily. If a new plan is negotiated or prepared, the adjustments or job rates for female job classes may be different than adjustments or job rates under the original pay equity plan(s). However, employers and bargaining agents must be able to show that the new adjustments or job rates for female job classes have been correctly determined using either the job-to-job, proportional value or proxy methods of comparison.

## What about funding for pay equity adjustments?

Any questions about funding for pay equity adjustments should be directed to your funding ministry. The Pay Equity Commission has no control or authority for pay equity funding.

## What is the process for developing a new plan after restructuring?

Where it is determined that a new plan must be prepared, the chart below outlines the processes for union and non-union plans.

<p style="text-align: center;"><b>WHERE THERE IS A BARGAINING AGENT (UNION)</b></p>	<p style="text-align: center;"><b>WHERE EMPLOYEES ARE NOT REPRESENTED BY A BARGAINING AGENT (NON-UNION)</b></p>
<p><b>Notification to the other party</b></p> <p>If the employer or the bargaining agent decides that a pay equity plan is no longer appropriate because of a sale, they must notify the other party, in writing, that they wish to negotiate a new plan.</p>	<p><b>Employer's decision</b></p> <p>If the employer decides that a pay equity plan is no longer appropriate because of a sale, the employer must prepare a new plan and post it in the workplace.</p>
<p><b>Gender Neutral Comparison System</b></p> <p>The employer and the bargaining agent shall negotiate and agree on a gender-neutral comparison system to evaluate jobs and make comparisons for the new plan. This may be the same comparison system used in the previous plan, an amended version, or a different system.</p>	<p><b>Gender Neutral Comparison System</b></p> <p>The employer must choose a gender neutral comparison system to evaluate jobs and make comparisons for the new plan. This may be the same comparison system used in the previous plan, an amended version, or a different system.</p>
<p><b>Establishment and Job Class</b></p> <p>The employer and the bargaining agent may agree:</p> <ul style="list-style-type: none"> <li>• That the establishment is two or more geographic divisions;</li> <li>• That a job class is male or female.</li> </ul>	<p><b>Establishment and Job Class</b></p> <p>The employer may decide:</p> <ul style="list-style-type: none"> <li>• that the establishment is two or more geographic divisions;</li> <li>• that a job class is male or female.</li> </ul>

<p style="text-align: center;"><b>WHERE THERE IS A BARGAINING AGENT (UNION)</b></p>	<p style="text-align: center;"><b>WHERE EMPLOYEES ARE NOT REPRESENTED BY A BARGAINING AGENT (NON-UNION)</b></p>
<p><b>Pay Equity Plan</b></p> <p>The employer and bargaining agent must evaluate female and male job classes, making comparisons, and determine any adjustments required to achieve pay equity for female job classes in the establishment. The results of comparisons should be listed in the new pay equity plan.</p> <p>Once the plan is agreed upon, the employer must post a copy of the pay equity plan in the workplace.</p>	<p><b>Pay Equity Plan</b></p> <p>The employer must evaluate female and male job classes, make comparisons, and determine adjustments required to achieve pay equity for female job classes in the establishment. The results of comparisons should be listed in the new pay equity plan.</p> <p>The employer must post a copy of the pay equity plan in the workplace.</p>
<p><b>Failure to Agree</b></p> <p>If the employer and the bargaining agent cannot agree on a new plan within 120 days of the date of notice to negotiate, the employer must notify the Commission.</p> <p>The bargaining agent may also notify the Commission of a failure to agree on a new plan.</p>	<p><b>Objection Process for Non-union Employees</b></p> <p>Employers have 90 days after the plan is posted to review the plan and submit comments to the employer.</p> <p>After the 90th day, the employer must, within seven days, post a notice stating whether the plan has been amended as a result of comments, and post an amended plan with the amendments clearly indicated.</p> <p>Following the posting of the notice or amended plan, employees have 30 days to file objections with the Pay Equity Commission.</p>
<p><b>Deemed Approval and Pay Equity Adjustments</b></p> <p>When a pay equity plan has been executed (signed) by an employer and a bargaining agent, the plan is deemed approved by the Commission, and, on the day provided for in the plan, the employer must make any adjustments in compensation required to achieve pay equity.</p>	<p><b>Deemed Approved and Pay Equity Adjustments</b></p> <p>If no objections are received at the Commission within 30 days, the plan is deemed approved by the Commission, and, on the day provided for in the plan, the employer must make any adjustments in compensation required to achieve pay equity.</p>

---

## How do I get more help or information?

We are here to help. The Pay Equity Commission provides the publication *A Guide to the Proxy Comparison Method* which will guide you through the step by step process of preparing a proxy pay equity plan. We can answer your questions by e-mail at <mailto:pecinfo.pecinfo@ontario.ca> or by phone at (416) 314-1896, toll-free at 1-800-387-8813. Publications and seminars are available free of charge. Request these by contacting us at <mailto:pecseminars.pecseminars@ontario.ca> or through our site at [http://www.payequity.gov.on.ca/peo/english/about\\_us.html](http://www.payequity.gov.on.ca/peo/english/about_us.html)

### **All communications are confidential.**

\* To obtain copies of the *Pay Equity Act* or the *Territorial Division Act*, contact Publications Ontario at 1-800-668-9938 or in Toronto at 416-326-5300.

---

## **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: 0-7794-9801-1