

# PAY EQUITY

## Sale of Business

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### Introduction

The *Pay Equity Act* requires employers to establish and maintain compensation practices that provide for pay equity. As part of this obligation, employers must consider their pay equity obligations when they sell part of their organization or buy all or part of another organization. Section 13.1 of the *Act* deals specifically with "sale of business" requirements. A "sale" is defined to include "leases, transfers and any other manner of disposition."

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### What are the employer's obligations following a sale of business?

Section 7(1) and 7(2) of the *Act* requires employers to establish and *maintain* pay equity. Employers who were required to post pay equity plans must examine their plans after a sale has occurred and determine whether each plan is still appropriate for the female job classes in their establishments. If there are changes that result in a plan no longer being appropriate for the job classes covered by the plan, the employer, whether it is the seller or the purchaser, must develop a new pay equity plan.

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 a business and has employees.

Where there is a bargaining agent, the plan must be negotiated with the bargaining agent. 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. The process for preparing new plans is outlined below.

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### What are the obligations of employers who are not required to post a plan because they have fewer than 100 employees?

Employers with fewer than 100 employees who chose not to post a plan were required to post a notice for employees regarding their obligation to achieve and maintain pay equity. If

the obligation to achieve and maintain pay equity was not met, the purchaser could be liable for the retroactive obligations of the seller. In this case, there is no time limit for an employee to file a complaint.

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### **What changes might make a plan no longer appropriate as a result of a sale?**

*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 which 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.

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

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

A purchaser who obtains new employees and positions as a result of a sale is required to complete any retroactive pay equity adjustments due to female job classes under the seller's plan, and to continue implementing the plan until the purchaser develops a new pay equity plan, if necessary.

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

The purchaser becomes liable on the date of the sale for any outstanding pay equity obligations, which may include retroactive pay equity adjustments as far back as January 1990. At the same time the sale is being negotiated, purchasers should ask if the seller has outstanding pay equity obligations. It is recommended that the purchase agreement include a provision for dealing with any outstanding obligations.

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

If a new plan is required following a sale, it must be effective as of the date of the sale. The new plan may require additional pay equity adjustments in the year the sale occurred. These adjustments must be made effective as of the date of the sale. If employers are still phasing in other pay equity adjustments, adjustments due for future years may also be phased in using one per cent of the previous year's payroll (except for public sector employers who should refer to our fact sheet on *Public Sector Restructuring*).

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**Is there a deadline to prepare a new plan after a sale of business?**

There is no deadline in the *Act* to prepare a new plan following a sale of business. 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.

**Once a new plan is developed, do pay equity adjustments or job 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 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 is the process for developing a new plan after a sale of business?**

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

<p><b>WHERE THERE IS A BARGAINING AGENT (UNION)</b></p>	<p><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>

<b>WHERE THERE IS A BARGAINING AGENT (UNION)</b>	<b>WHERE EMPLOYEES ARE NOT REPRESENTED BY A BARGAINING AGENT (NON-UNION)</b>
<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>Employees 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>

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## 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 [pecinfo@ontario.ca](mailto:pecinfo@ontario.ca) or by phone at (416) 314-1896, or toll-free at 1-800-387-8813. [Publications](#) and [seminars](#) are available free of charge. Request these by contacting us at [pecseminars@ontario.ca](mailto:pecseminars@ontario.ca) or through our site at [www.payequity.gov.on.ca](http://www.payequity.gov.on.ca)

All communications are confidential.

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

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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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