

CLOSING THE GAP: NEW PROACTIVE PAY EQUITY RULES FOR FEDERALLY REGULATED EMPLOYERS

Posted on April 27, 2021

Categories: [Insights](#), [Publications](#)

In an effort to reduce pay inequities between men and women working for federally regulated employers, the Government of Canada introduced the *Pay Equity Act* (the “Act”), which received Royal Assent on December 13, 2018. The Act aims to ensure that female workers are compensated equally for work of equal value performed by male counterparts.

Under the Act, any roles that contribute equally to an organization, regardless of the differences in these roles, should be paid the same.

Although the coming into force of the Act remains unknown, the changes are anticipated to take effect in late 2021. Given the proactive nature of the Act, employers should start preparing now to ensure compliance with the new rules.

Application and Proactive Compliance

The Act’s proactive pay equity regime will apply to all federally regulated employers that have a workforce of 10 employees or more. Both private and public sector employers, as well as cabinet and parliamentary offices, must comply with the new rules.

In contrast to the complaints-based model under the *Canadian Human Rights Act* (“CHRA”), under which proof of compliance with pay equity rules was only required in response to a complaint, the new rules require [proactive compliance](#). The Act removes the onus on employees and unions to make complaints and shifts it on employers to proactively examine their compensation practices and ensure that they are free of inequities and in compliance with the Act.

Federally regulated employers with an average workforce, i.e. the average number of employees working for an organization in a given year, of less than 10 employees will continue to be governed by section 11 of the CHRA, under which pay equity is enforced based on any complaints received.

Pay Equity Plans

Once the Act comes into force, employers will have three years to develop and post a single comprehensive Pay Equity Plan. This also means that pay adjustments must be increased within that same 3-year period.

In order to develop a Pay Equity Plan, employers should first undertake a job evaluation process in order to:

- identify different job classes in the workplace;
- identify which job classes are predominantly female, predominantly male or gender neutral;
- determine the value of work performed in each class;
- calculate the total compensation for each predominantly male and predominantly female class; and,
- compare compensation for each class and determine whether a wage gap exists.

If an employer determines that a wage gap exist between predominantly male and female classes, it must achieve pay equity by increasing compensation for a predominantly female job class, rather than decreasing compensation for a predominantly male job class.

Although the Act requires an employer to pay the increase in compensation within 3 years of the legislation coming into force, employers facing an increase in compensation greater than 1% of their annual payroll will be granted a longer period for payment. Such employers will have the ability to pay employees by way of incremental increases dispersed over a period of 3 to 5 years.

Employers will be required to periodically review and update their compensation practices and specifically, their Pay Equity Plan, every 5 years to ensure that pay equity is maintained and to address any new pay gaps. The Act will also require employers to submit an annual statement to assist the Pay Equity Commissioner in monitoring compliance with the Act.

Employers for which a single plan is impractical, particularly large organizations that have a wide array of operations across a variety of jurisdictions, can seek permission from the Pay Equity Commissioner to build multiple plans.

Pay Equity Committees

The Act requires that all employers with 100 or more employees and all unionized federal employers with more than 10 employees form a Pay Equity Committee. The Committee's main purpose is to engage in a collaborative exercise with management to develop a Pay Equity Plan.

In developing a Pay Equity Plan, the Committee must also work jointly with the employer to create, review and update job descriptions, which must accurately reflect a current description of what a certain role involves. The Committee must also work with management to develop a job evaluation tool and make a final decision with respect to the chosen method.

The Committee must be comprised of employee and employer representatives. In unionized workplaces, representation of all bargaining units is mandatory. Two-thirds of the Committee must consist of employee representatives and half of the Committee's members must be women.

Administration, Education and Enforcement

A Pay Equity Commissioner has been appointed under the *Act* to assist with administration, education and ensure compliance with the *Act*. The Commissioner is responsible for hearing any disputes that arise between an employer's Pay Equity Committee and management and is tasked with guiding employers, employees and bargaining units in understanding their rights and obligations under the *Act*. Notably, the Commissioner also has the authority to initiate audits, investigation complaints or disputes, and issue orders and monetary penalties. Employers that fail to comply with the provisions of the *Act* could face administrative penalties ranging from \$30,000 to \$50,000, depending largely on the size of the organization.

Additional Obligations

Draft regulations published in November 2020, and likely to take effect at the same time as the *Act*, include the obligation to post the employer's Pay Equity Plan and certain documents issued by the Commissioner must be posted in the workplace. In addition, the following timelines are proposed:

- An application for an authorization to phase in compensation increases must be submitted to the Commissioner before the employer posts the notice of increases in compensation; and
- An application for an authorization to establish more than one Pay Equity Plan for the same employer must be submitted within 12 months of the employer becoming subject to the *Act*.

How Can Employers Prepare?

With the *Act* expected to take effect this year, employers should begin preparing to meet their new pay equity obligations. The obligation to both assess one's workforce and complete adjustments to pay within the same 3-year window means that federally regulated employees should begin considering pay equity obligations soon after the *Act* takes effect.

However, while employers can take several steps to proactively comply with pay equity obligations, they should take care to not overstep undertake actions that must be carried out jointly by management and the (workplace) Committee.

We will continue to monitor and update you on any progress related to the *Act* and its regulations.

by [Kyle Lambert](#) and [Marie-Eve Jean](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2021