

Attention Federal Employers: Administrative Monetary Penalties Under The Federal Pay Equity Act Now In Force



Recent [amendments](#) to the *Pay Equity Regulations* ("Regulations") under the federal *Pay Equity Act* ("Act") establish an administrative monetary penalty ("AMP") scheme applicable to violations of the Act and Regulations. The amendments are notable as employers may now be penalized for violations, including the obligation for employers to post their finalized Pay Equity Plan by **September 3, 2024**.

AMPs are akin to fines; however, they are not criminal sanctions. The stated purpose of the AMPs under the *Pay Equity Act* is to promote compliance with the Act and not to punish. Prior to the amendments, no provisions operationalizing AMPs existed under the Act or Regulations.

Under the Act, the Pay Equity Commissioner ("Commissioner") has authority to conduct enforcement activities to verify compliance with the Act and Regulations, including by responding to employee complaints and conducting investigations and compliance audits.

The Act sets out the maximum penalty (per violation) of \$30,000 for employers with between 10 and 99 employees and \$50,000 for employers with 100 or more employees. However, penalties may be lower, and the amendments set out a formula the Commissioner will apply to determine the amount of each AMP on a case-by-case basis. The Commissioner will consider various factors, including the:

- Minimum and maximum amounts in the applicable penalty range;
- Assigned gravity value;
- Size of the employer; and
- Existence of prior violations.

To determine the gravity value, The Commissioner will consider the following aggravating and mitigating factors:

- The degree of negligence of the employer;
- The degree to which the employer might derive strategic or economic advantage from a continuing violation;
- The degree to which the employer demonstrated disregard for the authority of the Commissioner;

- The manner in which the violation came to the Commissioner's attention; and
- The steps taken by the employer to mitigate or reverse the harm done by the violation.

The minimum and maximum penalty ranges vary based on the type of violation and whether the violation is considered minor, serious, or very serious. Minor violations include contraventions related to posting notices, submitting annual statements, or other administrative obligations. Serious violations relate to provisions that set out key obligations, such as the requirement for certain employers to establish a pay equity committee. The classification of "very serious" is reserved for violations which prevent the Commissioner from administering and enforcing the Act or actions that are taken to harm employees' interests, such as acts of reprisal for participating in the pay equity process.

Employers with 10 or more employees should note that failing to post a final Pay Equity Plan by the required September 3, 2024 deadline pursuant to section 55(1) of the Act is considered a "serious" violation. Such employers are also reminded of the obligation to provide employees with 60 days to comment before posting the final Pay Equity Plan, meaning that draft plans should already be finalized. An employer may file a request for permission to extend the posting deadline.

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.

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