

Equal Pay for Equal Work: Pay Equity Is No Longer Just a Male-Female Thing



SITUATION

John, a full-time employee of ABC Company, gets paid \$25 per hour. Each of the following individuals does exactly the same work at exactly the same establishment as John but their pay differs as follows:

- Mary works full-time but gets paid \$22 per hour because she's a woman;
- Jerry is also a full-timer but gets \$22 per hour because he's not Canadian; and
- Jim gets \$20 per hour because his employment is only part-time.

Two more important facts: ABC Company is neither federally regulated nor located in Québec; and Jim is a white male with no characteristics protected from discrimination under human rights laws.

QUESTION

Which employee(s) has/have a valid discrimination claim?

- A. Mary
- B. Jerry
- C. Jim
- D. All of the above

ANSWER

A and B. Even though all 3 are paid less than John for identical work, only Mary and Jerry have valid claims for employment discrimination under human rights laws.

EXPLANATION

Equal pay for equal work is a fundamental human right that all employers are bound to respect.

Right?

So why isn't D the right answer? Answer: Current Canadian pay equity laws are spotty and generally limited to pay differentials based solely on gender. But as we'll explain, this is changing. The best way to explain the basic pay equity rules across the country is to break down the case of each employee in our scenario. ([Click here](#) for a summary of current pay equity laws in each jurisdiction.)

A. Gender-Based Pay Equity (Mary's Case Against ABC Company)

Where men and women do the exact same work in the exact same establishment under the exact same conditions, paying them different wages based purely on their gender is illegal. This is true in all parts of Canada. But while Mary could sue ABC Company for paying her less than John, the legal basis of her case would vary slightly by jurisdiction:

General Ban on Employment Discrimination

The human rights laws of all jurisdictions ban employment discrimination based on specific protected characteristics, including sex or gender. Paying one employee less for identical work simply because of gender would be a clear form of employment discrimination banned by these laws.

Equal Pay Requirements

In addition to general protections from employment discrimination, 13 of the 14 jurisdictions (all but Nunavut) have separate equal pay provisions specifically banning pay differentials based on sex or gender. In 5 jurisdictions (Alberta, BC, Newfoundland, Prince Edward Island and Northwest Territories), these provisions are contained in the human rights statute. In Ontario, Québec, Nova Scotia, New Brunswick, Manitoba, Saskatchewan and Yukon, they're set out in the employment/labour standards act. Gender-based pay equity is part of *both* federal human rights and employment standards legislation. In all cases, the equal pay provisions are subject to the same basic conditions, namely, they apply only to work that:

- Is done at the same establishment;
- Is substantially the same;
- Requires substantially the same skill, effort and responsibility; and
- Is performed under similar working conditions.

Equal pay requirements are also subject to exceptions allowing for *bona fide* pay differentials based on seniority, merit and productivity.

Pay Equity Laws

Most jurisdictions have laws requiring the government to take some degree of action to ensure equal pay within the *public* sector. Québec and the federal

government have gotten in front of the issue by requiring all employers—public and private—with 10 or more employees to implement proactive, positive pay equity plans to ensure equal pay for equal work for men and women. Under new federal Bill C-68, pay equity is also required under the Federal Contractors Program for contracts of over \$1 million.

Table 1: Mary's Gender-Based Pay Case against ABC Company



B. Nationality-Based Pay Equity (Jerry's Case Against ABC Company)

Jerry who got less than John for equal work due to the fact that he's not a Canadian citizen also has a pay equity case against ABC Company. But his pay equity case is less solid than Mary's, at least in many jurisdictions, since it's based on nationality/citizenship rather than sex/gender.

General Ban on Employment Discrimination

Like sex/gender, national origin and citizenship are protected characteristics under human rights laws. So, Jerry would have grounds for bringing an employment discrimination case in all jurisdictions.

Equal Pay Requirements

Unlike Mary, Jerry doesn't have a separate claim against ABC Company under the human rights or employment standards equal pay requirement because that provision covers only pay differentials based on sex/gender. Exceptions: In Saskatchewan, Newfoundland and Northwest Territories, the equal pay rule applies not just to sex/gender but to all personal characteristics protected by the jurisdiction's human rights law.

Pay Equity Laws

Pay equity laws are also sex/gender-based and don't apply to pay differences based on nationality or citizenship.

Jim's grievance is based on being paid less than John for equal work due to his status as a part-time employee.

Table 2: Jerry's Nationality-Based Pay Case against ABC Company



C. Employment-Status-Based Pay Equity (Jim's Case Against ABC Company)

General Ban on Employment Discrimination

Part-time employment status is not grounds for protection against employment discrimination under human rights laws. Remember also that we specified that Jim is a white male with no personal characteristics protected by human rights laws. Result: He doesn't have a human rights case against ABC Company.

Equal Pay Requirements

As noted above, equal pay requirements under human rights/employment standards are based on sex/gender (and, in Saskatchewan, Newfoundland and Northwest Territories, all personal characteristics protected by the jurisdiction's human rights law). But effective Jan. 1, 2019, there are 2 significant exceptions:

Federal: New Bill C-86 adds pay equity provisions to the *Canada Labour Code* requiring equality of pay by not just gender but also employment status. In other words, in federally regulated workplaces, part-time, casual, seasonal and temporary employees are entitled to be paid the same wages as full-time employees for the same work.)

Québec: Gender-based pay equity has long been a part of the *Québec Labour Standards Act*. But new Bill 176 extends it to employment status the way Bill C-86 does in the federal sector.

Ontario: The ban on pay differential by employment status was also part of Bill 148 in Ontario, effective April 1, 2018. But it was also one of the Bill 148 changes revoked by Bill 47. Bottom Line: Effective Jan. 1, 2019, the Ontario ESA guarantees gender- but not employment status-based pay equity.

Pay Equity Laws

Pay equity laws are sex/gender-based and don't apply to pay differences based on employment status.

Table 3: Jim's Employment Status-Based Pay Case against ABC Company

