

Equal Pay in the Ontario Workplace



Over the past 30 years there has been a gradual progression to establish equal pay in the Ontario Workplace. For employers and human resource managers it's important to recognize what your obligations are concerning equal pay and that these obligations are increasing.

The Pay Equity Act

For its time, the *Pay Equity Act* was revolutionary. Enacted in 1987, it requires equal pay between the sexes, not within one job classification, but for work of all job types that are of equal value. The classic example is the receptionist (which is female dominant) and the warehouse worker (which is male dominant). Both jobs are of equal value but the male dominant role is typically paid more.

The *Pay Equity Act* requires employers to assess the value of each job class and assign it a value based on the following factors:

1. What qualifications are required?
2. How much responsibility does the job class require?
3. What level of effort is required (physical and mental)?
4. What are the working conditions like (physical danger, stress-level, customer facing)?

If upon completing this analysis, two jobs are of equal value to the company then those jobs should be equally paid.

Equal Pay Under the Employment Standards Act

While the *Pay Equity Act* legislates equal pay for different work but of equal value, the *Employment Standards Act* ("ESA") mandates that employers pay equally for work that is substantially the same. If two employees engage in work that requires the same skill, effort, responsibility, under the same working conditions and in the same establishment, those employees should be equally paid.

The equal pay provisions of the *ESA* extend beyond gender discrimination to employment status. Since April 1, 2018, employers must not only pay males and females equally, but part time, temporary and seasonal workers must be paid the same as full time workers so long as they are performing substantially the same job.

There are exceptions, however. differences in pay are permitted so long as they are the result of:

1. a seniority system – a system that pays employee based on length of service;
2. a merit system – a system that pays employees based on merit: their skills, education, competence, etcetera;
3. a system that measures earnings by quantity or quality of production – a piecemeal system or similar; or
4. any other factor other than sex or employment status.

Employers should be careful to ensure that any system they are using to determine employee pay is being implemented fairly and communicated to employees in advance. Any measurements of quantity or quality should to the greatest extent possible be objective and recorded.

Further, the ESA considers hourly/salary pay, along with overtime and commission. It does not however, specifically discuss whether it includes benefits, stock options or bonuses. Nevertheless, it may be prudent to consider how these extras are distributed to employees and ensure they are done so fairly.

Bill 203, the Pay Transparency Act, 2018.

On April 26, 2018, the Ontario legislature passed the *Pay Transparency Act, 2018*. This Act continues the Ontario governments trend towards pay equalization by establishing requirements for employers on disclosing compensation information of employees and prospective employees. Ontario is the first province in Canada to have legislation of this kind.

The major pillars of this legislation are as follows:

1. Employers will be prohibited from asking for or seeking out information on what a prospective employee was or is being paid;
2. Employers will be required to include expected compensation or range of compensation in any publicly advertised job posting; and
3. Certain employers (likely those with a larger payroll) will be required to prepare and post publicly “pay transparency reports.” These reports are to include anonymized wage data with respect to gender and other prescribed characteristics, specifically information about the employer, the employer’s workforce composition, and differences in compensation in the employer’s workforce.

These transparency measures come into force and effect on January 1, 2019. The same day as the \$15 minimum wage. Employers with more than 250 employees will have to submit their first pay transparency report by no later than May 15, 2020. Employers with between 100 and 249 employees will have submit their first pay transparency report by no later than May 15, 2021.

The Human Resources Take Away

Employers of all sizes need to consider whether they are maintaining pay equity and equal pay in accordance with the *Pay Equity Act* and the *ESA*. With the recent increase to minimum wage and the new April 2018 equal pay requirements, now is the right time to review employee wages across the board and ensure there is no unintended breaches of these Acts.

There is also a need to prepare for the *Pay Transparency Act*. Even if it may not immediately apply to smaller employers, it may be a good corporate practice to implement.

[Leslie Dizgun](#) and [Justin W. Anisman](#) conduct a sophisticated commercial litigation and employment law practice at the law firm of Brauti Thorning Zibarass LLP. For further

information on this topic, Leslie and Justin can be reached online at BTZLaw.ca or at Justin's website and blog, [Legally Speaking](#).

Contributed By: Leslie Dizgun and Justin W. Anisman 