

# New Act Aims to Close Gender Pay Gap



## **Introduction**

On 7 July 2021, the Federal Pay Equity Commissioner and Minister of Labour jointly announced that the new federal Pay Equity Act (the Act) and its supporting regulations (the Regulations) will come into force on 31 August 2021. The Act and the Regulations set out a proactive pay equity scheme designed to ensure that, on average, women and men in federally regulated workplaces receive equal pay for work of equal value.

The federal government under Prime Minister Justin Trudeau has been vocal about its support for new measures designed to close the gender wage gap and to ensure that workers receive equal pay for work of equal value. In 2018, the Act was passed into law, but it was not immediately put into effect as the federal government continued to work on the statutory mechanisms, such as the Regulations, required to implement the Act. Recently, the federal government unveiled its intention that the Act come into force on 31 August 2021.

As federal legislation, the Act will be limited in its application to those employers who fall under federal jurisdiction, including airlines, banks and telecommunications businesses.

## **Act purpose and coverage**

The goal of the Act is to put into place long-term, sustainable changes that will ensure that, as stated by the federal government, “women’s work is valued and compensated fairly, now and into the future”. The Regulations detail the comprehensive set of formulas and requirements that enable employers to meet their obligations under the Act.

Overall, pay equity laws in Canada seek to mitigate long-standing gender inequities, where those working in male-dominated industries earn more, on average, than those working in female dominated industries, despite performing work of the same or similar value. Ensuring that women are fairly compensated for their work is an underlying goal of pay equity and is also intended to strengthen businesses and the Canadian economy.

The Act applies to federally regulated private and public employers with 10 or more employees. This includes parliamentary workplaces and the offices of the prime minister and federal ministers. Federal employers with fewer than 10 employees will

remain covered under pay equity provisions in the Canadian Human Rights Act.

The Act will not automatically apply to Indigenous governing bodies as employers. Further consultations with Indigenous partners are planned for the near future to make any modifications necessary to ensure the Act is suited for these workplaces.

### **Requirements for affected employers**

The Act requires affected employers to establish a pay equity plan (no later than 3 September 2024). Prior to the development and implementation of this plan, employers must post a notice (no later than 1 November 2021) indicating their obligations regarding the Act, whether they must establish a pay equity committee and, if so, the requirements for committee membership. This notice must remain in place until the final plan is produced and posted. There are different notices depending on whether the employer is required to have a single plan or multiple plans under the Act.

In order to establish the pay equity plan, employers must first:

- identify job classes in their workplace;
- determine whether they have at least one predominantly female job class and one predominantly male job class;
- determine the value of work performed in each job class based on an assessment of skill, responsibilities, effort and working conditions;
- calculate the total compensation associated with each predominantly male job class and predominantly female job class;
- compare the compensation between each of the predominantly male and predominantly female job classes of relatively equal value to determine if there are any discrepancies. To determine the value of the job class employers are required to use methods prescribed by the Act or another method approved by the Pay Equity Commissioner; and
- identify any wage gaps for predominantly female job classes.

If the employer identifies a gender wage gap, they must identify those predominantly female job classes that require an increase in compensation to address the gap. Employers should take care as the Act explicitly prohibits reducing male compensation to achieve pay equity. The Act requires employers to be transparent about their findings in the aforementioned steps and provide a date on which any pay adjustments are payable.

Once the pay equity plan is established it must be submitted to the Pay Equity Commissioner.

### **Pay equity committees and commissioner's responsibilities**

Federal employers with 100 or more employees and unionised federal employers with more than 10 employees are required to establish a pay equity committee. Establishing a pay equity committee is voluntary for other federal employers.

The pay equity committee is responsible for identifying wage gaps and establishing the pay equity plan jointly with their employer. The pay equity committee should fulfil the following criteria:

- include at least three members;
- at least two-thirds must represent the employees who are covered by the pay equity plan;
- at least 50% of the members must be women;
- at least one member selected by the employer or group of employers to represent it;

- at least one member selected by each of the bargaining agents, where there are unionised employees; and
- at least one member selected by non-unionised employees to represent them.

The Pay Equity Commissioner's newly established role includes administering and enforcing the Act, aiding with the understanding of the Act, and resolving disputes relating to the Act. This involves monitoring implementation and compliance with the Act, promoting compliance and educating employees and employers of their rights and obligations.

### **Next steps**

Affected employers have three years to develop and implement their proactive pay equity plans from the time that the Act comes into force (3 September 2024). Employers will be allowed a longer period of time to administer pay increases if those increases amount to more than 1% of their annual payroll.

Maintaining pay equity is an essential component of the Act. Affected employers must provide the Pay Equity Commissioner with annual statements regarding their pay equity plans and must also update their plans in accordance with the Act at least every five years to ensure that any wage gaps that emerge are closed.

The Pay Equity Commissioner, who administers and enforces the Act, may make an order requiring the employer who does not comply to cease contravention of the Act, take measures to ensure that it does not continue or reoccur, and otherwise enforce compliance. Monetary penalties ranging from \$30,000 to \$50,000 per violation, depending on the nature of the violation, may also be imposed to promote compliance with the Act.

### **Provincial or federal regulation?**

Provincially regulated employers are not subject to the Act, but may nevertheless be subject to existing provincial pay equity legislation depending in which province(s) the employer operates. Manitoba, Nova Scotia, New Brunswick and Prince Edward Island maintain pay equity legislation for public sector employers. Ontario and Quebec maintain pay equity legislation that applies to all public sector employers and all private sector employers with 10 or more employees.

### **Impact of other legislation on gender wage gap**

In both federally and provincially regulated workplaces, gender-based discrimination in compensation practices is prohibited by human rights legislation. Employees who have been subject to gender-based wage discrimination may therefore file a complaint and seek redress from the applicable human rights tribunal. In Manitoba, New Brunswick, Nova Scotia and Ontario, employment standards legislation also mandates that no employer shall pay an employee of one sex less than an employee of the other sex where both perform substantially the same job. In these provinces, employees may be able to file a complaint with the applicable provincial authority who oversees the administration of the employment standards legislation.

### **Guidance for employers**

As the Act comes into force on 31 August 2021, affected employers in federally-regulated sectors would be prudent to familiarise themselves with the requirements of the Act and begin the process of ensuring compliance with the requirements described above. The Act includes significant penalties for failure to comply and so employers are encouraged to start planning early.

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