

Pay Transparency Under The Employment Equity Act



New reporting obligations in effect for June 1, 2022

Amendments to the [Employment Equity Regulations](#), SOR/96-470 (the “Regulations”) introduced new “pay transparency” reporting obligations, amongst other things, under the [Employment Equity Act](#) (the “Act”). These amendments came into force on January 1, 2021 and create new obligations for affected employers that must be included in respect of their 2021 reports, which are due by June 1, 2022.

Background: The Employment Equity Act

The Act was first enacted in 1986, though it has undergone various changes since. The purpose of the current Act is “to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability” and “to correct the conditions of disadvantage in employment experienced by four identified groups, being women, Aboriginal peoples, persons with disabilities and members of visible minorities.” The Act applies to federally-regulated private sector employers with at least 100 employees and provincially regulated employers participating in the Federal Contractors’ Program.

Employers have the following key obligations under the Act:

1. Collect information and conduct an analysis of the employer’s workforce in order to determine the degree of the underrepresentation of persons in designated groups in each occupational group in that workforce;
2. Conduct a review of the employer’s employment systems, policies and practices in order to identify employment barriers against persons in designated groups that result from those systems, policies and practices;
3. Provide an opportunity to each employee to self-identify as a member of one of the four designated groups;
4. Prepare an employment equity plan to eliminate identified barriers in the short and long term and set numerical goals for representation of designated groups; and
5. Prepare and file an employment equity report with the Labour Program by June 1st of each year.

Key New Features of the Regulations

Aggregate Wage Gap Reporting (aka Pay Transparency)

The most significant amendments to the Regulations include changes related to the obligation for federally-regulated private sector employers to include more detailed salary data in their annual employment equity reports (i.e. in respect of obligation #5, above). This salary data is used to report on aggregated wage gap information in order to promote “pay transparency”. This new, significant reporting obligation requires the calculation of the following, by designated group and occupational group:

- the mean and median difference in hourly rates;
- the mean and median difference in bonus rates;
- the mean and median difference in overtime pay corresponding to overtime hours;
- the proportion of employees who have received bonus pay; and
- the proportion of employees who have received overtime pay.

Federally-regulated private sector employers must include this aggregated wage gap information in their annual employment equity reports due on June 1, 2022 and every year thereafter.

To facilitate this reporting, the term “salary” in respect of a private sector employer was amended to broadly include “remuneration paid for work performed by an employee, before deductions, in the form of basic pay, pay for piecework, shift premiums, bonus pay and overtime pay, but does not include benefits, securities, severance pay or termination pay, vacation pay, payment in kind, supplementary payments, allowances, retroactive payments, reimbursements for employment expenses or compensation for extra-duty services other than overtime pay.”

“Bonus pay” in respect of a private sector employer, is defined by the Act to mean “any additional remuneration paid to an employee as a result of profit sharing, productivity, performance, commissions or any other incentives.” Further information on the interpretation of the terms “salary” and “bonus pay” can be found in Employment and Social Development Canada’s [Interpretation, Policy and Guidelines](#).

Salary ranges have also been amended in the new Regulations to align with the salary breakdown used by Statistics Canada in the census. This means that salary increments above \$100,000 that were not previously analyzed will now be captured up to \$250,000.

New Record-Keeping Requirements

To assist in the reporting of aggregate wage gap data under the new Regulations, federally-regulated private sector employers are now required to maintain records of the following information for each employee, in addition to the list of records previously required to be maintained:

- their salary, excluding any bonus pay and overtime pay;
- the period over which the salary was paid;
- the number of hours worked that can be attributed to the salary earned;
- the bonus pay paid in the reporting period;
- the overtime pay paid in the reporting period; and
- the number of overtime hours worked to which the overtime pay can be attributed.

Mandatory Use of Designated Group Definitions

Under the amended Regulations, it is now mandatory to use the definitions provided in the Act for self-identification of designated groups when conducting a workforce survey. Previously, the Act allowed for the use of definitions that were “consistent” with those in the Act but this resulted in inconsistencies in the data collected by

workforce surveys. The new requirement will help to promote consistency in self-identification data between employers.

Expanded Census Metropolitan Areas for Reporting

Under the amended Regulations, federally-regulated private sector employers must consider all of the Census Metropolitan Areas (“CMAs”) as set out in the [Statistical Area Classification – Variant of SGC 2016](#) published by Statistics Canada. This means that the annual employment equity requirements will no longer be limited to the “designated” CMAs, expanding the scope of urban centers analyzed and reported on.

What’s Next?

In tandem with these recent amendments to the Regulations, the Government of Canada has established a [Task Force](#) to undertake a comprehensive review of the *Employment Equity Act* and its supporting programs. The Task Force will engage with stakeholder organizations, partners and Canadians to obtain views about employment equity and the promotion of equity, diversity and inclusion in federal workplaces. Consultations opened on February 28, 2022 and will close on April 28, 2022. This Task Force is expected to issue recommendations to modernize the Act, bringing it in line with more contemporary understandings of equity and diversity. We will continue to follow the progress of the Task Force and provide updates as they become available.

It is also important to note that these recent amendments to the Regulations come at a time when the Government of Canada is implementing other significant legislation to promote equitable pay practices for federally-regulated employers, including, most notably, the enactment of the *Pay Equity Act*. For more information about the *Pay Equity Act*, please see our earlier [bulletin](#).

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