Post Pay Equity Deadline – Where Are We Now?

In our previous blog posts here and here, we outlined important deadlines, requests for extensions to such deadlines and new regulations under the federal *Pay Equity Act* (the "Act").

As of September 3, 2024, most Canadian federally regulated workplaces with 10 or more employees were required to post their pay equity plans, unless an extension was obtained from the Pay Equity Commissioner (the "Commissioner").

While those employers who have posted their pay equity plan can breathe a sigh of relief, the work is not done. Federal employers have an ongoing obligation to preserve pay equity through various means, including maintenance of their pay equity plan.

In this update, we will provide employers with an overview of their ongoing obligations after the pay equity plan has been posted and some updates from recent decisions of the Commissioner on the process for how issues may be raised under the Act.

Maintenance of the Pay Equity Plan

- **Annual Statement:** Employers are required to submit an annual statement to the Commissioner. For employers that became subject to the Act on August 31, 2021, the first annual statement must be filed by June 30, 2025, and every year after that. The annual statement must include certain prescribed information as set out in the Act, including the number of predominately female job classes for which an increase in compensation was required, the amount of the increase in compensation and the total number of employees in the job class who received increases and the number of whom were women.
- **Annual Collection of Information:** Employers are required to collect workplace information in the form of snapshots, which is a point-in-time data set. Employers must collect information that represents its workforce on the last day of each fiscal year to identify any changes that are likely to have an impact on pay equity. This data is considered to be representative of the workplace for a one-year period and must be collected on an annual basis.
- **Updating the Pay Equity Plan:** As workplaces change over time, employers (or their pay equity committees, if applicable) are required to update the pay equity plan at least every five years to identify and correct any new pay equity

gaps. The annual collection of data (referred to above) is used to determine any changes that are likely to have impacted pay equity since the posting date of the initial (or most recent) plan. If the comparison shows pay equity gaps, these must be addressed in the updated plan. The updating of the plan is retroactive to the date of the prior plan.

Complaints, disputes and objections

Under the Act, an employer, bargaining agent or employee may file with the Commissioner a matter in objection, matter in dispute or complaint against another party. The appropriate process will depend on which party reports the issue to the Commissioner and whether the issue relates to an employer- or committee-led plan:

- A **matter of objection** may be appropriate if there are objections to any content of the pay equity plan;
- A **matter of dispute** may be appropriate where the members of the pay equity committee are unable to agree at any step leading to the establishment of the initial or updated pay equity plan;
- A **complaint** may be appropriate if, for example, it is alleged that the employer or bargaining agent acted in bad faith or in an arbitrary or discriminatory manner.

Two recent decisions of the Commissioner provide guidance on matters that may be raised as a dispute or a complaint.

United Steelworkers v. Canadian Imperial Bank of Commerce

In *United Steelworkers v. Canadian Imperial Bank of Commerce*, 2024 PEC 21, the bargaining agent filed a matter in dispute against the employer alleging that the employer refused to disclose relevant documents pertaining to the development of the pay equity plan. The Commissioner dismissed the matter in dispute, finding that the question of whether the employer has disclosed sufficient information to the bargaining agent did not constitute a matter in dispute under the Act. The Commissioner did, however, invite the bargaining agent to file a complaint, inferring that a complaint was the proper avenue in such circumstances. To date there have been no subsequent decisions issued regarding any complaint raised by the bargaining agent.

Public Service Alliance of Canada v. Bank of Canada

In *Public Service Alliance of Canada v. Bank of Canada*, 2024 PEC 29, the bargaining agent filed a complaint alleging that the employer acted in bad faith by making a unilateral and allegedly arbitrary and discriminatory decision to limit the bargaining agent to one regular member and one alternate member on the pay equity committee. The bargaining agent took the position that, while the Act requires an employer to facilitate the establishment of the pay equity committee, it does not give the employer authority to unilaterally set the number of representatives of each party on the committee.

The Commissioner dismissed the complaint, finding that the employer's actions in attempting to establish its pay equity committee did not amount to bad faith, arbitrary or discriminatory conduct. The Commissioner found that acting in "bad faith" includes an "element of ill-will or an intention to mislead or deceive" and that the term "arbitrary" could be understood as including actions that are "capricious, rather than based on reason or judgment." Finally, the Commissioner referred to the Supreme Court of Canada's definition of "discriminatory" from the decision of *Andrews v Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1

SCR 143, which states:

Discrimination may be described as a distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

Applying these definitions to the case at hand, the Commissioner could not find any evidence that the employer was acting with ill-will or an intention to mislead or deceive the bargaining agent. Further, the employer provided a reasonable explanation for the limitation, that being the difficult workload pressures placed on operations to provide coverage during the meetings of the committee, and therefore did not act in an arbitrary manner.

We are still in the early days of the Act being interpreted. As more decisions of the Commissioner are released, employers will receive further guidance on the Act's interpretation and its application to the workplace.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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