

## Typical procedure for achieving pay equity

The *Pay Equity Act*, in force since November 21, 1997, applies to every employer whose enterprise employs at least 10 employees, whether in the private, public or parapublic sector. The employer whose enterprise employs less than 10 people must respect pay equity as stipulated in the Charter of Human Rights and Freedoms. Furthermore, the Act does not apply to enterprises under federal jurisdiction.

The *Pay Equity Act* aims to redress differences in compensation due to the systemic gender discrimination suffered by people who occupy positions in predominantly female job classes.

For the purposes of applying the Act, employers are subject to obligations that depend on the size of their enterprise.

<b>Obligation according to the size of the enterprise</b>			
Obligation	100 employees or more	50 to 99 employees	10 to 49 employees
Pay equity program	X	X	optional
Pay equity committee	X	optional	optional
Compensation adjustments	X	X	X

This document presents the typical procedure for achieving pay equity. It does not cover all the aspects of the process in a detailed manner. Certain features depend on the context, and obligations differ according to the size of the enterprise. Refer to the Act for details.

<b>Typical procedure for achieving pay equity</b>		
1.	<a href="#">Determine the number of employees</a>	
2.	<a href="#">Determine the number of pay equity plans required</a>	
3.	<a href="#">Determine the composition of the pay equity committee(s)</a>	
4.	<a href="#">Identify the predominantly female job classes and the predominantly male job classes</a>	First stage of the pay equity plan
5.	<a href="#">Choose the method and the tools to evaluate the job classes and develop an evaluation procedure</a>	Second stage of the pay equity plan
6.	<a href="#">Post the results of the job class identification, as well as the choices concerning the evaluation method, the evaluation tools and the evaluation procedure</a>	
7.	<a href="#">Evaluate the job classes</a>	
8.	<a href="#">Determine the value of the differences in compensation</a>	Third stage of the pay equity plan
9.	<a href="#">Define the terms and conditions of payment of compensation adjustments</a>	Fourth stage of the pay equity plan
10.	<a href="#">Post the results</a>	
11.	<a href="#">Pay adjustments in compensation</a>	
12.	<a href="#">Maintain pay equity</a>	

## 1. Determine the number of employees

(articles 6, 8, 9)

The size of the enterprise is determined by the number of employees. According to the Act, the notion of "employee" refers to anyone who undertakes work for remuneration under the direction or control of an employer. The Act applies to full-time, part-time, casual, regular, and temporary workers. However, certain people are not considered to be employees and are therefore excluded from the Act. They are :

- students who work during the school year in an establishment chosen by an educational institution under a program recognized by the Ministère de l'Éducation which combines practical experience with academic training or students who work in a field related to their field of study in the educational institution they are attending;
- students employed for their vacation period;
- trainees undergoing professional training recognized by law;
- people who benefit from programs to achieve entry on the labour market (welfare recipients and handicapped people);
- senior management officers;
- police officers or fire-fighters;
- independent operators.

Consequently, those excluded are not counted when the number of employees in the enterprise is calculated.

The number of employees in an enterprise corresponds to the average number of employees in the enterprise in the course of the 12-month period preceding the coming into force of the Act, that is, November 21, 1997. The average number is determined on the basis of the number of employees entered on the employer's payroll for each pay period.

In the case of an enterprise which began its operations in the 12-month period preceding November 21, 1997 or after that date, the reference period for the calculation is the 12-month period beginning on the date on which the first employee commenced employment for the employer.

## 2. Determine the number of pay equity plans required

(articles 10, 11, 31, 32, 34)

The Act stipulates that an employer whose enterprise employs at least 50 employees must establish a pay equity plan applicable to all of the employees in his enterprise.

In short, the basic rule is :

one enterprise = one pay equity plan

However, the Act provides for certain situations where there may be more than one plan per enterprise :

- at the request of a certified association representing employees of the enterprise, the employer must establish a separate pay equity plan applicable to those employees;
- in addition, the employer and a certified association representing employees of the enterprise may agree to establish one or more separate plans applicable to those employees in one or more establishments of the enterprise;
- the employer may ask the *Commission de l'équité salariale* for authorization to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities.

## 3. Determine the composition of the pay equity committee(s)

To encourage employee participation in the procedure for achieving pay equity, the Act provides for the setting up of a pay equity committee. An employer whose enterprise employs 100 or more employees must do so. Smaller enterprises may also decide to form such a committee if they so desire.

Ø Composition of the pay equity committee

- The committee must be composed of no less than three members :

- 1/3 of the members represent the employer;
- 2/3 of the members represent the employees and are designated by the certified association(s) or by employees not represented by a certified association.

Ø At least 50% of these members must be women.

Ø The designation of the employee representatives on a pay equity committee must be effected so as to ensure representation of the major predominantly female job classes and of the major predominantly male job classes.

The employer must provide for the members of the committee the training required to carry out their mandate adequately.

Ø The committee's main responsibilities

The pay equity committee participates in the establishment of a pay equity plan. The committee plays a decision-making role in the first three stages of the program, that is :

- the identification of the predominantly female job classes and of the predominantly male job classes in the enterprise;
- the description of the methods and tools selected to determine the value of job classes and the development of a value determination procedure;
- the determination of the value of job classes, a comparison between them, the valuation of differences in compensation and the determination of the required adjustments.

Its role is advisory in the fourth stage, that is :

- the terms and conditions of payment of the adjustments in compensation.

#### **4. Identify the predominantly female job classes and the predominantly male job classes**

(articles 53, 54, 55, 60)

Ø Identification of job classes

The identification of job classes is the first stage of the pay equity plan as provided for in the Act. It is a question of grouping under the same job class jobs which have the following common characteristics :

- similar duties or responsibilities
- similar required qualifications
- the same remuneration, that is, the same rate or scale of compensation.

The remuneration in a job class is the highest rate of compensation or the maximum in the compensation scale applicable to the positions within the class.

It is possible that a job is unique and cannot be grouped with any other job in the enterprise; it thus becomes a job class in itself.

Ø Determine the predominance of a job class

Once the jobs have been grouped together by job class, they must be identified as belonging to a predominantly female job class, a predominantly male job class, or a mixed job class.

The Act provides for four criteria or indicators that help determine if a job class is predominantly female or predominantly male. A job class may be considered predominantly female or predominantly male if :

1. 60% or more of the positions in that class are held by employees of the same sex;
2. the difference between the rate of representation of women or men in the job class and their rate of representation in the total workforce of the employer is considered significant;
3. the historical incumbency of the job class in the enterprise indicates that it is a predominantly female or predominantly male job class;
4. owing to gender stereotypes of fields of work, the job class is commonly associated with women or with men.

Each job class must therefore be examined against these criteria in order to select the most appropriate one(s).

At this stage, the pay equity committee, or the employer, in the absence of such a committee, must have identified the predominantly female job classes and the predominantly male job classes. The mixed job classes, that is, those which, according to the Act, have equitable gender representation, will not be considered in the pay equity exercise.

## **5. Choose the method and the tools to evaluate the job classes and develop an evaluation procedure**

Choosing the method and tools for evaluating job classes and developing an evaluation procedure constitute the second stage of the pay equity plan as provided for in the Act. In order to compare predominantly female job classes with predominantly male job classes, the value of each job class must first be established. To do so, a job class evaluation method must be used to systematize the evaluation procedure and to reduce subjectivity to a minimum.

The Act does not specify a particular method for evaluating job classes. It is up to the pay equity committee or, in the absence of such a committee, the employer to select a method. However, whatever the method used, it must take the following four factors into account :

- required qualifications;
- responsibilities;
- effort required;
- the conditions under which the work is performed;

These four factors can be broken down into more specific sub-factors.

In addition, the method must :

- allow predominantly female job classes to be compared with predominantly male job classes;
- highlight the specific characteristics of predominantly female job classes and those of predominantly male job classes.

The evaluation tools may vary : surveys, interviews, etc. The evaluation procedure encompasses all the steps leading to the evaluation of the job classes. Such a procedure could, for example, provide for a work schedule and the development of a job class evaluation system.

Whatever the method, the tools, and the procedure selected for the evaluation, the Act requires that they be exempt from discrimination based on gender.

## **6. Post the results of the job class identification, as well as the choices concerning the evaluation method, the evaluation tools, and the evaluation procedure.**

(articles 75, 76)

The results of the identification of predominantly female job classes and predominantly male job classes, as well as the choices concerning the evaluation method, the evaluation tools, and the procedure must be posted in prominent places easily accessible to the employees. This posting must also indicate :

- the employee's right to ask for additional information or make observations, in writing, on the information posted;
- the period in which this right may be exercised, that is, within 60 days of the date of the posting.

When this right is exercised, the pay equity committee, or the employer in the absence of such a committee, has 30 days to consider the observations of the employee, make amendments, if needed, and effect a new posting. This new posting must indicate whether any amendments were made and, if so, clearly describe which ones.

In the absence of a pay equity committee, the posting must also include information concerning the remedies available under this Act and the period within which they may be exercised.

## **7. Evaluate the job classes**

(articles 51, 59)

Once the evaluation method and tools have been chosen, it is possible to proceed to the evaluation of predominantly female job classes and predominantly male job classes and determine their value. This is the beginning of the third stage of the pay equity plan.

The job class evaluation must cover the characteristics of the job class and not those of the people who hold the jobs. The application of the method and the tools of evaluation must be free of any gender discrimination.

## **8. Determine the value of the differences in compensation**

(articles 13, 37, 39, 52, 60, 61, 62, 63, 65, 66, 67)

Determining the value of differences in compensation, which is also part of the third stage of the pay equity plan, consists in comparing the remuneration of predominantly female job classes with that of predominantly male job classes.

Ø Remuneration

For the purpose of the valuation of differences in compensation, remuneration, according to the Act, includes base pay (wage or salary) and, if they are not equally available to all the job classes that are the subject of comparison, flexible pay and pecuniary benefits.

Flexible pay includes merit and performance pay and income from gain-sharing schemes.

Benefits having pecuniary value include, in addition to indemnities and bonuses,

- the various forms of paid leave including sick leave, family-related and parental leave, vacation and holidays, rest and meal periods and other benefits of that nature;
- retirement and group protection plans including pension funds, health and disability insurance and other group plans of that nature;
- non-salary benefits including the supply and maintenance of tools and uniforms or other clothing, except where required under the *Act respecting occupational health and safety* or except where the uniforms or other clothing are a job requirement, parking privileges, meal allowances, the supply of vehicles, payment of professional dues, paid educational leave, reimbursement of tuition fees, low-interest loans and other benefits of that nature.

#### Ø Comparison methods for valuating differences in compensation

The Act provides two methods of comparison for the valuation of differences in compensation, a method for valuation on an overall basis and a method for valuation on an individual basis.

##### · On an overall basis

Valuation on an overall basis consists in comparing each predominantly female job class with the earning curve of all predominantly male job classes.

It is therefore possible to :

1. plot the earning curve of the predominantly male job classes;
2. compare each predominantly female job class with the earning curve of all of the predominantly male job classes;
3. determine the differences in compensation for each of the predominantly female job classes, if needed.

##### · On an individual basis

Valuation on an individual basis consists in a job-to-job comparison of a predominantly female job class with a predominantly male job class of equal value.

Where there are two or more predominantly male job classes of equal value but with different remuneration, comparisons are made on the basis of the average remuneration for those job classes.

If for a predominantly female job class there is no predominantly male job class of the same value that can be compared to it, its remuneration shall be valuated proportionately to the remuneration of the predominantly male job class the value of which is closest to its value.

For the purpose of valuating differences in compensation, differences between job classes based on any of the following factors shall not be taken into account :

- seniority, unless this factor is applied so as to discriminate on the basis of gender;
- an assignment of fixed duration, such as an employee training, development, or orientation assignment;
- the region in which the employee works, unless this factor is applied so as to discriminate on the basis of gender;
- a shortage of skilled workers;
- red circling, that is, a situation where a person's compensation is maintained, following a reclassification, demotion, or special arrangement for the handicapped, at its former level until the compensation in the person's new job class attains that level;

- non-enjoyment of benefits having pecuniary value by reason of the temporary, casual or seasonal nature of a position.

Whatever the method chosen for valuating differences in compensation, it can happen that there is no male comparator within the scope of a pay equity plan. In this case, if more than one pay equity plan is implemented in the organization, the predominantly female job classes in this plan must be compared with all the predominantly male job classes in the enterprise.

It can also happen that there is no male comparator in the whole enterprise. The predominantly female job classes of the enterprise must then be compared with typical job classes which will be identified in a regulation made by the *Commission de l'équité salariale*.

The compensation adjustments required to achieve pay equity must have been determined at the latest by November 21, 2001 and are not retroactive.

In the case of an enterprise which begins its activities within the 12-month period preceding November 21, 1997 or after that date, the stipulated four-year time limit begins the day after one year of the start of its operations.

## **9. Define the terms and conditions of payment of compensation adjustments**

The differences in compensation were determined in the preceding point. The terms and conditions of the payment of compensation adjustments for predominantly female job classes must now be established. This is the fourth stage of the pay equity plan provided for in the Act.

It is the employer's responsibility to set out the terms and conditions of these compensation adjustments after consulting the pay equity committee or, depending on the situation, the certified association with which he jointly established the pay equity plan.

Only predominantly female job classes undergo adjustment in order to eliminate the difference in compensation observed. The Act stipulates that pay equity cannot be achieved by reducing the remuneration of the employees of the enterprise.

## 10. Post the results

The pay equity committee, or in the absence of such a committee, the employer must post the results of the four stages of the pay equity plan in prominent places easily accessible to the employees. This posting must also indicate :

- the employee's right to request additional information or make observations, in writing, on these results;
- the period in which this right may be exercised, that is, within 60 days of the date of the posting.

When this right is exercised, the pay equity committee, or the employer in the absence of such a committee, has 30 days to consider the observations of the employee, make amendments, if needed, and effect a new posting. This new posting must indicate whether any amendments were made and, if so, clearly describe which ones.

In the absence of a pay equity committee, the posting must also include information concerning the remedies available under this Act and the period within which they may be exercised.

## **11. Pay adjustments in compensation**

The employer must begin paying the first compensation adjustments no later than November 21, 2001 and the adjustments can be spread over a maximum four-year period, ending November 21, 2005. If the instalments are spread over a period of time, they must be annual and equal in

amount. If the adjustments are not paid within the time limit, they will bear interest.

The Act provides that the instalment period may be extended by a maximum of three years, when, in the opinion of the *Commission de l'équité salariale*, the enterprise's financial situation does not enable it to pay the adjustments provided for. On the other hand, if the *Commission* has reasonable grounds to believe that the employer's situation has improved, new terms and conditions, may be established.

If an enterprise begins its activities during the 12-month period preceding November 21, 1997, or after that date, the period provided for begins the day after one year of the start of its operations.

## **12. Maintain pay equity**

The employer is under the obligation to maintain pay equity, despite any changes that the organization may go through, especially the creation of new jobs, new job classes or changes in existing jobs or conditions. Maintenance of pay equity must also be guaranteed when a collective agreement is being negotiated or renewed. In the latter case, the certified association must also ensure that pay equity is maintained.

For more information, please call the *Commission de l'équité salariale* at 1 888 528-8765 or, in the Québec region, 528-8765.

This text is based on the legislation currently in force. It is explanatory and does not constitute a legal interpretation of the Act.

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