



INFO-ÉQUITÉ

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MAINTENANCE OF PAY EQUITY

The purpose of the Pay Equity Act¹ is to redress, within a given enterprise, differences in compensation due to gender discrimination suffered by persons who occupy positions in predominantly female job classes.

Once pay equity has been achieved, the Act makes provision for the employer to ensure maintenance of pay equity.

Sections 1, 2, 40 to 43, 100 and 115 of the Pay Equity Act provide the legal framework for maintenance. These sections stipulate the purpose of the Act, the precedence the Act takes over collective negotiations, the obligation to maintain pay equity, the changed circumstances that may justify modifications to a pay equity plan (general or separate), the remedies and penalties for failure to maintain pay equity.

This legal foundation serves as a reminder that maintaining pay equity means **continuing** to provide predominantly female job classes with the same remuneration as predominantly male job classes, in which the work is of equal value, in order to prevent the recurrence of differences in compensation.

ENTERPRISES EMPLOYING FEWER THAN 50 EMPLOYEES

The Pay Equity Act does not impose a specific process for achieving pay equity on employers whose enterprise employs fewer than 50 employees. The Act provides for the same flexibility in maintaining pay equity, by offering employers the following three possibilities:

- using the same process as the one developed for achieving pay equity;
- making changes to the initial process;
- using a different process.

For practical reasons, it is to the advantage of employers to use the initial pay equity process, although changes can be made to it as necessary.

Bear in mind that the process chosen, whether it be for achieving or maintaining pay equity, must be free of gender discrimination.

Employers interested in knowing more about the issues involved in maintaining pay equity, and in obtaining tips in that regard, can refer to the following section on the obligations under the Pay Equity Act for enterprises employing 50 or more employees.

¹ Pay Equity Act, R.S.Q., chapter E-12.001

ENTERPRISES EMPLOYING 50 OR MORE EMPLOYEES

PART 1: GENERAL PRINCIPLES

1. WHY MAINTAIN PAY EQUITY?

- to ensure the continuity of pay equity in all enterprises;
- to prevent differences in compensation from recurring in a pay equity plan (general or separate) and to prevent remuneration discrimination from starting over again.

2. WHEN DOES MAINTENANCE OF PAY EQUITY BEGIN?

Maintenance of pay equity begins as soon as the plan (general or separate) has been completed or should have been. The obligation to maintain pay equity starts from the moment compensation adjustments are determined, regardless of whether the employer chooses to spread them out or not.

For amalgamated municipalities subject to the Act respecting municipal territorial organization², maintenance begins on the date on which the plan is due to be complete.

3. WHO IS RESPONSIBLE FOR MAINTAINING PAY EQUITY?

The employer is responsible for maintaining pay equity. However, responsibility is shared with a certified association during the negotiation or renewal of a collective agreement. The certified association is then responsible for maintaining pay equity only for the employees in the certification unit it represents. The situation is the same when a certified association is created in an enterprise in which pay equity has been achieved: the plan continues, and, during the negotiation or renewal of a collective agreement, the new certified association shares responsibility with the employer for maintaining pay equity, but only for the employees in the certification unit it represents.

4. IS THE EMPLOYER LEGALLY BOUND TO MAINTAIN THE PAY EQUITY COMMITTEE?

No.

Tip/Inform employees and involve them in the process!

Although the Pay Equity Act does not oblige the employer to have a pay equity committee for maintenance purposes, the Commission de l'équité salariale advises employers to inform their employees and involve them in the process in order to optimize the monitoring of pay equity maintenance. A work group can be formed or

² Act respecting municipal territorial organization, R.S.Q., chapter O-9

the task can be added to the responsibilities of an existing committee, for instance. It is recognized that when employees take part in operations to maintain pay equity, they more readily accept the outcome.

5. CAN A SEPARATE PLAN BE REQUESTED DURING PAY EQUITY MAINTENANCE?

No, a certified association can no longer request a separate plan for its members alone and an employer cannot obtain authorization to carry out a separate plan for regional disparities.

6. WHAT ARE THE INDICATORS OF CHANGE LIKELY TO REPRODUCE DIFFERENCES IN COMPENSATION?

To fulfil its obligation, the employer must monitor changes in the enterprise that may recreate differences in compensation. For instance:

- a pay increase, a change in benefits having pecuniary value or the introduction of new forms of remuneration;
- the creation or elimination of a job class;
- a modification of tasks that may affect the value of a given job class;
- the negotiation or renewal of a collective agreement;
- an organizational change (increase or reduction in work force, amalgamation, sale or transfer of the enterprise in whole or in part, modification of the mission or activities of the enterprise, etc.);
- an increase in the minimum wage or a change in labour laws.

In Part 2 of this document, the Commission de l'équité salariale presents ways of ensuring that pay equity is maintained when certain situations occur after pay equity has been achieved.

7. WHEN DOES A PAY EQUITY PLAN HAVE TO BE MODIFIED?

When changes occur within or have an effect on the enterprise (e.g. new practices in remuneration, in job valuation, in work organization or in industrial relations, etc.) and the employer notices that the tool in force is no longer adequate, then the employer must make the changes that are necessary to maintain pay equity. The employer must demonstrate that the tool no longer corresponds to the reality, mission or activities of the enterprise.

The changes made must respect the Act's prescriptions regarding the content of the pay equity plan: the criteria for the identification of job classes and the determination of gender predominance, the method for determining job class value on the basis of the four factors (qualifications, responsibilities, conditions under which work is performed and effort

required), the method for valuating compensation differences provided under section 61 of the Act, etc.

Tip/Be careful!

Be careful before changing a pay equity plan. If it turns out to be necessary, you will have to demonstrate that the tool in force no longer corresponds to the reality of the enterprise in its development, mission and activities.

Tip/Inform employees if you change the pay equity plan!

The Pay Equity Act does not oblige you to post or communicate changes made to a general or separate plan as a part of pay equity maintenance. However, informing employees makes for a more transparent process.

8. WHAT FACTORS PROMOTE MAINTENANCE?

Based on lessons learned in Québec and Ontario, we suggest that you:

- spread the information, be transparent;
- involve and/or inform employees;
- preserve the history, writings, tools, valuation results, etc.

9. HOW DOES ONE GO ABOUT MAINTAINING PAY EQUITY?

Where one or more pay equity plans (general or separate) have been set up, maintenance operations will be performed within the framework of the plan or plans, in order to monitor the effects of any changes over the continuity of pay equity.

Tip/Give yourself the means to monitor!

The employer can choose specific moments for re-examining the pay equity plan, for instance: at the end of the fiscal year, at the time of review of working conditions, at the start of the calendar year, etc. If the case arises, the compensation adjustments that are determined bear interest at the legal rate³ from the time as of which they were payable.

³ Section 3 of the Interest Act provides that, whenever interest is payable by the agreement of parties or by law, and no rate is fixed by the agreement or by law, the rate of interest shall be the legal annual rate. Source : Department of Justice Canada website at <http://laws.justice.gc.ca>; enter “ interest” in the title field and click on “Interest Act”.

10. CAN MAINTENANCE ADJUSTMENTS BE SPREAD OUT?

No, adjustments are due in full as of the date on which the difference is created and bear interest at the legal rate from the moment they should have been paid.

11. ARE THE DIFFERENCES AUTHORIZED DURING THE IMPLEMENTATION OF PAY EQUITY ALSO AUTHORIZED FOR PAY EQUITY MAINTENANCE?

Yes, the differences authorized during the implementation of pay equity remain so for pay equity maintenance. These differences are related to seniority; assignments of fixed duration; region where an employee works; shortage of skilled workers; red circling following reclassification, demotion or special arrangement for a handicapped person; or non-enjoyment of benefits having pecuniary value because of the temporary, casual or seasonal nature of a position.

Tip/Be vigilant when you rely on authorized differences!

If you relied on authorized differences during the implementation of pay equity, you must check whether the situation has changed during maintenance, and redress any compensation differences. To illustrate, let's say there was a shortage of skilled workers during the implementation of pay equity. If the shortage disappears, the employer has to make up for the difference in compensation because it is no longer justified.

12. CAN THE REMUNERATION OF EMPLOYEES BE REDUCED IN ORDER TO MAINTAIN PAY EQUITY?

No, as stipulated in section 73, during pay equity implementation, an employer cannot, for the purpose of maintaining pay equity, reduce the remuneration of employees holding positions in the enterprise.

13. HOW IS MAINTENANCE HANDLED WHEN AN ENTERPRISE HAS FALLEN BEHIND?

Before pay equity can be maintained, a pay equity plan must be implemented. Accordingly, in an enterprise in existence on November 21, 1996, the employer⁴ must complete the pay equity plan using the profile of the enterprise on November 21, 2001 and pay compensation adjustments retroactively with interest at the legal rate from that date, and then ensure pay equity maintenance from the date on which the plan was to have been completed, which would be November 21, 2001 in this case.

If employees change job classes or leave the enterprise before the employer completes the pay equity plan, they must not be penalized by late implementation of the plan. Amounts

⁴ Or the committee, as the case may be.

due remain due. The employer must locate these employees and pay retroactively, with interest at the legal rate, the compensation adjustments to which they would have been entitled if the plan had been completed by November 21, 2001.

Tip/Get to work as soon as possible!

Putting off pay equity may complicate matters. Job data on November 21, 2001 can be hard to locate and the employees concerned by compensation adjustments may have changed job categories or left the enterprise.

14. WHAT REMEDIES ARE AVAILABLE?

Under section 100 of the Pay Equity Act, an employee or a certified association can file a complaint if either considers that pay equity is not being maintained in the enterprise. This can be done by filling out the complaint form available on the Commission de l'équité salariale's website or by telephoning for further information. Upon reception of a complaint, an investigation is conducted and if it turns out that pay equity is not being maintained the Commission determines the measures that must be taken in order to ensure the maintenance of pay equity in the enterprise.

PART 2: PARTICULAR SITUATIONS

For each situation, the Commission de l'équité salariale recommends procedures to facilitate the maintenance of pay equity.

- **Creation of a predominantly female job class:** The new job class is valued using the tool in use and granted the same remuneration as the appropriate male job class (individual method) or as that indicated by the earning curve of predominantly male job classes (overall method).
- **Elimination of a predominantly female job class or departure of an employee holding a position in such a class when payment of compensation adjustments is not yet complete:** These situations terminate pay equity adjustments that are still being paid by instalments spread over time. Thus, employees who leave the enterprise before compensation adjustments are fully paid cannot claim payment of the adjustments determined during the process and that have not yet been paid.
- **Creation or elimination of a predominantly male job class:** In these situations, the employer must check whether compensation differences are recreated. If so, the employer must adjust the remuneration of the predominantly female job classes and pay compensation adjustments to make up the full difference.

Tip/Set the remuneration of the new predominantly male job class according to the earning curve. This way, you will minimize the possibility of recreating compensation differences in predominantly female job classes!

- **A change in gender predominance of a job class:** The Act provides four criteria for determining gender predominance in a job class. The same criteria apply to maintenance. If, exceptionally, the gender predominance of a job class changes during maintenance, it will be necessary to apply the same approach as the one recommended for situations implicating the creation or the elimination of a job class.
- **Changes in tasks and contents of jobs:** The employer must check whether changes in job contents are significant and whether the value or rating of the job class has changed. In the affirmative, the value of the job class must be redetermined using the tool in use and the employer must ensure that compensation differences are not recreated.
- **Changes in overall remuneration of job classes:** If the employer decides to grant a pay increase or to add or modify certain elements of overall remuneration (group insurance, bonuses, purchase of shares, etc.), then he must ensure that the changes made

after the implementation of pay equity do not recreate compensation differences in predominantly female job classes.

Tip/Pay attention to all the elements of overall remuneration!

Under the Pay Equity Act, remuneration in a job class includes flexible pay, provided that such pay is not equally available to all the job classes being compared. Similarly, the value of benefits having pecuniary value must be included in the remuneration where these benefits are not equally available. The same holds true for pay equity maintenance.

- **A reduction in remuneration of a predominantly male job class having served for comparison purposes:**
 - If compensation adjustments have been paid in full, the employer does not have to reduce the remuneration of the equivalent predominantly female job class in order to maintain pay equity.
 - If the compensation adjustments identified are still being paid by instalments spread over time, the employer must pay the equivalent predominantly female job class the full amount of compensation adjustments determined when the pay equity plan was established.
- **Several groups (unionized and/or non-unionized) are covered by the same pay equity plan:** The employer must ensure the maintenance of pay equity for all job classes concerned by the plan. From the moment working conditions of a group are modified, the employer must ensure that compensation differences are not recreated as a result.
- **A change in the size of the enterprise:** Regardless of an increase or decrease in size of the enterprise, before or after implementing the pay equity plan or during maintenance of pay equity, the employer's obligations remain the same.

SECTIONS OF THE ACT DEALING WITH MAINTENANCE OF PAY EQUITY

1. The purpose of this Act is to redress differences in compensation due to the systemic gender discrimination suffered by persons who occupy positions in predominantly female job classes. Differences in compensation are assessed within the enterprise, except if there are no predominantly male job classes in the enterprise.

2. This Act has effect notwithstanding any provision of an agreement, an individual employment contract, a collective agreement within the meaning of paragraph *d* of section 1 of the Labour Code (chapter C-27), a decree made under the Act respecting collective agreement decrees (chapter D-2), a collective agreement made pursuant to the Act respecting labour relations, vocational training and manpower management in the construction industry (chapter R-20) and any other agreement respecting conditions of employment, including a government regulation giving effect thereto.

40. The employer shall, after adjustments in compensation have been determined or a pay equity plan has been completed, maintain pay equity in his enterprise. In particular, the employer shall ensure maintenance of pay equity upon the creation of new positions or new job classes, the modification of existing positions or of the conditions applicable to existing positions and the negotiation or renewal of a collective agreement. When a collective agreement is being negotiated or renewed, the certified association concerned shall also ensure that pay equity is maintained.

41. If, before the completion of a pay equity plan, an association is certified under the Labour Code (chapter C-27) to represent employees in the enterprise, obligations relative to the establishment of the plan remain unchanged. The employer may, at the request of the association, elect to establish a pay equity plan applicable to the employees represented by the association.

42. The alienation of the enterprise or the modification of its juridical structure shall have no effect upon obligations relative to adjustments in compensation or to a pay equity plan, which shall be binding on the new employer. Where two or more enterprises are affected by a modification of juridical structure by amalgamation or otherwise, the provisions of this Act which apply according to the size of the enterprise shall, in respect of the enterprise resulting from the modification, be determined to be those applicable to the enterprise which employed the greatest number of employees.

43. Where, because of changed circumstances in the enterprise, the compensation adjustments or the pay equity plan are no longer appropriate to maintain pay equity, the employer shall make the modifications necessary to maintain pay equity.

100. Upon receiving a complaint from an employee or a certified association representing employees in an enterprise alleging that pay equity is not being maintained in the enterprise, the Commission shall investigate the matter and determine, where applicable, the measures

to be taken to correct the situation, including the establishment of a pay equity plan. Any required adjustments in compensation shall bear interest at the legal rate as of the time they should have been paid.

115. Whoever

(1) contravenes any of the provisions of the first paragraph of section 10, sections 14, 15, 16 and 23, the second paragraph of section 29, the first paragraph of section 31, sections 34, 35, 40, 71, 73 and 75, and the second paragraph of section 76,

(2) fails to furnish to the Commission a report, a document or information referred to in section 95, or furnishes false information,

(3) takes or attempts to take reprisals as described in section 107, or

(4) hinders or attempts to hinder the Commission, a member or mandatary of the Commission or a member of its personnel in the performance of its or his duties,

is guilty of an offence and is liable to a fine of not less than \$1,000 nor more than \$25,000.

For a second or subsequent offence, the amounts set out in the first paragraph shall be doubled.