



SPOTLIGHT ON PUBLIC POLICY

CANADA

PAY EQUITY ACT

In Canada, the federal Government has taken a giant step forward with the enactment of the Pay Equity Act.¹ This Act established a proactive and groundbreaking pay equity regime within the federal public and private sectors. This will be the first time in Canada that federally regulated public and private entities with 10 or more employees will be required to proactively ensure equal pay for work of equal value.

The legislation covers not just full-time, but also seasonal, casual, temporary and part-time workers. It also provides for independent oversight through the appointment of a Pay Equity Commissioner, housed within the Canadian Ministry for Human rights.

The Pay Equity legislation was passed on 13 December 2018 and is not yet in force. Employers are required to set up a pay equity plan within three years of becoming subject to the legislation.

KEY FEATURES OF THE 2018 PAY EQUITY ACT

The Act to Establish a Proactive Pay Equity Regime, passed in December 2018, requires federally regulated public and private entities with 10 or more employees to proactively ensure equal pay for work of equal value.

Employers are required to set up a pay equity plan within three years of becoming subject to the legislation.

The law also requires that employees be given the opportunity to review and provide input to the plan before it is finalized. The plan is to be updated at least once every five years.

The Act provides for independent oversight through the appointment of a Pay Equity Commissioner, housed within the Canadian Ministry for Human rights.

BACKGROUND

While proactive pay equity legislation has already existed in Ontario and Quebec for several years, this is the first time that it will be adopted by the federal Government. Prior to the passing of this law, federal pay equity was a complaint-based system, and it was not uncommon for complainants to suffer decades of contentious, costly litigation before a decision was made.²

The principle of equal pay for work of equal value is a fundamental right enshrined in the Canadian Human Rights Act since 1977.³

Since the publication of the first gender gap report by the World Economic Forum in 2006, more women have entered the workforce, and their political participation and educational achievement levels have increased – but gender wage inequality still persists. However, Canada has made significant improvements. In the Forum's 2015 report, Canada was ranked eightieth in the world in terms of gender wage inequality.⁴ Its ranking improved to 49 in 2019.⁵

OVERVIEW

Employers with 10 or more employees are required to set up a pay equity plan within three years of becoming subject to the legislation. The plan must include a list of all the job classes in the organization, their value and their gender predominance (whether jobs are commonly done by women or men or are gender-neutral). Next, they must indicate how the job classes are compensated. If there is a difference between the compensation paid to a predominantly female job and a predominantly male job of similar value, employers will be required to increase compensation in those jobs.

The gender wage gap, according to the Canadian Government, is recognized as the “difference between the total of what women earn (...) compared with what men earn.”¹¹ Pay equity is defined as equal pay for work of equal value, where jobs are evaluated on their skill, their effort, their responsibilities and working conditions, and can be com-

INDEPENDENT OVERSIGHT

This is the first time that a federal Pay Equity Commissioner has been appointed to work within the Canadian Human Rights Commission. The Pay Equity Commissioner's mandate is “to promote women's equality by ensuring that federal public and private sector organizations value work done by women in the same way they value work done by men.”¹²

The Commissioner, supported by the Pay Equity Division, administers and enforces the Pay Equity Act by:

While 10 to 15 per cent of the gender pay gap can be attributed to discrimination, or unexplained factors,⁶ part of the reason could also be the way the pay equity regime used to be regulated. The former Public Sector Equitable Compensation Act of 2009,⁷ now replaced by the new legislation, was a source of frustration for many employees primarily because its scope was limited, subjected pay equity to collective bargaining and used market forces as a factor for determining the value of work, particularly women's work in the public sector.⁸

Under the new law, amendments have also been made to the Parliamentary Employment and Staff Relations Act (PESRA), meaning that parliamentary workplaces (e.g. house of commons, the parliament) will also be covered. The law also complements the Employment Equity Act of 1995,⁹ which “requires that employers remove barriers to the workplace for women, indigenous people, members of racialized groups and people with disabilities.”¹⁰

pared for their value in the workplace. While the legislation broadly covers the methods of calculating pay gaps, the details will be set in regulations that are currently under development.

The law also requires that employees be given the opportunity to review or provide input to the plan before it is finalized. The plan is to be updated at least once every five years and employers must file an annual statement with the Pay Equity Commissioner to report on key milestones. Moreover, employers that have 100 or more employees and any employer with unionized employees are required to form a pay equity committee to develop or update the pay equity plan.

The Act itself is expected to be reviewed 10 years after coming into force and every five years after that.

- Providing tools and guidance to employers, employees and their representatives.
- Ensuring compliance.
- Resolving disputes.

Once the Act and regulations are in force, several compliance tools will be at the disposal of the Commissioner to promote compliance, including investigatory and auditing powers, binding orders, and administrative monetary penalties. The Commissioner also has the power to issue authorizations, for example to exempt an employer from the requirement to establish a pay equity committee under certain circumstances.

The Canadian Human Rights Commission

The Canadian Human Rights Commission operates independently of the Government. Representing public interests, it works to protect the core principle of equal opportunity and promote an inclusive society free from discrimination. The Commission's mandate is to promote human rights through research and policy development, protect human rights through a fair and effective complaints process, and audit employers under federal jurisdiction for compliance with employment equity.¹³

CONCLUSION

The new federal pay equity law comes as part of the gender-focused "Equality and Growth: A Strong Middle Class" budget, which was tabled by the Canadian Government on 27 February 2018.¹⁴ With the onus now on employers to take proactive steps to ensure pay equity,

independent oversight and the necessary resources to carry out the mandate, the country is hopeful to see transformative changes in its goal to eliminate the gender wage gap.

ENDNOTES

1. Pay Equity Act, 2018. <https://laws-lois.justice.gc.ca/eng/acts/P-4.2/page-1.html>
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13. Canadian Human Rights Commission. About Us. <https://www.chrc-ccdp.gc.ca/eng/content/about-us>
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