Ontario

Pay Equity Office

The Q&A Guide to Ontario's *Pay Equity Act*

June 2023

Title: The Q&A Guide to Ontario's *Pay Equity Act*

Date Published: 2023

Contact:
Pay Equity Office
180 Dundas Street West, Suite 300
Toronto, Ontario M7A 2S6

Email: AskPayEquity@ontario.ca

Telephone: 416-314-1896
Toll-Free: 1-800-387-8813
TTY: 416-212-3991
TTY Toll-Free: 1-855-253-8333
Facsimile: 416-314-8741

Website: www.payequity.gov.on.ca

Ce document est disponible en français

ISBN 978-1-4606-4466-9 (Print)
ISBN 978-1-4606-4467-6 (HTML)
ISBN 978-1-4606-4468-3 (PDF)

© King's Printer for Ontario, 2023

Disclaimer: This resource is for information only and is intended to assist employers in understanding their obligations under the *Pay Equity Act*. It is not to be construed or considered as legal advice, nor warranted to be complete and accurate, and may be amended without notice. This resource does not replace the legal authority of the *Pay Equity Act*, nor does it restrict Review Officers of the Pay Equity Office in their interpretation and determination of matters under the Act.

Table of Contents

1. About this Publication 8

2. Overview 9

2.1 What is Pay Equity? 9

2.2 Why does Ontario need Pay Equity? 9

2.3 What is the Ontario Pay Equity Act? 9

2.4 What is the Pay Equity Commission? 9

2.5 What is Pay Equity about? 10

2.6 What is Pay Equity NOT about? 10

2.7 What is the structure of the Pay Equity Act? 10

2.8 Q&As General Pay Equity 11

3. Guiding Principles for Interpreting the Pay Equity Act 13

4. Summary of Requirements 15

4.1 Which employers must comply with the Pay Equity Act? 15

4.2 Part I: Requirement for ALL employers to ACHIEVE pay equity 15

4.3 Q&As Achieving Pay Equity 16

4.4 Part I: Requirement for ALL employers to MAINTAIN pay equity 16

4.5 Part II: Specific requirements only applicable for employers subject to Part II of the Pay Equity Act 17

4.6 Counting employees to determine applicable requirements 18

5. What are the Compliance Deadlines? 19

5.1 What are the deadlines for meeting the requirements of the Pay Equity Act? 19

5.2 What if an employer did not implement or achieve pay equity by the deadline? 22

5.3 When are retroactive payments due? 22

5.4 What are retroactivity dates for overdue pay equity adjustments? 22

5.5 Q&As Meeting Pay Equity Obligations Retroactively 23

6. Definitions 24

6.1 Who is in the public sector? Who is in the private sector? 24

6.2 Who is an employer? 25

6.3 Q&As Employer 25

6.4 Who is an employee? 26
6.5 Q&As Employees 28
7. Part I Requirements for Achieving Pay Equity 28
7.1 Defining the Establishment 29
7.2 Determining Job Classes 30
7.3 Q&As Job Class 31
7.4 Determining the Gender Predominance of Job Classes 32
7.5 Gender Bias and the Need for Gender Neutrality 36
7.6 Collecting Job Information 37
7.7 Deciding on a Mechanism or Tool to Determine the Value of Job Classes 38
7.8 Q&A Selecting a System to Value Jobs 38
7.9 Determining the Value of Job Classes 40
7.10 Q&As Job Evaluations 41
7.11 Determining the Job Rate 41
7.12 Q&As Job Rate and Benefits 43
7.13 Permissible Wage Differences 44
7.14 Q&A Formal Seniority System 46
7.15 Q&As Red Circling 48
7.16 Methods of Comparison 49
7.17 Job-to-Job Comparison Method 49
7.18 Proportional Value Comparison Method 52
7.19 Q&As Proportional Value 54
8 Part I Requirement to Maintain Pay Equity 54
8.1 What does it mean to “maintain pay equity”? 54
8.2 How is pay equity maintained when there are changes to job classes? 55
8.3 If more men are hired in a female job class, does it become a male job class? 55
8.4 If a male job class is not currently filled can it still be used as a comparator? 56
8.5 How do employers handle changes in wages after pay equity is achieved? 56
8.6 How do employers deal with new female job classes? 56
8.7 Are employers and unions required to negotiate a maintenance agreement? 56
8.8 Is it necessary for Part II employers to amend and re-post a pay equity plan for maintenance? 56

8.9 Can previous wage increases “count” towards achieving pay equity? 57

9 Part II Requirements for Implementing Pay Equity for Certain Employers/Unions 57

9.1 Requirement to use job-to-job before proportional value method..... 57
9.2 Requirement to notify the Commission if pay equity cannot be achieved 58
9.3 Requirement to use a Gender Neutral Comparison System 58
9.4 Pay Equity Plans 58
9.5 What is a “deemed approved” pay equity plan? 60
9.6 What is the significance of a “deemed approved” pay equity plan? 60
9.7 Is it possible to make a complaint about a deemed approved plan? 61
9.8 When can a "deemed approved plan" be amended or a new plan developed? 62
9.9 Changed Circumstances 63
9.10 Q&As Pay Equity Plans 65
9.11 Pay Equity Adjustments 66
9.12 Q&As Pay Equity Adjustments 67

10 Pay Equity in Unionized Workplaces 68

10.1 What are the employer’s and union’s pay equity responsibilities? 68
10.2 How is bargaining strength used to explain gender wage differences?..... 69
10.3 What happens when a union becomes certified as the bargaining agent for a group of employees in an establishment after a deemed approved plan? 69
10.4 Disclosure of information..... 70
10.5 Q&As Unionized Workplaces 70

11 Proxy Comparison Method 70

11.1 Brief History..... 71
11.2 What is the impact of the repeal and reinstatement of proxy on pay equity adjustments? 71
11.3 Which organizations can use the proxy method? 71
11.4 How does the proxy method work? 71
11.5 When must proxy pay equity be implemented and achieved by?..... 72
11.6 Implementing and Achieving Pay Equity Using the Proxy Method 72
11.7 Q&A Proxy Funding 75

11.8 How is maintaining using the proxy method different from job-to-job or proportional value methods? 75

12 Pay Equity Commission 76

12.1 About the Pay Equity Commission 76

12.2 About the Pay Equity Office 76

12.3 About the Pay Equity Hearings Tribunal 76

13 Enforcement and Complaints 77

13.1 What is the timeframe for making a complaint? 77

13.2 Who can make a complaint? 77

13.3 Can an employee represented by a union make a pay equity complaint? 77

13.4 How does the Pay Equity Act protect employees who make pay equity complaints? 78

13.5 What are reasons for filing a complaint under the Pay Equity Act? 79

13.6 What happens in the application process? 79

13.7 What is the role of a Review Officer? 80

13.8 What are the possible outcomes of investigations? 80

13.9 What happens when an employer or union complain about changed circumstances? 81

13.10 What happens when the complaint is that pay equity is not being maintained? 81

13.11 What happens when the complaint is about the preparation of a pay equity plan? 81

13.12 How does someone make anonymous complaints? 82

13.13 How does someone get a hearing before the Tribunal? 82

13.14 Are there offences and fines for failing to comply with the Pay Equity Act? 83

14 Proactive Compliance Programs 83

14.1 Pro-active Compliance Programs of the Pay Equity Office (formerly “Monitoring Programs”) 83

14.2 What information do Review Officers ask for in proactive compliance files? 84

14.3 Will businesses be reviewed proactively even if there has been no complaint made? 84

14.4 What if the employer cannot find the company’s pay equity documents? 84

14.5 Does the Pay Equity Office guarantee that an employer will not have future complaints after being monitored? 84

15 Glossary 84

16 Appendix 87

16.1 Forms 87

16.2 Contact Information 87

1. About this Publication

This Guide gives an overview of the minimum requirements of the Pay Equity Act, R.S.O. 1990, c. P7 (as amended), as interpreted by the Pay Equity Office. The interpretations are drawn from our own experiences and by applying the key rulings of the Pay Equity Hearings Tribunal and the courts. The Guide is designed primarily to help employers understand their obligations under the Pay Equity Act and is current to the date of publication.

The text contains examples that show how an employer might comply with the Pay Equity Act and provides examples to illustrate ways to approach compensation issues; however, it does not suggest a specific solution for any particular organization. Many of the requirements can be met in a variety of ways. For educational materials and resources on "how to" implement pay equity, and for information updates, please contact the Pay Equity Office.

The information contained in this Guide does not replace the legal authority of the Pay Equity Act. It does not bind the Pay Equity Hearings Tribunal. An official version of the Pay Equity Act is available on the Province of Ontario's E-Laws database of statutes and regulations website.

NOTE: The proxy provisions of the Pay Equity Act (Part III.2) are not included in Ontario's e-laws because the government has not amended the law to re-introduce the sections that were repealed by the legislature but subsequently restored by an Ontario Court ruling Service Employees International Union, Local 204 v. Ontario (Attorney General), 1997 CanLII 12286 (ON SC). The Pay Equity Office is obligated to enforce the proxy provisions due to the court ruling. The proxy method of pay equity is only available to those employers in the public sector that had employees on July 1, 1993, and that are specifically described in the Appendix to the Pay Equity Act.

Within this Guide, the Pay Equity Act is referred to in short form as the "Act" and sections of the Act quoted or referred to throughout the text are found [in square brackets]. The Pay Equity Commission is referred to in short form as "the Commission", the Pay Equity Office as "the Office" and the Pay Equity Hearings Tribunal as "the Tribunal". Tribunal and court cases are linked where possible.

2. Overview

2.1 What is Pay Equity?

Pay Equity is “equal pay for work of equal value”. Pay equity has been recognized as a fundamental human right for many decades at the international level. In 1951, the United Nation's International Labour Organization (ILO) adopted Convention No. 100, Convention Concerning the Equal Remuneration for Men and Women for Work of Equal Value. Since then, the Canadian government has enacted various forms of legislation and statutory mechanisms in the area of labour standards or human rights to address the problem of wage discrimination. In 1972, as part of the response to the Royal Commission on the Status of Women, Canada ratified the ILO’s Convention No. 100. Since the 1980s, almost all Canadian jurisdictions have dealt with pay equity in some manner using legislation or non-legislative approaches. Learn more about pay equity in various Canadian jurisdictions.

2.2 Why does Ontario need Pay Equity?

The gender wage gap is the difference in earnings between men and women. While progress has been made over the years on closing the gender wage gap, on average, women still do not earn as much as men.

Many factors contribute to the gender wage gap including differences between men and women in education levels, work experience, hours worked, unionization, and family and home responsibilities, as well as systemic discrimination. Pay equity recognizes that historically, women and men have tended to do different kinds of work. Work that has traditionally been performed by women has generally been undervalued and hence underpaid. The aim of pay equity is to close the part of the wage gap that is due to systemic gender discrimination in employer pay practices.

There are other forms of workplace gender discrimination, such as discriminatory hiring and promotion practices however these forms of discrimination are outside the jurisdiction of the Office. Other laws, such as the Employment Standards Act, 2000 and the Ontario Human Rights Code may offer remedies for other forms of workplace discrimination.

2.3 What is the Ontario Pay Equity Act?

In 1987, the Ontario government passed the Pay Equity Act. The Act describes the minimum requirements for ensuring that an employer’s compensation practices provide pay equity for all employees in female job classes. The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes [4. (1)].[1]

2.4 What is the Pay Equity Commission?

The Pay Equity Commission (the Commission) is made up of two separate and independent bodies:

- The Pay Equity Office (the Office) is the regulatory agency that is

[1] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 4(1).

responsible for the enforcement of the Act.

- The Pay Equity Hearings Tribunal (the Tribunal) is the quasi-judicial body that is responsible for adjudicating disputes arising from the enforcement of the Act.

The Commissioner is the head of the Commission and the Chief Administrative Officer of the Office, appointed by the Lieutenant-Governor in Council.

2.5 What is Pay Equity about?

Pay equity requires employers to identify and correct the gender discrimination that may be present in their pay practices and to adjust the wages of employees in female job classes so that they are equal to the wages of employees in male job classes found to be comparable in value based on skill, effort, responsibility and working conditions. According to the Act, all employees – both men and women – in undervalued female job classes would receive pay equity wage adjustments.[2]

2.6 What is Pay Equity NOT about?

- Evaluating individual employees or their performance on the job
- Internal equity or fairness in pay among all job classes and individual employees
- Comparisons between two different female job classes (for example, receptionist and secretary) or two different male job classes (for example, mechanic and welder)
- Comparisons of female and male job classes between different employers
- Setting wages according to market rates of pay
- Women and men in male job classes or gender neutral job classes (these individuals have no entitlement under the Act)
- "Equal pay for equal (same) work" which means that if a man and a woman are doing substantially the same work, for example, a sales job in a department store, they must receive the same pay. Equal pay for equal work falls under Ontario's Employment Standards Act, 2000.

2.7 What is the structure of the Pay Equity Act?

Part I of the Act applies to ALL employers covered by the Act and sets out the fundamental principles and general, ongoing obligations.[3] This first part prescribes the minimum requirements to establish, achieve and maintain compensation practices that provide for pay equity.[4] It covers the purpose of pay equity, when pay equity is achieved, definitions of terms, exceptions where differences in compensation between male and female job classes are permitted, prohibition against reducing compensation to achieve pay equity, and prohibition

[2] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 4(2), 6(1).
[3] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 3, 5, 7.
[4] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 5, 5.1, 6, 7, 7.1.

against intimidation of employees exercising their rights to pay equity.[5]

Part II of the Act, labelled "Implementation," contains specific provisions and deadlines for larger and public sector employers in existence when the Act came into effect. Part II of the Act applies only to:

- Public sector employers who were in existence on January 1, 1988, or came into existence by July 1, 1993, and
- Private sector employers who employed 100 or more employees on January 1, 1988, and;
- Private sector employers who employed 10 to 99 employees on January 1, 1988, and chose to post a plan by December 31, 1993.[6]

Part II employers are required to follow a mechanism for preparing, posting and amending pay equity plans within specific time frames for implementation.[7] Part II also outlines different processes that these employers adopt, depending on whether or not their employees were represented by bargaining agents on the relevant date.[8]

Part III was repealed on January 1, 1997 and reinstated by the Ontario Divisional Court on September 5, 1997.

Part III.1 of the Act describes the proportional value method of comparison.[9] Part III.2 describes the proxy method for those public sector employers specifically described in the Appendix to the Act that had employees on July 1, 1993 and could not achieve pay equity for their female job classes using job-to-job or proportional value methods of comparison.[10]

Part IV explains enforcement, complaints and investigations.[11]

Part V outlines governance issues including the structure, jurisdiction of the Commission, the Office, the Tribunal and sets out the powers of Review Officers.[12]

Part VI contains Regulations, Schedule and the Appendix that describes public sector employers.[13]

2.8 Q&As General Pay Equity

Q1: Is pay equity the same as equal pay for equal work?

A1: No. Equal pay compares pay for workers in the same job; pay equity compares the pay for jobs usually done by women (for example, clerical, social work, nursing or cosmetologist) in an establishment with the pay for different jobs usually done by men (for example, construction, truck driving, engineer or technician) in the same establishment.[14]

---

[5] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1, 2, 4, 5, 5.1, 6, 7, 7.1, 9

[6] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10.

[7] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 12, 13.

[8] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13(7.2), 14, 14.1.

[9] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.2, 21.3.

[10] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.1, 21.11.

[11] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 22, 23, 24.

[12] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 27, 28, 29, 33, 34.

[13] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 36, schedule.

[14] *Pay Equity Act,* R. S. O. 1990, c. P. 7, ss. 4(2), 5(1), 5.1(1), 6.

Q2: Is the government dictating to employers how to pay their workers?

A2: No. Employers determine rates of pay and benefits for their employees. The Act requires that employers assess their pay and benefits practices to ensure that female job classes are not underpaid compared to male job classes of equal or comparable value in the same organization.[15] Employers that are subject to the Act are required to value and compare female job classes to male job classes in their workplaces using the factors set out in the Act, and to pay female job classes at least the same as a male job class of equal or comparable value, based on the results of the job comparisons.[16] This may require modifications to existing compensation systems or practices.

Q3: Can pay equity resolve internal wage inequity?

A3: Sometimes. As employers conduct pay equity job comparisons, they discover illogical pay patterns or internal wage inequities in their organization. If they wish, employers may choose to establish internal wage equity among all of their jobs, but the Act does not require them to do so. The Office does not have jurisdiction to correct all wage issues. The Act only requires that female job classes be paid at least the same as male job classes of equal or comparable value.[17]

Q4: An employee in a male job class complains that he is paid less than a co-worker in a female job class. Is this a pay equity issue?

A4: No. The purpose of the Act is to correct systemic discrimination in compensation for female job classes.[18] The Act does not require that male or gender neutral job classes that are paid less than other similarly-valued job classes receive a wage increase. If the employee is in a male or gender neutral job class, there is no remedy for that individual under the Act.

Q5: An employee in a female job class is paid less than a co-worker in another female job class. Is the employer required to compare these two jobs?

A5: No. Pay equity requires employers to value job classes and to make comparisons between female and male job classes of equal or comparable value.[19] For example, the Act does not require an employer to compare the job rate of a cafeteria cashier with a housekeeper if both are female job classes.

Q6: If cleaners are earning an average of $15.00 per hour in a region, can an employer in the area claim that pay equity has been achieved if he pays his cleaners this rate?

A6: No. Relying on market pricing will not excuse an employer from examining its pay practices as required by the Act. An employer also cannot rely on external labour market information for valuing and comparing job classes and rates. For pay equity purposes, the employer is required to evaluate job classes and compare the

[15] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 7, 12, 13.
[16] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 6, 7, 12, 13.
[17] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 6, 7.
[18] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 4, 5.1.
[19] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 6, 12.

job rates of similarly valued male and female job classes within the establishment.[20]

Q7: A female employee who has just been hired is paid at the bottom of the grid at $20 per hour. A male employee in the comparable male job class who has worked in the company for six years is paid at the top of the salary grid at $26 per hour. Is this a pay equity issue?

A7: Unlikely. If a company has a formal seniority system where employees are paid based on their length of service, an employee who is just starting with the company will be paid less than those with more seniority.[21] Based on this example, as the female employee's seniority increases, she should expect to move up the salary grid at the rate of $1 per hour more each year until she too earns the maximum job rate in six years, unless there are other non-pay equity issues.

Q8: An employer pays a year-end bonus to the salesperson with the highest sales each month. Is this a pay equity issue?

A8: Unlikely. If it can be shown that the bonus is equally accessible to both, is awarded as a measure of merit for outstanding performance in sales and the bonus is not given on a regular or rotating basis, this is not likely a pay equity issue.[22]

3. Guiding Principles for Interpreting the Pay Equity Act

The following principles underlie the Pay Equity Office's interpretation of the Act. The principles have emerged from an understanding of the law and cases that have been heard by the Tribunal and the courts. Employers should consider how these principles apply to their situation and ensure that what they do to implement and achieve pay equity, is consistent with the intent and structure of the Act.

1. **Pay equity is both a fundamental human right and a regulatory labour standard.** As such, it blends aspects of compensation practices, employment law, labour relations and human rights.
2. **Pay equity in Ontario is a self-managed process.** The Act imposes an obligation on every employer to take specific steps to ensure that pay equity exists in their workplace.[23] Employers are responsible for implementing pay equity regardless of whether or not they believe that they have fair compensation or non-discriminatory practices and regardless of whether or not a complaint has been made.
3. **Pay equity is focused on gender neutrality.** The main purpose of the Act is to require employers to compare work in a gender neutral way so that the work done in female-dominated job classes is made as visible as the work done

[20] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1, 2, 6, 12.
[21] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(a).
[22] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(c).
[23] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 7, 13.

in male-dominated job classes and is compensated accordingly.[24]

4. **Pay equity allows for considerable flexibility**. Some of the requirements of the Act are specific and precisely defined and employers must comply strictly with these exact terms. Other requirements are not specifically or precisely defined which means that there is more than one way for employers to meet the requirement. Where the provisions of the Act are not precise, employers are compliant with the law as long as they make choices that are applied consistently and fall within a reasonable range of outcomes that meet the purpose of the Act.

   The Tribunal has established the standard of review to be used in determining whether there has been a contravention of the Act. Following Tribunal rulings, Review Officers use correctness as the appropriate standard when determining whether the pay equity result contravenes a precise provision of the Act, and reasonableness as the appropriate standard when deciding whether the result contravenes a provision that is not capable of exact application, but implies a range of outcomes or an exercise of discretion Group of Employees v. Parry Sound District General Hospital, 1996 CanLII 8067 (ON PEHT), Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CANLII 7947 (ON PEHT), and Group of Employees v. Parry Sound District General Hospital, 1995 CANLII 7205 (ON PEHT).

5. **Pay equity and collective bargaining.** Employers and unions are continuously involved in negotiations around compensation that may or may not have pay equity consequences. The Act prohibits employers or bargaining agents to bargain for, or agree to, compensation practices that, if adopted, would cause a contravention of the general requirement to provide for pay equity.[25]

6. **Gender-based inequalities are addressed within a single organization.** Pay equity is not intended to change market or business sector compensation practices.

7. **The Act prescribes minimal and carefully selected requirements** that target points in the process where **bias can be perpetuated.**

8. **Public education and information are essential** to changing social values, and therefore warrants being enshrined in legislation.

9. Legislation will be more effective if workplace parties can **resolve disagreements on their own**

[24] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7, 12, 13.

[25] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 7(2), 14.

before accessing assistance. Therefore, the legislation encourages local resolution of issues before submitting a Request for Review Services with the Pay Equity Office (aka "complaint").

10. Continuing in the same vein, the Act is a **hybrid of proactive and complaint-driven mechanisms.** The Act is proactive because is places primary responsibility on the employer to ensure compliance, and is complaint-driven because it provides for a complaint mechanism so that parties can access assistance from the Pay Equity Office when local solutions are not possible.

4. Summary of Requirements

4.1 Which employers must comply with the Pay Equity Act?

The Act covers all employers in Ontario except for private sector employers with fewer than ten employees.[26]

The minimum requirements set out in Part I of the Act apply to all employers.[27] The provisions in Part II apply only to certain employers that were in existence when the Act came into effect to provide them with a timeframe within which to implement pay equity in unionized and non-unionized environments.[28]

4.2 Part I: Requirement for ALL employers to ACHIEVE pay equity

Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer [7. (1)].[29]

No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1) [7. (2)].[30]

For the purposes of this Act, pay equity is achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under the job-to-job method of comparison or the proportional value method of comparison or, in the case of an employer to whom Part III.2 applies, the proxy method of comparison, and any adjustment to the job rate of each female class that is indicated by the comparison has been made [5.1 (1)].[31]

To meet the minimum requirements and to show that pay equity has been achieved, all employers covered by the Act MUST have carried out each of these activities for each of their establishments:

1. Determine job classes, including the gender and job rate of job classes.[32]
2. Determine the value of job classes based on factors of skill,

[26] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
[27] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).
[28] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10.
[29] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).
[30] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(2).
[31] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.1.
[32] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 5.1, 6(9), 13(3).

effort, responsibility and working conditions.[33]

3. Conduct comparisons for all female job classes using job-to-job, proportional value or proxy method (proxy is for public sector only and of limited application).[34]
4. Adjust the wages of underpaid female job classes so that they are paid at least as much as an equal or comparable male job class or classes.[35]

4.3 Q&As Achieving Pay Equity

Q1: All of the employees of a fast food company are paid minimum wage. Does pay equity apply to this business?

A1: Yes. All private sector employers with ten or more employees are required to comply with the Act.[36] At a minimum, employers must analyze their job classes and make the necessary pay equity job comparisons.[37] If the female job classes and similarly valued male job classes in an organization are all paid minimum wage, this is a situation where no pay equity gaps exist and thus, there will be no requirement to adjust wages. It may be advisable however for all employers to set up their pay equity process so that as new job classes emerge the employer has a mechanism in place to ensure ongoing compliance.

Q2: If an organization does not have any male job classes, can pay equity be done?

A2: No. If a private sector employer with ten or more employees has only female job classes or only male job classes, pay equity cannot be achieved because no comparisons between male and female job classes are possible. However, as soon as either a female or male job class is created, this employer would be required to achieve pay equity.[38]

4.4 Part I: Requirement for ALL employers to MAINTAIN pay equity

Once pay equity is achieved, all employers subject to the Act are required to maintain pay equity for the employees in female dominated job classes.[39] However, the Act does not stipulate specific procedures or schedules to follow for maintaining pay equity. The purpose of maintaining pay equity is to ensure that pay equity gaps that were closed are not re-opened or widened as a result of changes to job values and job rates and that new gaps are not created.

Maintaining pay equity is an ongoing process whereby employers must review job classes for changes in job rate, job value, duties and responsibilities as positions are added or eliminated. In a unionized environment, employers and unions are prohibited from agreeing to terms that, if implemented, would mean

[33] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5(1).
[34] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 5.1, 6, 21.2, 21.3
[35] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 9(3), 13.
[36] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
[37] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.1.
[38] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
[39] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).

that the minimum requirements of the Act are not met.[40]

4.5 Part II: Specific requirements only applicable for employers subject to Part II of the Pay Equity Act

Part II of the Act sets out specific requirements that only apply to certain large private sector and public sector employers that existed on January 1, 1988. The legislature understood that employers had existing compensation practices, some of which had been negotiated with their bargaining agents. In order to achieve pay equity in existing workplaces, the Act laid out a process to be implemented by existing employers, or existing employers and their bargaining agents, within specified time frames.

i. Who are "Part II employers"?

- Private sector employers that had 100 or more employees on January 1, 1988.[41]
- Private sector employers, employing 10 to 99 employees on January 1, 1988 and chose to post a pay equity plan no later than December 31, 1993.[42]
- Public sector employers that had employees on January 1, 1988.[43]
- Public sector employers that did not have employees on January 1, 1988 but that had employees on July 1, 1993.[44]

ii. What are the Part II requirements?

Employers subject to Part II of the Act must:

- compare job classes using a gender-neutral comparisons system if both male and female job classes exist [12];[45]
- prepare and post pay equity plan(s) according to the requirements outlined in [13];[46]
- negotiate all aspects of the pay equity plan with their existing unions in establishments with bargaining agents [14];[47]
- follow the process for accessing the Commission to resolve impasses in the negotiation process prior to the deemed approval of pay equity plans [16, 17];[48]
- follow the process for amending a pay equity plan in situations where changed circumstances in the organization cause the initial plan to no longer be appropriate [14.1, 14.2];[49]
- ensure that pay equity obligations are met when there is a "Sale of Business", including following the

[40] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(2).
[41] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10(a).
[42] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10(b).
[43] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10(c).
[44] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10(d).
[45] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 12.
[46] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13.
[47] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14.
[48] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 16, 17
[49] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 14.1, 14.2.

process for developing a new plan if necessary [13.1];[50]

- spend a minimum of 1% of the previous year's payroll for pay equity adjustments until pay equity is achieved within the timelines set by the Act [13. (4) – (6)];[51] and,
- meet the original compliance deadlines for implementing pay equity.

NOTE: This may require the payment of pay equity related wages that are owed retroactive to the date when first adjustments were due or when pay equity should have been implemented or achieved [13. (2) (e)].[52]

4.6 Counting employees to determine applicable requirements

Employers need to count the number of employees in order to determine whether the Act applies to them. Employers in existence on the effective date of the Act also need to count employees to determine whether Part II of the Act applies.[53]

An employer must count ALL its full-time and part-time employees except for students employed for their vacation period. (See Who is an employee?).

i. What happens if the number of employees changes?

Private sector employers with ten or more employees must comply with the Act.[54] Once a private sector employer employs ten employees, that employer remains subject to the Act even if there are fewer than ten employees in the future.[55]

ii. How does the employer count the number of employees?

The actual number of persons employed, as opposed to full-time equivalents, must be counted.[56]

Employers that existed when the Pay Equity Act came into effect must count number of employees in 1987

For private sector employers that existed on January 1, 1988, the number of employees is the average number of employees employed from January 1 to December 31, 1987 [1. (4)].[57] The method used to calculate the average must be reasonable and provide a fair representation of the actual number of employees that takes into account employment fluctuations throughout the year. For these employers, the number of employees during 1987 determines whether they are subject to Part II requirements and their deadlines for posting plans and first adjustments.

[50] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13.1
[51] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(4-6)
[52] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(2)(e).
[53] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
[54] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
[55] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3(2).
[56] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
[57] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(4)

5. What are the Compliance Deadlines?

5.1 What are the deadlines for meeting the requirements of the Pay Equity Act?

An employer's compliance deadline depends on whether the establishment is in the public or private sector, when it came into existence and the number of employees it had on January 1, **1988 (when the Act became effective) or July 1, 1993 (when the Act was amended).58**

i. Deadlines for employers not subject to Part II requirements

6. All new public sector employers that started their organization after January 1, 1988, must achieve pay equity immediately upon start-up.[59]
    - Please note this does not apply to those public sector employers who are covered by the proxy provisions of the Pay Equity Act (Part III.2). (See Proxy Comparison Method).
7. All private sector employers with fewer than 10 employees in existence on January 1, 1988 and all new private sector employers that started business after January 1, 1988, must achieve pay equity on the day they hire or hired their tenth employee (Table 1).[60]

Smaller private sector employers who had between 10 and 99 employees on January 1, 1988, and who chose not to post a pay equity plan by December 31, 1993, must **achieve** pay equity according to deadlines that depend on their size and method of implementing pay equity (Table 2).[61]

Table 1: New employers established after the Act came into effect or July 1, 1993, and existing private sector employers with fewer than 10 employees

Employer	Number of Employees	Achievement Date
New public sector employer established after January 1, 1988	N/A	Immediately upon start up
New private sector employer established after January 1, 1988	10 or more employees	Immediately upon start up
New private sector employer established after January 1, 1988	Fewer than 10 employees	Day when 10th employee is hired
Private sector employer existing as of January 1, 1988	Fewer than 10 employees	Day when 10th employee is hired

58 *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 10, 12.
59 *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 10, 11.
60 *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3.
61 *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 10, 11.

Table 2: Achievement dates for smaller private sector employers who were NOT required and chose NOT to post pay equity plans

Employer	Method of Comparison	Achievement Date
Private sector with 50 to 99 employees in 1987 who did NOT post a pay equity plan	Job-to-job	January 1, 1993
Private sector with 50 to 99 employees in 1987 who did NOT post a pay equity plan	Proportional value	July 1, 1993
Private sector with 10 to 49 employees in 1987 who did NOT post a pay equity plan	Job-to-job	January 1, 1994
Private sector with 10 to 49 employees in 1987 who did NOT post a pay equity plan	Proportional value	January 1, 1994

iii. Deadlines for Part II Employers

For private sector employers that had employees on January 1, 1988 and public sector employers with employees on either January 1, 1988 or July 1, 1993, the deadlines for complying with Part II requirements for posting pay equity plans and making adjustments are based on how many employees the private sector employer had, whether the private sector employer chose to post a plan by December 31, 1993, and the comparison method used by either a private or public sector employer to achieve pay equity (Tables 3 and 4).[62]

Table 3: Deadlines for posting pay equity plans and first adjustment dates for public sector employers

Employer	Method of Comparison	Posting of Pay Equity Plans	First Adjustment Date	Posting of Amended Pay Equity Plans
Public sector with employees in 1987	Job-to-job	January 1, 1990	January 1, 1990	N/A
Public sector with employees in 1987	Proportional value	January 1, 1994	January 1, 1993	January 1, 1994

NOTE: The achievement date for public sector employers in Table 3 is January 1, 1998.

[62] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.10.

Table 4: Deadlines for posting pay equity plans and first adjustment dates for private sector employers

Employer	Method of Comparison	Posting of Pay Equity Plans	First Adjustment Date	Posting of Amended Pay Equity Plans
Private sector with 500 or more employees in 1987	Job-to-job	January 1, 1990	January 1, 1991	N/A
Private sector with 500 or more employees in 1987	Proportional value	N/A	January 1, 1993	January 1, 1994
Private sector with 100 to 499 employees in 1987	Job-to-job	January 1, 1991	January 1, 1992	N/A
Private sector with 100 to 499 employees in 1987	Proportional value	N/A	January 1, 1993	January 1, 1994
Private sector with 50-99 employees in 1987 who choose to post a pay equity plan	Job-to-job	January 1, 1992	January 1, 1993	N/A
Private sector with 50-99 employees in 1987 who choose to post a pay equity plan	Proportional value	N/A	January 1, 1993	January 1, 1994
Private sector with 10-49 employees in 1987 who choose to post a pay equity plan	Job-to-job	January 1, 1993	January 1, 1994	N/A
Private sector with 10-49 employees in 1987 who choose to post a pay equity plan	Proportional Value	N/A	January 1, 1994	January 1, 1994

NOTE: There is no achievement date for private sector employers in Table 4. They are all required to spend at least 1 per cent of previous year's payroll on pay equity adjustments until pay equity is achieved.[63]

[63] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(4-6).

5.2 What if an employer did not implement or achieve pay equity by the deadline?

Employers who did not implement pay equity according to their deadlines have to conduct pay equity job evaluations and comparisons as if these tasks were completed on time, and if necessary, make payments retroactive to the applicable deadline. Review Officers have the authority to order interest on retroactive payments.[64] Part II employers who did not achieve pay equity according to the applicable deadline are not now able to take advantage of the minimum 1 per cent of payroll to pay adjustments over time.

5.3 When are retroactive payments due?

If an employer owes retroactive payments resulting from a pay equity plan or process that was implemented after the applicable deadline, these payments are now overdue and must be paid immediately.[65] Retroactive payments should be calculated as if they were paid on time and are cumulative. Review Officers have the authority to order interest on retroactive payments.[66]

5.4 What are retroactivity dates for overdue pay equity adjustments?

If an employer did not implement or achieve pay equity by their compliance deadline the employer's liability for pay equity is retroactive to the date when pay equity should have been implemented or achieved in the establishment.[67]

i. Retroactivity dates for employers not subject to Part II requirements

- The retroactivity date for private sector employers with fewer than 10 employees in existence as of January 1, 1988 and private sector employers that started their company after January 1, 1988 is the day they hired their tenth employee.[68]
- The retroactivity date for public sector employers established after July 1, 1993 is the day the organization started.[69]
- For private sector employers that had between 10 and 99 employees on January 1, 1988 and who were not required and chose not to post a pay equity plan, adjustments were due from their mandatory achievement date (Table 2).[70]

ii. Retroactivity dates for Part II employers

- For private sector employers that had employees on January 1, 1988 and who were required to post a pay equity plan or chose to do so, adjustments were due from the first adjustment date according to the

[64] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16.
[65] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 25(2)(e)-25(6).
[66] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16.
[67] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13(2)(e), 16(6), 17(3).
[68] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 3.
[69] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.1, 21.10(1)(b).
[70] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 10.

number of employees [13. (2) (e)] (Table 3).[71]

- Those employers who applied the proportional value comparison method to those female job classes that could not achieve pay equity by the job-to-job method of comparison were required to make the payments retroactive to the first adjustment date [21.10 (1) – (2.1)] (Table 3).[72]
- Public sector employers with employees on January 1, 1988 or July 1, 1993 that used either the job-to-job or proportional value comparison methods must have fully achieved pay equity by January 1, 1998.[73]
- Public sector employers with employees on July 1, 1993 that have been using the proxy method of comparison should have posted their pay equity plans by January 1, 1994.
- Proxy adjustments were to begin January 1, 1994 and continue every year until pay equity is achieved.

5.5 Q&As Meeting Pay Equity Obligations Retroactively

Q1: Can pay equity be deferred if a business is in financially difficult times?

A1: No. All employers covered by the Act must achieve and maintain pay equity regardless of financial hardship or any other difficulty.[74] There is no defence for non-compliance: employers cannot say, for example, that they were not aware of their obligations or that they did not have the money for pay equity adjustments. Employers who do not implement pay equity are liable for making pay equity payments that they owe to all current and past employees for the period they were originally due.[75] In some cases, retroactive payments can grow to substantial amounts. Review Officers have the authority to order interest on retroactive payments.

Q2: Are employers required to implement pay equity retroactively since the jobs have changed and the comparisons today will not be applicable?

A2: Yes. Employers who did not implement and achieve pay equity according to the original deadlines are required to do so now as if they had implemented pay equity when they were expected to have done it.[76] In order to understand their obligations, the employer would have to determine the number of employees they had in 1987 and whether they were subject to the Part II requirement to develop and post a pay equity plan.[77] They would define the female and male job classes they had at the time of implementation.[78] If these jobs were different than the current ones, or there were changes since the time of implementation, the employer will have to find and use job information and job rates

[71] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(2)(e).
[72] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.10.
[73] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 11, 21.10
[74] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7.
[75] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 25(5).
[76] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 16(6), 17(3).
[77] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 3, 10.
[78] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 12.

from those points in time to value and compare the job classes.[79]

Q3: Are former employees entitled to retroactive adjustments?

A3: Yes. Employees who have left the establishment do not lose their entitlement to pay equity. Former employees are entitled to retroactive adjustments relating to the time they were employed in the position, pro-rated to the time they left the company. An employer is expected to make a reasonable effort to contact former employees to inform them about the outcomes of pay equity and to pay them any outstanding payments. Search strategies may include posting newspaper advertisements or notices through professional associations, or Internet searches, sending notification to employees at their last known address by regular mail, or reaching them by telephone, fax, or e-mail. Employers are advised to document their search efforts.

Q4: A private sector employer had 60 employees in 1987. By 2009, this employer had not done pay equity. Does the employer need to post a pay equity plan?

A4: No. This employer was never required to post a pay equity plan. Posting a pay equity plan is only required for employers in the private sector who had 100 or more employees on January 1, 1988, and public sector employers that had employees on January 1, 1988, or July 1, 1993, (Part II employers).[80] However, the employer in this example must still implement and achieve pay equity.[81] This means that the employer is required to demonstrate that male and female job classes in the establishment were identified and valued, that comparisons of female and male job classes were made using the job-to-job or proportional value methods and the job rates of female job classes were adjusted, if found to be less than the job rates of comparable male job classes.[82] In addition, the adjustments would be owed retroactively to the date when pay equity was to have been achieved in this workplace.[83]

6. Definitions

6.1 Who is in the public sector? Who is in the private sector?

The public sector includes the Ontario government, as well as municipalities, hospitals, universities and colleges, school boards, and corporations established by these entities. It also includes organizations subject to government licensing, such as daycare or childcare agencies licensed under the Day Nurseries Act, nursing homes licensed under the Nursing Act, legal aid clinics established under the Legal Aid Services Act, child welfare services, long-term care facilities, Native friendship centres, community health services, residential care facilities, developmental and rehabilitation services, and sexual assault centres. Generally, public sector organizations are established

[79] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 14.1, 14.2.
[80] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s, 10(a)-(b).
[81] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 3, 11.
[82] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6.
[83] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 16(6), 17(3).

and/or governed by legislation. For a comprehensive listing of public sector organizations, refer to the listing in the Appendix in the Schedule to the Act.[84]

The private sector means all employers who are not in the public sector.[85] Thus, the Act also applies to non-profits.

6.2 Who is an employer?

In most situations, the identity of the employer responsible for pay equity will be clear. In situations where it is not clear, determining the employer for pay equity purposes will depend on the facts and circumstances of the business structure and/or employment relationships. The Tribunal devised four tests that, when applied, determine who is the employer for pay equity purposes Ontario Nurses Association v. Haldimand-Norfolk (Regional Municipality) (No.3), 1989 CANLII 1454 (ON PEHT).

1. Who has overall financial responsibility?
2. Who has responsibility for compensation practices?
3. What is the nature of the business, service, or enterprise?
4. What is most consistent with achieving the purpose of the Pay Equity Act?

The first three tests are applied to identify who controls the work and, if still unclear, the fourth is applied Canadian Union of Public Employees, Local 1582 v. Metropolitan Toronto (Municipality), 1989 CanLII 1461 (ON PEHT).

For pay equity purposes, the employer controls the work, financial issues, employment or labour relationships and the organization's core activities. The employer is the decision-maker with the power and capacity to affect pay practices. See also Hilton Works v. MacDonald, 1993 CanLII 5419 (ON PEHT) and Thomson Newspapers Corporation v. Southern Ontario Newspaper Guild, 1993 CanLII 5427 (ON PEHT).

6.3 Q&As Employer

Q1: In a franchise, who is the employer for pay equity?

A1: In cases where the individual franchise owner controls hiring, firing and disciplining employees, setting wages and valuing jobs, the individual franchisee is likely to be the employer responsible for pay equity. In cases where the franchise is corporately owned and the corporation retains control and decision-making power over human resources and pay systems, then the corporation is likely to be the employer for pay equity.

Q2: A large general merchandise retailer with three divisions: department store, discount merchandise, and specialty superstore operate under different names. Is each division considered the employer for pay equity purposes or would they all fall under the same pay equity process?

A2: Internal divisions created by the corporate entity for operational, marketing or other purposes do not necessarily constitute separate employers for pay

[84] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1, Schedule, Appendix.

[85] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1.

equity. Unless the divisions have been structured so that the authority and accountability for determining pay and valuing work has been transferred to the individual divisions, generally the corporate entity remains the employer for pay equity purposes.

6.4 Who is an employee?

The Act does not provide a specific definition of “employee” except by the two exclusions; however the Tribunal has applied two tests from common law to decide employee status of individuals Wellington (County) v. Butler, 1999 CanLII 14830 (ON PEHT):

- The “total relationship test” examines the nature, structure and actual aspects of the employment relationship.
- The “organizational or integration test” examines whether or not the work is integral to the business.

In the absence of a specific definition, employers should interpret "employee" broadly for the purpose of pay equity.

i. Which employees are covered by the Pay Equity Act?

All employees including management, full-time, part-time, contract and seasonal workers are entitled to pay equity rights under the law. All employees covered under the Act are entitled to receive pay equity adjustments to achieve pay equity, or to make a complaint under the Act that pay equity was not achieved or maintained for their female job class, or to object to a pay equity plan in the case of non-unionized employees of Part II employers.

Part-time employees, who work at least one third of the normal work period, are covered by the Act. Part-time employees, who work on a regular and continuing basis, although for less than a third of the normal work period, are also covered.

Workers who are employed on a seasonal basis, in the same position, for the same employer are also covered Clow v. Peterborough (City), 1995 CanLII 7217 (ON PEHT).

ii. Are workers in non-standard employment relationships such as consultants, contract, or contingent workers covered by pay equity?

From time to time, employers hire contract, consultants or contingent workers for specific tasks or projects. These individuals may be self-employed for taxation purposes or paid on a contract basis. However, if an individual acts and works like an employee, he/she may well be treated as one under the law. For pay equity purposes, if these individuals fill ongoing positions in the business and their day-to-day work is largely controlled by the organization, they would be considered employees covered under the Act.

iii. Which employees are NOT covered by the Pay Equity Act?

The Act only specifies two groups that are not covered.

- First, [1. (1)] states: “employee” does not include a student

employed for his or her vacation period.[86]

- Second, under limited circumstances, it may be possible to exclude casual workers [8. (3) – (4)] from pay equity.[87]

iv. What is the definition of a "casual" position?

A position shall not be considered "casual" if [8. (4)]:

(a) The work is performed for at least one-third of the normal work period that applies to similar full-time work. "Similar full-time work" does not have to be in the same or similar job class to the casual position. It can be interpreted broadly to mean similar to other job classes in the same job family or category (e.g. clerical work).

(b) The work is performed on a seasonal basis in the same position for the same employer.

(c) The work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work. "Regular" implies that the work will be performed according to a pattern, for example every other Friday or three hours per week, with a shared expectation between the employer and employees as to that pattern. "Continuing" suggests the existence of the work over a reasonable period of time.[88]

The exclusion of casual positions applies only when the work performed is casual work. The definition of a position as casual does not depend on whether the individual employee(s) hired to do the work is/are employed on a casual basis. This means that regardless of the number of hours or sporadic schedule of any individual worker, if the job meets any one of criteria listed in (a), (b) or (c) above, the designation of casual would not be appropriate and the position would not be exempt from the Act General Health Services (Circle of Life Health Services) v. Toronto East General Hospital, 2003 CanLII 57507 (ON PEHT).

Examples of Casual Workers:

1. A general clerk is hired for a few days to complete a one-time project or an interviewer is hired for two months to conduct a one-time customer survey. These individuals would be considered in casual positions and exempt from pay equity.
2. An employee is scheduled to work every Monday throughout the year. This work is "regular and continuous". Therefore, the job is not casual and the position is not exempt under the Act.
3. An employer runs a ski resort and hires ski instructors for four months every winter. The

[86] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[87] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(3)-(4).
[88] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(4).

employer hires both new and returning employees as instructors. These employees are not considered casual and thus the position is not exempt under the Act because the work performed is seasonal and for the same employer.

6.5 Q&As Employees

Q1: If a company hires clerical assistants through a temporary staffing agency to process its backlog of orders, is this employer responsible for pay equity for these temp workers?

A1: No. If the employer is paying the agency for the service of providing a person to do some specific work, then the temporary agency workers would not likely be included in the employer's pay equity processes or plan. Generally, temp workers are the employees of the temp agency and covered by the temp agency's pay equity processes or plan.

Q2: If students work at an amusement park full-time from June to September and on every Friday evening and Saturday throughout the year are they excluded from pay equity?

A2: No. Students who work during their vacation period are not covered by the Act; however, students who work in addition to their vacation period on a regular basis should be considered part-time employees for purposes of pay equity.[89]

Q3: Are co-op students who do work as part of their university or college training program covered by the Pay Equity Act?

A3: Yes. If a co-op student works for remuneration during the school year, not just on their vacation period, and their work is controlled by what appears to be a typical employer/employee relationship, the student may be covered by the Act.[90]

Q4: Are family members or business owners considered employees by the Pay Equity Act?

A4: Depends. Regardless of whether an individual is a family member or business owner, the question of whether he/ she is considered an "employee" is a legal one for which criteria has been developed in decisions of courts and the Tribunal. Generally, if an individual performs work in an ongoing position in the business and their day-to-day work is largely controlled by the organization and he/she is paid in a similar manner as other employees, that individual would likely be considered an employee and covered under the Act. Employers are advised to define "employee" broadly for the purposes of pay equity.

7. Part I Requirements for Achieving Pay Equity

This section describes the activities that all employers must carry out to meet Part I requirements for implementing and achieving pay equity in their establishment.

When the Review Services Unit investigates a dispute over whether or not pay equity was achieved or maintained, Review Officers follow the standard of review set by the Tribunal. The Tribunal has recognized that certain provisions of Part I require exact application while other sections leave some discretion to the

[89] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

[90] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

parties implementing pay equity. Where the complaint is related to an exact requirement, the Review Officer will apply the standard of correctness to the decisions made by the employer. Where the complaint is related to an area where discretion may be exercised, the Review Officer will apply the standard of reasonableness when reviewing employers' decisions. Where the Act allows for discretion, a Review Officer will not interfere with decisions made by the employer as long as he/she determines that the decision falls within a reasonable range of outcomes that does not go against the purpose and intent of the Act.

7.1 Defining the Establishment

i. How does the Pay Equity Act define "establishment"?

"Establishment" means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15 [1. (1)].[91]

"Geographic division" means a geographic area prescribed under the Territorial Division Act, 2002 [1. (1)].[92]

ii. Why must an employer define the establishment?

The Act states that pay equity must be established and maintained in every establishment of the employer [7. (1)].[93]

Decisions concerning the definition of establishment will determine which female and male job classes will be compared for pay equity purposes.

iii. How does an employer go about defining the establishment?

There may be more than one way to define the establishment. At minimum, employers must define their establishment according to a county, territorial district or regional municipality.

All employees of an employer in a given geographic division must be included in the same establishment.

If an employer has more than one location in different geographic locations, the employer can choose to combine establishments from more than one geographic division. In addition, it is possible to combine establishments in the same geographic division in cases where "centralized bargaining" occurs. That is, two or more employers and the union representing the employees agree that for pay equity purposes, there will be one establishment [2. (1)].[94] Where this occurs, each employer is still responsible for implementing and maintaining pay equity with respect to its own employees.

By allowing employers to define their establishment according to geographic divisions and requiring pay equity to be implemented in the establishment, the Act does not interfere with an employer's ability to set wages and pay

[91] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[92] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[93] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7.
[94] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 2(1).

practices in different regions in response to local economic conditions.

Example of the Establishment:

If a company has a warehouse and offices that are all located in Ottawa, there is only one establishment. However, if the company also has a warehouse in Toronto, the employer could decide to have two establishments. This means that the employer would prepare two separate pay equity processes or plans, one for Ottawa employees and the other for Toronto employees. The employer could also decide to have only one establishment, in which case both Ottawa and Toronto employees would be included under the same pay equity process or plan.

7.2 Determining Job Classes

i. What is the significance of a job class?

"Job class" is a pay equity term that has specific meaning under the Act. An employer is required to identify job classes in the establishment upon which comparisons for pay equity must be done.[95]

ii. What is the definition of a job class?

"Job class" means those positions in an establishment that:

- have similar duties and responsibilities;
- require similar qualifications;
- are filled by similar recruiting procedures; and
- have the same compensation schedule, salary grade or range of salary rates [1. (1)].[96]

iii. How does an employer identify a job class in the establishment?

The positions in one job class must meet all four of the criteria in the definition of a job class. If one position differs from another on any one of the criteria, these two positions would be in two different job classes. Some job classes may include many positions occupied by many employees all performing similar duties and responsibilities with the same compensation. Other job classes may have only one position, occupied by a single incumbent [1. (6)].[97]

iv. How are the criteria applied to determine job classes?

It must be noted that the first three requirements use the word "similar" allowing for some discretion in applying the criteria. The fourth requirement uses the word "same"; this must be applied exactly in order to meet the criteria.[98]

To determine similar qualifications of the job class, employers should consider both the nature of the qualification (for example, special credentials or skills) and the level of the qualification (for example, a community-college diploma could be equivalent to

[95] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 6.
[96] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[97] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(6).
[98] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

a three-year apprenticeship in a trade). The qualifications of a job class should reflect those required to do the work and not be the qualifications of the employee who happens to be in the job, or a desired qualification that may be not really required.

To determine similar recruitment procedures of the job class, employers should consider the scope of search (i.e. local, provincial, national, international), method of recruitment (i.e. union hiring hall, college campus, internal, external, newspaper advertisement, search firm) and /or recruitment requirements (i.e. application, interview, tests).

All the positions in a job class must have the same compensation schedule, salary grade or range of salary rates; they must be paid the same AND have equal access to the same benefits.

v. Are people with disabilities in a separate job class?

The Act specifies that a position cannot be assigned to a job class different than that of other similar positions only because the needs of its incumbent have been accommodated to comply with the Human Rights Code.[99]

7.3 Q&As Job Class

Q1: A company hires full-time and part-time cleaners. Do these similar or identical positions fall under the same job class?

A1: Possibly. If full time and part time employees do similar work, they would belong to the same job class if they have the same compensation schedule, salary grade or range of salary rates, and meet the other three tests for job class outlined in the definition quoted above.[100] However, where both full- and part-time employees perform similar duties and responsibilities but the part-time cleaners are paid an hourly rate and the full-time ones are paid on salary, or the part-time cleaners do not have benefits but the full-time ones do, then the full- and part-time positions would be in separate job classes.

Q2: There are ten "Secretary" positions in a company. Do all the secretaries belong to the same job class?

A2: Not necessarily. Even if all the secretaries performed similar duties and responsibilities but one secretary is not paid the same as the rest, that secretary must belong in a separate job class according to the Act.[101] If there are secretary job classes that are similar to each other, these job classes can be grouped together using a "group of jobs" approach.[102]

vi. What is a "Group of Jobs"?

A group of jobs is a series of job classes that involve similar kinds of work performed at different levels of skill, effort, responsibility and working conditions [6. (10)].[103] The wages for each job class usually increase proportionately through the series. Typically, employees progress from one

[99] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(7).
[100] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[101] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[102] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(6).
[103] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(10).

job class to the next job class within the group.

Example of a "Group of Jobs"

A group of jobs all doing similar "secretarial" work might be:

- Clerk
- Senior Clerk
- Clerk Typist
- Intermediate Clerk Typist
- Senior Clerk Typist

If an employer chooses to use a group of jobs approach, job classes that are related to each other in some way are grouped together to maintain the positions of the job classes relative to each other. Deciding which job classes to group together in a group of jobs should be based on an assessment of the actual tasks and duties performed not just similar sounding job titles.[104]

The group of jobs approach enables employers to:

- reduce the number of female job classes to evaluate and compare; and
- maintain the relationship between the female job classes in the group of jobs, since the same pay equity result will be applied to the whole group.

The group of jobs approach is applied as follows:

1. The female job class with the greatest number of employees is selected as the representative job class for the group.
2. The selected pay equity comparison method is applied to the representative job class. (See Methods of Comparison).
3. The resulting pay equity adjustments, if any, are applied to all the positions in all the job classes in the group as though they were all one female job class.

7.4 Determining the Gender Predominance of Job Classes

To achieve pay equity, the Act requires that female job classes be valued and compared to male job classes. The employer must determine the gender of each job class as male or female before any comparisons can be done. Female job classes are jobs done usually by women, and male job classes are jobs usually done by men. It is possible to have job classes that are neither male nor female; these job classes are considered to be gender neutral.

i. What is the definition of female job class and male job class?

"Female job class" means,

(a) a job class in which 60 per cent or more of the members are female,

(b) a job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining

[104] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(6)-6(10).

agent, if any, for the employees of the employer, decides is a female job class [1. (1)].[105]

"Male job class" means,

(a) a job class in which 70 per cent or more of the members are male, or

(b) a job class that a Review Officer or the Hearings Tribunal decides is a male job class, or a job class that the employer, with the agreement of the bargaining agent if any, decides is a male job class [1. (1)].[106]

In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations [1. (5)].[107]

An employer may treat job classes that are arranged in a group of jobs as one female job class if 60% or more of the employees in the group are female [6. (6)].[108]

An employer shall treat job classes that are arranged in a group of jobs as one female job class if a review officer or the Hearings Tribunal decides that the group should be treated as one female job class [6. (7)].[109]

An employer may, with the agreement of the bargaining agent, if any, for the employees of the employer, decide to treat job classes that are arranged in a group of jobs as one female job class [6. (8)].[110]

ii. How is the gender predominance of the job class determined?

The Act requires employers to apply three criteria or tests to determine the gender of the job class [1. (1), 1. (5)]:[111]

1. Current incumbency
2. Historical incumbency
3. Gender stereotype of the field of work

iii. What does “current incumbency” mean?

Current incumbency is the percentage of female and male incumbents in the job class. Usually if a job class is filled by:

- 60 per cent or more female employees, it is a female job class[112]
- 70 per cent or more male employees, it is a male job class[113]

Employers must also consider historical incumbency and gender stereotype of the field of work.

[105] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[106] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[107] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(5).
[108] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(6).
[109] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(7).
[110] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(8).
[111] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1), 1(5).
[112] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[113] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

iv. What if a job class is neither male nor female after applying the three criteria?

A gender-neutral job is not involved in the pay equity process. It cannot be used as a comparator nor can the incumbents receive pay equity adjustments.

Examples of Gender Neutral Job Classes

1. The assembly line workers in a particular establishment where there are more or less equal numbers of women and men doing the job, and there is no gender stereotyping for the job may be a gender neutral job class for pay equity.
2. A gym provides a personal training service. To encourage both men and women members to buy this service the employer has always employed an equal number of male and female personal trainers. In this company, personal trainers are likely a gender neutral job class.
3. A new internet company has two social media writers, one is male and the other is female; both have been working since the company started. In this company, these writers would likely be in a gender neutral job class.
4. The credit and accounts manager of a major department store is a position that has been held by roughly an equal number of men and women over the years. For this employer, this job class may be considered gender neutral.

v. What does historical incumbency mean and how is it applied?

Historical incumbency refers to pattern of employment for a particular job class within an establishment.[114] For example, if the job class in question is one that has been filled mostly by women, and a man is recently hired, it may still be considered a female job class in that establishment.

Historical incumbency can only apply to situations where the job classes existed when pay equity requirements were imposed. Logically, if the employer is considered a new establishment, then the historical incumbency of job class would not apply because there would be no history of the job class in the establishment, unless the establishment was a successor employer who purchased and continued to operate a business.

To apply the historical incumbency criteria, the Tribunal determined in Pay Equity Office v. GL&V Process Equipment Group Inc., 1999 CanLII 14828 (ON PEHT) that the period used "must be one that fairly represents the incumbency of the job class over a period of time during which the job class characteristics…remained substantially the same." This means that changes in the number and percent of men and women from year to year

[114] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(5).

may not necessarily result in a change in the gender predominance of the job class.

vi. What does gender stereotype of the field of work mean and how is it applied?

Gender stereotype of field of work refers to what most people commonly believe to be jobs held by women and jobs held by men.[115] For example, nursing is generally and traditionally seen as a female job; a truck driver is generally and traditionally seen as a job performed by men.

Employers who are met with complaints about their decision regarding the gender of a particular job class may be asked to explain their decision during an investigation. In applying the criterion of gender stereotype of field of work, employers sometimes justify their decisions by relying on statistical data, reports or information such as the gender breakdown of occupational classifications from Statistics Canada, graduation rates by gender in professional programs or fields of study, or occupational data by gender from professional associations.

It is important however for employers to consider the actual job characteristics and duties of the job class in its own establishment and whether those characteristics and duties are associated with, or can be found in a typical female job or male job Association of Professional Student Services Personnel v. Toronto Catholic District School Board, 2006 CanLII 61262 (ON PEHT).

vii. Can a job class be classified as female in one company and male in another?

Yes. Pay equity is implemented and achieved in the employer's individual establishment; the focus of the pay equity process is not sector, industry, or province-wide.[116] Therefore, it is possible that the gender of the job class may be male in one company but female in another. For example, if the accountant position has always been occupied by women in one establishment and by men in another, the gender of the job class is female in the first case and male in the second.

In its overall structure, the Act requires pay equity to be achieved within the establishment.[117] As such, decisions made about the gender of a job class should reflect the reality of each individual workplace. However, generic jobs that are not restricted to any particular employer may be helpful to determine whether the position has a gender stereotype Hatts Off Specialized Services Inc. v. Employees of the Employer, 2005 CanLII 60098 (ON PEHT).

viii. How do the criteria apply to a single incumbent job class?

The Tribunal has raised a caution about the single incumbent job class especially where only one person has

[115] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(5).
[116] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 2, 5.1(1), 6(1).
[117] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 5.1(1), 6(1).

occupied the job for many years and has specified that some weight must be given to the gender stereotype of the field of work. In addition, the number of persons in the job class does not necessarily mean that the results of current and historical incumbency should be discounted, particularly if both criteria point to the same result.[118]

ix. How is the gender of a new job class determined?

The employer must apply the current incumbency and gender stereotype of the type of work for determining the gender predominance.[119] To decide the gender predominance of the job class, employers are expected to consider all relevant factors pertaining to work performed in the job in their workplace.

x. Employers must be reasonable in determining the gender of the job class

Under the Act, the gender predominance of a job class is an element where a range of options and possible choices is permitted. In the case of Pioneer Youth Services (PYS Associates Ltd.) v. Canadian National Federation of Independent Unions, 2002 CanLII 49449 (ON PEHT), the Tribunal has ruled that where there is a complaint that is founded in an employer's exercise of discretion, the decision the employer made will be acceptable if it was considered to be reasonable, given the specific circumstances in which the determination was made.

7.5 Gender Bias and the Need for Gender Neutrality

i. How does gender bias occur in the valuing of jobs?

Gender bias occurs when aspects of work typically done by women are assigned less value than they should and/or aspects of work typically done by men are given higher value by the employer. For example:

- Manual and repair skills for a mechanic or service personnel are recognized but dexterity skills of a typist or multi-tasking skills of a receptionist are not.
- The physical effort required for lifting heavy objects in a stocker job class is taken into account, but the moving of objects in the cashier job class is overlooked.
- Responsibility for spending authority and budgetary control is recognized, but responsibility for protecting confidentiality or handling customer complaints is not.
- Stress of working with noisy machinery is valued, but the stress of dealing with irate or aggressive customers is overlooked.

Gender bias can also occur if jobs or job evaluation factors are described differently, using different or value-laden terms for men's and women's jobs. For example, if both men and women in a workplace perform similar

[118] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(6).

[119] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 1(5).

supervisory roles, the men's job may be described as "managing" while the women's job may be labelled "coordinating", assigning different values based on the term used. Similarly, if men's jobs are described in greater detail than women's jobs, it might suggest that men's jobs are more significant. Finally, if aspects of the job are omitted, or inadequately described, they will not be included in the evaluation.[120]

Previously, compensation systems made women's work invisible. Originally, job evaluation was designed and applied in industrial and manufacturing workplaces and to managerial positions. When these systems were applied to all jobs within a workplace or used to assess jobs in the health, service and office sectors, few changes were made to the underlying assumptions on which the value of jobs was assessed. The skills, ability and experience of women in these jobs were not recognized, leading to an inaccurate valuation, resulting in lower wages paid Ontario Nurses' Association v. Regional Municipality of Haldimand-Norfolk, 1992 CanLII 4705 (ON PEHT).

ii. What makes the job comparison process gender neutral?

Employers must ensure that every component of the job comparison process is gender neutral. In the Haldimand-Norfolk case, the Tribunal stated that bias in one component means the system or tool as a whole is not gender neutral and must be eliminated. The Tribunal identified four components in the job comparison process:

1. The accurate collection of job class information.
2. The mechanism or tool to determine the value of job classes.
3. The application of the mechanism or tool to determine the value of the work.
4. The comparison of job classes.

7.6 Collecting Job Information

Employers can gather information through observation, interviews, questionnaires; they can review or develop job descriptions, or they can rely on their own knowledge of the jobs. Regardless of the data collection method used, it is the content of the job itself and not the performance of workers in the job that is relevant.

In the Haldimand-Norfolk case, the Tribunal expanded on how job class information should be collected, by asking:

1. What is the range of work performed in the establishment?
2. Does the system make work, particularly women's work, visible in the workplace?
3. Does the information being collected accurately capture the skill, effort and responsibility normally required in the work and the conditions under which

[120] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.

it is normally performed for both the female job classes in the plan and the male job classes to be used for comparison?

4. Is the information collected accurately and consistently?

7.7 Deciding on a Mechanism or Tool to Determine the Value of Job Classes

There are many ways to determine the value of job classes. The Act requires that whatever mechanism or tool is used, it must value skill, effort, responsibility and working conditions and the mechanism or tool must be applied consistently to all of the job classes.[121] For example, employers can use a simple ranking method, or classifications or grade descriptions that include the four required factors.

A more detailed and common approach is the "point factor method". This mechanism involves assigning points to sub-factors and adding them to provide a "score" for the job class. In this type of job evaluation, employers decide the specific number and weighting of sub-factors and levels that is suitable for their business. Whatever system is selected, the Act states that:

- The system must compare all relevant job classes based on the total value of skill, effort (mental and physical), responsibility and working conditions.[122]
- The system must be gender-neutral, not biased toward jobs done by either women or men. It also has to be able to capture aspects of work done by women that may have been overlooked and undervalued in the past.[123]

The Office has developed educational materials and online resources which may assist in determining the value of job classes.

7.8 Q&A Selecting a System to Value Jobs

Q1: Smaller companies often use informal approaches to set wages. Are these employers expected to do job evaluations and comparisons for pay equity?

A1: Yes. Employers are required to provide pay equity for their female job classes by valuing job classes and comparing female and male job classes on the basis of skill, effort, responsibility and working conditions, using consistently applied gender neutral criteria.[124]

The Tribunal established four tests to determine whether the valuation tool is gender neutral Ontario Nurses' Association v. Regional Municipality of Haldimand-Norfolk, 1992 CanLII 4705 (ON PEHT):

1. Can the tool determine the value of the work performed using the required factors of skill, effort, responsibility and working conditions?
2. Is the choice of sub-factors free of gender bias?

[121] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.
[122] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.
[123] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 4, 5.1, 6.
[124] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.

3. Are the levels or their equivalent, if used, free of gender bias?
4. Is the composite of skill, effort, responsibility and working conditions decided in such a way that it gives value to all four factors, and is the point weighting free of gender bias?

NOTE: A job evaluation system that is applied to male job classes such as construction workers or heavy labourers in a workplace must be capable of also valuing the work done in that workplace by the female job classes such as light cleaners or secretary. The system would have to recognize the working conditions of all of the job classes and then assign the appropriate value to that factor. If a job evaluation tool was developed with only men's jobs in mind, but was then used to value men's and women's jobs, the results would be gender biased because the tool would not be able to recognize and reward skills used to do traditional women's work.

The Office receives a number of complaints each year from employees who are dissatisfied with the results of their employer's evaluation of their jobs. The focus of the Act however is not on the evaluation of individual job classes as such; it is on whether job classes have been valued in a way that allows for comparisons to be made between female job classes and male job classes, using the four required factors.[125]

The Act recognizes that the evaluation and comparison process can result in different outcomes. Employers develop job evaluation processes themselves or with the assistance of compensation specialists. Employers also negotiate job evaluation processes with their unions either within a collective bargaining process or separately as part of an ongoing pay equity process. As long as the valuation process is reasonable, contains the four required factors and is consistently applied for both male and female job classes, the decision of the employer or the agreement between the employer and the union will be upheld.[126]

i. How are factors used and sub-factors chosen to value job classes?

Where the employer and /or union choose to further refine the evaluation process by dividing each of the four required factors into sub-factors, the sub-factors must measure the full range of duties and tasks of both male and female jobs and be applied consistently to both male and female jobs in the establishment.

ii. Is there a typical weighting of factors and sub-factors used by companies based on industry?

No. Employers decide the weighting of the four factors and sub-factors however, heavily weighting sub-factors that tend to favour male job classes may result in gender-biased job evaluations, which is not acceptable for pay equity.

[125] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.

[126] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 5, 6.

7.9 Determining the Value of Job Classes

i. How do employers assign value to job classes?

Once all job information is collected, and the job evaluation tool or mechanism has been selected and customized for the organization, employers then apply the chosen mechanism or tool to determine the value of job classes according to the factors and sub-factors.

The Tribunal used five tests for determining whether the tool or mechanism used to value the work was applied in a gender neutral way Ontario Nurses' Association v. Regional Municipality of Haldimand-Norfolk, 1992 CanLII 4705 (ON PEHT):

1. Is the valuing tool applied consistently without regard to the gender of the job class?
2. If a committee is used to evaluate job classes, is the committee balancing the interests of the parties with duties and obligations under the Act?
3. If a committee is part of the system, is it sufficiently knowledgeable to allow the parties to meet their obligations?
4. Is the decision-making done in a manner free of gender bias?
5. Does the mechanism identify systemic wage discrimination?

ii. What if an employee requires job accommodation as a result of a disability?

A lower value cannot be assigned to a job merely because an incumbent requires an accommodation under the Human Rights Code to perform the job tasks and duties [5. (2)].[127]

iii. Job evaluations for pay equity must be reasonable

The Tribunal has recognized that under the Act, the area of job evaluation which includes collecting job information, deciding what is significant, and evaluating that job content against the prescribed factors of skill, effort, responsibility and working conditions, is not precise. The Tribunal stated in Group of Employees v. Ontario (Management Board Secretariat), 1999 CanLII 14827 (ON PEHT):

> "If the parties have made a reasonable effort to accurately capture the job content, then the Tribunal will not inquire further. Therefore, if, on the face of the Application, it is clear that the system ignored one of the criteria, or failed to apply these criteria, or unreasonably excluded important job information related to any of the four criteria, then the Tribunal should proceed to hear the merits of the Application."

[127] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5(2).

There may be more than one way to choose sub-factors and/or weightings to value a job class. When investigating complaints about job evaluation for pay equity purposes, a Review Officer will determine whether the job evaluation method took into account the four required factors of skill, effort, responsibility and working conditions and whether the decisions made were reasonable. See also McNeil v. Kirkland Lake (Town), 2002 CanLII 49446 (ON PEHT).

7.10 Q&As Job Evaluations

Q1: Can job evaluations be based on job descriptions?

A1: Yes, however, job descriptions are not required to do pay equity. Employers, especially small ones, may know enough about the jobs to be able to conduct a responsible valuation and comparison for pay equity purposes. Employers may also use other ways to collect and assess information about the jobs such as use of interviews, questionnaires or job evaluation committees.

Q2: Do employers have to evaluate all the male job classes in the establishment?

A2: Employers need to evaluate as many male job classes as necessary to identify a male comparator for each female job class. If the employer was required to post a pay equity plan, all comparator male job classes must be listed in the plan.

7.11 Determining the Job Rate

"Job rate" means the highest rate of compensation for a job class [1. (1)].[128]

"Compensation" means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount [1. (1)].[129]

This definition must be applied exactly in order to meet a fundamental requirement of the Act. According to the Tribunal in Ontario Nurses' Association v. Lady Dunn General Hospital, 1991 CanLII 4451 (ON PEHT): "In order to achieve pay equity, the sum of all salaries or wages and benefits, if any, received by a female job class must be equal to the sum of all salaries or wages and benefits, if any, provided to its male comparator job class. The adjustment may be made to wages or salaries, to benefits, or to a combination of the two."

i. Are there guidelines for determining the job rate?

The Act defines the job rate as the total of wages or salaries and benefits, but it does not specify a particular way to calculate the job rate or a time measurement (annual, weekly, hourly) for wages, or any particular method for calculating benefits.[130] However, to compare compensation of job classes, it is necessary to express the job rates with one common measurement standard: York Region Board of Education v. York Region Women Teachers' Association, 1995 CanLII 7030 (ON PEHT). The more common

[128] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[129] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[130] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

measurement standard used is dollars per hour. The Tribunal has also set out three principles for determining the job rate Ontario Northland Transportation Commission v. Transportation Communications International Union, 1992 CanLII 4696 (ON PEHT):

1. The calculations must be as accurate as possible, based on realistic and fair compensation calculations.
2. The job rate should be calculated in a manner which is the least disruptive to the collective agreement and compensation practices of the parties.
3. All calculations must conform to the purpose and scheme of the Act.

ii. How is the job rate set?

Determining the job rate for a job class depends on the compensation system the employer uses. If an employer does not have a formal system in place for determining pay, the job rate is usually the maximum rate paid to any incumbent in the job class.[131] If there is only one rate of pay for the job class, that rate is the job rate. If the employer maintains a definite salary or wage range with a minimum and a maximum rate for some or all of their job classes, the maximum of the range is the job rate, provided that the rate is actually attainable (however, employees need not be at the maximum rate). Typically, the maximum is achieved based on length of service and/or merit.

iii. How do payments such as commissions, bonuses, incentive pay or tips affect the job rate?

Payments based on work performance or output must be included as part of the job rate, even where the calculation is difficult Group of Employees v. Windsor Casino Limited, 2007 CanLII 62083 (ON PEHT). Payments can include sales commissions, bonuses, tips and other kinds of incentive pay and may be paid in addition to a base wage or salary, or they may be the only pay received. These types of compensation should be included in the job rate unless it can be clearly established that an amount is attributable to merit. In such cases, the existing merit system must be one that meets the criteria set out in [8. (1) (c)].[132] (See Permissible Wage Differences). Payments that are salary supplements with no confirmed link to performance are considered compensation and should be included in the job rate.

When pay is based on work performance or output, employers should determine the job rate based on how much an employee can realistically earn.[133]

Examples of Calculating Job Rates with Commissions and Tips

- Sales forecasts and past sales performance will provide

[131] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(3).
[132] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(c).
[133] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5(1).

information on what level of sales can be expected of employees. Applying the commission structure to these numbers can reveal what level of payment contributes to the job rate for these positions.

- An employer may pay a minimum regular salary to servers in a restaurant with the expectation that tips will provide most of the servers' incomes. In this case, since all of the servers can expect a significant part of their pay to come from tips, at least some portion of the tips will have to be counted into the job rate because that portion of the tips is a part of their normal pay. This is especially applicable where tips are pooled for distribution.

iv. How are benefits defined?

The Act does not define "benefits". For purposes of the Act, benefits are part of compensation provided they are quantifiable.[134] The value of a benefit must be included in the job rate if it contributes to the total compensation of a job class, or it provides an advantage to that job class over others that do not have the same benefit. The value of that benefit must be included in the job rate even if employees in the job class individually choose not to use it. It is the availability of benefits – not their use by individuals – that should be considered when including them into the job rate Regional Municipality of Peel v. Canadian Union of Public Employees, Local 966, 1992 CanLII 4698 (ON PEHT).

In situations where an item is something that is required to do the job, that item would not be considered a benefit and thus, not included in the job rate. For example, the value of a uniform or protective clothing would not be considered a benefit if these items are required to do the job.

If identical benefits are available to job classes, it is unlikely that costing will be necessary. To be identical, the benefits must be equally accessible to all employees. If employees have to meet a qualification to access a benefit, for example, having to work for a certain length of time to get more vacation days, those employees are still considered to have access to the benefit.

If one job class has benefits and another does not, or the job classes have the same benefit but at different levels of payment or advantage, it is critical that the value of the benefit be determined and included in the job rate.[135]

7.12 Q&As Job Rate and Benefits

Q1: Is a paid lunch considered a benefit?

A1: Maybe. There is no specific definition of benefit in the Act. A paid meal break may or may not be considered a benefit depending on the circumstances. For example, a paid meal break is not likely a benefit if it is considered work time and part

[134] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

[135] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

of the normal work week during which time employees remain subject to the employer's control and direction.

Q2: What about mileage allowance or use of a company vehicle?

A2: Maybe. Mileage allowance or use of a company vehicle may or may not be considered a benefit. For example, if travel or transportation is required for the job, then access to mileage allowance or use of a company vehicle may be a work arrangement and not a benefit. However, if employees can have the car on weekends for personal use, it may be considered a benefit.

Q3: An employer provides an extended health benefit plan to a female job class and a different plan for the male comparator job class. Not all employees claim the full value of the benefits. Should the benefits be included in the job rate?

A3: Yes. It is the availability of benefits – not their use by individuals – that should be considered when including them into the job rate.[136]

v. What is the best way to calculate the value of benefits for the job rate?

The Act does not specify how to calculate the value of a benefit. An employer may equate the benefit to the employer's average cost of providing the benefit, or may equalize the benefit by granting it to the job class that does not currently have it. In each case, the approach will depend on the type of benefit, funding, the existing compensation practices of the parties and finally, what course of action fits most with the purpose and intent of the Act.

7.13 Permissible Wage Differences

While the Act requires that female job classes be paid at least the same as male job classes of equal or comparable value, it does not necessarily mean that each incumbent in a female job class must be paid exactly the same as the incumbents in a male job class.[137] The Act sets out circumstances whereby differences in pay between females and their male comparators are allowed:

> [8. (1)] This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,
>
> (a) a formal seniority system that does not discriminate on the basis of gender;
>
> (b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
>
> (c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not

[136] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).

[137] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 5, 5.1, 6(1).

discriminate on the basis of gender;

(d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or

(e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.[138]

The Act is not intended to disrupt common compensation practices. When an employer claims an exception to pay equity, it is the employer's responsibility to show that the wage difference is a result of a circumstance or pay practice as it is described in the Act. Furthermore, these exceptions will be narrowly defined.

Permissible differences can also arise as a result of differences in bargaining strength [8. (2)].[139] (See Pay Equity in Unionized Workplaces).

i. How are permissible wage differences treated in pay equity job comparisons?

The effect of these exceptions is not to alter the job rate of the male job class, but to justify not adjusting the entire pay equity gap between the female job rate and the job rate of an equal or comparably valued male job class. A male job class that is affected by these circumstances can still be used in pay equity job comparisons. In all situations, the normal job rate is determined for the job class. The portion of the wage that can be attributed to the exception is excluded from the pay equity comparison process.

Wages cannot be reduced to achieve pay equity. It is against the law for an employer to reduce employees' wages in order to achieve pay equity [9. (1)].[140] If employees in a female job class have been underpaid, their wages must be increased. The wages of workers in male job classes cannot be reduced to make the job rates of comparable male and female jobs equal.

ii. Details of permissible wage differences

Formal Seniority System

Seniority systems provide increases in pay to employees based on length of service. Generally, employees who have worked for the company longer earn more than newer employees in the same job class.

[138] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1).
[139] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(2).
[140] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9.

Where an employer has a seniority system in place, differences in pay resulting from the system's application between incumbents in job classes of equal or comparable value is allowed provided that:

- the system is formalized and made known to employees when implemented; and,
- the system operates and is applied the same way, based on the same principles, for both female and male employees.[141]

For pay equity job comparisons, the maximum rate for the job class is used as the job rate. There may be differences between pay of individual employees within the job class due to seniority. However, all incumbents must be able to achieve the maximum rate, which is the job rate for the job class, after the required length of service.

7.14 Q&A Formal Seniority System

Q1: What makes a seniority system "formal"?

A1: A formal seniority system is normally documented. For example, it may be described in an employee's manual or guide, or where there is a union, in a collective agreement. There must be evidence that the system has been in existence and consistently applied in the organization. The employer must be able to demonstrate that the system defines and recognizes length of service to the organization and is known to the affected employees.

Temporary Employee Training or Development Assignment

Employers may pay employees in a temporary training assignment a "training" wage that may be either higher or lower than the regular job rate paid to an incumbent of a job class.[142] For example, management trainees, who are rotated through a number of non-managerial jobs as part of their training, may be paid at the rate of their management job class which is higher than the rate paid to their co-workers who fill the non-managerial jobs on a permanent basis. On the other hand, sometimes trainees continue to receive the wage of their "home" position throughout the training period, even though they may be performing work of higher value.

If a temporary training assignment meets the following conditions, the portion of the incumbent's wage in training that is greater or lower than the regular job rate would not be used for comparison purposes. To qualify as a permissible difference, a temporary training or development assignment:

- is equally available to female and male employees;
- leads to career advancement for employees in the program;
- is temporary for each employee involved, either of a fixed duration, or until a specific goal is achieved; and

[141] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(a).

[142] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(b).

- identifies the normal job rate for the job class.[143]

Merit System

A merit system may be the basis for a permissible difference in the rates paid to incumbents in equal or comparable job classes if an employer is able to show that the difference is based on a performance rating system that:

- has systematic ratings of how well employees are performing (these ratings must be applied consistently to employees, at regular and defined intervals and must be related to pay levels or increases);
- was brought to the attention of employees in some formal and consistent way;
- does not discriminate on the basis of gender; and
- identifies the normal job rate for the job class.[144]

An employer may have a merit system where a "reference rate" is identified for a job class. This reference rate is paid to an employee who performs his/her work in a fully competent manner, and it may be used as the job rate. Pay equity is achieved when the reference rate for the female job class is at least equal to that of the male job class of equal or comparable value. Employees who exhibit exceptional performance would be paid above the reference rate.

An employer's merit system must be gender neutral. Similar to the selection of sub-factors for a gender neutral job comparison tool or mechanism, the performance criteria used in the merit system and its application should not result in gender bias. The Tribunal stated in Law Society of Upper Canada v. Unknown Respondents, 1999 CanLII 14823 (ON PEHT):

> "The Tribunal will carefully scrutinize merit compensation systems to ensure that they are consistently applied and that gender bias, which may not be apparent on the face of the system, does not creep into its application."

Red Circling

"Red circling" pay practices are referred to in [8. (1) (d)] and enables an employer to pay an employee higher than the maximum rate or salary range for their assigned job as a special provision and is allowable under the Act.[145] The Act does not prevent the red circling of any job classes; however, its only application under the Act is to allow employers to use this red circling as a "permissible difference" for pay equity purposes. For an employer to claim that the difference in wages between a female and male job class of comparable value is due to red circling, a number of criteria must be met:

- The value of the red circled position was downgraded;

[143] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(b).
[144] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(c).
[145] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(d).

- This downgrading of the position was based on a gender neutral re-evaluation;
- The compensation of the incumbent is frozen; and
- The incumbent's compensation is frozen until the new, lower compensation rate catches up to the red circled rate.[146]

For example, if duties and responsibilities of a job class are reduced significantly, the position may be re-evaluated and, as a result, be assigned less overall value. In this case, an incumbent may keep the current compensation tied to the former value of the position but have future increases frozen or curtailed until the lower pay rate attached to the new lower valued position catches up. An employee's compensation cannot be reduced to achieve pay equity [9. (1)] CUPE, Local 1623 v. Greater Sudbury Regional Hospital, 2005 CanLII 60099 (ON PEHT).

7.15 Q&As Red Circling

Q1: Can the red-circling of a job exclude it from a pay equity process?

A1: No. The newly established pay rate for the red circled job will be used in pay equity comparisons.

Q2: Can an employer red circle a female job class?

A2: Yes, the Act does not prohibit the practice of red circling. If a female job class receives a lower rating as a result of a gender neutral job re-evaluation, nothing prevents an employer from red circling that female job class.

Q3: Can red-circling be used to compensate for pay increases for female job classes?

A3: No. Red circling should be used where it is appropriate; it cannot be used to avoid the spirit and intent of the Act.

Skills Shortage

The Act permits wage differences between employees in equal or comparable female and male job classes as a result of a skills shortage only if the employer can demonstrate:

- a skills shortage is causing a temporary inflation in compensation;
- difficulties in recruiting employees with the requisite skills for positions in the job class; and
- the job rate for the job class is identifiable.[147]

An employer should consider how broadly the positions were advertised, the length of time the search has gone on and whether internal candidates have been trained and are now available. Employers can refer to outside data, such as labour market indicators, to help demonstrate a skills shortage, but would also need to show difficulty in recruiting (Anonymous Group of Employees v. Melitta Canada Inc., 1995 CanLII 7204 (ON PEHT))

To claim that wage differences are due to a skills shortage, employers are required to demonstrate that the shortage is temporary in nature. For example, there may be insufficient graduates in an occupation or specialty at a given time, but there is evidence that more qualified people will be

[146] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(d).

[147] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(1)(e).

graduating or moving into the relevant market at an identifiable future date. This permissible difference, however, should not be used to justify all market stresses. Job rates reflecting long standing inflation due to past skills shortages may qualify for exemption. (Welland County General Hospital (No.2) (1994), 5 P.E.R. 12 – No link available)

7.16 Methods of Comparison

There are three methods of comparison in the Act for achieving pay equity:

1. **Job-to-job** comparison matches female job classes directly to a male job of equal or comparable value in the establishment.[148]
2. **Proportional value** comparison indirectly compares the relationship between the male and female jobs in an establishment.[149]
3. **Proxy method** of comparison is available only to broader public sector organizations that are unable to achieve pay equity using the above methods. Unlike the other two methods, the proxy method allows comparisons to be made to job classes outside the organization in other broader sector organizations.[150]

Employers who are not subject to Part II requirements may use either the job-to-job or the proportional value comparison method to achieve pay equity.[151] Part II employers are required to first apply job-to-job and then, if there are some female job classes that have not achieved pay equity, this employer must apply the proportional value comparison method.[152] Only public sector employers with employees on July 1, 1993, that are listed in the Appendix in the Schedule to the Act and are granted an Order by the Commission are eligible to use the proxy method. (See Proxy Comparison Method).[153]

The requirements for the job-to-job comparisons are set out in [6] of the Act.[154] The proportional value method is described in Part III.1 [21.1 – 21.10].[155] The proxy method is outlined in Part III.2 [21.11 – 21.23].[156] Both the proportional value and proxy methods were introduced in amendments to the Act in 1993 (Bill 102, Pay Equity Amendment Act).

The Office offers resources explaining the mechanics of each of the comparison methods.

7.17 Job-to-Job Comparison Method

According to the Act, pay equity is achieved using the job-to-job comparison when “the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the

[148] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 5.1, 6.
[149] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 5.1, 21.3.
[150] O. Reg. 396/93, s. 2.
[151] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(1), 5.1, 6.
[152] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 11.
[153] *Pay Equity Act*, R. S. O. 1990, c. P. 7, schedule.
[154] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6.
[155] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.1-21.10.
[156] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.11-21.23.

work performed in the two job classes is of equal or comparable value" [6. (1)].[157]

"Equal or comparable value" means the job classes must have similar value; they are not necessarily identical in value. With job-to-job comparisons, employers must look for male comparators for every female job class. One male job class can serve as the comparator for more than one female job class. The direct comparisons of job rates (pay and benefits) are made between each female job class and its male comparator job class.

i. Sequence of search: which job classes to compare?

Employers are required under the Act to identify an appropriate male comparator job class for every female job class within their establishment according to the following search sequence [6. (3) – (5)]:[158]

1. A male job class of equal or comparable value should be identified. For unionized female job classes, comparisons are made to male job classes in the bargaining unit. For non-unionized female job classes, comparisons are made to non-union male job classes. If more than one male comparator is found, the one with the lowest job rate is the appropriate comparator.[159]
2. If there is no male job class of equal or comparable value found, an employer must then look at other male job classes throughout the establishment. If more than one male comparator is found, again the one with the lowest job rate is the appropriate comparator.[160]
3. If there are no male job classes of equal or comparable value, an employer should look throughout the establishment for a male comparator that has lower value but is higher paid than the female job class. If more than one male comparator is found, the one with the highest job rate is the appropriate comparator.[161]

If, after applying the above sequence of search, there are female job classes that do not have a male comparator; the employer is required to use the proportional value method to achieve pay equity for these unmatched female jobs.[162]

Several methods can be used to determine comparable value.

If an employer's jobs have been evaluated using a point-factor system, that employer may choose to apply job clusters or a process called "banding" that sets out ranges or bands of points in which the value of different job classes are considered comparable.

- **Job Cluster Method:** job classes are listed according to

[157] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(1).
[158] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(3)-(5).
[159] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(4).
[160] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(5).
[161] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(3).
[162] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.2.

the points given to them, from highest to lowest points. Look for job classes that "cluster" together according to the number of points they have. See if there are female and male job classes within the clusters. These will be the job classes that are of equal or comparable value.

- **Floating Point Band Method:** comparable jobs are determined by focusing on the point value of each female job class and then looking for any male job classes that fall within a range or band of points. Male job classes that fall within a range of points above or below the female job are of the same or comparable value as the female job class. The number of points used may be a set amount, such as 25 points above or below the female job class. Some organizations use percentages ranging from 5% to 10%, instead of a fixed number of points.
- **Fixed Point Band Method:** comparable jobs are determined by listing the job classes by value and dividing the set of job class values into sections or “bands”, with each band having a certain number of points. Job classes that fall within the same band are of equal or comparable value.

ii. Are employers required to construct pay bands for pay equity job comparisons?

The Act does not specifically require the use of banding, or any particular strategy for achieving pay equity using the job-to-job method; the law only requires that job rates of female job classes are at least equal to the job rate of a male job class where the work performed is of equal or comparable value [5.1 (1)].[163] Regardless of whether or not an employer decides to use banding, there should be no gender bias in the job comparison process.

If an employer decides to use banding, there are no hard rules for setting bands for pay equity purposes. Most often, the starting value for bands is the lowest possible point score in the system, the lowest actual point value of a job class, or the typical breakpoint closest to these scores. There is also no set formula for how narrow or wide a band should be, or how many points to include within each band, or the kind of band to use (fixed or floating), or whether to use bands with even or uneven widths. The underlying test is whether the decisions are reasonable and in keeping with the Act.

iii. Avoid gender bias in banding

One sign of gender bias in the banding of job classes may occur when women in the female job classes consistently are at the top of bands and male job classes at the bottom. In this case, band boundaries may need to be adjusted so that job classes of equal or

[163] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.1(1).

comparable value are more accurately reflected.

7.18 Proportional Value Comparison Method

Proportional value indirectly compares female and male job classes by looking at the relationship between the value of the work performed and the compensation received by male job classes and applying the same principles and practices to compensating female job classes. The Act specifies that pay equity is achieved by proportional value when the relationship between the value of the work performed and the compensation received is the same for both female and male job classes [21.3 (1)].[164]

The proportional value method is applied in establishments where male job classes are not available in large enough numbers, or else their job values are such that they cannot be used for direct comparisons.[165] For example, in two-tiered pay systems, the male management job classes may be valued much higher than the female job classes, and thus, they may not be appropriate comparators.

To achieve pay equity using proportional value comparisons, employers must:

1. select a representative group of male job classes;
2. establish the relationship between job values and job rates;
3. calculate pay equity adjustments; and,
4. increase wages for underpaid female job classes.[166]

i. How are representative male job classes selected?

Female job classes must be compared with a representative male job class or representative group of male job classes [21.3 (1) (a)] for proportional value.[167] Regarding proportional value comparisons and what is "representative", the Tribunal stated in Hudson v. Hamilton Police Association, 2010 CanLII 61163 (ON PEHT):

> "The Act is clear that the value/compensation ratio of male job classes is to be determined having regard to one or more "representative male job classes". The term "representative" is not defined in the Act, however its plain English meaning suggests a part standing in for a whole: clearly "representative" implies that it is not necessary to include "every" male job class in the Proportional Value analysis."
>
> "Representative male job classes are those that will

[164] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.3(1).
[165] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.2.
[166] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.3(1)
[167] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.3(1)(a).

best reflect the value/compensation ratio at which male job classes in the "group" are compensated. They should therefore be job classes within the same employee "group" where that is possible, and should not include a job class that is paid an anomalous rate (like the inflated rate of the male job class with skills that are in short supply)."

This case suggests that male job classes are not "representative" if their rate of compensation is either much higher or much lower for their job value relative to other jobs in the organization, or their compensation is set in an anomalous way and not reflective of the overall compensation pattern or practices. These 'outlier' jobs should be excluded or they will distort the value/compensation ratio that is the basis for pay equity comparisons.

ii. Which comparisons are required?

For unionized female job classes, comparisons are made to representative male job classes in the bargaining unit. For non-unionized female job classes, comparisons are made to non-union male job classes [21.3 (2)].[168]

If no representative male job classes can be found, the female job classes must be compared to representative male job classes throughout the establishment [21.3 (3)].[169]

iii. Establishing the relationship between job values and job rates

There are different ways to establish the relationship between job value and job rate for pay equity by using proportional value.

The wage line approach to proportional value is widely used. While wage lines are not specifically required by the Act, this approach is considered the most effective way to summarize the overall relationship between the job rate and job value where there is more than one representative male job class.

For the wage line approach, the employer develops a job rate line by plotting the representative male job classes on a graph with the job rate along the y-axis and the job value along the x-axis. Then a line is drawn and projected over the range of job values that cover the female job classes. The employer can also use a computer program to draw a "best-fit" job rate line using a statistical technique called regression analysis. The female job classes are plotted. Employers are required to increase the wages of all female job classes that fall below the job rate line. The amount of the pay equity adjustment is the difference between the female job rate and the rate predicted by the job rate line for the job value of that female job class.

Using a "proportional to female job classes" approach, pay equity

[168] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.3(2).

[169] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.3(3).

adjustments are given to unmatched female job classes in proportion to adjustments of female job classes that had comparators under job-to-job (modified group of jobs approach).

The formula or pay-per-points approach requires the job value to pay relationship for male job classes to be expressed as a ratio that is applied to the female job classes. However, where there is more than one male job class, the formula or pay-per-points method is less effective than the wage line method at describing the job value to pay relationship in cases.

The Act requires employers to undertake job comparisons with representative male job classes for proportional value; however, it does not prescribe exactly how to do the comparisons. Employers, or employers and unions in unionized settings, may select the method that best suits their circumstances but in the case of a dispute their choices will be acceptable if they are considered reasonable and if they demonstrate the relationship between value and job rate.

7.19 Q&As Proportional Value

Q1: Is an employer required to develop a job rate line to use the proportional value method?

A1: The Act does not specifically require employers to use wage or job rate lines. However, employers must establish the relationship between job value and job rate as the basis for proportional value comparisons.[170] In practical terms, a job rate line is a common and reliable way to express the job value to pay relationship.

Q2: Can the proportional value method of pay equity be done with only one representative male job class?

A2: In certain cases it may be acceptable to apply the proportional value method where there is only one male job class or only one class that is representative. For example, where there are multiple female job classes that are close in value to the sole higher paid male job class, a female job rate line could be constructed. A male job rate line could then be drawn parallel to it. The female job rates would be increased to the point where they reach the amount on the male job rate line corresponding to the job value of each female job class.

Another approach is to calculate the ratio of job value to pay for the male job class. This ratio is then applied to the female job classes (sometimes referred to as “formula” or “pay per points approach”).

8 Part I Requirement to Maintain Pay Equity

Once pay equity has been achieved, all employers are required to maintain pay equity:

- Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer [7. (1)].[171]

8.1 What does it mean to “maintain pay equity”?

[170] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5.1.

[171] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).

Employers have an obligation under the Act to ensure that the job rates of female job classes remain at least the same as the job rate of a male job class of equal or comparable value in their establishments. Employers whose actions or lack of action have the effect of widening or creating new pay equity gaps would be considered in breach of their obligation to maintain pay equity.

The Act does not explain what type of compensation practices should be used to maintain pay equity, nor does it describe specific procedures or schedules to follow.

The Tribunal's ruling in Call-A-Service Inc v An Anonymous Employee, 2008 CanLII 88827 (ON PEHT) lays out the essential requirements for maintenance:

> "Maintenance is the means by which an employer ensures that compensation practices are kept up-to-date and remain consistent with pay equity principles. Subsection [7. (1)] of the Act imposes an obligation on an employer to establish and "maintain" compensation practices that provide for pay equity. Maintenance is an ongoing responsibility; it includes regularly reviewing job classes to capture any changes to job duties and responsibilities, which may require pay equity adjustments."

Some examples of changes resulting from ongoing maintenance that may affect pay equity are: changes to the duties and responsibilities of a job that may place it in a different job class and salary scale; the creation or elimination of a male job class used as a comparator, and changes in the gender dominance.

8.2 How is pay equity maintained when there are changes to job classes?

Jobs often undergo changes to meet the changing needs of the workplace. If the changes to the job content of a female job class are such that they affect the overall value of the job class in terms of skill, effort, responsibility and working conditions, it may be necessary to re-evaluate and /or re-classify the female job class and compare it with another male job class.[172] Depending on the extent and nature of the changes, some, but not necessarily all, changes to jobs have implications for pay equity. Pay equity is maintained, for example, when one or more job classes are added or eliminated and the changes have been evaluated in a way that is free of gender bias.

8.3 If more men are hired in a female job class, does it become a male job class?

Changes in the percentage of females and males in a job class alone will not necessarily change the gender predominance of the job class for pay equity purposes. For example, an organization may see an increase in the number of females working in a male job

[172] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 5(1).

class, and the job class appears to be gender-neutral. However, it may still be a male job class for pay equity purposes due to the historical incumbency of the job class and/or the gender stereotype of the work performed. The Act requires that all three criteria – current incumbency, historical incumbency, and gender stereotype of the field of work – be considered to determine the gender of a job class.[173]

8.4 If a male job class is not currently filled can it still be used as a comparator?

In Niagara (Regional Municipality) v. CUPE, Local 1287, 1999 CanLII 14829 (ON PEHT), the Pay Equity Hearings Tribunal found that: "...in the absence of any wage impact or substantive change in job content, the fact that the male comparator job class was vacant and remained vacant did not render the pay equity plan inappropriate for the female job classes."

8.5 How do employers handle changes in wages after pay equity is achieved?

Employers should be aware of any effects of wage increases on the pattern of pay between female and male job classes. Generally, if the job-to-job method was used to achieve pay equity, female job classes should be given wage increases that the male comparator receives.[174] Under proportional value, wage increases should be given in a way that maintains the same job value to job rate relationship for female and representative male job classes.[175] If percentage-based wage increases are given, this practice can effectively open gaps that must subsequently be closed again.

8.6 How do employers deal with new female job classes?

When a new female job class is created, it should be described, valued and compared using the gender neutral job comparison system or tool that was previously used to implement pay equity so that the new class is paid as much as their male comparator from the start.[176]

8.7 Are employers and unions required to negotiate a maintenance agreement?

While it is likely that the bargaining agent will be involved in developing strategies to maintain pay equity, the Act does not require parties in a unionized setting to negotiate a maintenance agreement.

8.8 Is it necessary for Part II employers to amend and re-post a pay equity plan for maintenance?

Where an employer has posted and implemented a pay equity plan in accordance with Part II or Part III.2 of the Act, there is no requirement to negotiate an amended plan or to re-post plans to maintain pay equity. In Call-A-Service Inc./Harmony Hall Centre for Seniors (No. 3) (28 April, 2008), the Tribunal stated:

[173] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(5).
[174] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 6(1).
[175] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.3.
[176] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 12.

> "Changes arising from maintenance do not give rise to a formal review period as required under subsections [15. (4) – (8)] of the Act. Most significantly though, such changes do not open a deemed approved plan. (Centennial College (2002-02) P.E.R. 102, par 20). To paraphrase the ruling of the panel in that case, the importance of a deemed approved plan makes it counter-intuitive to the scheme of the Act to contemplate treating subsequent events, as rendering a deemed approved plan open."

8.9 Can previous wage increases "count" towards achieving pay equity?

Only pay equity adjustments that were clearly identified as pay equity adjustments and distributed according to the rules of the Act to underpaid female job classes are considered for achieving the pay equity job rate. If an employer gives other wage increases (for example, cost-of-living increases), the pay equity job rate of female job classes of the seeking employer that have not yet achieved pay equity must be increased by the same dollar amount [21.11 (3), 21.22 (3)].[177]

9 Part II Requirements for Implementing Pay Equity for Certain Employers/Unions

Part II employers are defined as:

- public sector employers who were in existence on January 1, 1988, or came into existence by July 1, 1993;
- private sector employers who employed 100 or more employees on January 1, 1988; and
- private sector employers who employed 10 to 99 employees on January 1, 1988, and chose to post a plan before December 31, 1993, [11].[178]

9.1 Requirement to use job-to-job before proportional value method

For Part II employers, the job-to-job comparison method of pay equity must be applied first. If after applying the job-to-job comparisons, there are female job classes that do not have a male comparator; the employer is required to use the proportional value method to achieve pay equity for the remaining unmatched female job classes [21.2 (1)].[179]

Part II employers may apply proportional value comparisons to all their job classes even though male comparators were found for some female job classes using a job-to-job method. However, the pay equity adjustments under proportional value must

[177] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.11(3), 21.22(3).
[178] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 11.
[179] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.2(1).

be at least equal to the amount the employee would have received using job-to-job comparisons [21.2 (2)] since the Act specifies that Part II employers must conduct job-to-job comparisons first before the employer proceeds with proportional value comparisons.[180]

9.2 Requirement to notify the Commission if pay equity cannot be achieved

Employers subject to Part II of the Act must notify the Office if pay equity cannot be achieved by either job-to-job or proportional value comparisons [21.2 (5)] by completing a Notice of Inability to Achieve form.[181]

9.3 Requirement to use a Gender Neutral Comparison System

Part II employers must use a Gender Neutral Comparison System (GNCS) to do job comparisons for pay equity purposes.[182] This system should value the scope of the work of an organization or, in the case of a bargaining unit, the scope of the work done by the bargaining unit and evaluates aspects of both female and male jobs. In determining value of work performed for pay equity job comparisons, the factors of skill, effort, responsibilities and working conditions must be applied.

The type of GNCS must be described in the pay equity plan.[183] The Act requires the use of one GNCS per pay equity plan.

9.4 Pay Equity Plans

i. What is a pay equity plan?

A key component of Part II of the Act is the pay equity plan.[184] Pay equity plans provide employees with information about how pay equity was done in their establishment and the results and therefore should be accessible to all employees.[185] The Act requires that pay equity plans be posted in prominent places in each establishment and that copies of a plan be provided upon request to bargaining agents or non-union employees.[186]

ii. Which employers are required to post a pay equity plan?

All Part II employers are required to post a pay equity plan.[187] Private sector employers who employed 10 to 99 employees as of January 1, 1988 may have chosen to post a plan in order to phase in pay equity adjustments. However, after January 1, 1994 when Part III of the Act was repealed, the option to post a plan for these smaller employers no longer existed. Currently, the only employers required to post plans are large private sector employers who had employees on January 1, 1988, and public sector employers that existed on the effective

[180] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.2(2).
[181] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.2(5).
[182] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 12.
[183] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(2)(a-b).
[184] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(1).
[185] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(1).
[186] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(2).
[187] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(1).

date or July 1, 1993. New private sector employers, regardless of size, are not required to post plans.

iii. What were the deadlines for posting pay equity plans?

See What are the Compliance Deadlines? for dates for posting pay equity plans. An employer who was required to post a plan but missed the posting deadline must develop the plan, make adjustments and achieve pay equity as if the process proceeded on time.

iv. How many pay equity plans are required?

Employers who were required to prepare pay equity plans must have at least one pay equity plan for each establishment. If the workplace was unionized at the effective date, there must be separate plans for each bargaining unit, the contents of which must be negotiated [14. (4)], and one for all non-union employees [14. (1)].[188]

v. What are the contents of pay equity plans?

The Act specifies what must be contained in a pay equity plan for job-to-job plans [13], for proportional value plans [21.6], and for proxy plans [21.18].[189] Job-to-job plans must:

- Identify the establishment and the group of employees covered by the plan (i.e. non-union or bargaining unit employees).
- List all female job classes covered by the plan and all male job classes that were evaluated as potential comparators.
- Describe the gender neutral comparison system used to do the job comparisons.
- List the results of pay equity comparisons, including:
    - all the female job classes and the male job classes found to be equal or comparable in value;
    - the difference in job rates between each female job class and its male comparator, or a statement that pay equity already exists for the female job class;
    - a list of female job classes that did not find male comparators.
- Explain any permissible differences in compensation relied on to explain differences between female job classes and their male comparators.
- Describe how compensation will be adjusted to achieve pay equity.
- Note the date on which the first adjustments will be effective (and effective dates of any adjustments made retroactively if the plan was posted late).
- Describe the method used to achieve pay equity, either job-to-job

[188] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14.

[189] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13, 21.6.

or proportional value comparison, for each female job class.

- Describe the method used to carry out the proportional value calculations.
- List of the male job classes that made up the representative group and how they were selected.
- Identify how the relationship of job rate to job value was determined for the representative group of male job classes.
- Describe any revisions made to the original job-to-job pay equity plan.

vi. How long should the pay equity plan be posted for?

The Act does not state how long employers must post pay equity plans or keep other pay equity documents. The law does state that employers who are required to post a pay equity plan shall provide a copy to bargaining agent or employees upon request [1. (3)].[190] The Commission recommends that the plan be posted until pay equity is achieved or the plan is amended. It is advisable to keep records of the pay equity plan and its posting date.

9.5 What is a "deemed approved" pay equity plan?

The Commission does not approve employers' pay equity plans and employers are not required to send their pay equity plans to the Commission. The Act sets out the process by which pay equity plans are deemed approved depending on whether or not the plan was developed with a bargaining agent.

In unionized settings, where a plan has been negotiated with the bargaining agent, it is deemed approved by the Commission when both parties sign it [14. (5)].[191] The employer must then post a copy in the workplace.[192]

A pay equity plan is binding on both the employer and the bargaining agent and prevails over relevant sections of an existing collective agreement. The adjustments to rates of compensation are considered to be incorporated into the collective agreement [13. (10)].[193]

For non-unionized settings, employees are entitled to review, comment, and object to the plan. The employer may amend the plan. Plans covering non-union employees must initially be posted for 90 days, during which time employees affected by the plan may comment on it to the employer. Employers then have seven days to prepare and post a notice stating whether the plan has been amended and, if so, to post copies of the amended plan with the changes clearly noted. From the date of the second posting, employees have 30 days to file an objection to the plan with the Commission. If no objection is filed within the 30-day period, the plan is deemed approved [15. (8)].[194]

9.6 What is the significance of a "deemed approved" pay equity plan?

[190] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(3).
[191] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14(5).
[192] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(2).
[193] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(10).
[194] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 15(8).

The Tribunal explained the significance of a deemed approved plan in Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT):

> "Once the plan which is in formal compliance with s.13 has been executed or, posted and the objection period has passed, it is deemed approved. That is, it is treated by the law as if it had been approved by the Commission. Subsection 13(9) and 13(10) set out the significant consequences of this approval: the plan is binding on the employer and employees, and their bargaining agent, if any; and, it prevails over and forms part of the collective agreement. Future actions of the parties are governed by what the plan provides. The plan is to be implemented according to its terms, and failure to do that can be the subject of a complaint under subsection 22(2)(a)."

Further, in Niagara (Regional Municipality) v. CUPE, Local 1287, 1999 CanLII 14829 (ON PEHT) the Tribunal stated:

> "The legislation does not allow the Tribunal to require an amendment to a deemed approved pay equity plan, which has been fully implemented and maintained, where there has been no contravention of the Act [22(1)] and where there are no "changed circumstances" which have had the effect of making the plan inappropriate for the female job classes [22(2)(b)]."

9.7 Is it possible to make a complaint about a deemed approved plan?

Even though a plan is "deemed approved" it is not insulated from a complaint or from a review by the Office or Tribunal. In Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) the Tribunal set out when a complaint about a deemed approved plan could be made:

> "While deemed approval of the plan binds the parties, it is not a certification that the plan fully complies with the Act. It does not mean that it necessarily conforms to the statute, or that the minimum constituent elements of pay equity, set out in Part I of the Act, have been correctly implemented."
>
> ... "Where an applicant alleges that a deemed approved plan contravenes the Act, the applicant must show how the compensation practices established in the plan fail to provide for pay equity and must do so by reference to the specific

> provisions of Part I of the Act. In reviewing a deemed approved plan the Tribunal is less concerned with the process by which the plan was created and more interested in whether the result is consistent with the objectives of the Act. The Tribunal recognized that certain provisions of Part I require exact application while other sections leave some discretion to the parties. The standard of review reflects this duality. The Tribunal will apply a reasonableness test to review of decisions on those aspects of the Act which permit discretion. Where the Act imposes an exact requirement, the relevant portion of the plan will be reviewed for correctness."

In the decision, the Tribunal also set out the standard of proof required to establish a complaint:

> "In some instances, proof that Part I has been contravened may be quite straight forward and achieved by reference to the plan alone. This is more likely when the provision alleged to be contravened sets out an exact standard. In other cases, it may be necessary to examine the documents behind the plan or provide an expert opinion in order to have a fuller understanding of the alleged violation. More significantly, it may be necessary to call experts to provide objective evidence, external to the plan and its development, to establish whether or not the plan's result is reasonable."

To summarize, in order to be successful in challenging a deemed approved plan, the complaint must be able to show that the plan contains a specific contravention of the minimum requirements of Part I.

Employees and/or their bargaining agents may bring complaints about deemed approved plans under [22] of the Act.[195] (See Enforcement and Complaints).

9.8 When can a "deemed approved plan" be amended or a new plan developed?

Part II of the Act provides that deemed approved plans may be amended where there has been "changed circumstances" [14.1, 14.2].[196]

Part II also provides that a new plan may be developed where a "sale of business" has occurred [13.1].[197]

[195] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 22.
[196] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 14.1-14.2.
[197] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13.1.

These two sections outline the procedure to be followed when either of these situations arise.

9.9 Changed Circumstances

i. What are "changed circumstances"?

The Act does not specifically define “changed circumstances", however, this term can be used to describe a number of scenarios, including the addition or deletion of a large number of jobs, restructuring, the acquisition or selling of divisions, or accumulated changes over time that could not be dealt with through regular maintenance. To apply the provision of "changed circumstances" as a basis for amending a pay equity plan, the Tribunal has stated in Hilton Works v. MacDonald, 1993 CanLII 5422 (ON PEHT): “The plain language of sections 14.1 and 14.2 requires the Tribunal to look not simply at the fact of changed circumstances, but at the impact of the changed circumstances on the appropriateness of the plan.”

The decision as to whether a deemed approved plan is no longer appropriate for the establishment or the bargaining unit because of changed circumstances depends solely on the facts of each case and the degree of change.

ii. What can be amended?

Where a deemed approved plan is found to be inappropriate because of changed circumstances, the employer or the employer and the union cannot make changes to the gender neutral comparison system that was in the original plan.[198]

iii. What is the process for amending a deemed approved plan due to changed circumstances?

In unionized settings, either the employer or the union can notify the other party that it considers the plan to be no longer appropriate for the bargaining unit because of changed circumstances [14.1].[199] If the parties are unable to agree, either party may file an application with the Pay Equity Office. Giving notice under [14.1] does not automatically mean that the plan is no longer appropriate.[200] A Review Officer investigating such a matter will first require proof that the plan is no longer appropriate for the bargaining unit before taking further steps.[201]

In situations where there has been a change in circumstance but the change is such that the pay equity plan is still applicable for comparing job classes and identifying pay equity gaps in the establishment, the Review Officer will terminate his/her involvement in the matter.

Where a Review Officer finds that the plan is no longer appropriate for the bargaining unit, he/she may order that the parties negotiate the required amendments or may make such other orders as may be necessary to amend the plan. A plan that has been amended either by agreement or ordered

[198] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 12.
[199] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14.1.
[200] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14.1.
[201] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16.

becomes deemed approved once signed or ordered.[202]

In non-unionized settings, an employer may amend a deemed approved plan where in the employer's view the plan is no longer appropriate for the establishment.[203] The employer is required to post the amended plan and the employees will have an objection period that mirrors the objection period that was available when the original plan was developed.[204] The amended plan becomes deemed approved once all objection periods have expired.

In either setting, an existing deemed approved pay equity plan is binding on the parties it covers [13. (9)] until such time that an amended plan becomes deemed approved.[205]

It must be noted that if the employer is still in the process of achieving pay equity and the plan is amended because of changed circumstances, the amount of a pay equity adjustment for any female job class cannot be less than it was under the plan before it was amended [14.1 (7), 14.2 (3)].[206]

iv. Sale of Business

The Act outlines what can occur when a Part II employer sells a business [13.1].[207] A "sale of business" includes any form of transfer or disposition, including a lease or a sale of all, part or parts of a business.

v. What happens to pay equity plans as a result of a sale of business?

When a sale occurs, pay equity plans that are in effect may no longer be appropriate for either the seller or the purchaser due to changes in the composition of their workforces that make the existing plan(s) incapable of valuing and comparing the female job classes in the new organization(s).[208] In the case of Child's Place v. Fitzpatrick, 2002 CanLII 49459 (ON PEHT) the Tribunal stated:

> "…if the sale of business renders either the purchaser or the seller's plan no longer appropriate then each is required to prepare a new plan. No doubt the need for new plans is more likely in a sale of part of a business where the seller's business contracts and the purchaser's expands, with the attendant loss or gain of employees. But in any event, *a consideration of whether a new plan is required only occurs after the sale of business* when the consequences of that transaction are apparent to both the vendor and purchaser (emphasis added)."

---

[202] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(2).
[203] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14.2.
[204] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 1(2), 15(4)
[205] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(9).
[206] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 14.1(7), 14.2(3).
[207] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13.1.
[208] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13.1(2).

If a new plan is required in non-unionized settings, the employer prepares it. In unionized settings, the bargaining agent and employer negotiate and agree to a new plan for its bargaining unit. In both cases, the new plan is subject to the "deemed approved" as previously described.

vi. Who is responsible for paying adjustments under the pay equity plan?

Although a vendor would be normally responsible for the adjustments owing under its pay equity plan, a purchaser may be liable. The Tribunal commented on the potential liability of a purchaser in Child's Place v. Fitzpatrick, 2002 CanLII 49459 (ON PEHT) by stating:

> "…it is possible to read section 13.1 as placing an obligation on a purchaser to make payments under pay equity plans that the seller failed to make in a timely way. But it is difficult to read section 13.1 as absolving a seller of liability for outstanding adjustments at the point a sale is made. Indeed, it is possible to read section 13.1 in a manner that places joint and severable liability on both the seller and the purchaser."

If this issue arises in the course of an investigation of a complaint, a Review Officer will likely ask for copies of the pay equity plan, proof of adjustments paid, and the purchase and sale documents to determine liability. Purchasers should therefore be mindful of potential pay equity liabilities and obtain the necessary advice to protect themselves from assuming liability for payment of adjustments that are owed by the vendor.

9.10 Q&As Pay Equity Plans

Q1: Is it a requirement to include all jobs in the pay equity plan?

A1: The Act requires all job classes that were compared to be identified in a pay equity plan. However, nothing prevents an employer from listing gender neutral job classes as well as male job classes even if they were not used as comparators.[209]

Q2: If there are only female jobs or only male jobs in an establishment, is there any need for an employer to take further action?

A2: If only female job classes or only male jobs classes exist in the establishment, the employer is still required to post a pay equity plan that includes a statement about the lack of female or male job classes. These employers are required to notify the Office by completing a "Notice of Inability to Achieve form.

Q3: How should an employer describe the gender-neutral comparison system in the plan?

A3: If a point-factor job comparison system was used it is recommended that the employer describe the sub-factors used to evaluate job classes and explain how they were weighted. If a ranking system was

[209] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(1).

used, describe the methodology. A definition of equal or comparable value, point banding, ranking, or any other method used to determine job classes of equal or comparable value should be included. If the proportional value method of comparison was used, the plan must identify the male job classes used in the comparison.

9.11 Pay Equity Adjustments

Once pay equity job comparisons have been made, the Act requires employers to increase the job rates of female job classes to be at least as much as the job rate of the comparable male job classes.[210] These increases are referred to as pay equity adjustments.

i. Compliance deadlines for making pay equity adjustments

Part II employers who were required or chose to post a pay equity plan were allowed to phase in pay equity adjustments by set deadlines.[211] Part II employers who did not meet their original deadline for posting a pay equity plan or achieving pay equity must pay any adjustments that are owed immediately: these employers are not allowed to phase in adjustments as they are now overdue.[212] If an employer did not implement and achieve pay equity when it was required, that employer must determine the adjustment amounts based on the pay equity gaps that existed at the time their plans should have been posted. Retroactive payments should be calculated as if the adjustments were paid on time.[213]

See What are the Compliance Deadlines? for dates for posting pay equity plans, making adjustments and achieving pay equity.

ii. Minimum amount for pay equity adjustments

Employers who were required, or opted to post pay equity plans, were allowed to phase in pay equity adjustments, in an amount that is not less than the lesser of either 1% of the employer's total Ontario payroll costs of the previous year, or the amount required to achieve pay equity [13. (4) – (6)].[214]

"Payroll" means the total of all wages and salaries payable to the employees in Ontario of the employer [13. (8)].[215]

The minimum amount is applied to all of the employer's pay equity plans. The entire amount must be spent on pay equity adjustments. Payments must be made on the anniversary of the legislated first adjustment date [13. (5)] until pay equity is achieved.[216]

Depending on the employer's circumstances, the size of its payroll may have fluctuated from year to year, and thus, the money that was available for pay equity adjustments may have also varied. Regardless of any yearly fluctuations, a minimum of 1% of payroll

[210] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13(2), 13(4)-(6).
[211] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(2).
[212] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(6).
[213] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(6).
[214] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13(4)-6).
[215] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(8).
[216] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(5).

was required to be spent for adjustments.[217]

iii. Compounding effect of retroactive payments

Pay equity adjustments form a regular part of wages. That is, a pay equity adjustment added to the base pay rate, increases incrementally with each yearly adjustment until the pay equity rate has been achieved. There is a compounding effect when calculating retroactive payments.[218]

iv. Rules for distributing the adjustments

The Act sets out rules for distributing adjustments among the female job classes. Employers were required to make payments such that:

- All female job classes due adjustments within a pay equity plan must receive an adjustment until pay equity is achieved for the job class [13. (2), 13. (5)].[219]
- All incumbents of a female job class due adjustments must receive the same adjustment in dollar terms [9. (3)].[220]
- Within a pay equity plan, the lowest paid female job class must receive a larger adjustment than the other job classes, or the complete adjustment [13. (3)].[221]

As long as the above rules are met, employers were allowed to decide how they wanted to distribute the adjustments.

v. Reduction in Compensation to Achieve Pay Equity is NOT allowed

The Act specifies that employers cannot reduce compensation for any position in order to achieve pay equity or to offset pay equity adjustments to female job classes [9. (1)].[222]

9.12 Q&As Pay Equity Adjustments

Q1: If an employee leaves a position or job class but stays with the company and the job class she previously occupied requires pay equity adjustments, does the pay equity adjustment stay with the job class or is it paid to the employee?

A1: Pay equity adjustments are attached to a job class and have the effect of increasing the job rate of the job class until the job rate reaches the job rate of the comparable male job class.[223] If an employee leaves a female job class that is in the process of achieving pay equity, the employee will only be entitled to any retroactive payments that may be owing but will not be entitled to the benefit of ongoing pay equity adjustments that relate to the female job class the employee is leaving.[224]

Q2: Is it necessary to show the pay equity portion separately on employees' pay stubs?

[217] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(4)(a).
[218] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(6).
[219] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13(2), 13(5).
[220] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(3).
[221] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(3).
[222] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(1).
[223] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(3).
[224] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(6).

A2: Only wage adjustments that are designated as pay equity are considered to be pay equity adjustments. General wage increases or cost of living allowances cannot be considered as pay equity adjustments. Employers should have proof that wage increases were pay equity adjustments; this could be done by recording the amount separately on employee pay stubs or attaching a letter to properly identify it as a pay equity adjustment.

Q3: Are employers required to pay interest on overdue pay equity adjustments?

A3: A Review Officer or the Pay Equity Hearings Tribunal has the authority to order employers to pay interest on retroactive payments.[225]

10 Pay Equity in Unionized Workplaces

In the Act, "bargaining agent" means a trade union as defined in the Labour Relations Act that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees [1. (1)].[226]

"Collective agreement" means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment [1. (1)].[227]

10.1 What are the employer's and union's pay equity responsibilities?

Unions and employers are regularly engaged in collective bargaining. Much of this negotiation is salary and benefits related. For purposes of the Act, the main responsibility of union and employer is to ensure that the results of their compensation bargaining do not have the effect of contravening the Act [7] by making arrangements that do not meet the minimum requirements of Part I of the Act.[228]

Where the employer is subject to Part II of the Act, and the workplace was unionized on one of the dates specified in this Part, the law imposes a joint obligation on the employer and the existing bargaining agent to negotiate in good faith and endeavour to agree upon aspects of the pay equity process for the bargaining unit plan [14. (2) – (3)], including:

- the gender neutral comparison system;
- the pay equity plan for unionized employees;
- the definition of the establishment which may include two or more geographic divisions;
- the gender of job classes (female, male, gender neutral);
- the value of the job classes;
- the representative group of male job classes for proportional value;

[225] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 25(2)(e).
[226] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[227] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 1(1).
[228] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(2).

- the calculation of job rate; and,
- the amount and distribution of pay equity adjustments.[229]

10.2 How is bargaining strength used to explain gender wage differences?

According to the Act, differences in pay between female and male job classes are allowable if the differences can be attributed to differences in bargaining strength:

- After pay equity has been achieved in an establishment, the Act does not prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength [8. (2)].[230]

The Tribunal has noted that the defence of bargaining strength could not be raised to explain wage differences until the employer had achieved pay equity for all employees in its establishment York Region Board of Education v. Canadian Union of Public Employees, Local 1734, 1995 CanLII 7202 (ON PEHT).

While the Act does not specifically define "differences in bargaining strength," the Tribunal has interpreted bargaining strength to mean the ability of a bargaining unit to exercise power on behalf of all its members. In this case, the preferred interpretation refers to difference between different bargaining units, as opposed to differences within the same unit.

Furthermore, due to the remedial purpose of the Act, any exception should be narrowly defined and the onus is on the employer to provide evidence that conditions do in fact exist that warrant the application of the exception BICC Phillips Incorporated v. Group of Employees, 1997 CanLII 12223 (ON PEHT) and Stevenson Memorial Hospital v. Ontario Public Service Employees Union, Local 360, 2000 CanLII 22419 (ON PEHT).

10.3 What happens when a union becomes certified as the bargaining agent for a group of employees in an establishment after a deemed approved plan?

If an employer was required to post and implement a pay equity plan in accordance with Part II or Part III.2 of the Act, the plan is considered deemed approved by the Commission.[231] It remains a deemed approved pay equity plan even if a bargaining unit becomes certified. Employers are required to disclose information to the bargaining agent about how the employer achieved pay equity.

While certification of a bargaining unit is considered a change in circumstances, it does not automatically require that a new or amended plan be negotiated. The original plan is split into two plans: a plan for the bargaining unit and one for the non-bargaining unit employees.[232] This approach was ordered in the case of Ontario Nurses' Association v. St. Joseph's

[229] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 14(2)-(3).
[230] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 8(2).
[231] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 14(5), 15(8).
[232] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14(8).

Villa, 1993 CanLII 5412 (ON PEHT) where the Tribunal said: "…our order extends to the form of the Plan only, and not to its content or the comparison system on which it is based".

A bargaining agent or an employer may view the split plan as being inappropriate for the bargaining unit. A bargaining agent may also be of the view that the split plan does not meet the requirements of Part I.

10.4 Disclosure of information

Employers are obliged to disclose sufficient information to allow the union to properly represent its employees. The Tribunal has ordered that any information related to implementing or maintaining pay equity must be disclosed to the bargaining agent. Although the Act does not specifically indicate what information is required or when the information must be disclosed in the bargaining process, the Tribunal has ruled that the information requested must be relevant or related to pay equity. Furthermore, both parties are entitled to sufficient information which may include information about jobs outside the bargaining unit Ontario Public Service Employees Union v. Cybermedix Health Services Ltd., 1989 CanLII 1459 (ON PEHT) and Oakwood Retirement Communities Inc. v. S.E.I.U. Local 1 Canada, 2010 CanLII 76245 (ON PEHT).

10.5 Q&As Unionized Workplaces

Q1: Do companies need to set up joint employer/union committees to do pay equity?

A1: No. The use of pay equity committees is not required by law. If an employer and union choose to create a committee, they are free to do so. The Pay Equity Office has educational materials with practical tips for forming and operating pay equity committees that employers or unions can access online.

Q2: Do agreements concerning pay equity have to be ratified by the union?

A2: No. There is no requirement in the Act for union ratification. The union constitution may address this issue.

Q3: Can pay equity be negotiated at the same time as regular collective agreements?

A3: There is no requirement in the Act for ongoing pay equity negotiations or for the parties to have a particular system in place to deal with pay equity matters. Some employers and unions discuss pay equity during collective bargaining; some do not. Some employers and unions negotiate terms under which they will deal with pay equity issues; others have no process in place. Unions and employers must ensure that any changes or agreements reached in collective bargaining do not have adverse pay equity consequences.

Q4: What is the impact of pay equity adjustments on collective agreements?

A4: The Act indicates that pay equity prevails over all relevant collective agreements.[233] Any adjustments to rates of pay are incorporated into the relevant collective agreements; this does not require that the collective agreement be renegotiated in order to be effective.

11 Proxy Comparison Method

[233] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(10).

11.1 Brief History

The 1993 amendment to the Act contained provisions for proportional value and proxy methods. Unlike job-to-job and proportional value where comparisons are made within the organization, the proxy comparison method allows organizations in the broader public sector, which have mostly female job classes, to obtain and apply pay equity information from another public sector organization.

In 1996, the government repealed the proxy comparison method with the passing of Bill 26, Savings and Restructuring Act, Schedule J. However, a legal challenge was brought against this legislation, and the Ontario Supreme Court decided that repealing the proxy method violated the Charter of Rights and Freedoms. The court declared that Schedule J had no force or effect, reinstating the proxy method in the Pay Equity Act as though it had never been repealed.

11.2 What is the impact of the repeal and reinstatement of proxy on pay equity adjustments?

The Act requires that pay equity adjustments be made to the job rate of female job classes on an annual basis, using a minimum of 1% of the previous year's payroll, until pay equity is achieved. These adjustments accumulate annually, so that an additional 1% of payroll is paid out each year.[234] Employers should examine their proxy pay equity plans to determine whether any additional retroactive adjustments are required for the period from 1994 to 1996 in order to meet the minimum of 1% of payroll for adjustments required by the Act.[235]

11.3 Which organizations can use the proxy method?

Only organizations that are part of the public sector as defined in the Appendix in the Schedule to the Act and had employees on July 1, 1993 are eligible to use the proxy method [21.12 (1) – (2)].[236] Proxy Orders are issued by Review Officers who verify that the employer is a public sector employer and that pay equity cannot be achieved using either job-to-job or proportional value methods of comparison. Whether an organization is considered part of the public sector depends on the source and purpose of funding and services provided as specified by the Appendix in the Schedule to the Act.

To apply for an Order to use the proxy method, an organization must notify the Commission by completing and submitting a Notice of Inability to Achieve form. Only employers who have received an Order can proceed with proxy comparisons.

11.4 How does the proxy method work?

The proxy method allows eligible organizations called “seeking employers” [21.11 (1)] to go to another public sector employer to complete pay equity job comparisons.[237] Seeking employers borrow job and pay equity adjusted job rate

[234] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(4).
[235] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13(4), 16(6).
[236] *Pay Equity Act*, R. S. O. 1990, c. P. 7, schedule.
[237] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.12(1)-(2).

information about similar female job classes from this “proxy employer”. The seeking employer compares its female job classes to the proxy female job classes using a proportional value method of comparison. Then, as a result of the job comparisons, the seeking employer determines pay equity adjustments that enable the organization to achieve pay equity [21.15].[238]

The proxy comparison method applies to all female job classes in the seeking employer’s establishment [21.14 (1)], even if some female job classes could be compared using the job-to-job or proportional value comparison methods.[239]

11.5 When must proxy pay equity be implemented and achieved by?

Public sector employers using the proxy method of comparison should have posted their pay equity plans by January 1, 1994. Proxy adjustments began January 1, 1994 and continue every year until pay equity is achieved. Employers must spend a minimum of 1% of the previous year's payroll for pay equity adjustments every year until pay equity has been achieved [21.22].[240]

11.6 Implementing and Achieving Pay Equity Using the Proxy Method

i. Identify key female job classes

While all female job classes in the seeking organization must be included when applying the proxy method, key female job classes are initially identified and their duties and responsibilities are described and provided to the proxy employer. The proxy employer uses this information to find similar female job classes in its organization as of January 1, 1994. The Act defines “key female job class” as one where there is the most number of employees or the duties of the job class are essential to the employer.

ii. Select the proxy organization

The seeking employer selects a proxy employer from the Proxy Schedule of the Act contained in Ontario Regulation 396/93.[241] Column 1 of the Schedule contains nine broad categories of seeking employers: Health Care Services; Services for Seniors; Services for People with Disabilities; Counselling, Referral and Accommodation Services; Services for Children and Families; Correctional Services; Cultural Organizations; and Miscellaneous. The seeking employer chooses the description from Column 1 that matches its programs and services. Column 2 of the Schedule provides the potential proxy employers for the seeking employer categories. Once the seeking employer has determined the type of potential proxy employer it requires from Column 2, it looks for an organization of this type in its geographic division. If a proxy employer cannot be found in the same geographic division, the seeking

[238] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.15.
[239] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.14(1).
[240] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.22.
[241] O. Reg. 396/93, schedule.

employer selects the one closest to it.[242]

Two or more seeking employers may agree to form a "combined establishment" so long as all of these seeking employers fall under the same description in the Schedule to the Act [21.16].[243]

iii. Request information from the proxy employer

The provisions for information exchange between the seeking and proxy employers are detailed in [21.17] of the Act.[244]

[21.17 (1)] For the purpose of making a comparison for a key female job class using the proxy method, a seeking employer may request any potential proxy employer to provide it with the following information relating to a potential proxy establishment of the potential proxy employer (as of January 1, 1994):

1. Information about the duties and responsibilities of each female job class in the potential proxy establishment whose duties and responsibilities are similar to those of the key female job class of the seeking employer.
2. The pay equity job rate for each female job class in the potential proxy establishment referred to in paragraph 1.
3. The total cost of benefits provided to or for the benefit of the employees of the potential proxy establishment, expressed as a percentage of the total amount of all wages and salaries paid to those employees.
4. Such other information as may be prescribed in the regulations.[245]

The proxy employer is required to provide the job and pay equity adjusted job rate information requested by the seeking employer [21.17 (2)].[246] The proxy employer must provide the information within 60 days of receiving the request [21.17 (3)].[247] If no similar job classes exist in the proxy organization, the proxy employer provides information for a group of female job classes whose pay equity job rates are representative of the range of pay equity job rates in the potential proxy establishment [21.17 (5)].[248] If the key female job classes from the seeking employer are in a bargaining unit, the proxy employer provides job information for unionized jobs unless the seeking employer and union agree that the jobs may be compared to non-unionized jobs in the proxy establishment [21.17 (6)].[249]

---

[242] O. Reg. 396/93, schedule.
[243] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.16, schedule.
[244] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17.
[245] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(1).
[246] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(2).
[247] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(3).
[248] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(5).
[249] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(6).

[21.17 (2)] The potential proxy employer shall provide the requested information if:

(a) the request is made in writing;

(b) the request is accompanied by a copy of the order issued under subsection 21.12 (2);

(c) the request is accompanied by an organization chart showing the reporting relationships for all job classes of the seeking employer;

(d) the request contains a detailed description, in a form approved by the Commission, of the duties and responsibilities of the key female job class of the seeking employer that is to be compared using the proxy method;

(e) the request contains such additional information as may be prescribed in the regulations;

(f) the request is signed by the employer or a partner of the employer, or, if the employer is a corporation, if the request is accompanied by a copy of a resolution of the corporation's board of directors resolving that the corporation make the request and by a certificate of an officer of the corporation certifying that the copy is a true copy; and

(g) if the members of the key female job class of the seeking employer have a bargaining agent,

(i) the request is signed by the bargaining agent; and

(ii) it indicates whether the seeking employer and the bargaining agent have agreed that the class may be compared to job classes that are not in a bargaining unit of the establishment that is selected as the proxy establishment.[250]

iv. Proxy comparison method and achievement of pay equity

Achievement of pay equity in the establishment of a seeking employer occurs when:

- key female job classes are compared to proxy female job classes and the comparisons made as if the proxy female jobs were male job classes of the seeking employer; and
- other female jobs in the seeking establishment are compared to key female jobs as if the key female jobs were male job classes of the seeking employer [21.15 (1)].[251]

Proxy job comparisons are conducted by valuing and comparing the seeking employers' female job classes to those of the proxy employer. To do this, the seeking employer evaluates the job classes of the seeking and proxy

[250] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(2).

[251] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.15(1).

establishments using a gender neutral comparison system [21.15 (3)] and determines the job rates.[252] Once all the job values and job rates have been determined, and comparisons made using proportional value [21.15 (2)], the seeking employer is required to post a pay equity plan by January 1, 1994 [21.18, 21.19].[253] The seeking employer must achieve pay equity by increasing the wages of all female job classes such that the relationship between the value of the work performed and job rates of all female jobs of the seeking employer is the same as that of the female job classes of the proxy employer. At least 1% of the employers' previous year's payroll must be spent every year on adjustments until pay equity is achieved.[254]

11.7 Q&A Proxy Funding

Q1: Our organization no longer receives funding to cover the minimum 1% of payroll for proxy pay equity adjustments. Are we still obligated to make the payments?

A1: Yes. Employers covered by the Act are responsible for achieving and maintaining pay equity for their female job classes.[255] An employer's inability to pay adjustments, either due to financial hardship or lack of funding, does not exempt that employer from its obligations under the Act Kensington Village v. Service Employees International Union, Local 220, 2000 CanLII 22420 (ON PEHT)).

Any questions related to funding should be directed to the funding agency or Ministry.

11.8 How is maintaining using the proxy method different from job-to-job or proportional value methods?

The proxy employer provides a 'seeking' employer with "pay equity job rates" for female job classes that are similar to the key female job classes of the seeking employer. The "pay equity job rate" is the rate that the proxy employer's job classes would have been paid had the job class achieved pay equity on January 1, 1994 [21.11 (1)].[256] The proxy employer's pay equity job rates are used to determine the pay equity gaps that exist for the seeking employer's female job classes. Adjustments are paid to existing job classes until the pay equity target job rate is achieved, in addition to any job rate increases that may have been paid in the interim [21.11 (3), 21.22 (3)].[257] The seeking employer maintains pay equity by ensuring that all new female job classes are paid at least the pay equity target job rate for the job class.

i. Does an employer that achieved pay equity using the proxy method need to continue using the proxy method to maintain pay equity?

[252] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.15(3).
[253] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.15(2), 21.18, 21.19.
[254] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 13(4).
[255] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).
[256] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.11(1).
[257] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.11(3), 21.22(3).

As a general matter, yes, an employer that achieved pay equity using the proxy method must continue to use the proxy method to maintain pay equity, and determine whether any pay equity gaps have re-emerged.

However, an employer or a bargaining agent who believes changed circumstances (e.g., emergence of sufficient internal male comparators) have occurred, such that the pay equity plan is no longer appropriate, may be able to amend the plan, to change the comparison method, following the process in section 14.1 (establishment with bargaining unit), or section 14.2 (establishment with no bargaining unit) of the Act, as applicable.

For establishments with employees represented by a bargaining agent, the employer or bargaining agent that considers the plan no longer appropriate because of changed circumstances must provide notice to the other party to negotiate amendments to the plan.

12 Pay Equity Commission

12.1 About the Pay Equity Commission

The Pay Equity Commission is an independent agency of the government established by the Act. It is made up of two independent parts: the Pay Equity Office and the Pay Equity Hearings Tribunal [27. (2)].[258]

12.2 About the Pay Equity Office

The Pay Equity Office is responsible for the enforcement of the Act [33. (1)].[259] The Office provides general education about pay equity and training sessions on implementing pay equity to the public. The Office's Review Services Unit receives complaints from employers, employees and unions about non-compliance (see "Enforcement and Complaints"). Review Officers are empowered under the Act to investigate and attempt to settle disputes about pay equity.[260] They may also issue orders or make decisions [34. (3)].[261] A Review Officer may refer an order to the Tribunal if the order is not followed [24. (5)].[262] If an employer, employee or bargaining agent wishes to dispute an order or decision made by a Review Officer, they may make an application to the Tribunal [25. (1)].[263]

12.3 About the Pay Equity Hearings Tribunal

The Tribunal is the adjudicative branch of the Commission [21.23, 25, 28, 29. (1)].[264] It has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. The decisions of the Tribunal are final and conclusive for all purposes [30].[265]

[258] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 27(2).
[259] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 33(1).
[260] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 34(2)-(3).
[261] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 34(3).
[262] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 24(5).
[263] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 25(1).
[264] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 21.23, 25, 28, 29(1).
[265] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 30.

The Tribunal is a quasi-judicial body; it is required to be impartial and it must provide all parties with a fair hearing and fair process. The Tribunal's decision-makers are appointed for their specialised expertise in labour and employment law, compensation systems, and pay equity. In making its decisions the Tribunal must consider the specific issues in dispute between the parties in the context of the policy objectives and structure of the Act.

Recourse to the courts is limited, but could be made in cases where it could be shown, for example, that the Tribunal has gone beyond the scope of the Act.

Parties who wish to complain about a pay equity issue in their workplace must first file their complaint with the Pay Equity Office.[266]

For more information about the Tribunal's proceedings, parties can refer to the Tribunal's "Rules of Practice" available on the Tribunal's website or from the Tribunal's Registrar.

13 Enforcement and Complaints

Part IV of the Act sets out processes for making complaints and resolving disputes that may arise as pay equity is being implemented or maintained.

13.1 What is the timeframe for making a complaint?

There are no time limits. A complaint can be made for any period during which the Act has been in effect.

13.2 Who can make a complaint?

A complaint can be made by:

- any employer;
- any employee (including former employees);
- any group of employees;
- any bargaining agent representing the employee or group of employees in a female job class [22. (1)].[267]

13.3 Can an employee represented by a union make a pay equity complaint?

The Act recognizes that the bargaining agent represents its members with respect to pay equity issues in the workplace. Individuals in female job classes who are represented by a bargaining agent do not have any role in the pay equity process. Represented employees do not have the right to object to a pay equity plan before it becomes "deemed approved" (for non-unionized employees, an objection period is granted through [15. (7)] of the Act).[268] A pay equity plan that is negotiated between the employer and bargaining agent and signed by both parties becomes "deemed approved" on all employees covered by the plan once it is posted by the employer. [269]

Deemed approved plans may become the subject of a complaint brought by a represented employee. The Tribunal has recognized that employers and unions

[266] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 22.
[267] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 22(1).
[268] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 15(7).
[269] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14(5).

cannot ignore their obligations under the Act with impunity. Where a member of a bargaining unit in a female job class makes a complaint under [22],[270] he/she must be able to demonstrate that the deemed approved plan does not meet the minimum standards of the Act as set out in Part I. Examples of the type of contravention that might be brought forward by a represented employee include: the plan did not determine its female and male job classes, the legislated criteria of skill, effort, responsibility and working conditions were not considered when the job classes were valued, the plan did not use the appropriate job rates for the female job class or comparable male job class(es) when making comparisons.

However, if the pay equity plan did value the job classes using skill, effort, responsibility and working conditions, then the represented employee in his/her complaint must show that the valuation was unreasonable. In these situations, the Tribunal has indicated that deference must be given to the negotiating parties, because many aspects of achieving pay equity are not capable of absolute determination and there are acceptable ranges of outcomes in the valuation process Houston v. Centennial College, 2002 CanLII 49436 (ON PEHT), Group of Employees v. Ontario (Management Board Secretariat), 1999 CanLII 14827 (ON PEHT), and Munro v. Ottawa Heart Institute, 2004 CanLII 60148 (ON PEHT).

13.4 How does the Pay Equity Act protect employees who make pay equity complaints?

Employers are not allowed to penalize employees in any way for being involved in or asking questions about pay equity processes, objecting to pay equity plans, or otherwise exercising their rights to pay equity.[271]

[9. (2)] No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

(a) because the person may participate, or is participating, in a proceeding under this Act;

(b) because the person has made, or may make, a disclosure required in a proceeding under this Act;

(c) because the person is exercising, or may exercise, any right under this Act; or

(d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.[272]

In cases where the complaint claims that he/she was penalized for exercising his/her pay equity rights, the complainant must show that he/she was actually engaged in an activity outlined in [9. (2)] and that he/she experienced some form of

[270] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 22.
[271] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(2).
[272] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(2).

punishment by the respondent. To find a contravention of [9. (2)], the Review Officer must decide based his or her investigation of the facts that the employer's actions fell within the behaviours prohibited by the provision Clow v. Peterborough (City), 1996 CanLII 8060 (ON PEHT).[273]

13.5 What are reasons for filing a complaint under the Pay Equity Act?

Applicants can file a complaint about a contravention of the Act, regulations or order of the Commission. Some examples of violations include:

- Pay equity was not implemented or achieved for female job classes in the establishment [7. (1)].[274]
- Pay equity has not been maintained in the establishment [7. (1)].[275]
- Compensation to a male job class was reduced to achieve pay equity [9. (1)].[276]
- An employee has been fired, coerced, penalized, or harassed because of pay equity [9. (2)].[277]

Concerning pay equity plans, complaints can be made because:

- A pay equity plan was not prepared or posted by a Part II employer [13, 21.18, 21.4].[278]
- The posted pay equity plan does not meet the minimum standards set out in Part I of the Act.
- A union and employer fail to agree to a pay equity plan or fail to agree to amendments to a plan required because of changed circumstances or sale of business [14. (6)].[279]
- A non-unionized employee objects to a posted pay equity plan or amendments within the objection period [16. (4)].[280]
- There have been changes in the workplace such that the pay equity plan is no longer appropriate for the female job class to which the employee or group of employees belongs [22. (2) (b)].[281]
- The plan is not being implemented according to its terms [22. (2) (a)].[282]

13.6 What happens in the application process?

Applicants must complete, sign and submit an Application for Review Services form to the Pay Equity Office to start the process. Once the Office receives the application, the applicant will be notified that his or her application has been received. The applicant may be asked to provide further information to clarify the nature of the complaint. Failure to respond to requests

[273] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(2)
[274] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).
[275] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 7(1).
[276] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(1)
[277] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(2)
[278] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 13, 21.18, 21.4.
[279] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 14(6).
[280] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(4).
[281] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 22(2)(b).
[282] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 22(2)(a).

for information may delay the assignment of the file for investigation.

13.7 What is the role of a Review Officer?

Review Officers are employees of the Pay Equity Office who have powers under the Act to investigate complaints, attempt to settle disputes about pay equity and make orders for compliance. Review Officers also monitor the preparation of pay equity plans [24, 34(2), 35].[283] The Review Officer is neutral: he/she represents neither the applicant nor the respondent.

Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal [34. (2)].[284]

> [34. (3)] A review officer, for the purpose of carrying out his or her duties:
>
> (a) may enter any place at any reasonable time;
>
> (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;
>
> (c) upon giving a receipt therefore, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;
>
> (d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and
>
> (e) may provide in an order made under subsection 16 (2) or 24 (1) that any job class is a female job class or a male job class.[285]

13.8 What are the possible outcomes of investigations?

- The Review Officer may try to bring about a settlement between the parties [23. (1)].[286] Settlement efforts generally proceed only after the Review Officer determines that the issue is one that is within the authority of the Act to address.
- The Review Officer may issue an order on the outstanding issue(s) if the Officer believes based on his or her investigation that a contravention has occurred [24, 16. (2)].[287] An order generally sets out steps that the employer, and union if necessary, must take to comply with the law. An order is binding on the parties named in it. The terms can be varied or revoked as a result of

[283] *Pay Equity Act*, R. S. O. 1990, s. P. 7, ss. 24, 34(2), 35.
[284] *Pay Equity Act*, R. S. O. 1990, s. P. 7, s. 34(2).
[285] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 34(3).
[286] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 23(1).
[287] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 24, 16(2).

either party requesting a hearing at the Pay Equity Hearings Tribunal.

- The Review Officer may issue a "Notice of Decision" in situations where the Officer finds no violation of the Act [23. (2)], or the complaint is not within the within the jurisdiction of the Commission, or because subject of the complaint is trivial, frivolous, vexatious or made in bad faith [23. (3)].[288]

13.9 What happens when an employer or union complain about changed circumstances?

The Review Officer will investigate the substance of the claim.[289] Settlement efforts will be undertaken once it has been determined that there is a legislative basis for the complaint. If the Review Officer is of the opinion that no changed circumstances exist that render a plan inappropriate for the establishment or bargaining unit, the parties will be so informed of this decision and the Review Officer will in most cases conclude his/her involvement.

13.10 What happens when the complaint is that pay equity is not being maintained?

The Review Officer's initial investigation will focus on determining whether the employer's current administration of compensation practices shows a pay equity gap between female job classes and male job classes. The Review Officer may also make inquiries as to whether the organization has a formal or informal system in place to ensure that changes to the job classes are assessed for pay equity consequences. If pay equity gaps are found, the Review Officer may make such orders as are necessary to ensure that the employer has adequately maintained pay equity.[290]

13.11 What happens when the complaint is about the preparation of a pay equity plan?

If the complaint is about an objection to a pay equity plan in non-unionized workplace, a Review Officer will be appointed to investigate to determine if the objection is valid and whether the objection has been filed within the appropriate time frame. If there is a basis for the objection, the Review Officer may help the parties to reach a settlement. If the parties are unable to settle, the Review Officer will issue an order under [16. (2)].[291] A plan that reflects the settlement or order must be posted in the workplace [16. (3)].[292]

If any employee covered by the plan objects to the plan that reflects the order, they have 30 days to request a hearing before the Tribunal. Similarly, any employee not party to a settlement may request a Tribunal hearing within 30 days of the posting of a plan that reflects a settlement reached with other employees [16. (4)].[293]

---

[288] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 23(2)-(3).
[289] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 23(1).
[290] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 24.
[291] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(2).
[292] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(3).
[293] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(4).

If the 30-day period following the re-posting passes without objections being filed with the Commission, the plan is deemed approved by the Commission and must be implemented by the employer according to its terms [16. (5)].[294]

If the complaint is about a failure to agree to a plan the Review Officer will first determine if it is an appropriate situation for there to be negotiations. If it is a situation where negotiation between the employer and the bargaining agent is required, for instance a Part II employer and its then existing bargaining agent never negotiated a pay equity plan, the Review Officer will provide such assistance as may be necessary to help the parties arrive at a plan.[295]

If the complaint is about a failure to agree to amendments to a deemed approved plan in a unionized workplace, a Review Officer will be appointed to investigate whether an amended plan is necessary and may help the parties to reach a settlement. Where the parties are unable to reach an agreement on a plan, the Officer may issue such Orders as are necessary to resolve the matters in dispute under [24. (1)] in order to allow negotiations to continue.[296] The Review Officer may monitor the continued efforts of the parties until a plan is completed.

Alternatively, the Review Officer may order on all the remaining issues and provide a completed plan to the parties. This type of order is issued under [16. (2)].[297] The employer must post a copy of the plan that reflects the settlement or order. Review Officers may also notify the parties and the Hearings Tribunal that an order will not be made, or he/she may notify the complainant of a decision not to consider the complaint under the grounds listed in [23. (3)].[298]

13.12 How does someone make anonymous complaints?

If a complainant does not wish to have the employer know his/her identity, the employee or group of employees making the complaint must arrange for an individual to act as their representative. This person represents the complainant during the process and his/her name will be made known to the employer. Anonymous applications cannot proceed until the Office receives written confirmation of the appointed representative and his/her contact information and consent [32. (3) – (5)].[299]

13.13 How does someone get a hearing before the Tribunal?

If the parties fail to act on an order, the Review Officer may refer the matter to the Tribunal for enforcement [24. (5)].[300] Also, any party objecting to a Review Officer's Order or Notice of Decision may request a

[294] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(5).
[295] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 24.
[296] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 24(1).
[297] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 16(2).
[298] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 23(3).
[299] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 32(3)-(5).
[300] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 24(5).

hearing before the Tribunal regarding the issue(s) in dispute [23. (4), 24. (6)].[301]

In some cases, the parties may access the Tribunal directly where a Review Officer is unable to effect a settlement and has not issued an Order or a Notice of Decision.

13.14 Are there offences and fines for failing to comply with the Pay Equity Act?

The Act describes offences and penalties for anyone who:

- Prevents a Review Officer from exercising his or her duties [35. (5)].[302]
- Violates [9. (2)] by intimidating a person who is exercising their rights to pay equity.[303]
- Fails to comply with an order of the Hearings Tribunal [25. (2)].[304]
- Breaks confidentiality of information provided under the proxy method [21.17 (7)].[305]

If convicted of the above offences, the guilty party can be fined up to $5,000 in the case of an individual, or $50,000 in any other case [26].[306]

If a corporation or bargaining agent commits the above offences, any of its officers, officials or agents who authorize, permit or acquiesce in the contravention is a party to and guilty of the offences. They are subject to the penalty regardless of whether the corporation or bargaining agent has been prosecuted or convicted [26. (2)].[307]

14 Proactive Compliance Programs

14.1 Pro-active Compliance Programs of the Pay Equity Office (formerly "Monitoring Programs")

The Office has the authority to enforce the Act. It has broad general powers to do what is necessary to fulfill this mandate. In recent years the Office has conducted several types of compliance programs to identify employers who may not be current with their pay equity obligations and to provide assistance to them to achieve pay equity. Details of the Office's past monitoring programs are reported in the Annual Reports.

For proactive compliance purposes, the Office seeks to determine the status of pay equity in individual workplaces by asking employers to provide information about their establishment, workforce and wage rates. If the Office does not receive a reply from the employer or the replies are inadequate, a Review Officer may be assigned to investigate the employer and make orders that are necessary to ensure that the employer is meeting its legal obligation to achieve and maintain pay equity in its establishment(s).

---

[301] *Pay Equity Act*, R. S. O. 1990, c. P. 7, ss. 23(4), 24(6).
[302] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 35(5).
[303] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 9(2).
[304] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 25(2).
[305] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 21.17(7).
[306] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 26.
[307] *Pay Equity Act*, R. S. O. 1990, c. P. 7, s. 26(2).

14.2 What information do Review Officers ask for in proactive compliance files?

Review Officers may ask employers to provide information on their job classes such as lists of female and male jobs and/or job descriptions, a copy of the job evaluation system or job comparison methods. Review Officers may ask to see pay equity plans or records of any pay equity adjustments made, payroll records, collective agreements, salary grids, job evaluation ratings, job rates or other documents. They may ask to speak to people on matters that may be relevant for carrying out his or her duties to enforce the Act.

14.3 Will businesses be reviewed proactively even if there has been no complaint made?

Regardless of whether a complaint is made, the Act requires all employers to whom it applies to achieve and maintain pay equity. The Tribunal has confirmed that Review Officers may investigate employers and issue orders even if no complaint has been made. If an employer is reviewed proactively by the Office, the employer may be required to demonstrate that there were no pay equity gaps identified as a result of comparisons between female and male job classes of equal or comparable value; or if there were gaps, that they were closed, i.e. female job classes are being paid at least the same as male job classes of equal or comparable value. If the investigation reveals that the employer did not meet its obligations under the Act, the employer would be required to do pay equity retroactively, and to pay any necessary retroactive adjustments with interest.

14.4 What if the employer cannot find the company's pay equity documents?

An employer may be asked to prove that pay equity has been achieved or maintained by the Review Officer who is investigating a complaint under the Act or proactively reviewing a business. If there is no evidence that pay equity was done, it may have to be redone. Documents such as job descriptions and postings, personnel files, payroll, tax and accounting records or corporate documents such as Board of Directors' meeting minutes may provide information on the company's past pay equity activities.

14.5 Does the Pay Equity Office guarantee that an employer will not have future complaints after being monitored?

No. An employee or union can make a complaint about a contravention of the Act at any time. Complaints can be received even after a Review Officer has reviewed or investigated the employer.

15 Glossary

Comparator

A comparator is the male job class to which a female job class is compared and found to be of equal or comparable value. The female job class must be paid the same job rate as that of the comparator.

Compensation

Compensation means all salaries, wages, payments and benefits paid or provided to an employee for performing work for which he/she receives a fixed or predetermined amount.

Effective Date

The effective date of the Pay Equity Act is January 1, 1988.

Establishment

An establishment is defined as all the employees of an employer who work in a given geographic division.

Equal Pay for Equal Work

Equal pay for equal work is a section of the Employment Standards Act, 2000 that requires an employer to pay the same wage to a man or a woman doing similar work in the same company.

Gender Bias

Gender bias is the favouring of one gender (usually men) over another (usually women). In compensation, gender bias means that the gender of the person in the job has influenced how that job is paid.

Gender Neutrality

Gender neutrality, for pay equity purposes, is the objective comparison of both female and male jobs. When a job comparison system is gender neutral, it accurately captures the content of skill, effort, responsibility and working conditions of the work that is done in both male and female job classes.

Job Class

A job class is defined as those positions in an establishment that have similar duties and responsibilities; require similar qualifications; are filled by similar recruiting procedures; and have the same compensation schedule, salary grade or range of salary rates.

Job Evaluation System

A job evaluation system is part of a job comparison system that determines the value of job classes within an organization.

Job Rate

Job rate is the highest rate of compensation for a job class.

Job-to-Job Comparison

Job-to-Job is a method of directly comparing female job classes to male job classes.

Part II Employers

An employer is subject to Part II requirements of the Act if they are in the private sector and employed 100 or more employees on the effective date, January 1, 1988, or they are in the private sector and employed 10-99 employees on the effective date and chose to post a pay equity plan before December 31, 1993, or they are in the public sector with employees on the effective date or on July 1, 1993.

Pay Equity

Pay equity is equal pay for work of equal or comparable value. Pay equity requires that jobs usually done by women (female job classes) must be valued and compared to jobs usually done by men (male job classes). If they are found to be of similar value, the job classes must be paid the same.

Pay Equity Act, 1987

This law was passed to identify and correct gender discrimination in compensation

practices of employers. Under the law, jobs usually held by women are valued and compared to different jobs usually held by men. The Act was amended in 1993, 1995 and 1996, and is now known as Pay Equity Act, R.S.O. 1990, c. P.7, as amended.

Pay Equity Plan

A pay equity plan is a document that provides employees with information about how pay equity was done and the results for their workplace. Employers subject to Part II of the Act are required to post pay equity plans in the workplace.

Posting

Posting is the act of putting a copy of the pay equity plan in a prominent spot in the workplace where it can be seen and read by all employees.

Proportional Value

Proportional value comparison is a way of indirectly comparing female and male job classes. Proportional value looks at the relationship between the value of the work performed and the compensation received by male job classes, and applies that relationship to determine the pay for female job classes.

Proxy Method

The proxy comparison method allows defined organizations in the broader public sector, which have mostly or all female job classes, to find comparators from another public sector organization. Only organizations that are part of the public sector as defined in the Appendix in the Schedule to the Act and that had employees on July 1, 1993, are eligible to use the proxy method by order of the Commission.

16 Appendix

16.1 Forms

Up-to-date forms can be found on the websites of the Pay Equity Office and of the Pay Equity Hearings Tribunal.

16.2 Contact Information

Pay Equity Office: https://payequity.gov.on.ca/home_en/

Pay Equity Hearings Tribunal: https://www.olrb.gov.on.ca/pec/PEHT/default.asp