

PART III.2
PROXY METHOD OF COMPARISON

Definitions

21.11 (1) In this Part,

"key female job class" means,

- (a) the female job class in a seeking employer's establishment having the greatest number of employees in that establishment, or
- (b) any other female job class in the establishment whose duties are essential to the delivery of the service provided by the employer; ("catégorie clé d'emplois à prédominance féminine")

"pay equity job rate" means,

- (a) in relation to a female job class in a proxy establishment, the job rate that would be required for that class if pay equity were to be achieved for the class as of the 1st day of January, 1994, and
- (b) in relation to a key female job class of the seeking employer, the job rate that would be required for that class if the job rate were to bear the same relationship to the value of the work performed in that class as the pay equity job rates for the female job classes in the proxy establishment with which the key female job class is compared bear to the value of the work performed in those female job classes in the proxy establishment; ("taux de catégorie relatif à l'équité salariale")

"potential proxy employer" means, in relation to a seeking employer, an employer of a potential proxy establishment for that seeking employer; ("employeur éventuel de l'extérieur")

"potential proxy establishment" means, in relation to a seeking employer, an establishment that is eligible to be selected as the proxy establishment for that seeking employer; ("établissement éventuel de l'extérieur")

"proxy employer" means, an employer of a proxy establishment; ("employeur de l'extérieur")

"proxy establishment" means, an establishment whose female job classes are compared with female job classes of a seeking employer using the proxy method of comparison; ("établissement de l'extérieur")

"seeking employer" means, an employer in respect of whom a review officer has issued an order under subsection 21.12 (2). ("employeur intéressé")

Proxy's information to be used

(2) For the purposes of the definition of "pay equity job rate", the pay equity job rate for a female job class of the proxy establishment is the rate indicated by the proxy employer for that class under paragraph 2 of subsection 21.17(1).

Deemed increase in pay equity job rate

(3) If the job rate for a female job class of the seeking employer is increased by a percentage or dollar amount, and the increase is not made for the purpose of achieving pay equity, the pay equity job rate for any job class with which that female job class was compared shall be deemed to have been increased by the same percentage or dollar amount, as the case may be.

Application

21.22 (1) This Part applies to those employers who are declared, by order of a review officer, to be seeking employers for the purposes of this Part.

Order re seeking employer

(2) A review officer may make an order declaring an employer to be a seeking employer if the employer has given notice to the Pay Equity Office under subsection 21.2 (5) and if the review officer finds,

- (a) that the employer is a public sector employer; and
- (b) that there is any female job class within the employer's establishment that cannot be compared to a male job class within the establishment under either the job-to-job method of comparison or the proportional value method of comparison.

Reference to Hearings Tribunal

(3) Subsections 24 (5) and (6) apply, with necessary modifications, to an order made under subsection (2).

Systemic gender discrimination

21.13 For the purposes of this Part and despite subsection 4(2), systemic gender discrimination in compensation shall be identified by undertaking comparisons, in terms of compensation and in terms of the value of the work performed, using the proxy method of comparison,

- (a) between each key female job class in the seeking employer's establishment and female job classes in a proxy establishment; and

- (b) between the female job classes in the seeking employer's establishment that are not key female job classes and the key female job classes in that establishment.

Proxy method required

21.14(1) A seeking employer shall use the proxy method of comparison for all female job classes in an establishment.

Proxy establishment

(2) The seeking employer shall select the proxy establishment to be used for the purposes of the proxy method of comparison in accordance with the regulations.

Proxy method described

21.15(1) Pay equity is achieved for a female job class in an establishment of a seeking employer under the proxy method of comparison,

- a) in the case of a key female job class,
 - (i) when the class is compared with those female job classes in a proxy establishment whose duties and responsibilities are similar to those of the key female job class, and
 - (ii) when the job rate for the class bears the same relationship to the value of the work performed in the class as the pay equity job rates for the female job classes in the proxy establishment bear to the value of the work performed in those classes; and
- b) in the case of any other female job class,
 - (i) when the class has been compared with the key female job classes in the establishment of the seeking employer, and
 - (ii) when the job rate for the class bears the same relationship to the value of the work performed in the class as the pay equity job rates for the key female job classes bear to the value of the work performed in those classes.

Comparison methods

(2) The comparisons referred to in subsection (1) shall be carried out using the proportional value method of comparison,

- (a) in the case of a comparison under clause (1)(a), as if the female job classes in the proxy establishment were male job classes of the seeking employer; and

- (b) in the case of a comparison under clause (1)(b), as if the key female job classes of the seeking employer were male job classes of the seeking employer.

Comparison system

- (3) The comparisons shall be carried out using a gender-neutral comparison system.

Bargaining unit

- (4) Comparisons under this section for a key female job class in a bargaining unit of the seeking employer shall be made with job classes in a bargaining unit of the proxy establishment unless the seeking employer and the bargaining agent for the employees in the key female job class agree otherwise.

If no classes similar

- (5) For the purpose of making comparisons under clause (1)(a), if there is no female job class in the proxy establishment whose duties and responsibilities are similar to those of the key female job class of the seeking employer, the comparison shall be made with a group of female job classes in the proxy establishment selected by the proxy employer in accordance with subsections 21.17 (4) to (6).

Group of jobs

- (6) Subsections 6 (6) to (10) apply, with necessary modifications, to the proxy method of comparison.

Combined establishments

21.16(1) Two or more seeking employers agree that, for the purposes of a pay equity plan under this Part, all their employees constitute a single establishment,

- (a) if the seeking employers are in the same geographic division; or
- (b) if the seeking employers are otherwise entitled to agree under section 2, and the employers shall be considered to be a single employer.

Limitations

- (2) The circumstances in which seeking employers may enter into an agreement under clause (1)(a) may be limited by regulation.

Exception

(3) If any of the employees to be covered by a plan referred to in subsection (1) have a bargaining agent, an agreement made under that subsection is not effective unless the bargaining agent joins the agreement.

Employers to implement plans

(4) Even though the employees of two or more seeking employers are considered to be one establishment under subsection (1), each employer is responsible for implementing and maintaining the pay equity plan with respect to that employer's employees.

Obtaining information from potential proxy employers

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:

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.

Request

(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.

Response time

(3) An employer who is required to provide information under subsection (2) shall do so within sixty days after receiving the request.

If no classes similar

(4) If there is no 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, the potential proxy employer shall provide the information for a group of female job classes in the potential proxy establishment selected by the potential proxy employer in accordance with subsections (5) and (6).

Representative range

(5) Subject to subsection (6), the group of female job classes selected under subsection (4) shall consist of classes whose pay equity job rates are representative of the range of pay equity job rates in the potential proxy establishment.

Bargaining unit

(6) If the key female job class referred to in subsection (4) is in a bargaining unit, the group of classes selected by the potential proxy employer must be in a bargaining unit of that employer unless the seeking employer and the bargaining agent for the employees in the key female job class 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.

Confidentiality

(7) The seeking employer, an employee of the seeking employer or a bargaining agent for such an employee shall use the information provided by a potential proxy employer only for the purposes of this Act.

Offence

(8) Every person who contravenes subsection (7) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 in the case of an individual, and not **more than \$50,000 in any other case.**

Parties to an offence

(9) If a corporation or bargaining agent contravenes subsection (7), every officer, official or agent of the corporation or bargaining agent who authorizes, permits or acquiesces in the contravention is party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted.

Bargaining agent

(10) A prosecution for an offence created by subsection (8) may be instituted against a bargaining agent in its own name.

Consent

(11) No prosecution for an offence created by subsection (8) shall be instituted except with the consent in writing of the Hearings Tribunal.

Pay equity plan

21.18(1) Every seeking employer shall prepare a pay equity plan to provide for pay equity using the proxy method of comparison.

Contents

(2) The plan must do the following:

1. Identify the establishment to which the plan applies.
2. Identify the key female job classes of the seeking employer.
3. Identify the proxy employer and the proxy establishment.

4. Identify the female job classes in the proxy establishment with which the key female job classes of the seeking employer were compared and set out their pay equity job rates.
5. Identify the female job classes in the seeking employer that are not key female job classes and that were compared with the key female job classes.
6. Describe the gender-neutral comparison system used for the purpose of making the comparisons.
7. Describe the methodology used for the calculations required by the comparisons.
8. Set out the value of the work performed in each job class that was compared with another job class.
9. Set out the results of the comparisons.
10. Identify all positions that are excluded in determining whether a job class is a female job class or a male job class and that are not to be included in any compensation adjustments under the plan by virtue of subsection 8(3), and set out the reasons for relying on that subsection.
11. With respect to all female job classes for which pay equity does not exist according to the comparisons, indicate how the compensation in those job classes will be adjusted to achieve pay equity.
12. Set out the date on which the first adjustments in compensation will be made under the plan, which date shall be not later than one year after this section comes into force.

Plan binding

(3) A pay equity plan prepared under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(4) A pay equity plan prepared under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Requirement to post plan

21.19 An employer required to prepare a pay equity plan under this Part shall post a copy of it in the workplace within six months after this section comes into force.

Bargaining unit employees

21.20 Sections 14, 16 and 17 apply, with necessary modifications, with respect to a pay equity plan that is prepared under this Part for employees in a bargaining unit.

Non-bargaining unit employees

21.21(1) This section applies with respect to pay equity plans prepared under this Part for employees who are not in a bargaining unit.

Review period

(2) The employees shall have until the ninetieth day after the plan is posted to review it and submit comments to the employer on the plan.

Application of certain provisions

(3) Subsections 14(1) and 15(2), (3) and (5) to (8) and sections 16 and 17 apply, with necessary modifications, with respect to the plan.

Compensation adjustments

21.22(1) A seeking employer shall make the first adjustments in compensation in respect of a pay equity plan prepared under this Part effective as of the 1st day of January, 1994.

Application of certain provisions

(2) Subsections 13(3) to (6) and (8) apply, with necessary modifications, with respect to the plan.

Deemed increase in pay equity job rate

(3) Despite subsections 13(3) to (6), a seeking employer shall increase the job rate for a female job class for which pay equity has not been achieved by the dollar amount of any deemed increase in the pay equity job rate for the job class with which the female job class of the seeking employer was compared that is required by subsection 21.11(3). This increase shall be made before any adjustments required by subsection 13(3), (4) or (5) are made.

Deemed compliance

(4) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7(1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the 1st day of January, 1994.

Orders for information

21.23(1) A review officer or the Hearings Tribunal may order,

- (a) a proxy employer or a potential proxy employer to provide to a seeking employer any information that the proxy employer or potential proxy employer is required to provide by this Act or the regulations;
- (b) a seeking employer to provide to a proxy employer or a potential proxy employer any information that the seeking employer is required to provide by this Act or the regulations.

Compliance

(2) An employer or a bargaining agent shall comply with an order issued under subsection (1) within the time indicated in the order.

Reference to Hearings Tribunal

(3) Subsections 24(5) and (6) apply, with necessary modifications, to an order issued by a review officer under subsection (1).

NOTE: Sections 21.11 to 21.23 were amended by 1996, c. 1, Sch. J, s. 3 by re-enacting s. 21.22(l) to (3), and repealed by 1996, c. 1, Sch. J, s. 4. In a court decision, *S.E.I.U., Local 204 v. Ontario (Attorney General)* (1997), 151 D.L.R. (4th) 273, 97 C.L.L.C. 1230 035 (Ont. Ct. (Gen. Div.)), Schedule J of the *Savings and Restructuring Act*, 1996, S.O. 1996, c. 1, was declared unconstitutional and of no force and effect.

Orders by Review Officers

24(1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II, III.1 or Part III.2, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.

Idem

(4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 10 or a posting date that is later than the one provided under section 21.7 or 21.19.

Orders

25(2) (a) where it finds that an employer or a bargaining agent has failed to comply with Part II, III.1 or III.2, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan

Application of Parts II, III.1 and III.2

25(4) Parts II, III.1 and III.2 apply with necessary modifications to a pay equity plan prepared under clause (2) (a) but,

- (a) the order of the Hearings Tribunal may provide for a mandatory posting date that is later than the one provided in section 10 or a posting date that is later than the one provided under section 21.7 or 21.19;
- (b) (b) the order of the Hearings Tribunal shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 13(2)(e) or a date that is later than the one provided under section 21.10 or 21.22;

Regulations

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(...)

(g.2) governing the selection of an establishment as the proxy establishment for a seeking employer under Part III.2;

(g.3) limiting the circumstances in which seeking employers may make agreements under clause 21.16(1)(a);

(g.4) prescribing information for the purpose of paragraph 4 of subsection 21.17(1);

(g.5) prescribing information for the purpose of clause 21.17(2)(e);