

New pay equity obligations for employers starting August 31

August 24, 2021

Federally regulated employers need to be aware of new pay equity obligations starting August 31, 2021. This new legislation is expected to apply to around 1.2 million employees and failure to comply can result in monetary penalties. Provincially regulated employers may also want to take note.

Background

The federal *Pay Equity Act*, introduced in 2018 and [which we provided insight on in 2018](#), will come into force on August 31, 2021. Federally regulated employers with 10 or more employees will have three years to develop their pay equity plans. The legislation aims to achieve and maintain pay equity through proactive means by redressing the systemic gender-based discrimination in compensation practices.

The *Pay Equity Act* follows in the footsteps of provincial pay equity legislation. Certain provincial regulated employers in Ontario and Québec are already subject to similar pay equity requirements.

What does this mean for employers?

Affected employers are those within the legislative authority of Parliament under the Canada Labour Code. They include federally regulated employers in the private sector, such as banks, marine shipping, cross-border transportation and telecommunications.

The *Pay Equity Act* sets out several new obligations for federally regulated employers, including the introduction of pay equity plans and committees, the submission of annual filings and the compliance with audits and enforcement.

Developing and maintaining pay equity plans

In general, within three years of the *Pay Equity Act* taking effect (or from becoming subject to the Act, as applicable), employers must implement pay equity plans identifying and addressing gender-based wage gaps for incumbents of predominantly female job classes.

In developing such pay equity plans, federally regulated employers will be required to:

- identify job classes in the workplace and determine their gender predominance;
- determine the value of work performed by each job class considering the skill, effort and responsibility required and the conditions under which the work is performed;
- calculate the total compensation for each job class;
- compare the total compensation associated with the predominantly female job classes with the compensation associated with the predominantly male job classes of similar value; and
- identify predominantly female job classes requiring an increase in compensation, describe how their compensation will increase and set out the date on which the increase is payable.

Employers will be obliged to post a draft of their pay equity plans and allow time for employee feedback, which must be taken into account in preparing the final version. Employers will also need to revise and update their pay equity plans at least once every five years to proactively identify and close wage gaps.

Establishing pay equity committees

Some federally regulated employers will need to introduce pay equity committees, comprised of employee and employer representatives, to develop and revise their pay equity plans. They include employers with 100 or more employees and those with 10 to 99 employees, if some or all are unionized. Non-unionized employers with fewer than 100 employees may also establish pay equity committees.

The Act imposes strict committee composition requirements. Committees must count at least three members; at least two-thirds of the members must represent the employees to whom the pay equity plan relates; and at least half of the members must be women. In the case of unionized workplaces, each bargaining unit may appoint a committee member. Additional legislative provisions will apply to committee functions.

Complying with audits and enforcement

The *Pay Equity Act* will require employers to submit annual statements to the Pay Equity Commissioner regarding their pay equity plans and maintenance activities. The Commissioner will be responsible for the administration and enforcement of the legislation. Its broad powers will include resolving disputes, conducting compliance audits and enforcing monetary penalties for contravening the legislation.

What should employers do now?

Complying with the new pay equity obligations will necessitate careful planning. Federally regulated employers are encouraged to be proactive and take compliance-minded steps, including:

- identify a lead or create a committee in the organization to review and understand the obligations;

- consider retaining appropriate experts, including pay equity consultants and legal counsel; and
- take steps to take all actions and create all documents required by the Act, including drafting pay equity plans, conducting the required pay equity analysis and having a plan to update the pay equity plans at least once every five years.

Provincially regulated employers, especially with employees in Ontario and Québec, may wish to consider any pay equity obligations that may be applicable.

BLG has advised employers on pay equity compliance matters. Should you wish to discuss these compliance issues regarding pay equity, please do not hesitate to contact your BLG lawyer or any of the key BLG contacts listed below.

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