

## Bill C-86 Introduces New Pay Equity Act

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On October 29, 2018, the federal government tabled Bill C-86, an omnibus bill aimed at implementing further aspects of the government's Budget 2018. The Bill received Royal Assent on December 13, 2018 and will come into force on a date to be ordered by the Governor in Council.

The Bill contained provisions to modernize the *Canada Labour Code*, which we have discussed in a previous Focus Alert ([Federal Government Proposes Significant Amendments to the Canada Labour Code in Bill C-86](#)). The bill also introduced a new *Pay Equity Act* (the "Act") for federally regulated employers. This Focus Alert provides a discussion of the major provisions of the new Act in greater detail.

### Purpose of the Legislation

The purpose of the Act is to achieve pay equity by proactively taking steps to address systemic gender-based discrimination in compensation experienced by employees occupying predominantly female job classes. The legislation is intended to ensure that men and women performing work of equal value in the same establishment are paid equally.

Pay equity legislation is not for the purpose of ensuring that men and women in the same job are paid equally (known as equal pay for equal work), but rather that employees performing work in predominantly female job classes are paid the same as those performing work in predominantly male job classes if the work is of a comparable value.

Under the Act, where comparisons between predominantly female job classes and comparable predominantly male classes in an establishment reveals a difference in compensation, an employer is required to increase compensation payable to the employees in the relevant female job class in order to achieve pay equity.

### Pay Equity Committee

Employers covered by the Act are required to establish a pay equity plan. Employers with 100 or more employees, or with 10 to 99 employees if any of those employees are unionized, must establish a pay equity committee for that purpose. Employees with 10 to 99 non-unionized employees may establish a pay equity committee voluntarily, or if requested by an employee.

### Requirements

The requirements for a pay equity committee are as follows:

1. There must be at least three members;
2. At least 2/3 of the members must represent employees to whom the plan relates;
3. At least half of the members must be women;
4. At least one member must be selected by the employer to represent it;
5. If some or all employees to whom the plan relates are unionized, then there must be at least one member to represent each of the bargaining units; and
6. If some or all of the employees to whom the plan relates are not unionized, at least one member must be a person selected by the employees, by majority vote, to represent them.

If employers cannot establish a committee that meets those requirements, they can seek authorization from the Pay Equity Commissioner, newly established by the Act, to establish or continue a committee with different requirements.

If it is not possible to establish a pay equity committee despite reasonable efforts to do so, or if the committee cannot do its work after it is established, the employer must apply to the Pay Equity Commissioner for authorization to establish the plan without a committee.

## **Establishing a Pay Equity Plan**

### **Job Classes**

In order to establish a pay equity plan, an employer must identify job classes for the employees to whom the plan relates. Positions are in the same job class if they:

1. Have similar duties and responsibilities;
2. Require similar qualifications; and
3. Are part of the same compensation plan and are within the same range of salary rates.

Once job classes are identified, the employer or the committee (as applicable) must determine which job classes are predominantly female, and which are predominantly male. A job class is considered to be predominantly female if:

1. At least 60% of the positions in the class are occupied by women;
2. Historically, at least 60% of the positions in the class were occupied by women; or
3. The job class is one that is commonly associated with women due to gender-based occupational stereotyping.

A job class is considered to be predominantly male if the same criteria above apply, but with reference to men instead of women.

An employer or committee may treat a group of job classes as a single predominantly female job class if at least 60% of the positions in the group are occupied by women. The Act will then apply in respect of the group of classes as if it were one predominantly female job class.

## **Determination of Value of Work**

The employer or committee must determine the value of the work performed in each of the predominantly female and male job classes. In determining the value of the work performed, the employer or committee must consider the composite of:

1. The skill required to perform the work;
2. The effort required to perform the work;
3. The responsibility required in the performance of the work; and
4. The conditions under which the work is performed.

The method used by an employer or committee to determine the value of the work performed must not be discriminatory on the basis of gender, and must make it possible to determine the relative value of the work performed in all of the predominantly female and male job classes. It is possible for an employer or a committee to decide that the value of the work performed has already been determined through a method that complies with the requirements outlined above.

The employer or committee must calculate the compensation, in dollars per hour, associated with each predominantly female and male job class.

Differences in compensation may be excluded from the calculation of compensation if the differences are based on the following factors, as long as the factors are designed and applied in a manner that does not discriminate on the basis of gender:

1. A system of compensation based on seniority or length of service;
2. The practice of temporarily maintaining compensation for an employee who has been reclassified or demoted to a position with a lower rate of compensation until the rate of compensation for the position is equal to or greater than the rate of compensation that was payable to the employee immediately before their reclassification or demotion;
3. A shortage of skilled workers causing an employer to temporarily increase compensation because of difficulty in recruiting or retaining employees with the requisite skills;
4. The geographic area in which an employee works;
5. The fact that an employee is in a development or training program, resulting in a different rate of pay than that of an employee doing the same work outside of the program;
6. The non-receipt of benefits with a monetary value due to the temporary, casual or seasonal nature of a position;
7. The existence of a merit-based compensation plan that is based on a system of formal performance ratings, and that has been brought to the attention of employees; or
8. The provision of compensation for extra-duty services, such as overtime, shift work, being on call, being called back to work, or working or travelling on a day that is not a working day.

## **Comparison**

The employer or committee must then compare the compensation associated with the comparable predominantly female job classes with the compensation of the predominantly male job classes and determine if there is any difference in compensation between the classes. The employer or committee must use one of the two methods described in the Act. If neither can be used, an employer must apply for authorization to the Pay Equity Commissioner to use another means prescribed by regulation or proposed by the employer, or if there is a pay equity committee, the committee may apply a prescribed method or use a method that it thinks is appropriate, if no other means are prescribed.

## **Increases in Compensation**

Where the plan shows a difference in compensation between predominantly female and predominantly male job classes, then the employer must increase the compensation payable to the employees occupying positions in the predominantly female job classes that require an increase in compensation in accordance with the timelines outlined in the Act. An employer is not permitted to reduce the compensation payable to any of its employees for the purpose of achieving pay equity.

Where the required increase in compensation is more than 1% of the employer's payroll for the previous year, the employer may choose to phase in the compensation increase in accordance with the timelines and requirements outlined in the Act.

## **Updating the Pay Equity Plan**

Once the pay equity plan is established, employers have an obligation to update the plan in accordance with the timelines and requirements outlined in the Act.

## **Investigations and Audits**

As mentioned above, the Act establishes a Pay Equity Commissioner for the purpose of administering and enforcing the Act, assisting people in understanding their rights and obligations under the Act, and facilitating the resolution of disputes relating to pay equity.

The Pay Equity Commissioner is empowered by the Act to carry out audits and investigations for the purpose of verifying compliance, or preventing non-compliance, with the Act. The Pay Equity Commissioner can also order an employer to conduct an internal audit.

## **Administrative Monetary Penalties**

The Act permits the Governor in Council to make regulations with respect to violations and penalties. The Act indicates that maximum penalties for violations that may be established by

regulation are as follows:

1. \$30,000 for an employer with 10 to 99 employees, or for a bargaining agent representing some or all of the unionized employees of such an employer; or
2. \$50,000 for an employer with 100 or more employees, or for a bargaining agent representing some or all of the unionized employees of such an employer.

## **Referral to Canadian Human Rights Tribunal**

The Commissioner may refer certain disputes to the Canadian Human Rights Tribunal for inquiry.

## **Amendments to the *Parliamentary Employment and Staff Relations Act* (PESRA)**

With the exception of certain sections relating to violations and administrative monetary penalties, the provisions of the Act will apply to employers covered by PESRA. Provisions regarding contravention that are specific to PESRA are also established. The amendments to PESRA include a stipulation that the pay equity provisions are not to be construed as limiting the powers, privileges, and immunities of the Senate, the House of Commons and their members, or authorizing the exercise of a power or performance of a function or duty that interferes, directly or indirectly, with the business of the Senate or of the House of Commons.

## **In Our View**

The provisions of the new *Pay Equity Act* will create various obligations for employers to review their compensation practices through the establishment of pay equity committees and plans, and to address any differences in compensation between predominantly female and predominantly male job classes.

For further information regarding the provisions of the new Act and what they may mean for federally regulated employers, please contact [Raquel Chisholm](#) at 613-940-2755 or [Carole Piette](#) at 613-940-2733.