PAY EQUITY ACT LEGISLATIVE GUIDE

CANADIAN HUMAN RIGHTS COMMISSION

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Table of Contents

1. A message from the Pay Equity Commissioner

As Canada's Federal Pay Equity Commissioner, I am pleased to share the Pay Equity Act Legislative Guide with you. This guide is one of a series of tools and resources that will help employers, employees and bargaining agents understand pay equity and how to establish the foundation for a successful pay equity process.

Pay equity is an important tool in promoting gender equity and closing the gender wage gap. Research shows that organizations that take action on gender equity will see economic benefits.

The Pay Equity Act came into force on August 31, 2021. It applies to federally regulated public and private sector employers with an average of 10 or more employees. It also applies to parliamentary workplaces through changes made to the Parliamentary Employment and Staff Relations Act.

The Act requires that federally regulated public and private sector employers take active measures to close gender wage gaps in their workplaces. Employers have an obligation to examine their compensation practices and to pay workers performing work of equal value the same, regardless of gender.

If you keep the goals of the legislation in mind, use common sense and consult with this Guide and the other resources found on the Canadian Human Rights Commission Pay Equity website, you should arrive at the right destination: equal pay for work of equal value regardless of gender.

Achieving pay equity requires the consensus and collaboration of all workplace parties. We are here to help. For additional guides, templates and more information on your obligations and rights under the Pay Equity Act, visit www.payequitychrc.ca/en.

If you have any comments, questions or concerns, please contact us at payequity-equitesalariale@chrc-ccdp.gc.ca.

I look forward to your participation as we all engage in this important journey toward achieving pay equity together. Thank you.

Karen Jensen
Federal Pay Equity Commissioner

2. About this publication

This Guide is designed to help you understand the Pay Equity Act and the Pay Equity Regulations. It provides a road map for the pay equity journey. Whether you are a federally regulated employer with 10 or more employees, an employee working in a federally regulated enterprise or a union representing federally regulated employees, this Guide is for you. It uses plain language and provides concrete examples of how to fulfill the requirements of the Act. It is meant to be user-friendly and to be consulted as needed; you don't have to read it all at once.

This Guide will help organizations achieve pay equity by:

- Conducting a robust pay equity exercise, in accordance with the Pay Equity Act and the Regulations, to ensure that employees performing work of equal value in federally regulated workplaces are paid the same;
- Involving employees of large enterprises (100+ employees) and union representatives in the development and maintenance of a pay equity plan; and,
- Maintaining pay equity in the workplace by conducting a regular and thorough review of the pay equity plan in accordance with the Act and the Regulations.

For more information on various tools and resources developed by the Pay Equity Unit, please visit our website at www.payequitychrc.ca/en.

We welcome your feedback on this Guide, as well as any of our other reference and educational materials. If you have any comments, questions or concerns, please contact us at payequity-equitesalariale@chrc-ccdp.gc.ca.

3. Guiding principles for interpreting and applying the Pay Equity Act

3.1 A fundamental human right

Pay equity should first and foremost be interpreted and applied as a fundamental piece of human rights legislation. In practical terms, this means that notable consideration must be given to the purpose of the Pay Equity Act: eliminating gender discrimination in the compensation practices and systems in federally regulated workplaces. For many years, tribunals have held the view that all human rights legislation has a special nature or quasi-constitutional status. This concept applies to the Pay Equity Act and has three main implications:

1. First, human rights legislation, including the Pay Equity Act, should be given a **purposeful and liberal interpretation**;
2. Second, the Pay Equity Act must be given a **"flexible" interpretation**. For example, evolving social conditions can often impact the interpretation of the legislation by taking into consideration recent or emerging human rights concepts; and,
3. Third, in situations when there is a conflict between the Pay Equity Act and other legislation, the provisions of the Pay Equity Act **should prevail**.

3.2 Encouraging consensus and collaboration

To achieve the purpose of the Act and to correct gender-based pay equity gaps in a diligent fashion, the Pay Equity Commissioner strongly encourages consensus and collaboration among all parties in federally regulated workplaces.

For example, reaching consensus is an important part of how pay equity committee members make decisions. Pay equity committee members will have to collaborate and be prepared to compromise in order to make decisions that reflect diverse perspectives throughout the pay equity process.

Ultimately, committee members will have to work as a team to develop a sound pay equity plan for their workplace. Working collaboratively is essential to the success of the pay equity exercise. Putting matters to a vote by the committee should be used only as a last resort and if all efforts to reach consensus have failed.

3.3 How to apply the Pay Equity Act

The purpose of the Act is to achieve pay equity through proactive means by redressing systemic gender-based discrimination in the compensation practices and systems of employers. To fulfill its mandate in a proactive fashion, the Pay Equity Unit has adopted thefollowing key guiding principles that will govern the conduct of its activities.

3.3.1 Empowerment and accountability

Achieving pay equity is primarily the responsibility of employers, who play an active and diligent role in closing gender wage gaps in their workplaces. To achieve compliance, it is essential that

employers be aware of their pay equity legal obligations. Our unit is committed to empowering all workplace parties by supporting their learning about pay equity in a meaningfulway. After consultation with stakeholders, and to promote empowerment and accountability,the Pay Equity Unit has developed tools and resources to help workplace parties understand their responsibilities and take concrete steps to achieve pay equity.

3.3.2 Encourage best practices and a culture of continuous improvement

Our unit strongly believes in sharing and encouraging best practices as a key tool in creating a learning environment and culture of continuous improvement. By sharing successes, we can establish best practices that support collaboration and compliance with the Pay Equity Act. This will help with identifying knowledge gaps as well as implementing strategies to bridge these gaps. Stakeholder requests can be resolved in a more efficient manner, leading to a quicker implementation of their pay equity plans.

3.3.3 Foster productive relationships

The Pay Equity Unit believes in relationship building as a tool to achievepay equity compliance. At the heart of our approach is proactive early resolution to prevent andminimize the impact disputes can have on the relationship between the parties. By building awareness and commitment through information, education, guidance materials and tools, our unit can better support organizations in reaching their pay equity objectives.

A word of advice: The pay equity process will proceed much more smoothly when all stakeholders are using the three Cs: collaborate, compromise and communicate. Even employers who are not working with a pay equity committee to develop a plan should communicate openly and frequently with employees and be prepared to compromise and collaborate when they receive feedback from employees prior to posting their final pay equity plan.

Remember, the Pay Equity Commissioner does not have the jurisdiction to extend the three-year time limit for developing and posting a pay equity plan. Practising the three Cs will help you avoid time-consuming disputes that take precious time away from the committee's work developing a pay equity plan.

3.3.4 Be fair, impartial and transparent

The Pay Equity Unit conducts its business in a way that supports the Commission's corporate values. We are committed to fairness, impartiality and transparency inthe delivery of our compliance mandate, as well as timely reporting of the results of complianceactivities.

3.3.5 Support evidence-based decisions and a measured approach

Our unit is committed to evidence-based decision-making in the conduct of its mandate. Using the best available research, data and evidence will help achieve the ultimate collective goal: ensuring pay equity for everyone in federally regulated workplaces. To achieve this goal, there is a range of promotional approaches and enforcement responses that can be used to ensure compliance. The Commission strives to achieve proactive voluntary compliance through

stakeholder support and engagement, and enforcement measures will be used only when necessary. The response to non-compliance will escalate in severity depending on the nature of the violation and the compliance history of the organization.

4. Application of the Pay Equity Act

Federally regulated public and private sector employers with an average of 10 or more employees are subject to the proactive Pay Equity Act.

Federally regulated employers with fewer than 10 employees remain subject to the Canadian Human Rights Act and must provide equal pay for work of equal value in accordance with that legislation.

Some federally regulated employers became subject to the Act on the day it came into force [Act s. 6], while others will become subject to the Act on the first day of the fiscal or calendar year after the year in which they meet the average-size threshold [Act s. 7].

Parliamentary employers are subject to the Act through the Parliamentary Employment and Staff Relations Act. This application of pay equity legislation to parliamentary staff is explained further in Chapter 18, Parliamentary employers.

4.1 Employers subject to the Pay Equity Act

The Act applies to federally regulated public and private sector employers, as defined in the Act [Act s. 3(2) and s. (3)].

4.1.1 Federally regulated public sector employers

Federally regulated public sector employers include [Act s. 3(2)(a) to (d)]:

- The federal government, as set out in Schedules I, IV and V of the Financial Administration Act, including:
    - Federal government departments under Schedules I and IV (core public administration);
    - The Prime Minister's Office and Ministers' offices; and,
    - Federal government separate agencies (for example, the Canada Revenue Agency, the National Film Board of Canada and the Canadian Nuclear Safety Commission).
- The Royal Canadian Mounted Police;
- The Canadian Security Intelligence Service; and,
- The Canadian Armed Forces.

4.1.2 Federally regulated private sector employers

Federally regulated private sector employers are persons or organizations that employ people to undertake federally regulated work, as defined in the Canada Labour Code. These employers include:

- Federal Crown corporations (for example, Canada Post and Via Rail); and,
- Private sector employers who hire employees "upon or in connection with the operation of any federal work, undertakings or business" [Act s. 3(2)(e)].

Employees of the following businesses and industries likely work in a federally regulated sector:

- Banking;
- Navigation and shipping;
- Air transportation;
- Rail transportation;
- Road transportation;
- Canals, pipelines, tunnels and bridges with interprovincial or international activities;
- Telecommunications;
- Postal services;
- Protection of fisheries; and,
- Businesses that are declared by Parliament to be "for the general advantage of Canada or for the advantage of two or more of the provinces," [Canada Labour Code s.2] such as grain elevators, feed and seed mills, and uranium mining and processing.

The Treasury Board of Canada is the employer of the core public administration, the Royal Canadian Mounted Police, the Canadian Security Intelligence Service and the Canadian Armed Forces. Each separate federal government agency is its own employer. The Act also applies to parliamentary employers (for example, the Senate, the House of Commons and the Library of Parliament), through the Parliamentary Employment and Staff Relations Act (see Chapter 18, Parliamentary employers).

4.1.3 Territories and Indigenous governing bodies

The Act does not currently apply to the territorial governments of Yukon, the Northwest Territories or Nunavut [Act s. 10]. The Act will apply to territorial governments only if and when a date for its application is set by the Governor in Council [Act s. 10]. Until then, pay equity provisions in the Canadian Human Rights Act will continue to apply to the Nunavut government. Respective territorial human rights legislation applies to the governments of Yukon and the Northwest Territories.

The Act will apply to Indigenous governing bodies only after a period of consultation with these governing bodies and only if and when a date is set by the Governor in Council [Act s. 11]. Until then, protections against wage discrimination under the Canadian Human Rights Act will continue to apply to these employers.

4.2 Conducting an employee count

An employee count is done on the basis of the average number of employees working for an employer in a given year. The employee count determines whether and when an employer is subject to the requirements of the Act [Act s. 6 and s. 7]. The Act applies to federally regulated employers who have, on average, 10 or more employees [Act s. 6 to s. 9].

4.2.1 Employees to be included and excluded

The term "employee" includes everyone who is employed by an employer, with a few exceptions [Act s. 3].

For the purposes of the Act, the term "employee" includes:

- Non-management and management employees, which generally includes executives and chief executive officers;
- Unionized and non-unionized employees;
- Full-time and part-time employees;
- Permanent, casual and temporary employees, including seasonal workers;
- Dependent contractors [Act s. 3];
- Employees performing federally regulated activities as part of a separate unit for a provincial employer; and,
- Employees on long-term leave (for example, sick leave or maternity leave).

Who are "dependent contractors"?

Under the Pay Equity Act, which aligns with the federal approach under the Canada Labour Code, a dependent contractor works for a person or organization on a contract or project and the terms and conditions cause the worker to be economically dependent on the contracting person or organization.

Workers who regularly work on a contract basis for the same employer while using their own equipment are often considered dependent contractors (for example, some truck drivers).

Few employment relationships are excluded from the definition of "employee" under the Act.

Independent contractors in both the public and private sectors are excluded.

Public sector employers must exclude the following individuals from their employee count, as they are not considered employees under the Act [Act s. 3(1)]:

- Governor in Council appointees (for example, deputy ministers and heads and members of agencies, boards and commissions);
- Persons who are locally engaged outside of Canada (for example, non-diplomatic locally hired staff working in one of Canada's foreign missions); and,
- Persons who are employed through a student employment program (for example, the Federal Student Work Experience Program or a co-op or post-secondary internship program).

Private sector employers must exclude the following individuals from their employee count:

- Persons who work for the employer as part of a student employment program (for example, the Federal Student Work Experience Program or a co-op or post-secondary internship program); and,
- Students who work only during their school vacation periods.

Note that, despite these exclusions, the employer must still ensure individuals in these positions receive equal pay for work of equal value under section 11 of the Canadian Human Rights Act.

4.2.2 Calculating an average number of employees

Calendar or fiscal year

In conducting an employee count, the Act distinguishes between a fiscal year [Act s. 8] and a calendar year [Act s. 9].

Public sector employers must count their average number of employees in the previous fiscal year [Act s. 6 to s. 8]. If the average number of employees in a given fiscal year increases to 10 or more, the employer will become subject to the Act on April 1 of the next fiscal year [Act s. 8].

Private sector employers must count the average number of employees in the previous calendar year [Act s.6, s.7 and s.9]. If the average number of employees in a given calendar year increases to 10 or more, the employer will become subject tot he Act on January 1 of the next calendar year [Act s.9].

Example E4-1: A simple method for calculating the number of employees from payroll records

1. Review payroll records to determine the number of employees paid during each pay period (usually 26 per year);
2. Adjust the number of employees over the 26 pay periods based on the definition of an employee under the Act:
    a. Remove employees whose employment relationships are excluded under the Act (for example, students working through a student employment program); and,
    b. Include employees who may be considered to be dependent contractors under the Act.
3. Calculate the average number of employees for the year by:
    a. Adding up the adjusted number of employees for each of the 26 pay periods; and,
    b. Dividing the total adjusted number of employees by 26.

Table T4-1: Determining the number of employees subject to the Pay Equity Act using payroll records

Pay period	Number of employees on payroll*	Adjusted number of employees on payroll as per the Pay Equity Act**
1	85	83
2	87	84
3	87	84
4	106	100
...		...
26	117	103
Total	**2,735**	**2,706**

* Average by pay period = total number of employees on payroll ÷ 26 = 2,735 ÷ 26 = 105
** Average by pay period = total adjusted number of employees on payroll ÷ 26 = 2,706 ÷ 26 = 104

4.3 Becoming subject to the Pay Equity Act

4.3.1 Public sector employers

If a public sector employer had an average number of employees of 10 or more between April 1, 2020, and March 31, 2021, this employer became subject to the Act on August 31, 2021. If it had an average of less than 10 employees during the same period, it is not subject to the Act upon it coming into force. That employer then needs to count its employees annually. [Act s. 6 and s. 8]

If the average number of employees in any given fiscal year after the Act came into force (for example, 2021 to 2022, 2022 to 2023, 2023 to 2024) increases to 10 or more, the employer will become subject to the Act on April 1 of the following fiscal year [Act s. 7(1) and (2)].

4.3.2 Private sector employers

If a private sector employer had an average number of employees of 10 or more between January 1, 2020, and December 31, 2020, this employer became subject to the Act on August 31, 2021. If it had an average of less than 10 employees during the same period, it is not subject to the Act upon it coming into force. That employer then needs to count its employees annually. [Act s. 6 and s. 9]

If the average number of employees in any given calendar year after the Act came into force (for example, 2021, 2022, 2023) increases to 10 or more, the employer will become subject to the Act on January 1 of the following calendar year [Act s. 7(3) and (4)].

4.4 Employee count during maintenance

Employers subject to the Act must update their employee count as part of the requirement to review and update their pay equity plan at least once every five years (see Chapter 12, Update your pay equity plan).

During such an update, an employer may find that its employee count has changed. This may affect an employer in the following ways:

- If the employee count falls below 100 employees and no employees are unionized, an employer may update its pay equity plan without a pay equity committee. However, it may also choose to use a committee process (see Chapter 8, Establish the foundation: Pay equity committees).
- If the employee count increases to 100 or more employees, an employer who did not already have a pay equity committee in place must establish one to update its pay equity plan.

Note: Once an employer is subject to the Act, it remains subject to the Act even if the average number of employees declines to less than 10 in later years.

5. The powers and duties of the Pay Equity Commissioner

The Pay Equity Commissioner is the full-time member of the Canadian Human Rights Commission responsible for providing leadership and direction on the administration and enforcement of the Pay Equity Act and its Regulations. The Commissioner carries out her work with the support of a team of subject matter experts in the field of pay equity.

As Canada's leading federal expert on pay equity, the Commissioner has a mandate to promote women's equality by ensuring that federal public and private sector organizations value work done by women in the same way they value work done by men by [Act s. 104(1)(a) to (c)]:

- Ensuring the administration and enforcement of the Act;
- Assisting persons in understanding their rights and obligations under the Act; and,
- Facilitating the resolution of disputes relating to pay equity.

The pay equity regime under section 11 of the Canadian Human Rights Act still applies to federally regulated employees not covered by the Pay Equity Act. Under the Canadian Human Rights Act pay equity regime, employees in federally regulated workplaces with fewer than 10 employees who believe that they are not receiving equal pay for work of equal value can file a complaint of discrimination to the Canadian Human Rights Commission on the basis of sex.

Canadian Human Rights Commission

The Canadian Human Rights Commission is an independent organization with the authority to research, raise awareness about and speak out on any matter related to human rights in Canada. It is also responsible for administering the Canadian Human Rights Act, which protects people in Canada from discrimination based on 13 prohibited grounds, including sex, race and disability.

To find out more about the Canadian Human Rights Commission and how to file a complaint under the Canadian Human Rights Act if you have been a victim of discrimination, please visit the Canadian Human Rights Commission website at https://chrc-ccdp.gc.ca.

5.1 Duties of the Pay Equity Commissioner

In fulfilling her mandate, the Commissioner performs three primary duties [Act s. 104(2)(a), (b) and (d)]:

1. Providing education and information to workplace parties (namely, employers, employees and bargaining agents) on their rights and obligations under the Act;
2. Offering assistance to workplace parties in relation to pay equity matters, including matters of dispute, objections and complaints, that the parties themselves are unable to resolve, and deciding any matter or application for which she is responsible under the Act; and,

3. Monitoring the implementation of the Act, including reporting, and conducting enforcement activities as required.

To fulfill these duties, the Commissioner may undertake and publish research related to pay equity matters and maintain connections with similar provincial organizations (for example, the Ontario Pay Equity Commission and the Commission des normes, de l'équité, de la santé et de la sécurité du travail de Québec) to coordinate efforts where it makes sense to do so [Act s. 104(2)(e) and (f)].

5.1.1 Matters in dispute, objections and complaints

When a pay equity committee is creating or updating a pay equity plan, matters of dispute, objections and complaints may arise between the representatives of the employer, the bargaining agent and/or the non-unionized employees that the parties themselves are unable to resolve. For example, representatives may disagree about which wage compensation comparison methodology should be used. In such instances, pay equity committee members should work collaboratively to reach an agreement through consensus. If necessary, the committee could hire a third-party expert to provide a neutral perspective or seek the assistance of an external, independent mediator to resolve the matter. Ultimately, if the committee members are unwilling or unable to settle the matter, the Commissioner may intervene through dispute resolution or make a decision regarding any matter in dispute, objection or complaint.

For further details on the processes for notices of matters in dispute, objections and complaints, including when and how to notify the Commissioner, please refer to Chapter 15, Recourse, and Chapter 16, Enforcement.

The mechanism by which the Commissioner resolves matters will depend on the following factors:

- The nature of the matter in dispute, objection or complaint;
- The step in the pay equity process at which the matter arises (for example, creating or updating a plan);
- The party notifying the Commissioner (in other words, the employer, the employee or the bargaining agent); and,
- Whether the matter pertains to an employer-led or committee-led process.

Upon receipt and acceptance of a notice of matter in dispute, a notice of objection or a complaint, the Commissioner will first try to help the parties settle matters that are appropriate for settlement, including by providing information to the parties and proposing the use of a dispute resolution method such as mediation [Act s. 154(1)].

If initial attempts to resolve the matter in dispute, objection or complaint through dispute resolution are not successful, the Commissioner may decide to investigate the issue [Act s. 156(1)]. Following an investigation, the Commissioner may:

- Assist the parties in settling all or any part of the matter that she considers appropriate for settlement [Act s. 154(1)(a) and s. 155];

- Make a determination and issue an order to the party to resolve the dispute, objection or complaint and do what is necessary to ensure they are following the Act [Act s. 157 to s. 159]. For example, following a finding that an objection is valid with respect to the gender determination of a job class, the Commissioner may issue an order to an employer to redo its work in this regard to ensure the adequate development of the pay equity plan.
- Refer the matter to the Canadian Human Rights Tribunal, should the matter be an important question of law or a question of jurisdiction [Act s. 162]; or,
- Dismiss all or part of the case [Act s. 154 and s. 157 to s. 159].

To determine a matter in dispute, the Commissioner must provide workplace parties (for example, an employer, a bargaining agent or a member that represents non-unionized employees) an opportunity to present evidence and make representations [Act s. 157(1)].

The possible reasons for dismissal of a matter, in whole or in part, include [Act s. 154]:

- It is trivial, frivolous, vexatious or made in bad faith;
- It is beyond the jurisdiction of the Commissioner (for example, it is the responsibility of a provincial pay equity organization);
- Its subject matter has been adequately dealt with, or could be more appropriately dealt with, under another federal law (for example, elements of a complaint such as allegations of racial discrimination may suggest that it is more appropriately dealt with under the Canadian Human Rights Act*);* or,
- It was not filed within the period specified in the Act.

The Commissioner may also discontinue an investigation if there is insufficient evidence to pursue the matter [Act s. 156(4)].

Should the decision be made to discontinue an investigation, the Commissioner must notify the parties of the decision. The notice must set out the reasons for the decision and provide a time within which a party may request a review and the method by which they may do so [Act s. 156(4)].

In addition, at any time throughout the process, workplace parties have the option to settle the dispute without the assistance of the Commissioner. More information on settlement is provided in Chapter 15, Recourse, and Chapter 16, Enforcement.

5.1.2 Monitoring and enforcement

The Commissioner monitors the implementation of the Act, including the creation and maintenance of pay equity plans [Act s. 104(2)(a)]. More information on pay equity plans is available in Chapter 9, Create a pay equity plan, and Chapter 12, Update your pay equity plan.

The Commissioner is also responsible for compliance and enforcement activities, including:

- Conducting compliance audits [Act s. 118];
- Issuing internal audit orders [Act s. 120];

- Issuing notices of violations and administrative monetary penalties [Administrative Monetary Penalties Regulations, forthcoming, s. 128]; and,
- Publishing the names of employers in violation of the Act [Act s. 146].

For further details on these processes, including when and how to notify the Commissioner, please refer to Chapter 15, Recourse.

5.2 Modified application of the Pay Equity Act

The Commissioner has the ability to authorize, in certain circumstances, modified application of the Act. The next chapter provides additional details on the authorization process, including how and when to apply to the Commissioner for modified application of the Act.

6. Modified application of the Pay Equity Act

The Pay Equity Act lays out the rules all employers must follow. However, there may be certain situations when an employer or pay equity committee needs to ask the Pay Equity Commissioner for permission to change the way certain rules apply to them.

The Commissioner has the authority to approve these requests if they meet certain criteria (see Chapter 5, The powers and duties of the Pay Equity Commissioner).

Table T6-1: General rules and requests that can be made for changes

The general rule is:	However, a request can be made:
The Pay Equity Act applies to each employer individually.	For a group of employers to be treated as a single employer.
Each employer must develop and post one pay equity plan that covers all of its employees.	To establish multiple pay equity plans.
An employer who must, or who chooses, to set up a pay equity committee must follow a committee-led process.	To establish or update a pay equity plan without a pay equity committee in limited circumstances.
Pay equity committees must meet the membership requirements in the Act.	To set up a pay equity committee with different membership requirements.
	To allow a pay equity committee with different membership requirements to continue its work.
An employer must use the equal average or equal line method to compare compensation.	To use another method to compare compensation.
An employer must meet the deadlines for key pay equity milestones in the Act.	To extend the deadline for posting a pay equity plan.
	To extend the deadline for phasing in increases in compensation.

6.1 A group of employers

Employers are individually subject to the Act and responsible for meeting their obligations. However, there may be situations where it makes sense for multiple employers to work together to meet their obligations under the Act as a group. When this is the case, two or more private sector employers who are subject to the Act can ask the Pay Equity Commissioner for permission to form a group of employers [Act s. 4(1)]. The Commissioner may approve the request if she finds that all of the employers that would be part of the group [Act s. 106(1)]:

- Are part of the same industry;
- Have similar compensation practices; and,
- Have positions with similar duties and responsibilities.

Once a group of employers is recognized by the Pay Equity Commissioner, employers in the group have a collective responsibility to establish and maintain a pay equity plan for all

employees of employers in the group. However, employers in a group are still responsible for certain obligations individually. This includes:

- Posting the draft and final versions of the pay equity plan in their workplace (all employers in the group must do so on the same day);
- Posting any notices required by the Pay Equity Act; and,
- Implementing any increases in compensation owed to their employees.

When the Commissioner approves a request from a group of employers, she gives a date on which the group becomes subject to the Act. This ensures that all of the employers in the group are working on the same timeline to meet their obligations. The Commissioner must choose a date that is after the day one of the employers in the group became subject to the Act. The date must be as early as possible while still giving the group enough time to meet its obligations (namely, creating and posting the final pay equity plan) [Act s. 106(2)].

For more information see Group of Employers – Interpretations, Policies and Guidelines under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

6.2 Multiple pay equity plans

As a rule, every employer covered by the Act must develop and post a single pay equity plan. However, there may be situations when it makes sense for an employer to establish multiple plans.

If this is the case, an employer (or group of employers), a bargaining agent or a non-unionized employee in the workplace can apply to the Pay Equity Commissioner for permission to establish multiple pay equity plans [Act s. 30(1) and (2)].

After receiving a request and before making a decision, the Commissioner has to give anyone who may be affected by the decision the chance to provide evidence and make representations as to why the request should be approved or denied [Act s. 30(4)]. For example, if the bargaining agent makes the application, then those affected would include the employer, any non-unionized employees and possibly other bargaining agents in the workplace.

The Commissioner can authorize an application to establish multiple plans if she thinks it is appropriate in the circumstances [Act s. 107]. If the Commissioner thinks it would not be possible for the employer or pay equity committee to identify enough predominantly male job classes to compare compensation in each plan, she must deny the request [Act s. 30(5)].

For more information see Multiple Plans – Interpretations, Policies and Guidelines under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

6.3 A pay equity committee with different membership requirements

While the Act requires that the membership of a pay equity committee meet certain criteria (see Chapter 8, Establish the foundation: Pay equity committees), an employer may encounter situations where:

- It cannot set up a pay equity committee that meets the requirements; or,
- Something changes after the pay equity committee is formed and begins its work, and it becomes impossible for the pay equity committee to meet the requirements.

For example, one of the pay equity committee members could leave the pay equity committee and there may be no replacements available.

In these situations, the employer must ask the Pay Equity Commissioner for permission to set up a pay equity committee with different membership requirements or permission for a pay equity committee to continue its work with different membership requirements [Act s. 19(3), s. 27, s. 67(6), s. 68(6) and s. 75].

The Commissioner may approve the request if she thinks it is appropriate in the circumstances [Act s. 109]. Allowing these types of requests ensures that the pay equity process keeps moving forward if issues arise.

For more information see Pay Equity Committees – Interpretations, Policies and Guidelines under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

6.4 Establishing or updating a pay equity plan without a pay equity committee

As a rule, an employer who must or who chooses to set up a pay equity committee must follow a committee-led process, meaning a pay equity committee establishes or updates the pay equity plan (see Chapter 8, Establish the foundation: Pay equity committees).

However, there are two situations when such an employer may not be able to continue with a committee-led process:

- An employer makes all reasonable efforts to set up a pay equity committee but is still unable to do so [Act s. 108]; or,
- An employer sets up a pay equity committee but is then of the opinion that the pay equity committee is unable to do its work [Act s. 110].

6.4.1 The employer is unable to set up a pay equity committee

There may be situations where an employer is unable to set up a pay equity committee despite making all reasonable efforts to do so. If this happens, the employer can ask the Pay Equity Commissioner for permission to establish or update a pay equity plan without a pay equity committee [Act s. 25, s. 26, s. 73 and s. 74].

This allows the process to establish or update a pay equity plan to move forward.

The Commissioner may approve the request if she thinks it is appropriate in the circumstances [Act s. 108].

If the Commissioner approves the request, the employer would follow an employer-led process, meaning the employer would establish or update the pay equity plan without a pay equity

committee (see Chapter 9, Create a pay equity plan) and the appropriate recourse mechanisms become available (see Chapter 15, Recourse).

The employer has to post a notice in the workplace within 60 days after the day on which the Commissioner approves the request [Regulations s. 9(1)]. The notice must be posted until the final version of the pay equity plan is published [Regulations s. 9(2)] and it must inform employees that the employer will establish or update the plan without a pay equity committee [Act s. 25, s. 26, s. 73 and s. 74].

For more information see Pay Equity Committees – Interpretations, Policies and Guidelines under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

6.4.2 The pay equity committee is unable to do its work

There may also be situations where an employer was able to set up a pay equity committee, but for some reason the pay equity committee is no longer able to do its work. If the employer thinks this is happening at any point in the process, it can ask the Pay Equity Commissioner for permission to establish or update a pay equity plan without a pay equity committee [Act s. 28, s. 29, s. 76 and s. 77].

This allows the process to establish or update a pay equity plan to continue to move ahead.

When the Commissioner receives the request, she must first try to assist the pay equity committee in doing its work [Act s. 110(a)]. If, after this, the Commissioner thinks the pay equity committee is not able to do its work and the request is appropriate in the circumstances, she may approve the request [Act s. 110(b)].

If the Commissioner approves the request, the employer has to post a notice in the workplace. The notice must inform employees that the employer will establish or update the plan without a pay equity committee [Act s. 28, s. 29, s. 76 and s. 77]. The employer would then follow an employer-led process, meaning the employer would establish or update the pay equity plan without a pay equity committee (see Chapter 9, Create a pay equity plan) and the appropriate recourse mechanisms become available (see Chapter 15, Recourse).

6.5 Using another method to compare compensation

An employer or pay equity committee must use either the equal average or the equal line method to compare compensation when developing or updating a pay equity plan [Act s. 48(1)].

However, an employer following an employer-led process—meaning the employer establishes or updates the pay equity plan without a pay equity committee—may find that it cannot use either the equal average or the equal line method, including the rules for if regression lines cross outlined in sections 14 to 17 of the Regulations. See Chapter 9 of this Guide for more information on the rules set out in the Regulations for if regression lines cross. When this happens, the employer can propose another method to the Pay Equity Commissioner and ask for permission to use that method [Act s. 48(2)].

If the Commissioner is of the opinion that the request is appropriate given the circumstances, she may approve the request and permit the employer to use another method [Act s. 111]. The employer must use the method that the Commissioner approves [Act s. 111].

If a pay equity committee determines that the equal average or the equal line method cannot be used to compare compensation, the pay equity committee does not need to seek the Commissioner's authorization to use another method that it considers appropriate [Act s. 48(2)(b)].

6.6 Deadline extensions

Employers must meet certain deadlines for key pay equity milestones, such as posting a pay equity plan and paying increases in compensation (see Chapter 9, Create a pay equity plan, and Chapter 10, Increase employee compensation).

However, in certain circumstances, an employer may find that it needs more time to:

- Post the final or updated pay equity plan; or,
- Phase in increases in compensation.

6.6.1 Extension of the deadline to post a pay equity plan

An employer who thinks it needs more time than is allotted to post the final or updated pay equity plan can ask the Pay Equity Commissioner for an extension of the deadline [Act s. 57(1) and s. 85(1)]. The Commissioner may approve the request if she thinks it is appropriate in the circumstances [Act s. 112].

If the Commissioner approves the request, the employer must post a notice in the workplace as soon as possible with the new deadline [Act s. 57(2)(a) and s. 85(2)(a)]. The employer must then post the final or updated plan by the new deadline [Act s. 57(2)(b) and s. 85(2)(b)]. If the plan identifies any increases in compensation owed to employees, the employer will also owe lump sums with interest to those employees as of the date the plan was to be posted (see Chapter 10, Increase employee compensation).

6.6.2 Extension of the deadline to phase in increases in compensation

If an employer is experiencing extreme financial hardship, it may ask the Pay Equity Commissioner for an extension of the deadline to phase in increases in compensation [Act s. 63(1)]. The Commissioner may approve an extension if she thinks that the employer has shown extreme financial hardship [Act s. 113].

If the Commissioner approves the request, the employer must meet the new deadline when phasing in increases [Act s. 63(2)]. The employer must post a notice informing employees of the longer phase-in period as soon as possible. The notice must include the new dates on which each increase will be made and the percentage of the total increase each one will represent [Act s. 56(2)].

7. Summary of employer obligations

Employers have a number of obligations under the Pay Equity Act. Many of these arise during one of the five major milestones in the pay equity process:

1. Establish the foundation: Pay equity committees;
2. Create a pay equity plan;
3. Increase employee compensation;
4. File an annual statement; and,
5. Update the pay equity plan.

7.1 Establish the foundation: Pay equity committees

There are two types of employers that have an obligation to establish a pay equity committee [Act s. 16 and s. 17]:

1. Medium-sized to large employers (with 100 or more employees); and,
2. Small employers (with 10 to 99 employees) that have any unionized employees on the date on which they become subject to the Act.

Groups of employers must also establish a pay equity committee when the number of employees of all employers in the group is 100 or more or when any of the employees are unionized.

Small employers with only non-unionized employees are not required to establish a pay equity committee but may choose to do so, either on their own or at the request of an employee. If they do establish a pay equity committee, they must notify the Pay Equity Commissioner that they have done so [Act s. 16(2) and s. 17(2)].

Chapter 8, Establish the foundation: Pay equity committees, provides more information about pay equity committees and outlines the process for establishing them.

As part of the pay equity process, an employer must:

- Establish a pay equity committee (if required or if they choose to do so);
- Establish and post a pay equity plan;
- Increase employee compensation if and as necessary;
- File an annual statement; and,
- Update the pay equity plan.

In following these steps, employers must:

- Meet the posting requirements in the Act; and,
- Meet the timelines laid out in the Act.

7.2 Create a pay equity plan

The main obligation for employers subject to the Act is to establish a pay equity plan in their workplace [Act s. 12 and s. 13]. The process for developing a pay equity plan is outlined in detail in Chapter 9, Create a pay equity plan.

7.3 Increase employee compensation

If a pay equity plan identifies any predominantly female job classes (see section 9.2 for more information) that are owed an increase in compensation, the employer has an obligation to implement that increase.

The increase becomes payable on the day after the final version of the plan is posted [Act s. 60 and s. 61]. In certain situations, employers are able to phase in increases in compensation, when the total amount owed exceeds 1% of the previous year's total payroll. Small employers (10 to 99 employees) may have up to five years to phase in increases, and medium-sized to large employers (100 or more employees) may have up to three years to phase in increases [Act s. 61(2) and s. 62(4)].

Chapter 10, Increase employee compensation, provides more information about increases in compensation, including how to phase in increases.

7.4 File an annual statement

An employer is required to submit an annual statement to the Pay Equity Commissioner the year after the third year of becoming subject to the Act [Act s. 89(1) and (2)].

Employers that became subject to the Act upon it coming into force (August 31, 2021) must file their first annual statement by June 30, 2025.

See Chapter 11, File your annual statement and record keeping, for more information.

7.5 Update the pay equity plan

Employers are responsible for maintaining pay equity in their workplaces [Act s. 64]. They must do this by updating the pay equity plan—either by themselves or by establishing a pay equity committee, if required or if they choose to do so—at least every five years from when the initial pay equity plan is posted [Act s. 83(1)].

More information is available in Chapter 12, Update your pay equity plan.

7.6 Additional obligations

Employers have a number of obligations under the Act related to posting requirements and timelines.

7.6.1 Posting requirements

Postings are a key way that the Act ensures that employees are kept up to date on the pay equity process in their workplace.

Employers are responsible for ensuring that postings are made on time, are readily available to the employees and are in an accessible format. All postings must be available in printed or electronic form and accessible to all employees. Postings in printed format must be put in a visible place [Regulations s. 3].

Should an employee in the workplace have a disability, as defined in the Accessible Canada Act, postings must be provided in a form that is accessible to that employee [Regulations s. 4]. Making documents accessible could include, for example, making them available in the following formats: digital accessible information system (known as DAISY), audio, e-text, Braille, and accessible Portable Document Format (known as PDF).

When posting in electronic form, employers must provide employees with any necessary information to enable them to access the postings [Regulations s. 5].

Finally, all postings made under the Act must indicate the date on which that posting was made [Regulations s. 6].

Postings are required at key points throughout the pay equity process, such as the completion of a draft or final pay equity plan, and where the employer makes certain applications to the Pay Equity Commissioner. In the latter case, new versions of existing notices might be required [Regulations s. 7(2)].

Some instances where an employer must make a posting include:

- When an employer begins the pay equity plan process [Act s. 14 and s. 15];
- When draft, final and updated pay equity plans are ready [Act s. 52 to s. 57, s. 81, s. 83 and s. 85]; and,
- When the Pay Equity Commissioner has authorized certain applications, such as an application to establish a pay equity plan without a pay equity committee when it is otherwise required [Act s. 25, s. 26, s. 73 and s. 74].

This list is not exhaustive. Further information on posting requirements is provided in this Guide.

7.6.2 Timelines

Employers have three years, beginning on the day they become subject to the Act, to complete the following steps:

1. Within 60 days of becoming subject to the Act [Regulations s. 7(1)], post a notice that informs employees about the obligation to establish a pay equity plan and information about any obligations to establish a pay equity committee [Act s. 14 and s. 15];
2. Establish a pay equity committee, if they are required or choose to do so [Act s. 16 and s. 17]; and,
3. Complete the pay equity plan, including:
    a. Post a draft of the pay equity plan [Act s. 52 and s. 53];
    b. Provide 60 days for employees to comment on the draft [Act s. 54]; and,
    c. Post the final version of the pay equity plan [Act s. 55(1)].

After the first three years, timelines will differ slightly for employers depending on whether they are a small employer (10 to 99 employees) or a medium-sized to large employer (100 or more employees):

- Medium-sized to large employers who qualify and choose to phase in increases must do so within three years of the posting of the plan [Act s. 61(2)]; and,
- Small employers who qualify and choose to phase in increases must do so within five years of the posting of the plan [Act s. 61(2)].

Finally, both small employers and medium-sized to large employers must update their pay equity plan no later than five years after the pay equity plan is posted, and then at least every five years after that [Act s. 83(1)]. To do so, they must collect workplace information annually [Regulations s. 39 and s. 40].

Key dates for employers who became subject to the Act **on August 31, 2021,** include:

Table T7-1: Key dates for employers who became subject to the Act on August 31, 2021

	Federally regulated public sector employers and Parliamentary institutions		Federally regulated private sector employers	
Average number of employees	**10 to 99** between April 1, 2020, and March 31, 2021	**100 or more** between April 1, 2020, and March 31, 2021	**10 to 99** between January 1, 2020, and December 31, 2021	**100 or more** between January 1, 2020, and December 31, 2021
Post Pay Equity Act notice by	November 1, 2021	November 1, 2021	November 1, 2021	November 1, 2021
Post final pay equity plan by	September 3, 2024	September 3, 2024	September 3, 2024	September 3, 2024
First pay equity adjustments due	September 4, 2024	September 4, 2024	September 4, 2024	September 4, 2024
Phase in increases by	September 4, 2029	September 1, 2027	September 4, 2029	September 1, 2027
Post revised pay equity plan no later than	September 4, 2029	September 4, 2029	September 4, 2029	September 4, 2029
First annual statement no later than	June 30, 2025	June 30, 2025	June 30, 2025	June 30, 2025

Key dates for employers who become subject to the Act **after the coming-into-force date of August 31, 2021,** include:

Table T7-2: Key dates for employers who became subject to the Act after the coming-into-force date of August 31, 2021.on August 31, 2021

	Federally regulated public sector employers and parliamentary institutions		Federally regulated private sector employers	
Average number of employees	**10 to 99** between April 1 and March 31 of any year following fiscal year 2020 to 2021	**100 or more** between April 1 and March 31 of any year following fiscal year 2020 to 2021	**10 to 99** between January 1 and December 31 of any year following calendar year 2020	**100 or more** between January 1 and December 31 of any year following calendar year 2020
Become subject to the Act on	**April 1** of the year **after the fiscal year** in which the average number of employees was between 10 and 99	**April 1** of the year **after the fiscal year** in which the average number of employees was 100 or more	**January 1** of the year **after the fiscal year** in which the average number of employees was between 10 and 99	**April 1** of the year **after the fiscal year** in which the average number of employees was 100 or more
Post Pay Equity Act notice by	**60 days after** becoming subject to the Act	**60 days after** becoming subject to the Act	**60 days after** becoming subject to the Act	**60 days after** becoming subject to the Act
Post final pay equity plan by	**Three years after** becoming subject to the Act	**Three years after** becoming subject to the Act	**Three years after** becoming subject to the Act	**Three years after** becoming subject to the Act
First pay equity adjustments due	**The day after** posting the final pay equity plan	**The day after** posting the final pay equity plan	**The day after** posting the final pay equity plan	**The day after** posting the final pay equity plan
Phase in increases by	**The day after the eighth anniversary** of the date on which the employer became subject to the Act	**The day after the sixth anniversary** of the date on which the employer became subject to the Act	**The day after the eighth anniversary** of the date on which the employer became subject to the Act	**The day after the sixth anniversary** of the date on which the employer became subject to the Act
Post the final version of the revised pay equity plan no later than	**The fifth anniversary** of the day on which the employer posted the final pay equity plan	**The fifth anniversary** of the day on which the employer posted the final pay equity plan	**The fifth anniversary** of the day on which the employer posted the final pay equity plan	**The fifth anniversary** of the day on which the employer posted the final pay equity plan

	Federally regulated public sector employers and parliamentary institutions		Federally regulated private sector employers	
First annual statement no later than	**June 30** of the calendar year **after the employer has posted the final pay equity plan**	**June 30** of the calendar year **after the employer has posted the final pay equity plan**	**June 30** of the calendar year **after the employer has posted the final pay equity plan**	**June 30** of the calendar year **after the employer has posted the final pay equity plan**

Employers can request an extension to some timelines, such as the deadline to post a final pay equity plan. If the request is authorized, there are additional posting and timeline requirements that the employer must meet, and the employer must abide by the new timeline set out by the Commissioner. See Chapter 6, Modified application of the Pay Equity Act, for more information.

7.6.3 Lump sum payments, retroactivity and interest

There are situations where the Commissioner can extend an employer's deadline for posting its final pay equity plan. When this permission is given, in addition to increasing compensation or phasing in increases the day after the plan is posted, employers must also pay a lump sum to employees owed an increase in compensation. The lump sum must cover the total amount of adjustments owed to employees during the period of the extension [Act s. 60 and s. 61]. Lump sums are due on the day after the employer posts its final plan.

Retroactive payments may also be required after the plan is updated. These payments are to compensate for differences in compensation that cause a pay equity gap to emerge after the last plan was posted. Retroactive payments must be implemented on the day after the updated pay equity plan is posted [Act s. 88].

Where an employer makes payments after the deadline, it will be required to pay interest on outstanding amounts. Interest is not due on phased-in increases in compensation, unless they are paid late. Interest must be calculated at the aggregate of 2% annually and the bank rate in effect on the day for which the interest is calculated, compounded daily beginning on the first day after the day on which the amount was required to be paid [Act s. 62 and s. 88].

See Chapter 10, Increase employee compensation, for more information on making pay adjustments, including lump sums, retroactivity and interest.

8. Establish the foundation: Pay equity committees

Employers who are subject to the Pay Equity Act must develop and implement a pay equity plan in the workplace. The process to develop a pay equity plan can be different from one employer to another, depending on the number of employees and whether any are unionized.

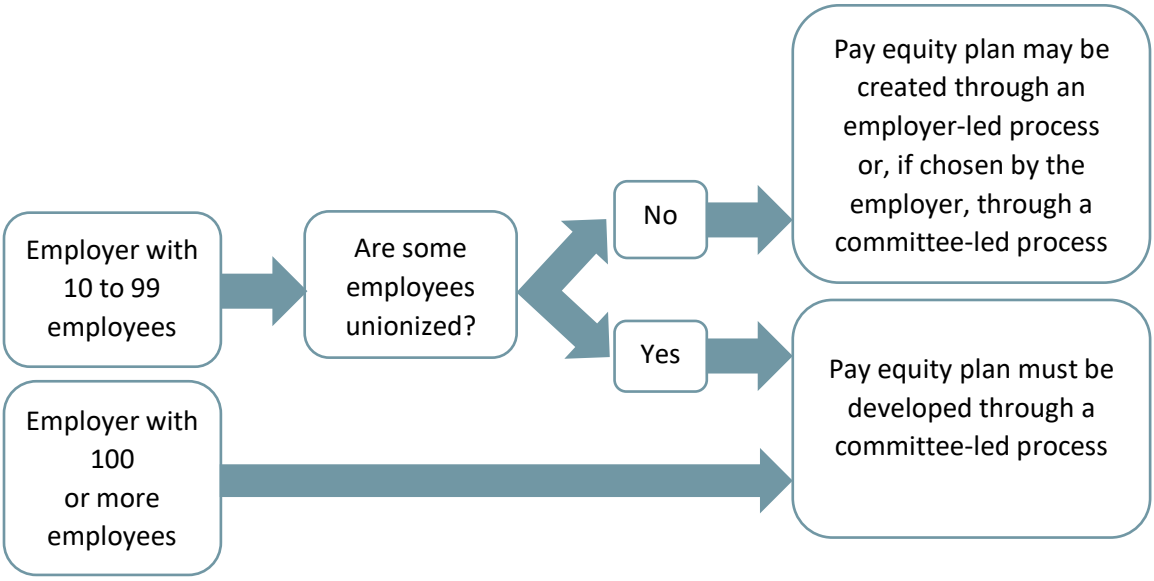
The following employers must establish a pay equity committee to develop their pay equity plan [Act s. 16]:

- All employers with any unionized employees, regardless of size (as long as they have 10 or more employees); and,
- All medium-sized to large employers (employers with 100 or more employees).

Small employers (10 to 99 employees) that have no unionized employees are not required to form a pay equity committee to create a plan but may still do so, either of their own initiative or at the request of one of their employees. Those employers who do not establish a pay equity committee will create the pay equity plan themselves. Those employers who do establish a pay equity committee must notify the Pay Equity Commissioner and follow the requirements for a committee-led pay equity process [Act s. 16(2)].

Please see Chapter 9, Create a pay equity plan, for information on employer-led and committee-led processes.

Figure F8-1: Requirement to develop a pay equity plan through a committee-led or employer-led process



8.1 Posting requirements

As a first step, all employers must post a notice in the workplace within 60 days of becoming subject to the Act [Regulations s. 7], outlining that the employer is required to develop a pay equity plan. For employers who must or choose to create a pay equity committee, the notice must also include the following information [Act s. 14 and s. 15]:

- The date of the posting;
- That the employer must make all reasonable efforts to set up a pay equity committee to make the plan;
- The criteria for who must be on the pay equity committee (see section 8.2 of this Guide);
- That non-unionized employees have the right to elect a pay equity committee member to represent them (see Example E8-2 of this Guide); and,
- That a bargaining agent will select a pay equity committee member to represent its members.

This notice must be posted until the final version of the pay equity plan is published or until it is replaced by a new version [Regulations s. 7(2)]. A new version may need to be posted if, for example, employers become part of a group of employers recognized by the Pay Equity Commissioner, or if they are authorized to create multiple pay equity plans.

The notice must be posted in print or electronic form, in such a way as to be readily available to all employees [Regulations s. 3]. It must also be presented in a form that is accessible to employees who have accommodation needs [Regulations s. 4].

Pay equity notice templates are available on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/templates.

8.2 Pay equity committee composition

A pay equity committee must include [Act s. 19]:

- At least three members;
- At least one member chosen by the employer to represent the employer;
- At least two-thirds of committee members that represent employees who will be covered by the plan;
- At least 50% women;
- If some or all employees are unionized, at least one person chosen by each bargaining agent to represent employees in their bargaining unit(s); and,
- If some or all employees are non-unionized, at least one person chosen by non-unionized employees to represent them.

A pay equity committee member may satisfy more than one criterion.

Example E8-1: Promote diversity among members

Key to the success of the pay equity committee will be the diversity, in terms of representation and expertise, of the members. The Pay Equity Act sets out basic composition requirements for the committee in section 19(1). In addition to meeting those requirements, the following elements may be considered:

- Gender balance;
- Representation of the workforce;
- Representation of different organizational levels and varying job positions;
- Representation of the jobs commonly held by women in the workplace;
- Inclusion of management and non-management employees;
- Inclusion of members with varying lengths of service;
- Inclusion of some employees that know the mission and goals of the organization; and,
- Inclusion of some employees well versed in pay equity requirements, if possible.

Having a diverse pay equity committee will promote the inclusion of different perspectives and a balance of views and will help address any biases.

Diversity among the membership of the committee is also a good way to gain a better understanding and appreciation of the tasks and efforts required for each job position. This will help ensure that the characteristics of the jobs to be evaluated are more fully taken into account.

8.3 Selection of pay equity committee members

Employers, must choose pay equity committee members who will represent the employer's interests. Bargaining agents, must also select their representative pay equity committee member(s) through their chosen selection process. Non-unionized employees must, by majority vote, elect employee representatives to act on their behalf [Act s. 19(2)].

To facilitate the selection of non-unionized employee representatives, employers must allow employees to take time away from their work. They must let employees use work space (such as meeting rooms) and equipment (such as computers) to select pay equity committee members to represent them [Act s. 22(1)]. An employee who takes time away from their work for a purpose related to the selection of pay equity committee members is deemed to be at work for all purposes [Act s. 22(3)]. This means that the employee must be compensated as if they were at work.

Example E8-2: Enabling non-unionized employees to select representatives

The employer communicates with employees that non-unionized employees will be represented in the pay equity committee:

- Through this communication, the employer seeks out non-unionized employees to volunteer to set up a vote to select the non-unionized representative(s) for the pay equity committee; and,
- The employer must support the selection of the non-unionized employee representative(s) by providing access to workplace space and equipment, and by providing paid time for this process [Act s. 22(1) and (2)].

The non-unionized employee volunteer(s) should be responsible for the process of selecting non-unionized employee representatives from start to finish. They should conduct the vote, tally results and inform the workplace of the selected representative(s).

8.4 Supporting the pay equity committee

Pay equity committees can be successful in completing a plan only if they receive the necessary support from employers, bargaining agents and employees.

8.4.1 Access to space and equipment for committee work

To facilitate the selection of employee representatives on a pay equity committee and to support the work of the pay equity committee, employers must provide access, as necessary, to premises and any equipment that may be needed [Act s. 22(1),(2) and (3)]. This may include giving the pay equity committee access to office space where they can meet to do their work; computers, software and other technology necessary to create a plan; and storage where they can keep any information related to the pay equity committee's work secure and confidential.

8.4.2 Time away from work for pay equity committee work

Employers must give employees paid time away from work, as required, to select pay equity committee members [Act s. 22(1)]. Once selected, employers must also provide pay equity committee members with paid time away from work, as needed, to conduct the pay equity process. This includes time when the pay equity committee is meeting to create the plan and any time needed for training related to their work as pay equity committee members [Act s. 22(2)].

Time that employees take to do pay equity committee work is considered time at work, and employees must be compensated for this time as though they were doing their regular work duties [Act s. 22(3)].

8.4.3 Providing information for pay equity plans

Employers, bargaining agents and employees must provide pay equity committees with any information (such as job descriptions and rates of pay) in the employer's possession that the pay equity committee finds necessary for the development of a plan [Act s. 23].

8.4.4 Providing direction to pay equity committee members

Employers and bargaining agents are ultimately responsible for the actions of their representatives on the pay equity committee. They must be aware of the activities of the pay equity committee and provide direction to their representatives on the issues that arise in the committee [Act s. 21(1) and (2)].

8.4.5 Maintaining confidentiality of information

Creating a plan requires the use of a large amount of information, some of which may be sensitive in nature, such as personal information about employees (like rates of pay, premiums and bonuses). Such information must be kept confidential and used only for pay equity purposes. In other words, a pay equity committee member who has access to rates of pay for the purpose of creating a plan cannot discuss or share this information with people who are not part of the pay equity committee.

When an employer, employee or bargaining agent shares information with a pay equity committee, they may note that the information is confidential. If they do, pay equity committee members, the employer and the bargaining agent must keep the information confidential [Act s. 24]. Members of the pay equity committee must use the information only for the purposes for which it was provided. For example, if the employer shares any rates of pay for the purposes of the pay equity committee's work and identifies the information as confidential, representatives of a bargaining agent and the bargaining agent must keep this information confidential and may not share or use this information outside of the work of the pay equity committee.

If an employer, bargaining agent or employee believes that the Act has been violated in relation to confidential information, they may file a complaint with the Commissioner [Act s. 150 and s. 151].

For more information on filing a complaint with the Commissioner, refer to Chapter 15, Recourse.

For more information on maintaining confidentiality, refer to the Interpretations, Policies and Guidelines series under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

8.5 Pay equity committee decision-making or voting

Pay equity committees should create a pay equity plan together through a process of consensus building and collaboration. A decision should be made by a pay equity committee vote only if an issue arises for which a decision cannot be made through consensus.

A vote can be held only if the following minimum pay equity committee membership is present [Act s. 20(2)]:

- At least one member who represents the employer;
- At least one member selected by each bargaining agent (if any); and,
- At least one member who represents non-unionized employees (if any).

8.5.1 Voting process

For voting, only two votes will be cast: one representing all employer pay equity committee members and one representing all employee pay equity committee members, including members who represent different bargaining agents and non-unionized employees, where applicable [Act s. 20(1)].

To cast a single representative vote, all the members who represent employees must agree on their position. If they are unable to come to an agreement, then the members who represent employees lose their right to vote, and the employer's vote determines the outcome [Act s. 20(1)]. Similarly, employer representatives must be unanimous in their position before casting their single vote.

Pay equity committee members are encouraged to come to decisions through collaboration and consensus building. Seeking the help of mediators or neutral third-party experts to resolve disputes is also an option.

Collaboration is defined as "the action of working with someone to produce or create something."*

Pay equity committee members will have to work as a team to develop a pay equity plan for their workplace. Working collaboratively is essential to the success of the pay equity exercise.

Working collaboratively saves time and avoids lengthy disputes.

Consensus is defined as "a general agreement: unanimity; the judgment arrived at by most of those concerned; group solidarity in sentiment and belief."**

Consensus building is an approach to decision-making that comprises the following components:

- Decisions are reached through mutual consent, with each participant given an opportunity to voice their preference;
- All committee members should be prepared to co-operate and participate in the process;
- The decision-making process is constructed based on principles of fairness, openness and trust; and,

- Outcomes yield benefits to all participants.

* Oxford Languages

** Oxford Languages

For more information on collaboration and building consensus, see Promising Practices for Forming a Pay Equity Committee under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: https://www.payequitychrc.ca/en/publications.

A vote among pay equity committee members can occur at any point during the development of a plan. For example, a committee may decide to conduct a vote to overcome an impasse over which method to use to compare compensation.

If, after attempting to resolve the matter internally, representatives of the employer and employees cannot agree on a given issue during the development of a plan, the employer, the bargaining agent or the non-unionized employee representative on the pay equity committee may notify the Commissioner that there is a “matter in dispute” [Act s. 147].

Please see Chapter 15, Recourse, for more information on how and when to notify the Commissioner on matters in dispute.

9. Create a pay equity plan

As discussed in the previous chapter, employers who are subject to the Pay Equity Act must develop and implement a pay equity plan to identify and address any gender-based compensation gaps in the workplace. They must then maintain pay equity in their workplaces through a set process (see Chapter 12, Update your pay equity plan).

To develop a pay equity plan, the employer or the pay equity committee has five steps to follow (see Chapter 8, Establish the foundation: Pay equity committees):

1. Create job classes;
2. Determine which job classes are predominantly female and which ones are predominantly male;
3. Value the work done in each of these predominantly female and predominantly male job classes;
4. Calculate total compensation in dollars per hour for each predominantly male and predominantly female job class; and,
5. Determine whether there are differences in compensation between jobs of equal value that need to be addressed.

Employers must ensure that they leave enough time to complete each step so they can post their final plans within three years of becoming subject to the Act [Act s. 55].

9.1 Create job classes

Creating job classes is the first step in developing a pay equity plan. Job classes are categories or groups of positions that are created using set criteria. In the case of the core public administration only, positions at the same group and level make up a single job class [Act s. 34].

A job class may comprise several positions or a single position. All positions in the workplace, including full-time, part-time, casual, seasonal and temporary positions, must be included when identifying job classes. This includes positions that are occupied or that may be occupied (for example, positions that are temporarily vacant at the time of the pay equity exercise) [Act s. 32].

When sorting positions into job classes, the focus must be on the requirements of the positions and not on the skills or qualifications of the individuals who occupy the positions at the time. If an employee has different qualifications from what the position requires, the position must still be categorized based on how the employer defines it. For example, an individual employee may hold a master's degree, but if the minimum requirement for their position is a lower level of educational achievement, the lower level should be used.

Positions can be grouped into the same job class if they meet three criteria [Act s. 32]:

1. They have similar duties and responsibilities;
2. They require similar qualifications; and,
3. They are part of the same compensation plan and are within the same range of salary rates.

Positions are considered to have **similar duties and responsibilities** when their tasks and duties are related or comparable or they overlap. When deciding whether positions have similar duties and responsibilities, it can be helpful to look at whether employees use the same equipment or processes, complete the same or similar tasks and have similar levels of responsibility and authority. For example, two administrative employees who follow the same office procedures, are responsible for scheduling meetings, take phone calls, write emails and do not supervise any staff may be considered to have similar duties and responsibilities.

Positions may be considered to have **similar qualifications** if they require comparable knowledge, experience and demonstrated skills or training. When assessing whether two or more positions require similar qualifications, it may be helpful to review and compare job descriptions and recent job postings.

Positions must also have the **same compensation plan** and the **same salary range** to be considered within the same job class. This can be determined by reviewing whether positions have the same eligibility for benefits and the same range of salary rates. Similar positions that have different levels of salary or benefits will be in different job classes.

Example E9-1: Creating job classes

Positions can be grouped into the same job class if they meet all three criteria:

1. They have **similar duties and responsibilities**;
2. They require **similar qualifications**; and,
3. They are part of the **same compensation plan** and are within the **same salary range**.

Context

Rahma, Elijah and Sabina all work at the same bank as human resources professionals.

Rahma is a human resources classification officer.

Elijah is a compensation research analyst.

Sabina is a job analyst.

Similar duties and responsibilities

The duties and responsibilities of the three positions listed above are not identical. Yet they are similar, as they all include tasks such as:

- Planning, developing, implementing and evaluating human resources strategies, including policies, programs and procedures to address an organization's human resource requirements;
- Advising employers and employees on the interpretation of human resources policies, compensation and benefit programs;
- Managing programs and maintaining human resources information and related records systems;
- Researching and preparing occupational classifications, job descriptions, salary scales and competency appraisal measures and systems; and,

- Researching employee benefits and health and safety practices and recommending changes or modifications to existing policies.

As a result, the duties and responsibilities may be considered similar because they share comparable tasks and levels of responsibility.

Similar qualifications

All three positions require a university degree or college diploma in human resources management or a related field, such as business administration or commerce, or the completion of a professional development program in human resources administration. Some employers may require human resources professionals to hold a Certified Human Resources Professional designation.

Rahma has a bachelor's degree in human resources management and holds a Certified Human Resources Professional designation.

Elijah has a bachelor's degree in business administration.

Sabina has a bachelor's degree in commerce.

All three have been with the bank between five and seven years and have taken a professional development program in human resources administration offered by their employer.

As a result, Rahma's, Elijah's and Sabina's positions may be considered similar, as they require equivalent knowledge, experience and demonstrated skills or training.

Same compensation plan and range of salary rates

Rahma, Elijah and Sabina are part of the **same range of salary rates**, are **contributing to a pension** and are eligible for the **same medical benefits**.

As a result, they may be a part of the same compensation plan.

9.1.1 Existing job classification systems

In the core public administration, a job class is defined as positions that are in the same group and level.

> The core public administration includes departments and agencies of the Government of Canada listed in Schedules I and V of the Financial Administration Act.

Each group and level forms a single job class [Act s. 34]. For example, CR-01 clerical and regulatory positions within the core public administration may be considered as a single job class. This means that a seven-level classification is made up of seven different job classes, each with varying salary steps or increments.

Example E9-2: Identifying job classes within the core public administration

An individual holding a position at CR-01 salary step 1 and another individual holding a position at CR-01 salary step 3 are part of the same job class.

Table T9-1: Core public administration clerical and regulatory structure

Job class	Salary increment					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
CR-01	$37,257	$38,033	$38,821	$39,608	$40,376	$41,162
CR-02	$40,439	$41,373	$42,292	$43,215	n/a	n/a
CR-03	$45,869	$47,071	$48,274	$49,478	n/a	n/a
CR-04	$50,821	$52,171	$53,518	$54,857	n/a	n/a
CR-05	$55,543	$57,067	$58,608	$60,130	n/a	n/a
CR-06	$63,220	$64,882	$66,529	$68,194	n/a	n/a
CR-07	$70,125	$72,066	$74,008	$75,970	n/a	n/a

Section 34 applies only to the core public administration. For other public sector employers, as well as private sector employers, job classes for the pay equity plan are identified by the employer or pay equity committee as part of the pay equity process [Act s. 32]. Chapter 9, Create a pay equity plan, provides more information on determining job classes, as part of the process to develop a pay equity plan.

9.1.2 Forming groups of job classes

Job classes may be combined to form a female-predominant group of job classes. A group of job classes is a series of job classes that bear a relationship to each other because of the nature of the work and that are organized into successive levels [Act s. 3(1)]. It should be noted that only female-predominant groups of job classes can be created.

A group of job classes can be treated as a single female-predominant job class if 60% of the positions in the group are occupied by women. (For information on how gender predominance for a group of job classes is determined, see section 9.2.) The largest predominantly female job class in the group serves as a representative of the group as a whole.

Employers may wish to create female-predominant groups of job classes if their workforce is already divided into these types of groups and they want to maintain their organizational structure. This option allows them to do so while still following the pay equity process.

Example E9-3: Forming groups of job classes

The table below represents a fictitious group of job classes made up of four job classes providing administrative support. The goal of the example is to demonstrate the hierarchical relationship between the job classes of a given group and to clarify the distinction between a position, a job class and a group of job classes.

Table T9-2: Group of job classes, administrative support

Position	Duties and responsibilities	Job class
Manager	• Oversees the provision of all administrative services at Company B.	Manager, administrative support services

Position	Duties and responsibilities	Job class
	• Manages human and financial resources for the administrative support team. • Works under minimal supervision, reporting to the director.	
Senior administrative officer	• Provides human resources and financial services to the manager and the director. • Works with less supervision than administrative officers and reports to the manager.	Senior administrative officers
Administrative officer 1	• Provides administrative services to the reception desk. • Works under the supervision of the manager.	Administrative officers
Administrative officer 2		
Administrative officer 3		
Administrative assistant	• Provides administrative services to the director. • Works under the supervision of the manager.	Administrative assistants
Scheduling assistant	• Provides scheduling services to the director. • Works under the supervision of the manager.	

For groups of job classes, neither historic gender predominance nor gender-based occupational stereotyping are considered when determining gender predominance.

To determine the value of work for a female-predominant group of job classes, the employer or pay equity committee must calculate the value of work using the individual job class with the greatest number of employees [Act s. 41(3)].

To calculate the total compensation for a female-predominant group of job classes, the employer or pay equity committee must calculate total compensation using the individual job class with the greatest number of employees [Act s. 44(2)].

For more information, access additional resources and tools at www.payequitychrc.ca/en.

9.2 Determining gender predominance of job classes

Gender-based pay inequity can result from the systemic undervaluation of work traditionally done by women, possibly going back many years. In order to correct discriminatory pay practices, the gender predominance of job classes needs to be determined. This is the second step in the development of a pay equity plan.

Job classes must be classified as predominantly female, predominantly male or gender-neutral.

Predominantly female job classes may receive increases in compensation through the pay equity exercise. **Predominantly male job classes** are used as comparators to determine whether any predominantly female job classes are owed an increase. **Gender-neutral job classes**, on the other hand, are not part of this comparison and are not put through the pay equity exercise.

Employers and pay equity committees determine whether a job class is predominantly female, predominantly male or gender-neutral by considering the following three factors (see sections 9.2.1 to 9.2.3) [Act s. 36 and s. 37]:

1. Current gender incumbency: Whether one gender holds 60% of the positions or more;
2. Historical gender incumbency: Whether one gender has historically held 60% of the positions or more; and,
3. Gender-based occupational stereotyping.

Once these three factors have been considered, the employer or pay equity committee must make a final decision on the gender predominance of each job class.

If the employer or pay equity committee finds that they do not have any predominantly female job classes in their workplace, the next step is to draft the pay equity plan and post it in the workplace (see section 9.6 of this Guide).

If the employer or pay equity committee determines that there is a least one predominantly female job class but **no predominantly male job classes**, they must use one of the two methods set out in the Pay Equity Regulations to complete the pay equity plan. Please consult section 9.5.4, Procedure if no male comparators.

A **gender stereotype** is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by men and women or the roles that are or should be performed by men and women.*

Gender-based occupational stereotyping is the act of taking these generalized views or preconceptions about attributes or characteristics and applying them to your beliefs about the types of jobs that should or should not be performed by men or women.

Some types of work are seen as “men’s work” or “women’s work.” These views are based on stereotypes about the type of work to which women and men are “suited.” While many of these stereotypes may be rooted in historical practice, they can still have an influence today.

* United Nations Office of the High Commissioner for Human Rights. Gender stereotypes and stereotyping and women’s rights. Geneva, Switzerland, September 2014.

9.2.1 Determining current gender incumbency

Current gender incumbency is measured by a count to determine whether at least 60% of the employees who currently hold positions in a job class are male or female. If one gender meets this threshold, that gender may be the predominant gender for that job class. If neither gender occupies at least 60% of the positions, the job class may be neutral.

When doing a count that determines the current gender incumbency of a job class, it is important to ensure that it is done in a way that respects gender diversity and those who may identify outside of the gender binary of “woman” and “man.” Doing so is an essential component of a human rights approach to pay equity.

Gender is now recognized as a spectrum of individual gender identities and not limited to the male-female binary paradigm.

For more information refer to the Interpretations, Policies and Guidelines series under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

9.2.2 Determining historical gender incumbency

Historical gender incumbency is measured by determining whether at least 60% of the employees who held positions in a job class in the past were male or female.

An employer or a pay equity committee can assess this by looking at which gender held at least 60% of positions in a job class in previous years. If they find that one gender met the 60% threshold for a job class in previous years, they may determine that the job class is either historically female predominant or historically male predominant.

The Act does not specify how far back in time employers or pay equity committees must look when determining which gender has historically held 60% of positions in a job class (historical incumbency). They should use a reasonable time period to do this type of analysis and ensure that the job class was more or less the same during the period (for example, ensuring there were no significant changes in the duties or responsibilities for the job class).

Some employers may have data going back 10 years, while others may only be able to access data going back five years. In some cases, new employers with no historical data may not be able to determine historical incumbency for job classes in their workforce. Employers and pay equity committees should determine what data exists and do the best analysis possible with what is available. If information is lacking, employers may wish to consider starting to collect such data to assist in future pay equity exercises.

Example E9-4: Considering which gender currently holds and historically held at least 60% of positions in a job class

After the pay equity committee at Company A completes the first step of its pay equity plan (identifying job classes), it needs to determine the gender predominance of the job classes. One of the job classes created during the first step is “administrative assistant.” Currently, Company A employs 45 administrative assistants.

Presently, 24 of these positions (53%) are held by female employees and 21 (47%) are held by male employees, which means that neither gender occupies 60% of the positions.

The pay equity committee also examines gender data for administrative assistants who worked for the company over the last 10 years. The committee finds that during these years, on average, 74% of the administrative assistant positions were held by women.

Based on this finding, the administrative assistant job class has historically been female predominate.

Next, the pay equity committee will look at the gender-based occupational stereotyping of this job class.

Table T9-3: Determining historical incumbency

Year	Number of female administrative assistants	Percentage of female administrative assistants (%)	Number of male administrative assistants	Percentage of male administrative assistants (%)	Predominant gender
10	35	87.5	5	12.5	Female
9	36	90.0	4	10.0	Female
8	32	84.2	6	15.8	Female
7	32	78.0	9	22.0	Female
6	31	75.6	10	24.4	Female
5	30	73.2	11	26.8	Female
4	31	70.5	13	29.5	Female
3	28	68.3	13	31.7	Female
2	27	62.8	16	37.2	Female
1	24	53.3	21	46.7	Neutral
10-year average	**30.6**	**73.9%**	**10.8**	**26.1%**	**Female**

9.2.3 Gender-based occupational stereotyping

The third factor to consider when determining gender predominance is gender-based occupational stereotypes. Traditionally, some types of work were seen as “women’s work” or “men’s work.” These occupational gender stereotypes reflect traditional roles that men and women occupied in society. For example, jobs such as nursing or early childhood education are often seen as jobs for women because of the stereotype that women are suited to work that requires them to provide care or tasks related to domestic work.

Compensation for these types of work may be impacted by gender-based occupational stereotyping. Employers and pay equity committees must consider gender stereotypes when determining the gender predominance of job classes. In doing this type of analysis, it is also worth considering whether the actual features and duties of the job were traditionally seen as more suited to women or men.

Evidence of gender-based occupational stereotyping could include graduation rates by gender for particular fields of study, gender-based hiring restrictions in recent years, or available occupational data by gender. It may be helpful to consult Statistics Canada or employer, professional or labour associations to find this type of information.

Example E9-5: Considering gender-based occupational stereotypes

Following its analysis of the current and historical proportions of men and women, the pay equity committee for Company A considers whether positions in this job class were previously

thought of as “women’s work” and whether gender-based occupational stereotyping may affect the positions.

To do this, the pay equity committee looks at the findings of a recent national survey from Statistics Canada, which indicate that 77% of administrative assistants in Canada are women. The pay equity committee also canvasses other employers in its industry and region, all of which indicated that women typically hold administrative assistant jobs.

As a result, the pay equity committee determines that the gender-based occupational stereotype of the administrative assistant job class is predominantly female.

9.2.4 Considering all factors

In some cases, determining gender predominance for a job class by considering all three factors is straightforward and the results across all factors are the same. However, in other cases, the analysis based on the three factors can give different results.

For example, if more than 60% of positions in a job class are currently held by men, but historically, more than 60% of positions were held by women, and at present, there is a female gender-based occupational stereotype, the gender determination may not be easy to make. The employer or pay equity committee has to make a judgment-based decision to make the appropriate determination on whether this job class is predominantly male or female.

Example E9-6: Determining gender predominance

The pay equity committee at Company A examines each of its job classes to determine:

- Whether one gender occupies at least 60% of positions in each job class;
- Whether one gender historically occupied at least 60% of positions in each job class; and,
- Whether any gender-based occupational stereotypes are associated with each job class.

The pay equity committee carefully considers each of the criteria and makes the gender predominance determinations listed in the table below.

Table T9-4: Gender predominance determination with all three factors

Company A job classes	Assessment of three factors			Gender predominance determination
	Current incumbency	Historic incumbency	Occupational stereotype	
Administrative assistants	Neutral (53% female; 47% male)	Female	Female	**Female**
Pilots	Male (62% male; 38% female)	Male	Male	**Male**
Service managers	Neutral (56% male;	Male	n/a	**Neutral**

Company A job classes	Assessment of three factors			Gender predominance determination
	Current incumbency	Historic incumbency	Occupational stereotype	
	44% female)			
Service agents	Female (62% female; 38% male)	Male	n/a	**Neutral**
Service administration	Female (63% female; 47% male)	Male	n/a	**Neutral**
Ground crew	Male (83% male; 17% female)	Male	Male	**Male**
Operations management	Male (74% male; 26% female)	Neutral	Male	**Male**
Financial administration	Neutral (50% female; 50% male)	Female	Female	**Female**
Flight attendants	Female (67% female; 33% male)	Female	Female	**Female**
Executive management	Male (80% male; 20% female)	Male	Male	**Male**

9.3 Determine the value of work through job evaluation

Job evaluation is the process of systematically analyzing the responsibilities of a job or job class and the skills required to perform the job duties for the purpose of determining the relative value to the organization. The evaluation does not consider the market value of jobs nor does it consider the person holding the job; rather, it is the essence of the job or job class that is being assessed based on job information. Job evaluation is concerned only about job content.

This section provides information on how to determine the value of work through job evaluation by:

- Choosing the job evaluation method (section 9.3.1);
- Collecting the necessary information (section 9.3.2); and,
- Determining the value of work (section 9.3.3).

All public and private sector employers and pay equity committees established by those employers may use values of work that have already been determined [Act s.41(2)].

Once an employer or pay equity committee has established job classes and gender predominance, the next step is to determine the value of the work for each predominantly female and predominantly male job class. The value of work is determined for the full range of positions in a job class (or one position, if the job class includes only one).

There is no need to complete this step for any gender-neutral job classes.

9.3.1 Choosing the job evaluation method

The employer or pay equity committee must choose a job evaluation method to systematically and objectively determine the value of work for all of its predominantly female and male job classes.

The method chosen must meet the three criteria set out in the Act:

1. First, the criterion to be applied in determining the value of the work performed is the composite of the skill, effort, responsibility and conditions under which the work is performed [Act s. 42];
2. Second, the job evaluation method must not discriminate on the basis of gender [Act s. 43(a)]; and,
3. Third, the method must make it possible to determine the relative value of the work performed in all of the predominantly female and predominantly male job classes covered by the pay equity plan [Act s. 43(b)].

The Act does not specify a particular job evaluation method that an employer or pay equity committee must use.

The "point-factor method" is the most commonly used for valuing work for pay equity purposes. This analytical method looks at a set of factors (skill, effort, responsibility and working conditions) and sub-factors (for example, a "knowledge" sub-factor that can include reference to education and experience), weighs them based on their importance within the organization and divides them into levels or degrees, which are then assigned points. Each job is rated to obtain a total point score.

Another example is the job ranking method, where jobs are compared to each other and ranked from the lowest to the highest level. This method may be appropriate in certain circumstances (for example, a small workplace with few job classes).

Requirements for the job evaluation system

The job evaluation method must determine the value of the work performed in each male- and female-predominant job class on the basis of the composite of the:

- Skill required to perform the work;
- Effort required to perform the work;
- Responsibility required in the performance of the work; and,
- Conditions under which the work is performed.

The employer or pay equity committee needs to customize the definition of these four criteria by considering the characteristics of the work done in its workplace and specific circumstances.

As an example, the following provides definitions for each of the four components:

The ***skill*** required refers to the relevant knowledge, skill and experience, however acquired, needed to perform the job. Skills may be acquired, for example, through education and experience. They include knowledge of the field of work (associated with practical procedures, specialized techniques and professional discipline), physical skills, communication skills, motor and sensory skills and analytical skills.

The ***effort*** refers to the effort required to perform the work required in the job. This could include physical, intellectual and/or cognitive effort. Physical effort may include accuracy and frequency of movement as well as work postures. Intellectual effort may measure concentration, creativity and complexity.

The ***responsibilities*** often refer to the accountability for resources and outcomes required in the job. This could include resources such as human, financial and technical, and outcomes such as safety and risk.

The ***working conditions*** refer to the conditions and environment associated with performing the work. This commonly includes the physical and psychological environment in which work must be completed. Examples of conditions associated with performing the work include the physical environment (for example, temperature, isolation, noise, physical danger and conditions hazardous to health) and the psychological environment (for example, mental stress).

Non-discriminatory job evaluation method

Conducting a gender-neutral job evaluation requires that all the characteristics of the work performed in predominantly female job classes be carefully considered. Some characteristics that are commonly overlooked in job evaluation include the use of fine motor skills, client service, lifting light objects on a regular basis and the psychological effort required for caregiving roles. The selected job evaluation method should account for all the aspects of feminized work.

For example, one of the unstated expectations of an administrative support role, which is typically female predominant, might be to tidy up the meeting room after events. This requirement may be overlooked and not included in the assessment of “responsibility” because it is unconsciously viewed as just something women do and not important enough to be included in the job evaluation. Another example of an overlooked responsibility for an administrative support role might be welcoming or accompanying visitors upon their arrival or departure from the workplace.

Discrimination based on gender

Discrimination based on gender can occur unknowingly due to unconscious gender biases. Unconscious gender bias is defined as “unintentional and automatic mental associations based on gender, stemming from traditions, norms, values, culture and/or experience.”* These associations can influence decision-making and are embedded in our organizational processes, including job evaluation.

For an objective and fair assessment of jobs, job evaluation methods "must be free from gender bias; otherwise key dimensions of jobs typically performed by women risk being disregarded or valued lower than those typically performed by men. This results in the perpetuation of the undervaluation of women's jobs and the reinforcement of the gender pay gap."**

* International Labour Organization. Breaking barriers: Unconscious gender bias in the workplace [ACT/EMP Research Note]. Geneva, Switzerland, August 2017.

** International Labour Organization. Promoting equity: Gender-neutral job evaluation for equal pay: A step-by-step guide. Geneva, Switzerland, 2008.

One method for one plan

Finally, the selected job evaluation method must make it possible to determine the relative value of the work performed in all of the predominantly female and predominantly male job classes covered by the pay equity plan. This means that a single method must be used for all the predominantly female and predominantly male job classes under the plan. The method must be capable of adequately measuring the value of the work in the full range of job classes included.

9.3.2 Collecting the necessary information

Once the employer or pay equity committee has established the job evaluation method it will use, it must gather information to understand the types of work different job classes do. This helps the employer or pay equity committee decide on the value of this work.

The types of information and the process used to collect it can vary. Types of information collected could include job postings, job descriptions and information about current organizational structures. In some cases, the employer or pay equity committee may be able to find the information it needs from existing materials. In other cases, it may want to collect additional information (for example, through desk audits, employee interviews or validation exercises) to better understand the work performed.

The employer or pay equity committee can decide what information it needs and how to get it.

9.3.3 Determining the value of work

During this step, the employer or pay equity committee assigns a value to each predominantly female and predominantly male job class based on the four criteria set out in the Act and then looks at the values of jobs relative to one another.

Although the way the employer or pay equity committee does this depends on the job evaluation method it chooses to use, the value determination for each job class must always reflect the combined skill, effort and responsibility required to perform the work and the conditions under which the work is performed, and it must not be discriminatory on the basis of gender.

To determine the value of work for a job class, the employer or pay equity committees will use information from sources such as job descriptions to evaluate the four factors. However, the value determination should not consider the following factors:

- Individual qualifications, performance and seniority;
- Existing pay; or,
- The external market (for example, supply and demand).

The employer or pay equity committee will use these values to determine whether there are differences in compensation later in the process (see section 9.5 of this Guide).

Note: This step is not required for job classes that are gender-neutral. The value of work is determined for the full range of positions in a job class (or one position, if the job class includes only one position).

Example E9-7: Determining the value of work

As mentioned in section 9.3.1, the point-factor method is commonly used for valuing work for pay equity purposes. This method weighs factors and sub-factors based on their importance within the organization and divides them into levels or degrees, which are then assigned points. Ultimately, each job is rated to obtain a total point score.

This example shows how to determine the value of work using the point-factor method. In the table below, the four factors are listed (skills, effort, responsibility and working conditions). These factors are broken down into sub-factors that must reflect the jobs in the organization and include those that are typically associated with women's work, as they are commonly overlooked.

Each factor and sub-factor is then assigned a weighting that reflects the importance of that sub-factor in the work for the organization. In this example, the sub-factors that describe the responsibilities of the work are weighted greater than skills, effort or working conditions. The weightings selected must total 100.

Table T9-5: Determining the value of work with the point-factor method

Factors	Sub-factor examples	Percent (%)
Skills	Knowledge	8
	Communication/interpersonal skills	9
	Problem solving/judgment	9
	Total	**26%**
Effort	Motor effort	6
	Cognitive/intellectual effort	18
	Total	**24%**
Responsibilities	Impact of action	10
	Coordination of others	20
	Risk management	5
	Total	**35%**
Working conditions	Physical environment	10
	Psychological environment	5
	Total	**15%**

As mentioned earlier, levels must also be created and defined for each sub-factor. The levels represent, for example, different degrees of difficulty, importance, complexity or disagreeableness. The description for each level must be mutually exclusive and not overlap. These levels are used during the evaluation of work for each predominantly male and predominantly female job class. Using the **knowledge sub-factor** as an example:

Factor: Skills

Sub-factor: Knowledge – Level of knowledge required to meet the job demands, such as the level of information, facts and skills. The knowledge can be obtained through any combination of formal education, training and work and life experience.

Table T9-6: Point-factor method-Knowledge sub-factor

Level	Definition
1	Little or no previous knowledge or experience required and/or on-the-job training of less than two months.
2	Three months to one year of work-related experience or a specific training certificate is required, or the job requires longer on-the-job training periods to understand needs processes or equipment specific to the job.
3	Moderate knowledge is required to meet job requirements. This knowledge is usually obtained through post-secondary level of education or equivalent work experience related to the required knowledge of the job.
4	Specialized knowledge is required that is usually obtained through an advanced degree or certification and/or lengthy periods of training/experience. There is a need for continuous updating of skills and knowledge (such as to re-certify) in order to retain specialized knowledge.
5	Specialized knowledge is required and broad knowledge of the business or operations is gained through progressive work experience related to the job. Knowledge is used to redefine concepts, techniques and theories that are important for the work of the organization.

Using the **skill factor and the sub-factors** selected under skill as an example:

Points are assigned to each level and must be equal to the maximum possible points identified for the sub-factor as a whole. During the evaluation process, each predominantly male and predominantly female job class is assigned points based on the work that is performed for the job class in alignment with the defined sub-factors and levels.

It is possible to assign different points by level based on the importance of each sub-factor.

Table T9-7: Point-factor method-Assigning different points

Factor/ sub-factors	Weighting (%)	Maximum possible points	Level 1	Level 2	Level 3	Level 4	Level 5
Skills (20% to 35%)		**260**					
Knowledge	**8**	80	20	40	60	**80**	100

Factor/ sub-factors	Weighting (%)	Maximum possible points	Level 1	Level 2	Level 3	Level 4	Level 5
Communications/ interpersonal skills	**9**	90	18	36	54	72	**90**
Problem solving/ judgment	**9**	90	18	36	54	72	**90**
Total	**26%**	**260**					

9.3.4 Using values of work that have already been determined

All public and private sector employers and pay equity committees established by those employers may use predetermined values of work for job classes, as long as the values were determined using a gender-neutral method that meets the same requirements as those laid out in the Act and any other requirements that may be prescribed by regulation [Act s. 41(2)].

That is to say, the method must:

- Consider the skill required to perform the work, the effort required to perform the work, the responsibility required in the performance of the work and the conditions under which the work is performed [Act s. 42];
- Not discriminate on the basis of gender [Act s. 43]; and,
- Be capable of determining the value of work of all predominantly female and predominantly male job classes.

These predetermined values of work must be current, meaning that they are reflective of the work being done at the time the pay equity plan is developed.

In workplaces where a pay equity committee has been formed, the members must agree to use predetermined values of work. Should an employer or a pay equity committee use values of work that have already been determined, the pay equity plan [Regulations s. 31] and annual statement [Regulations s. 51] must include an indication to this effect.

Discrimination based on gender

When using predetermined values of work, the employer or pay equity committee must be careful not to discriminate based on gender. This means thinking about the biases that may have been present when the values were determined and questioning them, trying to see things in new ways and listening to different opinions.

If the employer or pay equity committee does not ensure a non-discriminatory approach is applied, existing inequities may not be redressed by the pay equity plan.

9.4 Calculating total compensation

Once the value of the job classes has been determined, the employer or the pay equity committee must calculate the total compensation for each predominantly male and predominantly female job class [Act s. 44(1)]. There is no need to complete this step for any gender-neutral job classes.

Employers may pay their employees differently depending on industry norms or the type of work they do. For example, workers who transport goods as part of their work may be paid a kilometric rate while salespeople may be compensated with commissions.

No matter how employees are paid, the total compensation calculated during this step always has to be expressed in dollars per hour. Conversions to dollars per hour from other methods of compensation will have to be made in order to comply with the Act.

The Act requires or allows for the exclusion of certain forms of compensation when specific conditions are met. For example, when employer contributions to pension are equally available across all job classes, the employer or pay equity committee may choose not to include that as a form of compensation. However, if certain job classes do not have access to employer pension contributions while others do, then pension amounts must be reflected in the calculation of total compensation.

Because of the way compensation must be calculated under the Act, employers should be aware that the hourly amount of total compensation may not match the hourly salary they pay employees in a given job class.

***Compensation* under the Act means** any form of remuneration payable for work performed by an employee and includes [Act s. 3(1)]:

- Salaries, commissions, vacation pay, severance pay and bonuses;
- Payments in kind;
- Employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and,
- Any other advantage received directly or indirectly from the employer.

9.4.1 Forms of compensation to include

The employer or pay equity committee must include all elements of compensation like salaries, commissions, bonuses, long-term incentives (for example, stock options and/or share units) and employer contributions to health insurance and retirement savings plans in its calculations of total compensation [Act s. 3(1)], though some elements may or must be excluded (refer to sections 9.4.2 and 8.4.3).

The employer or pay equity committee must use the highest salary in the salary range for positions in a job class as the salary for that job class [Act s. 44(3)]. For example, when the maximum rate for a job class is attainable based on length of service (for example, from $20.00/hour upon entering the job class to $25.00/hour at the five-year mark), that rate is the one to be used (that is, $25.00/hour). If there is only one rate of pay for a given job class, that rate is the one to be used.

Where there is a defined salary range and all employees can expect to realize the maximum salary rate in the range, that maximum is defined as the highest rate.

For other elements of compensation that differ among positions in a job class, there is no set rule on how to calculate the dollar amount per hour for each element. Calculations need to reflect how much an employee can realistically earn in each job class and be done in a manner that respects the purpose and intent of the Act. For example, when calculating the dollar amount per hour for commission pay in a given job class, the employer or pay equity committee may use the target commission for satisfactory performance.

The following is an example of how to calculate total compensation.

Example E9-8: Calculating total compensation

Company A's pay equity committee calculates the hourly amount of each type of compensation for the financial administration job class. It does this by first calculating annual amounts, then translating these into hourly amounts.

The pay equity committee starts by calculating salary. It uses the highest rate in the annual salary range for the financial administration job class ($50,000). All employees in the job class are full-time (37.5 hours per week). To determine what the hourly amount of this compensation is, the pay equity committee divides the amount by the number of weeks in a year (52) and then divides that amount by the number of hours in a week (37.5):

$50,000 ÷ 52 = $961.54; and,

$961.54 ÷ 37.5 = $25.64.

The pay equity committee continues calculating the hourly amount of each type of compensation. For example, the employer contributes 6% of the annual salary to the pension plan for employees in the financial administration job class. Since the annual salary is $50,000, this works out to $3,000 annually.

The pay equity committee divides $3,000 by the number of weeks in a year (52) and then divides that amount by the number of hours in a week (37.5):

$3,000 ÷ 52 = $57.69 ÷ 37.5 = $1.54.

The resulting hourly amount of employer contributions to the pension plan is $1.54. The pay equity committee lists the amounts it calculates in the table.

After calculating the hourly amount of all types of compensation provided and listing them, the pay equity committee adds them up. The result is the hourly compensation for the financial administration job class: $31.62.

The pay equity committee will then calculate the hourly compensation for all other predominantly female and male job classes before they can compare compensation (see section 9.4).

Table T9-8: Calculating total compensation

Type of compensation	Amount (annual) ($)	Amount (hourly) ($)
Salary (highest rate in the range)	50,000	25.64
Employer contributions to health plan	960	0.49
Employer contributions to pension plan	3,000	1.54
Total	**$53,960**	**$27.67**

9.4.2 Forms of compensation that may be excluded

Any compensation that is equally available to all job classes and is provided without discrimination on the basis of gender may be excluded from the calculation to determine total compensation [Act s. 45]. For example, if the employer provides the same benefit (like health insurance or pension) to employees across all job classes, this form of compensation may be excluded from the calculation determining total compensation. The purpose of this is to simplify and streamline the work.

Before excluding any type of compensation from the calculation for total compensation, the employer or pay equity committee must ensure that it is not discriminatory to do so.

Example E9-9a: Calculating total compensation: Forms of compensation that may be excluded

In creating a pay equity plan, Company A's pay equity committee must calculate the total compensation for all job classes.

The pay equity committee begins by identifying forms of compensation that are equally accessible to all job classes under the pay equity plan. The pay equity committee finds that Company A pays the same percentage of employee health insurance, regardless of the gender predominance of the job class. As a result, the pay equity committee chooses to exclude health insurance from the calculation of total compensation.

Table T9-9: Calculating total compensation-Forms of compensation that may be excluded

Compensation excluded	Reason for exclusion	Justification
Health insurance	Compensation that is equally available to all job classes and is provided without discrimination on the basis of gender [Act s. 45].	The percentage of health insurance paid by the employer is the same for both predominantly female and predominantly male job classes.

9.4.3 Differences in compensation that must be excluded

Certain differences in compensation among the positions in the predominantly female and predominantly male job classes must be excluded when calculating the total compensation for

the job class [Act s. 46]. For example, a difference caused by a seniority bonus or isolation premium is excluded, as long as it is designed and applied in a gender-neutral manner [Act s. 46]. For such a difference to be excluded, neither the structure of the compensation practice nor the way it is applied to employees in practice can be discriminatory. The differences in compensation should also be established through formal policies and practices.

The differences in compensation that must be excluded from the calculation of total compensation are [Act s. 46]:

- A system to compensate employees according to their seniority or the length of their service;
- Temporarily maintaining an employee's compensation after their reclassification or demotion to a position with a lower compensation rate until the rate for that position is the same or greater than the rate the employee received right before the reclassification or demotion (for example, "red circling");
- A temporary increase in compensation that an employer implemented because a shortage of workers made it difficult to recruit or retain employees with the required skills for the positions in a job class;
- Compensation based on the geographic area where an employee works, which could include such things as isolation pay or cost-of-living bonuses;
- A merit-based compensation plan that is based on a system of formal performance ratings and that has been brought to the attention of the employees; and,
- Compensation for extra-duty services, including overtime, shift work, being on call, being called back to work and working or travelling on a day that is not a working day.

To calculate total compensation when excluding these factors, the employer or pay equity committee must **remove** the amount of the difference in compensation (represented in dollars per hour). This ensures that the amount is not part of the calculation of total compensation and comparison. Employers must not reduce the actual compensation of employees.

The employer or pay equity committee must also exclude, by **adding rather than subtracting**, as you would for the other six factors above, any differences in compensation based on [Act s. 46]:

- Paying an employee in a development or training program at a different rate than employees who do the same work but are not in this type of program; and,
- Temporary, casual or seasonal employees not receiving compensation in the form of benefits because of the nature of their employment status.

To calculate total compensation when excluding the two latter factors, the employer or pay equity committee must **add** the amount of the difference in compensation (represented in dollars per hour) to the total compensation of those not receiving this type of compensation. This is done only for the purpose of the total compensation calculation and comparison. The employer will not owe these employees this amount.

If the employer or pay equity committee applies any exclusions to the calculation of total compensation, it must indicate in the pay equity plan the job classes to which the exclusion was made and give the reason why [Act s. 51(i)].

Example E9-9b: Calculating total compensation: Forms of compensation that must be excluded

Company B's pay equity committee identifies two "accounting clerk" job classes that are both predominantly female, one of which is made up of permanent positions and the other of casual positions.

Work performed in both job classes requires similar skills, effort and responsibilities, and is performed under similar conditions. Both job classes make the same hourly wage of $17.00/hour.

However, the employer also contributes to permanent employees' pension plans. This benefit is valued at an additional $2.50/hour for each permanent employee. Casual employees are not eligible to participate in the pension plan. Because of the exclusion mentioned above, the Act requires the pay equity committee to calculate the total compensation for the accounting clerk (casual) as if that job class received the additional $2.50/hour benefit, such that the job class will be compared as it if made $19.50/hour.

Table T9-10 below shows how the pay equity committee would be expected to calculate the total compensation for the permanent and casual accounting clerk job classes and compares them—using the equal average method set out in the legislation—with the predominantly male "handyman (permanent)" job class of comparable value, which makes $21.50/hour.

Table T9-10: Calculating total compensation-Forms of compensation that must be excluded

	Job class	Accounting clerk (permanent)	Accounting clerk (casual)	Handyman (permanent)
	Gender	F	F	M
Compensation ($)	Hourly rate ($)	17.00	17.00	19.00
	Other forms	2.50*	n/a**	2.50*
	Total ($)	19.50	17.00	21.50
	Differences excluded ($)	n/a	$2.50 (for non-receipt of pension plan)	n/a
	For comparison ($)	19.50	19.50	21.50
	Increase owed ($)	2.00	2.00	n/a
	Adjustment ($)	21.50 (19.50 + 2.00)	19.00 (19.50 + 2.00 – 2.50)	n/a

* Employer contribution to pension plan
** Not entitled to participate in pension plan

9.4.4 Active and frozen rates of pay

A situation may arise in workplaces with more than one bargaining unit where some of the rates of pay are "active" and some are "frozen" [Regulations s. 1]:

- "Active" rates of pay are rates that are part of a current collective agreement.
- "Frozen" rates of pay are rates that cannot be changed, as they are currently subject to collective bargaining or a union certification application.

The Pay Equity Regulations define **"frozen,"** in respect of compensation associated with a job class, as:

(a) salary at a rate that is continued in force under section 107 of the Federal Public Sector Labour Relations Act;

(b) salary at a rate set out in a collective agreement applicable to a bargaining unit for which a strike may be declared or authorized without contravening subsection 194(1) of that Act or for which the conditions in paragraphs 89(1)(a) to (d) of the Canada Labour Code are met; or

(c) salary at a rate that:

(i) under section 56 of the Federal Public Sector Labour Relations Act, cannot be altered except under a collective agreement or with the consent of the Federal Public Sector Labour Relations and Employment Board;

(ii) under subsection 24(4) of the Canada Labour Code, cannot be altered except pursuant to a collective agreement or with the consent of the Canada Industrial Relations Board; or,

(iii) under paragraph 50(b) of the Canada Labour Code, cannot be altered without the consent of the bargaining agent.

The Pay Equity Act is not intended to address differences in compensation attributable to the timing of collective bargaining. Because of this, the Regulations prohibit comparing active and frozen rates of pay [Regulations s. 10 and s. 45].

Salary rate when compensation is frozen

The Regulations allow employers or pay equity committees to use an adjustment factor to determine the compensation of the job class(es) covered by the statutory freeze. This adjustment factor is equal to the average of all wage increases negotiated by all job classes (including gender-neutral ones).

To calculate the frozen compensation associated with a job class, employers or pay equity committees multiply the salary at the highest rate in the range of salary rates for positions in the frozen job class by the average percentage of increases received by unionized employees under collective agreements that have not expired. This amount is then added to the highest salary rate in the range of salary rates for positions in the job class [Regulations s. 10(a) and 45(a)].

Example E9-10: Prescribed approach when salary rate is frozen

A workplace has two bargaining units:

- Bargaining unit A covers four job classes: two gender-predominant and two neutral, under a collective agreement that has not expired; and,
- Bargaining unit B covers the two gender-predominant job classes with rates of pay that have been frozen for one year.

To calculate the salary rate for each gender-predominant job class in Bargaining unit B, the employer or pay equity committee follows these steps:

Step 1: Identify the percentage by which the salary increased in each job class of Bargaining unit A since the salary rates in Bargaining unit B became frozen.

Table T9-12: Calculating salary rates when frozen-Identifying percentage increase

Job class in Bargaining unit A	Percentage increase over the past year* (%)
Job class 1	2
Job class 2	1
Job class 3	4
Job class 4	1

* Since Bargaining unit B's rate of pay has been frozen.

Step 2: Calculate the average percentage increase based on the four job classes of Bargaining unit A: 2% + 1% + 4% + 1% = 8% ÷ 4 job classes in Bargaining unit A = 2%.

Step 3: Multiply the highest rate of pay in each of the two gender-predominant job classes in Bargaining unit B by that percentage.

Table T9-13: Calculating salary rates when frozen-Calculating percentage increase

Job class in Bargaining unit B	Highest rate of pay
Job class 1	$22.00/hour
Job class 2	$25.00/hour

Job class 1: $22.00 × 2%= $0.44

Job class 2: $25.00 × 2%= $0.50

Step 4: Add the results obtained in step 3 to the highest salary rate associated with each job class.

Job Class 1: $22.00 + $0.44 = $22.44

Job Class 2: $25.00 + $0.50 = $25.50

The new salary rates obtained ($22.44 and $25.50) should be used to calculate compensation.

The Regulations allow a pay equity committee to use a different method of comparing frozen and non-frozen compensation, provided that the alternative method meets a regulatory duty to negotiate reasonable measures to address the comparison between frozen and non-frozen rates of pay. This means that a pay equity committee is able to use a method of its own choosing provided that it minimizes, to the extent possible, the differences in compensation that result from the compensation associated with a frozen job class [Regulations s. 10(b)]. Pay equity committees do not need a special authorization from the Pay Equity Commissioner to use a method other than that prescribed in the Regulations.

9.5 Determining whether there are differences in total compensation

Once the employer or the pay equity committee has determined the value of work, it must compare the total compensation of the predominantly female job classes with that of the predominantly male job classes of equal value to determine whether there are differences in total compensation and the amount of the increase in compensation (if any) owed [Act s. 47].

This step does not have to be completed for any gender-neutral job classes.

Employers cannot reduce the compensation of any employee as a way to achieve pay equity. For example, they cannot pay employees in predominantly male job classes less so their compensation matches that of employees in predominantly female job classes [Act s. 98].

The Act prescribes two methods that employers and pay equity committees can use to compare total compensation: the equal average method (see section 9.5.1) and the equal line method (see section 9.5.2) [Act s. 48(1)].

9.5.1 Equal average method

The equal average method aims to compare the average total compensation of all predominantly female job classes with that of all predominantly male job classes within a particular value of work band.

A **band** is a range of values of work that the employer or pay equity committee considers comparable [Act s. 49(2)].

If an employer or pay equity committee chooses to use the equal average method, it first needs to create bands (ranges of values of work) based on total compensation amounts for the workplace. The employer or pay equity committee decides the width of the bands. However, the bands cannot overlap and must not be so wide as to include job classes that do not have a similar value of work. The predominantly male and predominantly female job classes are then placed within a band according to their value.

The employer or pay equity committee then has to compare the total compensation for the predominantly female job class (if there is only one) or the average total compensation of all predominantly female job classes in a band (female average) to the total compensation for the predominantly male job class (if there is only one) or the average total compensation for all predominantly male job classes within the band (the male average) [Act s. 49(1)(a)].

Under the equal average method, two conditions must be met for a predominantly female job class to be eligible for an increase in compensation [Act s. 49(1)(c)]:

1. First, the female total compensation average must fall below the male total compensation average in that band; and,
2. Second, the total compensation of the predominantly female job class must fall below the male average within a given band.

Example E9-11: Comparing total compensation using the equal average method

Company A's pay equity committee decides to compare total compensation using the equal average method.

First, the pay equity committee creates value of work bands. It does this by deciding the value range that each band will represent. It then places all of the job classes it identified in bands according to their value of work and hourly compensation.

The pay equity committee finds that Band 5 includes six job classes. Three of these are predominantly female (f1, f2 and f3, represented in the figure as red boxes) and three are predominantly male (represented as blue diamonds). All job classes in the same band are considered to be of equal or comparable value.

The committee calculates that the female average in this band is $25.00 per hour (represented in the figure by the orange line).

It calculates the male average to be $30.00 per hour (represented by the blue line in the figure).

The female average in Band 5 is below the male average in the band.

The pay equity committee finds that all of the predominantly female job classes in the band are below the male average. Therefore, they will all need an increase in compensation (see section 9.5.1.).

When none of the predominantly female job classes are above the male average, all the predominantly female job classes are adjusted up to the male average. This ensures that the female and male averages within a band coincide.

Figure F9-1: The equal average method

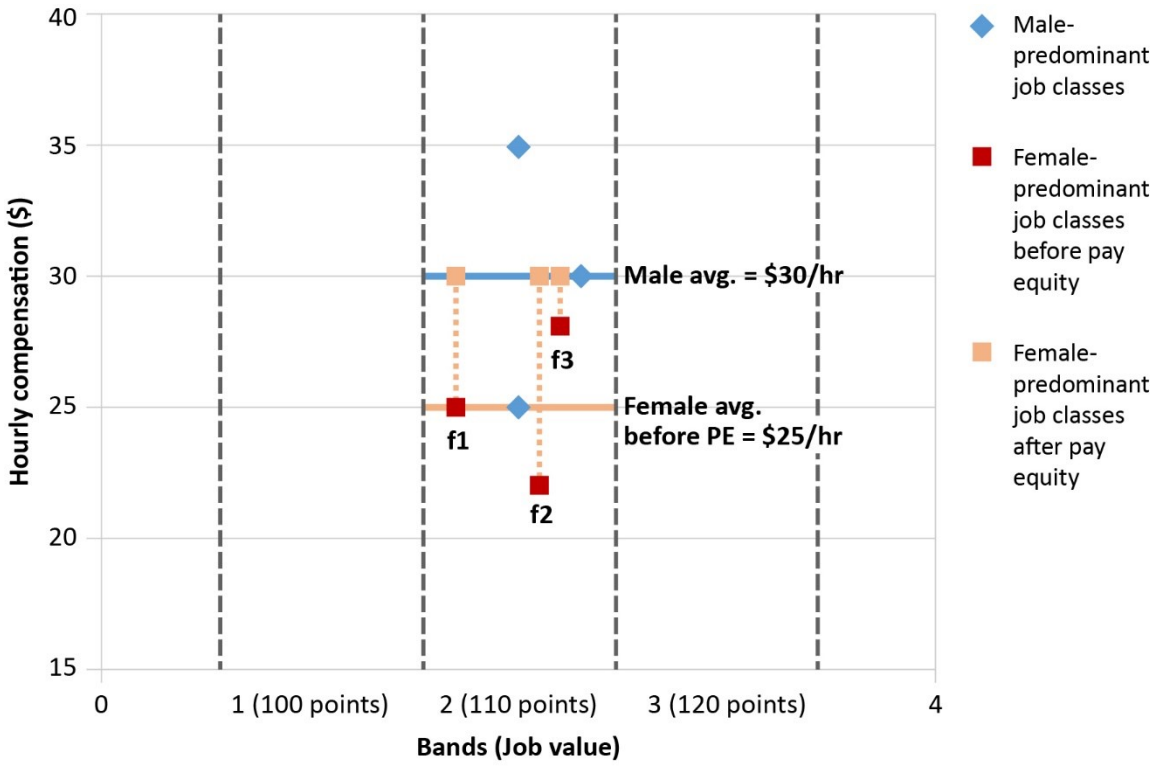


Chart data for Figure F9-1: The equal average method

Male-predominant job classes		Female-predominant job classes			
Job value (x-axis)	Hourly compensation (y-axis)	Job value (x-axis)		Hourly compensation before pay equity (y-axis)	Hourly compensation after pay equity (y-axis)
2.0	$25.00	f1	1.7	$25.00	$30.00
2.0	$35.00	f3	2.2	$28.00	$30.00
2.3	$30.00	f2	2.1	$22.00	$30.00

Example E9-12: Comparing total compensation using the equal average method

Company A's pay equity committee decided to compare compensation using the equal average method.

First, the pay equity committee creates bands. It does this by deciding the value range that each band will represent. It then places all of the job classes it identified in bands according to their value of work and hourly compensation.

Once it creates the bands, the pay equity committee finds that Band 5 includes six job classes. Three of these are predominantly female (f1, f2 and f3, represented in the figure as red boxes) and three are predominantly male (represented as blue diamonds). All job classes in the same band are considered to be of equal or comparable value.

It calculates that the female average in this band is $26.66 per hour (represented in the figure by the orange line).

They calculate the male average as $30.00 per hour (represented by the blue line in the figure).

The female average in Band 5 is below the male average in the band.

In this example, only f1 and f2 are eligible to receive an increase because their total compensation falls below the male average. Because f3 is above, it will not get any increase.

Figure F9-2: The equal average method

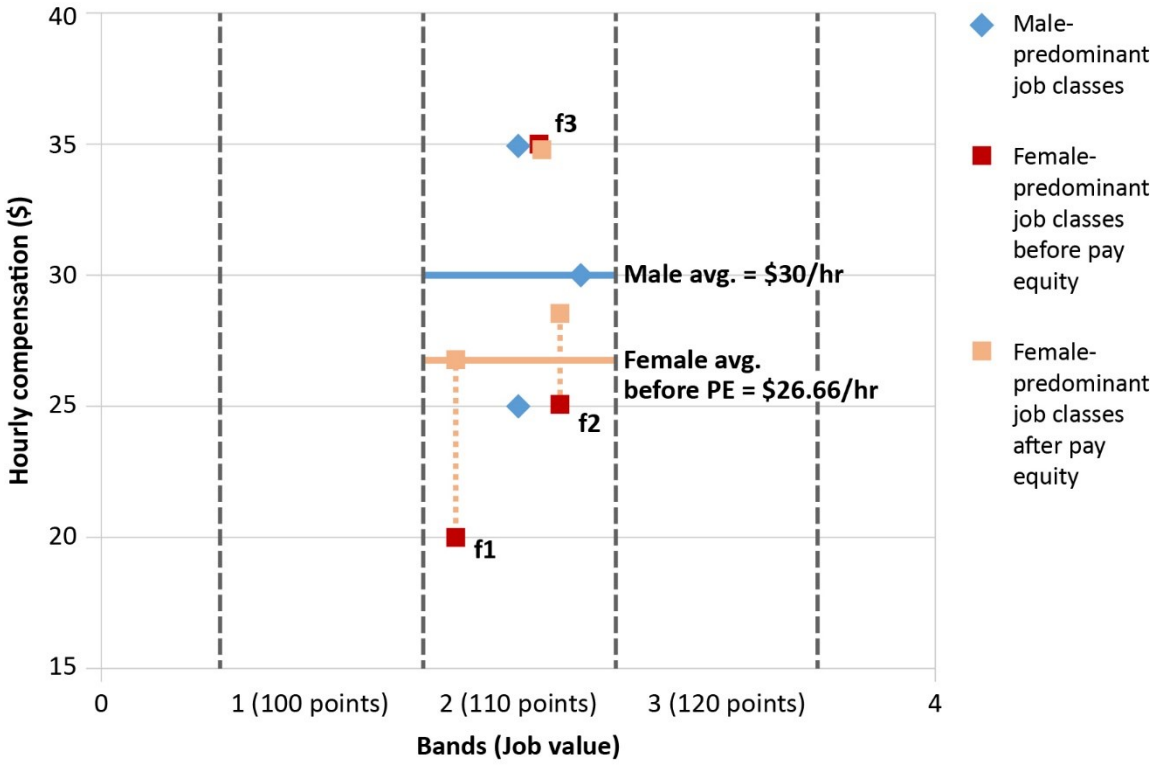


Chart data for Figure F9-2: The equal average method

Male-predominant job classes		Female-predominant job classes			
Job value (x-axis)	Hourly compensation (y-axis)	Job value (x-axis)		Hourly compensation before pay equity (y-axis)	Hourly compensation after pay equity (y-axis)
2.0	$25.00	f1	1.7	$20.00	$27.00
2.0	$35.00	f2	2.2	$25.00	$28.00
2.3	$30.00	f3	2.1	$35.00	$35.00

No predominantly male job in the same band: Comparing to the closest band

If, after completing the steps in the previous section, a band contains at least one predominantly female job class but no predominantly male job classes ("a no-comparator

band"), the employer or pay equity committee has to assign that band an average male total compensation amount that can be used for comparison. The employer or pay equity committee must use the following formula: (A × B) ÷ C.

In this formula [Act s. 49(1)(b)(i)]:

- **A** is the male average hourly compensation in the closest band;
- **B** is the average value of the work of the predominantly female job class (if there is only one) or classes within the band; and,
- **C** is the average value of the work of the predominantly male job class (if there is only one) or classes in the closest band.

If there are two bands with male comparators at an equal distance from the no-comparator band (and no closer male comparator), the employer or pay equity committee must instead use the method for using two bands at an equal distance, discussed in the next section.

Example E9-13: Comparing total compensation using the equal average method when there is no predominantly male job class in the same band: One comparison band

While comparing total compensation using the equal average method, Company A's pay equity committee finds that there is one predominantly female job class in Band 1 (f1, represented in the figure as a red box) but no predominantly male job classes in that band.

The pay equity committee determines that Band 3 is the closest band containing predominantly male job classes (represented as blue diamonds in the figure).

The pay equity committee calculates the male average in Band 3 as $25.00 per hour (represented as a solid blue line). They use this average to assign a male average to be used to compare total compensation with the predominantly female job class in Band 1.

They calculate this assigned average using the following formula: (A × B) ÷ C

= (male average in Band 3 × female average in Band 1) ÷ average value of work of the predominantly male job classes in Band 3

= ($25.00 × 100) ÷ 120

= $20.83/hour

They will then apply the same criteria as in the previous examples to figure out if the predominantly female job class in Band 1 is eligible for an increase.

Figure F9-3: The equal average method

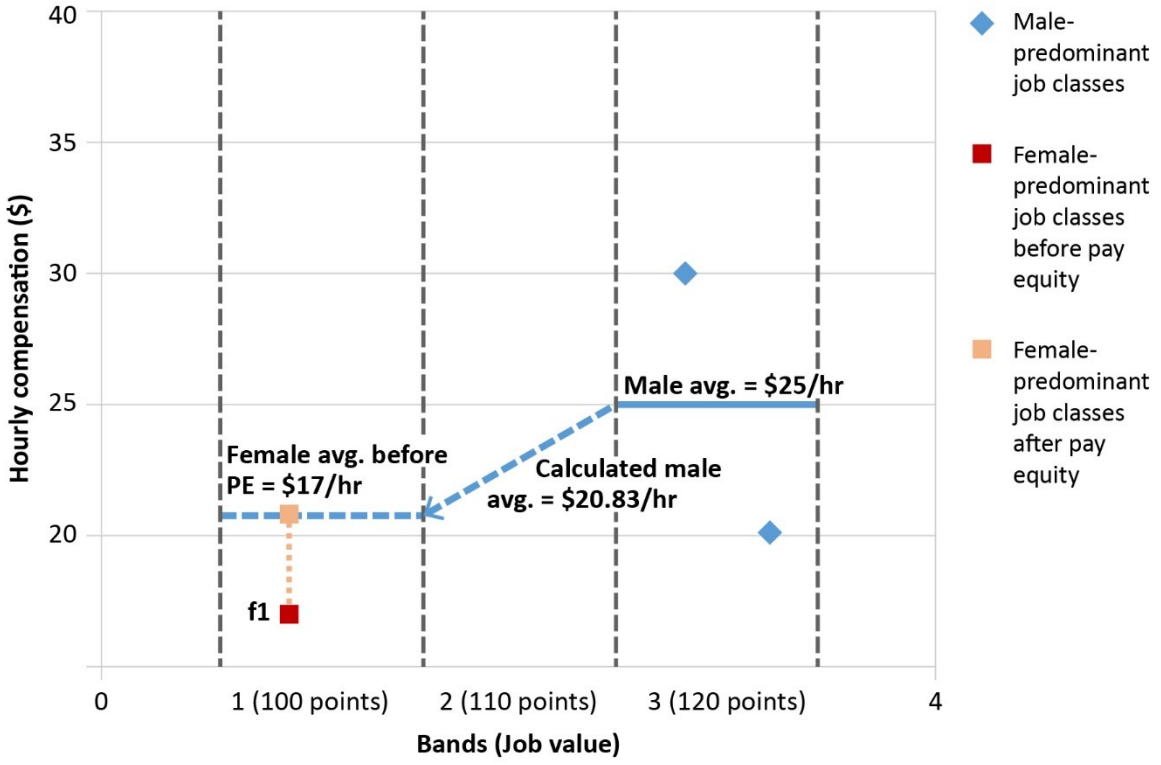


Chart data for Figure F9-3: The equal average method

Male-predominant job classes		Female-predominant job classes		
Job value (x-axis)	Hourly compensation (y-axis)	Job value (x-axis)	Hourly compensation before pay equity (y-axis)	Hourly compensation after pay equity (y-axis)
2.8	$30.00	f1 0.9	$17.00	$21.00
3.2	$20.00	n/a	n/a	n/a

Calculated average for male-predominant jobs in Band 1 = $20.83

No predominantly male job class in the same band: Two bands at an equal distance

When two bands with male comparators are equally close to the no-comparator band, both must be used to do the comparison.

In situations where there are two bands containing predominantly male job classes that are both at equal distance from the no-comparator band in question, **and** there is no other band containing at least one predominantly male job class that is closer, the employer or pay equity committee should use the following formula to assign a male total compensation average: (A + B) ÷ 2.

For this formula [Act s. 49(1)(b)(ii)]:

- **A** is the total compensation for the male job class (if there is only one) or the male average in the band on one side of the band in question; and,
- **B** is the total compensation for the male job class (if there is only one) or the male average in the band on the other side.

Example E9-14: Comparing total compensation using the equal average method when there is no predominantly male job class in the same band: Two bands at an equal distance

In the third scenario, Company A's pay equity committee decides again to use the equal average method to compare total compensation.

First, the pay equity committee creates bands. They do this by deciding the value range that each band will represent. They then place all of the job classes they identified in bands according to their value of work and hourly compensation.

The pay equity committee finds that Band 5 includes one predominantly female job class (f1 represented as a red box in the figure below) but no predominantly male job classes.

They determine that there are two bands containing predominantly male job classes (represented as blue diamonds in the figure below) that are equally close to Band 5: Bands 4 and 6.

In Band 4, there is only one predominantly male job class that earns $20.00 per hour. This is used as the "male average" for Band 4 (represented as the solid blue line in Band 4). In Band 6, there are two predominantly male job classes, one that earns $35.00 per hour and another one that earns $25.00 per hour, leading to an average of $30.00 per hour (represented as the solid blue line in Band 6).

The pay equity committee uses these averages to assign a male average to be used to compare total compensation with the predominantly female job class in Band 5.

They calculate this assigned average using the following formula:

(A+B) ÷ 2

= (male average in Band 4 + male average in Band 6) ÷ 2

= ($20.00 + $30.00) ÷ 2

= $25.00/hour

Based on this result, they will apply the same criteria as in the previous examples to determine if the predominantly female job class is eligible for an increase.

Figure F9-4: The equal average method

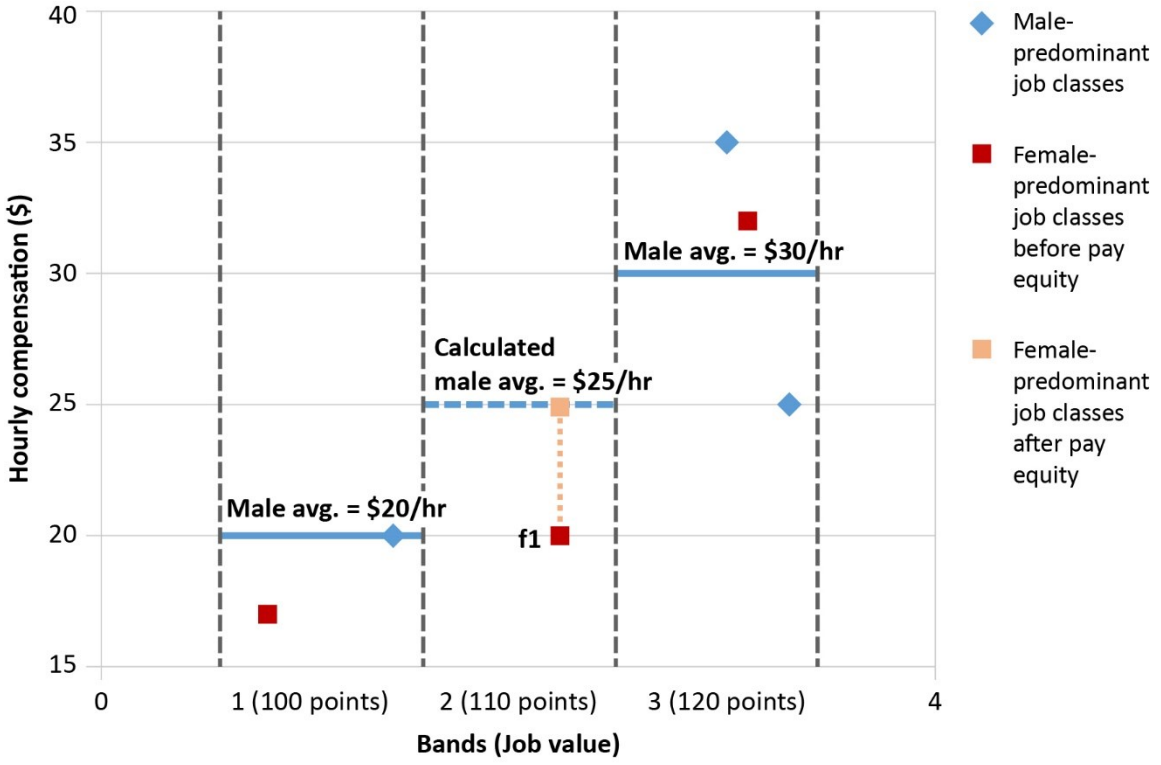


Chart data for Figure F9-4: The equal average method

Male-predominant job classes		Female-predominant job classes		
Job value (x-axis)	Hourly compensation (y-axis)	Job value (x-axis)	Hourly compensation before pay equity (y-axis)	Hourly compensation after pay equity (y-axis)
1.4	$20.00	0.8	$17.00	n/a
3.3	$25.00	f1 2.2	$20.00	$25.00
3.0	$35.00	3.0	$32.00	n/a

Calculating the increase in compensation owed

With the equal average method, the compensation of eligible predominantly female job classes has to be increased so that the average compensation of all predominantly female job classes within the band is equal to the male average used for comparison.

A predominantly female job class is eligible for an increase if:

- The female average hourly compensation in a band is less than the male average hourly compensation in that same band [Act s. 49(1)I(i)]; and,
- The hourly compensation of that particular predominantly female job class is below the male average hourly compensation for that band [Act s. 49(1)(c)(ii)].

Once the eligible predominantly female job classes are identified, the employer or pay equity committee calculates the amount of the increase in compensation by multiplying: the factor calculated in accordance with the Regulations, by an amount equal to the difference between the compensation associated with the predominantly female job class and the male average used for the comparison [Act s. 49(1)(d)].

The factor is determined by the formula **[(A × B) – C) ÷ D]** [Regulations s. 11].

For this formula:

- **A** is the number of predominantly female job classes within the band;
- **B** is as follows:
    - If there is more than one predominantly male job class within the band, **B** is the average compensation associated with the predominantly male job classes within the band;
    - If there is only one predominantly male job class within the band, **B** is the compensation associated with that job class; or,
    - If there are no predominantly male job classes within the band, **B** is the compensation calculated under section 49(1)(b) of the Act or section 28(b) of the Regulations, depending on the circumstances. These sections refer to the formula (A × B) ÷ C.
- **C** is the sum of the compensation associated with the predominantly female job classes within the band; and,
- **D** is the sum of the differences, for each predominantly female job class within the band whose compensation is less than the value determined for B, between the value of B and the compensation associated with the job class.

In practice, applying the formula to a scenario where all female-predominant jobs are below the average will yield a factor of 1.

Once the factor is calculated, you can calculate the increase in compensation for each predominantly female job class as follows:

Increase in compensation = (male average hourly compensation - the predominantly female job class's hourly compensation) × the factor

For any increases in compensation associated with a female job class or classes, the female average in the band must be the same as the male average used for the comparison [Act s. 49(1)(e)].

For more information on calculating compensation using the equal average method, consult the Pay Equity Interpretations, Policies and Guidance series: www.payequitychrc.ca/en/publications.

9.5.2 Equal line method

The equal line method uses regression lines to compare the total compensation of predominantly female and predominantly male job classes.

An employer or pay equity committee that chooses to use this method must create a female regression line that represents the relationship between the value of work and the hourly rate of compensation for all the predominantly female job classes. They must also create a male regression line that represents the same for the predominantly male job classes [Act s. 50(1)(a)].

If the entire female regression line is below the male regression line in the relevant range of job values (in other words, one line does not cross the other between the lowest and highest female job values in the plan), then any female job classes that fall below the male regression line will be owed an increase in compensation [Act s. 50(1)(b)].

Regression lines represent the relationship between the value of work and the hourly compensation for all predominantly female or male job classes, respectively.

Example E9-15: Comparing total compensation using the equal line method

Company B's pay equity committee decides to use the equal line method to compare total compensation.

They start by plotting all of the job classes on a chart with the y-axis representing total compensation in dollars per hour and the x-axis representing the value of work. They plot all 12 predominantly female job classes (represented as red squares in the figure) and all 12 predominantly male job classes (represented as blue diamonds in the figure).

Figure F9-5: The equal line method, before pay equity

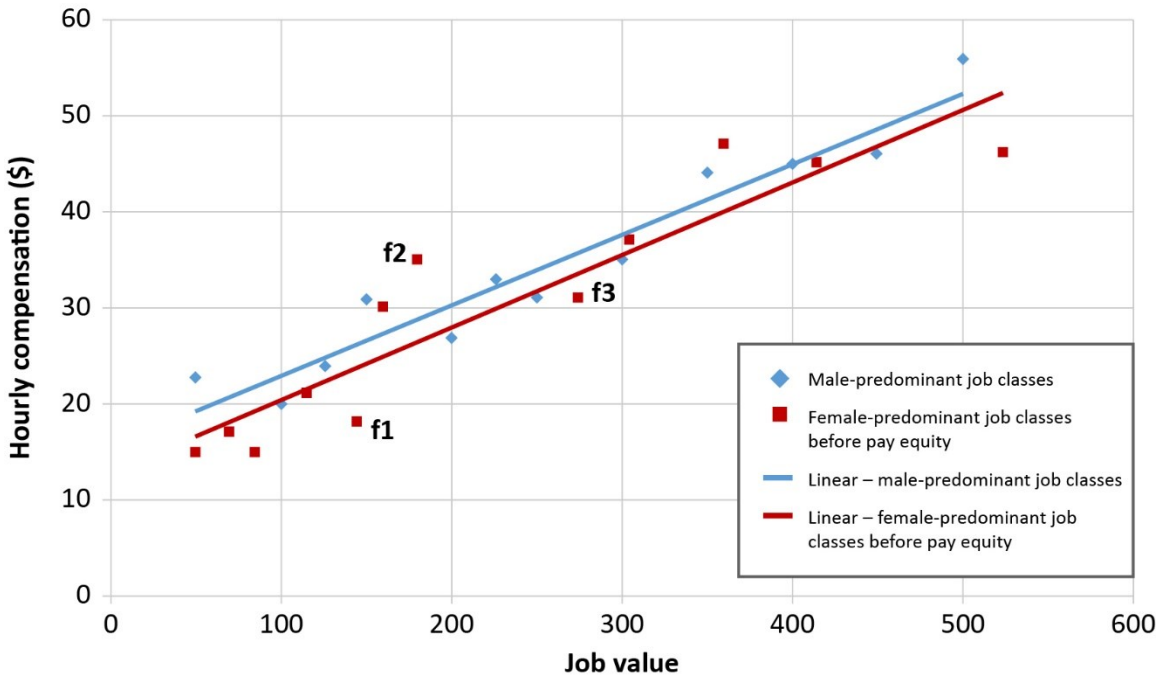


Chart data for Figure F9-5: The equal line method, before pay equity

Male-predominant job classes		Female-predominant job classes			
Job value (x-axis)	Hourly compensation (y-axis)	Job value (x-axis)	Hourly compensation before pay equity (y-axis)	Hourly compensation after pay equity (y-axis)	Adjustment
50.0	$23.00	50.0	$15.00	$18.10	$3.10
100.0	$20.00	70.0	$17.00	$19.70	$2.70
125.0	$24.00	85.0	$15.00	$19.80	$4.80
150.0	$31.00	115.0	$21.00	$23.10	$2.10
200.0	$27.00	f1 145.0	$18.00	$23.60	$5.60
225.0	$33.00	160.0	$30.00	$30.00	$0.00
250.0	$31.00	f2 180.0	$35.00	$35.00	$0.00
300.0	$35.00	f3 275.0	$31.00	$34.10	$3.10
350.0	$44.00	305.0	$37.00	$37.60	$0.60
400.0	$45.00	360.0	$47.00	$47.00	$0.00
450.0	$46.00	415.0	$45.00	$45.70	$0.70
500.0	$56.00	525.0	$46.00	$50.90	$4.90

The pay equity committee then uses the points plotted for predominantly female job classes to make a female regression line (represented as a red line) and the points plotted for predominantly male job classes to make a male regression line (represented as a blue line).

The pay equity committee determines that the female regression line is below the male regression line and never crosses it within the relevant range of job values. They also notice that some predominantly female job classes are below the male regression line, while others are above it.

While predominantly female job classes that are above the male regression line are not eligible for an increase in compensation, Company B must increase the compensation for each of the predominantly female job classes below the male regression line.

After these increases, the two regression lines must coincide.

Figure F9-6: The equal line method, after pay equity

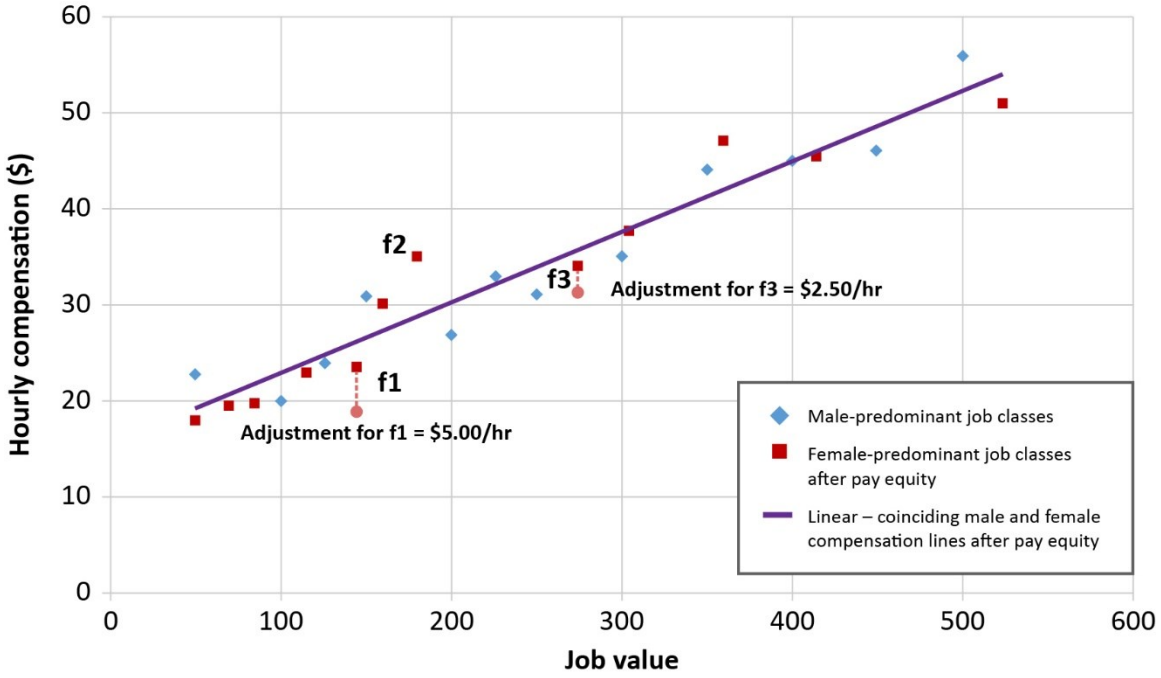


Chart data for Figure F9-6: The equal line method, after pay equity

Male-predominant job classes		Female-predominant job classes			
Job value (x-axis)	Hourly compensation (y-axis)	Job value (x-axis)	Hourly compensation before pay equity (y-axis)	Hourly compensation after pay equity (y-axis)	Adjustment
50.0	$23.00	50.0	$15.00	$18.10	$3.10
100.0	$20.00	70.0	$17.00	$19.70	$2.70
125.0	$24.00	85.0	$15.00	$19.80	$4.80
150.0	$31.00	115.0	$21.00	$23.10	$2.10
200.0	$27.00	f1 145.0	$18.00	$23.60	$5.60
225.0	$33.00	160.0	$30.00	$30.00	$0.00
250.0	$31.00	f2 180.0	$35.00	$35.00	$0.00
300.0	$35.00	f3 275.0	$31.00	$34.10	$3.10
350.0	$44.00	305.0	$37.00	$37.60	$0.60
400.0	$45.00	360.0	$47.00	$47.00	$0.00
450.0	$46.00	415.0	$45.00	$45.70	$0.70
500.0	$56.00	525.0	$46.00	$50.90	$4.90

Calculating the increase in compensation owed

When using the equal line method, two regression lines are created:

- One line represents the relationship between the job value and hourly rates of compensation for all of the predominantly female job classes.

- The other line represents the values and compensation for all the predominantly male job classes.

Although special rules apply when regression lines cross, generally the employer will owe increases in compensation only when the entire length of the female regression line falls below the male regression line. These increases are owed to predominantly female job classes whose compensation is below the male regression line. When those increases are applied, the female line is then redrawn and should coincide with the male line. The male and female regressions lines will appear as one straight regression line should they coincide.

With the equal line method, the compensation of eligible predominantly female job classes must be increased so that the female and male regression lines coincide.

- If the employer or pay equity committee uses the equal line method, it will determine the amount of the increase by multiplying the factor by: An amount equal to the difference between the compensation associated with the female job class and the compensation associated with a predominantly male job class, if such a male job class were located on the male regression line, with equal value of work [Act s. 50(1)(c)].

The factor is determined by the formula **[(A × B) ÷ C) + (D – (E × B)]** [Regulations s. 12(1)].

In this formula:

- **A** is determined by the formula **F ÷ G**, where:
    - **F** is the absolute value[1] of the difference between the hourly compensation associated with the predominantly female job class and the hourly compensation associated with a predominantly male job class of equal value, were it located on the male regression line; and,
    - **G** is the hourly compensation associated with the predominantly male job class referred to under variable F (in other words, the compensation a female job class would have received if it was on the male job regression line for the same job value).
- **B** is determined by the equation **[(H – I) – (J × K)) ÷ (L – (M × K)]**, where:
    - **H** is the sum of the products of the job value of each predominantly female job class multiplied by the hourly compensation associated with a predominantly male job class of equal value, were it located on the male regression line;
    - **I** is the sum of the products of the job value of each predominantly female job class multiplied by the hourly compensation associated with that job class;
    - **J** is a number equal to **(N – O) ÷ P**, as defined below:
        - **N** is equal to the sum of the hourly compensation associated with predominantly male job classes, were they located on the male regression line, that are doing work of equal value to that of the predominantly female job classes;

[1] Absolute value is the positive value of a number regardless of its sign.

        - **O** is equal to the sum of the hourly compensation associated with all of the predominantly female job classes; and,
        - **P** is equal to the sum of the absolute values of the differences, for each eligible predominantly female job class (in other words, those that fall below the male line), between the hourly compensation associated with the job class and the hourly compensation associated with a predominantly male job class of equal value, were it located on the male regression line.
    - **K** is the sum of the products of the job value of each eligible predominantly female job class multiplied by the absolute value of the difference between its associated hourly compensation and the hourly compensation associated with a predominantly male job class of equal value, were it located on the male regression line;
    - **L** is the sum of the products of the job value of each eligible predominantly female job class multiplied by the number calculated for that job class using the equation for **A**; and,
    - **M** is the number obtained by dividing the sum of the number calculated using the equation for **A** for each eligible predominantly female job class by the sum of the absolute values of the differences between the hourly compensation associated with each of these job classes and the hourly compensation associated with a predominantly male job class of equal value, were it on the male regression line.
- **C** is the absolute difference between the hourly compensation associated with the predominantly female job class and the hourly compensation associated with a predominantly male job class of equal value, were it on the male regression line;
- **D** is the same value as calculated for **J**; and,
- **E** is the same value as calculated for **M**.

This factor formula will produce a factor value between 0 and 1.

To determine the increase in compensation, this factor is then multiplied by the male average hourly compensation, minus the predominantly female job class's hourly compensation, or:

Increase in compensation = (male average hourly compensation − the predominantly female job class's hourly compensation) × the factor.

After the increase, the female regression line must line up with the male regression line [Act s. 50(1)(d)].

Steps to follow should regression lines cross when using the equal line method

An employer or pay equity committee will need to consult section 14 of the Pay Equity Regulations when using the equal line method set out in subsection 50(1) of the Pay Equity Act to compare predominantly male and female job classes when the regression lines they plot cross each other.

In situations where the initial regression lines cross, the employer will not necessarily owe an increase to all female job classes below the male line because not all of the female line falls below the male line.

Example E9-16: Equal line method: Crossed regression lines

Figure F9-7: Crossed regression lines

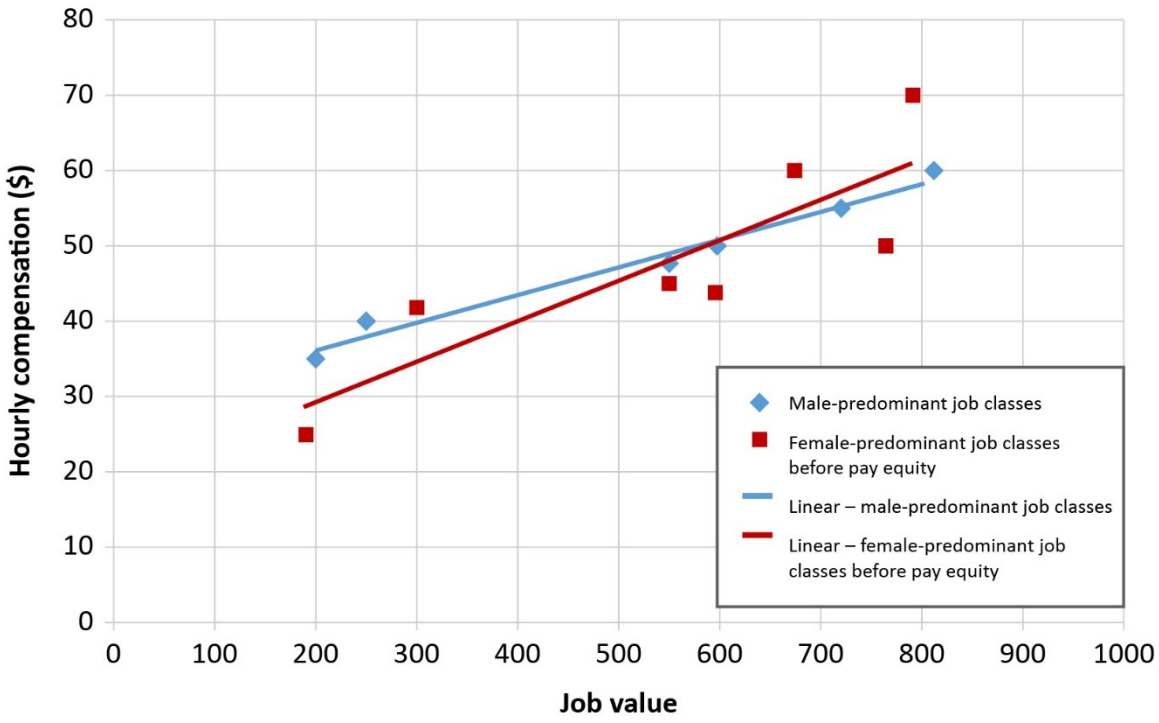


Chart data for Figure F9-7: Crossed regression lines

Male-predominant job classes			Female-predominant job classes		
Job class	Job value (x-axis)	Hourly compensation (y-axis)	Job class	Job value (x-axis)	Hourly compensation (y-axis)
MJC1	200	$35.00	FJC1	190	$25.00
MJC2	250	$40.00	FJC2	300	$42.00
MJC3	550	$48.00	FJC3	550	$45.00
MJC4	599	$50.00	FJC4	594	$44.00
MJC5	720	$55.00	FJC5	675	$60.00
MJC6	810	$60.00	FJC6	765	$50.00
n/a	n/a	n/a	FJC7	792	$70.00

To ensure that pay equity gaps are addressed properly when lines cross, employers or pay equity committees must **first use a modified version** of the equal line method set out in section 14(a) of the Regulations. Should this modified method continue to produce regression lines that

cross, then employers or pay equity committees can use one of the prescribed methods in the Pay Equity Regulations to complete the pay equity plan [Regulations s. 14(b)]:

- The equal average method set out in section 49 of the Act;
- The segmented line approach set out in section 15 of the Regulations; or,
- The sum of differences approach set out in section 16 of the Regulations.

Modified method

When regression lines cross, employers or pay equity committees must first use a modified version of the equal line method set out in section 14(a) of the Regulations. With this modified method, the employer will owe all female job classes below the male line an increase in compensation. Use the factor prescribed in subsection 12(1) of the Regulations to determine the amount of those increases.

When those increases are applied and the female line is redrawn, it is possible that the lines will coincide. Lines are more likely to coincide when the portion of the female line that was above the male line when they initially crossed remained relatively near the male line. It is in this scenario that you are more likely to achieve pay equity using the modified equal line method.

Equal average method

Should the regression lines remain crossed after first trying the modified method, employers or pay equity committees may choose to use the equal average method to determine the amount of any increases owed [Regulations s. 14(b)(i)]. See section 9.5.1 for information about the equal average method.

Segmented approach method

Should the regression lines remain crossed after first trying the modified method, employers or pay equity committees may choose to use the segmented line approach to determine the amount of any increases owed [Regulations s. 14(b)(ii)].

Should this be the case, the employer or pay equity committee must divide the predominantly female job classes and the predominantly male job classes into two segments [Regulations 15(a)]:

- One segment must include the job classes in which the value of the work performed is less than the value at which the regression lines intersect [Regulations s. 15(a)(i)]; and,
- One segment must include the job classes in which the value of the work performed is greater than the value at which the regression lines intersect [Regulations s. 15(a)(ii)].

For each of these discrete segments, the employer or pay equity committee must then create both a male and female regression line using all of the predominantly male and female job classes [Regulations s. 15(b)]. The job classes in the first segment should not be compared to any of the job classes in the other segment.

In practice, if the female regression line in either segment is completely above the male regression line in the same segment, then it will be determined that no pay equity gaps exist between job classes.

If the female regression line is entirely below the male regression line in the same segment, the employer will owe increases to female-predominant job classes that are below the male regression line. Increases in compensation are determined using the factor prescribed in section 12(1) of the Regulations.

If the two lines do not coincide when the regression lines are re-created to include the increases in compensation owed, then the employer or pay equity committee must use the equal average method set out in section 49 of the Act or the sum of differences method set out in section 16 of the Regulations to compare the compensation of all the predominantly female and male job classes in each segment [Regulations s. 15(c)].

If the female regression line crosses the male regression line, the employer or committee must apply the rules set out in sections 50(1)(b) to (d), without taking into account section 50(1)(b)(i) of the Act. Increases in compensation are determined using the factor prescribed in section 12(1) of the Regulations.

If the two lines do not coincide when the regression lines are re-created to include the increases in compensation owed, then the employer or pay equity committee must use the equal average method set out in section 49 of the Act or the sum of differences method set out in section 16 of the Regulations to compare the compensation of all the predominantly female and male job classes in each segment [Regulations s. 15(d)].

Once the increases in compensation are applied and the female regression line is redrawn, the lines should coincide. You achieve pay equity when the male and female lines in both segments coincide.

The segmented line approach must be abandoned if the male and female regression lines in a segment fail to coincide after the application of increases. In that case, the employer or pay equity committee must choose to use either the equal average (section 49 of the Act) or sum of differences approach to compare compensation (section 16 of the Regulations).

The sum of differences approach

Should the regression lines remain crossed after first trying the modified method or the segmented line approach, employers or pay equity committees can use the sum of differences approach to determine the amount of any increases owed [Regulations s. 14(iii)].

Under this approach, use the male regression line and plot all the female job classes. For every female job class, the employer or pay equity committee will also need to determine the compensation a male job class of equal value would be paid if it were plotted on the male line.

To determine the increase owed to each female job class below the male line, determine the difference between the amount of the compensation for each of the female job classes and the amount of the compensation a male job class with the same value as each female job class would be paid if it were on the male line.

Then, multiply the absolute value of this difference by the factor calculated using the formula [**(A – B) ÷ C]**, described in section 16(2) of the Regulations.

In this formula:

- **A** is the total reached by adding up the amounts of the compensation each male job class of equal value to a predominantly female job class would be paid if it was on the male line;
- **B** is the total reached by adding up the amounts of the compensation each predominantly female job class is paid, or the total determined for A, whichever is less; and,
- **C** is the total reached by adding up the absolute value of the differences between the amount of the compensation a female job class below the male regression line is paid and the amount of the compensation a male job class with the same value would be paid if it were on the male line.

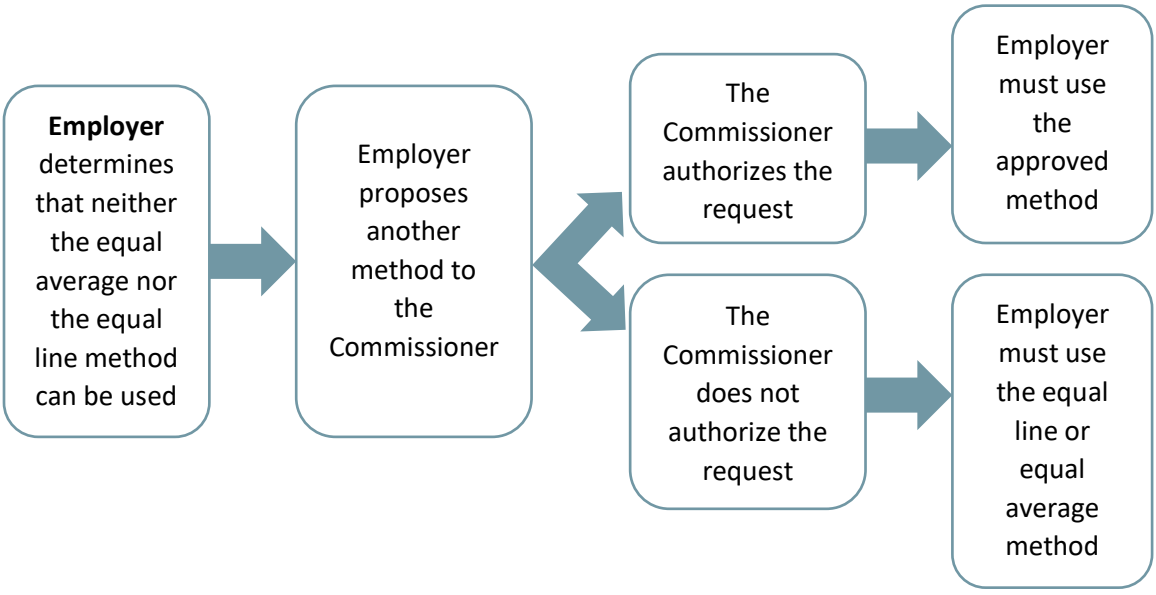
The employer or pay equity committee then records the amount of the increase owed to each female job class in the pay equity plan.

9.5.3 Other methods

If an employer that is conducting the pay equity exercise without a pay equity committee determines that neither the equal average nor the equal line method can be used, they can apply to the Pay Equity Commissioner for authorization to use another method that they propose [Act s. 48(a)(i)]. Currently, the Regulations do not provide for any other method of calculation.

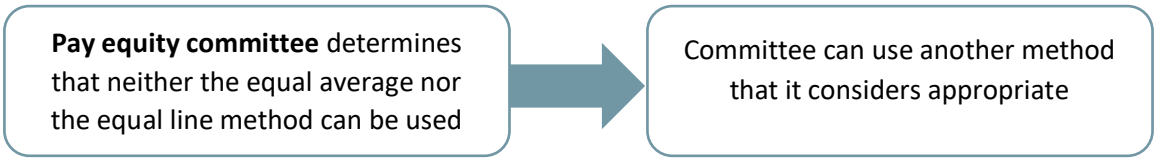
The employer must use the comparison method that the Commissioner approves [Act s. 48(2)(a)(ii)].

Figure F9-8: Using another method to compare compensation



If a pay equity committee is developing the pay equity plan and they decide that neither the equal average nor the equal line method can be used, the pay equity committee can use another method that they consider appropriate [Act s. 48(2)(b)].

Figure F9-9: Pay equity committee scenario for using another method to compare compensation



The pay equity committee does not have to make an application to the Pay Equity Commissioner to use another method.

For more information refer to the Pay Equity Interpretations, Policies and Guidelines series under Tools and Resources, Publications, on the Canadian Human Rights Commission Pay Equity website: www.payequitychrc.ca/en/publications.

9.5.4 Procedure if no male comparators

The pay equity process requires the comparison of predominantly female job classes to predominantly male job classes within the organization. Should it be determined that there are no predominantly male job classes, the Regulations outline two methods that can be used to create male job classes and complete the pay equity exercise.

In order to determine differences in compensation when there are no male job classes, the employer or pay equity committee must use either the:

- Other Employer Method: At least three predominantly male job classes from another employer [Regulations s. (19)(1)(a)]; or,
- Fictional Job Class Method: Three fictional predominantly male job classes, each of which is created by the employer or committee based on a different typical job class set out in the schedule of the Regulations [Regulations s. (19)(1)(b)].

Other Employer Method

Should an employer or pay equity committee choose to use the other employer method, the other employer that they approach must meet certain conditions. The other employer must:

- Have at least three job classes, that the other employer or that the pay equity committee, has determined to be predominantly male and that the total compensation has been calculated for [Regulations s. 19(2)(a)]; and,
- Agree to provide the employer or the pay equity committee with the necessary data to determine the value of work and the salary at the highest rate in the range of salary rates for positions in the job class [Regulations s. 19 (2)(b)].

In selecting three predominantly male job classes from another employer, an employer or pay equity committee must ensure that the job classes come from another employer with similar characteristics. To determine whether another employer has similar characteristics, consider whether the two employers [Regulations s. 19(3)(a)]:

- are part of the same industry;
- operate in regions where the cost of living is similar;
- have a similar number of employees;

- have a similar proportion of unionized employees; and,
- have similar compensation practices.

The job classes selected from another employer must also be representative of the range of values of work performed in the job classes as determined by the other employer or pay equity committee [Regulations s. 19(3)(b)].

All of the information provided by another employer must be kept **confidential** by the receiving employer, pay equity committee members and bargaining agents [Regulations 32(1) and 32(2)].

Once all the necessary information has been received from the other employer, the value of work [Regulations s. 20(1)] and the calculation of compensation [Regulations s. 23(1)] must be done for each chosen male job class as if the work were performed in the workplace for which the pay equity plan is being developed.

The employer or pay equity committee must use and meet the same criteria outlined in the Act when determining the value of work [Regulations s. 21] and selecting a method [Regulations s. 22] to do so.

Employers or pay equity committees may use any predetermined values of work for predominantly female job classes if the method used to determine them meets the criteria outlined in sections 21 and 22 of the Regulations [Regulations s. 20(2)].

See section 9.3 of this Guide for more information about determining the value of work.

The **total compensation** of the chosen male job classes must be expressed in dollars per hour [Regulations s. 23(1)].

The calculation of compensation for each other employer male job class must be calculated as if it were on the employer's payroll [Regulations s. 23(2)].

When determining the **salary** to be included in the calculation of total compensation of the chosen male job classes, one must use the salary at the **highest rate in the range of salary rates provided by the other employer**, for positions in the job class [Regulations s. 23(5)(b)].

For the **comparison of compensation**, the **equal average or equal line methods** outlined in sections 28 and 29 of the Regulations [Regulations s. 27] must be used. These methods work the same way as described in the Act but have been rewritten to accommodate chosen or created male-predominant job classes. The **only difference** is the steps to be taken when using the equal line method and the regression lines cross.

Should the **regression lines cross** when using the equal line method, employers or pay equity committees must use the equal average method set out in section 28 of the Regulations [Regulations s. 29(2)]. Employers or pay equity committees cannot use either the segmented line or sum of differences approaches.

Example E9-17: How the other employer method works

Employer A operates a business in the telecommunications sector in the Montreal area. As he identifies his job classes and determines their gender predominance, he realizes that he has female-predominant job classes but no male-predominant job classes.

Employer A reaches out to Employer B, who also operates a telecommunications business in Montreal. Employer B has completed some of the steps required to develop his pay equity plan. As part of those steps, he has identified five predominantly male job classes and calculated their compensation.

Out of those five, Employer A identifies three predominantly male job classes that represent the range of values of work identified in Employer B's workplace. Employer B then shares information about these job classes (for example, job descriptions for relevant positions, employee survey results, etc.) that allows Employer A to value the job classes and determine their compensation as if they were working in Employer A's business.

Employer A uses those job classes and, following the steps set out in the Regulations, determines if pay equity gaps exist in his workplace.

Fictional job classes method

An employer or pay equity committee that chooses to use the fictional job classes method to create fictitious male job classes must refer to the information provided in the Typical Job Classes Schedule ("the Schedule") of the Regulations. The Schedule provides descriptions of the work performed for three "typical" male job classes:

- Maintenance worker;
- Technician; and,
- Manager.

The **value of work** of each predominantly male job class created from the Schedule must be determined as if the work were performed in the workplace for which the pay equity plan is being developed [Regulations s. 20(1)].

- The employer or pay equity committee must use and meet the same criteria outlined in the Act when determining the value of work [Regulations s. 21] and selecting a method [Regulations s. 22] to do so.

Employers or pay equity committees may use predetermined values of work for predominantly female job classes if the method used to determine them meets the criteria outlined in sections 21 and 22 of the Regulations [Regulations s. 20(2)].

The **total compensation** of the created male job classes must be expressed in **dollars per hour** [Regulations s. 23(1)]. The calculation of total compensation must be done for **full-time work** [Regulations s. 23(3)] and take into account [Regulations s. 23(3)(a)]:

- The elements set out in columns 2 to 5 of the Schedule on which the created job is based; and,
- Current salaries that:
    - Have duties and responsibilities similar to those typical job classes in the Schedule;
    - Require experience, education and training similar to those typical job classes in the Schedule;
    - Have similar numbers of employees as the employer;
    - Are in the same industry; and,
    - Are in the same geographic area as the employer or a geographic area where the cost of living is similar.

Full-time work means 30 or more hours of work over a period of one week [Regulations s. 23(7)].

The **hourly wage** assigned to those job classes when calculating their total compensation must not be less than the following [Regulations. s. 23(3)(b)]:

- Maintenance worker: minimum wage of the province where the work is being done or highest provincial minimum wage if the employer operates in more than one province;
- Technician: 2.5 times the minimum wage of the province where the work is being done or highest provincial minimum wage if the employer operates in more than one province; and,
- Manager: 3.33 times the minimum wage of the province where the work is being done or highest provincial minimum wage if the employer operates in more than one province.

The **calculation of total compensation** must include all forms of compensation, other than salary which must be calculated based on section 23(3)(b) outlined above, that the employer pays as if each of the created job classes were performed in the employer's workplace [Regulations s. 23(3)(c)].

The employer or pay equity committee must use the highest rate in the range of salary rates for positions in the created predominantly male job classes to determine the salary in the calculation of compensation associated with a predominantly female job class [Regulations s. 23(6)].

An employer or pay equity committee **may exclude** from the calculation any form of compensation that is [Regulations s. 24]:

- Equally available to all job classes; and,
- Provided without discrimination on the basis of gender, to all job classes.

When **calculating the compensation** for any female job class, any differences in compensation that would either raise or decrease the position's compensation compared with what its compensation would otherwise be **must be excluded**. These differences are expressed in section 25 of the Regulations and are the same as those in the Act.

An employer or pay equity committee must use either the **equal average or the equal line** methods set out in sections 28 and 29 of the Regulations to **compare the compensation** of the created male-predominant job classes with any female-predominant job classes. These methods work the same way as described in the Act but have been rewritten to accommodate chosen or created male-predominant job classes. The only difference is the steps to be taken when using the equal line method and the regression lines cross. See section 9.5.2 of this Guide for more information.

Should the **regression lines cross** when using the equal line method, employers or pay equity committees must use the equal average method set out in section 28 of the Regulations [Regulations 29(2)]. Employers or pay equity committees cannot use either the segmented line or sum of differences approaches.

9.6 Posting pay equity plans

Once the employer or pay equity committee completes all the steps required to develop a pay equity plan, they must post the plan. Employers are responsible for posting a final version of the plan in the workplace within three years of becoming subject to the Act.

9.6.1 Information to include in pay equity plans

The pay equity plan must include specific information related to the employer's requirements, the process used to develop the plan and the results of that process [Act s. 51(a) to (m)].

First, the plan must include basic information about the requirements that the employer has to meet. This includes the number of pay equity plans that have to be established by an employer or group of employers, and the number of employees the employer, or each employer in a group of employers, have for the purpose of determining if a pay equity committee had to be established.

The plan must also indicate whether a pay equity committee was established. If a pay equity committee was established, the plan must indicate whether it meets the requirements of the Act and, if not, whether the employer or group of employers received permission from the Pay Equity Commissioner to establish a pay equity committee with different requirements [Act s. 51].

Second, the plan must report the results of each step that went into developing the pay equity plan. This includes a list that takes into account and identifies all gender-neutral, female-predominant and male-predominant job classes.

The plan must also identify any group of job classes that was treated as a single predominantly female job class. The plan must include a list of the individual classes in the group and indicate which job class within the group was used for completing the steps of the pay equity plan.

With regard to the determinations of the value of work performed, the plan must describe the job evaluation method used and, for each gender-predominant job class, provide the results of the job evaluation.

If differences in compensation were excluded from the calculation of compensation for any gender-predominant job classes, the plan must note this and explain the reasons why. The plan must indicate the method used for the comparison of compensation and provide the results. If the comparison method used was not the equal average or equal line method, the plan must also explain why another method was used.

The plan must also identify each predominantly female job class that requires an increase in compensation [Act s. 51]. This must include the dollar amount of each increase in compensation (if any) owed to a predominantly female job class and a description of how the employer will implement each increase, as well as the date on which the increase—or the first increase in a case where the employer will be phasing in increases (see Chapter 10, Increases employee compensation)—is payable.

The plan must also provide information on the dispute resolution procedures available to employees, including any timelines for these procedures.

In situations where the employer or pay equity committee has either chosen male-predominant job classes from another employer or created male-predominant job classes from the Schedule, the same steps set out in sections 52 through 57 in the Act must be followed. Similarly, the plan must include all of the information required under section 51 of the Act.

What is different is that the plan must state which of the prescribed methods was used to create the male-predominant job classes [Regulations s. 30(a)].

If the predominantly male job classes were created from the information provided by another employer, the plan must also [Regulations s. 30(a)]:

- Include the name of the other employer; and,
- Identify the predominantly male job classes from the other employer's workplace that were chosen.

Female-predominant groups of job classes and the job class that was used for determining the value of work and the calculation and comparison of compensation must also be noted. Exclusions that have been applied for the calculation of compensation and the method used must be listed. Finally, the plan must also indicate whether predetermined values of work were used [Regulations s. 30 and s. 31]. Use the checklist below to determine if you have all of the required information in your pay equity plan.

Table T9-14: Pay Equity Act section 51 information to include in pay equity plans

Does your pay equity plan include :
✓ The number of plans established and whether the employer is part of a group of employers [Act s.51(a)].
✓ The number of employees the employer, or each employer in the group of employers, has [b].
✓ Whether a pay equity committee has been established and whether it meets the requirements [c].
✓ A list of all identified job classes [d].
✓ A list of all predominantly female and predominantly male job classes [e][f].

✓	Information on whether a group of job classes was treated as a single predominantly female job class and, if so, a list of job classes that were included. The job class used to complete the steps of the pay equity plan must be clearly identified [g].
✓	A description of the evaluation method used to determine the value of work for any predominantly female and predominantly male job classes and the results [h].
✓	A list of any predominantly female or predominantly male job classes for which a difference in compensation was excluded from the calculation of compensation, and the reasons why [i].
✓	The method used to compare any compensation and the results [j].
✓	A list of each predominantly female job class that requires an increase in compensation, the amount of each increase (in dollars per hour) and how the employer will increase the compensation (for example, by increasing salary) [k].
✓	The date when the increase in compensation or the first increase is due [l].
✓	Information on dispute resolution procedures [m].

9.6.2 Process for posting pay equity plans

The process that employers must follow when posting plans includes three steps:

1. Posting the draft pay equity plan and notice;
2. Providing a 60-day employee comment period; and,
3. Posting the final pay equity plan.

Posting the draft pay equity plan and notice

Once an employer or a pay equity committee prepares a draft pay equity plan that includes all the necessary information (see section 9.6.1), the employer must post it in the workplace [Act s. 52].

Employers must also post a notice that informs employees of their right to provide the employer or the pay equity committee with comments on the draft. The notice must outline how employees can provide their comments and how much time they have to do so [Act s. 52].

Both the draft pay equity plan and notice must be posted on the same day. These documents must remain posted for at least 60 days and they must be placed close together if in paper form [Regulations s. 33].

The employer or the pay equity committee must consider any employee comments received during this 60-day period as they prepare the final version of the pay equity plan [Act s. 54(2)].

The employer can post the draft pay equity plan at any point during the three-year window provided to employers to establish a pay equity plan, as long as they allow 60 days for comment, plus time to consider the comments before the final pay equity plan is posted.

Employers who are part of a group of employers must all post their draft pay equity plan on the same day [Act s. 53(2)].

Posting the final pay equity plan

Finally, employers must post the final version of their pay equity plan no later than the third anniversary of the date on which they became subject to the Act. The final version of the pay

equity plan must remain posted until the final version of the revised pay equity plan is updated [Regulations s. 34].

All employers who are part of a group of employers must post their final pay equity plan on the same day [Act s. 55(2)].

An employer, or group of employers, will be considered to have established a pay equity plan on the day on which they post the final version of the plan as long as it meets the requirements outlined in the Act [Act s. 58 and s. 59]. In certain circumstances, however, an objection to the plan may be filed within 60 days of the posting of the plan [Act s. 148]. See Chapter 15 of this Guide for more information.

Figure F9-10: Pay equity plan posting process

10. Increase employee compensation

If an employer posts a final pay equity plan that identifies any predominantly female job classes that are owed an increase in compensation, (see Chapter 9, Create a pay equity plan), the employer has to increase the compensation of employees in those job classes by the amount identified in the plan and post a notice of increase (see section 10.4) [Act s. 60].

The notice of increases must be posted until the later of the 60th day after the day on which it was posted and the day on which the increases are paid in full [Regulations s. 35].

An employer who is late in paying any amount owed to its employees is in violation of the Pay Equity Act. Employers must pay each employee the value of the missed increases as well as interest on late amounts. The interest is calculated and compounded daily at the aggregate of 2% annually and the bank rate in effect on the day for which the interest is calculated [Act s. 62(5) to (6)]. Interest begins accumulating on the day after the increase in compensation was due and ends on the day the amount owed is paid [Act s. 97].

10.1 Implementing increases in compensation

All increases in compensation identified in a pay equity plan must be implemented the day after the final version of the plan is posted (or, no more than three years and one day after the day on which the employer became subject to the Act) [Act s. 61(1)]. The increased compensation is considered the employee's new compensation as of that day.

Newly federally regulated employers may have to follow different timelines for posting their plans (see Chapter 17, Employers with unique requirements). However, they still need to implement increases in compensation the day after they post their final plans.

Effect on collective agreements

If there is any difference between the increased compensation in the pay equity plan and compensation in an employee's collective agreement, the amount in the plan prevails (see Chapter 13, Impact of pay equity plans on existing workplace arrangements) [Act s. 95].

Example E10-1: Implementing increases in compensation

After Company A has posted its final pay equity plan, Company A needs to implement the increases in compensation identified in the plan.

The final pay equity plan reports that Predominantly Female Job Class 1, which currently earns $25.00 per hour, is owed a $0.75-per-hour increase.

The increase must be implemented the day after Company A posts the final version of the pay equity plan. Given that Company A is not eligible to phase in the increases, this means that, starting on the day the final pay equity plan is posted, employees in that job class will earn $25.75 per hour. Company A should ensure employees receive the increase on their next paycheque.

10.2 90-day period

No complaint or penalty can be made against the employer for failing to pay any increase owed for the first 90 days after it was owed [Act s. 96]. This gives employers time to process the increases in their pay systems, though it does not prevent interest from accruing [Act s. 97(1)].

Record keeping

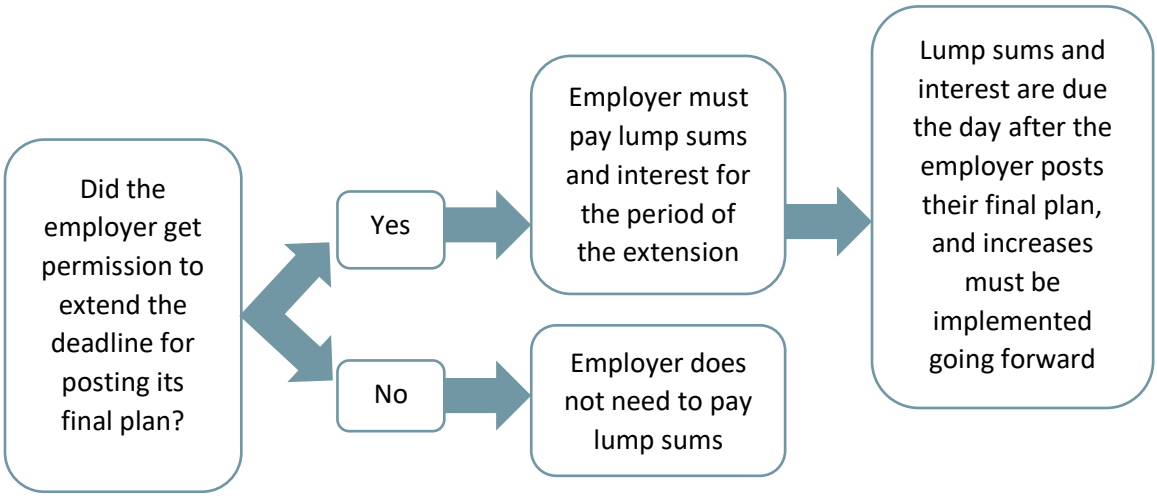
To make it easier to calculate and pay lump sums, employers should keep information about former employees who left their position during the period of the extension.

10.3 Paying lump sums

Employers who have been granted permission by the Pay Equity Commissioner to extend the deadline for posting their plan are obligated to [Act s. 62(1) and s. (2)]:

1. Pay any increase in compensation specific to their pay equity plan; and,
2. Pay lump sums to employees owed an increase in compensation – on the day following the posting of the final plan.

Figure F10-1: Employer process for paying lump sums



For more information, see Chapter 17, Employers with unique requirements.

The lump sums must cover the total amount of the increase in compensation owed to the employees including, the interest on each increase that each employee would have received on each payday during the period that the lump sum covers [Act s. 62(2)].

See Chapter 10 of this Guide for information on calculating interest.

A lump sum is also owed to former employees that held a position in a predominantly female job class owed an increase in compensation, during the period that the lump sum covers [Act s. 62(7)]. For these employees, the lump sum must cover the total amount of the increase in compensation owed for any period of the extension during which they held a position in a job class owed an increase.

Below is an example of how to calculate and pay lump sums.

Example E10-2: Calculating and paying lump sums

Company C has permission from the Pay Equity Commissioner to extend the deadline for establishing and posting its pay equity plan. The new deadline is three months (or six two-week pay periods) later than the original deadline.

Once completed, Company C's final pay equity plan identifies one predominantly female job class that is owed an increase in compensation. This job class has six employees. Three employees in the job class work 37.5 hours per week and three work 18 hours per week.

In addition to these six employees, one employee left their position in this job class one month (or two pay periods) before the new deadline for posting the final pay equity plan. Before leaving, the employee worked 37.5 hours per week.

Company C's pay equity plan states that employees in this job class are owed an increase in compensation of $1.25 per hour.

Company C must pay all of these employees a lump sum. It calculates the lump sum owed using the following formula:

Hourly increase × hours worked during pay period = amount owed for pay period

For example, the first employee (Employee 1 in the table below) works 37.5 hours per week, which adds up to 75 hours in every two-week pay period. Since the hourly increase for employees in this job class is $1.25, Company C calculates the lump sum owed to Employee 1 for that two-week period as follows:

$1.25 × 75 hours

= $93.75

It then multiplies this amount by six to cover the six two-week pay periods between the original deadline and the approved deadline for posting the final pay equity plan. The result, $562.50, is the total lump sum owed to Employee 1.

Company C does the same for all six remaining employees for all six pay periods.

For the Former Employee, Company C only calculates the amount owed for pay periods when this employee held a position in this job class (first four pay periods).

The table below shows Company C's lump sum calculations for all of its employees in this job class.

Table T10-1: Company C's lump sum calculations

Employee	Pay period 1 [$]	Pay period 2 [$]	Pay period 3 [$]	Pay period 4 [$]	Pay period 5 [$]	Pay period 6 [$]	Lump sum owed [$]
Employee 1	93.75	93.75	93.75	93.75	93.75	93.75	**562.50**

Employee	Pay period 1 [$]	Pay period 2 [$]	Pay period 3 [$]	Pay period 4 [$]	Pay period 5 [$]	Pay period 6 [$]	Lump sum owed [$]
Employee 2	93.75	93.75	93.75	93.75	93.75	93.75	**562.50**
Employee 3	93.75	93.75	93.75	93.75	93.75	93.75	**562.50**
Employee 4	45.00	45.00	45.00	45.00	45.00	45.00	**270.00**
Employee 5	45.00	45.00	45.00	45.00	45.00	45.00	**270.00**
Employee 6	45.00	45.00	45.00	45.00	45.00	45.00	**270.00**
Former employee	93.75	93.75	93.75	93.75	n/a	n/a	**375.00**

Next, Company C has to calculate and compound daily the interest owed on the lump sum amounts for each employee and former employee at the aggregate of 2% annually and the bank rate in effect on the day for which the interest is calculated.

Company C will need to implement any increase in compensation, the lump sum and the interest the day after it posts its pay equity plan.

10.4 Posting requirements

In addition to posting the final pay equity plan, employers who must provide increases in compensation must post a notice of increases before the increases are due (in other words, no later than the day the plan is posted) [Act s. 56(1)].

This notice must remain posted for 60 days or until the day on which the increases in compensation have been paid in full, whichever is the latest [Regulations s. 35].

All notices must include the date on which the increase in compensation and any lump sums are due.

For employers who choose to phase in increases in compensation, the notice must also include the dates of each increase and the percentage of the total increase each increase represents [Act s. 56(1)].

If an employer receives permission from the Pay Equity Commissioner for a longer phase-in period, they must post a notice for the longer phase-in period with the new dates of each increase and the percentage of the total increase each increase represents. The employer must post this as soon as possible after they receive permission [Act s. 56(2)].

10.5 Phasing in increases in compensation

The employer can choose to phase in increases, rather than implement them all at the same time, if the annual increases in compensation add up to more than 1% of the total annual payroll from the previous year (meaning the year immediately before the year in which the increases in compensation are due) [Act s. 61(2)].

The same is true for employers with multiple plans. They can phase in increases under each plan posted on the same day if the total increases in compensation amount to more than 1% of the employer's annual payroll for the previous year.

Example E10-3: Eligibility to phase in an increase in compensation

Company D's pay equity plan states that the company owes increases in compensation to employees in five predominantly female job classes. It specifies the hourly amount of the increase owed to each.

All of Company D's employees in these five job classes work 37.5 hours each week, 52 weeks a year (including paid leaves).

Company D calculates how much this will cost for the first year and what percentage of their annual payroll from the previous year these increases will represent.

Company D is a private sector employer, so it needs to know its annual payroll for the calendar year before the year in which the increases in compensation are due. Since the increases are due in November of the current year, Company D needs to use its annual payroll for January to December of the previous year. Its annual payroll for that year was $2,998,125.

The company calculates the total amount it owes employees using the formula:

Hourly increase owed × (weekly hours of work × number of work weeks in a year) × number of employees in the job class

For the job class represented in the table as F1, the calculation would be:

$5.00 × (37.5 × 52) × 7 = $68,250

Company D then does the same calculation for all the other job classes (F2, F3, F4 and F5) that are owed an increase.

Company D finds that the total amount they will owe employees in the five job classes in the first year after the plan is posted is $119,925. To determine what percentage of Company D's payroll this represents, they use the following formula:

Total amount owed ÷ annual payroll from the previous year × 100

= $119,925 ÷ $3,000,000 × 100

= 0.04

= 4%

Therefore, the total increases owed represent 4% of the company's annual payroll from the previous year.

Because the total owed for the first year is more than 1% of Company D's annual payroll from the previous year, they are eligible to phase in the increases within specific timelines if they choose (see Example E10-4).

Table T10-2: Company D's percentage of annual payroll

Job class	Hourly increase owed [$]	Number of employees	Total owed [$]
F1	5.00	7	68,250
F2	7.00	2	27,300
F3	1.50	5	14,625
F4	0.25	10	4,875
F5	2.50	1	4,875
Total for all employees			**$119,925**
Percentage of annual payroll from previous year			**4%**

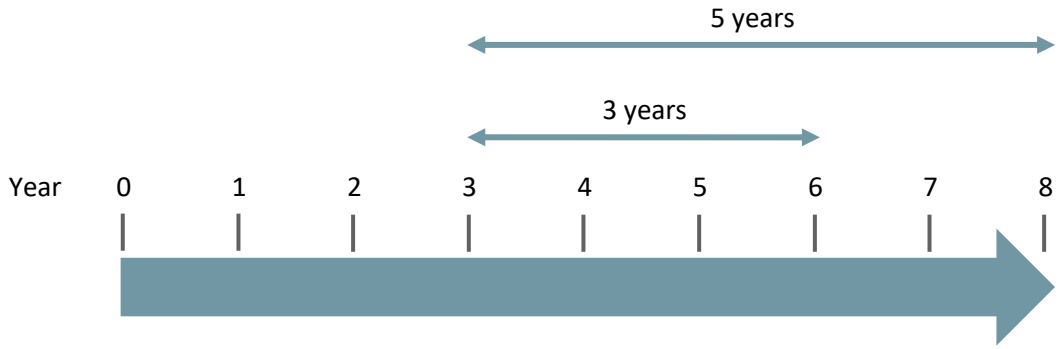
10.5.1 Timelines for phasing in increases in compensation

Employers who are eligible and choose to phase in increases in compensation must complete this process over a three- or five-year period of time depending on the size of the organization. All employers, regardless of the period of time that applies, must provide annual increases equal to at least 1% of their payroll from the year before the year the first annual increase in compensation was due.

Small employers (with 10 to 99 employees) have a maximum of five years and one day, starting on the day when they were required to post the final version of the plan, to complete the phase-in of increases in compensation [Act s. 62(4)(f)]. In other words, their maximum timeframe is eight years and one day from the day when they became subject to the Act.

Medium-sized to large employers (with 100 or more employees) have a maximum of three years and one day, starting on the day they were required to post the final version of the plan, to finish phasing in increases in compensation [Act s. 64(4)(e)]. In other words, their maximum timeframe is six years and one day from the day when they became subject to the Act.

Figure F10-2: Timeline for phasing in increases in compensation



Year 0: Becoming subject to the Act

- Employers with 10 or more employees became subject to the Act upon it coming into force.

Year 3: Pay equity plan

- Employers post the final version of the plan.
- Employers implement increases in compensation the next day.

Year 6: Pay equity adjustments

- Eligible medium-sized to large employers must have completed phase-in of increases.

Year 8: Pay equity adjustments

- Eligible small employers must have completed phase-in of increases.

The employer must create and follow a schedule of increases for the phase-in period. The first increase must be applied the day after the employer posts the final version of the plan or three years and one day after the employer becomes subject to the Act. [Act s. 61(2) and s. 62(4)(a)]. Subsequent increases must be made every year on the anniversary date of the previous increase [Act s. 61(2)(a)(i)].

The total amount of each annual increase must equal at least 1% of the employer's payroll from the year before the year the first annual increase in compensation was due. The final increase, however, has to cover the remaining amount necessary to eliminate differences in compensation [Act s. 61(2)(a)(iii) and s. 62(4)(b)]. Employers who do not implement increases in compensation owed on time will pay each employee the unpaid amounts with interest (see section 10 of this Guide for information about calculating interest).

Employers are required to post a notice relating to increases in compensation. This notice must be posted until the later of the 60th day after the day on which it is posted and the day on which these increases are paid in full [Regulations s. 35].

Example E10-4: Creating a schedule of increases

In a previous example **(E10-3),** we saw the case of company D, an employer eligible to phase in the increases in compensation owed to a number of employees in five predominantly female job classes.

This private sector employer, with more than 100 employees, has a maximum of three years and one day, starting on the day it was required to post the final version of the plan, to finish phasing in increases in compensation [Act s. 64(4)(e)].

Within the context of this example, Company D is posting its pay equity plan on September 1, 2024. After calculating its annual payroll for January 1 to December 31 of the previous year (2023), Company D found that the overall amount owed to employees for the first year was **$119,925** representing **4%** of its annual payroll.

At this point, budget allowing, the company could choose to pay the full increases in compensation owed to all affected employees immediately. If not in a position to pay the full amount, and as allowed by the Act, the employer could phase in the increases as they amount to more than 1% of the company's annual payroll [Act s. 62(2)(a)].

In this case, the total amount of increases owed would have to be paid between September 1, 2024, and September 2, 2027 (maximum of three years and one day). The amount of **$119,925**, from **E10-3,** could be paid in equal portions on an annual basis as per the following schedule.

Table T10-3: Company D's schedule of increases

Job class	F1	F2	F3	F4	F5	Total - All job classes
Number of employees in job class	25	17	13	10	8	73
Hourly increase owed [$]	5.00	7.00	1.50	0.25	2.50	n/a
Total owed [$]	68,250	27,300	14,625	4,875	4,875	$119,925
First payment Sept. 2024 [$]	17,062.50	6,825	3,656.25	1,218.75	1,218.75	$29,981.25
Second payment Sept. 2025 [$]	17,062.50	6,825	3,656.25	1,218.75	1,218.75	$29,981.25
Third payment Sept. 2026 [$]	17,062.50	6,825	3,656.25	1218.75	1218.75	$29,981.25

Job class	F1	F2	F3	F4	F5	Total - All job classes
Last payment Sept. 2027 [$]	17,062.50	6,825	3,656.25	1,218.75	1,218.75	$29,981.25

10.5.2 Extension of the phase-in period

Employers must post their final plan no later than the third anniversary of the date on which the employer, or group of employers, became subject to the Act [Act s. 55(1)]. However, employers experiencing extreme financial hardship can ask the Pay Equity Commissioner for permission to phase in increases in compensation over a longer period than the one that applies to them [Act s. 63(1)] (see Chapter 6, Modified application of the Pay Equity Act).

11. File your annual statement and record keeping

11.1 Annual statement

An employer is required to submit an annual statement to the Pay Equity Commissioner the year after the third year of becoming subject to the Act [Act s. 89(1) and (2)].

The checklist below outlines all of the information that is required in an annual statement.

Table T11-1: Annual statement checklist

Does your annual statement include:
✓ Name of the employer [Act s. 89(1)(a)].
✓ The date on which the employer became subject to the Act [b].
✓ Whether the most recent posted version of the pay equity plan was established or updated with or without a pay equity committee [c].
✓ The number of employees employed by the employer. The number of employees must reflect the last day of the year immediately before the year in which the employer submits its annual statement [d].
✓ The date of the version of the pay equity plan most recently posted [e].
✓ The number of predominantly female job classes for which an increase in compensation is required [f]; the amount in dollars per hour of the increase; and, ✓ The percentage of the increase in compensation of that job class that the increase represents [(g)(i)].
✓ The total amount of all lump sums paid to employees, and all interest paid on these amounts [(g)(ii)].
✓ The total number of employees occupying positions in each job class entitled to an increase in compensation and/or any lump sum payments [(g)(iii)] and the number of them that are women [(g)(iv)].
✓ An indication of the effect if predetermined values of work were used to establish or develop the employers pay equity plan [Regulations s. 53(1)(a)(b)].

A group of employers must include most of the same information. The differences from the types of information included in the checklist:

- The name of each employer in the group [Act s. 89(2)(a)]; and,
- The date on which the group became subject to the Act [Act s. 89(2)(b)].

All the other prescribed information is similar with the exception that it must reflect the employees who are covered under the pay equity plan(s) of the group of employers as a whole.

11.2 Submitting annual statements

11.2.1 First annual statement

An employer must send its first annual statement to the Commissioner either on or before June 30, following the third anniversary of the date they became subject to the Act [Act s. 89(3)].

This means that for employers who became subject to the Act on August 31, 2021, their first annual statement must be submitted either on or before June 30, 2025.

11.2.2 Subsequent annual statements

Employers must continue to send a statement each year either on or before June 30 of the calendar year following the calendar year (for private sector employers) or the fiscal year (for public sector employers) in which the previous annual statement was sent [Act s. 89(4)].

11.3 Record keeping

11.3.1 Private sector employers

A private sector employer must keep a copy of the final version of a plan and all documents relevant to the creation of that plan (for example, records, reports and electronic data) until either the day the employer posts the final version of an updated plan or a later date that may be set out in the Regulations [Act s. 90(1)]. It is a best practice to keep records for a longer period of time to be able to respond appropriately to notices of objection, complaints and audits, and for the purposes of updating the plan(s).

Private sector employers must also keep this information for any updated plans and relevant documents [Act s. 90(2)].

The Commissioner may order a private sector employer to keep a copy of these documents for a longer period of time than required under the Act [Act s. 91(1)]. The employer must keep the copies and other documents for the period of time set out in the order, unless the employer receives a copy of the order after the retention period and has already disposed of the documents [Act s. 91(2)].

11.3.2 Public sector employers

The Act does not have specific record-keeping requirements for public sector employers. These employers must continue to follow the record-keeping requirements set out in the Library and Archives of Canada Act.

12. Update your pay equity plan

Employers must maintain pay equity in their workplace.

To do this, employers must update their final pay equity plan no more than five years after posting their first final plan and continue to post an updated plan no more than five years after the last one was posted.

It is important to revisit the pay equity plan as workplaces change over time due to, for example, reorganizations, mergers, the creation of new jobs and new duties and responsibilities for existing positions.

The Regulations provide a detailed process for updating a pay equity plan, including a requirement to annually collect workplace information to do so.

More information on the process for updating the pay equity plan will be provided in a future edition of this Guide.

13. Impact of pay equity plans on existing workplace arrangements

13.1 Collective agreements

If there is an inconsistency between a pay equity plan established under the Pay Equity Act and a collective agreement, the plan prevails [Act s. 95]. This means that pay increases that are identified under the pay equity plan are considered to be part of the compensation that was negotiated under the collective agreement and will form part of the collective agreement going forward. It should also be noted that the Act prohibits reducing compensation [Act s. 98] to achieve pay equity (see Chapter 14, Prohibitions).

13.1.1 Role of bargaining agents

Bargaining agents play an important role in the establishment of a pay equity plan under the Act. Bargaining agents participate by selecting representatives to sit on the pay equity committee. Bargaining agents can also file complaints against employers if they think that an employer has violated the Act and make representations to the Pay Equity Commissioner when she is making a decision that could impact the employees that the bargaining agent represents. Bargaining agents are also able to send notices of dispute to the Commissioner when there is a disagreement between pay equity committee members representing employees and those representing the employer.

With this in mind, the Act creates a system for achieving pay equity that is completely separate from collective bargaining, as the pay equity plan prevails when there is a conflict between it and a collective agreement [Act s. 95].

14. Prohibitions

The Pay Equity Act sets out certain requirements and expectations related to pay equity. For example, pay equity committee members, employers and bargaining agents must keep some information confidential [Act s. 24]. Employers and bargaining agents are also expected to act in good faith [Act s. 150 and s. 151].

In addition, the Act prohibits some specific activities that could potentially undermine the pay equity exercise or impede the Pay Equity Commissioner's ability to administer and enforce the Act. These are:

- Reducing compensation;
- Obstructing the Commissioner;
- Making false or misleading statements; and,
- Taking reprisal.

See Chapter 16, Enforcement, for information about the consequences of engaging in prohibited activities.

14.1 Reducing compensation

An employer cannot reduce the compensation of any employee as a way to achieve pay equity. For example, an employer cannot reduce the pay of employees in predominantly male job classes so that their compensation matches that of employees in predominantly female job classes [Act s. 98].

This ensures that the pay equity exercise functions as intended and no employee's compensation is reduced as a way to achieve pay equity.

14.2 Obstructing the Pay Equity Commissioner

To ensure that the Pay Equity Commissioner can properly enforce the Act, no one is allowed to obstruct her or her delegate when they are performing their duties or exercising their authority (see Chapter 5, The powers and duties of the Pay Equity Commissioner) [Act s. 99].

Obstruction includes, for example, preventing the Commissioner from entering a workplace either physically or remotely, or refusing to produce records for examination.

14.3 Making false or misleading statements

It is prohibited to knowingly make false or misleading statements to the Pay Equity Commissioner or her delegate while they are performing their duties or exercising their authority (see Chapter 5, The powers and duties of the Pay Equity Commissioner) [Act s. 100].

This includes making these statements verbally or in writing (for example, in an application to the Commissioner for modified application of the Act).

Similarly, no one can make or be involved in making any false or misleading statement in any record, report, electronic data or other document that must be prepared, retained or provided under the Act [Act s. 101].

These prohibitions permit the Commissioner to enforce the Act properly by making sure the information she receives is accurate.

14.4 Taking reprisal

Employers, bargaining agents and anyone acting on their behalf are prohibited from taking reprisal (in other words, retaliating) against anyone for [Act s. 102 and s. 103]:

- Testifying or participating in a proceeding under the Act;
- Filing a complaint or exercising any right under the Act;
- Taking action to comply with this Act; or,
- Refusing to take any action that would have resulted in non-compliance with the Act.

Prohibited forms of reprisal include reprisals related to hiring and firing, disciplinary action, intimidation and threats, and discriminatory practices.

By prohibiting these types of activities, the Act ensures that employees' rights are protected.

Table T14-1: List of prohibited forms of reprisal under the Pay Equity Act

For employers	For bargaining agents
Refusing to employ or continue to employ the employee.	Taking disciplinary action against or imposing a penalty on the union member by discriminatorily applying the bargaining agent's discipline standards.
Suspending the employee.	Expelling or suspending the union member's membership in the union or organization.
Laying the employee off.	Imposing a financial penalty on the union member.
Discriminating against the employee with respect to employment, pay or other terms of employment.	Discriminating against the union member with respect to employment, terms of employment or membership in a union or organization.
Intimidating, threatening or disciplining the employee [Act s. 102(a) to (c)].	Intimidating or coercing the union member [Act s. 103(a) to (c)].

15. Recourse

15.1 Protections from reprisal

An employer, bargaining agent or any other person acting on their behalf cannot take any actions that penalize an employee for their involvement in a pay equity process or for exercising their rights to pay equity. Employees have rights to [Act s. 102 and s. 103]:

- File a complaint or exercise any right under the Pay Equity Act*;*
- Participate in a legal proceeding related to pay equity;
- Take an action in order to comply with the Act (for example, participate as a member of a pay equity committee); or,
- Refuse to take an action resulting in a violation of the Act (for example, disclosing information received from human resources).

See Chapter 14, Prohibitions for details about the specific actions that employers and bargaining agents cannot take against employees under the Act [Act s. 102 and s. 103].

An employee who believes their employer or bargaining agent has reprised against them may file a complaint with the Pay Equity Commissioner (Commissioner) describing the action or behaviour.

Employees must file their complaint within 60 days after the day on which they knew, or in the Commissioner's opinion, ought to have known, of the action or circumstances resulting in the complaint, unless the Commissioner considers it reasonable to extend the timeline [Act s. 152 and s. 153].

A complaint is itself evidence that the reprisal was taken. If a party states that the reprisal was not taken, the burden of proof is on that party [Act s. 152(3)].

Additional information on the complaint process, including what happens after a complaint about reprisal has been filed with the Commissioner, is located in section 15.3.4.

15.2 Matters in dispute, objections and complaints

During the creation or updating of a pay equity plan ("plan"), workplace parties may need assistance from the Pay Equity Commissioner and Division. For more information about the role of the Commissioner in assisting workplace parties, please refer to Chapter 5, The powers and duties of the Pay Equity Commissioner.

The process that an individual employee, bargaining agent, non-unionized employee representative or employer uses to ask for the Commissioner's assistance in resolving an issue depends on which party notifies the Commissioner, and whether the issue relates to an employer- or committee-led plan.

For additional information on the employer- and committee-led plan processes, including when a committee-led process is required, please refer to Chapter 8, Establish the foundation: Pay equity committees.

Table T15-1 illustrates the processes available to each party.

Table T15-1: Processes to request the Commissioner's assistance in resolving a pay equity issue, by workplace party and plan type

Plan type	Workplace party	Process			
		Notice of matter in dispute	Notice of objection	Complaint	Complaint – reprisal
Employer-led pay equity plan	Employee not on pay equity committee		Yes, please refer to section 15.2.1	Yes, please refer to section 15.2.1	Yes, please refer to section 15.2.1
	Bargaining agent		Yes, please refer to section 15.2.3	Yes, please refer to section 15.2.3	
	Employer			Yes, please refer to section 15.2.1	
Committee-led pay equity plan	Employee not on pay equity committee			Yes, please refer to section 15.2.1	Yes, please refer to section 15.2.1
	Non-unionized representative	Yes, please refer to section 15.2.2			
	Bargaining agent	Yes, please refer to section 15.2.3		Yes, please refer to section 15.2.3	
	Employer	Yes, please refer to section 15.2.4		Yes, please refer to section 15.2.4	

The sections that follow provide further details on the processes available and are organized by workplace parties: employees, bargaining agents, non-unionized employee representatives and employers.

15.2.1 Employees

Employees may directly request the Commissioner's help in resolving pay equity issues using two processes: notice of objection and complaints as described below.

Notice of objection

In the absence of a pay equity committee, if an employee objects to any content of an employer-led pay equity plan or updated plan, they may file a notice of objection with the Commissioner [Act s. 148].

Employees must file a notice of objection with the Commissioner within 60 days after the day on which the plan is posted, unless the Commissioner considers it appropriate to extend the timeline [Act s. 148 and s. 153].

If an employee represented by a bargaining agent objects to any content of an employer-led plan, they should notify their bargaining agent to file the objection (see section 15.2.3 for further information).

Employees represented by a pay equity committee are not able to file a notice of objection with the Pay Equity Commissioner. Rather, they may express their concerns with their employee pay equity committee representative.

Complaints

An employee may file a complaint with the Commissioner if they believe that one of the following events or circumstances has occurred and the incident or behaviour affects, or is likely to affect, the employees subject to the plan [Act s. 149 and s. 152]:

- Certain sections of the Act and its Regulations, or an order of the Commissioner or the Canadian Human Rights Tribunal have been violated;
- An employer has attempted to influence or interfere with the selection of its non-unionized employees to represent them on a pay equity committee;
- An employer or another bargaining agent has acted in bad faith or in an arbitrary or discriminatory manner; or,
- An employer or bargaining agent has taken reprisal against them (see Chapter 14, Prohibitions).

If a non-represented employee believes an employer acted unfairly against them for their involvement in a pay equity process or for exercising their rights to pay equity, they may contact the Commissioner directly to file a complaint.

All employees may file complaints directly with the Commissioner, regardless of whether or not they are represented by a bargaining agent.

Employees must file complaints describing the alleged incident or behaviour within 60 days after the day on which they became aware of it, unless the Commissioner considers it appropriate to extend the timeline [Act s. 150(1) and (2) and s. 153].

15.2.2 Representatives of non-unionized employees

Notice of matters in dispute

In those workplaces where a plan is created by a pay equity committee, and where representatives of the employer and employees cannot agree at any step leading to the establishment or updating of a pay equity plan, a pay equity committee member representing non-unionized employees may notify the Commissioner that there is a “matter in dispute” and provide a description of the matter [Act s. 147].

After doing so, the pay equity committee member must notify the other members of the committee as soon as possible that they have contacted the Commissioner.

15.2.3 Bargaining agents

Bargaining agents are expected to actively participate in the creation and revision of a committed-led plan, including working to resolve concerns and disputes in a collaborative and

constructive manner. When this fails, bargaining agents have recourse under the Act: notices of matters in dispute; notices of objection and complaints (described in further detail below).

Notice of matters in dispute

In those workplaces where a plan is created by a pay equity committee, and where representatives of the employer and employees cannot agree at any step leading to the establishment or updating of a plan, a bargaining agent may notify the Commissioner that there is a "matter in dispute" [Act s. 147]. Bargaining agents must provide the Commissioner with a description of the issue and notify the other members of the pay equity committee as soon as possible that they have contacted the Commissioner [Act s. 147].

Notice of objection

If an employer, as opposed to a pay equity committee, creates or revises and posts a plan, and the bargaining agent that represents those employees to whom the plan applies objects to any content of that plan, the bargaining agent may file a notice of objection with the Commissioner and provide details of the matter [Act s. 148].

This might happen in situations where for example, the Commissioner had previously granted the employer permission to develop a pay equity plan without a committee. In that case, the bargaining agent has the right to file a notice of objection after the plan has been posted.

Bargaining agents must file a notice of objection with the Commissioner within 60 days after the day on which the plan is posted, unless the Commissioner considers it appropriate to extend the timeline [Act s. 148 and s. 153].

Complaints

A bargaining agent may file a complaint with the Commissioner if they believe that one of the following incidents or behaviours has occurred, and it affects or is likely to affect the employees they represent [Act s. 150]:

- There has been a violation of certain sections of the Act or its Regulations, or an order of the Commissioner or the Tribunal;
- An employer has attempted to influence or interfere with the selection of its non-unionized employees to represent them on a pay equity committee; or,
- An employer or another bargaining agent has acted in bad faith or in an arbitrary or discriminatory manner.

Bargaining agents must file a complaint setting out the details of the alleged incident or behaviour within 60 days after the day on which they became aware of the matter, unless the Commissioner considers it appropriate to extend the timeline [Act s. 150(1) and (2) and s. 153].

15.2.4 Employers

Notice of matter in dispute

In those workplaces where a plan is created by a pay equity committee, and where representatives of the employer and employees cannot agree at any step leading to the establishment or updating of a plan, the employer may notify the Commissioner that there is a "matter in dispute" and provide details of the matter [Act s. 147].

Upon notifying the Commissioner of a matter in dispute, employers must also notify the other members of the pay equity committee as soon as possible [Act s. 147].

Complaints

In those workplaces where a pay equity committee must create a plan, an employer may file a complaint with the Commissioner if they believe one of the following events or circumstances has occurred, and the incident or behaviour affects, or is likely to affect, the employer subject to the plan [Act s. 151 and s. 24(2)]:

- A bargaining agent has disclosed confidential information provided to him or her as a member of a pay equity committee (for example, human resources data); or,
- A bargaining agent has acted in bad faith or in an arbitrary or discriminatory manner.

Employers must file a complaint setting out the details of the alleged incident or behaviour within 60 days after the day on which they become aware of it, unless the Commissioner considers it appropriate to extend the timeline [Act s. 151 and s. 153].

15.3 Response to notice

15.3.1 Dismissal

After receiving a notice of matters in dispute, objection or complaint from a workplace party, the Commissioner must first decide whether to accept the matter.

The Commissioner may decide to accept a matter or dismiss a matter, in whole or in part. Reasons for a dismissal of a matter, in whole or in part, include [Act s. 154(2) and s. 153]:

- It is trivial, frivolous or made in bad faith;
- It is beyond the jurisdiction of the Commissioner (for example, it is the responsibility of a provincial pay equity organization);
- The subject matter has been adequately dealt with, or could be more appropriately dealt with, under a collective agreement or another federal law (for example, elements of a certain complaint such as racial discrimination may indicate it is more appropriately dealt with under the Canadian Human Rights Act); or,
- It was not filed within the period specified in the Act.

Should the Commissioner dismiss all or part of a matter in dispute, objection or complaint, the parties involved (the employer, bargaining agent, representative of non-unionized employees, and/or employee) will receive a written notice of the decision, including the reasons for the decision and the timelines and process by which a party may request a review [Act s. 154(4)].

15.3.2 Settlement

Once the Commissioner receives and accepts all or any part of a matter in dispute, objection or complaint, she will first try to help the parties settle matters that are appropriate for settlement in the circumstances, including providing information to parties and using informal mechanisms such as dispute resolution [Act s. 154(1)]. Please refer to Chapter 5, The powers and duties of

the Pay Equity Commissioner, for more information on the Commissioner's role in providing informal assistance.

In addition, at any time during the dispute, objection or complaint process, the parties have the option to settle the issue, either with the help of the Commissioner or between themselves.

If the parties have notified the Commissioner of a matter in dispute, objection or complaint, but then come to an agreement between themselves on how to resolve the issue, they must provide the Commissioner with the terms of the settlement, in writing [Act s. 155(1)]. After receiving the terms of settlement, the Commissioner will consider the matter in dispute, objection or complaint to be withdrawn, unless she is of the opinion that it is appropriate in the circumstances to continue to examine it despite the settlement [Act s. 155(2)].

15.3.3 Investigation

The Commissioner may investigate a notice of matter in dispute, objection or complaint, to obtain the information needed to resolve the issue [Act s. 156(1)]. If two or more cases involve the same issues of fact or law, the Commissioner may join the investigations [Act s. 156(2)].

Before beginning an investigation, the Commissioner will send the workplace parties involved a notice informing them that an investigation into a matter in dispute, objection or complaint has begun [Act s. 156(3)].

Following an investigation, the Commissioner may:

- Make a determination and issue a written order to settle a disagreement and do what is necessary to ensure they are following the Act [Act s. 157 to s. 159]. For example, following a finding that an objection is proven, the Commissioner may issue an order to an employer to make revisions to its plan and notify the Commissioner of these changes, and any resulting differences in compensation to its employees. More detailed information on determinations and orders is provided in section 15.3.4 below.
- Refer the matter (or part of it) to the Tribunal, should it concern an important question of law or jurisdiction [Act s. 162].
- Dismiss the case [Act s. 154 and s. 157 to s. 159].

If the Commissioner discontinues all or any part of an investigation due to inadequate evidence or any of the factors listed in section 15.3.1, she will send a notice to the involved workplace parties with the reasons for the decision and the timelines and process by which they may request a review [Act s. 156(4) and (5)].

15.3.4 Determination and orders

The Commissioner has broad authority to make orders regarding notices of dispute, objection or complaints, including directing parties to do what is necessary to comply with the Act.

Determination of matter in dispute

As the first step in determining a matter in dispute, workplace parties (the employer, the bargaining agent and the member that represents non-unionized employees, as applicable) can present evidence and make representations to the Commissioner [Act s. 157(1)].

As a second step, the Commissioner may decide to conduct an investigation to obtain additional information, or if she is of the opinion that no additional information is required, make a written order determining the matter in dispute [Act s. 157(1) and (2)]. The Commissioner may also decide that the contents of the order become part of the parties' pay equity plan.

Determination of objection

If, as a result of an investigation into a notice of objection, the Commissioner finds that all or a part of an objection is proven, she will make a written order directing an employer to [Act s. 158]:

- Take any measures the Commissioner considers appropriate regarding the plan in question, within the time indicated in the order, including paying any differences in compensation and interest that are owed to employees; and,
- Revise the plan and provide those revisions to the Commissioner within the time indicated in the order.

The employer must also, as applicable [Act s. 158(4)]:

- Notify the Commissioner of any differences in compensation and interest payable to employees as a result of revisions to its plan [Act s. 158(2)]; and,
- Add the revisions to the plan to the final version of the posted plan, and when posting the updated version of the plan (the term "updated" is used throughout this Guide to refer to the "revised" plan), include a notice for employees informing them of the revisions to the final version of the plan.

If the Commissioner finds that the employer determined the differences in compensation and interest payable to employees incorrectly, she may order the employer to pay the difference determined by the Commissioner within the time indicated in the order [Act s. 158(3)].

Should the Commissioner find that all or part of an objection is unproven, she will dismiss it in whole or in part, and send the parties a notice with the reasons for the decision and the timeline and process for appeal [Act s. 158(1)(a) and (5)].

Determination of complaint

If the Commissioner finds that all or part of the complaint is proven as a result of an investigation, she will make a written order [Act s. 159(1)].

For those complaints relating to a violation of the Act, its Regulations or an order of the Commissioner or Tribunal, the order will require the employer, employee or bargaining agent, as applicable, to stop the violation or take any measures specified within the time indicated in the order [Act s. 159(1)(b)(i) and s. 119].

For those complaints regarding an employer or bargaining agent that attempts to influence or interfere with the selection by non-unionized employees of members to represent them on a pay equity committee, or acts in bad faith or in an arbitrary or discriminatory manner, the order will require the employer or bargaining agent to stop the behaviour in question or take any measures specified within the time indicated in the order [Act s. 159(1)(b)(ii)].

These orders will also include the time and the manner in which they may be appealed [Act s. 159(2) and s. 119].

If the Commissioner finds that all or part of a complaint is unsubstantiated she will dismiss it in whole or in part, and send the parties to the complaint a notice with the reasons for the decision and the time and the manner in which they may appeal it [Act s. 159(1)(a) and s. 159(3)].

Determination of complaint about reprisal

After an investigation into a complaint about reprisal, if the Commissioner finds that all or part of the complaint is proven, she will make a written order requiring the employer or bargaining agent to stop engaging in or withdraw the reprisal [Act s. 160(1)(b) and (c)].

The Commissioner may also make a written order requiring an employer, as applicable, to [Act s. 160(1)(b)]:

- Allow the employee who filed the complaint to return to their job duties;
- Reinstate the employee;
- Pay to the employee a sum that, in the Commissioner's opinion, is equivalent to the compensation they lost as a result of the reprisal;
- Pay to the employee a sum that, in the Commissioner's opinion, is equivalent to any penalty imposed on the employee by the employer; or,
- Do any other thing the Commissioner considers fair for the employer to do to repair any consequence of the penalty.

The Commissioner may also make a written order requiring a bargaining agent, as applicable, to [Act s. 160(1)(c)]:

- Reinstate or admit the person as a member of a union or employee organization;
- Withdraw any penalty against and pay a sum to the person that, in the Commissioner's opinion, is equivalent to any penalty applied to the person by the bargaining agent; or,
- Do any other thing the Commissioner considers fair for the bargaining agent to do to repair any consequence of the reprisal.

If the Commissioner finds that all or part of a complaint about reprisal is unproven, she will dismiss it in whole or in part, and send the parties to the complaint a notice with the reasons for the decision and the time and the manner in which they may appeal it [Act s. 160(2)].

16. Enforcement

16.1 Compliance audits

The Pay Equity Commissioner, or a person to whom the Commissioner delegates her powers, may conduct a compliance audit of an employer or bargaining agent to verify their compliance, or prevent their non-compliance, with the Pay Equity Act and its Regulations [Act s. 118(1)].

In addition, the Commissioner may order an employer to conduct an internal audit of its practices and records, reports, electronic data and other documents, and provide the Commissioner with a report of the audit results [Act s. 120(1)].

16.1.1 Audits by Commissioner

The Commissioner will notify the employer, group of employers or bargaining agent to be audited before beginning an audit [Act s. 118(2)]. The Commissioner's powers to conduct an audit include the ability to [Act s. 118(3) and s. 122(1)]:

- Enter any place, other than a residence, where the Commissioner has reasonable grounds to believe there is any record, report, electronic data or other document, information or thing relevant to the audit. The Commissioner may enter any place physically or remotely using telecommunications (for example connecting remotely to a company's network);
- Examine any record, report, electronic data or other document that is found in the place entered, and make copies, take extracts or create reproductions of it;
- Use any computer in the place entered to examine any electronic data;
- Use any copying equipment in the place entered to make copies of any document; and,
- Order any person to identify themselves to the satisfaction of the Commissioner or the Commissioner's delegate.

The Commissioner may also order an employer, group of employers or bargaining agent to produce all or any part of a record, report, electronic data or other document that the Commissioner has reasonable grounds to believe contains any information relevant to the audit, and to examine, make copies, take extracts, or create reproductions of it [Act s. 118(4) and (5)].

The Commissioner may be accompanied by any individual she believes necessary to help her exercise her powers or duties in conducting an audit [Act s. 123].

If the Commissioner enters a place remotely that is not accessible to the public, she will notify the owner or person in charge of the place and will only be connected for as long as is necessary to conduct the audit [Act s. 122(2)].

The owner or other person in charge of any place entered by the Commissioner for an audit, and every person found in that place must give the Commissioner all reasonable assistance and provide any information that she may reasonably need [Act s. 124].

On completion of an audit, the Commissioner may [Act s. 118(7) and s. 119]:

- Identify in writing measures that the employer, group of employers or bargaining agent must take to remedy a violation of the Act or its Regulations, and the time within which these measures must be taken; or,
- Issue a written order requiring the employer, group of employers, bargaining agent or employee to stop violating the Act within the time indicated in the order. This order will also include the time and the manner in which the parties may appeal it.

16.1.2 Audits by employer

The Commissioner may order an employer, or group of employers, to conduct an internal audit and provide the Commissioner with a report of the audit results [Act s. 120(1)]. Such an order will include the following information [Act s. 120(2)]:

- The employer(s) to whom the order applies;
- The period of time to be covered by the audit;
- The sections of the Act and its Regulations with respect to which the internal audit is being ordered;
- The date by which the employer must provide the audit report to the Commissioner; and,
- The form of the report (for example, electronic or hard copy).

As part of the order, the Commissioner may also ask the employer or group of employers to provide any other information that she considers appropriate to include in the report [Act s. 120(3)].

If, while conducting an audit, an employer or group of employers learns that it has violated the Act or Regulations referenced in the Commissioner's order, it must indicate these violations, and the measures that have or will be taken to correct them, in its report to the Commissioner [Act s. 120(4)].

16.2 Investigations

If, while conducting an audit, the Commissioner identifies an issue that in her opinion requires further examination, she may conduct an investigation [Act s. 121]. The Commissioner's powers to conduct an investigation include the ability to [Act s. 121 and s. 118(6)]:

- Summon and enforce the appearance of persons before the Commissioner, and require them to give oral or written evidence on oath and to produce any record, report, electronic data or other document, or any information or thing that the Commissioner considers necessary, in the same manner as in a court;
- Administer oaths;
- Receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Commissioner sees fit, regardless of whether or not it is or would be admissible in a court;
- Enter any place, other than a residence, physically or remotely (for example, connecting remotely to a company's network using telecommunications);

- Speak in private with any person in any place entered, and carry out in that place any inquiries that the Commissioner sees fit; and,
- Use any of the powers available to the Commissioner for the purposes of conducting an audit [Act s. 118(3)(b) to (g)].

The Commissioner may also be accompanied by any individual she believes necessary to help her conduct an investigation [Act s. 123].

If the Commissioner enters a place remotely, by a means of telecommunication, that is not accessible to the public, she will do so with the knowledge of the owner or person in charge of the place and, will only be connected for as long as is necessary to conduct the audit [Act s. 122(2)].

The owner or other person in charge of any place entered by the Commissioner during an investigation, and every person found in the place must give the Commissioner all reasonable assistance and provide any information that she may reasonably need [Act s. 124].

16.3 Administrative monetary penalties

An employer, group of employers, bargaining agent or other persons that violate the sections of the Act and its Regulations set out under the forthcoming Administrative Monetary Penalties (AMPs) Regulations are liable for paying a penalty under those Regulations [Act s. 129]. However, a violation of the Act or its Regulations is not an offence under the Criminal Code and cannot be pursued as one under that law [Act s. 135].

The details of the AMPs regime will be set out in future Regulations. The information provided below provides details as they are currently outlined in the Pay Equity Act.

16.3.1 Violations

If an employer or bargaining agent violates the sections of the Act and its Regulations set out in the AMPs Regulations, any of the following persons who directed, authorized, agreed to or participated in committing the violation is liable for the penalty determined using the AMPs Regulations [Act s. 130]:

- Any officer, director or agent of the employer or bargaining agent;
- Any senior official of the employer or bargaining agent; or,
- Any other person who conducts managerial or supervisory functions on behalf of the employer or bargaining agent.

An employer or bargaining agent is also liable for a violation committed by an employee or other person acting on their behalf, even if the specific person that violates the Act is not identified [Act s. 131].

If the Commissioner has reasonable grounds to believe that an employer, group of employers, bargaining agent or other person has violated the Act, she may issue a written notice of violation and serve it on the employer, each employer in a group of employers, bargaining agent or other person who committed the violation [Act s. 132(1)].

The notice of violation will include [Act s. 132(2)]:

- The name of the employer, bargaining agent or other person that is believed to have committed the violation, or if it is believed that a group of employers committed the violation, the name of each employer in that group;
- The relevant facts about the violation;
- The penalty for the violation, or any lesser amount determined by the Commissioner using the AMPs Regulations;
- The time and manner in which the penalty is to be paid;
- The named party or parties' right to a review of the notice, and the time and the manner in which a review may be requested; and,
- A statement indicating that if the named party or parties do not pay the penalty or request a review, they will be considered to have committed the violation and are liable for the penalty.

Rules about violations

An employer, group of employers, bargaining agent or other person named in a notice of violation cannot use due diligence as a defence to a violation or claim that they believed in the existence of facts that, if true, would clear them from wrongdoing [Act s. 133(1)].

If an employer, group of employers, bargaining agent or other person commits or continues to commit a violation on more than one day, the Commissioner will issue a separate violation for each day on which the violation is committed or continued [Act s. 134].

A notice of violation will not be issued more than two years after the day on which the Commissioner becomes aware of the alleged violation [Act s. 136(1)].

A document appearing to have been issued by the Commissioner, indicating the day on which the Commissioner became aware of an alleged violation, is admissible as evidence even without the signature of the person appearing to have signed the document (for example, an email from the Commissioner or her delegate) [Act s. 136(2)]. Without evidence proving otherwise, this document is proof that the Commissioner became aware of the violation on the day indicated on the document [Act s. 136(2)].

In addition, and unless there is evidence to the contrary, a document that appears to be a notice of violation served to a party or parties is considered authentic, and its contents may be used as proof in any proceeding relating to a violation [Act s. 145] (see section 16.3.1 for more information on notices of violation).

Responsibilities

An employer, group of employers, bargaining agent or other person that is served with and pays the amount set out in a notice of violation—or the lesser amount determined by the Commissioner using the AMPs Regulations—is considered to have committed the violation [Act s. 137(a)]. After receiving payment, the Commissioner will accept the amount as fulfillment of the penalty and end the violation proceedings [Act s. 137(b) and (c)].

An employer, group of employers, bargaining agent or other person who does not pay a penalty set out in a notice of violation and does not request a review within the specified time is considered to have committed the violation and is liable to pay the penalty [Act s. 138(1) and (2)].

Recovery of penalties

Once a notice of violation is issued, it is considered a debt to the Government of Canada until paid and, may be recovered in Federal Court [Act s. 143(1)]. The following amounts are considered debts to the Government [Act s. 143(1)]:

- The amount of the penalty from the date in the notice of violation setting out the amount of the penalty is served on the party; and,
- Following a review by the Commissioner, the amount of the penalty confirmed or corrected in the Commissioner's notice of decision from the expiry of the time in the notice.

Debts to the Government of Canada are final and cannot be reviewed, except where the Commissioner cancels or corrects a notice of violation, or reviews the facts of the alleged violation, penalty or both [Act s. 143(3)] (see section 16.4).

The Commissioner may certify any unpaid amount of a debt, including a default of payment [Act s. 144(1)]. The certificate may be registered in the Federal Court, and if registered, will have the same force and effect as a judgment of the Federal Court for a debt of the amount indicated in the certificate and all related registration costs [Act s. 144(2)].

Proceedings to recover a debt will not be introduced more than five years after the day on which the debt became payable [Act s. 143(2)].

Publication of violations

The Commissioner may make public [Act s. 146]:

- The name of an employer, each employer in a group of employers or bargaining agent who is determined to have committed a violation;
- The type of violation;
- The amount of the penalty charged; and,
- Any other information specified by regulation [Act s. 127(1)(j)].

16.4 Reviews, appeals and referrals

There are two review/appeal processes available under the Act.

The first process allows employers, groups of employers, bargaining agents and individuals to apply to the Commissioner for a review of the decision to:

- Dismiss all or part of a matter in dispute, objection or complaint; or,
- Discontinue an investigation into all or any part of a matter in dispute, objection or complaint.

Parties may also apply for a review of the acts or omissions that led to a notice of violation, of the amount of the penalty, or both (see section 16.4.1).

The second process allows parties to apply to the Chairperson of the Canadian Human Rights Tribunal to appeal a determination or an order issued by the Commissioner with respect to a notice of matters in dispute, an objection or a complaint (see section 16.4.1).

In addition, the Commissioner may refer an important question of law or jurisdiction to the Chairperson of the Tribunal that she considers to be more appropriate for the Tribunal to determine (see section 16.4.2).

For more information on the recourse processes mentioned in this section (namely, notices of matters in dispute, objections and complaints), see Chapter 15, Recourse.

Please see the table below for summary information concerning reviews and appeals heard by the Pay Equity Commissioner and the Canadian Human Rights Tribunal.

Table T16-1: Reviews and appeals heard by the Pay Equity Commissioner and the Canadian Human Rights Tribunal

Issue for review or appeal	Apply to Commissioner	Apply to Tribunal
• Acts or omissions that constitute the violation or of the amount of the penalty, or both.	Yes, for review; see section 16.4.1	No
• Dismissal of all or any part of a matter in a dispute, objection or complaint. • Discontinuation of an investigation into all or any part of a matter in dispute, an objection or a complaint.	Yes, for review; see section 16.4.1	No
• Decision or order made by the Commissioner with respect to a notice of matter in dispute, an objection or a complaint.	No	Yes, for appeal; see section 16.4.2

16.4.1 Reviews by the Commissioner

Review of notice of violation

An employer, group of employers, bargaining agent or other person named in a notice of violation may, within 30 days after the day the notice is served (or another period of time authorized by the Commissioner), and in the manner indicated in the notice, file a request for a review of the acts or omissions that resulted in the violation, the amount of the penalty, or both [Act s. 139(1)].

The request for review must include the grounds for review and a description of the evidence that supports those grounds [Act s. 139(2)].

On receipt of a request for review, the Commissioner will review the facts of the alleged violation, the penalty or both, and determine whether the employer, group of employers, bargaining agent or other person that requested the review committed the violation, if the

amount of the penalty determined using the forthcoming AMPs Regulations is correct, or both [Act s. 141 and s. 142(1)].

On completion of a review, the Commissioner may determine that the employer, group of employers, bargaining agent or other person did not commit the violation, and end the proceedings [Act s. 142(2)].

In reviewing the act or omission, and where it has been proven that the employer, group of employers, bargaining agent or other person committed the violation, the Commissioner may decide whether the penalty was determined correctly using the AMPs Regulations, and if not, correct the amount [Act s. 142(3)].

In reviewing the amount of the penalty, the Commissioner may determine whether the amount was established using the AMPs Regulations and if not, correct the amount.

The employer, each employer in a group of employers, the bargaining agent or the other person will receive a notice following the Commissioner's review that includes [Act s. 142(5)]:

- The Commissioner's decision;
- The reasons for the Commissioner's decision; and,
- If the amount of the penalty was confirmed or corrected by the Commissioner, the time and the manner in which the penalty is to be paid.

The employer, group of employers, bargaining agent or other person is liable for paying, within the time and manner indicated in the notice, the amount of the penalty confirmed or corrected by the Commissioner [Act s. 142(6)].

If the employer, group of employers, bargaining agent or other person, as applicable, pay the penalty, the Commissioner will accept the payment and end the proceedings [Act s. 142(7)].

The Commissioner's decision following a review is final and cannot be questioned or reviewed in court [Act s. 142(8)].

Review of dismissal or discontinuance of a matter in dispute, objection or complaint

An employer, group of employers, bargaining agent or individual who is a party to a matter in a notice of matters in dispute, objection or complaint process may request a review of the Commissioner's decision to dismiss all or any part of a matter in dispute, objection or complaint or discontinue an investigation [Act s. 161(1)]. Parties have 30 days to request a review after receiving notice of the decision, unless the Commissioner considers it appropriate to extend the timeline [Act s. 161(2)].

The party requesting the review must state the grounds for review and describe the evidence that supports those grounds [Act s. 161(3)].

On receipt of such a request, the Commissioner will review the decision and [Act s. 161(5) and (6)]:

- Confirm the decision to dismiss some or all of the matter in dispute, objection or complaint process, or if the decision to dismiss is not confirmed, investigate any part of the matter in dispute, objection or complaint; or,
- Confirm the decision to discontinue the investigation of some or all of the matter in dispute, objection or complaint process, or if the decision to discontinue the investigation is not confirmed, investigate any part of the matter in dispute, objection or complaint.

The Commissioner's decision following a review is final and cannot be questioned or reviewed in court [Act s. 161(7)].

Additional information on the processes for matters in dispute, objections and complaints is located in Chapter 15, Recourse.

16.4.2 Appeals and referrals to the Tribunal

Appeal of determination or order to Tribunal

An employer, group of employers, bargaining agent or other person may appeal to the Tribunal a decision made by the Commissioner to dismiss an objection or complaint after finding that it is not proven. They may also appeal any of the following orders made by the Commissioner [Act s. 168(1)]:

- Order to stop violating the Act or its Regulations, or to take any measures set out in the order within a given timeline;
- Order determining a matter in dispute regarding the creation or updating of a pay equity plan;
- Order to an employer to take appropriate measures regarding a plan, including the payment of differences in compensation and interest to employees;
- Order to an employer to correct payment of compensation and interest to employees;
- Order regarding a complaint; and,
- Order regarding a complaint about reprisal.

An application for appeal to the Tribunal must be filed within 30 calendar days after the day the order or notice of the decision is served. It must be made in writing and include the grounds for appeal and a description of the evidence that supports those grounds [Act s. 168(3)]. Orders under appeal continue to apply during the appeal process, unless the Tribunal determines otherwise [Act s. 168(2)].

After receiving an application for an appeal, the Chairperson of the Tribunal will assign a member of the Tribunal, or for more complex matters, a panel of three members to hear the appeal [Act s. 169(1)]. If a panel of three members is established, the Chairperson will select one of them to be its chair, unless the Chairperson is a member of the panel, in which case they will be the chair [Act s. 169(2)].

The member or panel of members assigned to hear the appeal may, by order [Act s. 170(1)]:

- Confirm, change or withdraw the decision or order that is under appeal; or,

- Refer the decision under appeal back to the Commissioner to determine again, with any directions that they consider appropriate.

The member or panel of members may also include in the order any terms that they consider fair to remedy or counteract any consequence of the matter under appeal [Act s. 170(2)].

A decision made by a majority of the members of the panel is the decision of the panel [Act s. 170(3)]. If there is no majority decision, the chair will make the panel's decision [Act s. 170(3)]. Every decision made by a member or panel regarding an appeal is final and cannot be questioned or reviewed in court [Act s. 170(5)].

The employer, group of employers, bargaining agent or individual who is party to the appeal will receive a copy of any decision or order to the Commissioner from the Tribunal member or panel of members assigned to the appeal. [Act s. 170(4)].

Referral of a matter in dispute, a notice of objection or a complaint to Tribunal

After receiving a notice of a matter in dispute, objection or a complaint, if the Commissioner is of the opinion that it would be appropriate for the Tribunal to determine an important question of law or jurisdiction, she may refer the question to the Chairperson of the Tribunal [Act s. 162].

After receiving this type of referral, the Chairperson will assign a member of the Tribunal, or for more complex matters, a panel of three members to conduct the inquiry [Act s. 163(1)]. If a panel of three members is established, the Chairperson will select one of them to be its chair, unless the Chairperson is a member of the panel, in which case they will be the chair [Act s. 163(2)].

The Commissioner may also participate in an inquiry that she has referred to the Tribunal, and in doing so, adopt a position that is in the public interest [Act s. 165].

If a referral involves a question about whether another law or regulation is inconsistent with the Act and its Regulations, the member assigned to the inquiry or, if three members have been assigned, the member chairing the inquiry, must be a lawyer who is a member of the bar of a Canadian province or the Chambre des notaires du Québec [Act s. 163(3)]. However, if a question of inconsistency between laws arises after a member or panel has already been assigned to the inquiry, and the member assigned or panel chair is not a lawyer, the inquiry will continue to proceed [Act s. 163(4)].

Before beginning an inquiry, the member or panel will notify the Commissioner, the parties to the matter and, at the discretion of the member or panel conducting the inquiry, any other interested party [Act s. 164(1)].

The member or panel may dismiss an issue referred to them if they are satisfied that [Act s. 164(2)]:

- For a case regarding jurisdiction, an inquiry is not necessary; or,
- In any case, it would be more appropriate for the Commissioner to determine the question.

In conducting a hearing for an inquiry, the member or panel's powers include the ability to [Act s. 164(3)]:

- Summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, in the same manner as a court;
- Produce any documents and things that the member or panel considers necessary for the full hearing and consideration of question, in the same manner and to the same extent as a superior court;
- Administer oaths;
- Receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the member or panel sees fit, regardless of whether or not it is or would be admissible in a court;
- Lengthen or shorten any time limit established by the rules of procedure established under the Canadian Human Rights Act; and,
- Decide any procedural or evidentiary question arising during the hearing.

The member or panel cannot accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence [Act s. 164(4)]. For example, most documents and written communications between a lawyer and a client cannot be admitted because of solicitor-client privilege.

A person summoned to attend a hearing is entitled, at the discretion of the member or panel, to receive the same fees and allowances as those paid to persons summoned to attend before the Federal Court [Act s. 164(5)].

While a hearing will be conducted in public, the member or panel conducting an inquiry may, on application from a party, take any measures and make any order that they consider necessary to ensure the confidentiality of the hearing, if they are satisfied that [Act s. 166(1)]:

- There is a real and substantial risk that public security matters will be disclosed;
- There is a real and substantial risk to the fairness of the hearing, to the extent that the need to prevent disclosure outweighs the benefit to society that the hearing be conducted in public;
- There is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved to the extent that the need to prevent disclosure outweighs the benefit to society the hearing be conducted in public; or,
- There is a serious possibility that the life, liberty or security of a person will be endangered.

The member or panel conducting an inquiry also has the discretion to take any measures or make any order they consider necessary to ensure the confidentiality of a hearing [Act s. 166(2)].

At the end of an inquiry, and unless the question was withdrawn, the member or panel will determine the matter. The Commissioner and the employer, group of employers, bargaining agent or individual given notice at the beginning of the inquiry will receive a copy of the determination. [Act s. 167(1)].

The determination may include a requirement for an employer, or each employer if the matter concerns a group of employers, to post the determination [Act s. 167(2)].

A decision made by a majority of the members of the panel is the decision of the panel or, if there is no majority decision, the panel chair's decision is the decision of the panel [Act s. 167(3)].

17. Employers with unique requirements

The Pay Equity Act applies to public and private sector employers with 10 or more federally regulated employees (see Chapter 4, Application of the Pay Equity Act).

As a rule, all employers covered by the Act have the same obligations and requirements. However, the following employers have certain unique requirements:

- Employers that take over a federally regulated business or organization that has a pay equity plan for its workers;
- Provincial businesses with a pay equity plan that has become federally regulated; and,
- Employers in a group of employers.

17.1 Employers that take over a business or organization that has a pay equity plan

Once a federally regulated private sector or Crown corporation employer has posted a final pay equity plan, that plan continues to apply even when a new employer takes over the business or organization through:

- A transfer or lease (for example, through a sale or merger) [Act s. 92]; or,
- Contract re-tendering [Act s. 93].

In these situations, the new employer:

- Becomes subject to the Act, if it was not already [Act s. 92(c) and s. 93(c)];
- Becomes liable for the former employer's obligations under the Act resulting from the posting of the final pay equity plan [Act s. 92(b) and s. 93(b)]; and,
- Is considered to be the employer that posted the plan going forward [Act s. 92(a) and s. 93(a)].

In other words, the new employer picks up where the former employer left off. This means the new employer must continue paying the new salaries for any employees who were owed an increase in compensation (see Chapter 10, Increase employee compensation) and maintaining pay equity for their employees (see Chapter 12, Update your pay equity plan) going forward.

17.2 A provincial business that becomes a federally regulated employer

If a newly federally regulated employer was previously a provincially regulated employer in a province that did not require them to establish a pay equity plan, they follow all the same obligations as other employers under the Act (see Chapter 4, Application of the Pay Equity Act).

Special rules apply when a provincial business that was required by provincial legislation to establish a pay equity plan, becomes a federally regulated employer [Act s. 94].

First, when performing the employee count under s. 9(a)(ii) or (b)(ii), persons who were employed in the provincial business during the calendar year must be included in calculating the average number of employees in the calendar year in which the business became a federally

regulated employer [Act s. 94(1)(a)]. Second, if that provincial business became a federally regulated workplace at least 18 months after the day the Act came into force, they will have less time to complete all of the steps to develop a plan. Such an employer must post the final version of their pay equity plan no later than 18 months after the day they became subject to the Act, instead of three years (see Chapter 9, Create a pay equity plan) [Act s. 94(1)(b)].

Employers in this situation are given less time because they have already completed a pay equity plan. As such, they should already be paying male and female employees equally for work of equal value according to the provincial pay equity regime, and they should have the expertise needed to complete the steps to develop a plan in the shorter timeframe to maintain pay equity for their employees.

17.3 Employers in a group of employers

A group of employers is any two or more federally regulated private sector employers who are recognized by the Commissioner as a single employer for the purposes of establishing and maintaining a pay equity plan [Act s. 4].

See Chapter 6, Modified application of the Pay Equity Act for more information on seeking permission from the Commissioner to form a group of employers.

A group of employers is treated as a single employer for the purposes of the Act [Act s. 106(1)].

This means that the pay equity exercise for a group of employers is largely the same as it is for an individual employer. However, some parts of the process, namely conducting an employee count and the criteria for setting up a pay equity committee, are a little different for groups.

Individual employers who are part of a group of employers are also still individually responsible for obligations related to:

- Implementing any increases in compensation they owe to their employees according to the jointly developed plan; and,
- Posting documents.

17.3.1 Conducting an employee count

The process for conducting an employee count is largely the same for a group of employers as it is for an individual employer (see Chapter 4, Application of the Pay Equity Act).

However, while an individual employer counts all employees they employ, a group of employers must determine the sum of all the employees employed by all the employers that are part of the group [Act s. 18]. This sum (and the presence of any unionized employees) is what the group of employers' uses to determine if they must follow an employer-led or committee-led process.

Example E17-1: Simple method for calculating the number of employees from payroll records (group of employers)

1. Each employer in the group reviews payroll records to determine the number of employees paid during each pay period (usually 26 per year).

2. Each employer in the group adjusts the number of employees over the 26 pay periods based on the definition of "employee" under the Act by:
    a. Removing employees whose employment relationships are excluded under the Act (students working through a student employment program, etc.); and,
    b. Including seasonal, casual and temporary employees, and employees who may be considered dependent contractors under the Act.
3. Each employer in the group calculates the average number of employees for the year by:
    a. Adding up the adjusted number of employees for each of the 26 pay periods; and,
    b. Dividing the total adjusted number of employees by 26.
4. The group of employers adds up the average calculated by each employer in the group. The resulting sum (or group average, in the table below) is the total number of employees for the group of employers.

Table T17-1: Calculating the number of employees from payroll records

Pay period	Employer 1		Employer 2		Employer 3	
	Number of employees on payroll	Adjusted number of employees on payroll	Number of employees on payroll	Adjusted number of employees on payroll	Number of employees on payroll	Adjusted number of employees on payroll
1	85	83	75	70	100	95
2	87	84	75	72	101	94
3	87	84	73	71	101	96
4	106	100	73	70	100	96
...	...	...	...	...	...	...
26	117	103	75	73	100	94
Employer total	**2,735**	**2,706**	**1,924**	**1,835**	**2,602**	**2,496**
Employer average	**2,706 / 26 = 104.1**		**1,835 / 26 = 70.6**		**2,496 / 26 = 96**	
Group adjusted number of employees on payroll total average: **104.1 + 70.6 + 96 = 271*** *Rounded up from 270.7						

17.3.2 Establishing a pay equity committee

The criteria to determine whether a group of employers needs to set up a pay equity committee is based on the number of employees and union presence for all employers in the group, rather than for each individual employer.

A group of employers must set up a single pay equity committee and follow a committee-led process if, collectively, they have [Act s. 17 and s. 68]:

- 100 or more employees; or,
- 10 to 99 employees and any of these employees are unionized.

A group of employers that does not have to set up a pay equity committee can still choose to do so. If they do, they must notify the Pay Equity Commissioner and follow the requirements of a committee-led process [Act s. 17(2) and (3)].

For more information on employer-led and committee-led processes, see Chapter 8, Establish the foundation: Pay equity committees.

17.3.3 Implementing increases in compensation

Employers who are part of a group of employers must implement increases in compensation individually, rather than as a group.

This means that each employer in a group is responsible for implementing any increases in compensation identified in the group's pay equity plan as being owed to that employer's employees.

17.3.4 Posting requirements

Employers who are part of a group of employers are also each individually responsible for fulfilling posting requirements.

For example, employers who are part of a group of employers must each post a notice when they begin the pay equity exercise. This notice must include all the same information that employers not in a group must include in their notices (see Chapter 8, Establish the foundation: Pay equity committees). However, in this case, the notice must also indicate that the employer is in a group of employers and that the pay equity process will establish or update the plan.

Employers who are part of a group of employers must also each post their draft and final pay equity plans on the same day [Act s. 53(2) and s. 55].

18. Parliamentary employers

Parliamentary employers are also subject to the Pay Equity Act through provisions in the Parliamentary Employment and Staff Relations Act (PESRA).

Parliamentary employers include:

- Members and committees of the Senate and the House of Commons;
- The Library of Parliament;
- The offices of the Senate Ethics Officers, the Conflict of Interest and Ethics Commissioner and the Parliamentary Budget Officer;
- The Parliamentary Protective Service; and,
- Any other parliamentary employer [PESRA s. 86.1].

Parliamentary employers have the same obligations as federally regulated employers subject to the Act; they must follow the Act's requirements as if they were public sector employers.

However, administration and enforcement of the pay equity requirements in the Parliamentary Employment and Staff Relations Act are slightly different for parliamentary employers.

18.1 Administration and enforcement

For parliamentary employers, the Commissioner still has the authority:

- To conduct compliance audits and investigations of parliamentary entities;
- To issue compliance orders and notices of contravention; and,
- To deal with complaints.

The Speakers of the Senate and the House of Commons also play a role in these processes.

For example, the Commissioner must provide the Speaker of the Senate and/or the Speaker of the House of Commons with notice before entering a place under the authority of a parliamentary entity [PESRA s. 86.6(1)]. The Commissioner must also notify either or both Speakers after [PESRA s. 86.6(2)]:

- Making or issuing an order;
- Beginning a compliance audit or investigation;
- Being notified of a matter in dispute, an objection or a complaint;
- Referring a question to the Chairperson of the Public Sector Labour Relations and Employment Board (Board);
- Discontinuing the investigation of all or any part of a matter in dispute, objection or complaint;
- Receiving a request for review;
- Causing a notice of contravention to be served; and,
- Issuing, varying or cancelling a notice of contravention.

If a parliamentary employer does not comply with any decision or order, the Commissioner must provide the relevant order, notice of contravention or decision to either or both Speakers

[PESRA s. 86.8(1) and (2)]. The Commissioner can also ask the Board to do so. The Speaker(s) then has to table the document in the Senate, the House of Commons or both [PESRA s. 86.9].

This slightly different approach recognizes and respects parliamentary privilege.

Appeals related to parliamentary employers are heard by the Board, rather than the Canadian Human Rights Tribunal, because of the Board's expertise resolving disputes while respecting parliamentary privilege [PESRA s. 86.3(1)(a)(ii)]. This also ensures that appeals considered under different parts of PESRA are heard by the same body.

If the Commissioner notifies the Speaker of the Senate or of the House of Commons that an appeal has been requested or a question has been referred to the Chairperson of the Board, the Speaker can present evidence and make representations to the Board in the appeal or referral. To enable the Speaker to do so, the Board must, at the Speaker's request, provide the Speaker with a copy of any necessary documents filed in the appeal or referral [PESRA s. 86.7(2)].

Finally, administrative monetary penalties cannot be applied to parliamentary employers, and individual officers, directors, agents, mandataries, senior officials of parliamentary employers or bargaining agents, or others exercising supervisory or managerial functions on their behalf, cannot be held liable for violations of the Act [PESRA s. 86.3(1)].