

PAY EQUITY REQUIREMENTS FOR SMALL PRIVATE SECTOR EMPLOYERS

BY J. PAUL WEARING

The Pay Equity law was enacted to remove gender bias from pay practices. Work traditionally performed by women has tended to be undervalued. The fact that an employer may pay men and women doing the same work the same salary and benefits does not satisfy the law. Pay Equity is more than "equal pay for equal work". It requires comparing the compensation for jobs performed mainly by men to the compensation for jobs performed by women, regardless of the content of the jobs.

Liability to comply with the law has been phased in since January 1, 1990. The phasing is based on the number of employees in the work place as of January 1, 1988. If you are an employer who, on January 1, 1988, employed more than 9 and fewer than 100 employees, Part III of the Act applies to you. Employers who employ between 10 and 99 employees as of January 1, 1988 are deemed to be "Small Private Sector Employers".

Employers in this category are excused from posting a pay equity plan but they are not excused from achieving pay equity.

The timetable for implementing pay equity for employers who had between 50 and 99 employees as of January 1, 1988 is January 1, 1993; for employers who had between 10 and 49 employees, the date is January 1, 1994.

A gender neutral comparison system is used to compare the value of female-dominated and male-dominated job classes. The job comparison system must value the content of the jobs using a composite of skill, effort, responsibility, and working conditions, and this exercise must be free of gender bias.

In work places that are unionized, the law requires employers to negotiate a gender neutral comparison system and pay equity plan with the bargaining agent before the mandatory posting date (posting of pay equity plan).

In the first decision of the Pay Equity Hearings Tribunal to assess the gender neutrality of a job comparison system used for negotiating a pay equity plan, the Tribunal has set the following standards:

Does the comparison system make work, particularly women's work, visible in the work place?

- * Does the information being collected accurately capture the skill, effort, responsibility, and conditions under which it is normally performed?
- * Is the job information being collected accurately and consistently, ie., the same way for the male job class and the female job class?
- * In work places that have no union, it is the sole responsibility of the

employer to prepare a pay equity plan and post it according to the timetable set out in the Act.

Under the law, employees have the right to file a complaint and thereby challenge the results of the job value comparison exercise. Such challenges can lead to investigation by Review Officers who are members of the enforcement arm of the Pay Equity Commission. If settlement of the complaint is not achieved, a hearing will be held by the Pay Equity Hearings Tribunal. It is not uncommon for a Review Officer to fail to endorse the efforts of an employer seeking to comply with the law.

The Government of Ontario has created a legal services clinic to provide free advice and counsel to employees wishing to challenge the results of the job value comparison exercise. Employers must be prepared to justify and defend the pay equity adjustments or lack of adjustments in their salary administration. In order to do this, it is recommended that you maintain detailed records of the process followed in assessing the pay equity of your salary administration.

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