

"We have taught the world that 'woman power' is about the cheapest power on earth. We never put a value on the labour which goes into this or that task."

– Violet McNaughton, journalist and first president of the Women Grain Growers in Saskatchewan

Pay Equity



Women's Legal
Education and
Action Fund

Fonds d'action et
d'éducation juridiques
pour les femmes

What is pay equity?

Simply put, pay equity is the right to equal pay for work of equal value.

In practical terms, pay equity is a compensation practice that requires an employer to pay employees the same wage to male and female employees who are performing work of *equal or comparable value*. It is a broader and more complex concept than equal pay legislation which requires employers to pay employees the same wage for the *same or substantially similar* work.

Determining what is equal or comparable work requires an employer to first establish male and female job classes, determine the value of jobs using a gender-neutral evaluation system, and compare the job classes to identify any disparities. As a result, pay equity can be a subjective process fraught with disagreements over the values of seemingly unrelated jobs, while equal pay legislation involves the relatively simpler task of comparing similar or the same jobs.

Why it is important?

Canada's continuing gendered pay inequity means that many women earn less than they should. Lower salaries for women is an integral part of the feminization of poverty.

Both in the past and in the present, women have earned less than men, particularly women who have jobs that are historically female dominated such as nursing, teaching, cleaning, or clerical work. Although the wage gap between men and women in Canada has narrowed in the past ten years, women still only earn approximately 79 cents for every dollar earned by men. For Aboriginal women, women of colour and racialized or new immigrant women, the wage gap between their earnings and the earnings of white men is even greater than the wage gap between white men and white women.

There are factors other than sex discrimination that explain why gendered wage inequities persist. However, effective and proactive pay equity legislation is one of the few tools that forces employers to examine why employees in traditionally female jobs may be paid less than other employees.

There ought to be a law

Like employment standards legislation, whether you're covered by a pay equity law depends on which province you work in.

In the late 1980s and early 1990s, a number of provinces adopted pay equity legislation, although not everyone is covered, particularly workers in the private sector. Manitoba, New Brunswick, Nova Scotia and PEI have pay equity legislation that covers public service employees. There are pay equity policy frameworks in British Columbia and Saskatchewan, and pay equity negotiations with public sector unions in Newfoundland, but no actual laws compelling employers to ensure there is pay equity in their compensation practices. Ontario and Quebec are the only provinces with comprehensive pro-active pay equity legislation that covers both the private and public sectors.¹ Furthermore, Quebec has recently tabled legislation to strengthen its pay equity law.

The federal government is moving in the opposite direction and undermining the statutory entitlement to pay equity. Following the 2004 report of the Pay Equity Task Force, the federal government has been under pressure to adopt stand alone pay equity legislation similar to Ontario or Quebec's. However, the federal government has recently adopted watered-down, stand-alone pay equity legislation for the public service (private sector employees will continue to be covered by the pay equity provisions in the *Canadian Human Rights Act*.) The new *Public Sector Equitable Compensation Act*:

¹In workplaces of 10 people or more



- Waters down the definitions of female job classes and the value of work.
- Redirects any employee pay equity complaints from the Canadian Human Rights Commission to the Public Service Labour Relations Board. Unions, traditionally the organization that filed pay equity complaints on behalf of its members, will be fined if they assist employees with a complaint.
- Makes pay equity a bargaining issue to be dealt with by unions and the Treasury Board as part of the collective bargaining process, thus making it possible for the most vulnerable workers to have their right to pay equity traded for some other benefit at the bargaining table.

This new law is a step backwards in the struggle for pay equity, and it will likely face a court challenge to see if it is a constitutional change. Pay equity, after all, is also a right protected by the equality provisions in the *Canadian Charter of Rights and Freedoms*.

LEAF and Pay Equity

LEAF has been involved in several pay equity cases before the courts.

In *Haldimand-Norfolk Regional Board of Commissioners of Police et al v. Ontario Nurses Association et al* (1990), the Ontario Nurses Association successfully argued before the new Pay Equity Tribunal that nurses should be in the same comparator class as police in the municipality of Haldimand-Norfolk. LEAF sponsored the intervention of the Equal Pay Coalition which argued that the purpose of the newly enacted Ontario *Pay Equity Act* was to promote equality for women and that a new interpretation of the *Act* to exclude a larger number of women from its benefits would be inconsistent with section 15 of the *Charter*. The decision was upheld by the Ontario Court of Appeal.

LEAF intervened in *NAPE (Newfoundland Association of Public Employees) v. Newfoundland* before the Supreme Court of Canada. The

Court accepted LEAF's arguments that the Newfoundland government discriminated against female workers by paying them unequal wages which was contrary to section 15 of the *Charter*. However, the Court ultimately ruled that this was justifiable under section 1 of the *Charter* because discrimination against women was justified in this case if a severe fiscal deficit overrides the government's obligation to remedy wage discrimination.

The decision in *NAPE* shows how much work LEAF has yet to do in the area of equality rights and social justice. The new federal pay equity legislation also shows that increased efforts in the area of law reform are necessary.

Resources

Government Resources

Ontario Pay Equity Commission

www.payequity.gov.on.ca/index_pec.html

Federal Pay Equity Program www.hrsdc.gc.ca/eng/labour/equality/pay_equity/about/index.shtml

Canadian Human Rights Commission

www.chrc-ccdp.ca/disputeresolution_reglementdifferends/payequity_paritesalariale-en.asp

Union and NGO Resources

Equal Pay Coalition www.web.net/~equalpay/

Canadian Labour Congress

www.canadianlabour.ca/en/Women

Public Service Alliance of Canada

www.pfac.com/what/payequity/pay-e.cfm

Pay Equity, Laws and Policies

Federal: *Human Rights Code*

www.chrc-ccdp.ca/default-en.asp?lang_update=1

British Columbia: *Human Rights Code* www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm

Manitoba: *Pay Equity Act* <http://web2.gov.mb.ca/laws/statutes/ccsm/p013e.php>

New Brunswick: *Pay Equity Act* www.gnb.ca/acts/acts/p-05-01.htm

Newfoundland and Labrador: *An Act Respecting the Protection of Human Rights* www.gov.nf.ca/hoa/statutes/h14.htm

Nova-Scotia: *Pay Equity Act*

www.gov.ns.ca/legislature/legc/statutes/payequit.htm

Ontario: *Pay Equity Act*

www.labour.gov.on.ca/pec/peht/peht_act.html

Prince Edward Island: *Pay Equity Act*

www.gov.pe.ca/law/statutes/pdf/p-02.pdf

Quebec: *Pay Equity Act*

www.canlii.org/qc/laws/sta/e-12.001/20051019/whole.html

Saskatchewan: *The Saskatchewan Human Rights Code*

www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S24-1.pdf

Yukon: *Human Rights Act* www.canlii.org/yk/laws/sta/116/20041124/whole.html

