



PAY EQUITY COMMITTEES

Interpretations, Policies and Guidelines

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Cat. No.: HR4-58/2021E-PDF

ISBN: 978-0-660-40609-1

TABLE OF CONTENTS

INTERPRETATIONS, POLICIES AND GUIDELINES	4
Pay Equity Committees	4
1. Purpose.....	4
2. Employers that are required to have a pay equity committee	4
3. Requirements concerning the composition of pay equity committees.....	5
4. When the requirements for a pay equity committee cannot be met.....	5
5. What the Pay Equity Commissioner will consider when authorizing a departure from the requirements regarding pay equity committees	6
5.1. Interpretation of the term “appropriate under the circumstances”	6
5.2. Interpretation of the term “all reasonable efforts”	7
5.3. The degree and type of effort	7
5.4. Other considerations.....	7
5.4.1. Comparable standards and practices within a particular industry	8
5.4.2. Actions that an employer could have reasonably taken but did not	8
5.4.3. Corrective measures.....	8
6. Examples of actions that employers should take to establish pay equity committees	9
6.1. Communications and awareness measures	9
6.2. Support measures.....	10
7. Referenced Pay Equity Act Provisions	11

INTERPRETATIONS, POLICIES AND GUIDELINES

Pay Equity Committees

1. Purpose

This Interpretation, Policy and Guideline (IPG) covers the following:

- Employers that are required to have a pay equity committee;
- Requirements concerning the composition of pay equity committees;
- When the requirements for a pay equity committee cannot be met;
- What the Pay Equity Commissioner will consider when authorizing a departure from the requirements regarding pay equity committees; and,
- Examples of actions that employers should take to establish pay equity committees.

*This document does not replace seeking out expert legal advice. This document is technical in nature and should not be used as a plain language resource. Plain language resources are available at www.payequitychrc.ca/en.

**Note that this IPG does not provide an exhaustive list of the factors that the Pay Equity Commissioner will consider when making a determination. These factors will develop over time.

***The term “employer” in this document can also refer to a “group of employers” that has been recognized by the Pay Equity Commissioner.”ⁱ

2. Employers that are required to have a pay equity committee

Sections 16 and 17 outline that the following employers must make “all reasonable efforts” to establish a pay equity committee:

- those with 100 or more employees; and,
- those with 10 to 99 employees, if some or all of their employees were unionized on the date on which the employer became subject to the Act.

Employers with 10 to 99 non-unionized employees are not required to establish a pay equity committee. However, they may, on their own initiative or at the request of an employee, decide to establish one. Should this be the case, they must notify the Pay Equity Commissioner that they are doing so.

3. Requirements concerning the composition of pay equity committees

A pay equity committee must be composed of at least three members and meet the following requirements:ⁱⁱ

- at least two-thirds must represent the employees who are covered by the plan;
- at least 50% of all the members must be women;
- at least one member must be selected by the employer to represent it;
- where there are unionized employees, at least one member must be selected by each of the bargaining agents;¹ and,
- where there are non-unionized employees, at least one member must be selected by non-unionized employees to represent them.

4. When the requirements for a pay equity committee cannot be met

Employers must file an application with the Pay Equity Commissioner if they cannot:

- Establish a pay equity committee to establish or update the pay equity plan; or,
- Establish or continue a pay equity committee that complies with the composition requirements outlined in section 19 of the Act.

On receipt of an application and upon review of the evidence provided by the employer and any interested parties (e.g. any employee or bargaining agent), the Pay Equity Commissioner may authorize different committee requirements, if she is of the opinion that it is appropriate in the circumstances.

The Pay Equity Commissioner has the discretion to grant or deny an authorization, based on whether the circumstances are appropriate and meet the purpose of the Act.

Employers must keep in mind that time will not be put on hold during the review process of their application. It is a good idea to continue to advance the pay equity work while the application is being processed.

¹ Each bargaining agent selects at least one person to be a member and to represent employees who are members of any bargaining unit represented by that bargaining agent.

5. What the Pay Equity Commissioner will consider when authorizing a departure from the requirements regarding pay equity committees

In assessing the evidence provided in each application, the Pay Equity Commissioner will determine whether the **request is appropriate under the circumstances.**ⁱⁱⁱ

In determining whether the request is appropriate under the circumstances, the Pay Equity Commissioner will consider whether an employer has made **“all reasonable efforts”** to establish a pay equity committee that meets the composition requirements in section 19 of the Pay Equity Act.

In determining whether an employer has made all reasonable efforts, the Pay Equity Commissioner may consider, among other factors, the **degree of the effort** (e.g. the length of time of the effort, how many times the effort has been made and the resources dedicated to the effort) and the **type of effort** (i.e. the action itself).

In assessing the evidence from each application, the Pay Equity Commissioner **may also consider:**

- Comparable standards and practices within the particular industry (if available);
- The actions that an employer could have reasonably taken but did not; and,
- Whether corrective measures have been taken to address the inability of the employer to establish a pay equity committee.

5.1. Interpretation of the term “appropriate under the circumstances”

The word “appropriate” can be interpreted to mean “suitable” or “justifiable” in the circumstances. These circumstances refer to the facts and evidence presented by the employer.

The Commissioner will examine the evidence submitted by the employer to determine whether an application is appropriate in the circumstances.

She may request additional information from the employer and any other interested parties (i.e. employees, bargaining agents).

Key to the decision of whether the application is appropriate under the circumstances will be whether suitable solutions exist that meet the goals of the Pay Equity Act. Those goals include involving employees in the development and maintenance of pay equity plans in certain workplaces.

5.2. Interpretation of the term “all reasonable efforts”

Employers who must establish a pay equity committee are expected to take genuine and meaningful steps to do so.

The term “all reasonable efforts” indicates that a high level of thoroughness is needed. It means that employers must take every action that is usual, necessary, or rationally connected to the task of creating a pay equity committee. In other words, employers should leave no stone unturned in their efforts to establish a pay equity committee that reflects the composition set out in the Act.

The term “all reasonable efforts” does not mean that an employer must suffer undue hardship to establish a pay equity committee that complies with the Act.

5.3. The degree and type of effort

The Pay Equity Commissioner may consider the **degree** and **type of effort** to determine whether an employer has met the standard of “all reasonable efforts”.

The **degree of effort** refers to among other things, the length of time of the effort, how many times the effort has been made and the resources dedicated to the effort. Examples of actions that may satisfy the standard of “all reasonable efforts” include:

- Communicating with employees on multiple occasions, and through different means (e.g. through verbal and written communications);
- Providing information concerning the pay equity exercise in a timely manner and keeping the information accessible for an appropriate length of time; and,
- Providing a reasonable period of time for employees to respond to communications concerning the pay equity exercise.

Examples of actions that may meet the **type of effort** (i.e. the action itself) required to satisfy the standard of “all reasonable efforts” could include:

- Providing information in an accessible format (e.g. for employees using assistive technologies such as screen readers);
- Providing a mechanism for employees to ask questions (e.g. anonymous mail box); and,
- Dedicating sufficient resources to the establishment of a pay equity committee (e.g. time, expertise).

5.4. Other considerations

In assessing the evidence from each application, the Pay Equity Commissioner may also consider:

- Comparable standards and practices within the particular industry;
- The actions that an employer could have reasonably taken but did not; and,
- Whether corrective measures have been taken to address the inability of the employer to establish a pay equity committee.

5.4.1. Comparable standards and practices within a particular industry

In assessing the evidence in an application, the Pay Equity Commissioner may consider comparable pay equity standards and practices from the employer's industry as they develop over time.

If those standards exist, the Pay Equity Commissioner may compare the employer's efforts with what other employers in the same industry have done to establish a pay equity committee that meets the criteria in section 19.

For example, an employer could demonstrate that they made genuine efforts to implement best practices provided by their industry association.

5.4.2. Actions that an employer could have reasonably taken but did not

In assessing the evidence in an application, the Pay Equity Commissioner may consider actions that an employer could have reasonably taken to establish a pay equity committee that meet the criteria in section 19, but did not.

- For example, the Pay Equity Commissioner notes that an employer put in place a communication strategy to solicit members for the pay equity committee. While the communication strategy included numerous methods of communication, the employer only provided the information once.

5.4.3. Corrective measures

In assessing an application, the Pay Equity Commissioner may consider the facts that led to the inability to meet the requirements and the corrective measures that the employer took to address them. For example:

- An employer encounters an obstacle in recruiting women committee members. If the employer finds that the cause of this obstacle is recruitment, but does not make efforts to find a solution, this would not meet the "all reasonable efforts" standard.
- An employer could address employee reluctance to participate in the pay equity committee due to a lack of technical knowledge about pay equity by providing options such as training or by acquiring the assistance of external consultants.

6. Examples of actions that employers should take to establish pay equity committees

Examples of the types of actions an employer should take to successfully establish a pay equity committee:

- Communications and awareness measures; and,
- Support measures.

6.1. Communications and awareness measures

An employer should inform their employees about the roles and tasks of the pay equity committee in a clear and timely manner through various communication methods (e.g. intranet, posters, email, team meetings, and pamphlets).

An employer should educate employees about pay equity and the role of the pay equity committee.

- For example, an employer could communicate their support for the purpose of the Act and the rights of their employees through email communications and team meetings.
 - An employer can consult the pay equity website of the Canadian Human Rights Commission to access resources that can help workplace stakeholders, including employers and employees, better understand, apply, and comply with the Act.

An employer should clearly communicate to all employees that they are being invited to join the committee.

- For example, an employer could communicate, through various means, and more than once, that a pay equity plan is being developed by a pay equity committee for the workplace and that employees do not have to be experts to participate.

6.2. Support measures

An employer should reassure its workforce that there will be no adverse employment consequences from participating in the pay equity committee. For example:

- An employer should communicate that employees will receive paid time to prepare and participate in committee activities and that their workload will be adapted as necessary. Employees who participate in training will be deemed to be at work^{iv} and compensated accordingly for their time.^v
- An employer should notify employees that they are protected against reprisals.

An employer should make efforts to help facilitate the selection of pay equity committee members.^{vi}

- For example, an employer must make their premises and equipment (e.g. meeting rooms, computers) available to non-unionized employees when they are voting to select their representative.

An employer should demonstrate to employees that it will support the work of the pay equity committee.^{vii} For example:

- An employer should inform their employees about the training options and facilitate their participation in that training.
- An employer should support members in their voting obligations by providing the needed resources (e.g. time, premises, equipment, information).

An employer must provide any information considered necessary by pay equity committee members to establish and update the pay equity plan.^{viii}

- For example, the employer should provide members with salary and compensation information so that members can calculate the total compensation of each job class.

7. Referenced Pay Equity Act Provisions

Group of employers

4 (1) Two or more employers described in any of paragraphs 3(2)(e) to (i) that are subject to this Act may form a group and apply to the Pay Equity Commissioner to have the group of employers recognized as a single employer.

Requirement to establish pay equity committee

16 (1) The following employers must, in respect of the pay equity plan that the employer is required to establish, make all reasonable efforts to establish a pay equity committee:

(a) an employer that is considered to have 100 or more employees for the purpose of section 6 or 7, as the case may be; or

(b) an employer that is considered to have 10 to 99 employees for the purpose of section 6 or 7, as the case may be, if some or all of its employees were unionized employees on the date on which the employer became subject to this Act.

Voluntary establishment of pay equity committee

16 (2) An employer that is considered to have 10 to 99 employees for the purpose of section 6 or 7, as the case may be, may, on its own initiative or at the request of an employee, decide to establish a pay equity committee if all of its employees were non-unionized employees on the date on which the employer became subject to this Act.

Notice to Pay Equity Commissioner

16 (3) An employer referred to in subsection (2) that establishes a pay equity committee must notify the Pay Equity Commissioner that it has done so.

Requirement to establish pay equity committee — group of employers

17 (1) The following groups of employers must, in respect of the pay equity plan that the group is required to establish, make all reasonable efforts to establish a pay equity committee:

(a) a group of employers that is considered under section 18 to have 100 or more employees; or

(b) a group of employers that is considered under section 18 to have 10 to 99 employees, if at least one of the employers in the group had unionized employees on the date on which it became subject to this Act.

Voluntary establishment of pay equity committee

17 (2) A group of employers that is considered under section 18 to have 10 to 99 employees, may, on its own initiative or at the request of an employee, decide to establish a pay equity committee if each of the employers in the group had only non-unionized employees on the date on which it became subject to this Act.

Notice to Pay Equity Commissioner

17 (3) A group of employers referred to in subsection (2) that establishes a pay equity committee must notify the Pay Equity Commissioner that it has done so.

Composition of committee

19 (1) A pay equity committee is to be composed of at least three members and must also meet the following requirements:

(a) at least two-thirds of the members must represent the employees to whom the pay equity plan relates;

(b) at least 50% of the members must be women;

(c) at least one member must be a person selected by the employer to represent it;

(d) if some or all of the employees to whom the pay equity plan relates are unionized employees, there must be at least the same number of members to represent those employees as there are bargaining agents, with each bargaining agent selecting at least one person to be a member and to represent employees who are members of any bargaining unit represented by that bargaining agent; and

(e) if some or all of the employees to whom the pay equity plan relates are non-unionized employees, at least one member must be a person selected by those employees to represent them.

Committee cannot be established

19 (3) If the employer is unable to establish a pay equity committee that meets the requirements set out in any of paragraphs (1)(a), (b), (d) and (e), it must apply to the Pay Equity Commissioner for authorization to establish a committee with different requirements than the ones set out in that paragraph.

Measures to facilitate the selection of members

22 (1) To facilitate the selection of employee representatives on a pay equity committee, an employer must make available, as necessary, its premises and equipment and must permit its employees to take time away from their work, as required, to participate in the selection process.

Measures to support work of committee

22 (2) Once the pay equity committee is established, the employer must make available, as necessary, its premises and equipment for the work of the committee and must permit employees who are members of the committee to take time away from their work, as required, to participate in training sessions and meetings of the committee and to perform their work as a member of the committee.

Employee deemed at work

22 (3) An employee who takes time away from their work in accordance with subsection (1) or (2) is deemed to be at work for all purposes.

Requirement to provide information – employer

23 (1) An employer must provide the pay equity committee with any information in the employer's possession that the committee considers necessary for the establishment of the pay equity plan.

Notice of establishment of plan without committee

25 If an employer, despite having made all reasonable efforts, is unable to establish a pay equity committee, the employer must apply to the Pay Equity Commissioner for authorization to establish the pay equity plan without a pay equity committee. If that authorization is granted, the employer must post a notice informing the employees to whom the pay equity plan relates that the employer will establish the pay equity plan without a pay equity committee.

Notice of establishment of plan without committee — group of employers

26 If a group of employers, despite having made all reasonable efforts, is unable to establish a pay equity committee, the group must apply to the Pay Equity Commissioner for authorization to establish the pay equity plan without a committee. If that authorization is granted, each employer in the group must post a notice informing its employees to whom the pay equity plan relates that the group of employers will establish the pay equity plan without a committee.

Committee does not meet requirement after establishment

27 If a pay equity committee established by an employer does not, at any time after it has been established, meet the requirements set out in any of paragraphs 19(1)(a), (b), (d) and (e), the employer must apply to the Pay Equity Commissioner for authorization for the continuation of the committee with different requirements than the ones set out in that paragraph.

Requirement to establish pay equity committee

67 (1) The following employers must, in respect of a pay equity plan that the employer is required to update, make all reasonable efforts to establish a pay equity committee:

(a) an employer referred to in any of paragraphs 3(2)(a) to (d) or (2)(e) to (i) that is considered under paragraph 69(a) or 70(a) to have 100 or more employees; or

(b) an employer referred to in any of paragraphs 3(2)(a) to (d) or (2)(e) to (i) that is considered under paragraph 69(b) or 70(b) to have less than 100 employees, if some or all of its employees are unionized employees on the day on which the employer posts the notice under subsection 65(1) in respect of the pay equity plan.

Committee cannot be established

67 (6) If an employer is unable to establish a pay equity committee that meets the requirements set out in any of paragraphs 19(1)(a), (b), (d) and (e), it must apply to the Pay Equity Commissioner for authorization to establish a pay equity committee with different requirements than the ones set out in that paragraph.

Requirement to establish pay equity committee — group of employers

68 (1) The following groups of employers must, in respect of a pay equity plan that the group is required to update, make all reasonable efforts to establish a pay equity committee:

(a) a group of employers that is considered under section 71 to have 100 or more employees; or

(b) a group of employers that is considered under section 71 to have less than 100 employees, if at least one of the employers in the group has unionized employees on the day on which the notice is posted in accordance with subsection 66(1) in respect of the pay equity plan.

Voluntary establishment of pay equity committee

68 (2) A group of employers that is considered under section 71 to have less than 100 employees may, on its own initiative or at the request of an employee, decide to establish a pay equity committee if each of the employers in the group had all non-unionized employees on the day on which the notice is posted in accordance with subsection 66(1) in respect of the pay equity plan that the group is required to update.

Committee cannot be established

68 (6) If a group of employers is unable to establish a pay equity committee that meets the requirements set out in any of paragraphs 19(1)(a), (b), (d) and (e), it must apply to the Pay Equity Commissioner for authorization to establish a pay equity committee with different requirements than the ones set out in that paragraph.

Notice of update of plan without committee

73 If an employer, despite having made all reasonable efforts, is unable to establish a pay equity committee in respect of a pay equity plan that it is required to update, the employer must apply to the Pay Equity Commissioner for authorization to update the pay equity plan without a committee. If that authorization is granted, the employer must post a notice informing the employees to whom the pay equity plan relates that the employer will update the pay equity plan without a committee.

Notice of update of plan without committee — group of employers

74 If a group of employers, despite having made all reasonable efforts, is unable to establish a pay equity committee in respect of a pay equity plan that it is required to update, the group must apply to the Pay Equity Commissioner for authorization to update the pay equity plan without a committee. If that authorization is granted, each employer in the group must post a notice informing its employees to whom the pay equity plan relates that the group of employers will update the pay equity plan without a committee.

Committee does not meet requirement after establishment

75 If a pay equity committee established by an employer does not, at any time after it has been established, meet the requirements set out in any of paragraphs 19(1)(a), (b), (d) and (e), the employer must apply to the Pay Equity Commissioner for authorization for the continuation of the committee with different requirements than the ones set out in that paragraph.

Authority — plan without committee

108 On receipt of an application referred to in section 25, 26, 73 or 74, the Pay Equity Commissioner may, if he or she is of the opinion that it is appropriate in the circumstances and in accordance with any regulations made under paragraph 181(1)(o), authorize the establishment or update, as the case may be, of a pay equity plan without a pay equity committee.

Authority — different committee membership

109 On receipt of an application referred to in subsection 19(3), section 27, subsection 67(6) or 68(6) or section 75, the Pay Equity Commissioner may, if he or she is of the opinion that it is appropriate in the circumstances and in accordance with any regulations made under paragraph 181(1)(o), authorize the establishment or continuation, as the case may be, of a pay equity committee that does not comply with the requirements set out in any of paragraphs 19(1)(a), (b), (d) and (e).

ⁱ See Pay Equity Act, section 4(1).

ⁱⁱ See Pay Equity Act, section 19(1).

ⁱⁱⁱ See Pay Equity Act, sections 108 and 109.

^{iv} See Pay Equity Act, section 22(3).

^v See Pay Equity Act, section 22(2).

^{vi} See Pay Equity Act, section 22(1).

^{vii} See Pay Equity Act, section 22(2).

^{viii} See Pay Equity Act, section 23(1).