When we support our clients in developing pay systems and structures, typical requirements are that they be straightforward, simple to manage and consistent from one country to the other. In many jurisdictions, this approach does not pose problems. In Canada however, one of the realities of conducting business and developing effective compensation systems is the requirement to comply with pay equity legislation.

The intent of this document is to provide a broad overview of Canadian pay equity legislation, as opposed to specific details, and to bring to your attention the issues that Hay Group has encountered.

**Preamble**

In Canada, Employment and Labour Standards are typically under Provincial or Territory jurisdiction. There are exceptions when organizations are regulated under the federal jurisdiction; examples of such would be banks, insurance companies, communications companies, interprovincial transportation companies (airlines, rail, trucking companies), etc.

In addition to the Federal Government of Canada, six Canadian provinces have enacted specific pay equity legislation. They are:

- Manitoba
- New Brunswick
- Nova Scotia
- Ontario
- Prince Edward Island
- Québec.

Three provinces, Saskatchewan, Newfoundland and British Columbia, have not enacted pay equity laws but have developed policy frameworks for negotiating pay equity with some specific public sector employees.

Only Alberta has neither passed pay equity legislation nor developed a pay equity negotiation framework.

Legislation in Manitoba, New Brunswick, Nova Scotia and Prince Edward Island cover strictly public sector employers and employees.

All of Canada’s provinces and territories also have human rights legislation which prohibits discrimination in employment generally and which, in the absence of or in addition to pay equity legislation, can be a tool for addressing discrimination in pay.

**Equal pay for equal work v. equal pay for work of equal value**

It is important to understand the difference between these two concepts. Equal pay for equal work requires that people who perform the same work (job) be paid the same regardless of gender/race/religion or any other potential discriminatory consideration. In the case of equal pay for work of equal value the requirement is broader and recognizes that the comparison should be to any job in the same employing organization that is of equal or comparable value (as measured through job evaluation). This is because a job might be occupied by women and paid less than an equivalent job that is occupied by men.

**The main legislation**

Pay equity or, equal pay for work of equal value, has been legislated and applies to all employers, in the public and private sectors in three jurisdictions:

- The Province of Ontario (since 1989)
- The Province of Québec (since 1997, amended in 2009) and,
- The Federal jurisdiction (since 1977).
In the first two cases, (Ontario & Québec) legislation covers employees of the employer who are active in that province regardless of where the employer is headquartered. The federal legislation applies to the federal government itself and companies in sectors that are federally regulated regardless of where the employee works.

These pay equity initiatives were “gender driven” and were implemented to “eliminate the existing wage gap between female predominant work and male predominant work.” The legislation was enacted at different times and each jurisdiction has its own specificities regarding timing and implementation requirements. The basic principle is that the compensation package offered to a job where incumbents are predominantly female should be equal to that of a job where incumbents are predominantly male and where the work is deemed to be of “equal” or “comparable” value.

Things to consider if you operate where pay equity is legislated

Job Documentation

When implementing a pay structure/compensation plan, employers must be careful not to automatically apply job evaluation scores based on job descriptions that are generic or were developed to represent jobs elsewhere. While legislation does not provide detailed requirements regarding job documentation, employees can always submit a complaint to the respective commission claiming that the value of their job was determined based on documentation that is not representative of their work.

Evaluations

What constitutes female and male predominant jobs varies from one jurisdiction to another and to a lesser extent, so does the definition of what constitutes “equal” or “comparable.” However, one thing that all three laws have in common is the definition of value.

In all cases, value is to be determined by measuring:

- The skills required to do the job competently (know-how)
- The effort required by the job (problem solving/mental effort)
- The responsibilities of the job (accountability)
- The working conditions affecting incumbents in the job.

Point bands

When developing a classification structure, care must be given to the point spreads attached to the bands. The percentage spread in the band widths need to be as consistent as possible. They either should all have approximately the same percentage width or at a minimum the growth in percentage width from one band to the next should be consistent. A structure with varying band widths can be construed by the commissions as an attempt to prevent certain female predominant jobs from being classified in the same band, hence making it “comparable” to a higher paid male predominant job.

Alignment to market values

Pay equity legislation was developed on the assumption that gender-related inequalities in pay are systemic (i.e. “the market” undervalues work typically done by women). Hence, any salary structure or compensation system where job rates are developed solely on the basis of market alignment will de facto be suspect and most likely deemed to be non-compliant.

All three sets of legislation recognize that market pressures or skills shortages may exist. In certain cases exceptions are allowed but such must be applied with extreme care and be well documented.

Pay practices as much as pay policy

For an organization to show that they have written policies and structures that comply with legislative requirements is a first step. However, organizations may also have to show that these policies are implemented equally and consistently to female and male predominant jobs.

In addition to reviewing policies, the commissions may be interested in looking at overall base salary compa-ratios of female jobs versus those of male jobs. Also of interest would be actual bonuses paid and benefits available to male jobs versus those paid to comparable female jobs.

Attaining and maintaining pay equity is required

When asked, some organizations may respond that they completed a pay equity review and produced a pay equity plan some years ago and have met their requirement. That comment may only be half correct as pay equity plans need to be maintained.

An initial pay equity analysis will indicate to an employer the measures that it needs to implement in order to attain compliance. However, compliance is not a one-time-occurrence.

As indicated, organizations are also required to maintain pay equity. Legislation refers to “changed circumstances” as events that would trigger the need for an organization to conduct a new pay equity analysis to determine if changes in the organization affected the pay relativities between male and female predominant jobs. Examples of such “changed circumstances” are:
Re-evaluation of jobs that may affect relativity

Disappearance of a male job that was used as a comparator and the need to identify a new comparator and the impact of such

- Mergers, acquisitions or divestitures
- Reorganizations/downsizing/consolidation of duties
- A change in reward philosophy or strategy
- Introduction of a new job evaluation methodology

Retroactivity of pay equity adjustments

Any legislatively defined inequity that is identified has to be corrected going forward but the requirement for an employer may not stop there.

When involved, the Commissions may also require that pay equity adjustments be paid retroactively to the date where the inequity was created or in some cases to dates that were specified in the legislation as target dates for compliance.

Adjustments have to be paid to active employees. In addition, employers have been required to contact individuals who had been in such jobs previously and/or may have left the company and compensate them accordingly. This exercise has often proved to be very time consuming and costly.

One must also keep in mind that adjustments are not limited to base salary as the legislation refers to total remuneration. All aspects must be considered and retroactive payments must be made accordingly (for example, employer pension plan contributions related to the additional pay that incumbents would receive due to pay equity adjustments can be required).

Finally, in some jurisdictions interest must also be applied to retroactive adjustments. In the Province of Québec, such interest is set at 5%.

Acquiring pay equity liabilities

We all know of the process of due diligence that occurs when one organization is going through the process of acquiring another one. In short, the exercise is to determine, among many other things, what type and size of liabilities the purchaser may acquire.

When acquiring another firm, your organization will also acquire its pay equity responsibilities and potential liabilities.

To minimize this, it is always advisable that the “acquiring” firm assess what activities have taken place in the past, in relation to pay equity and what the current status of the acquisition is in relation to pay equity compliance.

Enforcement

When legislation was introduced, the activities of the enforcement bodies (referred to as “commissions”) were mostly complaint driven. Commission staff would respond to complaints submitted by employees, perform the necessary investigations and render decisions.

Over the years, particularly in the Ontario and Québec jurisdictions, the enforcement approach has materially evolved as both commissions have taken a far more proactive role in seeking non-compliant organizations.

In Ontario, any employer can expect to receive, at some point, a letter from the Commission, reminding them of their obligations toward implementation and maintenance of pay equity. The letter in question also requires the employer to provide the Commission with information about years of operation in Ontario, pay equity activities conducted to date, employee population and list of current jobs. Based on the information that it receives, the Commission may decide to initiate a more detailed review of the employer’s pay practices.

In Québec, any organization that employs 6 or more employees is required to submit, annually, a “declaration” stating where it stands in relation to the requirements of the legislation. Indications to date are that this process is closely monitored by the Québec Commission.

Many organizations have received letters explaining the process to comply with the requirements. Where no action has been taken by employers, follow-up letters have been issued.

The Commission has openly declared that the information received from employers (or the absence of such), would serve in the determination of its enforcement approaches and activities. The declaration is a legal requirement and non-compliance can result in fines of up to $45,000.

Also of interest is that recently the Québec Commission (La commission de l’équité salariale du Québec) has started posting, on its website, the names of employers whose pay practices were found to be non-compliant.

Federally, the government has initiated a process of auditing the activities of federally regulated employers. It is also considering new legislation that will increase the compliance requirements.
Moving forward

Hay Group has developed a diagnostic process to identify pay management policies and practices that could be questionable. With this we can help clients better understand and manage their risks in the area of pay equity as well as helping them develop tools, systems and practices that will be “gender neutral.”

Our audit focuses on the following eight areas:

- **Job analysis and evaluation** – Ensure that credible and acceptable job analysis and evaluation processes are in place and are compliant with pay equity legislation.

- **Classifications and structures** – Ensure that classification and salary structure models are consistent and do not contribute to inequities or the perception of inequities.

- **Internal pay analysis** – Ensure that internal pay differences are rational and do not indicate bias across employee demographic groups.

- **Market interface** – Ensure that the use of permissible pay differences is supported by robust market/retention/turnover data.

- **Strategy / policy** – Ensure that reward strategies, reward design and administration policies do not provide inherent bias.

- **Total remuneration** – Ensure that inequities are not introduced through elements other than base pay (incentive design, group benefits, pension, vacation and sick leave, etc.).

- **Practices** – Ensure that pay equity compliance does not only exist “on paper” but that the actual practices of the employer are consistent with its policies.

- **Perceptions** – Ensure that reward programs are perceived as fair and equitable by senior leaders, management and employees and that pay equity compliance has been communicated throughout the organization (note: in many instances, legislation requires that the outcomes of pay equity exercises be posted for employee review).

The client deliverable is a documented report that identifies our findings and provides an overall assessment of the client’s risk profile. The consulting fees are dependent on the scope and complexity of the client’s population, history and reward programs. As a result of the diagnostic, organizations have a better assessment of their level of risk in potential pay equity litigation and adjustment costs.

We always advise clients to seek a legal review of our conclusions and the implications for their operations by their legal counsel or external counsel. Hay Group cannot provide legal opinions or offer legal advice. Any recommendations that we make are based on information that our clients provide to us, our knowledge of Canadian pay equity legislation as well as our deep expertise in reward management processes. In short, while our involvement will provide reassurance for the client, and we are recognized by the authorities as experts in the field, we cannot predict what an officer of the applicable commission might conclude, as they have considerable freedom in exercising judgement.

For more information
Contact us if you would like to understand more about how Hay Group can help you with pay equity.

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