Pay Equity Act

Key Recommendations

Canada’s unions welcome the introduction of proactive pay equity legislation in Bill C-86. The Pay Equity Act establishes a proactive obligation on employers in the federal jurisdiction to identify and redress systemic, gender-based discrimination and ensure that workers in predominantly female job classes receive equal pay for work of equal value.

The introduction of this legislation follows decades of activism by trade unions and feminist organizations. The 2004 Pay Equity Task Force Final Report (also known as the Bilson Report) laid out a clear roadmap for such legislation, following two years of extensive study. Proactive pay equity regimes in several provinces—most notably Ontario and Quebec—offer good examples of what can be achieved, as well as what to avoid.

Many of the provisions in the Act fulfill recommendations of the Bilson Report as well as meet some of the expectations the Canadian Labour Congress set out during the government’s consultation.

Upon a more detailed review of the Act, we have identified some areas of concern, and we have a few questions that require clarification from government. In some cases, amendments are required if the Act is to fulfill the objective to close the gender pay gap and redress discrimination in compensation for women.

1. Purpose Clause, Section 2

The Bilson Report recommended that “the new federal pay equity legislation include a purpose clause and/or preamble to provide a context and interpretive framework for the legislation.” The Pay Equity Act contains a purpose clause, but we have a serious concern with the interpretive framework it establishes.

Section 2 contains a qualifying phrase, “while taking into account the diverse needs of employers.” In this particular clause, this language undermines the intentions of the Act, which is to address systemic gender wage discrimination. It also undermines the human right of equal pay for work of equal value.
The current purpose clause of the Canadian Human Rights Act states:

> The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have……without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

You will note that there is no reference to the diverse needs of employers.

The Bilson Report recommended that the Government “enact new stand-alone, proactive pay equity legislation in order that Canada can more effectively meet its international obligations and domestic commitments, and that such legislation be characterized as human rights legislation” (Recommendation 5.1), and that “the new federal pay equity legislation include a purpose clause and/or preamble to provide a context and interpretive framework for the legislation” (Recommendation 5.9).

As it currently stands, the language in the purpose clause opens the door to the derogation from human rights so that the fundamental human right of equal pay for work of equal value is screened through the needs of employers. The current language significantly limits fundamental human rights, as all obligations and rights will have to be read through the needs of employers.

If the intention of this language is to acknowledge that there are diverse types of employers with different realities and structures in the federal jurisdiction, we believe this is accomplished in the operational sections of the agreement. There are different provisions for different sizes and types of employers, processes for unionized and non-unionized workplaces, and other types of flexibility built into the regulation. An acknowledgement is not required in the language that sets out the Act’s purpose.

**RECOMMENDATION**

Remove the phrase “while taking into account the diverse needs of employers.”
2. Unanimity of Employee Groups on Pay Equity Committees, Section 20

Section 20(1) on voting in pay equity committees states that a decision of the groups who represent employees must be unanimous, or they forfeit the right to vote and the employer’s decision prevails. The CLC has serious concerns about this, particularly given the complexity of some enterprises and the number of bargaining agents or groups of employees involved. There is no requirement for unanimity in the Quebec legislation; a majority agreement is required.

It is worth noting that there are other provisions where the employer has a lot of ability to act unilaterally.

The Quebec Pay Equity Act, Section 25 states:

25. The representatives of the employees as a group and the representatives of the employer as a group have one vote, respectively, within the pay equity committee.

If, on a given question, a majority decision is not reached among the representatives of the employees, the employer shall decide the question.

What this language means is that if the parties on the committee are unable to attain a majority vote, the employer may act. Majoritarianism is a fundamental principle for democracy and not the elevated standards of unanimity.

RECOMMENDATION

Amend the legislation to bring this in line with Quebec’s approach.

3. Pay Equity Committees, Sections 14(1), 16(1), and 16(2)

This Act requires employers to “to make reasonable efforts to establish a pay equity committee.” This language sets a weak standard. The establishment of the pay equity committee should be mandatory, and the employer should be required to negotiate in good faith. There is good faith language in both Ontario and Quebec legislation.

RECOMMENDATION

Amend the legislation as follows: The Employer must establish a pay equity committee and shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on a pay equity plan.
4. Retroactivity in Pay Equity Maintenance, Section 88(4)

The section on *Increases in Compensation* in the provisions for maintenance of pay equity appears to exclude retroactivity for employees where wage gaps have arisen in the interim between posting the original pay equity plan and the five-year review. However, the provision only requires retroactivity to when the revised pay equity plan was posted, not to when the gap first occurs.

Also, much of the calculations seem to be left to regulations. Section 88(2) with reference to lump sums is particularly unclear on any adjustments regarding the "previous pay equity plan was posted and to end no later than the day on which the revised plan was posted in accordance with... Section 85(2)."

A similar provision in Quebec's legislation, which denied retroactive pay equity adjustments back to the time of the breach, was recently struck down by the Supreme Court of Canada.

RECOMMENDATION

The federal Act should be amended in order to take into account this recent judgement and not replicate unconstitutional language.

5. Value of Job Classes Already Determined, Section 41(2)

Section 41(2) allows an Employer or a pay equity committee to determine that the value of work *has already been determined*. This gives an Employer, particularly in a non-unionized workplace, unilateral power to shelter what it has done to date without the requirement to properly evaluate women's work.

Such a provision raises significant concerns in light of the issue of the employer’s unilateral control of the pay equity process identified above.

RECOMMENDATION

This provision should be struck from the Act.

6. Compensation Exemptions for Precarious Workers, Section 46(f)

This section allows for the exclusion of the non-receipt of compensation—in the form of benefits that have monetary value—due to the temporary, casual, or seasonal nature of a position. This new provision would violate the determination of compensation within the current Canadian Human Rights Act (CHRA), Section 11 and the Equal Wage
Guidelines. Why in the new federal law, are women now receiving less?

Given the other changes to Part 3 of the Canada Labour Code regarding equal pay, the language is inconsistent. This specific exemption should be removed from the Pay Equity Act.

The 2004 Task Force recommended the inclusion of all employees in the federal jurisdiction, including part-time, casual, seasonal, and temporary workers (Recommendation 6.4). The Task Force also recommended that the legislation define compensation for pay equity purposes as total compensation, including base pay, flexible pay, and benefits with monetary value (Recommendation 11.1).

**RECOMMENDATION**

Remove the exemption.