



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **PAY EQUITY ACT**

## PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

If you find any errors or omissions in this consolidation, please contact:

*Legislative Counsel Office*

*Tel: (902) 368-4292*

*Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)*



## PAY EQUITY ACT

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## PAY EQUITY ACT CHAPTER P-2

### PART I — INTERPRETATION AND APPLICATION

#### 1. Definitions

In this Act

- (a) “**appropriate bargaining agent**” means the recognized bargaining agent authorized to negotiate terms and conditions of employment on behalf of employees and, where no recognized bargaining agent exists, means the employee representative;
- (b) “**civil service**” means an employee of the Government or an agency of the Crown, including the Crown corporations set out in Schedules B and C to the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9, but does not include an employee of an education authority continued under the *Education Act* R.S.P.E.I. 1988, Cap. E-.02;
- (c) “**class**” means a group of positions involving duties and responsibilities so similar that the same or like qualifications may reasonably be required for, and the same schedule or range of pay can be reasonably applied to, all positions in the group;
- (d) “**Commissioner**” means the Commissioner of Pay Equity appointed under subsection 5(4);
- (e) “**employee**” means a person employed by a public sector employer but does not include
  - (i) persons employed to make or conduct a temporary or special inquiry, investigation or examination, on behalf of the Legislative Assembly or the Government,
  - (ii) persons who are patients or inmates in a provincial institution and who help in the work of the institution,
  - (iii) any person paid by fees or hired on a special contractual basis or as an independent contractor,
  - (iv) bona fide students temporarily employed in the period from May to September in any year;
- (f) “**employee representative**” means a person elected by employees who have no recognized bargaining agent to represent them in negotiations under this Act;
- (g) “**female-dominated class**” means a class of which 60% or more of the incumbents are women;
- (h) “**male-dominated class**” means a class of which 60% or more of the incumbents are men;
- (i) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (j) “**pay equity**” means a compensation practice which is based primarily on the relative value of work performed, irrespective of the gender of employees, and includes the

- requirement that, subject to section 8, no public sector employer shall establish a difference between the wages paid to male and female employees, employed by that employer, who are performing work of equal or comparable value;
- (k) “**public sector employer**” means
- (i) the Government,
  - (ii) agencies of the Crown, excluding the employers referred to in subclauses (b)(i), (ii) and (iii) and including the Crown corporations set out in Schedules B and C to the *Financial Administration Act*,
  - (iii) the University of Prince Edward Island,
  - (iv) Holland College,
  - (v) a nursing home licensed under the *Community Care Facilities and Nursing Homes Act* R.S.P.E.I. 1988, Cap. C-13, which receives funds from the Government in the operation of its business,
  - (vi) the Charlottetown Area Development Corporation and the Summerside Waterfront Development Corporation,
  - (vii) such other board, commission, corporation, or organization as may be prescribed in the regulations;
- (l) “**total payroll**” means the total of all payments and benefits paid or provided to or for the benefit of an employee which are fixed or ascertainable amounts and are calculated at gross value;
- (m) “**wages**” means all forms of pay and benefits paid or provided, directly or indirectly, by or on behalf of an employer to or for the benefit of an employee and includes the relevant salary scales. 1988, c.48, s.1; 1993, c.29, s.4 and 1993, c.34, s.1; 1995, c.28, s.1; 1997, c.20, s.3; 2000, c.5, s.3; 2005, c.39, s.14; 2009, c.73, s.2; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3; 2016, c.6, s.125.

## 2. Object

- (1) The object of this Act is to achieve pay equity by redressing systemic gender discrimination in wages paid for work performed by employees in female-dominated classes in the public sector.

### Identification of discrimination

- (2) Systemic gender discrimination in wages shall be identified by undertaking comparisons between female-dominated classes and male-dominated classes in terms of relative wages and the relative value of the work performed.

### Discriminatory practice

- (3) For the purpose of this Act it is a discriminatory practice for an employer to establish differences in wages between employees in male-dominated classes and employees in female-dominated classes who are performing work of equal or comparable value.

### Criteria

- (4) In determining if a class is a female-dominated class or a male-dominated class regard shall be had to the historical incumbency of the class, gender stereotypes of fields of work and such other criteria as may be prescribed in the regulations. 1988, c.48, s.2; 1995, c.28, s.2.

## 3. Application

This Act applies to public sector employers and employees. 1988, c.48, s.3.

**4. Conflict**

- (1) Subject to subsection (2), in the event of a conflict between this Act and any other Act the provisions of this Act shall prevail.

**Saving for equal pay for equal work**

- (2) Nothing in this Act affects the principle of equal pay for equal work expressed in section 7 of the *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12, 1988, c.48, s.4.

**PART II — ADMINISTRATION****5. Pay Equity Bureau**

- (1) There is established a Bureau in the Department of Justice and Public Safety to be known as the Pay Equity Bureau which is designated to administer this Act.

**Functions**

- (2) The Bureau shall
- (a) provide information to any person concerned with pay equity and provide assistance to public sector employers, employees and the appropriate bargaining agents in implementing pay equity;
  - (b) monitor the progress of public sector employers in the implementation of pay equity;
  - (c) submit to the Minister upon request a detailed report setting out the progress in the implementation of pay equity;
  - (d) prepare and maintain statistics relating to pay equity;
  - (e) prepare and disseminate educational material relating to pay equity;
  - (f) initiate and oversee the negotiations required to be undertaken by the public sector employer and the appropriate bargaining agents;
  - (g) receive and process complaints that a public sector employer has failed to comply with this Act;
  - (h) perform such other duties as the Minister may determine.

**Powers**

- (3) The Bureau may exercise such powers and perform such duties as are or may be necessary to discharge its functions under this Act and, in particular, the Commissioner and pay equity officers may
- (a) summon witnesses;
  - (b) require the production of documents;
  - (c) administer oaths;
  - (d) enter places of employment, inspect and view any work and question any person;
  - (e) issue orders or directions to ensure compliance with the requirements of this Act.

**Commissioner and staff**

- (4) There may be appointed pursuant to the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8 a Commissioner of Pay Equity to administer the Bureau, pay equity officers and such other employees as may be necessary for the administration of this Act.

**Credentials**

- (5) The Minister shall provide each pay equity officer with written credentials of his appointment and the officer shall produce his credentials upon request, when exercising any powers conferred by this Act.

**Tabling of report**

- (6) Repealed by *1995, c.28, s.4*; *1988, c.48, s.5*; *1990, c.40, s.1*; *1993, c.29, s.4*; *1995, c.28, s.1*; *1997, c.20, s.3*; *2009, c.73, s.2*; *2010, c.31, s.3*; *2012, c.17, s.2*; *2015, c.28, s.3*.

**6. Complaints**

- (1) During the period prior to the achievement of pay equity, any public sector employer or the appropriate bargaining agent may file a complaint with the Commissioner complaining that a public sector employer or the appropriate bargaining agent has
- (a) failed to negotiate in good faith any agreement required by this Act;
  - (b) failed to implement any wage adjustment required by this Act;
  - (c) purported to implement a job evaluation plan, job evaluation system or pay equity agreement that is not gender-neutral or that otherwise does not comply with this Act;
  - (d) engaged in a discriminatory practice; or
  - (e) otherwise failed to carry out any obligation to implement pay equity,
- or that any person has contravened this Act or any order of the Commissioner.

**Idem**

- (2) Repealed by *1995, c.28, s.3*.

**Investigation and order**

- (3) The Commissioner may investigate a complaint filed under subsection (1) or (2) and issue such order as he considers appropriate to ensure compliance with this Act.

**Enforcement**

- (4) An order under subsection (3) is enforceable as if it were an order of the Supreme Court. *1988, c.48, s.6 s.1*; *1995, c.28, s.3*.

**PART III — IMPLEMENTATION OF PAY EQUITY**

**7. Determination of value**

- (1) In determining value for the purposes of this Act, the criterion to be applied is the composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed.

**Average and direct comparisons of value**

- (2) Where a public sector employer, in accordance with the procedures for negotiation set out in section 13 adjusts its compensation practices so that female-dominated classes are assigned a schedule or range of pay equal to the average or projected average schedule or range of pay of male-dominated classes performing work of equal or comparable value, the employer shall be deemed to have complied with the obligation to implement pay equity. *1988, c.48, s.7*.



**8. Exclusions**

- (1) For the purpose of implementing pay equity a difference in wages between a female-dominated class and a male-dominated class performing work of equal or comparable value is justified by
- (a) a formal performance appraisal system that has been brought to the attention of employees and does not discriminate on the basis of gender;
  - (b) a formal seniority system that
    - (i) provides that employees receive periodic increases in wages based on their length of service with the employer, and
    - (ii) does not discriminate on the basis of gender; or
  - (c) a skills shortage that is causing a temporary inflation in wages because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in a particular class.

**Justification of difference on account of skills shortage**

- (2) Where a public sector employer purports to justify a difference in wages on the basis of a skills shortage pursuant to clause (1)(c), the employer must establish to the satisfaction of the Commissioner that similar differences exist between the employees in the male-dominated class affected by the shortage and another male-dominated class performing work of equal or comparable value to that performed by the male-dominated class affected by the shortage. *1988, c.48, s.8.*

**9. No reduction of wages**

- (1) No public sector employer shall reduce the wages of any employee in order to implement pay equity.

**Adjustment of wage schedules**

- (2) No public sector employer shall place any employee in a lower step of a schedule or range of pay that has been adjusted upward in order to implement pay equity. *1988, c.48, s.9.*

**10. Annual wage adjustments**

For the purpose of implementing pay equity a public sector employer shall, in respect of each period of twelve months where pay equity adjustments are made pursuant to an agreement under subsection 14(1) or (2), make adjustments in the amount that is the lesser of

- (a) 1% of the total payroll of the employer for the immediately preceding period of twelve months; and
- (b) the amount remaining payable under the agreement in order to achieve pay equity. *1988, c.48, s.10.*

**11. Maximum amount of wage adjustment**

- (1) Subject to subsection (2) and except for the purpose of making retroactive adjustments under a pay equity agreement or when so ordered by the Commissioner or an arbitration board, a public sector employer shall not make pay adjustments in any period of twelve months in an amount in excess of 1% of the total payroll of the employer for the immediately preceding period of twelve months.

**Combined payment**

- (2) Where the public sector employer and the appropriate bargaining agents so agree, if in the final year the amount remaining payable under the agreement in order to achieve pay equity is less than 1% of the total payroll the payment of that amount may be combined with a wage adjustment under clause 10(a) for the preceding year. *1988, c.48, s.11.*

**12. Obligation of employer to implement pay equity**

Every public sector employer shall take such action as may be necessary to implement pay equity for its employees. *1988, c.48, s.12.*

**13. Negotiation of pay equity**

- (1) Throughout the process of implementation of pay equity each public sector employer shall
- (a) meet and negotiate with the appropriate bargaining agents;
  - (b) disclose to the appropriate bargaining agents information in its possession or control relevant to the implementation of pay equity;
  - (c) bargain in good faith with the appropriate bargaining agents making every reasonable effort to reach agreement respecting the implementation of pay equity.

**Obligation of bargaining agents**

- (2) The appropriate bargaining agents shall bargain in good faith with the public sector employer making every reasonable effort to reach agreement with the public sector employer.

**Negotiations separate from collective bargaining process**

- (3) The bargaining process referred to in subsections (1) and (2) shall be conducted in negotiations separate and apart from the normal negotiations conducted for the purpose of concluding a collective agreement. *1988, c.48, s.13.*

**14. Reaching agreements on pay equity**

- (1) The public sector employer and the appropriate bargaining agents shall jointly
- (a) endeavour to reach an agreement respecting
    - (i) the development or selection of a single gender-neutral job evaluation plan or a job evaluation system in which skill, effort, responsibility and working conditions are the criteria applied, to be applied to all female-dominated and male-dominated classes, and
    - (ii) the fixing of the classes to which the required job evaluation plan or system shall be applied;
  - (b) in accordance with the agreement, apply the required job evaluation plan or system in order to determine and compare the value of the work performed by female-dominated and male-dominated classes; and
  - (c) endeavour to reach an agreement
    - (i) identifying the inequities between male-dominated and female-dominated classes of equal or comparable value and determining the quantum of pay equity adjustments to be made,
    - (ii) respecting the proportionate share of the quantum referred to in subclause (i) to be allocated to each employee group represented by a separate bargaining agent where there is more than one appropriate bargaining agent.

**Negotiation of allocation by individual bargaining agent**

- (2) Where negotiations to implement pay equity have been conducted jointly pursuant to subsection (1) and the quantum of pay equity adjustments to be divided among the appropriate bargaining agents has been agreed, each individual bargaining agent shall negotiate, in good faith, directly with the public sector employer or his representative an agreement respecting
- (a) how the quantum is to be allocated among the female-dominated classes represented by that bargaining agent; and
  - (b) how the pay equity adjustments are to be implemented.

**Implementation**

- (3) Where an agreement referred to in subsection (2) is reached, the public sector employer shall implement such wage adjustments as may be necessary to establish pay equity in accordance with the agreement.

**Filing of agreements**

- (4) The public sector employer and the appropriate bargaining agent shall each file with the Commissioner copies of the agreements referred to in subsections (1) and (2).

**Agreement to prevail over provision of collective agreement**

- (5) A pay equity agreement pursuant to subsection (1) or (2) prevails over the provisions of all relevant collective agreements and the wage adjustments required by the agreement shall be deemed to be incorporated into and form part of the relevant collective agreements, if any, and of ensuing collective agreements, if any, entered into during any stage of the implementation period and the relevant collective agreements shall be amended accordingly.  
*1988, c.48, s.14.*

**15. Province-wide collective bargaining**

Where collective bargaining is conducted on a province-wide basis and the representatives of the public sector employer and the appropriate bargaining agents have traditionally negotiated collective agreements such as those applying to all hospitals, schools or addiction institutions in the province, negotiations to implement pay equity in respect of employees in those institutions shall be conducted on a province-wide basis by those representatives. *1988, c.48, s.15.*

**16. Referral to arbitration**

- (1) Where the parties fail to reach the agreements described in subsection 14(1) or (2) or fail to agree with respect to the application of a job evaluation plan or job evaluation system as required by clause 14(1)(b) within the period set out in section 17, the Commissioner shall refer the matter to an arbitration board constituted under section 41 of the *Labour Act* R.S.P.E.I. 1988, Cap. L-1.

**Order binding on parties**

- (2) The public sector employer and the appropriate bargaining agents are parties to the arbitration proceedings and an order or award of the arbitration board is final and binding on all of the parties to the proceedings.

**Authority of board**

- (3) The arbitration board may make any order it considers necessary to resolve the matter in dispute including
- (a) an order settling the provisions of an agreement described in clause 14(1)(a) including
    - (i) an order determining the job evaluation plan or job evaluation system required to be applied to all female-dominated and male-dominated classes,
    - (ii) an order that job evaluation be carried out under prescribed conditions, and
    - (iii) an order fixing classes to which a job evaluation plan or job evaluation system shall be applied;
  - (b) an order settling the provisions of an agreement referred to in clause 14(1)(c) or subsection 14(2) including
    - (i) an order fixing the quantum and allocation of wage adjustments required to be made to comply with this Act,
    - (ii) an order providing for the orderly implementation of those adjustments;
  - (c) an order that wage adjustments be implemented in accordance with any agreement reached by the parties or settled under clause (b); or
  - (d) an order making retroactive wage adjustments.

**Settlement**

- (4) Where an arbitration board settles the provisions of an agreement under subsection (3), the settled provisions shall be deemed to be agreements under subsection 14(1) or (2) and shall be binding on the parties. *1988, c.48, s.16.*

**16.1 Pay equity continued**

- (1) The process commenced under this Act for the achievement of pay equity for employees of hospitals approved under the *Hospitals Act* R.S.P.E.I. 1988, Cap. H-10 shall continue.

**Complaint process**

- (2) For greater certainty, the complaint process provided in subsection (1) applies prior to the achievement of pay equity for employees of hospitals licensed under the *Hospitals Act*. *1993, c.34, s.2; 2005, c.39, s.14.*

**17. Stages for implementation**

- (1) For the purpose of complying with the provisions of this Act there are the following stages in the implementation of pay equity:

STAGE I is the period of nine months from the commencement of negotiations in which the parties shall negotiate and agree to a single gender-neutral job evaluation plan or job evaluation system and the fixing of the classes to which the plan is to be applied.

STAGE II is the period of twelve months after the end of Stage I in which the parties shall apply the evaluation plan or system in order to determine and compare the value of the work performed by female-dominated and male-dominated classes and shall agree respecting the quantum of pay equity adjustments and the proportionate share of the quantum to be allocated to each employee group.

STAGE III is the period of three months after the end of Stage II in which the individual bargaining agent and the public sector employer or his representative shall agree respecting the allocation of the quantum of pay equity adjustments among the female-dominated classes

of employees who are represented by that bargaining agent and respecting the implementation of pay equity adjustments.

STAGE IV is the period in which pay equity adjustments are made under this Act until pay equity is achieved and Stage IV commences not later than twenty-four months after the beginning of Stage I.

#### **Commencement of negotiations**

- (2) For the purpose of complying with this Act, negotiations to implement pay equity in accordance with subsection (1) shall be commenced
- (a) in relation to the civil service, three months after this Act comes into force;
  - (b) in relation to public sector employees outside the civil service, fifteen months after this Act comes into force.

#### **Commencement, Stage IV**

- (3) Notwithstanding subsections (1) and (2) or any award or order of an arbitration board under this Act, in respect of employees of the following public sector employers:
- (a) the University of Prince Edward Island; and
  - (b) a hospital licensed under the *Hospitals Act*,

Stage IV shall be deemed to have commenced on January 1, 1995, with respect to their employees. *1988, c.48, s.17; 1993, c.34, s.3; 1995, c.28, s.5.*

## **PART IV — GENERAL**

### **18. Discrimination**

No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person because

- (a) the person may participate, or is participating, in a proceeding under this Act;
- (b) the person has made, or may make, a disclosure required in a proceeding under this Act;
- (c) the person is exercising, or may exercise, any right under this Act; or
- (d) the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act. *1988, c.48, s.18.*

### **19. Regulations**

The Lieutenant Governor in Council may make regulations. *1988, c.48, s.19.*