Pay equity consultations - What we heard report [1]

Author: Employment and Social Development Canada
Source: Employment and Social Development Canada
Format: Report
Publication Date: 24 Oct 2018

AVAILABILITY
PDF available online [2]

EXCERPTS

About this report
On October 5, 2016, in its response to the Special Committee on Pay Equity report titled It's Time to Act, the Government of Canada made a commitment to table new, proactive pay equity legislation for the federal jurisdiction before the end of 2018. The Government committed to draw upon provincial lessons learned and to conduct targeted stakeholder consultations on design issues. In April 2017, Labour Program officials held separate roundtable discussions with employer, employee and advocacy stakeholders on designing a proactive pay equity system. A discussion paper that identified issues and questions was circulated in advance.

We heard from over 40 stakeholders, including employee and employer representatives and organizations interested in proactive pay equity in federally regulated workplaces. We have grouped comments from stakeholders into four general themes that summarize those found in the discussion paper. This is a high-level summary of the feedback we received from stakeholders on key components of the new regime we are developing. The input we received from stakeholders has been important in informing the development of the new legislation.

Everyone with whom we met broadly supported the principle of pay equity—equal pay for work of equal value. However, employer representatives were generally not supportive of creating new proactive pay equity legislation. Instead, they favoured the improvement of the current federal approach to pay equity.

There was general agreement among participants that the new federal legislation should have well-articulated requirements, clear definitions and an oversight body to provide guidance and support to workplace parties. When it came to some specific elements of a proactive pay equity system, however, views from employer, employee and advocacy stakeholders often differed, with employer representatives in particular expressing the need for flexibility.

Theme 1: Coverage of new pay equity legislation
For the most part, employee and employer representatives considered Quebec and Ontario's practice of exempting workplaces with fewer than 10 employees acceptable. Some employer representatives noted that small and medium-sized firms would require administrative flexibility in the methods prescribed to achieve pay equity, with one suggesting that the threshold should be raised to include only employers with more than 25 employees. On the other hand, some employee representatives and advocacy groups stressed that pay equity is a human right to which all employees are entitled and questioned the appropriateness of any exemption.

In addition, while employer representatives told us that students, casual employees, temporary workers and senior management should be exempted from the legislation, employee and advocacy groups believed that the new legislation should be as inclusive as possible, so as not to further marginalize precarious workers. Employee representatives also noted that student and senior management exemptions risk being misused, which could reduce the number of comparators both on the lower and higher end of the wage spectrum, thus restricting pay equity adjustments.

Stakeholders generally felt that proactive pay equity should also apply to firms participating in the Federal Contractors Program, but that those operating in Quebec or Ontario should be able to demonstrate compliance with their respective provincial pay equity systems and therefore be exempted from the federal requirements.

Theme 2: Implementing pay equity in the workplace

Scope of establishment and job class comparisons

Both employee representatives and advocacy groups told us that the concept of establishment should be based on all of the operations of an employer, and that the scope of comparisons should be as wide as possible, meaning that one pay equity plan per employer would be appropriate in most cases. Employee representatives stressed the need to ensure that the establishment not be limited to the bargaining unit, to avoid limiting comparisons or maintaining occupational segregation. Advocacy groups further noted that individual franchises or branches should not be considered separate establishments.

Employer representatives, for their part, said that the legislation should provide flexibility and discretion for them to define their establishments, and that it should allow for multiple pay equity plans under one employer. Such flexibility would, for example, accommodate different plans for unionized and non-unionized workforces; for each bargaining unit; for different geographic areas of operation where there may be regional rates of pay and skill shortages; and for different sectors of activity. Employee and advocacy stakeholders, while acknowledging that flexibility might be necessary in certain circumstances, stressed that the key to pay equity is to compare the value of each job in an establishment, regardless of the nature of the activity.

Stakeholder groups were generally not in favour of establishing a prescribed order of comparison, which would require, for example, that comparisons first be made between job classes in the same bargaining unit. Employer representatives indicated that any preferential order of comparison could instead be articulated in policy guidance. Both employee representatives and advocacy groups believed that establishing comparisons at the bargaining unit level has served to limit pay equity comparisons in Quebec and Ontario.

Identifying job classes

In general, most employee and employer stakeholders agreed that to form a job class, jobs must: share similar duties and responsibilities; require comparable qualifications; and be subject to the same rate of pay or pay scale. This is consistent with current practices in Quebec and Ontario.

Employee representatives suggested that there should be no minimum number of incumbents to form a job class. They also noted that evaluating each individual job class is necessary to ensure that all characteristics of female-predominant work are taken into account. They preferred that approach over adopting a "group of jobs" approach, which would allow for grouping together several job classes performing similar work at different levels of skill, effort and responsibility, and working conditions. Employer representatives were in favour of flexibility. They said that using a "group of jobs" approach would be acceptable if it were useful in a particular enterprise.

Gender predominance of a job class

There was discussion about the appropriate proportion of employees to determine the gender predominance of a job class. All stakeholder groups were in favour of a fixed proportion rather than a sliding scale (in other words, a threshold that varies based on the size of a job class). Employee and advocacy groups felt that a threshold of 60% would be appropriate, as is the case in provincial jurisdictions, but some employer representatives told us that a threshold of 70% would better target the application of pay equity where it is needed.

We heard from representatives from all 3 stakeholder groups that some qualitative criteria (such as historical incumbency or occupational stereotypes) could be taken into account, in addition to the proportion of women or men in a job class. The employee and advocacy groups stressed that addressing systemic discrimination by merely setting a minimum percentage would not be sufficient. Some employer representatives felt that qualitative factors could play an important role in maintaining consistency over time. Others thought that the use of strictly numerical criteria would be a more objective way to determine gender predominance.

Estimating wage gaps for jobs of equal value

Stakeholders had different views on what wage comparison methodologies should be used and whether they should be established in legislation. Advocacy and employee stakeholders favoured setting out specific methodologies that would achieve greater adjustments for women in legislation. Employer stakeholders felt that there would need to be flexibility to choose a wage comparison methodology most appropriate to a particular workplace and favoured an approach that would be set in guidelines rather than in legislation.

Timeframe for developing a pay equity plan and making pay adjustments

Employee stakeholders stressed the importance of implementing pay equity effectively rather than focusing on prescribed timeframes for implementation.

Advocacy groups expressed concerns that allowing lengthy timeframes for making pay equity adjustments could give more weight to the hardship of employers than to the hardship and livelihood of female employees. They noted that pay equity is already required by law, and suggested that employers should make payments within 1 year of the completion of a plan.

Employer representatives favoured having up to 5 years to develop a pay equity plan, and another 3 to 5 years to issue pay equity adjustments. They also told us that exceptions to these timelines could include situations of financial hardship of an employer; major restructuring, mergers and acquisitions; situations where the pay adjustments are excessive; and allowing time for a resolution process if the employer and union are unable to come to an agreement.

Theme 3: Maintaining pay equity and reporting requirements

Stakeholders expressed different views when it came to requirements to maintain pay equity. Employer representatives said that reporting requirements would be sufficient to identify any issues that needed to be addressed to maintain pay equity in the workplace. From their perspective, maintenance could also be tied to changed circumstances in the organization (for example, a new job class or a major restructuring). They also generally favoured simple reporting in the form of a checklist every 2 to 5 years, as they felt annual reporting would be too onerous. Some employer representatives were concerned about the possibility of the new legislation having rigorous maintenance requirements because of issues such as high staff turnover, loss of corporate memory and challenges with record-keeping, particularly among smaller employers—issues that were also brought up by advocacy groups as a reason for frequent maintenance.

Advocacy groups agreed that maintenance reviews should be tied to changed circumstances but felt they should take place at least every 2 to 3 years, whichever comes first. Employee representatives were in favour of regular, ongoing maintenance activities, with some

suggesting a 5-year cycle at a minimum.

In addition to maintenance reviews, employee representatives and advocacy groups told us that rather than a simple checklist, there should be comprehensive annual reporting to an oversight body, including detailed information on workplace pay structures. Advocacy groups felt that the federal government should require rigorous reporting and monitoring to ensure maintenance of pay equity and compliance with the legislation, particularly in non-unionized environments, and to ensure employers are fulfilling their human rights obligations.

Theme 4: Roles and responsibilities

Roles and responsibilities of workplace parties in developing and maintaining pay equity

We heard from employee and advocacy stakeholders that the new legislation should require representatives of unionized and non-unionized employees to be involved in developing a pay equity plan as well as in the maintenance process. This would mean employees participating on a joint pay equity committee within a workplace would have access to all the same information as the employers and have decision-making authority. Some advocacy groups felt that the same information should be available to non-unionized employees if they are to have any kind of meaningful participation in the process. They also thought that employers should support the participation of employees on the committee. Employee representatives and advocacy groups were not in favour of employees having joint responsibility for achieving pay equity in the workplace, given their lack of control over compensation.

Employer representatives, on the other hand, generally believed that employees should be engaged in the process in an advisory capacity rather than a decision-making capacity. They made a distinction between being transparent with employees, which they supported, and fully involving them in every step of the process.

Representatives from all 3 stakeholder groups mentioned the need for the legislation to be precise about the roles and responsibilities of employer and employee representatives.

Role of oversight body

All stakeholders agreed that there will be a need for an adequately resourced oversight body with a well-defined mandate and expertise in pay equity to give guidance and support to parties involved in the pay equity processes. However, views differed on the structure of this body.

We heard throughout the discussions with employee and advocacy groups about the need for a robust oversight body, which they said should be a specialized, independent commission and tribunal. They thought that the oversight body should have review officers to monitor and to investigate complaints, the power to impose sanctions or fines in cases of non-compliance, adjudicative powers and the resources to adjudicate in a timely manner. They also said that the oversight body should have a role in educating employers on pay equity and that it should develop guidelines and tools to assist workplace parties.

Employer representatives agreed on the need for specialized experts with the skills required to deal with cases related to pay equity and make appropriate assessments; however, some did not agree that creating a new tribunal and commission was necessary. They emphasized the merits of first using internal dispute resolution systems, and of building on existing resources such as the Canadian Human Rights Commission.

Conclusion

What we heard from employee representatives overall was that the new legislation must be inclusive and should reflect the spirit of the 2004 Pay Equity Task Force Report (known as the Bilson Report) as much as possible. There was general consensus amongst employee stakeholders that pay equity has taken too long, and further delays are unacceptable.

While employer representatives did not generally support the establishment of new proactive pay equity legislation, both employee and employer representatives told us that definitions must be clearly defined in any new legislation to avoid confusion and litigation, and that clear guidelines and options must also be set out. They stressed the importance of support, including concrete, simple tools. Employer representatives noted that flexibility and options would be key to helping them achieve pay equity.

Advocacy groups, for their part, focused on pay equity as a human right and women's rights issue and favoured an approach that would take into consideration the fact that some groups are more disadvantaged than others (for example, single mothers, racialized women, people with disabilities, Indigenous and newcomer women). Some advocacy groups were also interested in expanding the new system to include pay transparency, which they thought would increase the success of a pay equity system in closing the gender wage gap.

Overall, all participants believed in the principle of equal pay for work for equal value. The feedback we received from employee, employer and advocacy stakeholders has been valuable to us in the development of the new proactive pay equity legislation.

Related link: Feds introduce pay equity legislation [3]
Region: Canada [4]
Tags: pay equity [5]

Links
[1] https://childcarecanada.org/documents/research-policy-practice/18/10/pay-equity-consultations-what-we-heard-report [2]

https://www.canada.ca/content/dam/esdc-edsc/documents/programs/pay-equity/reports/pay-equity-wwh-report-en-oct2018.pdf [3] https://childcarecanada.org/documents/child-care-news/18/10/feds-introduce-pay-equity-legislation [4] https://childcarecanada.org/taxonomy/term/7864 [5] https://childcarecanada.org/category/tags/pay-equity