

BILL 87

Pay Equity Act, 2009

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

INTERPRETATION

Definitions

1 The following definitions apply in this Act.

“bargaining agent” means a bargaining agent as defined in the *Public Service Labour Relations Act* that represents employees to whom this Act applies and, if no bargaining agent exists, means an employee representative. (*agent négociateur*)

“Bureau” means the Pay Equity Bureau established under subsection 29(1). (*Bureau*)

“Chairperson” means the Chairperson of the Labour and Employment Board appointed under the *Labour and Employment Board Act*. (*président*)

“chief executive” means the deputy head or chief executive officer of any portion of the Public Service, or the person who occupies any other similar position, however called, in any portion of the Public Service. (*premier dirigeant*)

“Director” means the Director of the Bureau appointed under subsection 29(1). (*directrice*)

“employee” means a person who is employed in the Public Service but does not include a chief executive. (*employé*)

“employee representative” means a person appointed under section 11 to represent employees to whom this Act applies who have no bargaining agent to represent them. (*représentant des employés*)

“employer” means, with respect to Parts I, II and III of the Public Service, Her Majesty in the right of the Province as represented by the Board of Management, and with respect to Part IV of the Public Service, the various bodies corporate listed in that Part. (*employeur*)

“female-dominated classification” means (*classification à prédominance féminine*)

(a) a job classification in which there are 10 or more incumbents of whom 60% or more are women, or

(b) a job classification in which there are 10 or more incumbents that the employer and the bargaining agent or bargaining agents affected agree, based on the historical incumbency of the job classification or other similar criteria, to treat as a female-dominated classification.

“job classification” means those positions within each of Parts I, II or III of the Public Service or in the case of a body corporate listed in Part IV of the Public Service, within that organization, that have similar duties and responsibilities, require similar skills and qualifications and have the same compensation schedule and pay rate or range of pay rates. (*classification d’emplois*)

“male-dominated classification” means (*classification à prédominance masculine*)

(a) a job classification in which there are 10 or more incumbents of whom 60% or more are men, or

(b) a job classification in which there are 10 or more incumbents that the employer and the bargaining agent or bargaining agents affected agree, based on the historical incumbency of the job classification or other similar criteria, to treat as a male-dominated classification.

“Minister” means the member of the Executive Council assigned responsibility for the administration of this Act. (*ministre*)

“nondiscriminatory job evaluation system” means a system for determining the relative worth or value of jobs within an organization, taking into account both the similarities and differences between the sexes. (*système non discriminatoire d’évaluation des postes*)

“Part I of the Public Service” means those portions of the public service of the Province specified in Part I of the First Schedule of the *Public Service Labour Relations Act*. (*Partie I des services publics*)

“Part II of the Public Service” means those portions of the public service of the Province specified in Part II of the First Schedule of the *Public Service Labour Relations Act. (Partie II des services publics)*

“Part III of the Public Service” means those portions of the public service of the Province specified in Part III of the First Schedule of the *Public Service Labour Relations Act. (Partie III des services publics)*

“Part IV of the Public Service” means those portions of the public service of the Province specified in Part IV of the First Schedule of the *Public Service Labour Relations Act. (Partie IV des services publics)*

“pay” means straight-time wages and salary. (*rémunération*)

“pay equity” means a compensation practice that is based primarily on the relative value of the work performed, irrespective of the gender of employees, and includes the requirement that the employer not establish or maintain a difference between the pay paid to female and male employees who are performing work of equal or comparable value. (*équité salariale*)

“Public Service” means the several portions of the public service of the Province specified from time to time in Part I, Part II, Part III or Part IV of the First Schedule of the *Public Service Labour Relations Act. (services publics)*

Determination of value of work

2 In determining the value of work performed 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.

PURPOSE AND APPLICATION OF ACT

Purpose of Act

3 The purpose of this Act is to implement pay equity within each of Parts I, II and III of the Public Service and in the case of a body corporate listed in Part IV of the Public Service,

within that organization.

Application of Act

4(1) This Act applies to employees employed in the Public Service.

4(2) This Act does not apply to an employer listed in Part IV of the Public Service if the employer has less than 10 employees.

Differences in pay

5 This Act does not apply so as to prevent differences in pay between a female-dominated classification and a male-dominated classification if the employer is able to show that the difference is the result of

- (a)* a formal seniority system that does not discriminate on the basis of gender,
- (b)* a temporary employee training or development assignment that is equally available to female and male employees and that leads to career advancement for those involved in the program,
- (c)* a merit pay plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender,
- (d)* the personnel practice known as red-circling, where the value of a position has been downgraded and the pay of the incumbent employee has been frozen or the employee's increases in pay have been curtailed until the pay for the downgraded position is equivalent to or greater than the pay payable to the incumbent, or
- (e)* a skills shortage that is causing a temporary inflation in pay because the employer is encountering difficulties in recruiting or retaining employees with the requisite skills for positions in the job classification.

Conflict

6(1) Subject to subsection (2), in the event of a conflict between a provision of this Act or of the regulations made under it and a provision of any other Act or regulation, this Act and the regulations made under it prevail.

6(2) Nothing in this Act limits or abrogates any obligation of the employer or any right to which employees are entitled under section 37.1 of the *Employment Standards Act*.

IMPLEMENTATION OF PAY EQUITY

Duty of employer to implement pay equity

7 An employer shall take such action as may be necessary to implement pay equity within each of Parts I, II and III of the Public Service or if the employer is a body corporate listed in Part IV of the Public Service, within its organization.

Comparisons between female and male dominated classifications

8(1) To implement pay equity, comparisons between female-dominated classifications and male-dominated classifications within each of Parts I, II or III of the Public Service or within an organization that is a body corporate listed in Part IV of the Public Service in terms of pay and in terms of the value of the work performed shall be undertaken.

8(2) For the purpose of making comparisons between female-dominated classifications and male-dominated classifications in accordance with subsection (1), pay calculated on an hourly basis shall be used.

Deemed compliance with obligation to implement pay equity

9 An employer shall be deemed to have complied with this Act when the employer adjusts its compensation practices so that female-dominated classifications are assigned a rate of pay equal to the average or projected average rate of pay of male-dominated classifications performing work of equal or comparable value.

Restrictions on implementation of pay equity

10(1) Notwithstanding any other provision of this Act, an employer shall not, in order to implement pay equity,

(a) reduce, freeze or red-circle the pay of any employee, or

(b) place any employee in a lower step of a pay range that has been adjusted upward.

10(2) Notwithstanding any other provision of this Act, pay adjustments under this Act shall not be implemented by an employer except in accordance with the regulations.

PROCESS OF IMPLEMENTATION

Appointment of employee representative

11(1) An employer shall ensure that, with respect to female-dominated classifications that do not belong to a bargaining unit, an employee representative is appointed to represent the interests of one or more such classifications with respect to the implementation of pay equity.

11(2) If the employer does not appoint an employee representative within 30 days after being requested to do so by an employee who is a member of a female-dominated classification referred to in subsection (1), the Director may appoint the employee representative upon request and shall notify the employer of the appointment.

Conduct of parties during implementation process

12(1) Throughout the process of the implementation of pay equity, an employer and bargaining agents who represent affected employees in the Public Service shall

(a) meet and determine the process to be followed by the parties with respect to the implementation of the pay equity process,

(b) disclose to each other information in their possession or control relevant to the implementation of the pay equity process, and

(c) bargain in good faith with each other, making every reasonable effort to reach agreement respecting the implementation of the pay equity process.

12(2) The process referred to in subsection (1) shall commence within 60 days after the commencement of this Act, or within such longer time as may be allowed by the Director, and shall be conducted in negotiations separate and apart from the negotiations conducted for the purpose of concluding a collective agreement.

Agreements on pay equity

13(1) An employer and the bargaining agents affected shall jointly endeavour to reach an agreement, within the period of 12 months after the commencement of this Act, or within such longer time as may be allowed by the Director, respecting

- (a) the selection of a nondiscriminatory job evaluation system,
- (b) the identification of all female-dominated classifications and male-dominated classifications, and
- (c) the manner in which the job evaluation system is to be applied to the female-dominated classifications and the male-dominated classifications.

13(2) The employer and the bargaining agents shall, in accordance with the agreement and within the period of 24 months after the commencement of this Act, or within such longer time as may be allowed by the Director,

- (a) apply the nondiscriminatory job evaluation system in order to determine and compare the value of the work performed by female-dominated classifications and male-dominated classifications, and
- (b) endeavour to reach an agreement identifying the inequities between female-dominated classifications and male-dominated classifications performing work of equal or comparable value.

13(3) The employer shall then determine the proportionate share of the amount of the pay adjustments to be allocated to the female-dominated classifications and how it is to be

allocated among the female-dominated classifications and shall provide the bargaining agent affected with a written notice of its decision.

13(4) The pay adjustments implemented by the employer and as reflected in the written notice prevails over the provisions of all relevant collective agreements and shall be deemed part of and be incorporated into and form part of the relevant collective agreements and of all collective agreements entered into during any stage of the implementation of pay equity.

Extension of time

14 If either an employer or a bargaining agent has reason to believe that it will not be able to meet a limitation period set out in section 13, the employer or the bargaining agent may apply to the Director to allow an extended period of time within which to comply with the requirement, and the Director may grant an extension, one or more times, but no extension is to exceed 3 months.

Report to Bureau

15 An employer shall report to the Bureau as to its progress in implementation of pay equity within 25 months after the commencement of this Act.

Communication with affected employees

16 An employer shall ensure that employees affected by pay equity are informed about the implementation of the pay equity process from time to time and of the outcome of the process.

Appointment of arbitrator

17(1) If it is apparent that the employer and the bargaining agents affected will fail to reach the agreement referred to in subsection 13(1) or paragraph 13(2)(b) within the applicable period of time, the employer and the bargaining agents affected may jointly apply, in writing, to the Chairperson for the appointment of an arbitrator to deal with the matter or matters in dispute.

17(2) If the employer and the bargaining agents affected fail to reach the agreement referred to in subsection 13(1) or paragraph 13(2)(b) by the date that is 2 months before the expiry of the

applicable period of time, the employer and the bargaining agents affected shall jointly apply, in writing, to the Chairperson for the appointment of an arbitrator to deal with the matter or matters in dispute.

17(3) An application shall be accompanied by a statement of the matter or matters in dispute prepared jointly by the employer and the bargaining agent or bargaining agents affected.

17(4) The Chairperson shall, within 5 days after receipt of an application, appoint an arbitrator to deal with the matter or matters in dispute and shall at the same time send to the arbitrator a copy of the statement referred to in subsection (3).

Duties and powers of arbitrator

18(1) Subject to this Act and the regulations, an arbitrator appointed under this Act shall determine the procedure for the conduct of proceedings before the arbitrator but shall give full opportunity to the employer and the bargaining agent or bargaining agents affected to present evidence and make representations.

18(2) An arbitrator appointed under this Act, in relation to any hearing under this Act, is vested with all the powers and privileges of commissioners under the *Inquiries Act* and the regulations under that Act.

Arbitration Act does not apply

19 The *Arbitration Act* does not apply to arbitrations under this Act.

Award of arbitrator

20(1) An arbitrator appointed under this Act shall, after affording the employer and the bargaining agent or bargaining agents affected full opportunity to present evidence and make representations, render an award.

20(2) An award referred to in subsection (1) shall

(a) be consistent with the provisions of this Act and the regulations,

- (b) deal only with the matter or matters referred to the arbitrator by the Chairperson,
- (c) be rendered in writing, signed by the arbitrator, no later than 60 days after the date on which the arbitrator was appointed, and
- (d) be binding on the employer, the bargaining agent or bargaining agents affected and the employees to whom this Act applies represented by the bargaining agent or bargaining agents affected and shall not be questioned or reviewed in any court.

20(3) Notwithstanding subsection (2), the employer and the bargaining agent or bargaining agents affected may, within 14 days after the day on which the award is rendered, jointly agree, in writing, to amend, alter or vary any provision of an award referred to in subsection (1) and any such amendment, alteration or variation shall be deemed to be a part of the award effective on and after the day on which the agreement to amend, alter or vary the award is signed.

Reference back to arbitrator

21 If in respect of an award rendered under this Act it appears to the employer or any bargaining agent affected that the arbitrator has failed to deal with any matter in dispute referred to the arbitrator, the employer or the bargaining agent affected may, within 7 days after the day on which the award is rendered, refer the matter back to the arbitrator who shall deal with the matter in the same manner as if the matter had been referred to the arbitrator under section 17.

Replacement of arbitrator

22 An arbitrator appointed under this Act may be replaced by the Chairperson on the application of the employer or any bargaining agent affected at any time before the arbitrator renders an award.

Remuneration of arbitrator

23(1) Subject to subsections (2) and (3), an employer and a bargaining agent shall pay one-half the remuneration and expenses of an arbitrator appointed under this Act.

23(2) If an employee representative and an employer apply for the appointment of an arbitrator under this Act, the employer shall pay the remuneration and expenses of the arbitrator.

23(3) An arbitrator appointed under this Act shall be paid such remuneration and expenses as may be fixed by the Lieutenant-Governor in Council.

MAINTENANCE OF PAY EQUITY

Duty of employer to maintain pay equity

24 An employer shall take such action as may be necessary to maintain pay equity within each of Parts I, II and III of the Public Service or if the employer is a body corporate listed in Part IV of the Public Service, within its organization.

Maintenance of pay equity

25(1) After pay equity is achieved with respect to any job classification, whether before or after the commencement of this Act, an employer shall

- (a)* conduct a nondiscriminatory review of its pay equity compensation practices in accordance with the regulations, and
- (b)* make any pay adjustments that are required to ensure pay equity is maintained.

25(2) An employer shall provide the results of the review to the Bureau within 30 days after the review is completed.

Restrictions on maintenance of pay equity

26(1) Notwithstanding any other provision of this Act, an employer shall not, in order to maintain pay equity,

- (a)* reduce, freeze or red-circle the pay of any employee, or
- (b)* place any employee in a lower step of a pay range that has been adjusted upward.

26(2) Notwithstanding any other provision of this Act, pay adjustments to maintain pay equity shall not be implemented by an employer except in accordance with the regulations.

Communication with affected employees

27 An employer shall ensure that employees affected by the maintenance of pay equity are informed about the maintenance of pay equity from time to time.

PAY EQUITY PROCESS COMMENCED BEFORE APRIL 1, 2010

Determination of compliance

28(1) An employer who has commenced or completed the pay equity process with an affected bargaining agent before April 1, 2010, shall, at the request of the Director, deliver a report to the Director by the date specified by the Director, describing the process followed by the employer, comparing it to the requirements of this Act that are imposed on the employer with respect to the implementation of pay equity.

28(2) If the Director is satisfied that the employer has complied with the provisions of this Act insofar as they would have applied to the process followed by the employer, had the Act then been in force, the Director shall so advise the employer and the bargaining agent.

28(3) In determining whether there has been compliance, the Director shall consider whether the process followed by the employer included

- (a)* the selection of a nondiscriminatory job evaluation system,
- (b)* the identification of all female-dominated and male-dominated classifications,
- (c)* the determination of the value of the job classifications, a comparison between them, the identification of inequities and the determination of required pay adjustments, if any, and
- (d)* the terms and conditions of payment of the adjustments in compensation.

28(4) If the Director determines that there has been compliance up to the point in the process reached by the employer by April 1, 2010, the Director shall advise the employer and bargaining agent of that determination, and the employer may then continue with its implementation of the pay equity process.

28(5) If the Director determines that there has not been compliance up to the point in the process reached by the employer by April 1, 2010, the Director may provide advice to the employer with respect to its achieving compliance, and the employer shall ensure that it is in compliance with the requirements of this Act before proceeding further with its implementation of the pay equity process.

PAY EQUITY BUREAU

Pay Equity Bureau

29(1) The Minister shall establish the Pay Equity Bureau, which shall be composed of one or more civil servants employed under the *Civil Service Act*, one of whom shall be appointed by the Minister as Director.

29(2) The Bureau may

- (a)** provide information with respect to pay equity to any employee, employer or bargaining agent,
- (b)** provide assistance and advice to employers, employees and bargaining agents in implementing or maintaining pay equity,
- (c)** request information from employers in order to monitor the progress of implementation and maintenance of pay equity,
- (d)** review the process and provide assistance to employers who have completed or who are in the process of completing implementation of pay equity,
- (e)** prepare and maintain statistics relating to pay equity,

- (f) prepare and disseminate educational material relating to pay equity,
- (g) provide assistance and oversee the pay equity process required to be undertaken by an employer and affected bargaining agents,
- (h) provide information, assistance and advice to any employer, employees and bargaining agents not covered by the Act, and
- (i) perform such other duties and exercise such other powers as may be prescribed by regulation.

29(3) The Bureau shall submit to the Minister an annual report setting out the progress in the implementation and maintenance of pay equity.

REGULATIONS

Regulations

30 The Lieutenant-Governor in Council may make regulations

- (a) providing for pay adjustments on the implementation or maintenance of pay equity, including the date on which pay adjustments are effective, restrictions as to the amount of payroll available for pay adjustments, the period of time over which pay adjustments may be made, and other limitations or restrictions;
- (b) respecting the procedure for the conduct of proceedings before an arbitrator appointed under this Act;
- (c) providing for the timing and circumstances under which a review of pay equity maintenance is to occur;
- (d) providing for the maintenance of pay equity, including the process to be followed and the timing and substance of the process;
- (e) respecting forms for the purposes of this Act or the regulations;
- (f) prescribing other duties and powers of the Director or the Bureau.

REPEAL AND COMMENCEMENT

Repeal

31 *The Pay Equity Act, chapter P-5.01 of the Acts of New Brunswick, 1989, is repealed.*

Commencement

32 *This Act comes into force on April 1, 2010.*