



Coalition for Pay Equity
Coalition pour l'équité salariale
New Brunswick • Nouveau-Brunswick

PAY TRANSPARENCY IN NEW BRUNSWICK:

**The necessary tool to enforce
equity in workplaces**

2025

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This report benefited from the thoughtful insights, expertise, and contributions of the **Equal Pay Coalition**.

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Introduction

The New Brunswick Coalition for Pay Equity is a group of individuals and organizations that pursues and ensures the realization of the right to pay equity and to just conditions of work for women.¹ To that end, the Coalition engages in communication, education, research, and advocacy for the adoption and implementation of adequate legislation, as well as public policy dialogue and development.

As often noted by the Supreme Court of Canada, “work has long been recognized as one of the most fundamental aspects in a person's life”. Work provides the means of financial support and is an essential component of their sense of identity, self-worth, and emotional well-being. The Court has said that “the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional, and physical elements of a person's dignity and self-respect. The right to work in conditions of equality and dignity is fundamental.”²

However, persistent inequality in pay and systemic wage discrimination remain significant problems in New Brunswick. Systemic discrimination results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination, but have an adverse effect on women and other equity-seeking groups.³ The culture of pay secrecy in New Brunswick workplaces is used to disadvantage women and equity groups. In 2024, men's average hourly pay was \$31.48. However, the average hourly rate for women was only \$29.17.⁴ Income and earnings is much lower for Indigenous women, immigrant women, racialized women, and women with disabilities.

According to the 2021 Census, the most recent data available, Indigenous women earn about 53% of men's median income (\$29,120 compared to \$54,700),⁵ and racialized women earn a similar

1 The Coalition recognizes and respects gender diversity and those who may identify outside of the gender binary of “woman” and “man.” The Coalition supports a human rights approach to pay equity. The word “woman” is to be interpreted as including all individuals who identify as women or self-identify and decide to be counted as a woman, including trans women.

2 Reference re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313, 1987 SCC 88 at para. 91 (Dickson C.J., dissenting, later affirmed by the Supreme Court of Canada). Cited in Blackett, Adelle, *A Transformative Framework to Achieve and Sustain Employment Equity* (Ottawa: His Majesty the King in Right of Canada, 2023) at page 6.

3 This is the basic legal definition of systemic discrimination drawing from Canadian National Railway Co. v. Canada (Canadian Human Rights Commission), (“Action Travail”), at p. 1139.

4 This data is strictly for the hourly average wage. There are several ways to measure wage discrimination and wage differences by equity groups, such as annual income or average earnings, and each Statistics Canada category includes and excludes different data. No matter how wage discrimination is measured, there is still a problem. Annual earnings include all employment income, including performance-based pay like commissions and bonuses, while hourly wages do not. Since women tend to work fewer hours and are less likely than men to receive performance-based pay, the gap based on annual earnings is larger than the gap based on hourly wages.

5 Statistics Canada. Table 98-10-0428-01 Employment income statistics by Indigenous identity and highest level of education: Canada, provinces and territories, census divisions and census subdivisions

proportion at \$29,640.⁶ For women with disabilities, the most recent Atlantic-wide figure is about \$32,000. Women also remain twice as likely as men to work part-time, a trend unchanged for two decades, further limiting their earning potential and career stability.⁷

These inequities persist across the wider labour market. Women make up the majority of workers in New Brunswick's key sectors — business and administration (73%), health (81%), education and community services (70%), and sales and service (55%)⁸ — yet they consistently earn less than men.⁹ This is compounded by the fact that the province still has one of the lowest women's participation rates in the country (57.5%), suggesting that unequal and opaque pay practices continue to push women into lower-paid, undervalued work and limit their full participation in the workforce.¹⁰

These patterns reveal that gender wage inequalities persist despite existing legal protections.

Pay transparency is a necessary tool to make those protections enforceable by exposing hidden gaps and ensuring employers meet their obligations.

It is against the law in New Brunswick to discriminate against women in employment. Women have been entitled to equal pay for equal work since 1973, with the enactment of the *Human Rights Act* and further provisions in the *Employment Standards Act*. Women working in the public sector have been protected by pay equity provisions under the *Pay Equity Act* since 1989.

The rights of women to equal pay for work of equal value and equal treatment in pay and employment opportunities are internationally recognized human rights and labour standards.

Despite all of these laws, wage discrimination persists because of systemic sex discrimination in employment:

- Women continue to be paid less when doing the same work as men.
- They continue to be paid less when doing work of equal value to men.
- They continue to face systemic sex discrimination in hiring, access to full-time work, training, mentoring and promotions.
- Women continue to predominate in part-time, temporary, casual, seasonal, and temporary agency work, where they continue to face pay discrimination.

⁶ Statistics Canada. Table 98-10-0439-01 Employment income statistics by visible minority, highest level of education, immigrant status and income year: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts

⁷ Statistics Canada. Table 14-10-0327-03 Proportion of workers in full-time and part-time jobs by gender, annual

⁸ Statistics Canada. Table 14-10-0416-01 Labour force characteristics by occupation, annual

Business, finance and administration occupations, except management (L1): \$44,440 (women) vs \$62,108 (men)

Health occupations, except management (L3): \$49,240 (women) vs \$75,600 (men)

Education, law and social, community and government services, except management (NOC 4000): \$46,680 (women) vs \$68,400 (men)

Sales and service occupations, except management (L6): \$23,400 (women) vs \$34,520 (men)

⁹ Statistics Canada. Table 98-10-0452-01 Employment income statistics by occupation minor group, work

¹⁰ Statistics Canada. Table 14-10-0327-02 Unemployment rate, participation rate and employment rate by gender, annual

Yet, a woman's right to equal pay and employment opportunities is not a "frill" or a "perk" to be ignored when inconvenient or costly. Women's equity cannot be relegated as the economy's ordained shock absorbers and told to wait until some other convenient time.¹¹

Urgent, clear, targeted action is required to bring true decent work and economic equality in workplaces so that no one is left behind.

1. Call to Action

The New Brunswick Coalition for Pay Equity calls upon the Government of New Brunswick to enact and enforce proactive legal and policy frameworks to redress systemic discrimination in compensation in workplaces. The Coalition seeks an end to systemic discrimination and to create just conditions for work for women and all equity-seeking groups.

New legal frameworks will require that the government monitor employer compliance, conduct audits, and publicly report pay data to end discrimination.

The Coalition's main priority remains the adoption of proactive pay equity legislation that applies to workplaces in both the private and public sectors.

Pay equity ensures that employers identify and fix pay discrepancies by comparing different jobs of comparable value through proactive measures with clear deadlines. Women in New Brunswick need pay equity, particularly those who work in the private sector and women-dominated workplaces, to ensure their work is paid at its just value.

Pay transparency legislation complements this effort. It is the latest tool to help end wage discrimination and to proactively enforce *existing* equality rights. The Coalition's proposal calls for an intersectional analysis of the compensation of equity groups to expand on and enforce existing human rights.

Pay Transparency does not introduce an entirely new package of different rights. It is simply a tool to help remove barriers to equality and ensure existing rights are enforced. Pay transparency is particularly needed where employers' persistent non-compliance undermines the fundamental right to equality in the workplace for all.

Pay transparency requirements exist in other Canadian jurisdictions as well as international jurisdictions. In Canada, a variety of pay transparency measures and models, with varying degrees of efficacy, are now in effect in five jurisdictions.¹²

¹¹ Québec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, 2018 SCC 17 (CanLII), [2018] 1 SCR 464, <<https://canlii.ca/t/hrx1n>> at para 24.

¹² The Federal jurisdiction under the Employment Equity Act and its regulations; British Columbia, Pay Equity Act; Ontario, the Pay Transparency Act, 2018 is not in effect. The new Employment Standards Act posting requirement for publicly advertised jobs comes into effect as of January 1, 2026; Prince Edward Island, Employment Standards Act posting requirement; Newfoundland and

Pay transparency is supported by the International Labour Organization, the World Health Organization, the Equal Pay International Coalition, the Organization for Economic Co-operation and Development (OECD) and the European Union. In addition, several states and municipalities in the United States have introduced pay transparency ordinances.

Building on this growing international consensus, the Coalition welcomes the provincial government's public consultations on pay transparency. A broad discussion among equity groups will help ensure that any new policy creates meaningful change, removes systemic barriers, and build fully equitable workplaces.

Ending wage discrimination must be a clear priority in public policy and employer practices. Equality and human rights enforcement are not partisan issues. It is a fundamental legal obligation of all those who govern, regardless of party, to cooperate and take the necessary human rights measures to ensure equality in compensation.

It is the position of the Coalition that both an expanded and updated *Pay Equity Act, 2009* and a new robust pay transparency law are required as they remedy different issues:

- Pay equity remedies women's low wages resulting from the historical undervaluation of women's work.
- Pay transparency ensures that compensation information is accessible to workers to enforce existing rights to wages free from discrimination.

The New Brunswick Coalition for Pay Equity supports the immediate implementation of standalone and proactive pay transparency legislation with effective enforcement mechanisms.

Without access to the additional tool of pay transparency, inequities will continue to flourish. Without additional enforcement mechanisms, pay transparency will not achieve the purpose to redress those inequities.

Following its initial work in 2023, the New Brunswick Coalition for Pay Equity has developed this strengthened and expanded *Framework for Pay Transparency*, which details the key elements for meaningful pay transparency legislation.¹³ The Coalition's detailed *Framework for Pay Transparency* calls for legislation that is fully enforced and does not rely on employer voluntarism. Employer embarrassment alone will not redress wage discrimination.

Labrador, Pay Equity and Pay Transparency Act, although the regulations for the Act have not yet passed. See also the European Union Pay Transparency Directive, 2023/970, on strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

¹³ In 2024, the Coalition held consultation sessions with community organizations and worked with Dr. Kerri Froc to develop a modest proposal to ensure that women in New Brunswick had similar pay transparency legislation as Prince Edward Island. However, our research and consultations continued over the following months. The Coalition wants to ensure that New Brunswick's equity groups have access to proactive enforcement of their rights. This updated and amended Framework is the result.

Any pay transparency measures introduced in New Brunswick must overcome the weaknesses and limitations of existing pay transparency laws across Canada.

Creating a new, robust pay transparency tool will help the province achieve and sustain fair, equitable workplace inclusion for all. In fact, the principles of transparency in certain types of contracts are not new to the province.

This position paper starts by setting the context for a new pay transparency law. It outlines specific requirements for such a law, including proposed language for the legislation, and proposes vigorous enforcement mechanisms and new penalties to enforce human rights.

Part I Setting the Context

1. What is Pay Transparency?

Pay transparency is the right to information about compensation to help protect workers from discrimination. It requires employers to proactively provide employees with information regarding wages, benefits, the criteria used to determine pay, and workforce composition. This information must be made open and accessible to all employees to ensure equality.

Pay transparency is also a tool to promote equality and uphold basic human rights in compensation by ensuring employers root out discrimination in pay structures.

Unless workers can freely access information about the pay structure in their workplace, it is impossible to enforce their guaranteed human right to receive pay free of discrimination. When women and other workers do not know what their colleagues earn, gender-based discrimination in compensation can continue.

It is important to remember that the entire pay transparency exercise is about ensuring that:

- 1) employees have access to the information that is necessary for them to be able to enforce their rights to non-discriminatory pay; and
- 2) employers are subject to public accountability for their compliance with fundamental human rights and workplace laws.

Pay transparency must be designed to strengthen the enforcement of existing legal obligations to ensure pay is free from discrimination.

2. Discriminatory wages are against the law

Wages are required by law to be free from discrimination. In New Brunswick, three distinct legal entitlements create the right to discrimination-free compensation.

- a) The *Employment Standards Act* establishes the right to equal pay for equal work without distinction based on sex.¹⁴
- b) The *Pay Equity Act, 2009* guarantees equal pay for work of equal value in the public sector by ensuring that jobs predominantly done by women are paid the same as jobs predominantly done by men that are of equal value based on skills, effort, responsibilities and working conditions.¹⁵ The goal of pay equity legislation is to recognize and correct the discrimination affecting how women's work is valued and paid. Pay equity redresses the systemic

¹⁴ Employment Standards Act, SNB 1982, c E-7.2, Section 37.1 <<https://canlii.ca/t/56bjc>>

¹⁵ Pay Equity Act, 2009 SNB 2009, c P-5.05, <<https://canlii.ca/t/564mr>>

discrimination premised on the historic economic and social devaluation of “women’s work” compared to “men’s work”. Pay equity requires employers to fix pay discrepancies through proactive measures with clear deadlines.

- c) The *Human Rights Act*¹⁶ guarantees that equity groups, such as women, Indigenous peoples, racialized peoples, people with disabilities, people from the 2SLGBTQI+ community, are entitled to equal treatment without discrimination in all aspects of employment.¹⁷ For example, systemic discrimination that limits access to jobs, promotions, training, and other aspects of employment is often reflected in the clustering of equity groups in certain jobs, employment statuses and lower pay levels.

A strong pay transparency law can provide accountability on these measures by revealing;

- a) when women and men are paid differently for similar work (equal pay);
- b) when women-dominated jobs are underpaid relative to men’s work of similar value (equal value);
- c) when equity groups are concentrated in underpaid and precarious employment, such as underpaid part-time work (human rights);
- d) when equity groups encounter glass ceilings, glass walls and sticky floors that deny them career progression (human rights).

Pay transparency breaks through the culture of pay secrecy, which enables wage discrimination in workplaces. Pay secrecy refers to the employers’ explicit or implicit rules, policies and practices that prevent workers from knowing about pay structures or prohibit them from discussing or sharing information about their earnings. The culture of secrecy creates workplaces where workers fear asking questions, and it allows employers to perpetuate wage discrimination.

Pay transparency helps build workplaces based on equality and respect for human dignity.

¹⁶ Human Rights Act, RSNB 2011, c 171, <https://canlii.ca/t/5634j>

¹⁷ Under Section 2.1 of the Human Rights Act, the prohibited grounds of discrimination are: (a) race, (b) colour, (c) national origin, (d) ancestry, (e) place of origin, (f) creed or religion, (g) age, (h) physical disability, (i) mental disability, (j) marital status, (k) family status, (l) sex, (m) sexual orientation, (n) gender identity or expression, (o) social condition, and (p) political belief or activity. Under Section 2(2), the Act also requires that a limitation, specification, exclusion, denial or preference based on a prohibited ground of discrimination is not a discriminatory practice if it is based on a bona fide requirement or qualification that justifies the difference. 2017, c.24, s.3

Part II Building a Robust Pay Transparency Act for New Brunswick

This section outlines the four key principles that, according to the Coalition, should form the foundation of the *Pay Transparency Act*.

1. Pay Transparency to assist with achieving substantial equality in workplaces.

Pay transparency assists in making workplaces better and more inclusive. Its goal is to foster equitable inclusion and decent work for all workers. We cannot afford to leave members of equity groups behind. Pay transparency is grounded in the understanding that systemic discrimination continues to shape workplaces. Systemic discrimination refers to how power structures relationships between groups in society, privileging some and marginalizing others.

Imbalances of power and dominance, such as racism, ableism and sexism, result in a society being designed well for some and not for others. They allow those who consider themselves “normal” to continue constructing institutions and relations in their image.¹⁸ Economic power imbalances in the workplace between employers and workers put workers at the mercy of their employers. The current systems and power structures for setting compensation create an adverse effect on equity-seeking groups, and particularly women who are Indigenous, racialized, Black, or with disabilities.

For example, as noted by the Supreme Court of Canada, women-dominated jobs are generally less paid and less valued than men-dominated jobs. The lower rates of pay discourage men from entering these jobs. As a result, women are concentrated in different jobs than men. This reinforces the view that low pay results from market factors and skill requirements rather than the undervaluation of women’s jobs. Women’s skills are often overlooked, as they are regarded as “natural” female characteristics rather than acquired through experience or training.¹⁹

Historical attitudes towards equity groups, their role in society, along with stereotypical assumptions regarding aspirations, preferences, capabilities, and ‘suitability’ for certain jobs, have contributed to occupational segregation, particularly sex segregation, in the labour market. Work is paid less and undervalued because it is aligned with an equity group. Men are less likely to go into these jobs because the pay is so low. As a result, systemic, self-replicating discrimination occurs.

¹⁸ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3, <<https://canlii.ca/t/1fqk1>> at para 41.

¹⁹ *Centrale des syndicats du Québec v. Québec (Attorney General)*, 2018 SCC 18 (CanLII), [2018] 1 SCR 522, <<https://canlii.ca/t/hrx1q>>, para 2-3.

The Supreme Court of Canada has long required that it “is essential to look to the past patterns of discrimination and to destroy those patterns to prevent the same type of discrimination in the future.”²⁰ This understanding of the need to actively intervene to remedy systemic discrimination reflects the legal principle of substantive equality.

Substantive equality is the equality right that requires government action to remedy systemic discrimination and to avoid creating new barriers.²¹ It means that a woman’s employment prospects and outcomes should not be shaped by discrimination based on gender or by the intersection of other factors such as racialization or gender identity. At its core is the recognition that identical treatment can often produce serious inequality. Without targeted remedial measures, systemic wage discrimination will persist.

Substantive equality requires that a policy or law be made meaningful for all members of society, including those who have been racialized or systemically defined by gender, sexuality, or disability, or similar kinds of characteristics, as well as intersecting identities. In contrast, formal equality is satisfied when everyone is merely treated in the same way.²²

To achieve and maintain substantive equality, pay transparency intervenes so that a more detailed and second look at the pay structures is undertaken. It requires an examination of the impact of pay structures on equity groups: who is left out? who is treated differently and adversely? who requires a remedy to ensure equality? The legislation does not focus on an employer’s intent. Pay transparency legislation explicitly rejects the presumption that everyone has the same employment opportunities, unless demonstrated otherwise.

The Coalition’s proposal advances substantive equality. It takes an approach which recognizes that women in the labour market are differently situated than men. Women are in more precarious jobs, they are clustered into “care” work, and their work is undervalued. The result is low pay.

The Coalition’s proposal shines a spotlight on and requires disclosure of the compensation practices within the workplace. The legislation is looking at the systemic result and the adverse effect of those practices on compensation.

The overall goal is new legislation with requirements that help end discrimination and advance substantive equality in employment. The Coalition’s proposed language uses the most inclusive definitions and aims to extend the benefits of pay transparency to as many vulnerable workers as possible.

²⁰ *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)* [1987] 1 SCR 1114 at 1145 and in Blackett, Adelle, A Transformative Framework to Achieve and Sustain Employment Equity. Ottawa: His Majesty the King in Right of Canada, 2023, p. 8

²¹ See the Supreme Court of Canada’s decision in *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII), [2020] 3 SCR 113, <<https://canlii.ca/t/jb370>>, at paras 31, 40-42 and see Faraday, Fay. “One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada” (2020), 94 S.C.L.R. (2d) 301, which discusses substantial equality and the critical pay equity case in which the New Brunswick Coalition for Pay Equity intervened with other organizations.

²² Blackett, Adelle, A Transformative Framework to Achieve and Sustain Employment Equity. Ottawa: His Majesty the King in Right of Canada, 2023, and see pages 8 and 194.

2. Pay Transparency is proactive.

Pay Transparency requires employers to proactively review compensation practices, advertise wage rates, and report and expose pay differences.

The fundamental principle of the new legislation is to encourage effective and proactive implementation by employers.

Proactive pay transparency laws require employers to publicly disclose:

- wage information in job postings;
- the wage structure in their workplaces;
- the discriminatory wage gaps in their wage structure between equity groups and the men-dominated reference group;
- the distribution of employees across income levels;
- the gender distribution across job status categories (full-time, part-time, casual, seasonal, temporary, etc.);

Pay transparency laws enable information sharing and:

- allow workers to request and receive information on the wage structure;
- allow workers to share wage and salary information;
- prohibit employers from disciplining or retaliating against workers for seeking or sharing wage information; and
- prohibit employers from asking job applicants about their compensation history.

3. Public accountability is needed to ensure that employers deliver on their fundamental human rights obligations.

Any new law must assist with the enforcement of human rights and the right to compensation free from discrimination. Pay transparency should shine a light on wages and compensation in ways that help eradicate systemic discrimination. Accountability within the workplace fosters a more inclusive workplace. Publicly reporting aggregate salary data that reveals wage gaps amongst equity groups encourages employers to meet their fundamental human rights obligations.

4. The province must ensure that pay transparency is enforced by a fully resourced and supported Pay Equity Bureau.

Meaningful pay transparency legislation requires employers to conduct regular audits and publish their plan to fix intersectional pay gaps among equity groups.

Regulatory oversight by the Pay Equity Bureau ensures expert assessment of employers' pay transparency reports. The Coalition recommends that the Bureau develop new online tools to help employers meet their legislative requirements on pay transparency.

The legislation must advance the overall goals of pay transparency through rigorous enforcement mechanisms. Hefty fines should apply where employers fail to remedy wage discrimination or to submit their pay transparency reports.

Part III Recommended Provisions for the Pay Transparency Act

In this section, the Coalition provides both an overview and specific recommended language for pay transparency legislation. It also compares existing pay transparency regulations across Canada's provincial and federal jurisdictions, referencing them when relevant.

1. The Act's Preamble

A preamble in legislation sets out the intention, the context and the problem the legislation seeks to remedy.²³

Given that pay transparency is a tool that supports the enforcement of equal pay and human rights, the new Act must include a Preamble that is consistent with and supports the New Brunswick Human Rights Act and international human rights commitments. A consistent preamble will guide the Act's interpretation and reinforce the significance of human rights.

Specifically, the new pay transparency legislation must be a means to redress and remedy widespread non-compliance with existing laws.

The Coalition proposes the following detailed Preamble to underscore the importance of quasi-constitutional human rights at stake:

Whereas it is desirable to take proactive action to combat systemic discrimination and to enhance compliance with employers' existing legal obligations to deliver discrimination-free pay, to codify a common way to measure such rights and to simplify their administration;

Whereas the right to equality without discrimination is recognized in the Universal Declaration of Human Rights as proclaimed by the United Nations and;

Whereas right to equality without discrimination in employment and women's right to equal pay for equal work and the right to equal pay for work of equal value are recognized in the International Covenant on Economic Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Beijing Declaration and Platform for Action; the Durban Declaration and Program of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance; the Convention on the Rights of Persons with Disabilities as proclaimed by the United Nations; and Convention 100 – Equal Remuneration for Work of Equal Value and

²³ See section 15 of the *Interpretation Act*, RSNB 1973, c I-13, <<https://canlii.ca/t/564n1>>

Convention 111 – Discrimination in Employment and Occupation as proclaimed by the International Labour Organization; and

Whereas it is recognized that human rights, equal pay and pay equity are guaranteed by the rule of law, and that these principles have been confirmed in New Brunswick by several enactments of the Legislature, this legislation advances the proactive enforcement of those rights.

2. Purpose of the pay transparency legislation

It is equally important for the Act to include a clear and strong purpose clause to ensure that employers, workers, and the government know the objective to be achieved. A purpose clause is a particularly important part of any legislation because it articulates the core principle which will be used to interpret its other provisions.

The law has two main purposes. First, it ensures employees have access to the information they need to enforce their fundamental workplace rights. Second, it requires employers to demonstrate their compliance with these longstanding, bedrock human rights obligations.

Pay transparency is not merely for the sake of transparency. It is a tool to support the enforcement of fundamental workplace and human rights laws that mandate equal pay and pay equity. This purpose should be clearly articulated in the legislation. For example, the Ontario *Pay Transparency Act*²⁴ included a purpose clause from which the proposal below is built. The Coalition proposes the following specific purposes:

The purpose of the Act is

- (i)** to redress systemic discrimination and proactively promote substantive equality in the workplace for equity groups, including women, Indigenous workers, racialized workers, Black workers, 2SLGBTQI+ workers, and workers with disabilities through increased transparency of compensation and workforce composition;
- (ii)** to increase disclosure of inequities related to employment and compensation that women and other equity groups face, and to require the removal of such inequities, if identified
- (iii)** to promote, amongst employers, the elimination of gender and other biases in hiring, promotion, employment status and pay practices;
- (iv)** to support open dialogue and workplace consultation between employers and employees on issues concerning employment, compensation, and equal opportunity; and
- (v)** to support economic growth, equitable inclusion and full and productive employment and decent work for all.

²⁴ Pay Transparency Act, 2018, SO 2018, c 5, <<https://canlii.ca/t/5353z>> s. 4.

The *Pay Transparency Act* contributes to redressing and remedying systemic wage discrimination. Accordingly, the new legislation must not undercut, repeal, or retract from the obligations set out in the *Employment Standards Act*, the *Pay Equity Act, 2009* or the *Human Rights Act*.

3. Scope and application of the law

In this section, the Coalition proposes that the law apply broadly to employers in both the public and private sectors, to workers by equity group, and to the key category for reporting of "job class". It also calls for a comprehensive analysis of compensation by relying on a total compensation approach. We examine each of these important categories below.

a) Employers

The Coalition proposes that the new *Pay Transparency Act* must apply to *all* employers in the public sector, the non-profit sector, and the private sector.

Under the New Brunswick *Human Rights Act*, every employer in the province, regardless of size, must treat equity groups without discrimination in all aspects of employment, including pay.

Under the *Employment Standards Act*, every employer in the province, regardless of size, must provide women with equal pay for equal work.

The *Pay Transparency Act* must support existing obligations under the *Human Rights Act* and the *Employment Standards Act*, which apply stringent standards for compliance. It must not abrogate existing equality rights, and no pay shall be reduced or frozen in order to remedy inequality.

The Coalition proposes that employers with 20 or more employees be subject to specific reporting obligations, including a detailed pay transparency report on compensation structures in their workplace, as set out in greater detail below.

The Act would define an employer to mean a person who employs one or more employees or contracts for the services of one or more employees.

This Act would apply to the Crown and its employees.

In addition, the Coalition identifies specific types of employer groups which require additional considerations to ensure that pay transparency applies to them, given their unique role in the New Brunswick labour market. These employers are required to file pay transparency reports regardless of their size.

- a) The law would explicitly be directed to *all vendors of record* who do or seek to do business with the New Brunswick government. A Pay Transparency report would be required *before* a vendor of record was awarded a contract. Any current vendors of record not in compliance

with the pay transparency law would have their contracts not renewed until they complied with the law.

- b)** A *franchisee*, which may be an employer with less than 20 employees, would be required to make a pay transparency report. A franchisee is where the business operates and is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make the payment or payments, to the franchisor in the course of operating the business or as a condition of acquiring the franchise or commencing operations.
- c)** Employment agencies, following the definition from the *Human Rights Act*, "include[s] a person who undertakes with or without compensation to procure employees for employers and a person who undertakes with or without compensation to procure employment for persons." This group includes temporary help agencies and recruiters. All such employers would be required to make pay transparency reports.

The Coalition rejects the notion that pay transparency is to be applied only to larger employers. Limiting the application of the law would undercut existing legal obligations. Such an approach would effectively signal tolerance for and condone discriminatory behaviour in smaller workplaces. Without accountability, employers would not be required to comply, and employees would lack the tools to enforce their rights.

If the law only applies to a small fraction of employers, particularly larger ones, it will not serve as an effective deterrent to discriminatory practices or help shift the institutionalized systemic discrimination. An analogy can be made to speeding tickets: if the maximum speed on the highway is 100 km/hour, but drivers know that tickets will not be issued unless a driver in fact exceeds 120 km/hour, it effectively condones speeding up to 120 km/hr.

It is women working in small, non-unionized workplaces who are most in need of access to pay transparency to enforce their rights. Unless pay transparency legislation aligns with employer obligations to deliver non-discriminatory pay, accountability will not be achieved, and the culture of non-compliance that devalues women's work and impoverishes women will not be broken.

b) Workers

The Act would apply to all workers in differing forms of work. The Coalition adopts the following broad definition of “worker”:

- (i) A person who performs work or supplies services for monetary compensation.²⁵
- (ii) a person who receives training from a person who is an employer,
- (iii) a contractual worker,
- (iv) a person who is a home-based worker or
- (v) a dependent contractor.

The legislation would cover all provincially regulated workers, regardless of employment status, including part-time, non-unionized, casual, temporary, and seasonal employees.

As we note below, the Coalition supports extending equal pay based on job status so that workers in precarious work arrangements are paid equally to those in standard work arrangements.

The protections of this law would extend to workers hired through a temporary agency. The Coalition supports that workers on temporary assignment be paid equally to the employees of the temporary help agency's client when performing work of similar duties, qualifications, skill, effort, and responsibility. The objective is to extend the right to equal pay and protection from discrimination throughout the pyramid employment relationship.

c) Job class

Pay transparency legislation requires a category for analyzing pay structures and compensation in the workplace.

The Coalition proposes using “job class” as follows:

An employer shall identify the job class of positions occupied or that may be occupied by workers. Positions are considered to be in the same job class if

- (i) they have similar duties,
- (ii) they require similar qualifications, and
- (iii) they require similar skill, effort, and responsibility, and
- (iv) work is performed under similar working conditions

²⁵ The Occupational Health and Safety Act defines an employee” to mean (a) a person employed at or in a place of employment, or (b) a person at or in a place of employment for any purpose in connection therewith. The Coalition seeks to ensure that all individuals in a work relationship with an employer are captured by the pay transparency legislation.

The Coalition recommends using “job class” to ensure consistency with existing provisions of the *Employment Standards Act* and *Pay Equity Act, 2009*. These are categories which employers are currently obligated to use.

In addition, to ensure consistency with s. 37.1 of the *Employment Standards Act* (equal pay provisions) and the *Human Rights Act* (right to no discrimination in employment), the Act would ensure that no employer may pay a worker from an equity group a different rate of pay than that paid to a worker who is not a member of an equity-seeking group, unless a *bona fide* occupational requirement justifies the difference.

It is important to note that the federal pay transparency legislation and the B.C. *Pay Transparency Act* both relies upon a broad category of prescribed “occupational groups.” For New Brunswick, it is not necessary to add a new category to analyze compensation structures. In addition, a job class may consist of only one position, or it may consist of several positions that meet the above criteria.

d) Equity Groups

To fulfill the purpose of the legislation, the *Pay Transparency Act* must require employers to examine compensation and pay structures through an intersectional lens, taking into account key equity groups.

According to the Canadian Human Rights Commission, “intersectionality is a concept that recognizes that different kinds of discrimination reinforce and influence each other. The various identities a person identifies with, such as their race, class, gender, physical or mental ability, or sexual orientation, can shape the nature of the discrimination they face in their lives.”²⁶

Whereas analyzing multiple grounds separately – as if they existed in discrete silos – can sometimes ignore the compounding effect that intersecting grounds can have.

Intersectional and compounded human rights grounds may have the impact of increasing and exacerbating an individual’s vulnerability. Where multiple grounds of discrimination are present, their combined effect may be more than the sum of their individual effects. As the statistics in Part I demonstrate, the gender pay gaps are greater when human rights grounds are combined with gender and an explicit, transparent intersectional approach is applied.

The Coalition recommends that pay transparency analysis is be based on defined equity groups that reflect the prohibited grounds of discrimination under the *Human Rights Act*. The proposed equity groups align with those recommended in the recent Task Force on Employment Equity.²⁷

²⁶ Kapoor v. LTL Transport Ltd. and Robert McDougall, 2025 CHRT 69 (CanLII), para 105-112.

²⁷ Blackett, Transformative Framework, *supra* at Chapter 3.

These groups are recognized as experiencing the deeper adverse effects of discrimination, particularly when compounded or intersecting with other grounds.

By identifying the equity groups and the compounding intersectional effect of multiple grounds at the forefront of the pay transparency analysis, the legislation is proactive in reviewing how these human rights grounds may factor into adverse treatment in compensation.

The Coalition's proposed equity groups for pay transparency purposes are:

- women,
- Indigenous workers,
- racialized workers,
- Black workers,
- 2SLGBTQI+ workers, and
- workers with disabilities.

For clarity, the Coalition proposes that the definition of 2SLGBTQI+ must be broad, inclusive, and as used by the Federal government to include:

Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional sexually and gender diverse people (2SLGBTQI+).

In addition, to ensure that non-binary or other gender identities are not erased by asking for sex-based traditional binary information, the Coalition proposes that the legislation include the approach adopted by the B.C. Pay Transparency Regulation (BC Reg 225/2023). The Regulation enables the collection and analysis of data, which overcomes the traditional binary in section 1 (2) by this definition:

1(2) The following are the gender categories that apply in relation to reporting requirements under this regulation:

- (a)** Man, for an employee who identifies as a man;
- (b)** Woman, for an employee who identifies as a woman;
- (c)** Non-binary, for an employee who identifies as non-binary;
- (d)** Unknown, for an employee,
 - i. who does not identify as being in a gender category set out in paragraph (a), (b) or (c),
 - ii. who does not wish to specify which gender category applies, or
 - iii. about whom the reporting employer does not have information respecting the employee's gender category.

Once an employer has identified all job classes, an employer must determine which of those classes are predominantly composed of workers from equity groups to assess compensation and pay structures

To determine whether a job class is an “equity-group job class”, the Coalition proposes using a criteria set out in the *Pay Equity Act, 2009* as follows:

An employer shall identify a job class in which 60 per cent or more of the members of the job class are from a specific equity group.

In assessing whether the job class is an equity group job class, consideration must be given to the historic incumbency of the job class and the occupational stereotyping of the job class since the pay structures were first established and evolved.

The Coalition relies upon equity groups because disadvantage and discrimination are historically rooted, **and these equity groups may face the deepest discrimination in compensation.** The purpose of pay transparency is to illuminate the significant differences in experiences and the specific barriers faced by each equity group.

Without an intersectional analysis, the barriers to equality that arise at the intersections of grounds of discrimination, such as race, gender and disability, will remain masked and overlooked.

Relying upon equity groups ensures that human rights are proactively enforced. Employers can then review and identify compensation practices that create discrimination or disproportionately negatively affect equity groups.

As part of the Act's reporting obligations, employers will be required to collect information about workers from equity groups. The self-identification by workers should remain voluntary and confidential. When individuals identify with more than one equity group, they should be encouraged to indicate any equity groups with which they identify. This reflects the intersecting marginal identities or intersectionality.

One of the clearest examples of recognizing the need for anti-discrimination protections on intersectional and combined grounds is found in the *Human Rights Act* of the Northwest Territories. The NWT Code protects a “class of individuals” from discrimination based on “two or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds.”

The Northwest Territories Code's equal pay provisions also use an intersectional approach. Specifically, no employer, based on a prohibited ground of discrimination, may discriminate against any such employee by paying them, or by causing or contributing to their being paid, at a rate of pay lower than that paid to other employees in similar jobs, subject to prescribed exceptions. The right to equal pay is not limited to pay between women and men alone.²⁸

The point is to examine the workplace experience of members of equity groups both through an intersectional lens and as a whole. This means the equity groups and their compensation, as well as whether they are members of more than one equity group.

²⁸ Human Rights Act, SNWT 2002, c 18, <https://canlii.ca/t/55fwx> s. 5 (3) and s. 9.

Given the specific purpose of the pay transparency legislation to redress systemic discrimination and promote substantive equality, it should not substitute as the entire new enforcement mechanism of the *Human Rights Act*. New Brunswick requires strong, well-financed human rights mechanisms, which have the confidence of all equity seeking and equity deserving groups.

However, pay transparency should not be called upon to replace the *Human Rights Act* or the *Pay Equity Act, 2009* or important proactive efforts to encourage employment equity in workplaces.

The proposed pay transparency legislation is to correct barriers to the equitable compensation members which equity groups have as an existing right. The proposal seeks to remedy certain aspects of discriminatory pay.

Following from the analysis and recommendations of the recent federal Task Force on Employment Equity, it is important to establish specifically which of the groups – e.g. women workers rather than “sex” or “gender identity” or expression”; Black workers and racialized workers rather than “race”, “national or ethnic origin” face the most significant barriers in New Brunswick. The Coalition has done that through the clear identification and naming of specific equity groups most directly adversely affected.²⁹

The Coalition further notes that with respect to the human rights prohibited ground of “age”, Australia’s 2012 pay transparency legislation did include age as a reporting group, but as of 2025, age was no longer required to be a category.

e) Reference group(s)

For the pay transparency report, the analysis of compensation and pay structures requires a reference group or group(s) to assess barriers to equality.

To ensure consistency with the *Employment Standards Act* and the *Pay Equity Act, 2009*, the Coalition proposes that the comparator be a “male-dominated reference group(s)”. **The Reference group is a job class in which 60 per cent or more of the members of the job class have identified as men.**

The Coalition does not support the requirement that there needs to be a minimum of 10 incumbents within the reference group, as that is inconsistent with either the *Employment Standards Act* or the *Human Rights Act*, where there may be one male employee paid at a higher compensation rate, which requires consideration.

There may be more than one male-dominated job class in a workplace. The objective is to identify where the reference group or groups fall within the workplace compensation hierarchy to enable a comparison with the job class of equity groups.

²⁹ Please see, and the Coalition relies upon the analysis of Blackett, A. (chair) *A Transformative Framework to Achieve and Sustain Employment Equity*, p 167, for a discussion of the importance of specific identifiable groups, rather than the prohibited grounds of the Human Rights Act.

f) Employment status

The new Act must specify the pay transparency reporting obligations, including the compensation structure by job status (full-time, part-time, casual, seasonal, and temporary help agency workers).

To ensure that workers can exercise their right to non-discriminatory pay, employment status may be defined as follows:

- (a) whether an employee works full-time, part-time, or casual hours;
- (b) whether an employee has permanent, temporary, seasonal, or casual status; or
- (c) whether an employee is hired directly by an employer or through a temporary help agency

g) Compensation

To ensure a complete analysis of compensation structures, the Coalition relies upon an approach that considers the **total compensation of a job class**.

Lack of access to key elements of pay, such as bonuses or overtime pay, contributes to the gender pay gap and wage discrimination. Other examples include the differential or lack of access to vacation pay and vacation weeks.

Compensation information will make it possible to determine not only hourly rates of pay, but also bonus pay, overtime pay and overtime hours, all of which are needed to assess and report on pay gaps.

The Coalition proposes that “compensation means any form of remuneration payable for work performed” and includes:

- (i) salaries, commissions, overtime pay, vacation pay, severance pay entitlements and bonuses;
- (ii) payments in kind;
- (iii) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
- (iv) any other advantage received directly or indirectly.

4. Employer Obligations

a) Pay Transparency prior to employment

(i) Disclosure of compensation information

Pay transparency laws have been adopted to ensure workers have access to information about compensation. Non-unionized workers, in particular, often lack knowledge about the pay structure in their workplace without the proactive disclosure of this information. Historically, workers could be disciplined or even terminated for asking about or sharing wage information.

Employers have had decades to eliminate the equity pay gaps in their workplaces. Without significant intervention, patterns of systemic discrimination will persist. Pay transparency, through the mandatory disclosure of compensation information, will enable workers, particularly those in non-unionized workplaces, to know and enforce their right to non-discriminatory pay.

The requirement to include compensation information in publicly advertised job postings is a basic feature of pay transparency legislation in jurisdictions across Canada such as British Columbia, Ontario, Prince Edward Island and Newfoundland and Labrador, as well as in the United States and under the European Pay Transparency Directive.

It is important to note that in New Brunswick, the right to disclosure of information is a legislative right for potential franchisees. Under the *Disclosure Document Regulation of the Franchise Act*, franchisors must provide a Franchise Disclosure Document (FDD) to prospective franchisees at least 14 days before any agreement is signed. Why would employees not be afforded a similar right to information?³⁰

The Coalition recommends that a "publicly advertised job posting" means

an external job posting for a specific job that an employer advertises to the general public in any manner.

Examples of a general recruitment campaign that does not advertise a specific position and merely uses a general help-wanted sign are captured by this definition. The Coalition proposal is that employers provide as much detail regarding the compensation package as possible.

The Coalition recommends that,

an employer who publishes a publicly advertised job posting shall include in the posting information about the expected pay, the hourly rate for the position at time of hire, the salary range of expected pay from the lowest to highest, the salary progression scheme (e.g. annual progression or other method used by the employer), the benefits, bonus structure, and available pension benefit for the position.

³⁰ Disclosure Document Regulation, NB Reg 2010-92, <<https://canlii.ca/t/535x1>>

(ii) Workers' protections from the use of compensation history

In a labour market such as New Brunswick's, where systemic wage discrimination is widespread, the discriminatory pay that members of an equity group receive in one job is often carried forward in subsequent jobs as employers use compensation history as a benchmark for setting pay. In this way, compensation history becomes one of the ways to perpetuate, for example, gender pay gaps that impoverish women throughout their careers.

The Act must prohibit an employer from asking a job applicant about compensation history. However, the Act must also not undermine this prohibition by allowing employers to rely on compensation history even if they obtain such information.

Specific protections for workers must be included to prohibit the use of compensation history and create a barrier to arbitrarily setting low and discriminatory wages.

The Coalition recommends the following protections:

- (i) No employer shall seek pay history information about an applicant by any means, whether directly or indirectly or through a third party, unless the pay history information is publicly accessible.
- (ii) Nothing prohibits an applicant from voluntarily and without prompting disclosing pay history information to an employer or an employer's agent.
- (iii) Where an applicant has made a disclosure of pay history information or the employer has obtained public compensation information, an employer cannot consider or rely on compensation history in any way which undermines a job applicant's right to receive pay that is free of discrimination.

b) Transparency regarding job postings and pay structures during employment

The right to pay transparency must apply to internal job applicants as well. Workers should have the right to pay transparency about their employer's pay structure during employment. Disclosure regarding an employer's existing pay structure and discretionary increases is critical to ensure that increases are not applied in a discriminatory manner as employees move to a different job with the same employer.

The Coalition recommends that,

1. Where an employer posts a specific job within the workplace for internal applicants, the posting information shall include the expected hourly pay rate, the range of expected pay for the position, criteria used to determine the pay, the range of pay, the pay progression system, the benefits offered, the bonus schemes and available pension benefit for the position.
2. Every employer shall, on written request by a worker, inform them, in writing, within 1 month of the request, of the average hourly wage, average annual gross pay, the range of pay, the pay progression system, the benefits, bonus schemes and available pension benefit by equity group for the job class of the requesting employee.

c) Employer Pay Transparency Analysis and Reporting Obligations

The public disclosure of compensation information is the core of the pay transparency law.

For years, the Supreme Court of Canada has directed employers to build conceptions of equality directly into the workplace standards when developing them.³¹ A proactive consideration of equality is required.

Pay reporting enables and requires employers to evaluate and monitor their pay structures. Pay transparency reporting will reveal the clustering of equity groups in particular job classes, by employment status and pay levels. It shines a spotlight on pay structures through a human rights lens to ensure that employers proactively comply with equal pay and non-discrimination provisions.

The Coalition proposes two components to the pay transparency analysis and reporting obligations of employers:

- i. All employers must conduct an equal pay review by job class and equity groups within the workplace. The results are posted in the workplace. Employers with less than 20 employees are not required to file the annual pay transparency report.
- ii. Employer with 20 or more employees are required to conduct a Compensation Structure Analysis and prepare an annual pay transparency report.

The initial analysis would be prepared and posted in the workplace within six months of this new legislation coming into effect. The pay transparency reports must be made available to workers. Following the initial posting and filing, annual pay transparency reports would be filed for each subsequent 12-month period. Employers with 20 or more employees would file their pay transparency report with the government's assigned agency, the New Brunswick Pay Equity Bureau.

³¹ British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union (BCGSEU), [1999] 3 S.C.R. 3 (Meiorin).

The pay transparency report must be filed within thirty days of posting in the workplace and, subsequently, on an annual basis.

It is important to note that the information provided in pay transparency reports is not personal. It is information that relates to the pay structure of positions in a workplace. Pay transparency reports do not disclose individual employee data. They provide aggregate figures, in an anonymized way, to describe the wage structures and patterns in the workplace.

The Coalition's proposed pay transparency reporting obligations are in line with existing pay reporting obligations in New Brunswick statutes and should not be less rigorous.

It is important to keep in mind that every collective agreement in the province is publicly available on the province's Collective Agreement Retrieval System (CARS) — the online search engine for collective agreements and arbitration awards filed with the Industrial Relations Branch of the Department. Every collective agreement contains a wage grid. Even where there is only one individual in a position or job classification in a unionized workplace, the wage information for that classification is publicly available to anyone who cares to access the collective agreement.

Similarly, under the original *Pay Equity Act*, for over three decades, public sector employers were required to develop pay equity plans in their workplaces, which disclose job classes and their associated pay. The Act required full disclosure to employee representatives, both non-union and bargaining agents, who were appointed to represent employee interests, as well as mandatory reporting directly to employees on the progress of the pay equity process.³²

Anonymous wage data collected under pay transparency legislation should not be treated any differently. The information that primarily relates to a job class is the kind of information that has, in law, been disclosed as an important element of rights enforcement and public accountability. Public accountability ensures that an employer's hiring and compensation practices are legitimate.

While the Coalition proposes extensive anti-reprisal provisions, these are insufficient on their own to allow workers, particularly non-unionized women, to take the risk of seeking wage information from their employer and enforcing their rights. Many years of experience with employment standards show that non-unionized workers who seek to enforce their rights face a serious risk of discipline and termination. Therefore, the onus to disclose pay information must lie with the employer. And that information must be available to workers in their workplace. The Coalition proposes that the employers' reporting obligations must be set out in the new Act itself rather than being left to regulation. Both the Government of British Columbia and the federal government require employers to prepare public pay transparency reports.

³² Pay Equity Act, SNB 2009, c P-5.05, <<https://canlii.ca/t/564mr>> sections 11, 12 and 16.

Finally, the Coalition proposes that the pay transparency reporting be simplified for employers. It recommends that the **Pay Equity Bureau develop and prescribe the annual pay transparency reporting forms** for employers to use in their workplaces and to file with the Bureau.

To summarize, there are five primary elements to the employer's reporting obligations:

1. Collect information from workers;
2. Conduct an Equal Pay Review within each job class to ensure there is no discrimination against equity groups.
3. Conduct a Compensation Structure Analysis to examine any compensation gaps between equity groups, by job class and employment status compared to the reference group;
4. Post the transparency report in the workplace and,
5. File the pay transparency report with the Pay Equity Bureau (employers with 20 + employees).

(i) Collecting employee information

The starting point for the pay transparency analysis is to collect information from workers. The Coalition proposes the following language, which is informed by the requirements for information collected from BC's *Pay Transparency Act*.

1. For the purpose of preparing a pay transparency analysis, a reporting employer must:
 - i. during the first period in which the reporting employer is required to prepare a pay transparency report, make reasonable efforts to collect the prescribed information from each worker of the reporting employer;
 - ii. at the time an individual becomes an employee of the reporting employer, make reasonable efforts to collect the prescribed information from that individual;
 - iii. at least once in every calendar year, provide to each employee of the reporting employer with the opportunity to provide the prescribed information, and to update or make additions to any information provided by the employee under this section.
2. An employer must, when collecting information from a worker, inform the worker that the employee's disclosure of the information is voluntary.
3. An employer must inform the workers that the information collected is confidential and will only be used by or be disclosed to other persons within the employer's organization for the employer to carry out its obligations under the Pay Transparency Act. No data of an individual incumbent from within a job class will be publicly disclosed in a workplace pay transparency report without that individual employee's consent.
4. The public interest in maintaining open and public reporting outweighs privacy interests, save and except for job classes with two or fewer incumbents where the job class information may be anonymized in the workplace report and the Compensation Review public report, unless the two incumbent workers consent otherwise.

(iii) Equal pay review within the job class and by equity group

This first step ensures enforcement of equal pay for equal work based upon equity groups in a manner consistent with the Human Rights Act guarantee of non-discrimination in employment.

- i. Every employer shall analyze the compensation of individual employees within each job class by equity group and by employment status to ensure no employee of an equity group is paid a **lesser or different compensation** rate than any male employees within the job class.
- ii. Where a majority of the equity group, such as women, identify other equity grounds, these should be noted **and analyzed for a compounding adverse effect**
- iii. The employer shall remedy any **compensation** discrepancies and ensure that individuals from an equity group within a job class receive equal pay for equal work within three months of the analysis.
- iv. No employer shall reduce a worker's compensation through the pay transparency exercise.
- v. Employers shall post within the workplace the overall results of the analysis and the effective date of the remedy of any compensation gaps by job class, equity group, and employment status in the workplace within thirty days of completing the analysis. **The Equal Pay Review shall be made available to bargaining agents, if the workers are represented.** No individual worker shall be identified in this report.
- vi. Employers shall include the results of the equal pay review in the annual pay transparency report, if required to produce a report. No individual worker shall be identified in this report.

(iv) Compensation structure analysis

Reporting on gaps between the job classes, by equity groups and employment status compared to the reference group(s).

The Coalition proposes a comprehensive review and reporting of compensation structures. This reporting obligation applies to employers with 20 or more employees. The federal *Employment Equity Act*'s pay transparency reporting requires a review of compensation by occupational groups.³³ The Coalition proposes using "job class" to maintain consistency with New Brunswick's employment standards and pay equity categories.

The Coalition does not propose B.C.'s *Pay Transparency Act*'s approach. The approach in B.C. simply illustrates the average difference in pay across gender groups by four general pay hierarchy groups, or quartiles, regardless of the job or occupational group. Although some employers have taken an additional step to examine occupational categories, the B.C. The Act does not require such information in pay transparency reports.

³³ Employment Equity Regulations: SOR/2020-236

From the Coalition's perspective, this generalized reporting has the significant potential to mask inequities both within and between job classes. For example, such reports may demonstrate a segregation of women in the lower compensation quartile in a company, but do not require a deeper examination of why such clustering occurred, whether there is a comparable, higher-paid, male reference group, or the remedy to address the low pay.

The Coalition proposes that the Employer reporting obligations are based on job class, analyzed by equity group and by employment status. The Coalition proposes an explicitly intersectional analysis to the pay transparency reporting.

Under the federal system, annual reports include data organized by designated equity groups, employment status and "occupational group" with information on hourly wage gaps, bonus pay gaps, overtime pay gaps, and gaps in overtime hours worked. The Coalition supports the collection of this important information to provide a more comprehensive picture of compensation structure. The Coalition proposes using job class rather than the extremely broad occupational categories approach used federally.

The Coalition proposes that the compensation structure analysis and annual pay transparency report include:

1. Every employer with 20 or more employees must prepare an annual pay transparency report that includes a compensation structure review of the difference between job class(es) by equity group and the employment status compared to the reference group(s), based upon the following information:
 - a. the **total number of its employees** and the number of those employees who are members of **equity groups**;
 - b. the **job classes** in which the employees are employed, the **proportion of equity groups, and employment status of employees in the job class**; and where a majority of the equity group of a job class, such as women, identify other equity grounds, these should be noted as part of the job class and considered in the equity analysis;
 - c. the job classes which are determined to constitute **reference group(s)**;
 - d. the annual **total compensation** categorized by each job class, by equity group and by employment status within the job class in comparison to a comparable reference group job class(es);
 - e. in women-dominated workplaces, gather and compare the annual total compensation of each job class and within each job class by equity group and by employment status;
 - f. a **rank list of all job classes** organized by equity group in the establishment from **the lowest rate of total compensation to the highest rate of total compensation**; and, where a majority of the equity group identify other equity grounds, these should be noted;

- g. the mean and median hourly rate of pay, based upon a total compensation analysis (e.g. salaries, vacation pay and other payments in kind), within each job class, by equity group and by employment status in comparison to the comparable reference group job class(es);
- h. the mean and median **overtime pay** within each job class, by equity group and by employment status in comparison to the comparable reference group job class(es);
- i. the mean and median **overtime hours worked**, within each job class by equity group and by employment status in comparison to the comparable reference group job class(es);
- j. the mean and median **bonus pay (e.g. holiday bonus, year-end bonus, profit-sharing, merit pay increase)**, within each job class by equity group and by employment status in comparison to the comparable reference group job class(es);
- k. whether job class by equity group and employment status in comparison to the reference group job class(es) **access a pension or similar retirement compensation plan**.
- l. Where the employer used a job evaluation tool to create the existing compensation structure, such tool shall be identified in the report and made public to all employees, including, but not limited to, the tool's subfactors, levels, weights of each subfactor and the job scores assigned to each job class.

2. The employer shall remedy and eliminate any identified discriminatory compensation gaps not justified by bona fide occupational requirements, **between the equity job class(es) by employment status, in comparison to the reference group job class(es), through positive policies and practices**. This is in addition to any remedies identified from the equal pay within job class analysis.
3. The discriminatory compensation gaps shall be remedied within three months of the preparation of the Pay Transparency Report.
4. The pay transparency report shall identify all remedies taken and any positive policies and practices instituted for equity groups by job classes and employment status. No individual worker shall be identified in the report.
5. No employer shall reduce a worker's compensation through the pay transparency exercise.

d) Post the pay transparency report in the workplace.

The Coalition proposes that the law guarantee access to the annual pay transparency reports to workers and their representatives in the following manner:

1. Each year, employers shall inform all workers and their representative bargaining agents, if any, of their right to receive, review and consult on the annual pay transparency report 30 days before the posting of the report.
2. The first pay transparency report shall be posted in the workplace six months after the Act is in effect.
3. An employer who is required to prepare a pay transparency report shall post the pay transparency report online and in at least one conspicuous place in every workplace of the employer where it is likely to come to the attention of employees in that workplace.
4. Workers and their representatives, including bargaining agents, shall have the right to ask employers for additional clarifications and details regarding the pay transparency report, including explanations of any gaps and differences in compensation for equity groups. Employers are required to respond in a substantive manner within 30 days of receiving the request.

(i) File an annual pay transparency report with the Pay Equity Bureau

Pay transparency legislation requires the filing of reports with the appropriate government agency. In New Brunswick, the Pay Equity Bureau is the designated agency. The Pay Equity Bureau has the mandate to provide assistance and advice to employers, employees, and bargaining agents in implementing or maintaining pay equity, as well as requesting information from employers in order to monitor the progress of implementation and maintenance of pay equity. The requirement for employers to report to the Pay Equity Bureau is well established under the *Pay Equity Act, 2009*.³⁴

The Pay Equity Bureau has direct expertise in analyzing systemic wage discrimination, which lies at the core of the reporting obligations in the pay transparency legislation.

In addition, the Coalition proposes that the Pay Equity Bureau provide direct assistance to employers through the provision of a software program for filing pay transparency reports. The Coalition notes that under the federal *Employment Equity Act and its Regulations*, the Government of Canada requires employers to file reports using prescribed forms (WEIMS).

³⁴ PEA, s. 15.

Using the forms prescribed by the Pay Equity Bureau reduces the administrative burden for employers, ensures greater consistency in reporting, and allows for easier and more efficient computation and consolidation of information by the Bureau.

The Coalition proposes that,

1. The Act shall require that employers submit the annual pay transparency report to the Pay Equity Bureau.
2. Every employer shall submit the pay transparency report to the Pay Equity Bureau within 30 days of posting the report in the workplace.
3. Employers shall file the annual pay transparency report to the Pay Equity Bureau on specially designated forms through software designed specifically for the reporting purposes as provided by the Pay Equity Bureau.
4. The employer shall retain a copy of the database or other computer record used to generate the report for five years after the year in respect of which the report is filed.

Part IV Enforcement and Dispute Resolution Mechanisms

Pay transparency legislation requires robust protections, oversight and enforcement mechanisms. Without such mechanisms, the pay transparency exercise is relegated to mere employer voluntarism. Workers cannot be assured that their fundamental human rights will be respected simply as a result of an employer's embarrassment or newfound enlightenment. As evidenced by the wage discrimination described above, volunteerism is simply not effective.

Pay transparency is important for all employees in a workplace. Workers have the right to be protected from reprisals and to know that their employer is complying with employment standards and human rights laws.

1. Workers' Protections: Anti-Reprisal protections

Protections against adverse treatment by employers in response to workers exercising their right to information, filing a complaint, or initiating a proceeding to enforce their rights under the pay transparency legislation are a core requirement. **The anti-reprisal protections must buttress the purpose of the legislation to redress systemic discrimination and end the culture of secrecy over compensation in workplaces.**

Anti-reprisal protections help redress the power imbalances in the workplace. Such protections are recognized in the *Employment Standards Act* and the *Human Rights Act* and should continue to apply. Pay transparency legislation across Canada also includes anti-reprisal protections.

The Coalition proposes the following:

1. No employer or person acting on behalf of an employer shall intimidate, demote, suspend, dismiss, harass, reduce compensation or otherwise penalize or disadvantage a worker or threaten to do so because the worker has,
 - a. made inquiries to the employer about the worker's pay,
 - b. disclosed information about the worker's pay to another worker of the employer or to an individual who has applied for employment with the employer,
 - c. made inquiries to the employer about a pay transparency report or information contained in a pay transparency report,
 - d. asked the employer to comply with the employer's obligations under this Act, or
 - e. made a report to the Pay Equity Bureau in relation to the employer's compliance with the employer's obligations under this Act.

2. No worker shall be required to sign a non-disclosure agreement upon the commencement of at the time of termination or severance of employment which in any way limits the worker's ability to discuss compensation, termination and/or severance payments with another worker of the employer or to an individual who has applied for employment with the employer.
3. Nothing in this Act bars the jurisdiction of either the Human Rights Act or the Employment Standards Act to apply to a worker's complaints related to wage discrimination.

2. Enforcement Mechanisms

The Pay Transparency Act is remedial and requires strong enforcement mechanisms to ensure compliance. **The right to conditions of equality in compensation is fundamental, and it is the law.** The unequal and unfair treatment the equity groups experience with lower pay arises from discrimination, prejudices and stereotypes.

Therefore, the enforcement mechanisms must be developed from the starting point that pay transparency remedies violations of quasi-constitutional rights – fundamental human rights.

New Brunswick's pay transparency legislation must overcome the inherent weaknesses in existing pay transparency legislation in other provinces. The B.C. Pay Transparency Act and Regulation do not institute penalties against employers or remedies for workers, despite employer reports demonstrating gender pay gaps. Employer voluntarism to remedy the situation or merely "naming and shaming" employers will not be enough.

The Coalition proposes that in all confirmed cases of the violation of the Act, significant penalties against employers and remedies to any individuals harmed by lower compensation must be applied.

An employer's failure to provide information or comply with reporting requirements to demonstrate compliance is a blatant disregard for employees' human rights and their ability to enforce them. **Such breaches must be recognized as a fundamental violation of quasi-constitutional human rights and warrant significant human rights damages to the workers.**

It is critically important to expand the Pay Equity Bureau's capacity for public education and proactive enforcement to ensure full compliance with the new Act.

The Coalition proposes that the Director of the Pay Equity Bureau be recognized as the Director of Pay Transparency Enforcement.

1. The Director of the Pay Equity Bureau shall be appointed as the Director of Pay Transparency Enforcement with the following responsibilities:
 - i. to support employers in complying with their obligations under the Act, inclusive of the provision of educational programs and materials, as well as the prescribed forms to ensure efficient and effective pay transparency reporting;
 - ii. to support workers' access to justice through the provision of:
 - public awareness campaigns
 - workplace educational programs, such as workplace posters, to assist workers and
 - easily accessible complaint forms to initiate Bureau-led investigations and audits.
 - iii. to direct the Pay Transparency compliance officers
 - iv. to receive reports of non-compliance from workers and compliance officers regarding employers under this Act;
 - v. to investigate reports of non-compliance from workers;
 - vi. where a notice of contravention has been issued under the Act, and the contravention is disputed, to have the matter dealt with by final and binding arbitration and to appoint an arbitrator to review and hear the dispute. The burden of proof lies with the employer disputing the contravention;
 - vii. where a worker disputes the investigation report, and the matter may be dealt with by final and binding arbitration, to appoint an arbitrator to review and hear the dispute;
 - viii. to prepare an annual public report summarizing the results of the employers' pay transparency reports, the number of non-compliance reports received, the enforcement actions taken, the penalties assigned, if any issued, in the year, and any other analysis or reports to encourage compliance with the Act;
 - ix. to direct and order penalties for employers' non-compliance and prosecution of employers for repeat non-compliance of the Act and/or failure to pay orders;
 - x. to ensure effective and timely compliance with the Act as required, publish the names of employers who have been issued orders and penalties;
 - xi. any other responsibilities prescribed by Regulation.

The Coalition proposes hiring of three compliance officers. Following the WorkSafeNB model, one officer would assist employers, another would assist non-unionized employees, and a third would lead workplace audits. These dedicated officers would be assigned to provide information and advice to those who seek to discuss or dispute any decision made in relation to the Act.

1. A compliance officer must be authorized, without a warrant,
 - i. To conduct a compliance audit of an employer and, for that purpose, may enter and inspect any place to investigate a possible contravention of the Act or to perform an inspection to ensure that this Act is being complied with.
 - ii. If a compliance officer believes that a person has contravened a provision of the Act or the regulations, the officer may issue a notice to the person setting out the officer's belief and specifying the amount of the penalty for the contravention.

A key role of the Pay Equity Bureau will be to publish a public report providing an overview of the employer reports and enforcement advances as a result of pay transparency:

2. The Pay Equity Bureau must publish within four months of the deadline for receiving the employer reports, a report that contains the following information in relation to the preceding 12 months:
 - i. differences among the equity groups and reference groups in relation to compensation and employment status;
 - ii. a description of trends in relation to the differences in compensation and employment status;
 - iii. the number of reports of non-compliance received by the director and a description of the nature of those reports;
 - iv. an analysis of the positive plans and efforts taken by employers to redress discrimination;
 - v. report on the number of penalties issued by the amount of financial penalty.

3. Penalties

The penalty provisions should be set out in the legislation itself in order to ensure public deterrence from noncompliance, and the penalties should be set at a level at which the cost of noncompliance is significant. The penalties should also be crafted to reflect both the extreme public harm caused by non-compliance with quasi-constitutional law and also the individual harm done to workers when an employer flouts their human rights.

Currently, the administrative monetary penalty regime under employment standards is ineffective in bringing about effective changes; the monetary penalties are too low to deter non-compliance.

Penalties and damages should be applied in all confirmed violations of the Act. The new Act should include penalties that truly deter non-compliance. The Coalition recommends that large employers be fined up to \$10,200 for failure to comply, with escalating penalties for repeated violations.

The new Act should also include damages for individual workers where an employer fails to comply with the Act. Such damage awards would start at a minimum \$1,000 damage award to the affected

workers. This damage award recognizes that the right to non-discriminatory pay is a fundamental human right. The failure to report on compliance with this fundamental law undermines an employee's human rights and respect for the fundamental law of the province.

Finally, prosecutions should be pursued against repeat offenders. The repeated violation or non-payment of orders must be enforced through court prosecution.

The Coalition proposes the following comprehensive penalties for the violation of the Act:

1. The Director of Pay Transparency has the authority, having regard to the nature of the offence and the circumstances surrounding the Act's violation, the nature, circumstances, extent and gravity of the violation and the wilfulness or intent of the employer and the employer's history of prior violations may make an an order imposing a penalty in respect of any contravention of the Act or the regulations within the range set out below
2. In cases involving violations of:
 - i. The confidentiality of individual worker identification data, the Director may order penalties up to the maximum range of repeated violations,
 - ii. equal pay within a job class, the Director may order penalties up to the maximum range of repeated violations,
 - iii. the requirement to remedy compensation gaps with care not the result of bona fide occupational requirements, the Director may order penalties up to the maximum range of repeated violations and;
 - iv. the anti-reprisal provisions, the Director may order penalties up to the maximum range of repeated violations.
3. The Director of Pay Transparency may make an order directing the employer to rectify any harm caused to individual workers by the violation of any provision of the Act and in addition:
 - i. to restore a worker(s) adversely affected by the violation to the position that they would have been in but for the violation,
 - ii. to reinstate a worker(s) who has been removed from a position of employment in violation of the Act,
 - iii. to compensate a worker(s) adversely affected by the violation for any consequent expenditure, financial loss or deprivation of benefit, in the amount that the Director considers just and appropriate and no less than the minimum set out below,
 - iv. to compensate a worker(s) adversely affected by the violation for any consequent emotional suffering, including that resulting from injury to dignity, feelings or self-respect, in the amount that the Director considers just and appropriate and no less than the minimum set out below.
 - v. Such damage awards to a worker(s) shall not be less than \$1,000 for each violation of the Act.

4. When a contravention of the Act or the regulations continues for more than one day, the amount of the penalty and damages payable shall be the product of (a) the penalty/damages-imposed times the number of days that the contravention continues.
5. Where an employer fails or refuses to comply with a provision of the Act, the employer will be in repeated violation of the Act within 2 years. In such cases, the minimum damages award to individual worker(s) shall not be less than \$10,000.00.
6. When an offence under this Act is committed by a corporation, each officer and director of the corporation commits the violation unless they can establish that the violation was committed without their knowledge or consent, was not acquiesced in by them, and that the violation occurred despite the exercise of reasonable diligence by them in the performance of their responsibilities to the corporation.

Penalty range as follows:

Size of Employer	1 st Penalty per day up to:	Repeated Violation Penalty per day up to:
500 or more workers	\$5,000 - \$10,200	\$200,000 - \$500,000
100 to 499 workers	\$1,000 - \$5,200	\$50,000 - \$200,000
20 to 99 workers	\$500 - \$2,100	\$20,500 - \$50,000
19 or fewer workers	\$300 - \$1,100	\$10,200 - \$20,000

Part V General Provisions

In addition to the above, the Coalition proposes that the Act include the following general provisions. The most important recommendation is that the Act be reviewed five years after its introduction, allowing for additional recommendations to improve its efficiency and effectiveness.

1. Limitation period

No notice of contravention shall be issued under this Act by the Pay Equity Bureau more than two years after the occurrence of the last act, series of acts, or default upon which the contravention is based.

Workers and/or bargaining agents are required to file complaints no later than one year after the occurrence of the last act, series of acts, or default upon which the complaint is based.

2. Review of the Act

1. Five years after the Act comes into force, the minister, or an individual designated by the minister, must complete a written review of the effectiveness of this Act and the regulations and report to the Legislature.
2. The minister, or the individual designated by the minister, must carry out the written review in consultation and cooperation with Indigenous governing entities.
3. The written review shall make recommendations for measures that may be taken to improve the effectiveness of the Act and recommendations for amendments to the Act or the regulations.

Concluding Remarks

Pay transparency enables workers to detect and challenge possible discrimination. For employers, pay transparency builds an inclusive workplace for all, enhances recruitment and retention, attracts qualified candidates, fosters a culture of respect among the workforce, ensures internal consistency in salary ranges, and benchmarks equity.

The Coalition has long advocated that everyone deserves to be paid fairly for the value of their work. Pay transparency is an additional tool to support existing anti-discrimination laws and build decent work for all.

Summary of Recommendations

To build an effective, rights-based Pay Transparency Act for New Brunswick, the Coalition recommends a legislative framework grounded in human rights, substantive equality, and proactive enforcement. The following summarizes the key measures required to deliver real, lasting change.

Preamble

This legislative framework positions pay transparency primarily as a tool to ensure respect for human rights already codified in New Brunswick, and to provide remedies when those rights are not upheld. These are legal obligations requiring employers to offer compensation that is free from discrimination.

The framework we propose is designed to complement the existing laws that protect these rights, including:

- the Human Rights Act,
- the Employment Standards Act,
- the Pay Equity Act, 2009.

These laws guarantee, respectively, the right to work free from discrimination, the right to equal pay for equal work, and the right to equal pay for work of equal value. Pay transparency ensures these rights are enforced proactively, because without such intervention, systemic discrimination can persist.

Employer Obligations

The Pay Transparency Act must apply to all employers in the public sector, the non-profit sector, and the private sector, with **specific obligations for all employers** and additional, more detailed reporting requirements for employers with 20 or more employees.

- **Provide pay information in job postings:** hourly pay, salary range and progression, benefits, and pension information, for all internal and public postings.
- Make information on job positions and pay structures accessible to employees.
- **Collect confidential, voluntary self-identification data** from workers to **conduct Equal Pay Reviews** within each job class to ensure equal pay by job status and for equity groups (women, Indigenous workers, racialized and Black workers, workers with disabilities, and 2SLGBTQIA+ workers).
- Post Equal Pay Review results annually in the workplace and/or online.

For employers with 10+ employees:

- **Analyze their pay structure annually** to identify gaps between equity groups and the men-dominated reference group(s) across the workforce, including job clustering and differences in hourly wages, overtime, overtime hours, and bonuses (using median and mean measures).
- **Post the analysis** in the workplace and/or online.
- **File the analysis** with the Pay Equity Bureau.

Worker Protections

The Act must include **anti-reprisal protections**. Workers cannot be penalized for:

- asking about their own or others' pay;
- sharing or exchanging compensation information;
- asking questions about Equal Pay Reviews or pay structure analyses;
- requesting employer compliance with the Act or filing a complaint with the Pay Equity Bureau.

Employers must be **prohibited** from:

- asking prospective employees about their compensation history and using it to determine pay;
- requiring workers to sign non-disclosure agreements that limit their ability to discuss their pay with colleagues or others.

Enforcement and Accountability

To ensure the Pay Transparency Act is properly applied, it must include efficient oversight, penalties for non-compliance, and clear remedies for workers.

Designate the Pay Equity Bureau as the enforcement body, supported by three dedicated compliance officers (employer support, worker support, and audits).

The Bureau must be responsible for:

- conducting education on pay transparency;
- carrying out inspections and audits to ensure compliance;
- receiving and investigating complaints;
- issuing enforceable orders and directing timely remedies;
- publishing an annual public report summarizing employer submissions, trends, and enforcement actions.

To deter non-compliance with this quasi-constitutional human rights legislation, the Act must include clear and meaningful penalties against employers for violations and damages to be awarded to workers to make them whole.

- The Director may impose penalties for any violation, taking into account severity, intent, and employer history.
- Breaches of confidentiality, equal pay obligations, failure to remedy unjustified pay gaps, and reprisals may result in penalties at the maximum range.
- Orders may include reinstatement, restoration of lost wages or benefits, and compensation for financial and emotional harm (Minimum damages: **\$1,000 per violation**).
- Penalties accumulate daily for continuing violations. Non-compliance triggers a two-year repeated-violation status, with minimum damages of **\$10,000**.
- Penalty range as follows:

Size of Employer	1 st Penalty per day up to:	Repeated Violation Penalty per day up to:
500 or more workers	\$5,000 - \$10,200	\$200,000 - \$500,000
100 to 499 workers	\$1,000 - \$5,200	\$50,000 - \$200,000
20 to 99 workers	\$500 - \$2,100	\$20,500 - \$50,000
19 or fewer workers	\$300 - \$1,100	\$10,200 - \$20,000