

AMENDMENTS TO THE *PAY EQUITY ACT*

FRANCE LEGAULT

THE *PAY EQUITY ACT* (HEREINAFTER THE "ACT") CELEBRATED ITS 10TH ANNIVERSARY IN 2006. TO MARK THE OCCASION, THE COMMISSION DE L'ÉQUITÉ SALARIALE TOOK STOCK OF WHAT HAD BEEN ACHIEVED. AFTER COMPLETING THIS ANALYSIS, ON MAY 27, 2009, THE NATIONAL ASSEMBLY PASSED BILL 25, WHICH MADE SEVERAL AMENDMENTS TO THE ACT. THESE AMENDMENTS CAME INTO FORCE ON MAY 28, 2009.

THE MOST IMPORTANT CHANGES MADE BY BILL 25 WERE: (I) THE EXTENSION OF THE ACT'S COVERAGE TO BUSINESSES THAT REACH AN AVERAGE OF TEN OR MORE EMPLOYEES DURING A CALENDAR YEAR, (II) THE IMPOSITION OF PAY EQUITY AUDITS, AND (III) THE ADOPTION OF MEASURES TO REQUIRE EMPLOYERS TO IMPLEMENT PAY EQUITY WHO HAVE NOT YET DONE SO.

EXTENSION OF COVERAGE TO BUSINESSES WITH TEN OR MORE EMPLOYEES

From 1997 to 2004, the Minister of Labour noticed that the number of businesses subject to the Act had decreased from 49,370 to 43,770¹. During the same period, 6,196 businesses with 1 to 9 employees increased in size without becoming subject to the Act².

The reason is simple. Before the amendments, only businesses with ten or more employees during the entire applicable reference period were subject to the Act.

However, since the most recent amendments, any business whose average number of employees grows to 10 or more during a calendar year, i.e. from January 1 to December 31, becomes subject to the Act, effective January 1st of the following year. Thus, any business that was not subject to the Act for this reason must henceforth calculate its average annual number of employees every year, beginning in calendar year 2008, until it reaches an average of ten or more employees.

When a business becomes subject to the Act during a calendar year, it will have a period of four years to implement pay equity beginning on January 1st following the year in which the number of employees grows to an annual average

of ten. However, if the business had an average of ten or more employees in 2008, it must implement pay equity within four years following January 1, 2010.

PAY EQUITY AUDITS - DEADLINE: DECEMBER 31, 2010

According to the Minister of Labour's report, a survey of private businesses revealed that 88% of the businesses that had implemented pay equity stated that they did not subsequently experience any changes that could affect pay equity within their firms.³ Furthermore, only 34% of the firms had set up and maintained a pay equity audit committee.⁴ The report stated that these figures are very surprising given the great variety of situations that can affect pay equity within a firm (salary increases, creation or elimination of job categories, changes to existing jobs or the applicable job conditions, negotiation or renewal of collective agreements).

¹ Report of the Minister of Labour on the implementation of the *Pay Equity Act*, 2006.

² *Idem*.

³ *Idem*, p. 65.

⁴ *Idem*, p. 67.

Prior to the recent amendments, section 40 of the Act provided for the maintaining of pay equity. This section stated that every employer that implemented pay equity in its firm was required to maintain it thereafter. However, no specific time limits or parameters were provided. In practice, this obligation was more theoretical than real.

Bill 25 introduced specific parameters for conducting audits to maintain pay equity, both in terms of the time limit and the procedure for doing so. From now on, periodic pay equity audits must be conducted every five years. Salary adjustments must now be paid as of the date the new posting is made, failing which they will bear interest at the legal rate from that date.

For employers that have already implemented pay equity, a periodic pay equity audit must be conducted by no later than December 31, 2010, and salary adjustments must be paid as of that date.

The employer has the option of conducting a pay equity audit alone, through a committee, or jointly with the certified association. The results of this audit must be posted within 60 days. Among other things, the posting must set out the process used in the audit, a list of the events that led to adjustments, a list of the job classes entitled to adjustments, the amount of the adjustments, and the rights and recourses.

The information used in implementing pay equity for the first time or during the periodic revision thereof, as well as the content of all postings, must be kept on file for five years.

GRACE PERIOD FOR LAGGARDS - DEADLINE: DECEMBER 31, 2010

Finally, the Act now grants a grace period to businesses that have not yet implemented pay equity. Employers that had not yet completed the initial pay equity process by March 12, 2009, now have an extension until December 31, 2010 to do so.

Unless the employer has already taken certain steps in this process, it must use the data (job classes, compensation, etc.) that was available on February 1, 2009. The employer must pay the adjustments retroactively to the date on which pay equity ought to have been completed, with interest.

If the employer has still not implemented pay equity by January 1, 2011, and a complaint is filed, in addition to interest at the legal rate, the employer will have to pay the additional indemnity provided for in the *Civil Code of Québec* on any adjustments that are due.

The aim of all these amendments is obviously to implement a more proactive law that will bring about changes in our mentality and collective values, with the single, common goal of correcting systemic discrimination in wages.

This text is only a summary of certain amendments made by Bill 25 to the *Pay Equity Act*, and is not a detailed description of all the amendments to the Act. Employers are therefore advised to review all the amendments to the Act, to familiarize themselves with those specifically applicable to their situation.

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