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PAY EQUITY:

THE COUNTDOWN HAS STARTED...

Since November 21, 1997, many Quebec employers are faced with a new series of legal obligations. Indeed, that day marked the coming into force of the *Pay Equity Act* (S.Q. 1996, chapter 43) (hereinafter the "Act")¹, one year after its assent by the Quebec National Assembly.

For employers covered by the Act, the countdown has started. Yet, for many, various queries remain:

- In what context was the Act adopted?
- What is its scope?
- What legal obligations are imposed on employers in connection with pay equity?
- How much time are employers allowed to achieve pay equity within their enterprise?

Without undertaking a detailed and exhaustive study of the Act, we propose to highlight the major components of this new legislation in order to assist you in assessing its impact on your business.

Q: What is the philosophy behind this new Act?

A: This socially proactive piece of legislation aims to eliminate discrimination...

Various lobbying groups have convinced the Quebec government of the existence of a global salary gap between men and women in Quebec, and that a significant portion of this substantial gap can be attributed to gender discrimination. This particular type of discrimination, referred to as

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¹ The provisions of the Act dealing with the establishment of the "*Commission de l'équité salariale*" had previously come into force on November 21, 1996.

“systemic” discrimination, calls into question collective bias or prejudice and cultural stereotypes which have influenced compensation practices in our society over the years and have led to under-payment of predominantly “female” jobs.

It is in response to this situation that the Quebec legislator decided to adopt proactive legislation, that is, legislation which requires employers, even in the absence of complaints by employees, to have compensation practices which are fair, equitable and free from any gender discrimination.

In this perspective, one may say that the Act is designed “*to redress differences in compensation which are due to the systemic gender discrimination affecting persons holding positions in predominantly female job classes*”.

Q: Which employers are covered by the Act?

A: Those employers whose enterprise employs ten or more employees...

The Act applies to every employer whose enterprise employs 10 or more persons, whether or not the enterprise is unionized and whether or not it belongs to the public or private sector. In addition, once an employer is covered by the Act it remains so even if the number of employees subsequently falls below ten.

For the purposes of the Act, the number of employees in an enterprise is the average number of employees in the enterprise, based on the employer’s payroll, during the twelve-month period preceding the date of the coming into force of the Act. In this connection, the Act specifically excludes the following persons from the notion of “employee”:

- students employed during their vacation period;

- trainees undergoing professional training recognized by law;
- senior management officers;
- police officers and fire fighters.

Q: What are the obligations imposed upon employers covered by the Act?

A: These obligations vary according to the number of employees in the enterprise...

The Act establishes three categories of enterprises and imposes different obligations according to each category. Thus, as the number of employees increases, so also do the pay equity obligations which the employer must assume (see table on page 6).

Hence, an enterprise of 100 or more employees must establish a **pay equity plan** and allow the employees to participate in its establishment by setting up a **pay equity committee** which includes employee representatives.

For its part, an enterprise of 50 or more, but fewer than 100, employees must also establish a **pay equity plan** which will apply to the entire enterprise. This enterprise is not required to set up a pay equity committee, but it may choose to do so. In the latter case, the employer becomes subject to all the provisions of the Act which deal with pay equity committees.

Lastly, an enterprise of 10 or more, but fewer than 50, employees is not required to set up a pay equity committee or establish a pay equity plan. However, this enterprise must, under the Act, determine the **adjustments in compensation** which are required so that employees holding positions in predominantly female job classes receive the same remuneration, for work of equal value, as employees in predominantly male job classes. Moreover,

it should be noted that an employer whose enterprise falls within this category may, if desired, establish a pay equity plan, in which event the provisions of the Act regarding pay equity plans will apply.

THE PAY EQUITY COMMITTEE

Any enterprise which is subject to this obligation, (or which chooses to become subject thereto), must set up a pay equity committee in order to enable employees to participate in the establishment of the pay equity plan.

The Act provides that this committee shall be composed of not less than 3 members, of which not less than 2/3 of which shall represent the employees and that not less than 1/2 of the members representing the employees must be women. However, the number of members representing the employees on the committee may not exceed 12. In addition, the method of designating the employees who will sit on the committee will vary according to whether the enterprise is unionized or not.

The Act also imposes specific obligations in connection with the operations of the pay equity committee. For instance, the employer must:

- provide the employees sitting on the committee with all the information necessary to establish the pay equity plan;
- provide the employees sitting on the committee with the required training in order to allow them to establish the pay equity plan;
- allow the employees sitting on the committee to absent themselves from work, without loss of pay, in order to attend training sessions and meetings of the committee.

THE PAY EQUITY PLAN

Pursuant to the Act, a pay equity plan shall include four stages, which are summarized below.

(1) Identification of predominantly female job classes and of predominantly male job classes in the enterprise

The first stage involves identifying the predominantly female and predominantly male job classes in the enterprise. In this respect, the Act specifies that "job classes" consist of groups of positions held by employees which have:

- similar duties or responsibilities;
- similar required qualifications;
- the same remuneration (the same rate or scale of compensation).

Once a job class has been identified, the Act sets forth several criteria for the determination of its predominance. One which may readily be applied is that a job class shall be considered predominantly female or predominantly male, as the case may be, where 60 % or more of the positions in that class are held by employees of the same sex.

(2) Establishment of a method for valuating these job classes, identification of tools and development of a valuation procedure

The second stage of the pay equity plan involves establishing a value determination method for the job classes, determining the appropriate tools and developing a method of valuation. This method must provide for the comparison of predominantly female job classes with predominantly male job

classes. The value determination method must also take into account the following factors for each job class:

- the required qualifications;
- the responsibilities assumed;
- the effort required;
- the conditions under which the work is performed.

(3) Evaluation and comparison of job classes, measurement of the gap in compensation between comparable classes and determination of required adjustments in compensation

The third stage of the program involves valuating and comparing job classes, determining the wage gap in comparable classes and calculating the required adjustments in compensation. Comparing the value of job classes is at the core of the process put forward under the Act. This stage implies comparing predominantly female job classes and predominantly male job classes - in accordance with the results of the valuation of job classes - so as to measure the differences in compensation between them. On this point, it should be noted that a regulation will be adopted for cases in which there is no comparable predominantly male job class in the enterprise.

(4) The determination of the terms and conditions of payment of the adjustments in compensation

Finally, the pay equity plan shall provide the terms and conditions for the payment of the adjustments in compensation required in order to eliminate the salary gap between predominantly male and predominantly female job classes. Adjustments in compensation may be spread over a maximum period of 4 years starting from the deadline for their determination. Where

adjustments in compensation are spread over time, the Act specifies that the instalments must be annual and equal in amount. The Act also allows an employer who is demonstrably unable to pay the adjustments to extend the period over which the adjustments are spread by a maximum of 3 years. Finally, it should be noted that the Act prohibits employers from reducing the remuneration payable to any employee as a means of achieving pay equity.

THE DETERMINATION OF ADJUSTMENTS IN COMPENSATION

Under the Act, adjustments in compensation are the adjustments required to afford employees in predominantly female job classes the same remuneration, for work of equal value, as is afforded to employees in predominantly male job classes. In this connection, the Act specifies only that the method adopted by the employer must be free from any gender discrimination.

Q: What are the delays, under the Act, for attaining pay equity?

A: They are the same for all enterprises covered by the Act (see table on page 6).

Thus, the Act provides that the required adjustments in compensation or that of a pay equity plan be determined by November 21, 2001. At this date, the employer shall pay the first adjustments in compensation, which, as mentioned above, may be spread over a maximum period of 4 years. Again, an employer faced with economic difficulties may apply for a maximum extension of 3 years of the period over which the adjustments are spread.

In the same train of thought, the employer and, if applicable, the Union, are required under the Act to ensure that pay equity is

maintained thereafter, particularly when new positions are created and upon the renewal of a collective agreement, if any.

their legal obligations in order to maintain a competitive position in their respective markets.

Q: What bodies are responsible for the administration and carrying out of the Act?

To this end, you will shortly be invited by the Labour Relations group of *Lavery, de Billy* to attend a breakfast conference where the various issues raised by the *Pay Equity Act* will be discussed in greater detail.

R: The Commission de l'équité salariale and the Labour Court...

As of November 21, 1997, the portion of the Act providing for the establishment of the *Commission de l'équité salariale* had already been in force for a year. This body was vested with various powers of inquiry to allow it to oversee the establishment of pay equity plans and see to the maintenance of pay equity. The Commission may investigate complaints or disputes under the Act and, where possible, further a settlement between the parties.

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The Act also provides that a party who is dissatisfied with the measures determined by the Commission in the performance of its decision-making duties may apply to the Labour Court, the decisions of which are final and without appeal.

It should be noted that the Act also contains penal provisions according to which any person who contravenes the provisions of the Act is liable to a fine of up to \$25,000 for a first offence, and up to \$50,000 for a second or subsequent offence.

CONCLUSION

The new *Pay Equity Act*, without doubt, serves important objectives. Indeed, it represents a new step towards the recognition of the fundamental right to equality. Accordingly, and although some might question the appropriateness of this type of legislative measure in the present economic environment, employers should familiarize themselves immediately with

Obligations imposed upon employers covered by the Act

Number of employees in the enterprise	Principal corresponding obligations
100 or more	<ul style="list-style-type: none">• Establish a pay equity plan• Set up a pay equity committee
50 to 99	<ul style="list-style-type: none">• Set up a pay equity committee
10 to 49	<ul style="list-style-type: none">• Determine salary adjustments

Determination of adjustments in compensation

Delays for attaining pay equity under the Act	
Pay equity plan or determination of adjustments in compensation	By November 21, 2001
Payment of adjustments in compensation	Possible spreading until November 21, 2005* <small>* (except where an extension is authorized on the basis of economic difficulties)</small>

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