



Gallagher

Insurance | Risk Management | Consulting

Pay Equity Express – Summer/Fall 2020

Pressures on Human Resources During and After the Pandemic

COVID-19 has had an immediate and obvious impact on organizations and workplaces. Layoffs, work station re-structuring, workflow and operating procedures changing, personal protective equipment requirements, hours of work to accommodate commuting, even the lunch room has to be re-thought. Human Resource leaders have been at the front-line trying to manage the physical and emotional changes for their organizations, and, with return-to-workplace plans in high gear, the list of things to do is long. Nevertheless, as HR practitioners we have to keep an eye on the 'normal' stuff too – recruitment and retention strategies, competitive compensation, internal equity, and Pay Equity compliance.

Workplaces still need to keep all legislation at the forefront of their obligations. Employers need to keep in mind that changes in one area of the organization invariably mean impact elsewhere, in perhaps less prominent but still significant places, particularly when it comes to compensation.

Employers in Ontario and Quebec need to continue to maintain Pay Equity in the workplace. Federally regulated workplaces should also be preparing for the activation of the newly enacted Federal Pay Equity Act and its many requirements.

To assist organizations in proactively and strategically managing their Pay Equity compliance responsibilities, we have prepared the following check list of considerations:

Ontario:

1. Returning to the Office /Workplace may prompt Human Resources to issue a call to action to conduct a general clean-up of files and records, as well as shredding of old files. We strongly recommend that Human Resources **take care not to shred or otherwise destroy records relating to Pay Equity**, yes, even those Ontario records from 30+ years ago.
2. Organizations hold the obligation to **maintain Pay Equity for female dominated jobs** in the workplace. Best practice is to conduct a Pay Equity analysis on an annual basis. We recommend using the same point in time, year-over-year, to prepare the analyses, and to keep these records indefinitely. Records should be kept for each of the organization's employee groups: one for each bargaining unit, and one for the non-union group.
3. The Pandemic may have triggered the elimination (or creation!) of new jobs within an organization. We strongly recommend **not to eliminate any male dominated jobs** from your compensation records, and in particular, from your Collective Agreement(s) without first checking for Pay Equity impact. The eliminated male job may serve a very important role in ensuring Pay Equity is maintained either in the same or a different employee group.



4. The “New Normal” no doubt means that some jobs have now changed. Human Resources needs to consider and plan for impact in terms of **job changes** and how they are to be reflected in the job evaluation system.
5. Under the Maintenance requirement of Pay Equity, **Job evaluation alone is not enough to show compliance** under the Pay Equity Act. In unionized workplaces, the employer and union representatives often jointly evaluate jobs, but the mechanics of the Pay Equity analysis is left to Human Resources. The employer is required to show evidence of the male/female Pay Equity analysis to remain compliant. Pay Equity complaints may arise from the union, or current and past employees. A growing liability may emerge if this analysis is left undone.
6. **Paying according to market is never an acceptable defense** under the Pay Equity Act. A formal analysis using defensible criteria needs to be prepared annually to demonstrate full compliance.
7. **Part Time or Contract female dominated jobs** may not have been included in Pay Equity analysis under the erroneous belief that these jobs are “casual”. If these jobs are recurring, or seasonal, or occur for at least a third of the normal work period that applies to similar full-time work, they **need to be included for Pay Equity compliance**.

Quebec

Although most, if not all of the points discussed above apply also in Quebec, Pay Equity legislation amendments in 2019 have triggered additional obligations. Many organizations with facilities operating in Quebec should have their annual audits coming due either in 2020 or in 2021. The changes to the legislation are primarily intended to improve or enhance the audit process, reporting, and to support employees and employers in the application of the new legislation. Of primary significance we note:

1. Maintenance activities are still to be carried out every 5 years, however if adjustments are found in female dominated jobs, these adjustments must now be identified and paid out **retroactively**. In the past, if differences in compensation were noted, they would be applied on a go-forward basis only because there was no obligation to pay out in arrears. Now, employers must identify and make adjustments to pay from the date of the “event” that generated the pay gap. Renegotiated collective agreements, although agreed to between the parties, if not tested for Pay Equity may also trigger a wage gap.
2. Previously employers were obligated to retain records in Quebec for Pay Equity for a period of 5 years. This has now changed to **6 years, or even longer if a complaint is filed**. In that case, the retention of data is mandatory until an investigation is completed and a **final decision** is made by the Commission.



3. Use of a Committee in the past means an employer must **notify and consult with the Committee as part of a participation process**, even if the employer chooses to conduct a Maintenance Audit on its own.
4. Pay Equity **Audit Posting** now includes additional provisions:
 - a. Summary of questions and observations made in the course of the participation process
 - b. Identifying the date and list of events leading to any Pay Equity adjustments
 - c. Terms and conditions of payment (where applicable)
 - d. Remedies that are available to employees
 - e. The plan must include a date of posting and information concerning the rights of employees
 - f. If the employer conducted the audit on its own, the plan should include remedies available, and should reference the link to the Complaint Form available on the Commission's website: Here is the link to download the pdf: <https://www.csst.qc.ca/en/formulaires/Pages/5061A.aspx>
5. The annual filing of DEMES will decrease to once every 5 years to coincide with the next Pay Equity audit for the organization. This is only applicable if an organization has attested that it has completed its initial plan or that a maintenance audit has been completed.

Federal Pay Equity – Update

The Federal government has made a clear commitment and a priority to closing the gender wage gap in the Canadian economy. In 2019, the Canadian Federal government introduced Bill C-86; this Pay Equity Act has received Royal Assent but the effective date is not yet proclaimed. Given the COVID-19 impact, it appears that the date will be later this year. Various aspects of this new legislation are similar to the Ontario and Quebec provincial legislations. However, many federally regulated employers are still wondering what to expect and how to prepare for this new, proactive Pay Equity legislation.

Until the law becomes effective, employers can test for potential impact of the legislation in preparation for the actual date prescribed by law. This means examining the comparison methodologies to gain familiarity with the approaches and to assess for any potential areas of risk. It is important to understand the scope of work and to establish parameters, and at the same time develop an action plan. Below are recommendations on how organizations can prepare and strategize to comply with federal Pay Equity:

Information / Data Preparation

- Identify all legal entities
- Identify / review existing job evaluation plan for all employee groups
- Prepare a list of all job classes along with current job documentations / descriptions
- Gather employee data by job classes (current and historical) in order to determine gender dominance
- Gather all compensation related elements (base, bonus, commission) including non-cash information especially if programs differ by employee group / role or level



Governance & Process

- Identify key roles and accountabilities
- Develop timeline and key milestones
- Determine whether a committee or joint committee approach is necessary
- Determine/explore the process of a committee, including how members are selected/appointed
- Determine communications strategy

While both the employer and employees stand to gain from the proactive Pay Equity legislation, there is considerable work to be completed in preparation for, as well as, when the legislation becomes effective. While the legislation does allow employers three years to develop their Pay Equity Plans, we recommend that employers commence work on the foundations for their plan as soon as possible to proactively manage the process and ensure compliance.

About Gallagher's Human Resources & Compensation Consulting Practice

Gallagher has been assisting organizations with compensation-related legislative compliance for over 30 years. Our areas of specialization include the Ontario Pay Equity Act, Quebec Pay Equity Act and most recently, the Federal Pay Equity Act. Gallagher offers professional consulting services on all matters relating to Pay Equity, including preparing technical Pay Equity multi-year analyses and cost impact reports, responding to and working with Review Services at the Pay Equity Commission, responding to matters raised by unions and helping organizations establish yearly maintenance programs to help ensure continued compliance. Given our extensive experience in this area, Gallagher offers a variety of consulting services, ranging from in-depth, complex, historical analyses to over-the-shoulder or ad hoc Pay Equity guidance to HR. We are flexible in our approach, as we know that a one-size-fits-all solution does not work when it comes to the complexities that can be encountered with Pay Equity legislation.

If you would like to discuss or explore any of these topics at greater length, please contact a Consultant at Gallagher.

Mary Turan
Sr. Consultant
Mary_Turan@ajg.com
647 388 1722

Susan Tang
Sr. Consultant
Susan_Tang@ajg.com
647 388 2215

Jane Mizanski
Consultant
Jane_Mizanski@ajg.com
647 407 5256

Gallagher provides insurance, risk management and consultation services for our clients in response to both known and unknown risk exposures. When providing analysis and recommendations regarding potential insurance coverage, potential claims and/or operational strategy in response to national emergencies (including health crises), we do so from an insurance/risk management perspective, and offer broad information about risk mitigation, loss control strategy and potential claim exposures. We have prepared this commentary and other news alerts for general informational purposes only and the material is not intended to be, nor should it be interpreted as, legal or client-specific risk management advice. General insurance descriptions contained herein do not include complete insurance policy definitions, terms and/or conditions, and should not be relied on for coverage interpretation. Insurance brokerage and related services to be provided by Arthur J. Gallagher & Co.'s Canadian subsidiaries; including, Arthur J. Gallagher Canada Limited, Gallagher Benefit Services (Canada) Group Inc., Gallagher Bassett Canada Inc. and its affiliates ("Gallagher"). None of the Gallagher entities provide accounting, legal, or tax advice.