

THE PAY EQUITY ACT

— 25 YEARS OLD —

BUT STILL LACKING



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THE PAY EQUITY ACT DEMYSTIFIED

THE PAY EQUITY ACT IS 25 YEARS OLD. DESPITE SOME ADVANCES, THE FIGHT TO GAIN AN EQUAL SALARY FOR AN EQUIVALENT JOB NEEDS CONSTANT VIGILANCE. THE ISSUE IS HARD TO UNDERSTAND, BUT THE REASONS EXPLAINING WHY INEQUITIES PERSIST ARE EVEN MORE COMPLEX. HERE IS A BRIEF OVERVIEW TO DEMYSTIFY THE MATTER.



Centrale des syndicats
du Québec



PAY EQUITY AND PAY EQUALITY, WHAT'S THE DIFFERENCE?

The two expressions are often confused, but their significance is different. **Pay equality** means that employees occupying the same job in a same company get the same salary.

Pay equity means that a person occupying a predominantly female job must receive the same salary as someone occupying a predominantly male job of equivalent value (in terms of qualifications, responsibilities, effort and working conditions) in the same company.

WHAT IS A PREDOMINANTLY FEMALE OR MALE JOB?

A **predominantly female job** is traditionally or mainly occupied by women, for example nurses, psychologists, secretaries and librarians.

A **predominantly male job** is traditionally or mainly occupied by men, for example drivers, janitors, mechanics and audiovisual technicians.

ARE EMPLOYERS REQUIRED TO APPLY PAY EQUITY IN THEIR BUSINESS?

Pay equity is a fundamental right entrenched in the **Pay Equity Act (PEA)**, passed in 1996. It mandates all businesses of 10 employees or more, under Québec jurisdiction, to conduct pay equity work to ensure that no differences in compensation due to systemic gender discrimination exist and to redress such differences as required.

WHAT IS SYSTEMIC GENDER DISCRIMINATION?

It's **stereotypes** and **biases** on the role of women and the value of their work. In a certain time, women mostly occupied jobs perceived as the extension of the work they did at home (educating children, taking care of others, etc.) and the qualities that were associated were for a long time devalued for that reason. The salary of women was also considered a complementary revenue. It was thus lower than that of men, who were considered by society as their family's providers. Discrimination based on gender has thus historically been inserted in women's compensation.

HOW DOES THE TREASURY BOARD ENSURE PAY EQUITY IN THE PUBLIC SECTOR?

The Act requires that employers—the Treasury Board for the public sector workers—conduct **pay equity audits** every five years.

That work aims to identify whether changes or events have created differences in compensation between predominantly female job classes and predominantly male job classes.

When the employer has completed the pay equity audit, they must put in place a **participation process** (if they haven't implemented a pay equity audit committee).

This process allows the employees' representatives to get information on the way the employer conducted their pay equity audit exercise. The employees can then make comments and ask questions to better understand the work conducted by the employer.

The employer must, thereafter, **post the results** of the audit exercise and make the salary corrections required, if applicable.

WHAT DO WE MEAN EXACTLY BY “POST THE RESULTS”?

The posting allows **to inform the personnel** that a pay equity audit was conducted and provide its results. It notably includes a list of the events that generated adjustments (for example, the addition or removal of a job class), a list of predominantly female jobs that are entitled to adjustments, the percentage or amounts of the adjustments to be made, etc.

WHEN DID THE TREASURY BOARD CONDUCT PAY EQUITY AUDITS?

Until 2009, the PEA stipulated that employers had to maintain pay equity continuously and make the necessary adjustments, without, however, specifying the related procedure. To better structure the process, the government (legislator) decided to transform the continuous maintenance obligation into a **periodical audit (every five years) obligation**.

The Treasury Board carried out its pay equity audits in **2010** and in **2015** for public sector employees. The 2020 pay equity audits were postponed, notably because of the pandemic.

DID THE PAY EQUITY ACT HAVE POSITIVE EFFECTS?

Since its enactment, the **PEA has had direct positive effects** for public sector employees. Between 2000 and 2015, for example, the average compensation gap between women and men dropped from 16.5% to 9.9%.

In 2006, close to 326,000 public and parapublic sector workers received salary adjustments going from 2.94% to 13.65%. Other exercises in those two sectors resulted in adjustments ranging from 4.16% to 6.49% for more than 450,000 people.

WHY THEN DO WE SAY THAT COMPENSATION GAPS PERSIST?

Despite a decrease of the compensation gap since the passing of the PEA, men still earn 10.2% more than women. It means that **women's hourly salary is \$2.96** lower than their male counterparts'. In a society like ours, where equity constitutes a fundamental right, these disparities do not make sense.

WHAT ACTIONS DID THE CSQ UNDERTAKE FOLLOWING THE PAY EQUITY AUDITS OF 2010 AND 2015?

The CSQ questioned the **Treasury Board** on the approach taken to carry out the 2010 and 2015 audit exercises for public sector employees. It then **analyzed the data, verified the results** of the work and **shared that information and its concerns** with its federations about the various job classes.

Together with the federations, **local unions made pay equity work complaints** to the Pay Equity Commission in charge of overseeing the application of the PEA. Note that the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) now applies the Pay Equity Act.

The Centrale implemented **internal pay equity work complaint coordination committees** to work closely with its federations and share the information regarding job classes involved in complaints as well as the handling of such complaints.

► 2010 pay equity work complaints

The CSQ participated, with its federations, in the **conciliation process**, with representatives of other union organizations and of the Treasury Board as well as with conciliators of the Pay Equity Commission.

The **conciliation work started in 2013**. The Centrale and impacted federations put all their energy over the years to resolve the complaints related to the 2010 exercises. It was only in **June 2021 that agreements were finally signed** by some federations. Some job categories still remain for which nothing has been settled and no agreement has been signed.

► 2015 pay equity work complaints

To this day, **no conciliation** has been made with the Treasury Board. All the pay equity work complaints from 2015 are currently at the investigation services of the CNESST. They informed the Centrale, over a year ago, that they first needed to complete the processing of the 2010 complaints before starting the investigations of the 2015 exercises.

WHAT ARE THE AMENDMENTS MADE TO THE PAY EQUITY ACT SINCE ITS PASSING IN 1996?

The Act was amended, first in 2009, then in 2019. The changes made in **2009** notably made it so the employers were required to proceed to **pay equity audits every five years**.

However, those amendments did not provide for any retroactive effect on salaries to the date when discrimination happened. The Centrale as well as other union organizations deemed those **amendments unconstitutional** and brought the cause to court.

In 2018, almost 10 years after the cause was brought to court, the Supreme Court of Canada agreed with the Centrale and the other union organizations, claiming that **the new measures created a discriminatory regime** against women.

WHY DOES THE CSQ WANT A COMPLETE REVIEW OF THE PAY EQUITY ACT?

Sadly, the new provisions, enacted in 2019, did not resolve all of the problems and even introduced **problematic elements still deemed discriminatory**. With other union organizations, the CSQ initiated **new legal action**, aiming to challenge some of the Act's provisions.

In 2021, the Québec Court of Appeal agreed with the Centrale and the other union organizations by recognizing that **periodical audit exercises created a discriminatory regime** against women. The judges' decision allowed the litigation to go ahead to the Superior Court.

WHAT CONSEQUENCES DID THE PAY EQUITY ACT AMENDMENTS HAVE ON THE CHILDCARE SECTOR'S EMPLOYEES?

Among the problematic elements introduced by the PEA's new provisions is the one about **exclusively female working environments**. The CSQ and other union organizations denounced the fact that employers in businesses that do not have male comparisons, like is the case for **daycare centres**, could apply the salary adjustments resulting from the pay equity work dating back to May 5, 2007, instead of retroactively to November 21, 2001. Women working in the targeted businesses are seeing **their right to a compensation adjustment postponed by six years**. Yet the people impacted by this decision already occupy a job that has been traditionally underpaid.

SINCE 2019, THE SALARY CORRECTIONS MUST BE RETROACTIVE, WHAT DOES THIS MEAN?

The Supreme Court of Canada ruled that the salary corrections must be **retroactive to the moment when discrimination happened** in a predominantly female job class, instead of the date when the results of the work are to be posted.

There are two ways to process the amounts due to the employees: a lump sum and a salary adjustment.

A **lump sum** is paid when the change or event resulting in the discrimination has a start and end date in the five-year period.

► For example:

If the event creating a compensation gap started on September 1, 2018, and ended on January 1, 2019, the employer must, during the 2020 pay equity audit (covering 2015 to 2020), pay a lump sum to each employee of the impacted job class who were employed during that period.

A **salary adjustment**, on the other hand, is paid when the change or event resulting in the discrimination has a start date, but no end date in the five-year period.

► For example:

If the event creating a compensation gap starts on September 1, 2018, and ends after the period covering 2015 to 2020, a salary adjustment must be paid to each employee of the impacted job category who were employed during that period.

The lump sum and salary adjustments are payable at the new posting. If the employer does not make the payment or the salary change at that moment, 5% legal interests apply on amounts due.

WHY DOES THE PAY EQUITY ISSUE IN THE PUBLIC SECTOR TAKE SO LONG TO PROCESS?

There is still a lot of work to do to achieve true pay equity. **Thousands of complaints are still pending** at the CNESST regarding pay equity audits of 2010 and 2015. The Treasury Board shows a **clear lack of will** to apply the PEA, which makes the situation unstable.

For example, the Treasury Board failed to use the conciliation process to listen to the employees through their union organizations' representations and to ensure that the PEA is truly implemented.

WHAT DOES THE CSQ INTEND TO DO TO PRESS THE TREASURY BOARD TO RESOLVE THE PAY EQUITY PROBLEM?

Pay equity has always been a **priority issue for the Centrale**. Our organization was in action before the passing of the PEA in 1996, and still is today.

The Centrale intends to continue the battle on several fronts, notably by having **pay equity recognized as a fundamental right** that cannot be negotiated. Our organization believes we cannot back down on such a strategic question that is in direct line with actual equality for women.

The CSQ notably demands:

- ▶ **The right to a fair and equitable value determination as part of** the pay equity audits for all workers;
- ▶ **Transparency in the information** used to carry out the audit work;
- ▶ **Union participation** in the pay equity audits through the implementation of pay equity audit committees.

WHAT ARE THE MAIN GOALS OF THE COMMUNICATION AND POLITICAL DENUNCIATION STRATEGY THE CSQ IS SETTING IN MOTION IN THE FALL OF 2021?

The current **“Pay Equity: 25 years old but still lacking bite!”** campaign aims **to denounce Treasury Board’s lack of will** to apply the PEA and proceed with the required salary adjustments. The strategy also consists in **demanding that the legislator modify the PEA**, which has a discriminatory effect, notably by removing the lump sums and providing for salary adjustments that are retroactive to the date of the event, and that it ensure to pay all amounts due.

We must remind the government that **the PEA has a major impact on thousands of employees** in the education, childcare and health and social services networks.

APPLYING THE
PAY EQUITY ACT IS
RECOGNIZING THE TRUE
VALUE OF OUR JOBS!



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