

Factsheet 3

The Difference between Equal Pay and Pay Equity

Your Rights to Equality at Work

Three different laws protect your right to equality at work:

Employment standards or minimum standards laws protect the right to **equal pay for equal work**.

Pay equity laws protect the right to **equal pay for work of equal value**.

Human rights laws protect the **right to be free from discrimination** in all aspects of employment.

Employment Standards: Equal pay for equal work

Beginning in the 1950s, employment standards laws were introduced across Canada which guaranteed that women and men must be paid the same for doing the same or substantially the same work.

Employers tried to avoid paying equal pay to women by creating minor differences between men's and women's jobs, or by giving them different job titles. The law was changed to make clear that jobs do not need to be *identical* to be paid the same. They just need to be *substantially the same*.

While the principle of "same work-same pay" has been the law for generations, the violation of this law remains a very common form of pay discrimination that affects women and racialized workers. (See Fact Sheet #4 about how pay transparency helps address this.)

Employers have also tried to find other loopholes to lower pay and these loopholes have overwhelmingly affected women and racialized workers. The main loophole is to pay workers differently based on the nature of their employment status.

Part-time, seasonal, and casual work, and work done through temporary help agencies – all forms of work primarily done by women and racialized workers – are often paid only 50% of the wages paid for the same work done by full-time workers, or workers hired directly by employers.

This is the next equal pay for equal work fight that must be addressed across the country.

Amendments to Ontario's *Employment Standards Act* would have closed this loophole by requiring the same pay for work regardless of employment status. But following the June 2018 provincial election, these provisions were repealed.

Meanwhile, amendments were made to the *Canada Labour Code* to require employers to pay the same rates to workers who are doing the same or similar work without difference based on their employment status. Those provisions, however, will not be in effect until a date set by Order in Council which has not happened.

Pay Equity: Equal pay for work of equal value

Equal pay for work of equal value is also known as pay equity.

This right to equality addresses the fact that Canada has a sex segregated labour market. Women and men continue to be concentrated in jobs, often in different workplaces.

Generations of research show that the more female-dominated a job is, and the more that it is considered traditional "women's work" – such as caregiving, teaching and service jobs – the lower it is paid.

Pay equity laws require that work be paid based on a discrimination-free assessment of the

- skills
- responsibility
- effort
- working conditions

that are required by the job.

Pay equity laws require that female-dominated jobs and male-dominated jobs of similar value be paid the same.

Pay equity laws exist in most but not all provinces in Canada. The extent of the law's coverage also varies from province to province. In some provinces pay equity laws apply to workers in both the public and private sectors; in others they apply only in the public sector. Some provinces (Ontario and Quebec) provide ways to calculate pay equity entitlements for women in exclusively female workplaces; others do not. In the Yukon, the pay equity law takes an intersectional approach to identifying pay discrimination – looking at factors that affect pay beyond gender, including race, ancestry, and national origin.

The Canadian government introduced a new proactive federal pay equity in the fall of 2018 that will require public and private sector employers in the federal jurisdiction to proactively address pay equity in their workplaces. The federal law, however, will not be in effect until the regulations that determine how it will be implemented are made. Attention is needed to ensure the regulations deliver meaningful pay equity protection.

This federal action, combined with recent Supreme Court of Canada decisions protecting pay equity rights,¹ present an important opportunity to demand economic justice by strengthening pay equity rights at the provincial level as well.

Human Rights: The Right to Equality at Work

Human rights laws at the federal and provincial levels provide the broadest protection for the right to equality at work.

Human rights laws guarantee the right to equality without discrimination in all aspects of employment – from hiring, through treatment on the job, access to training and promotions, access to benefits and so on – including pay.

Human rights laws also provide the broadest form of protection as they explicitly guarantee freedom from discrimination on many grounds, and intersecting grounds, beyond gender.

While human rights laws protect against discrimination on many of the same grounds, there is also variation from province to province. The *Canadian Human Rights Act* prohibits discrimination in employment based on:

- race
- colour
- age
- sexual orientation
- gender expression
- family status
- disability
- national or ethnic origin
- religion
- sex
- gender identity
- marital status
- genetic characteristics
- conviction for an offence for which a pardon has been granted or in respect of which a record of suspension has been ordered

Together these laws create a strong foundation to fight for equality at work and demand economic justice for women.

¹ *Quebec (Attorney General) v. Alliance du personnel professionnel de la santé et des services sociaux*, 2018 SCC 17; *Centrale des syndicats du Québec v. Québec (Attorney General)*, 2018 SCC 18