



EMPLOYER NEWS

Regional Newsletter - Labour, Employment, Human Rights and Public Law

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Recent Modifications to the Pay Equity Act 1

FASKEN NEWS

Honours to our labour and employment lawyers :

Louis Bernier, a member of our practice group since 1975, now holds the title of Emeritus Lawyer, this honour having been recently bestowed upon him by the Quebec Bar.

After 24 years as a member of the Quebec Bar, **Dominique Monet** has been admitted to the Ontario Bar in June 2009. Dominique will nevertheless pursue his career in Quebec.

Congratulations to Louis and Dominique!

DID YOU KNOW THAT...?

In Quebec, more than 250 million dollars are paid in disability benefits every year. Moreover, the Canadian Life & Health Insurance Association estimates that between 30 and 40% of disability claims in Canada pertain to mental illness.

RECENT MODIFICATIONS TO THE PAY EQUITY ACT

Last May 27th, the National Assembly adopted the modifications to the Pay Equity Act (the "Act") introduced by Bill 25. These modifications came into force on May 28, 2009.

Although the modifications to the Act are numerous, the highlights concern pay equity maintenance as well as measures intended for employers who have not yet implemented pay equity within their undertaking.

PAY EQUITY AUDITS

Prior to the modifications, only article 40 of the Act governed maintenance obligations. It set out that an employer having completed his pay equity program was under an obligation to maintain pay equity in his enterprise. This obligation subsisted on an ongoing basis, that is to say whenever a change occurred within the business that could influence the pay equity results. For example, upon the creation of a new position, upon modification of the tasks of a position, upon modification of the working conditions, whether they result from collective bargaining or otherwise, the employer had to ensure that pay equity was being maintained. If it was not, the employer was to proceed to the required salary adjustments. At least, that was the theory!

With the modifications to the Act, the obligation is better detailed, be it with regard to the steps to be taken or to time frames, namely by providing that audits are to be conducted every 5 years. The audit provisions are now be found at chapter IV.1 of the Act and in the transitional provisions of the Bill.

As a result of these recent modifications, an employer having already implemented his pay equity program must have completed his audit and put up the required posting no later than December 31, 2010; pay adjustments are owed on that date. Up to this time limit, employers are essentially shielded from prosecution for failures to comply with the Act.

It is up to the employer to decide if he wants to conduct the audit alone, through an audit committee or jointly with the bargaining agent. The results of the audit must be posted for a sixty day period; an employee may ask for additional information or present his observations. If the employer acts alone, an employee or the certified union may file a complaint if he considers that the audit is not in compliance with the Act. If the employer conducts the audit through a committee or with the union, no complaint can be filed against the results of audit.

Following the first audit, subsequent audits are conducted every 5 years from the date of the last audit posting. Adjustments are owed on the date of the posting, or in other words, without retroactivity.

UNCOMPLETED PROGRAMS

By virtue of the transitional provisions, the employer who on March 12, 2009 had not completed the pay equity program is granted a delay up to December 31, 2010 to finalize his program and proceed to the postings of the results. Until that date, as for maintenance, employers are essentially protected against prosecution.

Except if certain steps in the pay equity process had already been carried out by March 12, 2009, information at February 1, 2009 is the only information that can be used in establishing the program and for purposes of determining salary adjustments. This could well constitute an advantage for an employer where, for whatever reason, the salary differences have narrowed and conversely, a disadvantage for an employer where the salary differences have widened since 2001.

Pay adjustments required by the program will apply retroactively. Interest at the legal rate (5%) is owed on the amounts payable.

Employers who have not complied by December 31, 2010 and against whom a complaint will have been filed shall be held to the payment of the interest plus the additional indemnity provided for by law.

OTHER MODIFICATIONS

The Bill introduces a number of other changes to the Act. Among these changes, let's review the following.

The definition of a red circle salary has been widened. To recall, by virtue of article 67 of the Act, certain pay differences are not considered for valuation purposes, including differences resulting from red circle rates. Prior to the modification, a red circle salary was defined as a salary that was maintained at the same level (thus a frozen wage rate) until the wage rate for the classification had reached the red circle level. From now on, the red circle salary is one where the wage differential recedes within a reasonable period of time.

Moreover, the salary of a handicapped person paid under a special arrangement (the French version speaks of "accommodation") is neither to be taken into account in valuating wage differences.

The length of postings provided for in the Act increases to 60 days and the obligatory content of the posting is set out in further detail.

Information used either in establishing pay equity or for audits must be preserved for a period of 5 years from the posting of the results. With regard to employers who had finalized pay equity within the mandated time frames (and who are not presently the object of a complaint or investigation), the document preservation period has theoretically lapsed. It may nevertheless be prudent, if not necessary, to keep the information used until the first audit is completed.

The above is a summary of the principal modifications to the Act. Other modifications may be of interest to you or relevant to your particular situation. For more information, please do not hesitate to contact the author of this newsletter or one of the members of our [Labour, Employment, Human Rights and Public Law](#) practice group.

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