

What the Commission Doesn't Tell You: New Thinking on Pay Equity

Webinar – June 15, 2011





We all know.....

- What is Pay Equity?
- Pay Equity legislation (primarily applicable in *Ontario, Quebec* and Federally Regulated industries) tries to ensure that employees who work in jobs that have historically been dominated by female workers, and therefore may have been undervalued, receive compensation for their work determined by the value of their work.
- Pay Equity legislation therefore is aimed at closing any female wage gap relative to similarly classed male counterparts.
- Pay Equity legislation came into effect in Ontario effective January 1, 1988. Quebec's Pay Equity Act was effective November 21, 1997. Federally regulated organizations are covered by the Canadian Human Rights Act (Section 11) and Equal Wages Guidelines, 1986 and the Canada Labour Code (Section 182).
- Employers were required to identify and pay any adjustments in compensation by January 1, 1994 (at the latest) in Ontario and November , 2001 in Quebec. **Since all deadlines have passed employers are required to achieve Pay Equity.**



What is New?

Recent Pay Equity Activity

- ❑ Renewed activity by the Ontario Pay Equity Office (PEO) and the Commission de l'équité salariale in Quebec
- ❑ In Ontario, steps are being taken to conduct research as part of its Gender Wage Gap Program
 - ❑ Letters to select group of employers with 500+ employees
 - ❑ Additional letters are expected to be sent to employers 100+ employees.
 - ❑ If wage gaps are identified , a review officer might be assigned for further investigation.
- ❑ In Quebec, the Commission is very active in the press urging employees to complain if a pay equity plan or audit findings are not posted.
 - ❑ Companies with more than 10 employees, are required to conduct a pay equity audit by December 31, 2010 and post the results. Audits need to be conducted every 5 years thereafter.
 - ❑ Annual Declaration need to be completed by all organizations with 6 more employees – reminders have been sent out with more to come!



What is New?

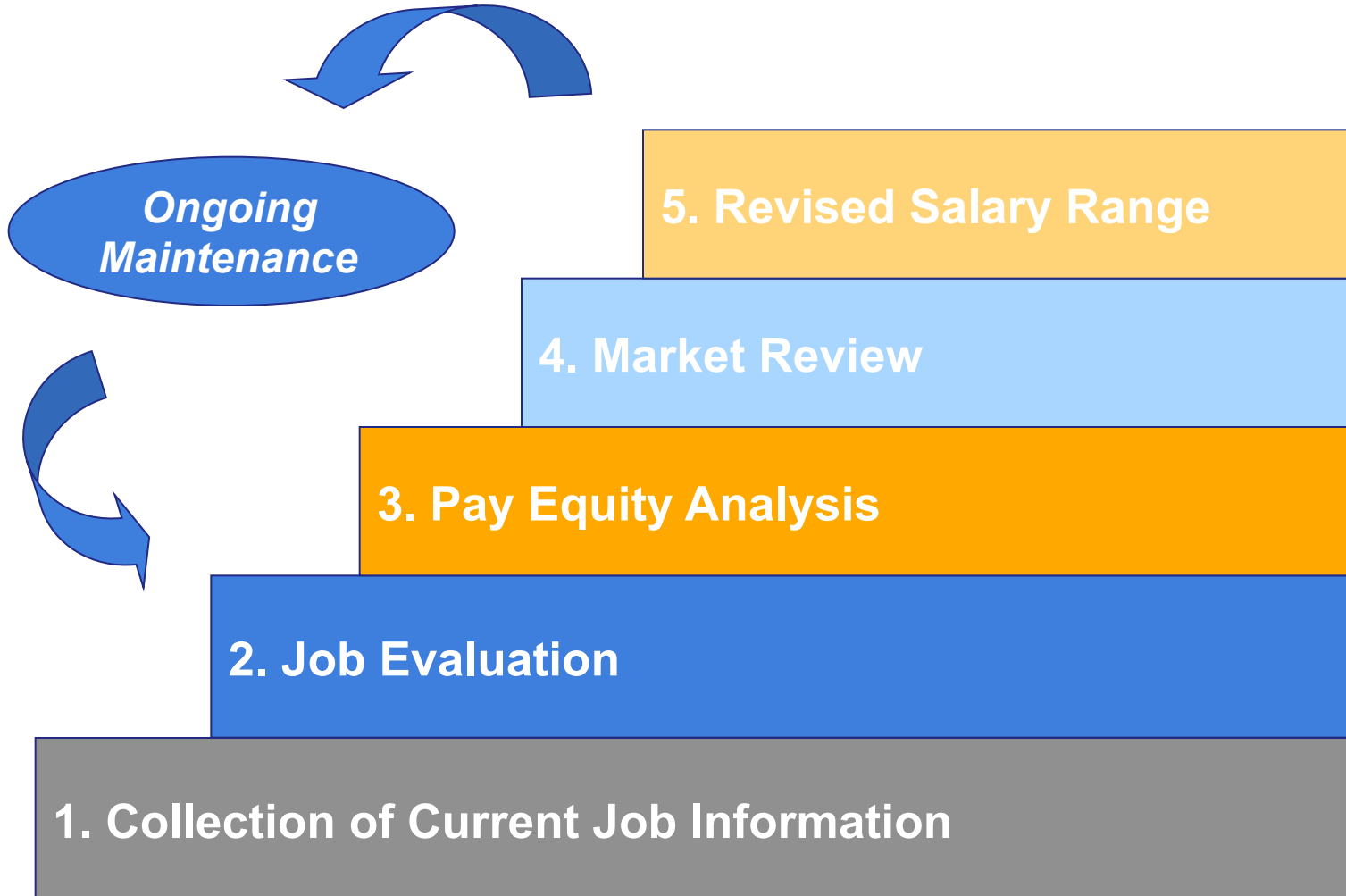
Governance

- In line with any Corporate Board's strong emphasis on governance to ensure all HR programs are aligned with socially acceptable business practices.
- Mitigates risk and penalties (both in reputational and hard legal costs)

Talent Management

- Diversity is fundamental to achieving superior business results
- Women represent an important and growing segment from both a market and talent perspective
- Can strengthen Employee Relations & Engagement, Recruitment and Retention Strategies
- Job Measurement can provide a clear understanding of org & role design incl. creating awareness of internal equity.

Making it work...





Pay Equity in Ontario

Application of the Act

- All private sector employers with greater than 10 employees on January 1, 1988 or any date thereafter
- All public sector employers
 - Broadly defined
 - Schedule under the *Pay Equity Act (PEA)*



Mandatory Posting Dates

- Public Sector Employers
 - January 1, 1990
- Private Sector Employers
 - January 1, 1990 if > 500 employees on Jan. 1/88
 - January 1, 1991 if >100 < 500 employees
 - January 1, 1991 if >50 < 100 employees
 - January 1, 1992 if >10 <50 employees if posted
 - s.20 notice



Phases of Pay Equity

1. Achievement

2. Maintenance



Steps to Achieve Pay Equity

- By employer for non-Union employees
- By employer and bargaining agent for each bargaining unit with all essential elements agreed to: rating tool, job class, gender dominance, male comparator/cross comparator, regression line, weights, banding, effective date and retroactivity

A line graph on a grid background. The vertical axis is labeled with a dollar sign (\$) and the horizontal axis is labeled with a percent sign (%). A blue line shows an upward trend with some fluctuations, ending in an arrow pointing up and to the right.

Identify the Establishment

- All employees employed in a geographic division
- Can combine Establishments into one plan
- ...”Establishment”....”geographic division” and definition of “Employer”



Identify the Job Classes

- Non-Union
- Each bargaining unit
- Job class definition in PEA
 - Similar duties and responsibilities
 - Similar qualifications
 - Filled by similar recruiting procedures
 - Same compensation schedule, salary grade or range of rates
- Full-time versus part-time job classes



Determine Gender Dominance of the Job Classes

Incumbency

- 60% of incumbents female = female-dominated
- 70% of incumbents male = male-dominated
- Gender neutral if meets neither test

Historical incumbency

Gender stereotyping, if any

Date of analysis impacts outcome



Gather Job Data

- From incumbents ideally
- Job Fact Questionnaires
- Job Descriptions
- Manager review/sign off but not veto



Evaluate Job Classes

- Using a gender neutral job evaluation system
 - Statutory criteria
 - Skill
 - Effort
 - Working Conditions
 - Responsibilities
 - Choice--Point Factor systems common
- Changing GNCS?
- Rating by Committee??
- “Reasonableness” standard



Determine Job Classes of Comparable Value

- Hierarchy of jobs by points
- Group into “bands”
 - Fixed
 - Expanding
 - Floating
- Band structures can vary from one employee group to another



Determine Job Rate

Includes all forms of compensation

“Fixed or ascertainable” test

- Benefits
- Perquisites
- Vacation entitlement
- Sick leave entitlement

Maximum rate

- Hourly rates
- Top of grid
- Max of salary range
- Actual salaries if no grid/range
- Is it defensible?



Comparison of Job Rates

- Job-to-job method of comparison
- Proportional value method of comparison
- Proxy method of comparison



Identifying Male Comparator

- Male job class with lowest job rate in the band
- Within the bargaining unit (if any)
- Outside the bargaining unit
 - Other bargaining units
 - Non-union employees
- Lower valued, higher paid male job class



Job-to-Job Comparison

- ❑ Compare female job classes to male job class of comparable value

Job Classes	Points	Gender	Max. Hourly Rate	PE Adjustment
Band 100-125				
Receptionist	111	F	\$18.00	\$1.00
Admin Asst	121	F	\$20.00	Nil
Maintenance	108	M	\$21.00	N/A
Driver	124	M	\$19.00	N/A



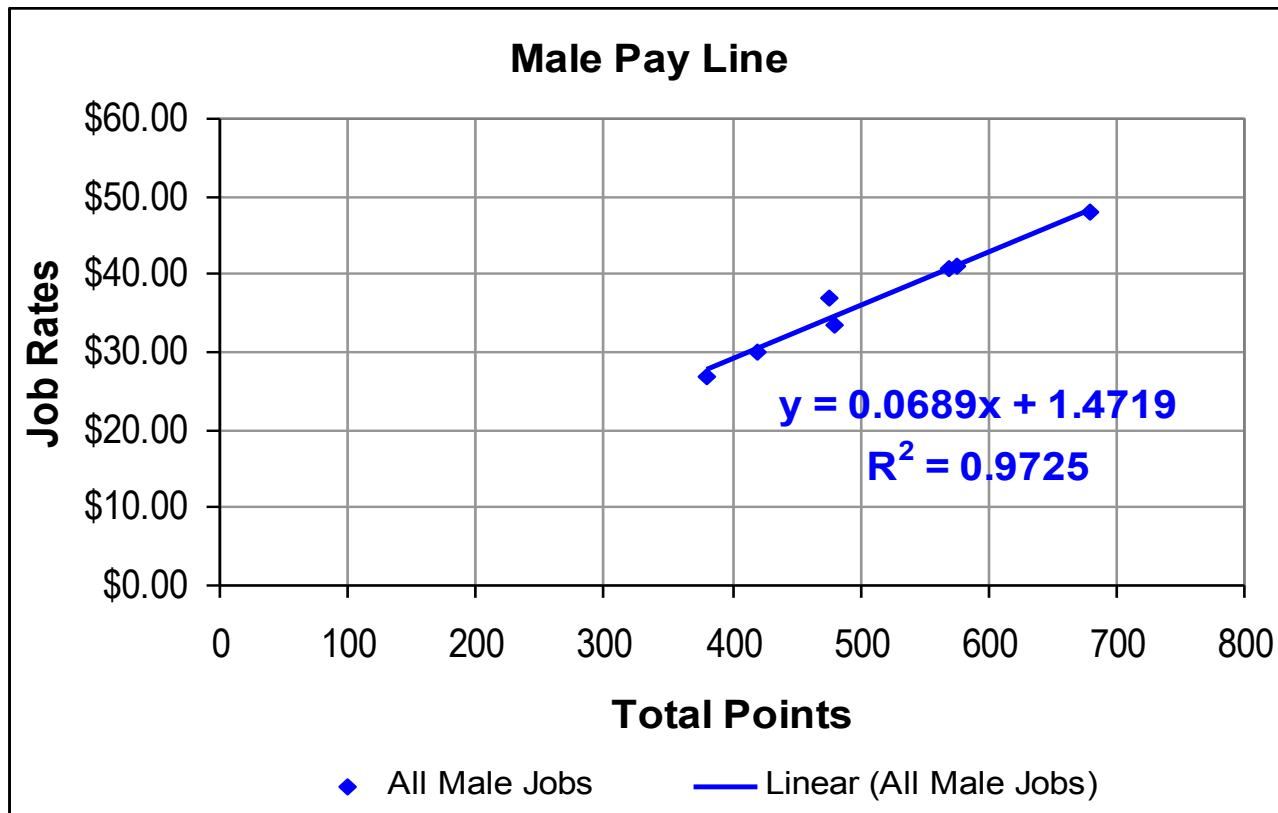
Proportional Value Comparison

- Where no male comparators in a band
- Only required for those bands without male comparators or cross comparators
- Regression line drawn using “representative” male job classes within the organization
- Female job class job rates compared to the regression line to determine adjustments
- Be prepared to defend the selection

Sample Proportional Value Line

Male Trend Line

➤ regression analysis





Proxy Comparison

- Public sector only
- Where no male job classes in the organization
- Or, so few male job classes such that proportional value method cannot be used
- Must be declared a seeking employer by the Pay Equity Commission
- Where female job classes paid less than the pay equity target rate
- Annual calculations to close the wage gap

Sample Pay Equity Impact Chart

Similar Value Group	Job Title	Total Points (value)	Job Class	Job Rate (\$/Annum)	P.V. Rate (at M.P.)	Pay Equity Adjustment (\$/Annum)
600 – 649	A	630	F	\$42,000		
	B	620	M*	\$42,000		
	C	600	F	\$40,000		\$2,000
550 – 599	D	570	M	\$36,000		
	E	565	F	\$36,000		
	F	560	M*	\$34,500		
	G	550	F	\$34,000		\$500
500 – 549	H	530	F	\$32,500		
	I	510	M	\$32,000		
450 - 499	J	480	F	\$28,900	\$30,708	\$1,808
	K	480	F	\$29,000	\$30,708	\$1,708
	L	455	F	\$31,000	\$30,708	
	M	455	F	\$30,700	\$30,708	\$8



Effective Date for Adjustments

- Mandatory posting dates
- January 1, 1994 for proxy
- Date of existence in Ontario
- Strict compliance vs. “informed” compromise



Retroactivity

- No 1% limit unless proxy
- Interest can be awarded
- Phase in may not be tolerated by Pay Equity Commission
- Review collective agreement language
- Deductions and pension contributions



Employees Entitled to Adjustments

- Current incumbents in eligible female job classes
 - Full-time
 - Part-time
 - Casual
 - Students employed outside of their vacation period
- Former employees
 - Except where full and final release



Post Pay Equity Plan

- ❑ *Pay Equity Act* dictates requirements of a Pay Equity Plan
- ❑ Non-Union Pay Equity
 - ❑ “Deemed approved” status dependent on posting
 - ❑ 90 day objection period
 - ❑ 7 day reposting
 - ❑ Further 30 days complaint period to Pay Equity Commission
- ❑ Union Plan deemed approved upon signing
- ❑ Proof of posting required



Maintenance Obligations after Pay Equity Achieved

- Ongoing comparison of job rates with male comparator or regression line
- Introduction of new job classes
- Significant changes to job classes warranting re-evaluation
- Elimination of male comparator job classes
- No obligation to revisit gender dominance
- No obligation to revisit proxy employer job rates
- Adopting a new job evaluation system
- Changing banding methodology
- Merger/Acquisition and Sale of Business



Key Considerations—Union Pay Equity

- BPS Bargaining
- Inclusion of benefits
- Inclusion of part time/casuals
- Union representation/agents for non-bargaining unit employees
- Comparators outside the bargaining unit
- Negotiated increases/stacking



Pay Equity Complaints

- Current or former employees
 - Unionized or not
- Unions
 - Even where signatory to a Pay Equity Plan or not
 - Even where collective agreement rates purport to be pay equity compliant
- Unions acting as agents for former non-union employees
- No time limits
- Estoppel/waiver does not apply if non-compliance with PEA
- Random audits by Pay Equity Commission
- Review Officers “adding to” legislative requirements



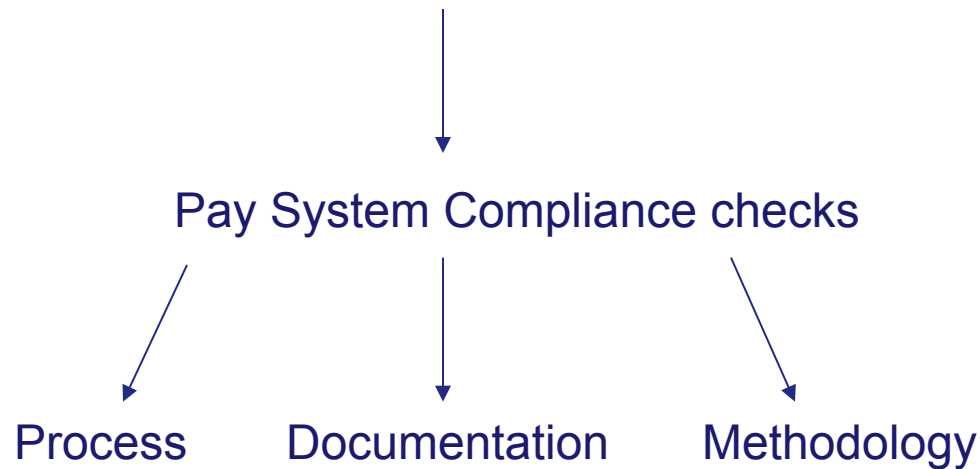
Risk of “Doing Nothing”

- Financial liability continues to mount
- Potential for interest increases
- Agenda for collective bargaining
- Platform for unionization
- Employment Standards Act 2000* Director’s Liability?



“Pay Equity Proof?”

- ❑ No guarantee that any Pay Equity Plan or process is acceptable, or will be accepted by the Pay Equity Commission
- ❑ Vulnerable to employee complaint at any time
- ❑ Random review/audits by Review Services





What the Commission doesn't tell you!

- Document—Document—Document!
- Never Purge!
- “Informed” Compliance



Questions?

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