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Introduction
By Liz Wright, Managing Director

Gender pay equity continues to be a priority with many Canadian organizations, since it is about ensuring compliance and promoting diversity, while ultimately having positive business and economic impacts.

Recent labour legislation has focused on raising minimum wages in Ontario and ensuring equal pay for part-time employees among other employment changes.

In our second volume of Pay Equity Express, we will focus on the potential impacts that recent legislations may have on pay equity going forward. At Gallagher McDowall Associates, we are committed to giving you the heads-up - particularly how these may relate to your annual pay equity maintenance obligations.

Hidden Costs of Bill 148 Legislation
By Mary Turan and Susan Tang, Senior Consultants

Private and Public Sector employers in Ontario are anticipating that changes will come their way when Bill 148 comes into law. June 1st 2017 marked the introduction of Bill 148, *Better Workplaces, Better Jobs Act*, *2017* (currently on second reading). There are significant changes proposed to the *Employment Standard Act, 2000 (ESA)* and the *Labour Relations Act, 1995*.

Employers should examine these proposed changes closely, not only from the perspective of the direct impact, but also to examine the impact in other, less prominent – however, still significant – areas of compensation; namely, ***pay equity compliance***. Private sector employers with 10 or more employees, all public sector employers, and broader public sector employers need to examine the status of their Pay Equity Plans and update their compensation practices.

Welcome

To *Pay Equity Express*, our newsletter on pay equity issues & trends. If you have any questions regarding this content, please contact:

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Inside This Issue:

Consideration needs to be given to:

- The impact of minimum wage on pay equity (anticipated first change in rate to $14 per hour, effective January 1, 2018) which can add additional pay equity liabilities
- The impact of "equal pay for equal work (anticipated effective date April 1, 2018)" which can also have a ripple effect on further costs

In this issue, we will examine the potential "hidden" impact of the minimum wage increase changes, as well as the potential financial impact of equal pay for equal work scenario.

Expected or Potential Impact of Minimum Wage and Pay Equity

It is anticipated that the sectors most likely to be impacted by the change to minimum wage are those who employ staff in retail, hospitality or leisure/recreation.

Examples of jobs to be potentially impacted include the following types of roles:

- Food Preparation
- Retail Sales
- Building and Grounds Maintenance
- Cleaning Services
- Summer Recreation Program staff
- Office Administrative Support

The following section outlines the potential hidden impact from a pay equity perspective.

Under the *Ontario Pay Equity Act*, there are two comparison methods to achieve pay equity: **job-to-job** and **proportional value (PV)** method of comparisons.

Employers are required to first apply the **job-to-job comparison** and, if there are female job classes that do not have a male comparator, the employer is required to use the **proportional value (PV)** method.

The **job-to-job method** of comparison occurs when a female job class has a male job class comparator within the same range of points or range determined by bands (similar value group). Typically, the job rate of the female job class is compared to the job rate of the male job class within the same band. If there is more than one male job class in the band, then the comparator is the male job class with the lowest job rate.

If the female job class job rate is lower than its male comparator job rate, then the difference between the two rates is the pay equity adjustment.

An employer who uses the job-to-job method of comparison for pay equity purposes would move a male comparator to the proposed $14 per hour job rate in January 2018 (and $15 per hour, as of January 1, 2019). Any female dominated positions with similar job value, and which are also at the current minimum wage rate, will move likewise due to the impending legislation. In this scenario, the job-to-job method of comparison is maintained.

In terms of additional impact, since all male or female dominated positions will need to move to the new minimum wage job rate, the impact on pay equity is equal. Where we can expect to see challenges is with respect to compression (i.e. maintain existing differentials) with other jobs within the organization.

Example:
A current job rate of a male dominated job is $14.50 per hour. The job also serves as a male comparator for several female dominated jobs for purposes of pay equity.

With the minimum wage being raised to $14.00 per hour, an employer may choose to change the rate for the male job to $15.00 per hour in order to alleviate compression and maintain existing differentials.

On the face of it, this may be nothing more than the employer having to bear the direct cost of this increase. However, where there is further impact is with respect to female jobs that are using this male dominated job as a male comparator. Female dominated jobs that use this male job as a comparator would also need to increase their job rates to $15.00 per hour (assuming no other male dominated job is available to serve as a male comparator).

The employer needs to be aware of this "**ripple effect**" and is required under law to ensure pay equity for female dominated jobs.

Employers also need to be aware of the impact of pay equity when using the **Proportional Value (PV)** method of comparison. The likely impact will be that the predicted rates for female jobs without direct male comparators may increase.

Proportional Value is established by examining the relationship between the value and pay of male job classes to that of female job classes and their respective pay rates. This is achieved by plotting the job rates for the male job classes against their respective job value. A mathematical formula is derived from a line of best fit or a male pay line using the method of regression analysis.

Once the Male Pay Line (or corresponding formula) has been developed, it is used to determine the pay equity rate for female job classes. If female job rates are below the line, then the pay equity adjustment is the difference between the current female job rate and the corresponding job rate on the line for each respective comparable value.

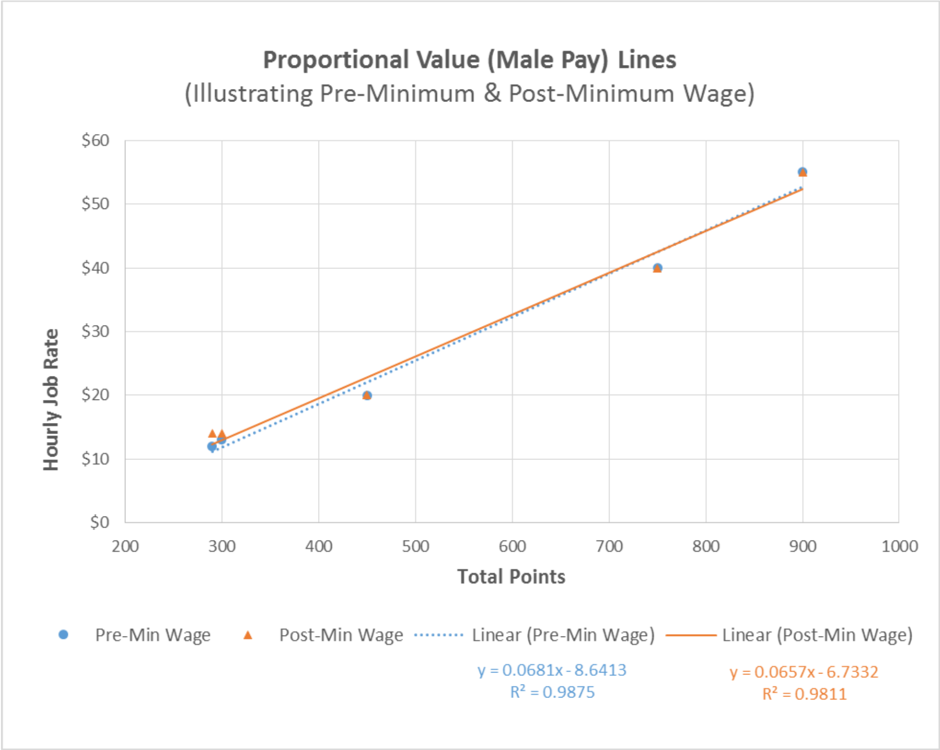
Below is an example of potential impact to pay by changing the minimum wage rate of male jobs that are part of the male pay line. (In our example 2 out of 5 male jobs used in the pay line were impacted by the proposed increase to minimum wage.)

Job Title	Job Class Gender	Total Points	Job Rate	Job Rate (Post Min Wage)
Job A	M	900	$55.00	$55.00
Job B	M	750	$40.00	$40.00
Job C	M	450	$20.00	$20.00
Job D	M	300	$13.00	$14.00
Job E	M	290	$12.00	$14.00

- *A female job class with 350 points and a job rate of $15.00 per hour would be increased to $16.25 per hour when the minimum wage is increased to $14.00 per hour for male job classes that are included in the male pay line used to achieve pay equity.*

Job Title	Job Class Gender	Total Points	PV Rate	PV Rate (Post Min Wage)
Job F	F	350	$15.20	$16.25

- *In this example there would be a $1.05 per hour increase, or $1,911 (based on 1820 hours) per annum increase for all incumbents in the impacted female job.*
- *This adjustment arises because the increase to minimum wage for male job classes that are included in the proportional value pay line calculations "drive" an increase in the job rate outputs for female job classes that rely on the PV method for pay equity.*
- *This is illustrated in the following graph, where pre and post minimum wage male pay lines show the impact. The orange line reflects the increase to the pay line after minimum wage is applied. The pay line moves up, resulting in an increase to job rates for female jobs.*



While this adjustment to the wage rate of the female dominated job is in compliance with the requirements of the *Pay Equity Act*, and is also in keeping with the spirit of wage gap closure that is in the news lately in Ontario as well as abroad, employers need to be aware of the cost impact in order to properly budget for these types of changes. Additionally, employers should also be aware that by not recognizing and adjusting pay rates for female job classes on a regular and periodic basis, an employer may be **accumulating significant retroactive pay equity liability.**

Impact of the Proposed "Equal Pay for Equal Work" and Pay Equity

Bill 148 will require that employers pay all employees the same rate of pay as an employee who performs the same job on full time basis, eliminating the differential pay based on employment status. The rule applies to part-time, casual, temporary and seasonal employees.

Differential wage rates can be maintained where there are objective reasons in justification (e.g., seniority systems, merit, production measures or any other factor other than gender or employment status).

Two key elements for employers to consider are job content and comparability. Employers should ensure that duties/responsibilities for all positions are reflected in current job descriptions in order to effectively determine comparable value using a gender neutral comparison system; and differentiate job duties and job value where possible. If the 'same job' is determined, assess whether a bonafide exemption should apply.

Under the job-to-job method of comparison, if a part-time male job class that is currently serving as a male comparator to full-time female job classes, and due to the impact of Bill 148 receives an increase, all female job classes who use the part-time male job class as comparator must also receive the same increase.

Example:
Pre Bill 148: Male comparator is highlighted in blue.

Similar Value Group	Band Width From	Band Width To	Job Title	Job Class Gender	Total Points	Job Rate $P.HR	Pay Equity Analysis: Job to Job $P.HR	Pay Equity Analysis: Pay Equity Adj. $P.HR
1	150	200	Admin Support (FT)	F	195	$16.00	$11.60	$0.00
1	150	200	Facility Attendant (FT)	M	170	$15.50		
1	150	200	Child Care Attendant (PT)	F	170	$14.00	$11.60	$0.00
1	150	200	Facility Attendant (PT)	M	170	$11.60		
1	150	200	Reception Desk Staff (PT)	F	165	$13.00	$11.60	$0.00

Post Bill 148: Part-time and Full-time **Facility Attendant** has been collapsed into one male job class and the job rate is now reflecting the full-time rate, therefore female job classes require a pay equity adjustment of $1.50 per hour (plus the minimum wage increase to $14.00)

Similar Value Group	Band Width From	Band Width To	Job Title	Job Class Gender	Total Points	Job Rate $P.HR	Pay Equity Analysis: Job to Job $P.HR	Pay Equity Analysis: Pay Equity Adj. $P.HR
1	150	200	Admin Support (FT)	F	195	$16.00	$15.50	$0.00
1	150	200	Facility Attendant (FT) and (PT)	M	170	$15.50		
1	150	200	Child Care Attendant (PT)	F	170	$14.00	$15.50	$1.50
1	150	200	Reception Desk Staff (PT)	F	165	$14.00	$15.50	$1.50

In conclusion, the anticipated outcome of Bill 148 needs to be examined carefully to ensure organizations are preparing and properly budgeting for cost impact. Whether the impact is as a result of the direct increase to minimum wage, or due to hidden impact through proportional value or even compression related issues, organizations would be well advised to test and prepare for the impending changes to their compensation plans.

Ontario Pay Equity Commission – Monitoring Activities

The Pay Equity Act in Ontario has been in force for 30 years. The requirement to comply is a must for organizations with 10 or more employees in the private sector and all public sector organizations. **Maintenance is an on-going requirement**. Organizations need to be diligent about the upkeep of their pay equity related analysis and employee pay data records/documentation to demonstrate compliance on yearly basis.

Information required for pay equity includes:

- Determining job classes and gender, along with job rate
- Conducting job evaluation using a gender neutral comparison tool
- Conducting job comparison for all female job classes using either the job-to-job or proportional value method of comparisons on annual basis
- Identifying and paying out adjustments to underpaid female job classes

In recent monitoring activities, the Pay Equity Commission in Ontario typically requires that the employer provide 3 years' analyses and related pay data. The request for information will also typically include:

- Copies of T4 records
- Details about Commission and Bonus programs, and
- Detailed Payroll records

Recent new monitoring activities on the part of the Pay Equity Commission include:

1. ***Federal Contractors Program (FCP)*** – with the pending Federal Pay Equity legislation (anticipated timing 2018), many organizations that are under Provincial regulation and who also participate under the FCP have received letters from the Ontario Pay Equity Commission regarding maintenance. If these organizations are able to show compliance provincially, the proposed Federal Pay Equity legislation is anticipated to provide an "exemption" for these organizations from the federal pay equity legislation. Employers should be ensuring that their pay equity records are current and that compliance can readily be demonstrated.
2. ***New Employers*** - who have been in business for at least 3 years, and that have 10 or more employees in the western, eastern and northern parts of Ontario, may be receiving letters from the Pay Equity Commission requesting evidence of compliance.
3. ***Innovation Sector*** – information technology, clean technologies, advanced health technologies, digital media, are just a few of the targeted industries under this monitoring effort.

4. ***Vendor of Record Monitoring*** – employers that act as Vendor of Record for Ontario may also receive monitoring letters from the Commission requesting proof of pay equity compliance.
5. ***Engagement Survey*** – employers who have a unionized workplace may be requested to complete an anonymous and voluntary online survey. While the anonymity may give comfort to employers, the fact that the survey raises awareness about pay equity should compel employers to ensure compliance for all of their employee groups, including the bargaining unit positions. Employers who do not participate may be flagged for monitoring by the Pay Equity Commission.

The Pay Equity Commission is now posting on their website a link to summaries of Notice of Decision letters and summaries of Orders (including company names) issued by Review Officer, starting as of April 2016. The information is available by employer name and listed in alphabetical order by fiscal year. The intent is to further educate the public about pay equity.

Quebec Pay Equity Commission – Monitoring Activities

Under the Quebec Pay Equity legislation, employers (with 10 or more employees) are obligated to complete a pay equity exercise, and assess the maintenance of pay equity every 5-year period. In addition, employers are obligated to file the Employer Pay Equity Statement (DEMES) each year.

Employers should be aware that the CNESST *(Commission des norms, de l'équité, de la santé et de la sécurité du travail)* continues to monitor the activities of reporting and non-reporting companies through its audit program to ensure that employers do carry out their pay equity requirements. It should be noted that employers who do not comply with the Act are subject to criminal proceedings involving fines ranging from $1,000 to $45,000. Furthermore, CNESST will publish the names of the defaulting companies until the employer complies with the law.

As a cautionary note, employers should comply with these obligations in a timely manner and with accurate information in the reporting of activities (i.e. DEMES). In the event of conflicting reported information, this may result in a Review Officer requesting for additional information and further investigation.

It also should be noted that all outstanding (unpaid) compensation adjustments will bear **interest** at the legal rate from the time as of which they are payable. Furthermore, if there is a **complaint** and the findings indicate an adjustment, then there is an ***additional*** **punitive interest** rate applied.

Federal Pay Equity – Update

The Government tabled its response in October 2016 to a new, proactive pay equity legislation for the federal jurisdiction by late 2018, reaffirming its commitment to gender equality and to the principle of equal pay for work of equal value.

In its response, the Government indicated that it will consult and learn from provincial experiences, and seek the views of stakeholders on design issues such as pay equity methodology, comparison methods and reporting requirements.

Currently, there has been no additional updates from the Government. However, we do know that over the last several months, there has been discussions with stakeholders to gather views on the key design elements of a proactive pay equity system.

For more information, see the web links below:

Bill 148 - http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4963

Pay Equity Commission Ontario - http://www.payequity.gov.on.ca/EN/Pages/default.aspx

Pay Equity Commission Quebec - http://www.ces.gouv.qc.ca/english.asp

House of Commons Canada Special Committee on Pay Equity - http://www.ourcommons.ca/Committees/en/ESPE

To learn more about pay equity maintenance activities, or to have your questions answered about how to respond to a monitoring notification, please call Gallagher McDowall Associates at 416.644.6584.

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