



GROUP OF EMPLOYERS

Interpretations, Policies and Guidelines

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INTERPRETATIONS, POLICIES AND GUIDELINES

Group of Employers

1. Purpose

This Interpretation, Policy and Guideline (IPG) covers guidance on the term “group of employers” as well as on the criteria that must be met to form a group of employers outlined in section 106(1) of the Pay Equity Act (the Act).

To foster a common understanding of who is a “group of employers” under the Act and what are those criteria, the following guideline addresses:

- What is a **group of employers** under the Act?
- **Who** can apply?
- **When** to apply?
- What factors will the Pay Equity Commissioner consider?
- What is the Pay Equity Commissioner’s discretion for approving an application?
- When does a group of employers become subject to the Act?

* This document does not replace seeking out expert legal advice. This document is technical in nature and should not be used as a plain language resource. Plain language resources are available at <https://www.payequitychrc.ca/en>.

** The Act does not currently apply to employees of the governments of Yukon, the Northwest Territories and Nunavut, or Indigenous governing bodies, including First Nations Governments. Pay equity in these workplaces is still protected through section 11 of the Canadian Human Rights Act or territorial legislation.

2. Definition of a Group employers under the Act

The term “group of employers” under the Pay Equity Act refers to two or more employers that applied to be recognized by the Pay Equity Commissioner as a single employer.ⁱ The obligation set out in the Act to establish and maintain pay equity applies equally to a group of employers.

Section 106(1) of the Act outlines the criteria used by the Pay Equity Commissioner when exercising her discretion to approve an application for a group of employers to be recognized as a single employer.

On receipt of an application, the Pay Equity Commissioner may recognize the group as a single employer if she is of the opinion that the employers:

- a) are part of the same industry;
- b) have similar compensation practices; and,
- c) have positions with similar duties and responsibilities.ⁱⁱ

Even if employers meet all the criteria, the Pay Equity Commissioner may refuse to grant the application if she is of the opinion that doing so would not align with the purpose of the Act, which is to redress systemic gender-based wage discrimination within federally regulated workplaces.

3. Employers who can apply

Two or more employers in each of the following categories listed below can make an application to the Pay Equity Commissioner to be recognized together as a single employer:

- A person who employs employees in connection with the operation of any federal work, undertaking or business;ⁱⁱⁱ
- A corporation established to perform any duty or function on behalf of the Government of Canada;^{iv}
- A person who has a relationship with a dependent contractor that is characterized by economic dependence.^v

Each employer within the group must be subject to the Pay Equity Act. This means that each employer must have had an average of 10 or more employees during the previous calendar year in which the Act came into force.^{vi}

Federal public sector employers, as well as parliamentary institutions, cannot apply to form a group of employers.^{vii}

Example – Companies of the same banner

Company A and Company B are franchises of the same business banner, meaning they are legally independent, but both are bound to the same franchisor by way of a franchise agreement. They are not in direct competition with each other and already possess similar attributes (e.g., common obligations or procedures) as set out in the franchise agreement. Normally, each would develop its own pay equity plan. However, these two businesses could decide to group together under the Act as long as they meet the criteria below.

4. Deadline to submit an application

Neither the Act nor the regulations provide a time limit for filing an application for recognition as a group of employers. It may be to the advantage of all parties to file the application as soon as possible so as not to cause undue delays in the implementation of the Act.

5. Factors considered by Pay Equity Commissioner

According to the Act, the Pay Equity Commissioner has the power to recognize two or more employers as a single employer if they meet the following criteria:

- They are part of the same industry;
- They have similar compensation practises; and,
- They have positions with similar duties and responsibilities.

5.1. Requirement to be part of the same industry

The first criterion that must be met under the Act is that the applicants be part of the same industry. The term “same industry” refers to a group of enterprises with substantially identical^{viii} lines of work, which provide a closely related set of products, goods or services.

In determining whether the applicants are part of the “same industry” the Pay Equity Commissioner may consider:

- Whether there are important similarities in the applicants’ activities, products or services provided, or in their mission statement;^{ix} and,
- Whether the applicants serve the same or similar markets or occupy the same niche.^x

Example – Companies of the same banner (continued)

Company A and Company B are franchised under the same trade name and therefore serve similar markets. They both benefit from the expertise of the franchisor, which allows them to offer a similar range of services and products of the same quality.

5.2. Requirement to have similar compensation practices

To be recognized as a single employer, the group of employers must share common characteristics in the way that compensation is determined and paid.

In assessing whether applicants have “similar compensation practices,” the Pay Equity Commissioner may consider factors such as whether the applicants share:

- Similar or same salary structure;^{xi}
- Similar or same human resources policies for employees;^{xii} and,
- Similar or same benefits.^{xiii}

Example – Companies of the same banner (continued)

Although they are independent from each other, Company A and Company B have decided to adopt an identical salary structure for their employees, based on the best practices identified by the franchisor. Their human resources policies are similar, particularly in terms of the hiring process common to all franchisees.

5.3. Requirement to have positions with similar duties and responsibilities

In assessing whether applicants have “positions with similar duties and responsibilities”, the Pay Equity Commissioner may consider whether:

- Their positions have similar requirements and skills;
- The applicants’ employees use the same equipment or processes;
- They complete the same or similar tasks; and,
- They have similar levels of responsibility and authority.

Example – Companies of the same banner (continued)

Company A and Company B are organized in a very similar way. Job descriptions for the various positions are standardized and the franchisor provides them with their work equipment, including uniforms. The job categories are also similar and include a division between retail, warehouse and administrative employees.

6. The Pay Equity Commissioner’s discretion for approving an application

The Pay Equity Commissioner **may** recognize a group of employers as a single employer if she is **of the opinion** that all of the three criteria discussed above have been met.^{xiv}

The use of the term “of the opinion” gives the Pay Equity Commissioner the discretion to determine whether the application meets the criteria.

It means that the Pay Equity Commissioner may deny an application even if the criteria are met. The Pay Equity Commissioner may deny an application should she determine that the outcome of granting an application could run contrary to, or may not align with, the purpose of the Act, which is to redress systemic gender-based wage discrimination within federally regulated workplaces.

7. Becoming subject to the Act

Should the Pay Equity Commissioner approve an application for a group to be recognized as a single employer, she must choose the day on which the group becomes subject to the Act so that the group operates on the same timelines and respects the time limits prescribed by the Act.

This date must be:

- A day after which one of the employers in the group becomes subject to the Act; and,
- The earliest day that would give the group sufficient time to meet its obligations under the Act.

8. Referenced Pay Equity Act Provisions

Employers

3(2) For the purposes of this Act, each of the following is considered to be an employer:

[...]

(e) each person who employs employees in connection with the operation of any federal work, undertaking or business, as defined in section 2 of the Canada Labour Code, other than a work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut;

(e.1) a corporation established to perform any duty or function on behalf of the Government of Canada, other than a corporation named in Schedule IV or V of the Financial Administration Act;

(f) in respect of a dependent contractor, an employer as defined in paragraph (b) of that expression in subsection 3(1) of the Canada Labour Code;

(g) the government of Yukon;

(h) the government of the Northwest Territories; and

(i) the government of Nunavut.

Group of employers

4 (1) Two or more employers described in any of paragraphs 3(2)(e) to (i) that are subject to this Act may form a group and apply to the Pay Equity Commissioner to have the group of employers recognized as a single employer.

References to employers

(2) If a group of employers is recognized by the Pay Equity Commissioner as a single employer under section 106, every reference in sections 19 to 21, 27, 32, 35, 38 to 41, 43 to 50 and 54, subsection 57(1), sections 64, 75, 78, 79 and 82, subsections 85(1) and 104(2), sections 111, 147, 148 and 151, subsection 157(1) and paragraph 181(1)(c) to an employer is, in respect of the group of employers, to be read as a reference to that group of employers, unless the context otherwise requires.

References to employers

(3) If a group of employers is recognized by the Pay Equity Commissioner as a single employer under section 106, every reference in sections 118 to 120, subsections 149(2) and 150(3), paragraph 158(1)(b), subsections 158(2) and (3) and section 168 to an employer may, in respect of the group of employers, is to be read as a reference to that group of employers or to any employer in the group, as the context requires.

Date on which group becomes subject to Act

(4) If the Pay Equity Commissioner recognizes a group of employers as a single employer, the date on which the group of employers is considered to have become subject to this Act for the purpose of subsection 55(1) and paragraphs 61(1)(b) and 89(2)(b) is the date chosen by that Commissioner.

Employers subject to Act on coming into force

6(b) an employer referred to in any of paragraphs 3(2)(e) to (i) that

(i) is considered under subparagraph 9(a)(i) to have 10 to 99 employees, or

(ii) is considered under subparagraph 9(b)(i) to have 100 or more employees.

Authorizations by Pay Equity Commissioner

Recognition of group as single employer

106 (1) On receipt of an application referred to in subsection 4(1), the Pay Equity Commissioner may recognize the group as a single employer if he or she is of the opinion that the employers

(a) are part of the same industry;

(b) have similar compensation practices; and

(c) have positions with similar duties and responsibilities.

Choice of date

(2) If the Pay Equity Commissioner recognizes a group as a single employer under subsection (1), he or she must choose the day on which the group becomes subject to this Act for the purpose of subsection 55(1), and paragraphs 61(1)(b) and 89(2)(b). He or she must choose a day that

(a) is after the day on which one of the employers in the group becomes subject to this Act; and

(b) is, in his or her opinion, the earliest day that would give the group sufficient time to meet its obligations under this Act.

9. Sources - Case Law Cited

Pharmaciens - propriétaires affiliés de Pharmaprix, 2017 QCCNESST 400 (CanLII).

Pharmaciens – propriétaires affiliés de Pharmaprix (Re), 2013 CanLII 86738 (QC CES).

Prince Rupert Grain Ltd (Re), [2007] CIRBD No 19.

R v Fraser, [1987] OJ No 2456.

Saipem UK Ltd v Canada, [2011] TCJ No 15.

ⁱ See *Pay Equity Act*, s.4(1).

ⁱⁱ *Pay Equity Act*, s.106(1).

ⁱⁱⁱ See *Pay Equity Act*, s.3(2)(e).

^{iv} See *Pay Equity Act*, s.3(2)(e.1).

^v See *Pay Equity Act*, s.3(2)(f).

^{vi} See *Pay Equity Act*, s.6(b).

^{vii} See *Pay Equity Act*, s.4(1) and *Parliamentary Employment and Staff Relations Act*, s.86.3(1).

^{viii} *Saipem UK Ltd v Canada*, [2011] TCJ No 15, para 44.

^{ix} *Prince Rupert Grain Ltd (Re)*, [2007] CIRBD No 19, para 147.

^x *Ibid.*

^{xi} *Pharmaciens-propriétaires franchisés de Pharmaprix*, 2011 CanLII 36687 (QC CES), para 18.

^{xii} *Ibid.*, para 20.

^{xiii} *Ibid.*, para 21. Note: this was not considered by the CNESST in Quebec because the pharmacies had different benefits for their managers, but this could be in favour of the similar compensation practices.

^{xiv} See *Pay Equity Act*, s.106(1)(2).