



MULTIPLE PLANS

Interpretations, Policies and Guidelines

TABLE OF CONTENTS

INTERPRETATIONS, POLICIES AND GUIDELINES	3
Application for multiple pay equity plans	3
1. Purpose.....	3
2. The general rule.....	4
3. Persons entitled to apply.....	4
4. Factors considered by the Pay Equity Commissioner.....	5
Step 1: Determine whether it is possible to identify enough predominantly male job classes to make a comparison of compensation for each of the proposed pay equity plans	5
Step 2: Determine whether it is appropriate in the circumstances to authorize the establishment of more than one pay equity plan	6
4.1. Whether regional disparities exist.....	7
4.2. Whether Multiple Bargaining Units or a Community of Interest warrant multiple plans.....	8
5. Timeline to make an application	9
6. Steps to apply	9
7. Referenced Pay Equity Act Provisions	10

INTERPRETATIONS, POLICIES AND GUIDELINES

Application for multiple pay equity plans

1. Purpose

This Interpretation, Policy and Guideline (IPG) covers the following elements of a request for authorization of multiple pay equity plans:

- The general rule;
- Persons entitled to apply;
- Factors considered by the Pay Equity Commissioner;
- Timeline to make an application; and
- Steps to apply.

Note that this IPG does not provide an exhaustive list of the factors that the Pay Equity Commissioner will consider when making a determination on multiple pay equity plans. These factors will develop over time.

*This document does not replace 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 term “employer” in this document can also refer to a “group of employers” that has been recognized by the Pay Equity Commissioner.”

2. The general rule

As a rule, employers must establish a single pay equity plan for all of their employees, no matter the branch, division or region in which they may work.

Having a **single plan** also means having **one** pay equity committee and developing a **single method** to value the work across all job classes.

Having a single plan is a comprehensive and robust way to determine if there are any pay equity gaps because it considers all predominantly male and predominantly female job classes in the organization and uses the same methodology to value them.

Establishing multiple pay equity plans is an exception to the rule. This means that the Pay Equity Commissioner will only approve applications where a party or the parties can establish through evidence that it is **appropriate under the circumstances** and consistent with the purpose of the Act, which is to redress gender-based discrimination in the pay practices and systems of employers.

Some employers may have already gone through a pay equity exercise to ensure compliance with section 11 of the Canadian Human Rights Act (CHRA). There are some important differences between the CHRA and the Pay Equity Act, and there is no exemption in the Pay Equity Act for employers who may have already completed pay equity analyses under the CHRA.

The **general rule** requiring a single plan for all employees **applies equally** to employers who have completed multiple plans under the CHRA. However, employers that have already completed extensive pay equity work may find it easier to provide the evidence necessary to support an application for multiple pay equity plans.

3. Persons entitled to apply

Workplaces that are **required** to establish a pay equity committee, or those **that have done so on a voluntary basis**ⁱⁱ, can file an application for multiple plans.

This means that an employer, bargaining agent or non-unionized employee in one of the following workplaces may ask the Pay Equity Commissioner to create more than one pay equity plan for:

1. A workplace with on average **100 employees or more**; or,
2. A workplace with **10 to 99 employees**, some of whom are **unionized**; or,
3. A workplace where a pay equity committee has been **voluntarily established**.ⁱⁱⁱ

It should be noted that the workplaces described under the first and second points above may or may not have established a pay equity committee before filing their application. However, those described under the third point must have established their pay equity committee and notified the Pay Equity Commissioner before they qualify for filing an application.

4. Factors considered by the Pay Equity Commissioner

When considering an application for multiple pay equity plans, the Pay Equity Commissioner will review each application on a case-by-case basis and take a two-step approach:

- **Step 1** – Determine whether it is possible to identify enough predominantly male job classes to make a comparison of compensation for each of the proposed pay equity plans^{iv}; and,
- **Step 2** – Determine whether it is appropriate in the circumstances to authorize the establishment of more than one pay equity plan.^v

Step 1: Determine whether it is possible to identify enough predominantly male job classes to make a comparison of compensation for each of the proposed pay equity plans

The first determination that the Pay Equity Commissioner will make when considering an application for multiple pay equity plans is whether it is possible to identify “**enough**” predominantly male job classes under each of the proposed pay equity plans to get through all the steps of the plan, including the comparison of compensation.

Because the issue regarding the sufficiency of male comparators is raised prior to finalizing the pay equity plan or plans, it may be that the analysis will be based on estimates rather than on final predominantly female and male job classes.

The word “**enough**” is defined as “occurring in such **quantity** [and] **quality** [...] as to **satisfy fully** the demands, wants, or needs of a situation or of a proposed use or end”.^{vi} In the Pay Equity Act context, it is important to consider the following components:

- The estimated **quantity** of predominantly male job classes (i.e. number and range of values of work); and
- The estimated **quality** of the predominantly male job classes (e.g. whether they would offer potential for comparisons across a range of values of work).

There is **no predefined quantity** of male-dominated job classes required to conduct a comprehensive and robust pay equity analysis.

If the evidence shows that it is not possible to identify enough predominantly male job classes under any of the proposed plans, the Pay Equity Commissioner has a legal obligation to deny the application.

If the establishment of multiple pay equity plans were to **unnecessarily restrict the scope of predominantly male job classes** available under one of the proposed pay equity plans, it may also lead to the denial of the application.

Step 2: Determine whether it is appropriate in the circumstances to authorize the establishment of more than one pay equity plan

Should the Pay Equity Commissioner determine that it is possible to identify enough predominantly male job classes for each pay equity plan, the next step is to determine whether it is **appropriate in the circumstances** to authorize the establishment of more than one pay equity plan. In other words, the Pay Equity Commissioner will look at whether the application is “suitable” or “justifiable” in the circumstances.

The requestor and other interested parties will provide the Pay Equity Commissioner with the facts and circumstances of the application through evidence. The Pay Equity Commissioner will examine the evidence submitted by the parties and any representations^{vii} to determine whether an application is appropriate in the circumstances. The Commissioner may request any information from the parties to ensure that the application for multiple plans is appropriate in the circumstances.

Examples of some of the questions that the Pay Equity Commissioner may contemplate when assessing whether an application is appropriate under the circumstances:

- Whether an attempt to meet the standard of a single plan was made before filing an application for multiple pay equity plans.
- Whether there are any objections to the application by those who would be affected by it, and the nature of those objections.
- Whether the evidence demonstrates that the impacts of establishing multiple pay equity plans would be gender neutral.
- Whether the establishment of multiple pay equity plans would offer a suitable solution to meet the purpose of the Pay Equity Act and serve to redress potential systemic pay-based gender discrimination in the workplace.

In reviewing the facts and circumstances, the Pay Equity Commissioner may also consider:

- Whether regional disparities exist; and,
- Whether multiple bargaining units or communities of interest warrant multiple plans.^{viii}

4.1. Whether regional disparities exist

Employers with operations in various locations may face challenges in creating a single pay equity plan. Regional disparities, including **social, economic, cultural, political, environmental,** or **other** disparities, can affect the labour market conditions in a region and have an impact on the compensation of certain job positions.

Example – Regional disparities affecting operations in a specific region

An employer provides evidence in support of a request for multiple pay equity plans based on regional disparities that affect their entire operations in northern communities. The evidence outlines that the company operates multiple airlines across Canada, including one serving Canada's northern communities. Air operations in northern communities are subject to extreme weather (e.g. cold temperatures), extended periods of darkness, low and sporadic passenger volumes, and generally, harsh operating conditions. This creates a difficult and costly operating environment for the company.¹ In addition, the working conditions are significantly different from those in other areas of the country.

These circumstances make it challenging for the company to establish a single pay equity plan due to:

- The upward pressure on wages because of the difficult operating environment; and,
- The challenging working conditions which may need to be given more weight than usual in the method to value the work.

When looking at an application for multiple pay equity plans, the Pay Equity Commissioner may consider:

- Whether an attempt to meet the standard of a single plan was made before filing an application for multiple pay equity plans.
- Whether gender is a factor in the regional differences.
- Whether both male and female job classes receive the same regional pay.
- Whether there are any objections to the application by those who will be affected by it and the nature of those objections.

¹ Office of the Auditor General of Canada (2017) "Report 6 – Civil Aviation Infrastructure in the North – Transport Canada." Retrieved from: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201705_06_e_42228.html

An application for multiple pay equity plans that includes evidence of regional disparities must demonstrate that it offers a suitable solution to meet the purpose of the Pay Equity Act.

It is possible that regional disparities could affect only certain job classes by raising their pay. This issue can be dealt with through the exclusions set out under section 46 of the Pay Equity Act instead of creating a separate plan.^{ix} Section 46 of the Pay Equity Act outlines differences in pay that may be excluded from the calculation of compensation for the purpose of a pay equity plan. In particular, paragraph 46(d) pertains to differences in compensation based on the geographic area in which an employee works.

Example – Regional disparities affecting only certain job classes

An employer with operations in the North provides a remoteness premium to employees in certain professional job classes to attract them. After a year of service, the employer further provides a retention bonus. Given that these elements of pay affect only certain job classes, the employer excludes the remoteness premium and the retention bonus from the calculation of compensation and establishes one plan that includes employees in the Northern region as well as employees in metropolitan area.

4.2. Whether Multiple Bargaining Units or a Community of Interest warrant multiple plans

Employers or bargaining agents may wish to file an application for multiple pay equity plans that replicate the current bargaining unit or community of interest structure in a workplace. Labour relations boards have recognized a “community of interest” in terms of “their geographic location, the basis on which they are paid, the kind of work they do, and other shared characteristics...”.^x

Example – Multiple bargaining units in a single workplace

A workplace is comprised of 3 bargaining units and non-unionized employees. The bargaining agents that represent the three bargaining units file an application to establish four multiple pay equity plans that replicate the current bargaining unit structure:

- Plan 1 includes
 - Bargaining unit A – Predominantly male job classes
- Plan 2 includes
 - Bargaining unit B – Predominantly male job classes
- Plan 3 includes
 - Bargaining unit C – Predominantly female job classes
- Plan 4 includes
 - Non-unionized employees – Predominantly female job classes

When looking at an application for multiple pay equity plans that would replicate an existing bargaining unit or a community of interest structure in a workplace, the Pay Equity Commissioner may consider:

- Whether an attempt to meet the standard of a single plan was made before filing an application for multiple pay equity plans.
- The interaction between the compensation policies, structures and practices and the pay equity process.
- Whether the bargaining units or communities of interest are comprised of predominantly male or female job positions.
- Whether the bargaining units or communities of interest reinforce occupational gender segregation.
- The impact on non-unionized employees.
- Whether there are any objections to the application by those who will be affected by it and the nature of those objections.

An application for multiple pay equity plans that replicates the current bargaining unit or community of interest structure must demonstrate that it offers a suitable solution to meet the purpose of the Pay Equity Act to redress gender-based discrimination in the pay practices and systems of employers.

5. Timeline to make an application

There is no time limit to file an application for multiple pay equity plans. However, applications should be filed in a timely manner.

For example, an application for multiple plans filed near the deadline for posting the final version of a pay equity plan may not leave enough time to complete the plans, which may in turn impact on the Commissioner's decision. Requestors must keep in mind that time will not be put on hold during the review process of an application. It is a good idea to continue to advance the work while the application is being processed.

Requestors should also recognize that some work is required before filing an application for multiple plans to have sufficient evidence to demonstrate that the proposed plans would be appropriate. Parties should take into account that time is needed to analyze the positions in their workplace and collect the information necessary to file an application.

6. Steps to apply

Access the "How we help" section on the Canadian Human Rights Commission website at <https://www.payequitychrc.ca/en> to learn more about the process for making an application.

7. Referenced Pay Equity Act Provisions

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.

Requirement to establish pay equity committee

16 (1) The following employers must, in respect of the pay equity plan that the employer is required to establish, make all reasonable efforts to establish a pay equity committee: (a) an employer that is considered to have 100 or more employees for the purpose of section 6 or 7, as the case may be; or (b) an employer that is considered to have 10 to 99 employees for the purpose of section 6 or 7, as the case may be, if some or all of its employees were unionized employees on the date on which the employer became subject to this Act.

Voluntary establishment of pay equity committee

(2) An employer that is considered to have 10 to 99 employees for the purpose of section 6 or 7, as the case may be, may, on its own initiative or at the request of an employee, decide to establish a pay equity committee if all of its employees were non-unionized employees on the date on which the employer became subject to this Act.

Notice to Pay Equity Commissioner

(3) An employer referred to in subsection (2) that establishes a pay equity committee must notify the Pay Equity Commissioner that it has done so.

Multiple plans

30 (1) An employer referred to in subsection 16(1) or (3), a bargaining agent for any unionized employees of the employer or a non-unionized employee of the employer may apply to the Pay Equity Commissioner to approve the establishment of more than one pay equity plan.

Multiple plans — group of employers

(2) A group of employers referred to in subsection 17(1) or (3), a bargaining agent for any unionized employees of an employer that is in the group or a non-unionized employee of an employer that is in the group may apply to the Pay Equity Commissioner to approve the establishment of more than one pay equity plan.

Application — required information

(3) The employer, group of employers, bargaining agent or employee, as the case may be, must, in the application, (a) indicate the number of pay equity plans being proposed; and (b) identify the employer's employees — or, if the employer is in a group of employers, all of the employees of the employers in the group — to whom each pay equity plan would relate.

Evidence and representations

(4) The Pay Equity Commissioner must give an opportunity to make representations, in the manner that he or she specifies, to the applicant, to the employer or group of employers, if it is not the applicant, and to any bargaining agents and non-unionized employees that are not the applicant and that the Pay Equity Commissioner considers would be affected by the application.

Denial of application

(5) The Pay Equity Commissioner must deny the application if he or she is of the opinion that, if more than one pay equity plan were to be established it would not be possible for the employer or group of employers, or a pay equity committee, as the case may be, to identify enough predominantly male job classes for a comparison of compensation to be made under section 47 in respect of each of those pay equity plans.

Approval of application

(6) If the Pay Equity Commissioner approves the application, the employer or group of employers, as the case may be, must establish, in accordance with this Act, each of the pay equity plans whose establishment is approved.

Differences in compensation excluded

46 An employer — or, if a pay equity committee has been established, that committee — must exclude from the calculation of compensation associated with a job class any differences in compensation that either increase or decrease compensation in any or all positions in that job class as compared with the compensation that would otherwise be associated with the position, if the differences are based on any one or more of the following factors and those factors have been designed and are applied so as not to discriminate on the basis of gender:

- (a)** the existence of a system of compensation that is based on seniority or length of service;
- (b)** the practice of temporarily maintaining an employee's compensation following their reclassification or demotion to a position that has a lower rate of compensation until the rate of compensation for the position is equivalent to or greater than the rate of compensation payable to the employee immediately before the reclassification or demotion;
- (c)** a shortage of skilled workers that causes an employer to temporarily increase compensation due to its difficulty in recruiting or retaining employees with the requisite skills for positions in a job class;
- (d)** the geographic area in which an employee works;
- (e)** the fact that an employee is in an employee development or training program and receives compensation at a rate different than that of an employee doing the same work in a position outside the program;
- (f)** the non-receipt of compensation — in the form of benefits that have a monetary value — due to the temporary, casual or seasonal nature of a position;
- (g)** the existence of a merit-based compensation plan that is based on a system of formal performance ratings and that has been brought to the attention of the employees; or
- (h)** the provision of compensation for extra-duty services, including compensation for overtime, shift work, being on call, being called back to work and working or travelling on a day that is not a working day.

Authority — multiple pay equity plans

107 On receipt of an application referred to in subsection 30(1) or (2) and after giving an opportunity to make representations under subsection 30(4), the Pay Equity Commissioner may, if the application has not been denied under subsection 30(5) and if he or she is of the opinion that it is appropriate in the circumstances, authorize the establishment of more than one pay equity plan.

Sources

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Key Resources

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ⁱ See Pay Equity Act section 4(1).

ⁱⁱ Ibid. sections 16(1) to (3).

ⁱⁱⁱ Ibid. section 30(1)(2).

^{iv} Ibid. section 30(5).

^v Ibid. section 107.

^{vi} Enough, Webster's Third New International Dictionary 755 (2002)

^{vii} See Pay Equity Act section 30(4).

^{viii} See Pay Equity Task Force (2004). *Pay Equity: A New Approach to a Fundamental Right*. p.439. Retrieved from: http://equalpaycoalition.org/wp-content/uploads/2017/07/PETF_final_report_e.pdf.

^{ix} See Pay Equity Act section 46(d).

^x See Pay Equity Task Force (2004). *Pay Equity: A New Approach to a Fundamental Right*. p.439. Retrieved from: http://equalpaycoalition.org/wp-content/uploads/2017/07/PETF_final_report_e.pdf