



# **REQUIREMENT TO KEEP INFORMATION CONFIDENTIAL**

Interpretations, Policies and Guidelines

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# INTERPRETATIONS, POLICIES AND GUIDELINES

## Requirement to Keep Information Confidential

### 1. Purpose

This interpretation, policy and guideline (IPG) defines the expression “keep confidential” used in section 24 of the Pay Equity Act (the Act) and sets out how to apply this provision.

The Act requires pay equity committee members (both current and past), employers and bargaining agents to keep information confidential when the person sharing it specifies that it is confidential. Such information may only be shared for the purpose for which it is provided.

This IPG outlines the following elements for keeping the confidentiality of information:

- Preserving the confidentiality of information;
- Designating information as confidential;
- Sharing of confidential information; and
- Recourse following a breach of section 24 of the Pay Equity Act.

In addition, an optional model statement of understanding is provided in the Appendix.

\*Section 24 only applies to workplaces with a pay equity committee (committee).

\*\*The term “employer” in this document can also refer to a “group of employers” that has been recognized by the Pay Equity Commissioner”.<sup>1</sup>

\*\*\*In accordance with section 72, section 24 applies to a pay equity committee updating the pay equity plan.

\*\*\*\*This document is not a legal document and is not a binding interpretation of the Act. 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>.

### 2. Keeping Information Confidential

To “**keep confidential**” means that the information must not be shared in any manner, whether in writing, verbally or otherwise. It also means that steps must be taken to

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<sup>1</sup> See Pay Equity Act section 4(1).

protect confidential information. Pay equity committee members, employers and bargaining agents should put procedures in place to ensure that their electronic and paper files are secure and cannot be accessed by others outside of the committee. They should also ensure that confidential discussions are limited to only those participants privy to the information and that these discussions are held privately.

Confidential information refers to information that is not in the public domain. Thus, information that would be accessible through access to information legislation, among other things, should not be subject to this confidentiality obligation. It is the role of the pay equity committee to define what is considered confidential information.

Confidential information may be personal information about an individual, or information about the employer and its business or organization that is not public. The type of information that workplace parties may consider as confidential might include:

- Performance awards for executives;
- Information about an individual's salary bonuses, awards and allowances actually paid; or
- Personal employee information, such as gender identity.

This information must be treated as confidential even after an individual has left the pay equity committee or terminated his or her employment relationship.

Federal workplaces must ensure that the processes and policies they put in place for the collection, use and storage of information align with any other legislative requirements they may be subject to concerning privacy and personal information, such as for example, the Privacy Act.

#### **Example – Treating information as confidential**

Paul sits on the pay equity committee as an employer representative. As part of the committee work, Paul has access to employee-specific compensation information, executive performance awards and seniority premiums. One day, as Paul is having lunch with colleagues, they start asking questions about executive rates of pay and bonuses.

Paul knows that it would be a contravention of the Pay Equity Act to disclose such information to his colleagues, who are not members of the committee. Paul explains that this is information that he cannot share with others outside of the committee and that he must keep the information to himself.

### 3. Designating Information as Confidential

Under the Act [s. 24(1)], members of the pay equity committee are required to treat as confidential any **information “specified by the employer, employee or bargaining agent [...] as being confidential”**. The employer, employees or bargaining agents may, however, decide what information is or is not confidential, to whom it may be disclosed and how it may be disclosed.

Information can take many forms, including records, reports, printouts, emails, electronic data or other documents or things. It may also be verbal communication.

Confidential information should be clearly identified to avoid ambiguity. For example, a visible “confidential” watermark could be applied to a document. Similarly, when parties wish to have a confidential discussion, they should clearly indicate it at the outset.

What may be confidential in one workplace may not be confidential in another one. For example, public-sector rates of pay are published online, which may not be the case for private-sector workplaces, especially when non-unionized.

Committees are encouraged to use tools such as minutes, operating rules, or a statement of understanding (see Appendix) to ensure that members are aware of their confidentiality obligations.

#### **Example - Protecting documents designated as confidential**

Patrick is the owner of ABC Trucking. To support the work of the pay equity committee, he provides them with pay information including a document with data on performance award amounts. Given the sensitivity of the data, Patrick puts a “confidentiality” watermark on the document and uses his workplace secure email system to transfer the file to the pay equity committee.

### 4. Sharing Confidential Information

Information may only be disclosed **“for the purpose for which it is provided”**. The purpose of disclosing information under the Act is to assist with the development or update of the pay equity plan and thus meet the objective of the Act.

In addition to the Act requiring that information be kept confidential, it is essential that this principle be upheld to ensure that the pay equity process runs smoothly and meets its purpose and goals.

Information **cannot be disclosed** for any other purpose than pay equity.

As part of developing or updating the pay equity plan, a committee member may be required to share confidential information with the bargaining agent or the employer. In

such cases, the bargaining agent or an employer who receives such information from a committee member must then keep it confidential.

Valid reasons to share information as part of the pay equity process include, but are not limited to, the following activities:

- Seeking authorizations;
- Researching data relevant to the pay equity process, such as minutes, letters of agreement, questionnaires, payroll records, etc.;
- Requesting instructions, directions or approval; or,
- Verifying the accuracy of information.

Information shared due to posting requirements under the Act is not confidential information, as it is required to be shared by law.

Note: If a person wants to use the confidential information for another purpose, he or she must request permission from the employer, the bargaining agent or the employee who shared the information. If the party agrees, the person should keep evidence that he or she received permission. A written record of this authorization should also be collected.

## **5. The Remedies for a Breach of Section 24 of the Pay Equity Act**

In the event that confidentiality obligations are not respected by any member of the pay equity committee, employees, bargaining agents and employers may respectively file a complaint with the Pay Equity Commissioner under sections 149(1), 150(1) and 151(1).

## **6. 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 keep information confidential — committee members**

**24 (1)** Each person who is or was a member of a pay equity committee to which information is provided in accordance with section 23 must keep confidential — except for the purpose for which it is provided — any of the information that is specified by the employer, employee or bargaining agent, as the case may be, as being confidential.

## **Employers and bargaining agents**

**(2)** Each employer and each bargaining agent that receives, from a member of a pay equity committee, information that the member is required under subsection (1) to keep confidential, must also keep the information confidential.

## **Application of sections 20 to 24**

**72** Sections 20 to 24 apply in respect of a pay equity committee established under this Part, except that “establishment” is to be read as “updating”.

## **Complaints — employees**

**149 (1)** Any employee to whom a pay equity plan relates who has reasonable grounds to believe that there has been a contravention of any provision of this Act or the regulations — other than sections 32 to 51, 78 and 79 and any regulations made under any of paragraphs 181(1)(b) to (h) — or a contravention, in relation to that plan, of an order of the Pay Equity Commissioner or the Tribunal issued under this Act, and who is affected or is likely to be affected by the alleged contravention may, within 60 days after the day on which they become aware of the alleged contravention, file a complaint with the Pay Equity Commissioner that sets out the particulars of the complaint.

## **Complaints — bargaining agents**

**150 (1)** Any bargaining agent that represents unionized employees to whom a pay equity plan relates that has reasonable grounds to believe that there has been a contravention of any provision of this Act or the regulations — other than sections 32 to 51, 78 and 79 and any regulations made under any of paragraphs 181(1)(b) to (h) — or a contravention, in relation to that plan, of an order of the Pay Equity Commissioner or the Tribunal issued under this Act may, within 60 days after the day on which it becomes aware of the alleged contravention, if the alleged contravention affects or is likely to affect the employees to whom the pay equity plan relates, file a complaint with the Pay Equity Commissioner that sets out the particulars of the complaint.

## **Complaints — employer**

**151 (1)** If a pay equity committee is established under this Act in respect of a pay equity plan, an employer that has reasonable grounds to believe that a bargaining agent has contravened subsection 24(2) or an order of the Pay Equity Commissioner or the Tribunal issued under this Act may, if the employer is affected or is likely to be affected by the alleged contravention, within 60 days after the day on which it becomes aware of the alleged contravention, file a complaint with the Pay Equity Commissioner that sets out the particulars of the complaint.

## Appendix

### Statement of Understanding Template

The model below is provided as an example and is not mandatory. The parties may decide to set out the confidentiality obligations in the pay equity committee's operating rules, or to reflect the committee's decisions on confidentiality in the minutes of its meetings. It is up to the workplace parties to discuss together how they wish to operate, and to adopt an approach that works for them.

#### STATEMENT OF UNDERSTANDING

I, [include the name of the pay equity committee member], hereby acknowledge and declare that:

- (i) In my role as a committee member of [name of employer], I may be given access to information that is of a personal and/or confidential nature, for example: employee names, salaries and compensation information, gender identity, and other information necessary to develop the pay equity plan in accordance with the Pay Equity Act.
  
- (ii) I have received, read and understood section 24 of the Pay Equity Act below, which requires me to keep information confidential when required by either [insert the employer], a bargaining agent, or employee

#### **Requirement to keep information confidential — committee members**

24 (1) Each person who is or was a member of a pay equity committee to which information is provided in accordance with section 23 must keep confidential — except for the purpose for which it is provided — any of the information that is specified by the employer, employee or bargaining agent, as the case may be, as being confidential.

Employers and bargaining agents

(2) Each employer and each bargaining agent that receives, from a member of a pay equity committee, information that the member is required under subsection (1) to keep confidential, must also keep the information confidential.

(iii) I understand that a breach of section 24 of the Pay Equity Act may lead to a complaint brought by:

- The employee under section 149(1)
- The bargaining agent under section 150(1)
- The employer under section 151(1)

(iv) I have received, read and understood my employer's policies related to the management of confidential information, including but not limited to the rules related to the safeguard, storage, access, disposal, release, distribution and security of confidential documents and information.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_