



DETERMINING THE FEMALE OR MALE PREDOMINANCE OF A JOB CLASS IN AN INCLUSIVE MANNER

Interpretations, Policies and Guidelines

© Her Majesty the Queen in Right of Canada,
as represented by the Canadian Human Rights Commission, 2021.

Cat. No.: HR4-75/2022E-PDF

ISBN: 978-0-660-41778-3

TABLE OF CONTENTS

- 1. Purpose 2
- 2. Determination of the female or male predominance of a job class 2
 - 2.1. Current incumbency..... 3
 - 2.2. Historical incumbency..... 3
 - 2.3. Gender-based occupational stereotype 3
 - 2.4. Making a final decision on female or male predominance..... 4
- 3. A human rights interpretation of “woman” and “man” 4
- 4. An inclusive approach to determine the current incumbency of a job class..... 5
 - 4.1. Collecting self-identified gender data..... 5
- 5. Referenced Pay Equity Act Provisions..... 8
- APPENDIX 9

1. Purpose

This Interpretation, Policy and Guideline (IPG) covers the following elements:

- The determination of the female or male predominance of a job class;
- A human rights interpretation of the terms “woman” and “man”; and,
- An inclusive approach to determining the female or male current incumbency of a job class.

*This document is not a legal document and is not a binding interpretation of the Pay Equity Act (“the Act”). This document is technical in nature and should not be used as a plain language resource. Plain language resources are available at 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.ⁱ

2. Determination of the female or male predominance of a job class

The Pay Equity Act (“the Act”) requires employers and pay equity committees to identify job classes and then determine which ones are “predominately female” and which ones are “predominately male.” A job class may also be “gender neutral.”

Employers and pay equity committees must apply three criteria to make this determination:

1. **Current incumbency** – At least 60% of the positions in the job class are occupied by women or men;ⁱⁱ
2. **Historical incumbency** – Historically, at least 60% of the positions in the job class were occupied by women or men;ⁱⁱⁱ and,
3. **Gender-based occupational stereotype** – The job class is one that is commonly associated with women or men due to gender-based occupational stereotyping.^{iv}

All three criteria must be considered when determining the female or male predominance of job classes.

All three criteria hold equal weight when determining the female or male predominance of a job class. This means that they must be considered equally, with no one holding more importance than another.

The pay equity committee will need access to any information that is necessary to assess the three criteria. To that end, it is important to note that:

- Employers have an obligation to provide the pay equity committee with any information in their possession that the committee considers necessary for the establishment of the pay equity plan; and,^v
- Bargaining agents and employees have an obligation to provide the pay equity committee with any information in their knowledge or control that the committee considers necessary for the establishment of the pay equity plan.^{vi}

2.1. Current incumbency

As part of the first criterion, the employer or pay equity committee must conduct a “gender count” of the individuals that hold positions within each job class to determine whether 60% of the positions in the job class are occupied by women or men.

To establish the percentage, the employer or the pay equity committee may need to obtain data on the gender of employees in the positions.

The gender count should be done in an inclusive manner to ensure respect for human rights principles.

More information about determining the current incumbency of a job class in an inclusive manner is provided in [Section 4](#) of this document.

2.2. Historical incumbency

To assess the second criterion, historical incumbency, the employer or pay equity committee must determine whether 60% of the positions in a job class were historically occupied by either men or women.

To determine historical predominance, the employer or the pay equity committee will need to access data on the gender of employees who have held the positions in the past.

Although the use of inclusive data that capture employees’ self-identified gender beyond the binary of man and woman is encouraged, this data may not be available. In that case, the use of pre-existing data from, for example, human resources systems may be used as an alternative for the determination of the historical incumbency of a job class.

The Act does not specify the number of years of data needed to conduct an analysis of historical predominance. The period used will depend on both the circumstances and the availability of the data. For example, a new employer starting a business will not have access to past data, while another employer may have access to data for a period of five years or more.

2.3. Gender-based occupational stereotype

A gender-based occupational stereotype refers to a common perception that a job or occupation is typically female or male. If the work done in the job class is associated with a male or female occupational stereotype, it would meet the third criterion.

To determine whether there is an occupational stereotype for a given job class, the employer or the pay equity committee may consult statistical data broken down by gender from their industry or from research institutions. This will allow them to verify whether the type of job in question is occupied more by women or men within their industry or, more generally, in Canada.

Graduation rates broken down by gender in a given field or program of study may also be used as indicators.

2.4. Making a final decision on female or male predominance

Based on the analysis of the three criteria and the circumstances of the workplace (for example, the availability of historical data and the history of a position), the employer or the pay equity committee must make a final decision on the female or male predominance of each job class.

It is not necessary for all three criteria to be met to determine the gender predominance of a job class. In some cases, a job class may meet all three criteria provided in the Act concerning gender predominance, and in others, it may meet only one.

For example, if more than 60% of positions in a job class are currently held by men, but historically, more than 60% of positions were held by women and there is a female gender-based occupational stereotype associated with the work, the employer or the pay equity committee could determine that the job class is predominantly female.

3. A human rights interpretation of “woman” and “man”

Ensuring that pay equity is done in a way that respects gender diversity and those who may identify outside of the gender binary of “woman” and “man” is not only a best practice but an essential component of a human rights approach to pay equity.

This is why the word “woman” in the Pay Equity Act (“the Act”) is to be interpreted as including all individuals who identify as women, or decide to be counted as a woman, notwithstanding their sex assigned at birth. The same interpretation also applies to the word “man.”

Furthermore, the Act should not be interpreted as requiring every employee to identify as being a “woman” or a “man.” The experiences of individuals who identify with another gender are not reflected in this binary paradigm.

4. An inclusive approach to determine the current incumbency of a job class

To determine the current incumbency in an inclusive manner, employers and pay equity committees should count the number of incumbents identifying as men, women or another gender, for the positions in each job class. For the purpose of this document, this process will be referred to as “the gender count.”

There are two main elements to conducting an inclusive gender count:

1. Collecting self-identified gender data; and,
2. Providing employees who identify with another gender an opportunity to select a gender category for the gender count.

4.1. Collecting self-identified gender data

To collect self-identified gender data, employees should be allowed to:

- Update their information already on file; or,
- Provide new information on the gender with which they choose to identify.

The collection of data should be done in an anonymous, safe and secure way.

Examples of measures that can promote the safety of employees include:

- Confidentiality policies or non-disclosure contracts;
- Use of identification numbers rather than personal information (such as an individual’s name) during data collection; and,
- Use of aggregated data for analysis purposes.

Two common methods used to collect gender information from employees are:

- Confidential employee records stored in human resource information systems; and,
- Anonymous employee surveys.

A sample two-step survey that can be used for a gender data collection exercise is provided in the Appendix.

In addition, you may learn more by reading the Promising Practices for Collecting Inclusive Gender Data available on the Canadian Human Rights Commission’s website at www.payequitychrc.ca/en.

4.2. Providing employees the opportunity to select a gender category for the gender count

An inclusive gender count provides employees with the opportunity to select a gender category for the purpose of the gender count.

This means cisgender women are counted as women and cisgender men are counted as men. This also means that transgender women are counted as women and transgender men are counted as men.

An inclusive gender count should also give individuals who identify with another gender the option of being associated with or not being associated with a binary gender category for the pay equity process. For example, individuals who identify as non-binary, or individuals who identify with other Indigenous (for example, Two-Spirit) or cultural gender identities, may choose to be counted as women or men, or they may choose not to be counted as either. Both options will have an effect on the gender count.

For the gender count, individuals who identify with another gender may choose one of two options:

- They may choose to identify with a binary category.
 - The total number of incumbents in either the female or male count would be increased.
- They may choose to not identify with a binary category.
 - The total number of incumbents in the job class would, accordingly, be reduced.

Employers or pay equity committees should provide clear direction on how the choice of employees who identify with another gender will affect the gender count exercise.

Example: An employee who identifies with another gender decides not to identify with a binary category of male or female

If an employee who identifies with another gender **chooses not** to identify with either binary category of male or female, the employer or pay equity committee would not include them in either, and the **total number of incumbents in the job class would be reduced**, just for the purpose of the gender count.

In a given job class comprising 12 positions, where one position is held by an employee who identifies with another gender – and this employee chooses to not be included in either binary gender category – the total number of incumbents in the job class would be revised to reflect the number of positions held by individuals who identify as either male or female, thus reducing the total number of incumbents to 11:

Descriptor	# Number of employees for gender count	% Percentage
Female (Cisgender or Transgender)	8	73
Male (Cisgender or Transgender)	3	27
Another gender	1	--
Total # number of incumbents for gender count	11 (1 employee who identifies with another gender chooses to not be included in either binary category: 12 – 1 = 11)	100

If a predominantly female job class is eligible for an increase in compensation at the end of the pay equity process, all incumbents will receive an increase, regardless of the gender they identify with, even if their decision resulted in a reduction of the total number of incumbents for the gender count.

Example: An employee who identifies with another gender decides to identify with a binary category of male or female for the gender count

If an employee who identifies with another gender **chooses to identify** with either binary category of male or female, the employer or pay equity committee would **include them as part of the selected binary gender category**, just for the purpose of the gender count. This means that the employee who identifies with another gender would be given the option of being included in either the “female” or “male” gender count for the job position.

In a given job class comprising 12 positions, where one position is held by an employee who identifies with another gender – and this employee chooses to be included in the female category based, for example, on a perception of disadvantage related to their gender identity – the total number of female incumbents in the job class would be revised:

Descriptor	# Number of employees for gender count	% Percentage
Female (Cisgender or Transgender)	8 female + 1 another gender = 9	67 + 8 = 75
Male (Cisgender or Transgender)	3	25
Another gender	1	8
Total # number of incumbents for gender count	12	100

As with the other example, if a predominantly female job class is eligible for an increase in compensation at the end of the pay equity process, all incumbents will receive an increase, regardless of the gender with which they identify. This means that in this case, all 12 incumbents of the job class could be eligible for an increase, should the employer or pay equity committee determine that an adjustment is necessary.

5. Referenced Pay Equity Act Provisions

Requirement to provide information – employer

23(1) An employer must provide the pay equity committee with any information in the employer's possession that the committee considers necessary for the establishment of the pay equity plan.

Requirement to provide information – employees and bargaining agents

(2) Every employee to whom the pay equity plan relates and, if some of those employees are unionized employees, every bargaining agent that represents those unionized employees, must provide the pay equity committee with any information within their knowledge or control that the committee considers necessary for the establishment of the pay equity plan.

Determination

35 Once an employer — or, if a pay equity committee has been established, that committee — has identified all of the job classes under section 32, it must determine which of them are predominantly female job classes and which of them are predominantly male job classes.

Predominantly female job classes

36 A job class is considered to be a predominantly female job class if:

- (a)** at least 60% of the positions in the job class are occupied by women;
- (b)** historically, at least 60% of the positions in the job class were occupied by women; or
- (c)** the job class is one that is commonly associated with women due to gender-based occupational stereotyping.

Predominantly male job classes

37 A job class is considered to be a predominantly male job class if:

- (a)** at least 60% of the positions in the job class are occupied by men;
- (b)** historically, at least 60% of the positions in the job class were occupied by men; or
- (c)** the job class is one that is commonly associated with men due to gender-based occupational stereotyping.

APPENDIX

Two-step survey for the collection of inclusive gender data in the pay equity context

The model below is provided as an example and is not mandatory. It is up to the workplace parties to discuss together how they wish to operate and to adopt an approach that works for them.

The model provides some suggested background information, followed by the survey questions.

Purpose

The purpose of the Pay Equity Act is to address gender discrimination in the pay practices and systems of federal jurisdiction workplaces with 10 or more employees.

As part of the pay equity exercise, the employer or pay equity committee must determine the gender predominance of each job class by considering three criteria:

1. **Current incumbency** – At least 60% of the positions in the job class are occupied by women or men;
2. **Historical incumbency** – Historically, at least 60% of the positions in the job class were occupied by women or men; and,
3. **Gender-based occupational stereotype** – The job class is one that is commonly associated with women or men due to gender-based occupational stereotyping.

In order to determine the current incumbency of each job class, we ask that you answer the questions below concerning your current gender identity and, if applicable, how you choose to identify for the purpose of this component of the pay equity exercise in our workplace.

Gender refers to your current gender, which may be different from the sex assigned to you at birth and may be different from what is indicated on your identification or legal documents.

Commitment to human rights

Ensuring that pay equity is done in a way that respects gender diversity and those who may identify outside of the gender binary of “woman” and “man” is not only a best practice but an essential component of a human rights approach to pay equity.

In order to determine the current gender incumbency of a job class in an inclusive manner, individuals who identify with another gender have two options for the collection of data:

- They may choose to not identify with a binary category.
 - In this case, the total number of positions in the job class would be reduced.
- They may choose to identify with a binary category.
 - In this case, the total number of positions in either the female or male count would be increased.

Confidentiality and safety

We aim to make this process as inclusive as possible. Your information is confidential, will only be used for the purpose of the pay equity exercise and is being stored in a safe and secure manner.

Current gender identity

1. Which best describes your current gender identity? (check one)

- Male (Cisgender or Transgender)
- Female (Cisgender or Transgender)
- Another gender (for example, non-binary or another cultural or Indigenous gender identity such as Two-Spirit)
- Prefer not to say

Determining the current gender predominance of a job class in an inclusive manner

2. For those who responded:

- Another gender; or,
- Prefer not to say ...

Do you wish to identify as either female or male for the purpose of the pay equity plan, for example due to a possible perception of disadvantage related to your gender identity?

- Yes
- No

Your gender identification may have an impact on whether a job class is determined male or female predominant.

If you select **yes** and identify as:

- **Male**, the total number of male positions in the job class will be revised.
- **Female**, the total number of female positions in the job class will be revised.

If you select **no**:

- **If you do not identify with either binary gender category**, the total number of positions in the job class will be reduced.

3. For those who responded **yes**, how do you choose to identify for the determination of the current gender incumbency of your job class?

- Male
- Female

ⁱ See Pay Equity Act, section 4(1).

ⁱⁱ See Pay Equity Act, sections 36(a) and 37(a).

ⁱⁱⁱ See Pay Equity Act, sections 36(b) and 37(b).

^{iv} See Pay Equity Act, sections 36(c) and 37(c).

^v See Pay Equity Act, section 23(1).

^{vi} See Pay Equity Act, section 23(2).