



FROZEN RATES OF PAY

Interpretations, Policies and Guidelines

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1. Purpose

This Interpretation, Policy and Guideline (IPG) provides interpretive guidance on sections 10 and 45 of the Pay Equity Regulations about the treatment of frozen compensation.

This IPG covers the following:

- What is frozen compensation;
- The method to follow to address frozen rates of pay in situations where an employer or pay equity committee is establishing or updating a pay equity plan; and,
- Other methods.

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 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. Issue

The Pay Equity Act is not intended to address differences in compensation attributable to the timing of collective bargaining. In fact, the Pay Equity Regulations (the Regulations) prohibit comparing active and frozen rates: the employer or pay equity committee must ensure that no comparison is made between compensation that is frozen and not frozen (active) associated with predominantly male or predominantly female job classes.ⁱⁱ

The collective bargaining process can often be prolonged, and in a workplace with more than one bargaining agent, the timing of collective bargaining may or may not be synchronized across bargaining units. Therefore, at any given time, there may be a mix of frozen and active rates in the workplace.

The Regulations prescribe how to address frozen compensation when establishing or updating a pay equity plan:

- If the employer is establishing or updating a pay equity plan without a pay equity committee, they must follow the prescribed method outlined in the Regulations.ⁱⁱⁱ This method is elaborated upon in section 4 of this document.
- If the pay equity plan is being established or updated by a pay equity committee, the option to use a different method of comparing frozen and non-frozen compensation is provided.^{iv} The alternative method must minimize, to the furthest extent possible, differences in compensation that result only from the compensation associated with a frozen job class.^v Examples of alternative methods are provided in section 5 of this document.

3. What is frozen compensation?

A workplace with one or more bargaining units might find itself in a situation where some of the rates of pay in effect are active and some are frozen.

Active rates of pay refer to rates that are part of a ratified or binding collective agreement.

Frozen rates of pay are rates that cannot be changed because a union has applied for certification or because they are currently subject to collective bargaining (or strike or lockout) upon the expiration of the term of a collective agreement.^{vi}

Section 1 of the Pay Equity Regulations defines the term “frozen,” in respect of compensation associated with a job class, as:

- Salary at a rate that is continued in force under section 107 of the [Federal Public Sector Labour Relations Act](#);
- Salary at a rate set out in a collective agreement applicable to a bargaining unit for which a strike may be declared or authorized without contravening subsection 194(1) of that Act or for which the conditions in paragraphs 89(1)(a) to (d) of the [Canada Labour Code](#) are met; or,
- Salary at a rate that:
 - Under section 56 of the [Federal Public Sector Labour Relations Act](#), cannot be altered except under a collective agreement or with the consent of the Federal Public Sector Labour Relations and Employment Board;
 - Under subsection 24(4) of the [Canada Labour Code](#), cannot be altered except pursuant to a collective agreement or with the consent of the Canada Industrial Relations Board; or,
 - Under paragraph 50(b) of the [Canada Labour Code](#), cannot be altered without the consent of the bargaining agent.

Note: Employers and pay equity committees comparing compensation under sections 47 to 50 of the Pay Equity Act are prohibited from comparing frozen rates of pay with active rates of pay.

This prohibition does not apply to employers or pay equity committees with no male job classes comparing compensation using either the other employer method or the typical job classes method as per sections 26, 27 and 28 of the Pay Equity Regulations.

4. The method to follow when an employer is prohibited from comparing frozen and active rates of pay when establishing or updating a pay equity plan

Sections 10 and 45 of the Pay Equity Regulations (the Regulations) prescribe a method to address frozen rates of pay in situations where the employer or pay equity committee is establishing or updating a pay equity plan.

In situations where a pay equity plan is being established or updated by a pay equity committee, the pay equity committee may use the prescribed methods outlined in sections 10(a) and 45(a) of the Regulations, or they may use another method. Please see section 5 of this document for more information.

In workplaces with no pay equity committee, the employer is prohibited from comparing frozen and active rates of pay. The employer must use the prescribed methods in sections 10(a) and 45(a) of the Regulations to calculate the average percentage increase to determine the compensation of the job class(es) covered by a statutory freeze. This amount is equal to the average of all wage increases for job classes that contain positions occupied by unionized employees who are covered by collective agreements that have not expired since the compensation associated with the classes became frozen.^{vii}

To calculate the comparable compensation associated with a job class for which the salary of a position or multiple positions are currently frozen, an employer must multiply the salary at the highest rate in the range of salary rates for positions in the job class by the average percentage increase calculated. This amount is then added to the highest salary rate in the range of salary rates for positions in the job class for which the salary is currently frozen.^{viii}

Example of prescribed approach

Scenario: A workplace has six bargaining units:

- Bargaining units A to E have active rates of pay; and,
- Bargaining unit F has rates of pay that have been frozen for one year.

To calculate the comparable salary rate for each gender-predominant job class in bargaining unit F, the employer follows these steps:

Step 1: Identify the percentage by which the salary increased in each job class of bargaining units A to E since the salary rates in bargaining unit F became frozen.

Table 1: Calculating comparable salary rates when frozen – identifying percentage increase

Bargaining unit	Average percentage increase over the past year ¹ (%)
Bargaining unit A	3%
Bargaining unit B	2%
Bargaining unit C	3%
Bargaining unit D	1%
Bargaining unit E	1%

¹ Since bargaining unit F rates of pay have been frozen.

Step 2: Calculate the average percentage increase based on the five bargaining units with active rates of pay:

Average percentage increase = percentage increase of each bargaining unit ÷ number of bargaining units

$$= (3\% + 2\% + 3\% + 1\% + 1\%) \div 5 \text{ bargaining units}$$

$$= 10\% \div 5$$

$$= 2\%$$

Step 3: Multiply the highest salary rate in each of the three gender-predominant job classes in bargaining unit F by the average percentage increase.

Table 2: Calculating comparable salary rates when frozen – calculating percentage increase, job class 1

Status	Position	Salary rate (\$)	Highest salary rate (\$)	Calculation with highest percentage increase (\$)
Active	1	\$21.23/hour	\$22.00/hour	$\$22.00 \times 2\% = \0.44
Frozen	2	\$21.50/hour	\$22.00/hour	$\$22.00 \times 2\% = \0.44
Frozen	3	\$22.00/hour	\$22.00/hour	$\$22.00 \times 2\% = \0.44

Table 3: Calculating comparable salary rates when frozen – calculating percentage increase, job class 2

Status	Position	Salary rate (\$)	Highest salary rate (\$)	Calculation with highest percentage increase (\$)
Frozen	1	\$25.16/hour	\$28.00/hour	$\$28.00 \times 2\% = \0.56
Active	2	\$26.75/hour	\$28.00/hour	$\$28.00 \times 2\% = \0.56
Active	3	\$28.00/hour	\$28.00/hour	$\$28.00 \times 2\% = \0.56

Table 4: Calculating comparable salary rates when frozen – calculating percentage increase, job class 3

Status	Position	Salary rate (\$)	Highest salary rate (\$)	Calculation with highest percentage increase (\$)
Active	1	\$21.15/hour	\$25.00/hour	$\$25.00 \times 2\% = \0.50
Frozen	2	\$22.34/hour	\$25.00/hour	$\$25.00 \times 2\% = \0.50
Frozen	3	\$24.65/hour	\$25.00/hour	$\$25.00 \times 2\% = \0.50
Active	4	\$25.00/hour	\$25.00/hour	$\$25.00 \times 2\% = \0.50

Step 4: Then, add the results obtained under step 3 to the highest salary rate associated with each job class.

Table 5: Calculating comparable salary rates when frozen – calculating new salary rate

Job class in Bargaining unit F	Calculation (\$)	Comparable salary rate (\$)
Job class 1	\$22.00 + \$0.44	\$22.44/hour
Job class 2	\$28.00 + \$0.56	\$28.56/hour
Job class 3	\$25.00 + \$0.50	\$25.50/hour

The comparable salary rates (\$22.44/hour, \$28.56/hour and \$25.50/hour) should be used for the calculation of compensation for the purpose of pay equity.

Note: These new comparable salary rates are not considered when establishing job classes under section 32 of the Pay Equity Act. Employers and pay equity committees do not have to retrace their steps and recreate job classes because the range of salary rates has changed. These amounts are only for the purpose of calculating compensation for the pay equity plan.

5. Other methods

When a pay equity plan is being established or updated by a pay equity committee, the members may or may not decide to use the prescribed method for addressing frozen compensation in the Pay Equity Regulations (the Regulations).^{ix}

In situations where a pay equity committee decides to use a method of its own choosing, members must ensure that the chosen method minimizes, to the furthest extent possible, differences in compensation that result from the compensation associated with a frozen job class.^x

In other words, the committee must choose a method that increases a frozen rate of pay to an amount that reflects what that job class would likely be paid in the present, if the rate of pay were not frozen.

A pay equity committee does not require authorization from the Pay Equity Commissioner to use a method other than that prescribed in the Regulations.

The following are examples of other factors that could be used to determine a new rate of pay for those job classes that are frozen:

- **Consumer Price Index:** As the Consumer Price Index measures price changes over time, it may be a useful indicator for calculating new rates of pay. This may be an attractive method when a cost-of-living-adjustments clause is found in the collective agreement.

- Labour market information: Labour market information can provide information about employee wages by industry and occupation, which could be used to calculate new rates of pay. Publicly available information can be found on the Statistics Canada website: www150.statcan.gc.ca. Another example of labour market information can be found in the [Québec survey on total compensation \(ERG\)](#).
- A newly negotiated rate of pay: This may be the case where a workplace has already negotiated a new rate of pay but has yet to ratify the collective agreement. These negotiated amounts could be used as the new rates of pay for the purpose of establishing or updating the pay equity plan.
- Private company data sets: These data sets from private companies provide data such as base pay to total remuneration and benefits.

6. Referenced Pay Equity Regulation provisions

Definitions

1 The following definitions apply in these Regulations.

[...]

frozen, in respect of compensation associated with a job class, means that the compensation includes

- (a) salary at a rate that is continued in force under section 107 of the [Federal Public Sector Labour Relations Act](#);
- (b) salary at a rate set out in a collective agreement applicable to a bargaining unit for which a strike may be declared or authorized without contravening subsection 194(1) of that Act or for which the conditions in paragraphs 89(1)(a) to (d) of the [Canada Labour Code](#) are met; or
- (c) salary at a rate that
 - (i) under section 56 of the [Federal Public Sector Labour Relations Act](#), cannot be altered except under a collective agreement or with the consent of the Federal Public Sector Labour Relations and Employment Board,
 - (ii) under subsection 24(4) of the [Canada Labour Code](#), cannot be altered except pursuant to a collective agreement or with the consent of the Canada Industrial Relations Board, or
 - (iii) under paragraph 50(b) of the [Canada Labour Code](#), cannot be altered without the consent of the bargaining agent. (gelée)

Process for Establishment of Pay Equity Plan

Frozen Compensation

Prohibited comparison — frozen compensation

10 In carrying out the comparison of compensation under sections 47 to 50 of the Act, an employer — or, if a pay equity committee has been established, that committee — must ensure that no comparison is made between frozen compensation associated with a predominantly female or predominantly male job class and compensation that is not frozen and that is associated with a predominantly female or predominantly male job class in which unionized employees occupy positions, unless the salary rate that is used to determine salary in the calculation of the frozen compensation associated with a job class is

(a) the salary rate obtained by adding, to the highest salary rate in the range of salary rates for positions in the job class, the product obtained by multiplying

(i) the salary at the highest rate in the range of salary rates for positions in the job class

by

(ii) the average percentage by which, since the compensation associated with the job class became frozen, the salary for positions in job classes that contain positions occupied by unionized employees in respect of whom the pay equity plan applies and who are governed by a collective agreement that is not expired has increased; or

(b) if a pay equity committee has been established, the salary rate determined using a method other than the one set out in paragraph (a) that minimizes, to the extent possible, the differences in compensation that result only from the compensation associated with a job class being frozen.

Rules if Regression Lines Cross

Prohibited comparison — frozen compensation

45 For the purposes of subsection 78(1) of the Act, in carrying out the comparison of compensation using the rules and factors set out in sections 47 to 50 of the Act, an employer — or, if a pay equity committee has been established, that committee — must ensure that, for each period set out in subsection 41(1) or (2), no comparison is made between frozen compensation associated with a predominantly female or predominantly male job class and compensation that is not frozen and that is associated with a predominantly female or predominantly male job class in which unionized employees occupy positions, unless the salary rate that is used to determine salary in the calculation of the frozen compensation associated with a job class is

(a) the salary rate obtained by adding, to the highest salary rate in the range of salary rates for positions in the job class, the product obtained by multiplying

(i) the salary at the highest rate in the range of salary rates for positions in the job class

by

(ii) the average percentage by which, since the compensation associated with the job class became frozen, the salary for positions in job classes that contain positions occupied by unionized employees to whom the pay equity plan applies and who are governed by a collective agreement that is not expired has increased; or

(b) if a pay equity committee has been established, the salary rate determined using a method other than the one set out in paragraph (a) that minimizes, to the extent possible, the differences in compensation that result only from the compensation associated with a job class being frozen.

Notes

ⁱ See Pay Equity Act section 4(1).

ⁱⁱ See Pay Equity Regulations section 10.

ⁱⁱⁱ See Pay Equity Regulations section 10(a).

^{iv} See Pay Equity Regulations section 10(b).

^v See Pay Equity Regulations section 10(b).

^{vi} See Pay Equity Regulations section 1.

^{vii} See Pay Equity Regulations section 10(a)(ii).

^{viii} See Pay Equity Regulations sections 10(a) and 45(a).

^{ix} See Pay Equity Regulations section 10(b).

^x See Pay Equity Regulations section 10(b).