



# MULTIPLE PLANS

Interpretations, Policies and Guidelines

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Cat. No.: HR4-105/2023E-PDF  
ISBN: 978-0-660-68186-3



# 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 concerning the authorization of multiple pay equity plans:

- Multiple pay equity plans are an exception to the rule;
- Persons entitled to apply;
- Information to include in an application;
- Timeline to make an application; and
- Opportunity to make representations.

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.”<sup>ii</sup>

## 2. Multiple plans are an exception to the 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.

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

A single plan is a comprehensive 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.

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

Some employers may have already done a pay equity exercise to ensure compliance with section 11 of the Canadian Human Rights Act (CHRA). However, there are some important differences between the CHRA and the Pay Equity Act and all employers must meet the proactive pay equity requirements under the Pay Equity Act. This includes employers who may have already completed a pay equity analysis under the CHRA.

## 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,<sup>ii</sup> can file an application for multiple plans.

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**.<sup>iii</sup>

The workplaces described under the first and second points above may or may not have established a pay equity committee before filing their application. It is not necessary for them to form a pay equity committee before submitting an application for multiple plans. However, those described under the third point must have established their pay equity committee and notified the Pay Equity Commissioner before filing an application.

## 4. Information to include in the application

The Pay Equity Act outlines what types of information must be included in an application for multiple plans:<sup>iv</sup>

- The number of pay equity plans being proposed; and,
- The employees to whom each pay equity plan would relate.

In addition, it is up to the requestor to provide evidence to the Pay Equity Commissioner that will demonstrate whether:<sup>v</sup>

- It is possible to identify enough predominantly male job classes to make a comparison of compensation for each of the proposed pay equity plans; and,
- It is appropriate in the circumstances to authorize the establishment of more than one plan.

### 4.1 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

After providing an opportunity to make representations,<sup>vi</sup> the Pay Equity Commissioner must first 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.<sup>vii</sup>

The Pay Equity Commissioner must deny the application if they are of the opinion that the proposed plans do not make it possible for the requestor to identify enough predominantly male job classes for a comparison of compensation to be made.<sup>viii</sup>

It is the responsibility of the requestor to provide full arguments and evidence so that the Pay Equity Commissioner can conduct the necessary analysis. For example, an employer that says each proposed plan has enough male comparators will need to provide, as well as interpret and explain, the job class data that proves this.

Some **key concepts** to keep in mind when submitting information include:

Key Concept	Description
<b>Positions</b>	A position is a role held by an employee in an organization (e.g., Accounts Payable Clerk, Financial Analyst, Laborer). All positions, including full-time, part-time, casual, seasonal, and temporary ones must be examined. Positions are different than job classes.
<b>Job classes</b>	Job classes are groups of positions that are created by the pay equity committee using three characteristics prescribed in the Pay Equity Act. Positions may be grouped together into a job class if they: <ul style="list-style-type: none"><li>• Have similar duties and responsibilities;</li><li>• Require similar qualifications; and,</li><li>• Are part of the same compensation plan and are within the same range of salary rates.<sup>ix</sup></li></ul>

Key Concept	Description
	<p>For example, if the positions Investment Analyst, Financial Analyst, and Research Analyst share the three characteristics, they may be put into one “job class.”</p> <p>For the core public administration only, positions that are in the same group and level may form a single job class.<sup>x</sup></p>
<b>Predominantly male job classes</b>	<p>A job class is considered predominantly male if:</p> <ul style="list-style-type: none"> <li>• At least 60% of the positions in the job class are occupied by men.</li> <li>• Historically, at least 60% of the positions in the job class were occupied by men.</li> <li>• The job class is one that is commonly associated with men due to gender-based occupational stereotyping.<sup>xi</sup></li> </ul>
<b>Enough</b>	<p>The word “enough” is defined as “occurring in such quantity, quality, or scope as to satisfy fully the demands, wants, or needs of a situation or of a proposed use or end.”<sup>xii</sup></p> <p>There is <b>no predefined quantity</b> of male-dominated job classes required to conduct a comprehensive and robust pay equity analysis, but it should be an amount that is more than one.<sup>xiii</sup></p> <p>Multiple pay equity plans should not <b>unnecessarily restrict the scope of predominantly male job classes</b> available under one of the proposed pay equity plans.<sup>xiv</sup></p> <p>For the purpose of the application, job classes and their gender predominance can be based on estimates in situations where a pay equity committee has not been created or has not completed that step.<sup>xv</sup></p>
<b>Possible</b>	<p>The word “<b>possible</b>” is defined as “that may be (i.e., is capable of being); that may or can exist, be done or happen”.<sup>xvi</sup></p> <p>In the context of the Act, the expression “would not be possible” would then mean something that could not exist, be done or happen.<sup>xvii</sup></p>

#### 4.2. 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 proposed 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.

Some guiding principles that the Pay Equity Commissioner may consider when determining whether the evidence demonstrates that an application for multiple plans is appropriate include:

- The circumstances in which the establishment of multiple plans might be appropriate are not fixed and each case will turn on its merits.
- The impact multiple plans will have on reinforcing occupational gender segregation is an important consideration; and,
- It is crucial to assess whether the proposed multiple plans will proactively redress systemic pay-based gender discrimination in the workplace<sup>xviii</sup>.

Multiple plans are the exception, not the rule. The expectation that it will be difficult to put in place a single pay equity committee and/or develop a single pay equity plan will not itself be sufficient to show why multiple plans are necessary.

It is the responsibility of the requestor to submit evidence that demonstrates why their application for multiple plans is appropriate in the circumstances.

Examples of some of the types of information that the requestor may wish to include in their application:

- Whether an attempt to meet the standard of a single plan was made before filing an application for multiple pay equity plans.
- Whether the evidence demonstrates that the impacts of establishing multiple pay equity plans would be gender neutral meaning, for example, that the proposal does not reinforce occupational gender segregation.
- Whether the establishment of multiple pay equity plans would offer a suitable solution to meet the objective of the Pay Equity Act and serve to redress potential systemic pay- based gender discrimination in the workplace.

If the application proposes that multiple plans be approved based on factors, such as regional disparities, complex bargaining structures or communities of interest, the requestor should include information that clearly demonstrates that the proposal does not reinforce occupational segregation nor frustrate the purpose of the Act.<sup>xix</sup>

Occupational gender segregation means that a substantial proportion of women are employed in a limited range of occupations where the femininity ration or proportion of women is very high [...]. The occupational segregation of women and low wages usually go hand in hand.

CN Decision para. 54.

For example, if an application proposes multiple plans based on existing bargaining unit structures,



the requestor should provide arguments and evidence to demonstrate how those plans will not limit the ability to reveal whether systemic inequities in compensation exist in an employer's workplace.

## **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. Making an application for multiple plans does not pause or extend the deadlines employers must meet under the Pay Equity Act.

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. Opportunity to make representations**

The Pay Equity Commissioner has an obligation to provide the requestor, employer, and any bargaining agents<sup>xx</sup> and non-unionized employees<sup>xxi</sup> that are not the requestor an opportunity to make representations.<sup>xxii</sup>

It is the responsibility of the requestor to identify all parties who might be affected by the application. These parties will then be given the opportunity to make representations.

For the purposes of providing representations the definitions of bargaining agent and non-unionized employee can be found in section 3(1) of the Pay Equity Act.

For the purposes of representations from non-unionized employees, it is important to note that the definition of a non-unionized employee excludes employees who perform management functions or are employed in a confidential capacity in matters relating to industrial relations. If there has already been a vote to select a non-unionized employee representative or representatives for the pay equity committee, these individuals may provide representations on behalf of the non-unionized employees for the multiple plans authorization request. Otherwise, non-unionized employees may choose to select one or more representatives to participate in an authorization request on their behalf. The selection must be done in a fair and transparent manner.<sup>xxiii</sup>

Please see the Definition of Non-Unionized Employee Interpretation, Policy and Guideline for more information: <https://www.payequitychrc.ca/en/non-unionized-employees-interpretations-policies-and-guidelines>.

Access the “**How we help**” section on the Canadian Human Rights Commission Pay Equity website at <https://www.payequitychrc.ca/en/how-we-help/how-we-can-help> to learn more about the process for making an application.

## **7. Pay Equity Decisions and Resources**

Visit the CanLii website for **decisions** rendered by the Pay Equity Commissioner: <https://www.canlii.org/en/ca/pec/>.

Visit the **Pay Equity website** for useful resources and tools: <https://www.payequitychrc.ca/en>

Pay Equity **Publications**, including Interpretations, Policies and Guidelines, Promising Practices and the Pay Equity Legislative Guide can be found here:

<https://www.payequitychrc.ca/en/publications>

## **8. Referenced Pay Equity Act Provisions**

### **Bargaining agent**

3(1) The following definitions apply in this Act.

**bargaining agent** has the same meaning as in subsection 2(1) of the Federal Public Sector Labour Relations Act or the same meaning as in subsection 3(1) of the Canada Labour Code, as the case may be. (agent négociateur)

### **Non-unionized employee**

**3(1)** The following definitions apply in this Act.

**non-unionized employee** means an employee who is not a member of a bargaining unit, other than an employee who occupies a position declared to be a managerial or confidential position as defined in subsection 2(1) of the Federal Public Sector Labour Relations Act or an employee who performs management functions or is employed in a confidential capacity in matters relating to industrial relations. (non syndiqué)

### **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.

## **Job classes**

**32** An employer — or, if a pay equity committee has been established, that committee — must start by identifying the job class of positions occupied or that may be occupied by employees to whom the pay equity plan relates. Subject to section 34, positions are considered to be in the same job class if

- (a) they have similar duties and responsibilities;
- (b) they require similar qualifications; and
- (c) they are part of the same compensation plan and are within the same range of salary rates.

## **One-position job classes**

**33** A job class may consist of only one position.

## **Job classes in core public administration**

**34** Positions in the core public administration that are at the same group and level comprise a single job class.

## **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.

### **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.

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

<sup>ii</sup> See Pay Equity Act section 16(2).

<sup>iii</sup> See Pay Equity Act section 30(1).

<sup>iv</sup> See Pay Equity Act section 30(3).

<sup>v</sup> See Pay Equity Act sections 30(5).

<sup>vi</sup> See Pay Equity Act sections 30(4) and 107.

<sup>vii</sup> See *Canadian National Railway Company and Unifor, United Steelworkers, International Brotherhood of Electrical Workers, and Teamsters Canada Rail Conference*. (CN Decision) paragraphs 20, 22 to 28, and 30.

<sup>viii</sup> See Pay Equity Act section 30(5) and 107.

<sup>ix</sup> See Pay Equity Act section 32.

<sup>x</sup> See Pay Equity Act section 34.

<sup>xi</sup> See Pay Equity Act section 37. And, see CN decision paragraphs 22 to 28.

<sup>xii</sup> Webster's New International Dictionary, 3<sup>rd</sup> ed, *sub verbo* "enough".

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<sup>xiii</sup> See CN decision paras. 22 to 28.

<sup>xiv</sup> See CN decision para. 28.

<sup>xv</sup> See CN decision para. 72.

<sup>xvi</sup> Webster's New International Dictionary, 3<sup>rd</sup> ed, *sub verbo* "possible".

<sup>xvii</sup> See CN Decision para. 26.

<sup>xviii</sup> See CN Decision para. 34.

<sup>xix</sup> See CN Decision paras. 31 to 34.

<sup>xx</sup> Definition of bargaining agent can be found in section 3(1) of the Pay Equity Act: bargaining agent has the same meaning as in subsection 2(1) of the Federal Public Sector Labour Relations Act or the same meaning as in subsection 3(1) of the Canada Labour Code, as the case may be. (agent négociateur)

<sup>xxi</sup> Definition of non-unionized employee can be found in section 3(1) of the Pay Equity Act: non-unionized employee means an employee who is not a member of a bargaining unit, other than an employee who occupies a position declared to be a managerial or confidential position as defined in subsection 2(1) of the Federal Public Sector Labour Relations Act or an employee who performs management functions or is employed in a confidential capacity in matters relating to industrial relations. (non syndiqué)

<sup>xxii</sup> See Pay Equity Act section 30(4).

<sup>xxiii</sup> See CN Decision para. 73.