

# Spotlight on the gender pay gap in Canada

GENDER PAY GAP SERIES - NO. 4

Gender pay is currently top of mind in Canada. Despite the longstanding nature of equal pay and pay equity legislation in Canada, on average, women still earn less than men. A report by Statistics Canada shows that women earn approximately CAD 0.88 for every dollar earned by men (as measured by the wage ratio method, i.e., comparing hourly wage rates of full-time workers).<sup>1</sup> The Ontario Government and the Federal Government recently took steps aimed at improving women's equality in the workforce and addressing the gender pay gap in these jurisdictions. We outline the key aspects of both initiatives below. We also summarize existing gender pay legislation and highlight current opinions as to why the gender pay gap persists.

<sup>1</sup> Statistics Canada, Women in Canada: A Gender-based Statistical Report, 2017, by Melissa Moyser, Catalog No. 89-503-X (Ottawa: Minister of Industry, 8 March 2017).



## Ontario leading among global regulators intent on addressing the gap

Ontario is Canada's most populous province and accounts for approximately 39% of the country's labor force. Ontario's newly introduced [Pay Transparency Act, 2018](#) is set to come into force on 1 January 2019. The Act imposes requirements on employers to promote equality of compensation between men and women, and to increase the transparency of information regarding compensation and workforce composition. Ontario looked to other jurisdictions in developing the legislation, including the UK, Australia and Germany, and the Act puts the province ahead of other governments who are stepping up efforts to close the gap. Key requirements are as follows:

- A salary rate or range must be stated in all publicly advertised job postings.
- Job candidates may not be asked about their past compensation.
- No reprisals may be made against employees who discuss or disclose compensation.
- Employers with 100 or more employees and prescribed employers (i.e., prescribed by forthcoming regulations to the Act) must track and annually report compensation gaps based on gender and other prescribed characteristics (in "pay transparency reports").
- Such employers will need to post their pay transparency report online, or in at least one conspicuous place, in every workplace of the employer.
- The province will also publish pay transparency reports, which may be done online.

The initial reporting dates are staggered:

- Employers with 250 or more employees must submit their first report by 15 May 2020.
- Employers with 100 to 249 employees must submit their first report by 15 May 2021.

"Compensation" is defined as "all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount." However, other details of what information is to be tracked and reported on are reserved for the regulations, which have not yet been released. Also reserved for the regulations is information as to:

- which employers, in addition to those with 100 or more employees, will be subject to the tracking and reporting requirements
- the characteristics, other than gender, to be tracked and reported on
- the amount of the penalties that compliance officers will be permitted to impose upon employers who are found to contravene pay transparency requirements

At present, we do not know whether employers will need to report on the overall gap within their organization (as in the UK) or gaps between employees at the same level or in the same job role. The granularity of gap reporting can identify different issues - the UK single figure approach can reveal a representation gap, whereas the in-grade approach can reveal potential discrimination.

## Equal pay and pay equity legislation in Canada

All jurisdictions in Canada have equal pay legislation and certain jurisdictions also have pay equity legislation.

Equal pay laws require equal pay for equal or similar work. Employers are required to pay men and women the same for work that is performed in the same establishment, requiring substantially the same skill, effort and responsibility and performed under similar working conditions.

Pay equity laws require equal pay for work of equal value, regardless of whether or not it is similar, assessed by reviewing the skill, effort, responsibility and working conditions of the jobs. Employers are required to pay female and male employees the same if they perform work of equal value in the same establishment, even if they do entirely different jobs. In Ontario and Quebec, pay equity legislation applies to all employers except private sector employers with fewer than 10 employees. As mentioned above, the federal pay equity system is currently a complaints-based model administered by the Canadian Human Rights Commission.

Equal pay and pay equity legislation have been in force for a relatively long time. For example, pay equity legislation has been in place as follows:

- Ontario - since 1988
- Quebec - since 1997, amended in 2009
- Federal - since 1977



## Preparing for pay transparency

The fate of the Act will likely depend on the outcome of Ontario's provincial election on 7 June 2018. However, making pay distinctions based on gender is already prohibited by employment standards legislation in Ontario (and in all other jurisdictions in Canada). In addition, most employers in Ontario (private sector employers with fewer than 10 employees are excepted) are already subject to pay equity legislation.

Ontario's pay equity legislation imposes an obligation on the employer to take specific steps to ensure that pay equity exists in the workplace and to prepare a Pay Equity Plan describing the steps taken, the outcome and any pay equity adjustments to be made. While there is no reporting requirement per se, the Pay Equity Office has a monitoring program pursuant to which it audits individual workplaces to ensure compliance. Under pay equity legislation, an employer must value every male and female job class in its establishment using a gender-neutral comparison system and compare the wage rates of all equally valued male and female job classes to ensure that there are no pay inequities. Effectively, this requires a pay audit of all job classes.

The new legislation adds more rigor to the government's monitoring capabilities. It also adds a risk of reputational damage stemming from the public and the media having access to published gaps. This has been the case in the UK. The ban on salary history questions and the need to state salary ranges in job advertisements will also be a significant adjustment for many employers. It is a common practice for employers to base compensation offers, at least in part, on previous salary history. Typically, employers will seek to offer enough of a salary increase to attract a candidate based on the candidate's disclosure as to his or her current salary.

Employers should prepare for the new legislation by taking steps to ensure that pay policies and practices are free from unconscious gender bias and considering what adjustments might need to be made to their recruitment processes in order to comply with tougher rules about salary history questions and requirements to publish salary rates. Employers should also review their obligations under pay equity legislation and ensure that they are in compliance.

## The gender pay gap in Canada

Despite the longstanding nature of Canada's equal pay and pay equity legislation, on average, women still do not earn as much as men. According to a Statistics Canada report<sup>2</sup>, the gender pay gap in Canada has changed as follows over the last three decades:

- earnings ratio increased from CAD 0.65 in 1984 to CAD 0.74 in 2014.
- wage ratio increased from CAD 0.74 in 1984 to CAD 0.88 in 2016.

According to the above-referenced report, the gender pay gap is attributable to the following factors, which are common in countries across the globe at a similar level of economic development:

- Canadian women are still more likely to work in lower paid traditionally "female" fields like teaching, nursing, social work, sales, service or administration.
- Women are more likely to work part time than men and to experience interruptions in their careers, in many cases because they take on child-care and elder-care responsibilities.
- Among less educated workers, heavily female-represented job types (such as cashiers and daycare workers) tend to be lower paid than many heavily male-represented job types (such as truck drivers or construction workers).
- Discrimination, or unconscious bias, persists, e.g., men and women hold the same job/profession but women are valued lower.

In addition, women are under-represented in private sector leadership roles in Canada. Only 2.6% of women were in charge of incorporated businesses in 2014, compared to 6.5% of men, according to a RBC Economics report<sup>3</sup>.

<sup>2</sup> Ibid.

<sup>3</sup> RBC Economics, Research Publication, "The State of Women in Canada's Economy: In Pictures" (March 2017), [online](#).

Ontario's new legislation demonstrates the global trend toward expanding regulation in this field. Other Canadian provinces will likely be keeping a watchful eye on these developments. It is also foreseeable that Quebec could build on the reporting requirements under their pay equity legislation.



### Federal initiative

Federally regulated employers are currently subject to pay equity requirements under the Canadian Human Rights Act. The existing pay equity system is a complaints-based model administered by the Canadian Human Rights Commission without a progress reporting requirement. The Federal Government plans to introduce a new proactive pay equity regime in federally regulated sectors, affecting approximately 1.2 million employees.<sup>4</sup> According to the Federal Government's [budget plan](#), titled Equality + Growth: A Strong Middle Class, released earlier this year, the new legislation will:

- apply to federal employers with 10 or more employees
- build pay equity requirements into existing federal compliance regimes where possible
- establish a streamlined pay equity process for employers with fewer than 100 employees
- set out specific timelines for implementation and compulsory maintenance reviews
- include job types such as seasonal, temporary, part-time and full-time positions
- provide independent oversight
- ensure that both wages and other benefits are evaluated in a gender-neutral way
- apply to the Federal Contractors Program on contracts equal to or greater than CAD 1 million
- repeal previous legislation which is inconsistent with the goal of pay equity

In addition, to inform Canadians about the pay practices of federally regulated employers, the Federal Government plans to publish existing pay information filed by employers under the Employment Equity Act. The pay information will be made available in a user-friendly online format that identifies wage gaps. According to the budget plan, this approach will help draw attention to employers who lead in equitable pay practices, while holding employers accountable for wage gaps that affect women, Indigenous Peoples, persons with disabilities and visible minorities.

<sup>4</sup> At the time of writing, the proposed legislation has not been tabled by the Federal Government.

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## Our gender pay gap series

The Baker McKenzie Gender Pay Gap series will be spotlighting gender pay gap regulations in key jurisdictions and exploring the central issues, including how to narrow the gap.

For more on the global picture and how our global network of over 700 labor and employment lawyers are helping clients address this issue, see the [Gender Pay Gap series](#).

**Next in the series: Equal pay audits: an important diagnostic tool to help close the gender pay gap**

