

Pay Equity Act

CHAPTER 337 OF THE REVISED STATUES, 1989

as amended by

1990, c. 4; 2000, c. 28, s. 88; 2018, c. 1, Sch. A, ss. 135-137



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CHAPTER 337 OF THE REVISED STATUTES, 1989
amended 1990, c. 4; 2000, c. 28, s. 88; 2018, c. 1, Sch. A, ss. 135-137

**An Act to Provide for
Pay Equity**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Pay Equity Act*. R.S., c. 337, s. 1.

Purpose

2 The purpose of this Act is to increase the pay of employees in classes which are predominately female where it is determined, by the process set out in this Act, that, by reason of sex discrimination, those employees are paid less than they should be. R.S., c. 337, s. 2.

Interpretation

3 (1) In this Act,
(a) “Civil Service” means the Civil Service as defined by the *Civil Service Act*;

(b) “classification” means a position or group of positions that have the same classification title, require the same or like qualifications and have the same salary grade or range of salary rates;

(c) “Commission” means the Pay Equity Commission established by this Act;

(d) “corrections employee” means a person employed in a correctional facility pursuant to the *Corrections Act*;

(e) “Crown corporation” means a corporation listed in Schedule A to this Act as amended from time to time by the Governor in Council;

(ea) “education entity” means an education entity as defined by the *Education Act*;

(f) “employee” means a permanent employee, whether full-time or part-time, or a term employee employed for a term of more than one year and includes a regular casual employee;

(g) “employee representative” means a bargaining agent within the meaning of the *Teachers Collective Bargaining Act* or the *Trade Union Act* and the Union within the meaning of the *Civil Service Collective Bargaining Act* or the *Corrections Act* and in all other cases means the person selected in the manner determined by the Commission;

(h) “employee unit” means a group of employees represented by the same employee representative unless the employer and employee representative agree otherwise;

(i) “employer” means an employer to whom this Act applies;

(j) “female-dominated class” means a group of ten or more employees with the same employer in the same classification, where sixty per cent or more of the employees are female;

(k) “highway worker” means a certified employee pursuant to a collective agreement between the employee agent and the Minister of Transportation as authorized by order in council dated the sixteenth day of January, 1973;

(l) “hospital” means a hospital to which the *Hospitals Act* applies;

(m) “male-dominated class” means a group of ten or more employees with the same employer in the same classification, where sixty per cent or more of the employees are male;

(n) “Minister” means the Minister of Labour;

(na) “municipal enterprise” means an autonomous agency, board, commission, association or corporation of which the majority of the board of directors or board of management are appointed by

one or more municipalities and includes a home referred to in Sections 14 to 17 of the *Homes for Special Care Act*;

(nb) “municipality” means a municipality as defined by the *Municipal Affairs Act*;

(o) “pay” means salary or compensation of an employee in respect of employment but does not include benefits such as the value of living and residential allowances, automobile allowances, clothing allowances, gratuities, overtime or payments in lieu of overtime;

(p) “pay equity process” means the process of negotiation, agreement, consultation, identification, evaluation and adjustment in respect of pay equity as provided for by this Act;

(q) *repealed 2018, c. 1, Sch. A, s. 135.*

(r) “university” means a body listed in Schedule B to this Act as amended from time to time by the Governor in Council.

(2) For the purpose of clauses (j) and (m) of subsection (1), numbers shall be determined as of

(a) in respect of employees referred to in clause (a) or (b) of subsection (1) of Section 4, the twenty-fifth day of May, 1988;

(b) in respect of employees referred to in clause (c) of subsection (1) of Section 4, the date this clause comes into force; and

(c) in respect of employees referred to in clause (d) of subsection (1) of Section 4, such date as is specified in the regulations. R.S., c. 337, s. 3; 1990, c. 41, s. 1; 2018, c. 1, Sch. A, s. 135.

Application of Act

4 (1) This Act applies to

(a) employees in the Civil Service, corrections employees, highway workers and employees of the Victoria General Hospital and the Nova Scotia Hospital who are not in the Civil Service and, in respect of those persons, Her Majesty in right of the Province;

(b) Crown corporations, hospitals and education entities and to their employees;

(c) universities, municipalities and municipal enterprises and to their employees; and

(d) public-sector corporations or bodies specified in the regulations and to their employees.

(2) Nothing in this Act affects the provisions in the *Human Rights Act* and the *Labour Standards Code* prohibiting discrimination based upon sex. R.S., c. 337, s. 4; 1990, c. 41, s. 2; 2018, c. 1, Sch. A, s. 136.

Supervision of Act

5 The Minister has the general supervision and management of this Act. R.S., c. 337, s. 5.

Pay Equity Commission

6 (1) There is hereby established the Pay Equity Commission.

(2) The Commission is composed of such persons, including representatives of labour and management, as the Governor in Council determines.

(3) The Governor in Council shall designate a member of the Commission to preside over meetings of the Commission.

(4) Each member of the Commission holds office for a term determined by the Governor in Council and may be re-appointed.

(5) A vacancy on the Commission does not impair the right of the remaining members to act.

(5A) Each member of the Commission shall, before acting as such, take and subscribe, before a judge of the Supreme Court or the county court and file with the Minister, an oath or affirmation of office in the following form or to like effect:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, to the best of my judgement, skill and ability, execute and perform the office of member of the Pay Equity Commission and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the Commission. So help me God.

(5B) A member of the Commission has all the privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(6) The members of the Commission shall receive such remuneration as the Governor in Council may determine and shall be reimbursed for reasonable expenses actually incurred in carrying out the business of the Commission. R.S., c. 337, s. 6; 1990, c. 41, s. 3.

Duties of Commission

7 (1) The Commission shall

(a) determine the manner in which an employee representative is to be selected where required to be selected pursuant to this Act;

(b) monitor the implementation of pay equity;

(c) determine, in accordance with this Act, those matters upon which an employer and its employee representatives fail to agree;

- (d) provide information respecting pay equity to concerned persons;
- (e) provide advice in implementing pay equity;
- (f) prepare and maintain statistics respecting pay equity;
- (g) prepare and disseminate educational material respecting pay equity;
- (h) perform such additional duties as the Minister may determine.

(2) Where the Commission makes a determination pursuant to clause (c) of subsection (1), its decision is final. R.S., c. 337, s. 7.

Personnel

8 The Commission may, in accordance with the *Civil Service Act*, employ an administrator and such other persons as are necessary for the Commission to perform its duties pursuant to this Act. R.S., c. 337, s. 8; 2000, c. 28, s. 88.

Reports

9 (1) At least once every month after the pay equity process begins in respect of a particular employer or at such times as the Commission may determine, the employer shall submit a report to the Commission setting out the progress in implementing pay equity.

(2) An employee representative may submit a report to the Commission at any time respecting the progress in implementing pay equity.

(3) At least once every twelve months and at such other times as the Minister may determine, the Commission shall submit a report to the Minister setting out the progress in implementing pay equity.

(4) Within thirty days of receipt or, where the House of Assembly is not then sitting, within thirty days of the House next sitting, the Minister shall table in the House of Assembly the reports received pursuant to subsection (3). R.S., c. 337, s. 9; 1990, c. 41, s. 4.

Powers of Commission

10 (1) The Commission may, for the purpose of this Act and the regulations,

- (a) summon witnesses;
- (b) require the production of documents and the supplying of information;
- (c) administer oaths;
- (d) issue orders or directions to ensure compliance.

(2) In exercising its powers and performing its duties pursuant to this Act, the Commission shall act in a manner that respects any request of an employer or employee for privacy in respect of confidential financial, personal or other matters without prejudicing the rights of the employee or employer, respectively, pursuant to this Act.

(3) An order issued pursuant to clause (d) of subsection (1) may be made an order of the Supreme Court and thereupon enforced in a like manner as any order of such Court.

(4) To make an order made pursuant to clause (d) of subsection (1) an order of the Supreme Court, the person presiding over the meeting of the Commission at which the order was made shall endorse a copy of the order certified by that person to be a true copy as follows:

Make the within an order of the Supreme Court.
Dated this day of, 19.
.....
Pay Equity Commission

and that person shall forward the order so endorsed to the prothonotary of the Supreme Court who shall, on receipt thereof, enter the same as a record, and it thereupon becomes and is an order of the Supreme Court and is enforceable as any order thereof. R.S., c. 337, s. 10; 1990, c. 41, s. 5.

Date pay equity process begins

11 (1) The pay equity process begins on the first day of September, 1988, for employees in the Civil Service, corrections employees, highway workers and employees of the Victoria General Hospital and Nova Scotia Hospital who are not in the Civil Service.

(2) The pay equity process begins on the first day of September, 1989, for employees of Crown corporations, hospitals, other than the Victoria General Hospital or the Nova Scotia Hospital, and education entities.

(3) The pay equity process begins on the first day of October, 1990, for employees of universities, municipalities and municipal enterprises.

(4) The pay equity process begins on the day specified in the regulations for employees of public-sector corporations or bodies specified in the regulations. R.S., c. 337, s. 11; 1990, c. 41, s. 6; 2018, c. 1, Sch. A, s. 137.

Evaluation system

12 Within six months of the pay equity process beginning, an employer and all of its employee representatives shall endeavour to agree upon a single system, that does not discriminate on the basis of sex, for the evaluation of all female-dominated classes and male-dominated classes employed by the employer and,

where there is failure to agree within the six months, a determination shall be made within a further two months by the Commission and such determination is an agreement for the purpose of Section 13. R.S., c. 337, s. 12.

Application of evaluation system

13 (1) Upon agreement on an evaluation system and within twenty-one months of the pay equity process beginning, an employer and all of its employee representatives shall apply, or cause to be applied, the agreed-upon evaluation system to determine and compare the value of the work performed by the female-dominated classes and male-dominated classes employed by the employer and to eliminate sex discrimination in pay for work performed by employees in female-dominated classes.

(2) Where the Commission is of the opinion that an employer and its employee representatives are not applying the agreed-upon evaluation system in a timely fashion, the Commission may make such determinations as it considers necessary to complete the application of the evaluation system within the required time.

(3) Sex discrimination in pay is to be identified by undertaking comparisons between each female-dominated class in an employee unit and all male-dominated classes employed by the employer, whether in the same or another employee unit, in terms of pay and in terms of the value of the work performed.

(4) In making the comparisons required by this Section, there is no sex discrimination in pay where a pay difference is the result of

(a) a formal seniority system that does not discriminate on the basis of sex;

(b) a temporary employee-training or employee-development program or assignment which is equally available to male and female employees and leads to career advancement for those involved in the program or assignment;

(c) a merit pay plan that is based on formal performance ratings, that has been brought to the attention of the employees and that does not discriminate on the basis of sex;

(d) a skills shortage that is causing a temporary inflation in pay because the employer is encountering difficulties in recruiting employees with the requisite skills.

(5) The criteria to be applied in determining the value of work as required by this Section are the skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed. R.S., c. 337, s. 13.

Pay equity adjustments

14 (1) Upon completion of the application of the evaluation system and within twenty-four months of the pay equity process beginning, an employer

and each of its employee representatives in respect of each of its employee units shall endeavor to agree respecting the quantum, allocation and orderly implementation, over a period not exceeding four years, of the pay equity adjustments required to achieve pay equity and, where there is failure to agree within the twenty-four months respecting

(a) the quantum or allocation of the adjustments, a determination shall be made by the Commission within a further two months;

(b) the orderly implementation of the adjustments, the adjustments shall be divided equally over four successive years,

and such determination or division is an agreement for the purpose of Section 15.

(2) In determining pay equity adjustments,

(a) a female-dominated class shall be assigned a schedule or range of pay with a top rate of pay equal to the top rate of pay of a male-dominated class in accordance with Section 17; and

(b) all positions in the female-dominated class shall receive the same adjustment in dollar terms. R.S., c. 337, s. 14.

Entitlement to adjustments and prohibitions

15 (1) Twenty-four months after the pay equity process begins, an employee is entitled to the pay adjustments agreed to pursuant to Section 14.

(2) Upon agreement on the pay adjustments pursuant to Section 14, an employer shall implement the pay adjustments in accordance with the agreement.

(3) In achieving pay equity, no employer shall

(a) reduce the pay of any employee; or

(b) move an employee to a lower step of a schedule or range of pay that has been adjusted upward to implement pay equity.

R.S., c. 337, s. 15.

Consequential adjustments

16 Where an employee receives a pay adjustment pursuant to subsection (2) of Section 15, the pay of every person to whom the employee is responsible or subordinate shall be considered by the employer to determine whether an adjustment should be made because of the duties and responsibilities of that person in relation to the duties and responsibilities of that employee. R.S., c. 337, s. 16; revision corrected.

Achievement of pay equity

17 Pay equity is achieved in a female-dominated class when the pay rate for the class is equal to

(a) where there is only one male-dominated class of the same employer performing work of equal or comparable value, the pay rate of that class;

(b) where there are two or more male-dominated classes of the same employer performing work of equal or comparable value, at least the pay rate of the class with the lowest pay rate;

(c) where there is no male-dominated class of the same employer performing work of equal or comparable value and only one male-dominated class with a previously higher pay rate and performing work of lower value, the pay rate of that class; or

(d) where there is no male-dominated class of the same employer performing work of equal or comparable value and two or more male-dominated classes with higher pay rates and performing work of lower value, the pay rate of the class with the highest pay rate. R.S., c. 337, s. 17.

Duties of employer and employee representative

18 (1) Throughout the pay equity process an employer shall

(a) meet and negotiate with its employee representatives;

(b) disclose to the employee representatives information in its possession or control relevant to the pay equity process; and

(c) bargain in good faith, making every reasonable effort to reach agreement.

(2) Throughout the pay equity process, each employee representative shall bargain in good faith with the employer, making every reasonable effort to reach agreement.

(3) The bargaining process respecting pay equity is to be separate and apart from the normal negotiations for a collective agreement between an employer and its employee representatives. R.S., c. 337, s. 18.

Conflict between agreements

19 Where there is a conflict between an agreement on pay equity made pursuant to this Act and another agreement, the agreement on pay equity prevails over the provisions of the other agreement with respect to pay. R.S., c. 337, s. 19.

Filing and inspection of agreements

20 (1) Every agreement made pursuant to this Act shall be filed forthwith by the employer with the Commission and thereupon is binding upon the parties thereto.

(2) An employer or an employee to whom an agreement on pay equity pertains may inspect any such agreement filed in the office of the Commission and is entitled to a copy of the agreement upon payment of a reasonable charge therefor. R.S., c. 337, s. 20.

Regulations

- 21** (1) The Governor in Council may make regulations
- (a) respecting the content of reports to and by the Commission;
 - (b) adding to or deleting from the list of corporations in Schedule A to this Act;
 - (ba) adding to the list of bodies in Schedule B to this Act or excluding from this Act other bodies coming within the classes or categories referred to in clause (c) of subsection (1) of Section 4;
 - (bb) specifying, from time to time, public-sector corporations or bodies to whom this Act applies, including corporations or bodies expressly excluded from this Act, and in each case the date the pay equity process begins and the date as of which numbers are to be determined for the purpose of clauses (j) and (m) of subsection (1) of Section 3;
 - (c) defining any word or expression used in this Act and not defined herein;
 - (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 337, s. 21; 1990, c. 41, s. 7.

SCHEDULE A

Cancer Treatment Research Foundation of Nova Scotia
 Halifax-Dartmouth Bridge Commission
 Nova Scotia Council on Applied Science and Technology
 Nova Scotia Legal Aid Commission
 Nova Scotia Liquor Commission
 Nova Scotia Liquor License Board
 Nova Scotia Power Corporation
 Nova Scotia Research Foundation Corporation
 Nova Scotia Resources Limited
 Novaco Limited
 Public Archives of Nova Scotia
 Sydney Steel Corporation
 Waterfront Development Corporation
 Workers Compensation Board

R.S., c. 337, Sch.; 1990, c. 41, s. 8.

SCHEDULE B

Acadia University
Atlantic School of Theology
Dalhousie University
Mount Saint Vincent University
Nova Scotia College of Art and Design
St. Francis Xavier University
St. Marys University
Technical University of Nova Scotia
Université Sainte-Anne
University College of Cape Breton
University of Kings College
1990, c. 41, s. 8.
