

## Enterprises with ten or more employees subject to a “reinforced” version of Quebec’s *Pay Equity Act*

Amendments to Quebec’s *Pay Equity Act* came into force on May 28, 2009.<sup>1</sup> The amendments principally affect small enterprises (those with 10 to 49 employees), which will no longer be exempt from the Act. They also tighten compliance requirements under the Act generally, particularly with respect to the time period within which a pay equity plan must be completed and with respect to the ongoing obligations of employers to maintain pay equity in their workplaces.

The newly modified *Pay Equity Act* now covers enterprises comprised of ten employees or more. These enterprises will have four years (from January 1, 2010) to carry out a pay equity assessment. They will be required to ensure that job classes traditionally occupied by women receive a salary equal to those job classes traditionally occupied by men, even if these job classes are different, provided that they are of the same or comparable value within the enterprise (job class comparisons allow one to determine the salary gap between females and males occupying comparable positions). The employer must pay compensation adjustments to employees who occupy job classes that are predominantly female and that have a comparable value to those job classes which are predominantly male. Pursuant to the new *Pay Equity Act*, enterprises facing financial difficulties may, upon receipt of authorization from the Pay Equity Commission, spread out their compensation adjustment payments.

Once pay equity has been attained, enterprises must conduct an audit every five years to ensure that pay equity is being maintained.

The *Pay Equity Act* establishes a cut-off date, namely December 31, 2010, for enterprises currently subject to the law (those enterprises employing fifty employees or more) who have not yet completed a pay equity plan. Enterprises that have already completed their plans must conduct an evaluation of their maintenance of pay equity by the same December 31, 2010 deadline.

It is estimated that, as of today, approximately half of the enterprises subject to the *Pay Equity Act* have not yet completed their pay equity plan. The Minister of Labour has undertaken to ensure that the law will be applied with more firmness in the future. To this end, it has granted itself sufficiently strong tools, in the form of these amendments to the *Pay Equity Act*, to provide enterprises with incentives to attain pay equity within the prescribed period.

In particular, an enterprise which fails to meet the deadline will be liable to pay amounts owed to its employees with interest at the legal rate, calculated from the date the enterprise became subject to the law. Such an enterprise may

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also lose its right to spread out its compensation adjustment payments. It may also be obliged to pay an additional indemnity, ranging between 2% to 3% of the compensation owed, to affected employees, in addition to the fines described below.

Fines have been increased and are now:

- > Between \$1,000 and \$15,000 for an enterprise with fewer than fifty employees;
- > Between \$2,000 and \$30,000 for an enterprise with fifty to one hundred employees; and
- > Between \$3,000 and \$45,000 for an enterprise with one hundred employees or more.

For subsequent offences, the amounts of the fines are doubled.

The law obliges employers to post a detailed description of the pay equity steps taken in their enterprise for sixty days. Employers also have the obligation to keep, for a five year period, both the information used to evaluate pay equity and the content of all postings.

The *Pay Equity Act* will be re-evaluated in ten years.

The new *Pay Equity Act* should encourage all Human Resource personnel to not only implement pay equity, but to also ensure the maintenance of pay equity. It is now mandatory in all enterprises with ten employees or more to identify the facts likely to create discriminatory salary gaps, such as the creation or abolishment of job classes and the modification of certain functions, in order to establish salary structures that ensure not only pay equity but also fair pay for all job classes.

For further information, please contact your Stikeman Elliott representative or any member of our Employment and Labour Group listed at [www.stikeman.com](http://www.stikeman.com)

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<sup>1</sup> *Act to amend the Pay Equity Act*, S.Q. 2009, c.9.