



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 10
(2019, chapter 4)

**An Act to amend the Pay Equity Act
mainly to improve the pay equity
audit process**

**Introduced 12 February 2019
Passed in principle 20 March 2019
Passed 9 April 2019
Assented to 10 April 2019**

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EXPLANATORY NOTES

This Act makes various amendments to the Pay Equity Act, mainly to improve the pay equity audit process.

The Act requires certain employers who decide to conduct a pay equity audit alone to carry out a participation process, sets out rules for the process and requires the employers to report on it when posting the results of the audit. It also amends the content to be included in such postings, requiring employers to include the start date and, where applicable, end date for each of the events leading to adjustments.

The Act amends the date on which the adjustments determined following a pay equity audit become payable, making each adjustment payable as of the date of the event leading to the adjustment, and specifies the terms and conditions of payment of the adjustments.

Under the Act, the Commission des normes, de l'équité, de la santé et de la sécurité du travail is required to lend assistance to any employee seeking help in drafting a complaint. Furthermore, certain complaints are to be filed using the form prescribed by the Commission, and the date as of which the Commission may order adjustments when conducting an investigation into a pay equity audit is amended.

The Act amends the procedure for dealing with complaints filed following a pay equity audit conducted by an employer alone. Among other things, the Commission must designate a conciliator when a complaint has been filed by a certified association in an enterprise where more than one association represents a single job class. The Act allows the Commission to group complaints according to certain criteria and, for such cases, specifies the manner in which an agreement may be reached and allows an employee who has filed an individual complaint covered by the agreement to refuse to be bound by it.

The Act amends the date as of which a pay equity audit must take place and specifies the elements to be taken into account for the purposes of the valuation of differences in compensation and the determination of the required adjustments. The Act eliminates the obligation for an employer to issue a notice stating that the results of the pay equity exercise will be posted, both for an initial exercise

and for an audit. The conservation period for the information used by an employer for such an exercise or audit is increased, and the expression “partners advisory committee” is replaced by “pay equity advisory committee”.

Lastly, the Act makes certain amendments to the Commission’s regulatory powers and the penal provisions, and includes transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

- Pay Equity Act (chapter E-12.001).

Bill 10

AN ACT TO AMEND THE PAY EQUITY ACT MAINLY TO IMPROVE THE PAY EQUITY AUDIT PROCESS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PAY EQUITY ACT

1. Section 14.1 of the Pay Equity Act (chapter E-12.001) is amended, in the second paragraph,

(1) by replacing “five” by “six”;

(2) by adding the following sentence at the end: “Where, under Chapter VI, a complaint has been filed or an investigation is being conducted, the period is extended until a final decision has been rendered on the complaint or the investigation has been completed.”

2. Section 35 of the Act is amended

(1) by replacing “payment, or a notice stating that no compensation adjustments are required” in subparagraph 4 of the first paragraph by “payment or, where no compensation adjustments are required, a notice to that effect”;

(2) by adding the following sentences at the end of the second paragraph: “It shall also mention that the remedies are to be exercised using the form prescribed by the Commission. In addition, the posting shall include information on the remedy available under section 101.”;

(3) by striking out the third paragraph.

3. Section 75 of the Act is amended by striking out the last sentence of the third paragraph.

4. Section 76 of the Act is amended by replacing “include information on the remedies available under this Act and the time within which they may be exercised” in the second paragraph by “shall include information on the remedies available under sections 96.1, 97 and 99 and specify the time within which they may be exercised. It shall also mention that the remedies are to be exercised using the form prescribed by the Commission. In addition, the posting shall include information on the remedy available under section 101”.

5. Section 76.1 of the Act is amended

(1) by inserting the following paragraph after the first paragraph:

“The audit shall be conducted to identify whether events that have occurred in the enterprise since the previous pay equity exercise have created differences in compensation between predominantly female job classes and equivalent predominantly male job classes and to determine the adjustments required, if any.”;

(2) in the second paragraph,

(a) by striking out “in order to determine whether adjustments in compensation are required”;

(b) by replacing “the second paragraph of section 76” by “the first paragraph of section 35, the second paragraph of section 75 or section 76.3”;

(3) by adding the following paragraph at the end:

“Section 13 applies, with the necessary modifications, to a pay equity audit.”

6. The Act is amended by inserting the following section after section 76.1:

“76.1.1. For the purposes of the valuation of differences in compensation and the determination of the required adjustments, remuneration includes flexible pay and benefits having pecuniary value, if that pay and those benefits are not equally available to all the job classes that are the subject of the comparison. However, differences between job classes based on any of the factors listed in section 67 are not taken into account for the purposes of the valuation and the determination.”

7. Section 76.2 of the Act is amended by striking out “or associations” in subparagraph 3 of the first paragraph.

8. The Act is amended by inserting the following section after section 76.2:

“76.2.1. An employer that has set up a pay equity committee to establish a pay equity plan or whose enterprise includes at least one certified association representing employees covered by the pay equity audit shall, if the employer decides to conduct the audit alone, carry out a participation process. Such a process must be completed not later than 60 days before the posting under section 76.3 is made.

In the course of the participation process, the employer shall

(1) send information on the pay equity audit in progress to the certified associations and, where applicable, to the employees not represented by such associations or to their representatives designated under the third paragraph, in particular by providing them with documents describing the work done; and

(2) establish consultation measures regarding the audit to enable those associations and employees to ask questions or make observations to express their concerns, expectations, opinions or suggestions, among other things.

At the request of an employer, the employees not represented by a certified association shall designate one or more representatives for the carrying out of the participation process.

An employer shall allow those employees to hold a meeting in the workplace for the purpose of designating any representative. A representative so designated is deemed to be at work when performing any task related to the participation process.

Such a certified association and, where applicable, such an employee or representative are bound to protect the confidentiality of any information and document received under subparagraph 1 of the second paragraph. However, the association and, where applicable, the representative may forward the information and documents to the employees they represent, who must also protect their confidentiality.

9. Section 76.3 of the Act is replaced by the following section:

“76.3. After conducting a pay equity audit, the pay equity audit committee, or the employer in the absence of such a committee, shall post the audit results for 60 days in prominent places easily accessible to employees. The posting shall include

(1) a summary of the pay equity audit process;

(2) a summary of the questions asked and observations made in the course of the participation process consultation measures, if any, and a summary stating the manner in which they were taken into account;

(3) a list of the events leading to adjustments and, for each of those events, the start date and, where applicable, end date, or, where no adjustments are required, a notice to that effect;

(4) a list of the predominantly female job classes that are entitled to adjustments, if any;

(5) the percentage or amount of the adjustments to be paid, and the terms and conditions of payment, where applicable; and

(6) the date of the posting and information concerning the rights exercisable under the first paragraph of section 76.4 and the time within which they may be exercised.”

10. Section 76.4 of the Act is amended

(1) by replacing “which shall be dated, with any amendments clearly indicated or with an indication that no amendments are needed. If the pay equity audit was conducted by the employer alone, the posting shall include information concerning the remedies available under this Act and the time within which they may be exercised.” in the second paragraph by “which shall be dated and include a summary of the additional information requested or observations made as well as the means established by the committee, or the employer in the absence of such a committee, to address them. If no information was requested or observations made, the posting shall mention that. Furthermore, the posting shall specify the amendments made to the results of the pay equity audit conducted by the committee or the employer or, where no amendments are necessary, a notice to that effect.”;

(2) by adding the following paragraph at the end:

“If the pay equity audit is conducted by the employer alone, the posting shall include information on the remedies available under section 100 and specify the time within which they may be exercised. It shall also mention that the remedies are to be exercised using the form prescribed by the Commission. In addition, the posting shall include information on the remedy available under section 101.”

11. Section 76.5 of the Act is replaced by the following sections:

“76.5. Any adjustment is payable as of the date of the event leading to the adjustment.

Any amount payable for the period preceding the date of the posting under the second paragraph of section 76.4 shall be paid on that date in the form of a lump sum. Such a sum constitutes remuneration at the time it is paid that must be considered for the purposes of employee benefit plans.

Any adjustment in compensation payable for the following period is paid from that date.

The adjustments bear interest at the legal rate from the date on which they should have been paid.

“76.5.1. Despite the second paragraph of section 76.5, payment of a lump sum may be spread over a maximum period of four years, after consultation with the pay equity audit committee or the certified association referred to in subparagraph 3 of the first paragraph of section 76.2, where applicable.

In such a case, the instalments are annual and the amount of each instalment shall be equal. The first instalment shall be paid on the date of the posting under the second paragraph of section 76.4. The balance owing bears interest from that date. The interest shall be added to the subsequent instalments.

“76.5.2. An employer may not, to maintain pay equity, reduce the remuneration of the employees holding positions in the enterprise. For the purposes of this section, remuneration includes flexible pay and benefits having pecuniary value. However, it does not include a lump sum referred to in the second paragraph of section 76.5.”

12. Section 76.6 of the Act is amended by adding the following paragraph at the end:

“The same applies to an amount paid in the form of a lump sum under the second paragraph of section 76.5, in a case of failure to pay, for the purposes of the exercise of a remedy.”

13. The Act is amended by inserting the following section after section 76.6:

“76.6.1. Where an employee who has left the enterprise is entitled to an amount paid in the form of a lump sum, the employer shall notify the employee of that fact in writing. Despite section 76.5.1, the sum may not be paid in instalments.

If an employer pays a lump sum in instalments under section 76.5.1 and an employee entitled to it leaves the enterprise during the period over which the instalments are spread, the employer shall, not later than 15 days after the employee’s departure, pay the employee the balance owing of the lump sum as well as the applicable interest.”

14. Section 76.8 of the Act is amended

(1) by replacing “five” by “six”;

(2) by adding the following sentence at the end: “Where, under Chapter VI, a complaint has been filed or an investigation is being conducted, the period is extended until a final decision has been rendered on the complaint or the investigation has been completed.”

15. Section 93 of the Act is amended by inserting the following paragraph after the first paragraph:

“For the purposes of subparagraph 6 of the first paragraph, in the case of a complaint filed under the second paragraph of section 100 or an investigation conducted on its own initiative in relation to a pay equity audit for which the required postings were not made, the Commission may investigate only in respect of the last pay equity audit for which the postings should have been made.”

16. Section 101 of the Act is amended by replacing the third paragraph by the following paragraph:

“Despite the fourth paragraph of section 76.5, if the employer contravenes section 76.9, the Commission may determine that the interest on an adjustment is payable as of the date of the event leading to the adjustment.”

17. The Act is amended by inserting the following section after section 101:

“101.0.1. Every complaint filed under this Act shall briefly state the grounds on which it is based.

The Commission shall lend assistance to employees who seek help in drafting a complaint.

For the purposes of sections 96.1, 97, 99 and 100, a complaint is to be filed with the Commission using the form prescribed by the latter.”

18. Section 102.2 of the Act is amended

(1) by striking out the second sentence of the first paragraph;

(2) by inserting the following paragraphs after the first paragraph:

“However, where an employer whose enterprise has more than one certified association representing employees in a single job class is the subject of a complaint filed by at least one of those associations under section 100, the Commission shall designate a conciliator. The designation shall take place not later than 60 days after the expiry of the time limit set out in the first paragraph of that section.

A conciliator may not have previously acted as an investigator in connection with a complaint referred to him.”

19. The Act is amended by inserting the following sections after section 102.2:

“102.2.1. The Commission may group complaints if they have the same juridical basis, are grounded on the same facts or raise the same points of law, or if circumstances permit. When grouping complaints, the Commission shall, to ensure fair representation of the parties, take into account the first paragraph of section 19.1, the second paragraph of section 21.1 and the second paragraph of section 103.0.1, where applicable.

“102.2.2. A conciliator designated under the second paragraph of section 102.2 has 120 days after being designated to meet with the parties and attempt to bring them to an agreement. The conciliator may extend that period by 60 days.”

20. Section 103 of the Act is amended

(1) by replacing “The agreement shall be signed” in the first paragraph by “Subject to section 103.0.1, the agreement shall be signed”;

(2) by striking out the second paragraph.

21. The Act is amended by inserting the following sections after section 103:

“103.0.1. An agreement reached during conciliation under the first paragraph of section 102.2 shall, if it concerns grouped complaints filed under section 100 in respect of an enterprise that has only one certified association representing employees in a single job class, be signed by the employer, the certified association having filed one of those complaints and the conciliator.

An agreement reached during conciliation under the second paragraph of section 102.2 shall, if it concerns grouped complaints, be signed by the employer and by at least one certified association or group of such associations. Within 30 days after being reached, the agreement shall also be ratified by one or more certified associations representing, for each job class concerned, a majority of employees. The agreement shall then be signed by the conciliator.

If it proves impossible to reach an agreement within the time set out in section 102.2.2, an agreement on the grouped complaints may be reached by the parties referred to in the second paragraph as long as the Commission has not determined measures under section 103.0.3. The agreement shall be ratified in accordance with the second paragraph.

If an agreement covers an employee who filed a complaint, the conciliator, or the parties in the case of an agreement referred to in the third paragraph, shall send the agreement to the Commission as soon as it is signed to enable the latter to promptly inform the employee that an agreement has been reached.

“103.0.2. An agreement reached in accordance with section 103.0.1 settles all complaints covered by the agreement and binds every certified association and, where applicable, every employee having filed such a complaint.

However, not later than 30 days after being notified of the agreement by the Commission, an employee may state in writing to the Commission his intention not to be bound by the agreement. In such a case, the employee’s complaint is maintained.

The notice sent to an employee by the Commission shall include a summary of the agreement, state how the employee may access the agreement and mention the employee’s right to refuse to be bound by it. The notice must be accompanied by a form allowing the employee to express his refusal.

“103.0.3. The Commission shall determine the measures to be taken to achieve or maintain pay equity in accordance with this Act where

- (1) it proves impossible to reach an agreement through conciliation;
- (2) an agreement was not reached within the time set out in section 102.2.2; or
- (3) an agreement was not ratified in accordance with the second paragraph of section 103.0.1.

The Commission shall do likewise in respect of a complaint filed by an employee who has stated his refusal to be bound by an agreement in accordance with the second paragraph of section 103.0.2.

The time allotted for the implementation of the measures is set by the Commission.”

22. Section 103.1 of the Act is amended

- (1) by replacing the first two paragraphs by the following paragraphs:

“In the case of a complaint filed under the second paragraph of section 96.1, the second paragraph of section 97 or section 99, the Commission may not determine compensation adjustments applicable prior to or require the use of information dating before the date that is five years before the date on which the complaint was filed.

In the case of a complaint filed under section 100, the Commission may not determine adjustments applicable prior to or require the use of information dating before the start date of the pay equity audit period covered by the complaint.”;

- (2) by striking out the last sentence of the third paragraph;

(3) by adding the following paragraph at the end:

“In any other case in which the Commission conducts an investigation on its own initiative,

(1) if the investigation concerns an initial pay equity exercise, it may not determine compensation adjustments applicable prior to or require the use of information dating before the date that is five years before the date on which the investigation began; and

(2) if the investigation concerns a pay equity audit, it may not determine adjustments applicable prior to or require the use of information dating before the start date of the pay equity audit period covered by the investigation.”

23. Section 114 of the Act is amended

(1) by inserting “or the conduct of a pay equity audit” after “determination of adjustments in compensation” in subparagraph 1 of the first paragraph;

(2) by inserting “or the conduct of a pay equity audit” after “of a pay equity plan” in subparagraph 2 of the first paragraph;

(3) by inserting the following paragraph after the first paragraph:

“The provisions of a regulation made under the first paragraph may vary according to the number of employees in the enterprise.”

24. Section 115 of the Act is amended by replacing “section 76.1 or 76.3” and “section 76.8 or 76.9” in subparagraph 1 of the first paragraph by “section 76.1, 76.2.1 or 76.3” and “section 76.5.2, 76.6.1, 76.8 or 76.9”, respectively.

25. The Act is amended by replacing all occurrences of “partners advisory committee” by “pay equity advisory committee”.

TRANSITIONAL AND FINAL PROVISIONS

26. In any document, unless the context indicates otherwise, a reference to the partners advisory committee is a reference to the pay equity advisory committee.

27. The provisions of the Pay Equity Act (chapter E-12.001), as amended by this Act, apply to any complaint filed and investigation initiated before 10 April 2019, subject, in the case of a complaint referred to in the second paragraph of section 102.2, as amended by section 18, to the fact that

(1) if conciliation is in progress on that date, the conciliator in charge of the conciliation is deemed to be designated by the Commission on that date;

(2) despite subparagraph 1, if two pay equity audits for the same employer are the subject of complaints, the Commission designates a conciliator for the most recent pay equity audit only where the time limits applicable to the conciliation of the complaints relating to the previous pay equity audit have expired; and

(3) in the other cases, the Commission has 90 days from 10 April 2019 to designate a conciliator.

However, sections 76.5, 101 and 103.1 of the Pay Equity Act, as they read on 9 April 2019, continue to apply to any pay equity audit for which the posting under the second paragraph of section 76.4 was made before 10 April 2019.

28. If an employer is required to make a posting under section 76.3 of the Pay Equity Act, as replaced by section 9, within 12 months after 10 April 2019, the reference dates provided for in the third paragraph of section 76.1 of that Act, as amended by subparagraph *b* of paragraph 2 of section 5, apply to the employer only from the subsequent pay equity audit.

29. Section 76.2.1 of the Pay Equity Act, enacted by section 8, does not apply to an employer who is required to make a posting under section 76.3 of that Act, as replaced by section 9, within 90 days after 10 April 2019.

30. A pay equity audit committee, or the employer in the absence of such a committee, that made a posting under the first paragraph of section 76.3 of the Pay Equity Act before 10 April 2019 must, if the posting under the second paragraph of section 76.4 of that Act, as amended by section 10, is to be made after that date, include in the latter posting, for each of the events leading to adjustments, the start date and, where applicable, end date, or, where no adjustments are required, a notice to that effect.

Despite the applicable time limit to make the posting under the second paragraph of section 76.4, the posting may be made not later than 90 days after 10 April 2019.

However, the adjustments payable under section 76.5 of the Pay Equity Act, as amended by section 11, must be paid on the date on which the posting under the second paragraph of section 76.4 should have been made had it not been for the additional time granted under the second paragraph.

31. If, before 12 February 2019, the Commission, under section 101.1 of the Pay Equity Act, authorized an employer to conduct a pay equity audit on a date that is after 10 April 2019 even though the posting under the first paragraph of section 76.3 of that Act, without that authorization, should have been made before that date, the provisions of the Pay Equity Act, as they read on 9 April 2019, apply to the pay equity audit that is the subject of the Commission's decision.

32. The provisions of the Regulation respecting pay equity in enterprises where there are no predominantly male job classes (chapter E-12.001, r. 2) are deemed to apply, with the necessary modifications, in the context of a pay equity audit until those provisions are amended accordingly.

33. This Act comes into force on 10 April 2019.

