

EQUAL PAY LEGISLATION IN CANADA BY JURISDICTION¹

Jurisdiction	Application	Type of Prohibition ²	Basis for Measuring Equal Pay	Basis for the Comparison of Work	Factors that Justify a Difference in Pay	Time Limit to File Complaint	Restrictions on Recovery ³
Federal Jurisdiction <i>(Canadian Human Rights Act, Equal Wages Guidelines, 1986)⁴</i>	Federal public service and federally-regulated undertakings	Male-female pay differential	Wages ⁵ (Act, s. 11(1))	Work of equal value performed in the same establishment, assessed by the composite of the skill, effort and responsibility required and the working conditions under which work is performed. ⁶ (Act, s. 11(1), (2))	Different performance ratings; seniority; a re-evaluation and downgrading of an employee's position; a rehabilitation assignment; a demotion procedure or a procedure of gradually reducing an employee's wages on the same grounds that justify a demotion procedure; a temporary training position; the existence of an internal labour shortage in a particular job classification; a reclassification of a position to a lower level; or regional rates of wages. Gender is not a reasonable factor justifying a difference in pay. ⁷ (Act, ss. 11(4), (5); Guidelines, s. 16)	1 year (an extension of time is possible) (s. 41(1)(e))	No
Alberta <i>(Human Rights, Citizenship and Multiculturalism Act)</i>	Private and public sectors	Male-female pay differential	Rate of pay s. 6(1)	The same or substantially the same work for an employer in an establishment. s. 6(1)	The contravention of the Act was reasonable and justifiable in the circumstances. (s. 11)	1 year ⁸ (s. 20(1)(b))	Recovery is limited to wages, income lost and/or expenses incurred during the 2 years preceding the complaint. A limit also applies for civil proceedings. ⁹ (s. 34)

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British Columbia <i>(Human Rights Code)</i>	Private and public sectors	Male-female pay differential	Rate of pay (s. 12(1))	Similar or substantially similar work. This must be assessed by the concepts of skill, effort and responsibility, subject to factors in respect of pay rates, such as seniority systems, merit systems and systems that measure earnings by the quantity or quality of production. (ss. 12(1),(2))	A factor that would reasonably justify the difference, other than sex. (s. 12(3))	6 months ¹⁰ (an extension of time is possible). (s. 22)	No (A limit does apply for civil proceedings). ¹¹
Manitoba <i>(Employment Standards Code)</i>	Private and public sectors	Male-female pay differential	Scale of wages ¹² (s. 82(1))	The kind or quality of work and the amount of work required of, and done by, the employees, is the same or substantially the same. (s. 82(1))	No provisions	6 months (s.82(2))	Recovery is limited to wages due and payable in the 6 months before the date the complaint was filed or, if employment was terminated, in the last 6 months of employment. ¹³ (s. 96(2))
New Brunswick <i>(Employment Standards Act)</i>	Private and public sectors	Male-female pay differential	Rate of pay ¹⁴ (s. 37.1(1))	Work that is substantially the same in nature, performed under similar working conditions in the same establishment and requiring substantially the same skill, effort and responsibility. (s. 37.1(1))	A seniority system; a merit system; a system that measures earnings by quantity or quality of production; or any other system or practice that is not unlawful. (s. 37.1(1))	12 months (s. 61(1))	No ¹⁵
Newfoundland and Labrador <i>(Human Rights Code)</i>	Private and public sectors	Male-female pay differential	Wages, pension rights, insurance benefits and opportunities for training and advancement. (ss. 11(1),(2))	The same or similar work on jobs requiring the same or similar skill, effort and responsibility, performed under the same or similar working conditions in the same establishment. (s. 11(1))	A seniority system or a merit system. (s. 11(1)) These factors apply only in respect of wages (i.e. not for insurance benefits or opportunities for training and advancement).	6 months (s.20(1))	No

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Northwest Territories <i>(Human Rights Act)</i>	Private and public sectors	General anti-discrimination	Rate of pay. ¹⁶ (s. 9(1))	The same or substantially similar work performed by employees in the same establishment. Work is deemed to be similar or substantially similar if it involves the same or substantially similar skill, effort and responsibility and is performed under the same or substantially similar working conditions. (s. 9(1),(5))	A seniority system; a merit system; a system that measures earnings by quantity or quality of production or performance; a compensation or hiring system that recognizes the existence of a labour shortage in respect of the field of work or of regional differences in the cost of living; a downgrading, reclassification or demotion process or system; the existence of a temporary rehabilitation or training program; or any other system or factor. These cannot be based on a prohibited ground of discrimination. (s.9(2))	2 years (an extension of time is possible) (s. 29(2),(3))	No
Nova Scotia <i>(Labour Standards Code)</i>	Private and public sectors	Male-female pay differential	Rate of wages ¹⁷ (s. 57(1))	Substantially the same work performed in the same establishment, the performance of which requires substantially equal skill, effort and responsibility and that is performed under similar working conditions. (s. 57(1))	A seniority system; a merit system; a system that measures wages by quantity or quality of production; or another differential based on a factor other than sex. (s. 57(2))	6 months ¹⁸ (s. 21(3A))	No
Ontario <i>(Employment Standards Act, 2000)</i>	Private and public sectors	Male-female pay differential	Rate of pay ¹⁹ (s. 42(1))	Substantially the same kind of work performed in the same establishment under similar working conditions and that requires substantially the same skill, effort and responsibility. (s. 42(1))	A seniority system; a merit system; a system that measures earnings by quantity or quality of production; or any factor other than sex. (s. 42(2))	2 years (s. 96(3))	An order to pay unpaid wages made by an employment standards officer cannot exceed \$10,000 per employee. (ss. 42(5), 103(4)) Furthermore, an officer cannot make an order to pay unpaid wages if the wages became due more than 6 months before the complaint was filed. (s. 111)

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Prince Edward Island <i>(Human Rights Act)</i>	Private and public sectors ²⁰	General anti-discrimination	Rate of pay (s. 7)	Substantially the same work, requiring equal education, skill, experience, effort and responsibility and which is performed under similar working conditions. (s. 7)	A seniority system; a merit system; or a system that measures earnings by quantity or quality of production. The factor cannot be based on discrimination. (s. 7)	1 year (s. 22(1)(b))	No (A limit does apply for civil proceedings) ²¹
Quebec <i>(Charter of human rights and freedoms)</i>	Private and public sectors	General anti-discrimination	Salary or wages (s. 19)	Equivalent work performed at the same place. (s. 19)	Experience; seniority; years of service; merit; productivity; or overtime. These criteria must be common to all members of the personnel in order to justify a difference in pay. ²² (s. 19)	Not specified ²³	No
Saskatchewan <i>(Labour Standards Act)</i>	Private and public sectors	Male-female pay differential	Rate of pay ²⁴ (s. 17(1))	Similar work performed in the same establishment under similar working conditions, requiring similar skill, effort and responsibility. (s. 17(1))	A seniority system or a merit system. (s. 17(1))	Not specified	No
Yukon Territory <i>(Employment Standards Act)</i>	Private sector	Male-female pay differential	Rate of pay (s.44)	Similar work performed in the same establishment under similar working conditions, requiring similar skill, effort and responsibility. (s. 44)	A seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a differential based on any factor other than sex. (s. 44)	6 months ²⁵ (s. 73(3))	No
(Human Rights Act)	Public sector, including municipalities and their corporations, boards and commissions	Male-female pay differential	Wages ²⁶ (s. 15(1))	Work of equal value, assessed by the criterion of the composite of skill, effort, and responsibility required and the working conditions. (s. 15(1),(3))	No provisions	6 months (s. 20(2))	No

¹ Nunavut does not have equal pay legislation. However, the *Human Rights Act* in that territory does prohibit discrimination against an individual or class of individuals with respect to “employment or a term or condition of employment” on the ground of sex (among other grounds), regardless of whether that term or condition exists prior or subsequent to employment (s. 9(1)(b)).

² In general, equal pay provisions prohibit a *pay differential* between *male and female* employees of the same employer who are performing the same or substantially similar work. However, the legislation of the Northwest Territories, Prince Edward Island and Quebec prohibits *general discrimination* with respect to pay where employees perform work that is the same or substantially the same. The *Human Rights Act* of the Northwest Territories prohibits an employer from paying an employee, *on the basis of a prohibited ground of discrimination*, at a rate of pay less than that paid to other employees employed in the same establishment who are performing the same or substantially similar work (s. 9). Prohibited grounds of discrimination include race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, marital or family status, family affiliation, political belief or association, social condition and a conviction for which a pardon has been granted (s. 5). The *Human Rights Act* of Prince Edward Island similarly prohibits discrimination in pay (s. 7). “Discrimination” is defined as discrimination in relation to age, colour, creed, ethnic or national origin, family status, marital status, physical or mental handicap, political belief, race, religion, sex, sexual orientation or source of income of any individual or class of individuals (s. 1(1)(d)). Moreover, in Quebec, the *Charter of human rights and freedoms* requires an employer to grant, without discrimination, equal salary or wages to the members of his/her personnel who are performing equivalent work at the same place (s. 19). Under the *Charter*, discrimination exists where a distinction, exclusion or preference (based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap) has the effect of nullifying or impairing a person’s right to full and equal recognition and exercise of his/her rights or freedoms (s. 10).

³ This refers to provisions that cap the amount of money that an employee can recover from an employer in a complaint under equal pay legislation, excluding the following: punitive damages (including compensation or damages awarded on the grounds that the wrongdoer acted willfully or recklessly); compensation in respect of pain and suffering or injury to dignity, feelings and self-respect; costs; and administrative costs.

⁴ In addition, some administrative and investigatory provisions of the *Canada Labour Code* apply to the determination of whether a discriminatory practice has been engaged in contrary to section 11 (i.e. the equal pay/pay equity provision) of the *Canadian Human Rights Act*. Furthermore, an inspector designated under the Code can notify, or file a complaint with, the Canadian Human Rights Commission where he/she has reasonable grounds to believe that an employer is or has engaged in such a discriminatory practice (ss. 182(1), (2) of the Code).

⁵ “Wages” is defined as any form of remuneration payable to an individual for the performance of work, including the following: salaries, commissions, vacation pay, dismissal wages and bonuses; reasonable value for board, rent, housing and lodging; payments in kind; employer contributions to pension funds, pension plans, long-term disability plans and all forms of health insurance plans; and any other advantage received directly or indirectly from the employer (s. 11(7) of the Act).

⁶ The *Equal Wages Guidelines, 1986 (Guidelines)* prescribe the factors that must be considered in assessing the skill, effort and responsibility required and the working conditions under which work is performed. The *Guidelines* provide that intellectual and physical qualifications acquired by experience, training, education or natural ability must be considered in assessing the skill required in the performance of work; however, the methods by which employees acquired these qualifications cannot be considered in assessing the skill of different employees. Intellectual and physical effort must be considered (and can be compared) in assessing the effort required. Moreover, the extent of responsibility by the employee for technical, financial and human resources must be considered in assessing the responsibility that is required. Finally, in assessing the conditions under which work is performed, the *Guidelines* require the consideration of the physical and psychological work environments, including noise, temperature, isolation, physical danger, health hazards and stress. The requirement to work overtime or to work shifts cannot be considered in assessing working conditions where a wage in excess of the basic wage is paid in respect of that time (ss. 3 to 8). Moreover, where an employer relies on a system in assessing the value of work performed by employees employed in the same establishment, that system must be used in the investigation of any complaint alleging a difference in wages, provided that it operates without any sexual bias, is capable of measuring the relative value of work of all jobs in the establishment and assesses the skill, effort, responsibility and working conditions in accordance with the *Guidelines* (s. 9).

⁷ To justify a difference in wages on the basis of one of these factors, the employer is required to establish that the factor in question is applied consistently and equitably in calculating and paying the wages of all male and female employees employed in the same establishment who are performing work of equal value. Where the employer seeks to justify a difference in pay on the grounds of the existence of an internal labour shortage in a particular job classification or on the grounds of the reclassification of a position to a lower level, he/she must also meet additional requirements (*Guidelines*, ss. 17, 18, 19).

⁸ The deadline to commence a civil action under the equal pay provisions is also one year. Note that the Act precludes a person from proceeding with both a civil action and a complaint regarding the equal pay provisions (ss. 6(3)(a),(c) and (d)).

⁹ A civil action applies only to the wages of an employee during the 12-month period immediately preceding the earlier of the termination of the employee's services or the commencement of the action (s. 6(3)(b)).

¹⁰ A civil action under the equal pay provisions must be commenced within 12 months of the date of the termination of the employee's services (s. 12(5)(a)).

¹¹ A civil action applies only to wages due and payable to the employee during the 12 month period immediately before the earlier of the date of the termination of employment and the commencement of the action (s. 12(5)(b)).

¹² The Code defines "wages" as compensation for work performed that is due and payable to an employee by an employer, including the following: salary, commission or compensation in any other form, however measured; a payment or benefit to which an employee is entitled under the Code, including a vacation allowance; and pay in lieu of minimum notice of termination (ss. 1(1), 1(3)).

¹³ However, if the complaint relates to a vacation allowance or wages for a general holiday, the maximum amount recoverable is limited to wages due and payable in the 22 months before the date the complaint was filed or, where the employee's employment was terminated, in the last 22 months of employment (s. 96(2)(b)).

¹⁴ "Pay" includes wages, public holiday pay and pay in lieu of public holidays, vacation pay and pay in lieu of vacation, benefits, initiation fees and dues checked off by an employer. It does not include deductions from wages that can be lawfully made by an employer. "Wages" includes salary, commissions and compensation in any form for work or services (however measured). It does not include public holiday pay, pay in lieu of public holidays, vacation pay, pay in lieu of vacation gratuities or honoraria (s. 1).

¹⁵ Where an employer's violation of the equal pay provisions results in an employee receiving a lower rate of pay than he/she would have otherwise received, the Director of Employment Standards appointed under the Act can make any order that he/she considers appropriate and just in the circumstances, including an order that the employer compensate the employee for the loss of pay (s. 37.1(4)).

¹⁶ "Pay" includes any form of payment made by an employer for work performed by an employee including salary, commission, vacation pay, severance pay, pay in lieu of notice of termination, bonuses, the value of any board, rent or housing provided, contributions to a disability plan, health insurance plan or pension plan and any other advantage received directly or indirectly by the employee (s. 9(6)).

¹⁷ "Wages" includes salaries, commissions, compensation in any form for work or services (however measured), general holidays pay and pay in lieu of minimum notice of termination. It does not include vacation pay, pay in lieu of vacation provided for under the Code or gratuities (s. 2(u))

¹⁸ There is no time limit to file a complaint; however, an order cannot be made with respect to a complaint unless the failure to comply with the Act occurred within the six months preceding the receipt of the complaint or the initiation of an inquiry under the Act (s. 21(3A)).

¹⁹ The *Employment Standards Act, 2000* (ESA) provides that where an employment standards officer (officer) finds that an employer has contravened the equal pay provisions, the officer can determine the amount owing to an employee and that amount will be deemed to be "unpaid wages" owing to the employee (s. 42(5)). Under the ESA, "wages" includes monetary remuneration payable by an employer to an employee under an employment contract, any payment an employer is required to make to an employee under the ESA, and any allowances for room and board under an employment contract or prescribed allowances. It does not include the following things: tips or other gratuities; sums paid as gifts or bonuses that are dependant on the discretion of the employer and that are not related to hours, production or efficiency; expenses and travelling allowances; or employer contributions to a benefit plan and payments to which an employee is entitled under a benefit plan (s. 1(1)).

²⁰ However, an employee is not entitled to recovery and enforcement of the equal pay provisions if an appeal or grievance procedure is provided for him/her under the *Civil Service Act* or the *Labour Act* or where the employee is a party to a proceeding before an arbitration board constituted under the *Arbitration Act* that has jurisdiction to adjudicate on the question of rates of pay (s. 7(5)).

²¹ The *Human Rights Act* provides that civil proceedings under the equal pay provisions apply only to the employee's wages during the 12-month period immediately preceding the earlier of the termination of his/her services or the commencement of proceedings. Civil proceedings must be commenced within 12 months of the date that the cause of action arose. The Act bars an employee from proceeding with both a complaint under the Act and civil proceedings.

²² In addition, the Charter provides that an adjustment in compensation and a pay equity plan are not discriminatory on the basis of gender if they are established in accordance with the *Pay Equity Act* (s. 19).

²³ However, the *Commission des droits de la personne et des droits de la jeunesse* established under the Charter can refuse to act on a complaint where it is based on acts or omissions the last of which occurred more than two years before the date the complaint was filed (s. 77).

²⁴ "Pay" is defined as remuneration in any form (s. 2(l))

²⁵ If the complaint relates to wages alleged to be due, the complaint must be made within six months after the last date on which payment was to be made and the employer failed to make it; if the complaint relates to any other matter, it must be made within six months after the date on which the subject-matter of the complaint arose (s. 73(3)).

²⁶ "Wages" refers to any payment for work performed by an individual, including the following: salaries; commissions; vacation pay; dismissal wages; bonuses; value for board, rent, housing or lodging; payments in kind; employer contributions to pension plans or funds, long-term disability plans or any form of health insurance plans; and any other advantage received directly or indirectly from the employer (s. 15(4)).

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