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THE *PAY EQUITY ACT*: A PROACTIVE MEASURE ADDRESSING PAY IN EQUITY IN FEDERALLY REGULATED WORKPLACES

The Canadian Federal Government made headlines in the fall of 2018 when it introduced and passed the *Pay Equity Act* with the aim of ensuring that women and men in federally regulated workplaces receive equal pay for work of equal value. This legislation is part of the Government's overall policy agenda to advance gender equality in the workplace and to reduce the wage gap. As the Government stated in its news release announcing the new legislation: "Advancing gender equality is not just good for women, it is good for all Canadians. When Canadian women can count on equal pay for work of equal value, our economy grows stronger, families prosper and communities thrive."

This proactive measure to achieving pay equity was influenced by similar regimes in Ontario and Quebec, which are the only provincial jurisdictions with pay equity legislation. It is also worthy to note that the *Canadian Human Rights Act* (which also applies to federally regulated employers) currently requires employers to comply with pay equity obligations, but does not require verification of compliance unless a complaint against the employer is filed.

The new legislation is expected to come into force in 2020. In anticipation of the legislation coming into force, the Government announced on September 10, 2019 the appointment of Karen Jensen as the first federal Pay Equity Commissioner. In its announcement, the Government stated that the Commissioner will play both an education and enforcement role with regard to the new legislation.

The legislation impacts a vast majority of federally regulated employers in both the public and private sectors, including banking, air and railway transportation and telephone, telegraph and cable systems.

The legislation imposes a number of obligations on employers, depending on the employer's size and whether it is unionized. A general overview of the key obligations are as follows:

- Pay Equity Committees – Large employers (100 employees or more) and all unionized employers will be required to establish a committee of employer and employee representatives (with two thirds of the committee consisting of employees) who will be tasked with the development of a pay equity plan.

- Pay Equity Plans – All employers with 10 or more employees will need to establish pay equity plans within three years after the legislation comes into force. Once completed, the Plan must be posted in the workplace. The plans are established by the pay equity committee or by the employer in cases where a committee is not required. The objective and purpose of the plan is to compare predominantly female job classes to predominantly male job classes to determine if a wage difference exists. This is based on an analysis of the value of the work and compensation paid. Value of work is assessed based on the composite of skills required to perform the work, the responsibility required in the performance of the work and the conditions under which the work is performed. Where adverse wage differences exist, employers will be obligated to increase compensation to eliminate the difference. This includes adjusting wages negotiated pursuant to a collective agreement. The legislation prohibits employers from decreasing the wage rates of predominantly male job classifications to achieve pay equity.

- Maintenance of Pay Equity Plans – The legislation imposes a requirement to review and update plans at least every five years and remedy any pay gaps that have occurred during that time.

There is no doubt that once the legislation comes into force, it will have a significant and profound impact on those employers who are affected by it. While the legislated purpose of the legislation expressly states that achieving pay equity should "take into account the diverse needs of employers", how or to what extent an employer's interests will play a role is uncertain. In anticipation of these changes, affected employers may want to be proactive and review and examine compensation practices/policies within their organization.

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