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chapter E-12.001

PAY EQUITY ACT

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REPEAL SCHEDULES

CHAPTER I

PURPOSE AND SCOPE

1. The purpose of this Act is to redress differences in compensation due to the systemic gender discrimination suffered by persons who occupy positions in predominantly female job classes.

Differences in compensation are assessed within the enterprise, except if there are no predominantly male job classes in the enterprise.

1996, c. 43, s. 1.

2. This Act has effect notwithstanding any provision of an agreement, an individual employment contract, a collective agreement within the meaning of paragraph *d* of section 1 of the Labour Code (chapter C-27), a decree made under the Act respecting collective agreement decrees (chapter D-2), a collective agreement made pursuant to the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) and any other agreement respecting conditions of employment, including a government regulation giving effect thereto.

1996, c. 43, s. 2; 2007, c. 3, s. 72.

3. This Act is binding on the Government, government departments and bodies and mandataries of the State.

For the purposes of this Act,

(1) the Conseil du trésor is deemed to be the employer in the public service enterprise and the parapublic sector enterprise;

(2) the public service enterprise includes government departments and bodies and persons other than the National Assembly whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1); and

(3) the parapublic sector enterprise includes colleges, school service centres, school boards and institutions to which the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2) applies.

1996, c. 43, s. 3; 1999, c. 40, s. 121; 2000, c. 8, s. 242; 2000, c. 8, s. 124; 2006, c. 6, s. 1; 2020, c. 1, s. 309.

4. This Act applies to every employer whose enterprise employs 10 or more employees. The date from which the Act applies to an enterprise where the number of employees grows to 10 or more in the course of a given year is 1 January of the following year. The number of employees is computed in the manner set out in section 6.

However, regardless of the number of employees, every employer shall submit a report on the implementation of this Act in his enterprise, in the cases and subject to the conditions prescribed by regulation of the Minister made after consultation with the Commission and the pay equity advisory committee.

Anyone who causes work to be done by an employee is an employer.

In this Act, unless the context indicates otherwise, “Commission” means the Commission des normes, de l’équité, de la santé et de la sécurité du travail.

1996, c. 43, s. 4; 2009, c. 9, s. 1; 2015, c. 15, s. 157; 2019, c. 4, s. 25.

5. For the purposes of this Act, a federation within the meaning of the Act respecting financial services cooperatives (chapter C-67.3) and the credit unions that are members of that federation are deemed, upon the

forwarding of a notice to the Commission des normes, de l'équité, de la santé et de la sécurité du travail, to form a single enterprise. The federation is thereupon the employer of all the employees of the savings and credit unions that are members of it. The federation shall inform the employees and the certified associations within the meaning of the Labour Code (chapter C-27) representing employees of the savings and credit unions of the forwarding or revocation of a notice hereunder.

1996, c. 43, s. 5; 2000, c. 29, s. 651; 2015, c. 15, s. 237.

6. For the purposes of this Act, the number of employees in an enterprise is its average number of employees.

That average number is determined on the basis of the number of employees on the employer's paylist for each pay period in a calendar year.

1996, c. 43, s. 6; 2009, c. 9, s. 2.

7. From the time an employer becomes subject to this Act under the first paragraph of section 4, every person on whom this Act imposes obligations remains subject to those obligations on the same terms, regardless of any change in the number of employees in the enterprise.

1996, c. 43, s. 7; 2009, c. 9, s. 2.

8. Any natural person who undertakes to do work for remuneration under the direction or control of an employer is an employee, except

(1) a student who works during the school year in an establishment chosen by an educational institution under a program recognized by the Ministère de l'Éducation, du Loisir et du Sport or the Ministère de l'Enseignement supérieur, de la Recherche, de la Science et de la Technologie which combines practical experience with academic training or a student who works in a field related to his field of study in the educational institution he is attending;

(2) a student employed for his vacation period;

(3) a trainee undergoing professional training recognized by law;

(4) *(paragraph repealed);*

(5) a person who, engages in an activity within the framework of an employment-assistance measure or program established under Title I of the Individual and Family Assistance Act (chapter A-13.1.1) and in respect of whom the provisions concerning the minimum wage in the Act respecting labour standards (chapter N-1.1) do not apply;

(6) a senior management officer;

(7) a police officer or a fire fighter.

1996, c. 43, s. 8; 1998, c. 36, s. 180; 2004, c. 31, s. 64; 2005, c. 28, s. 195; 2005, c. 15, s. 154; 2013, c. 28, s. 203.

9. This Act does not apply to an independent operator, that is, a natural person who does business for his own account, by himself or within a partnership, and has no employees.

An independent operator who in the course of his business carries on activities for a person similar to or connected with those carried on in the enterprise of that person is considered an employee of that person, except

(1) where he carries on the activities

(a) simultaneously for several persons;

(b) under a remunerated or unremunerated service exchange agreement with another independent operator carrying on similar activities; or

(c) for several persons in turn and supplies the required equipment, and the work done for each person is of short duration; or

(2) in the case of activities that are only intermittently required by the person who retains his services.

1996, c. 43, s. 9.

CHAPTER II

APPLICATION

DIVISION I

PROVISIONS APPLICABLE TO ENTERPRISES EMPLOYING 100 OR MORE EMPLOYEES

§ 1. — *General provisions*

10. An employer whose enterprise employs 100 or more employees shall establish, in accordance with this Act, a pay equity plan applicable throughout his enterprise.

The employer may, except as regards establishments covered by an agreement under the second paragraph of section 11, apply to the Commission for authorization to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities.

1996, c. 43, s. 10.

11. At the request of a certified association representing employees of the enterprise, the employer shall establish a pay equity plan applicable to those employees throughout the enterprise or one or more plans applicable to those employees in accordance with the authorization obtained under the second paragraph of section 10.

As well, the employer and a certified association representing employees of the enterprise may agree to establish one or more separate plans applicable to those employees in one or more establishments of the enterprise that are not covered by an authorization under the second paragraph of section 10. Such an agreement may also be entered into between the employer and two or more certified associations. In either case, the employer may establish a separate plan applicable to the other employees.

In the parapublic sector enterprise, however, there may be only one pay equity plan for all employees represented by certified associations. Two pay equity plans shall be established for employees of that enterprise who are not represented by certified associations: one applicable to colleges, school service centres and school boards, and the other, to institutions.

1996, c. 43, s. 11; 2004, c. 26, s. 1; 2006, c. 6, s. 2; 2009, c. 9, s. 3; 2020, c. 1, s. 311.

12. Two or more employers may develop a common procedure for the establishment of a pay equity plan applicable to each of their enterprises. The development of a common procedure requires the agreement of the pay equity committees of each of the enterprises.

Each employer remains responsible for the establishment of the pay equity plan in his enterprise in accordance with the other requirements of this Act.

1996, c. 43, s. 12.

12.1. A group of employers may apply to the Commission for recognition as the employer of a single enterprise for the purposes of this Act.

Before granting that recognition, the Commission shall verify that the enterprises concerned have a set of similar or common characteristics that will allow this Act to be carried out in a manner consistent with its objective. The Commission may, among other things, examine the activities of and the job classes and salary structures within those enterprises.

When different time limits apply to the enterprises concerned, the Commission sets the time limit for completing a pay equity plan, determining compensation adjustments or conducting a pay equity audit in the single enterprise.

The provisions of this Act relating to employers apply to a group of employers recognized as the employer of a single enterprise. The employers in the group remain responsible for paying the compensation adjustments in their respective enterprises. The compensation adjustments are payable as of the date applicable to each enterprise if it is different from that set by the Commission for the single enterprise. If a remedy is sought before the Commission, the prescription period for compensation adjustments that is set out in section 103.1 is extended by any additional time granted by the Commission.

2009, c. 9, s. 4.

13. In an enterprise where there are no predominantly male job classes, the pay equity plan shall be established in accordance with the regulations of the Commission.

The pay equity plan of such an enterprise may also be established by using two or more predominantly male job classes in an enterprise with similar characteristics as comparators.

The use of such job classes as comparators is subject to the approval of the Commission, unless the members of the pay equity committee have agreed to it or the pay equity plan is established jointly under section 32. Two or more employers may jointly seek such approval from the Commission.

1996, c. 43, s. 13; 2009, c. 9, s. 5.

14. At the Commission's request, an employer shall post, in prominent places easily accessible to employees, or distribute to the employees, every information document concerning pay equity furnished to the employer by the Commission.

A posting under this Act may be made using an information technology-based medium.

1996, c. 43, s. 14; 2009, c. 9, s. 6.

14.1. The employer shall keep the information relevant to a pay equity plan until the plan has been completed.

In addition, the employer shall keep the information used to complete the plan and the content of all postings for a period of six years from the date of a posting under the second paragraph of section 76. 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.

2009, c. 9, s. 7; 2019, c. 4, s. 1.

15. No employer, certified association or member of a pay equity committee may, in the establishment of a pay equity plan, act in bad faith or in an arbitrary or discriminatory manner or exhibit gross negligence with regard to employees in the enterprise.

1996, c. 43, s. 15.

§ 2. — *Participation of employees in pay equity committee*

16. An employer shall enable employees to take part in the establishment of a pay equity plan by setting up a pay equity committee on which they are represented.

1996, c. 43, s. 16.

17. A pay equity committee shall be composed of not less than three members.

Not less than two-thirds of the members of the pay equity committee shall represent the employees. Not less than half of the members representing the employees must be women.

The other members of the committee shall represent and be designated by the employer.

1996, c. 43, s. 17.

18. Where all the employees concerned by a pay equity plan are represented by a certified association, the association shall designate their representatives on the pay equity committee. The association may come to an agreement with the employer for the application of a mode of employee participation different from that provided for in this subdivision, subject to at least half of the committee members representing the employees being women.

1996, c. 43, s. 18.

19. Where a pay equity plan only concerns employees who are not represented by a certified association, those employees shall designate their representatives on the pay equity committee.

1996, c. 43, s. 19.

19.1. In the public service enterprise and the parapublic sector enterprise, a certified association or, where applicable and under section 21.1, a group of employees' associations, that represents employees in a job class to which a pay equity plan applies also represents, for the purposes of that plan and until it has been completed, all the employees in that job class who are not covered by a certification.

The adjustments in compensation and the terms and conditions of payment of compensation adjustments set out in such a plan are the only ones applicable to all such employees.

2006, c. 6, s. 3.

20. Where the employees concerned by a pay equity plan are represented by more than one certified association or where some of those employees are not represented by a certified association, the representatives of the employees on the pay equity committee shall be designated as follows:

(1) each certified association representing employees shall designate one member;

(2) the employees not represented by a certified association shall designate one member;

(3) if the employees represented by one certified association or the employees not represented by a certified association form the majority of the employees concerned by the plan, that certified association or those non-represented employees shall designate the majority of the members representing the employees.

The employer may grant a certified association referred to in subparagraph 1 of the first paragraph or the employees referred to in subparagraph 2 of the first paragraph the right to designate more than one member. In determining the number of additional members, the employer must, while complying with the provisions of subparagraph 3 of the first paragraph, take into account the number of employees represented by the certified association in relation to the number of employees not represented by a certified association.

1996, c. 43, s. 20.

20.1. In the public service enterprise and the parapublic sector enterprise, an association that comprises employees not represented by a certified association and that is recognized by government order for labour relations purposes and a representative body referred to in section 432 of the Act respecting health services and social services (chapter S-4.2) are considered to be certified associations for the purposes of the designation of members of the pay equity committee responsible for establishing a pay equity plan applicable to employees not represented by a certified association.

Section 19.1 applies, with the necessary modifications, to those associations and bodies as well as to the employees they represent.

2006, c. 6, s. 4.

21. The number of members that may be designated under the first paragraph of section 20 to represent the employees on a pay equity committee may not exceed 12.

If the application of the first paragraph of section 20 would cause their number to exceed 12, the mode of designation of the 12 members shall be determined by agreement between the employer and the employees or, failing agreement, by the Commission on the application of the employer, of a certified association or of an employee not represented by a certified association. In determining the mode of designation, the Commission shall take into account the number of employees represented by a certified association in relation to the number of employees not represented by a certified association, as well as the representation of predominantly female job classes and predominantly male job classes among those employees.

1996, c. 43, s. 21.

21.1. The pay equity committee responsible for establishing the pay equity plan for all employees represented by certified associations that is referred to in the third paragraph of section 11 is composed of 16 members, 11 of whom shall represent employees and five of whom shall represent the employer.

The members representing employees shall be designated as follows:

(1) two by each of the following employees' associations or groups of employees' associations: the Centrale des syndicats du Québec (CSQ), the Confédération des syndicats nationaux (CSN), the Fédération des infirmières et infirmiers du Québec (FIIQ) and the Fédération des travailleurs et travailleuses du Québec (FTQ);

(2) one by the Alliance du personnel professionnel et technique de la santé et des services sociaux (APTS);

(3) one by the employees' associations or groups of such associations that represent employees covered by an accreditation in colleges, school service centres and school boards, to which subparagraphs 1 and 2 do not apply, that do not form part of associations or groups referred to in those subparagraphs and that are not affiliated with them; and

(4) one by employees' associations or groups of such associations that represent employees covered by a certification in an institution to which the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2) applies, to which subparagraphs 1 and 2 do not apply, that do not form part of associations or groups referred to in those subparagraphs and that are not affiliated with them.

2006, c. 6, s. 5; 2009, c. 9, s. 8; 2020, c. 1, s. 267.

22. A certified association or an employee not represented by a certified association may apply to the Commission for a determination as to whether the number of members representing the association or the employee on the pay equity committee is in conformity with the provisions of section 20.

1996, c. 43, s. 22.

23. The employer shall allow employees not represented by a certified association to hold a meeting in the workplace for the purpose of designating their representatives on the pay equity committee.

The Commission may also authorize another mode of designation of the representatives of employees not represented by a certified association.

1996, c. 43, s. 23; 2006, c. 6, s. 6.

24. The designation of the representatives of the employees on a pay equity committee shall be effected so as to ensure representation of the major predominantly female job classes and of the major predominantly male job classes.

1996, c. 43, s. 24.

25. The representatives of the employees as a group and the representatives of the employer as a group have one vote, respectively, within the pay equity committee.

If, on a given question, a majority decision is not reached among the representatives of the employees, the employer shall decide the question.

1996, c. 43, s. 25.

26. The employer shall provide the required training to every employee who, as a member of a pay equity committee, takes part in the establishment of a pay equity plan.

The cost of the training is deemed to be an eligible training expenditure within the meaning of section 5 of the Act to promote workforce skills development and recognition (chapter D-8.3).

1996, c. 43, s. 26; 2007, c. 3, s. 68.

27. A pay equity committee shall establish its own operating rules, including rules governing the holding of meetings.

1996, c. 43, s. 27.

28. An employee who is a member of a pay equity committee may, without loss of pay, absent himself from work for the time required to attend training sessions and meetings of the pay equity committee and to perform any committee task. The employee shall be deemed to be working and shall be remunerated at the normal rate during that time.

1996, c. 43, s. 28.

29. The employer is bound to disclose to the members of the pay equity committee the information necessary to establish the pay equity plan. The employer shall also facilitate the collection of the necessary data.

The members of the pay equity committee are bound to protect the confidentiality of any information and data obtained.

1996, c. 43, s. 29.

30. If the certified association or the employees do not designate their representatives on a pay equity committee, the employer shall act alone to establish the pay equity plan applicable to his employees.

In such case, the employer shall send a notice to the Commission advising it that the association or the employees are not or are no longer participating in the pay equity committee and indicating that he is acting

alone to devise the pay equity plan applicable to his employees. The employer shall post a copy of the notice in prominent places easily accessible to employees.

1996, c. 43, s. 30.

30.1. When forming a pay equity committee is highly problematic or when an association or the employees are not or are no longer participating in the committee, the Commission may, on the application of the employer, a certified association or an employee not represented by a certified association, authorize a committee composition different from that prescribed in this subdivision.

No authorization under the first paragraph may be granted, however, if the employer has posted a copy of a notice sent to the Commission under the second paragraph of section 30.

2009, c. 9, s. 9.

DIVISION II

PROVISIONS APPLICABLE TO ENTERPRISES EMPLOYING 50 OR MORE BUT FEWER THAN 100 EMPLOYEES

31. An employer whose enterprise employs 50 or more but fewer than 100 employees shall establish, in accordance with this Act, a pay equity plan applicable throughout his enterprise.

The employer may, except as regards establishments covered by an agreement under the second paragraph of section 32, apply to the Commission for authorization to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities.

The employer may elect to set up a pay equity committee in accordance with sections 16 to 29.

1996, c. 43, s. 31.

32. At the request of a certified association representing employees of the enterprise, the employer and the association shall establish jointly a pay equity plan applicable to those employees throughout the enterprise or one or more plans applicable to those employees in accordance with the authorization obtained under the second paragraph of section 31.

As well, the employer and a certified association representing employees of the enterprise may agree to establish one or more separate plans applicable to those employees in one or more establishments of the enterprise that are not covered by an authorization under the second paragraph of section 31. The employer and two or more certified associations may agree likewise. In either case, the employer may then establish a separate plan applicable to employees not represented by a certified association.

As regards the joint establishment of a pay equity plan, the employer and the certified association have the same obligations as those imposed on a pay equity committee by Chapter IV.

Section 29, adapted as required, shall apply.

1996, c. 43, s. 32; 2009, c. 9, s. 10.

33. Sections 12 to 15, adapted as required, shall apply.

1996, c. 43, s. 33.

DIVISION III

PROVISIONS APPLICABLE TO ENTERPRISES EMPLOYING FEWER THAN 50 EMPLOYEES

34. An employer whose enterprise employs fewer than 50 employees shall determine the adjustments in compensation required to afford the same remuneration, for work of equal value, to employees holding positions in predominantly female job classes as to employees holding positions in predominantly male job classes. The employer must ensure that the process does not discriminate on the basis of gender.

The employer may elect to establish a pay equity plan subject to the same conditions as those applicable to enterprises employing 50 or more employees. In such case, the employer shall send a notice to the Commission and post a copy in a prominent place easily accessible to employees.

1996, c. 43, s. 34.

35. An employer shall, at the expiry of the time limit set out in section 37, post the following for 60 days in prominent places easily accessible to employees:

(1) a summary of the pay equity process;

(2) a list of the predominantly female job classes identified in the enterprise;

(3) a list of the predominantly male job classes used as comparators; and

(4) for each predominantly female job class, the percentage or amount of the compensation adjustments to be paid and the terms and conditions of payment or, where no compensation adjustments are required, a notice to that effect.

The posting shall be dated and shall also include information concerning the rights exercisable under section 76 and the remedies available under section 99. 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.

1996, c. 43, s. 35; 2009, c. 9, s. 11; 2019, c. 4, s. 2.

36. Sections 12 to 15, adapted as required, shall apply.

The provisions governing the terms and conditions of payment of compensation adjustments contained in sections 70 to 74 shall apply to the employer.

1996, c. 43, s. 36.

DIVISION IV

TIME FRAME

37. The adjustments in compensation required to achieve pay equity must be determined or a pay equity plan must be completed within four years after the employer becomes subject to this Act.

1996, c. 43, s. 37; 2009, c. 9, s. 12.

38. In an enterprise where there are no predominantly male job classes, the adjustments in compensation must be determined or the pay equity plan must be completed either within the time limit set out in section 37 or within two years of the coming into force of the regulation made by the Commission under subparagraph 1 or 2 of the first paragraph of section 114, whichever time limit expires last.

1996, c. 43, s. 38.

39. *(Repealed).*

1996, c. 43, s. 39; 2009, c. 9, s. 13.

DIVISION V

Repealed, 2009, c. 9, s. 14.

2009, c. 9, s. 14.

40. *(Repealed).*

1996, c. 43, s. 40; 2006, c. 6, s. 7; 2009, c. 9, s. 14.

41. *(Repealed).*

1996, c. 43, s. 41; 2009, c. 9, s. 14.

42. *(Repealed).*

1996, c. 43, s. 42; 2009, c. 9, s. 14.

43. *(Repealed).*

1996, c. 43, s. 43; 2009, c. 9, s. 14.

CHAPTER III

SECTOR-BASED PAY EQUITY COMMITTEE

44. A joint sector-based association, one or more employers' associations and one or more employees' associations, a parity committee or any other group recognized by the Commission, including a regional group, may, with the approval of the Commission, form a sector-based pay equity committee for a sector of activity.

1996, c. 43, s. 44.

45. A sector-based pay equity committee shall be composed of an equal number of representatives of employers and representatives of employees. The Commission shall lend assistance to the committee.

1996, c. 43, s. 45.

46. The mandate of a sector-based pay equity committee is to facilitate the work of pay equity committees, or of employers in the absence of such committees, in establishing pay equity plans, by developing the following elements:

(1) the identification of major predominantly female job classes and of major predominantly male job classes;

(2) the description of the method and tools to be used to determine the value of such job classes;

(3) the determination of a value determination procedure.

A sector-based committee may also develop any other element relative to pay equity plans.

No element developed by a sector-based committee may discriminate on the basis of gender.

1996, c. 43, s. 46.

46.1. A sector-based pay equity committee may submit the elements developed under section 46 to the Commission for approval.

Elements approved by the Commission cannot be the subject of a remedy before the Commission.

2009, c. 9, s. 15.

46.2. A sector-based pay equity committee shall send the documents pertaining to the elements developed under section 46 to the pay equity committees, or to the employers and certified associations referred to in section 32 in the absence of a pay equity committee.

It shall attach a notice setting out which elements have been approved by the Commission, if any.

2009, c. 9, s. 15.

47. Elements developed under section 46 may be used in determining adjustments in compensation or in establishing a pay equity plan within an enterprise in the sector concerned. The plan shall, nevertheless, be completed so as to satisfy the other requirements of this Act.

1996, c. 43, s. 47; 2009, c. 9, s. 16.

48. The Commission shall, on the request of a pay equity committee, or on request of the employer or a certified association referred to in section 32 in the absence of such a committee, furnish the documents pertaining to elements developed under section 46 that the Commission has approved.

1996, c. 43, s. 48.

49. *(Repealed).*

1996, c. 43, s. 49; 2009, c. 9, s. 17.

CHAPTER IV

PAY EQUITY PLAN

DIVISION I

GENERAL PROVISIONS

50. A pay equity plan shall include

(1) the identification of the predominantly female job classes and of the predominantly male job classes in the enterprise;

(2) the description of the method and tools selected to determine the value of job classes and the development of a value determination procedure;

(3) the determination of the value of the job classes, a comparison between them, the valuation of differences in compensation and the determination of the required adjustments;

(4) the terms and conditions of payment of the adjustments in compensation.

1996, c. 43, s. 50.

51. The employer must ensure that no element of the pay equity plan discriminates on the basis of gender and that all elements are applied on a gender neutral basis.

1996, c. 43, s. 51.

52. Where more than one pay equity plan is being established in an enterprise and, within the scope of a plan, no predominantly male job classes have been identified, the predominantly female job classes to which the plan applies shall be compared with male job classes throughout the enterprise.

1996, c. 43, s. 52.

DIVISION II

IDENTIFICATION OF JOB CLASSES

53. The pay equity committee, or the employer in the absence of such a committee, shall identify predominantly female job classes and predominantly male job classes.

1996, c. 43, s. 53.

54. For the purpose of identifying predominantly female job classes and predominantly male job classes, positions held by employees which have the following common characteristics shall be grouped together:

(1) similar duties or responsibilities;

(2) similar required qualifications;

(3) the same remuneration, that is, the same rate or scale of compensation.

The remuneration in a job class is the highest rate of compensation or the maximum in the compensation scale applicable to the positions within the class.

A job class may consist of only one position.

1996, c. 43, s. 54.

55. A job class may be considered predominantly female or male if

(1) it is commonly associated with women or men owing to gender-based occupational stereotyping;

(2) 60% or more of the positions in that class are held by employees of the same sex;

(3) the difference between the rate of representation of women or men in the job class and their rate of representation in the total workforce of the employer is considered significant; or

(4) the historical incumbency of the job class in the enterprise shows that it is a predominantly female or predominantly male job class.

1996, c. 43, s. 55; 2009, c. 9, s. 18.

DIVISION III

JOB CLASS VALUE DETERMINATION METHOD

56. The method selected by the pay equity committee, or by the employer in the absence of such a committee, for determining the value of job classes must allow the predominantly female job classes to be compared with predominantly male job classes.

It must highlight the specific characteristics of predominantly female job classes and those of predominantly male job classes.

1996, c. 43, s. 56.

57. The value determination method must take the following factors into account in respect of each job class:

(1) required qualifications;

(2) responsibilities;

(3) effort required;

(4) the conditions under which the work is performed.

1996, c. 43, s. 57.

58. The pay equity committee, or the employer in the absence of such a committee, shall determine the tools and devise the procedure to be used to determine the value of job classes.

1996, c. 43, s. 58.

DIVISION IV

DETERMINATION OF VALUE OF JOB CLASSES, VALUATION OF DIFFERENCES IN COMPENSATION AND DETERMINATION OF REQUIRED ADJUSTMENTS

59. The pay equity committee, or the employer in the absence of such a committee, shall determine the value of each predominantly female job class and of each predominantly male job class using the value determination method selected.

1996, c. 43, s. 59.

60. The pay equity committee, or the employer in the absence of such a committee, shall compare predominantly female job classes and predominantly male job classes so as to valuate the differences in compensation between them.

1996, c. 43, s. 60.

61. Differences in compensation between a predominantly female job class and a predominantly male job class may be valuated on an overall or individual basis or according to any other method for valuating differences in compensation that is prescribed by regulation of the Commission or authorized by the Commission on application by the pay equity committee, or the employer in the absence of such a committee.

1996, c. 43, s. 61; 2009, c. 9, s. 19.

62. Valuation on an overall basis shall be effected by comparing each predominantly female job class with the earning curve of all predominantly male job classes.

1996, c. 43, s. 62.

63. Valuation on an individual basis shall be effected according to the job-to-job method of comparison, that is, by comparing a predominantly female job class with a predominantly male job class of equal value.

In applying the job-to-job method of comparison, where there are two or more predominantly male job classes of equal value but with different remuneration, comparisons are made on the basis of the average remuneration for those job classes.

Where the job-to-job method of comparison cannot be applied to a predominantly female job class, its remuneration shall be valuated proportionately to the remuneration of the predominantly male job class the value of which is closest to its value.

1996, c. 43, s. 63.

64. No method of comparison may be used which excludes a predominantly female job class.

1996, c. 43, s. 64.

65. For the purposes of the valuation of differences in compensation, remuneration includes flexible pay if it is not equally available to all the job classes that are the subject of the comparison.

Flexible pay includes merit and performance pay and income from gain-sharing schemes.

1996, c. 43, s. 65.

66. Where benefits having pecuniary value are not equally available to all the job classes that are the subject of the comparison, the value thereof must be determined and must be included in the remuneration for the purpose of determining differences in compensation.

Benefits having pecuniary value include, in addition to indemnities and bonuses,

(1) the various forms of paid leave including sick leave, family-related and parental leave, vacation and holidays, rest and meal periods and other benefits of that nature;

(2) retirement and group protection plans including pension funds, health and disability insurance and other group plans of that nature;

(3) non-salary benefits including the supply and maintenance of tools and uniforms or other clothing, except where required under the Act respecting occupational health and safety (chapter S-2.1) or except where the uniforms or other clothing are a job requirement, parking privileges, meal allowances, the supply of vehicles, payment of professional dues, paid educational leave, reimbursement of tuition fees, low-interest loans and other benefits of that nature.

1996, c. 43, s. 66.

67. For the purpose of valuating differences in compensation, differences between job classes based on any of the following factors shall not be taken into account:

(1) seniority, unless this factor is applied so as to discriminate on the basis of gender;

(2) an assignment of fixed duration, such as an employee training, development or orientation assignment;

(3) the region in which the employee works, unless this factor is applied so as to discriminate on the basis of gender;

(4) a shortage of skilled workers;

(5) the temporary maintenance of a person’s compensation following a reclassification or demotion, so that the person is not penalized due to a new rate of compensation or compensation scale, provided the compensation applicable to the employees in the same job class catches up to the person’s compensation within a reasonable time;

(5.1) a handicapped person’s compensation under a special arrangement;

(6) non-enjoyment of benefits having pecuniary value by reason of the temporary, casual or seasonal nature of a position.

1996, c. 43, s. 67; 2009, c. 9, s. 20.

68. The pay equity committee, or the employer in the absence of such a committee, shall determine the adjustments required to eliminate differences in compensation.

1996, c. 43, s. 68.

DIVISION V

TERMS AND CONDITIONS OF PAYMENT OF COMPENSATION ADJUSTMENTS

69. The employer shall determine the terms and conditions of payment of adjustments in compensation after consultation, where applicable, with the pay equity committee or with the certified association referred to in section 32.

1996, c. 43, s. 69.

70. Adjustments in compensation may be spread over a maximum period of four years.

Where adjustments in compensation are spread over time, the instalments must be annual and equal in amount.

1996, c. 43, s. 70.

71. The employer shall make the first adjustments in compensation under a pay equity plan on the date by which the plan must be completed or, in the case of an enterprise employing fewer than 50 employees, on the date by which adjustments in compensation must be determined.

If the employer fails to make adjustments in compensation within the applicable time limits, the unpaid adjustments shall bear interest at the legal rate from the time as of which they were payable.

1996, c. 43, s. 71.

72. The Commission may, subject to the conditions it determines, authorize an employer who shows that he is unable to pay the adjustments in compensation to extend by a maximum of three years the period over which the adjustments are spread.

The Commission may, however, where it has reasonable grounds to believe that the financial situation of the employer has improved, order payment of the adjustments or determine new terms and conditions.

The Commission may, for such purposes, require of the employer that he furnish any document or information and that he report on any steps he has taken to obtain a loan from a financial institution.

1996, c. 43, s. 72.

73. An employer shall not, in order to achieve pay equity, reduce the remuneration payable to any employee holding a position in his enterprise. For the purposes of this section, remuneration includes flexible pay and benefits having pecuniary value.

1996, c. 43, s. 73.

74. Adjustments in compensation in respect of predominantly female job classes and the terms and conditions of payment thereof determined in accordance with this Act are deemed to form part of the

collective agreement or the conditions of employment applicable to employees holding positions in those job classes.

1996, c. 43, s. 74; 2006, c. 6, s. 8.

DIVISION VI

POSTING

75. Upon completion of the stages of the pay equity plan provided for in paragraphs 1 and 2 of section 50, the pay equity committee, or the employer in the absence of such a committee, shall post the results thereof for 60 days in prominent places easily accessible to the employees concerned by the plan, together with information concerning the rights exercisable under section 76 and the time within which they may be exercised.

The committee or employer shall do likewise upon completion of the stages of the pay equity plan provided for in paragraphs 3 and 4 of section 50. The posting shall include a description of the method used to valuate differences in compensation. The results of these stages shall be posted with a copy of those already posted under the first paragraph.

A posting under this section shall be dated.

1996, c. 43, s. 75; 2009, c. 9, s. 21; 2019, c. 4, s. 3.

76. Within 60 days of the date of a posting under section 35 or 75, any employee may, in writing, request additional information from or make observations to the pay equity committee, or the employer in the absence of such a committee.

The pay equity committee, or the employer in the absence of such a committee, shall make a new 60-day posting within 30 days of the expiry of the time limit set out in the first paragraph, with any amendments clearly indicated or with an indication that no amendments are needed. The posting shall be dated and, in the absence of a pay equity committee, 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.

1996, c. 43, s. 76; 2009, c. 9, s. 22; 2019, c. 4, s. 4.

CHAPTER IV.1

PAY EQUITY AUDIT

2009, c. 9, s. 23.

76.1. After a pay equity plan has been completed or adjustments in compensation have been determined under Division III of Chapter II, an employer shall periodically conduct a pay equity audit in his enterprise.

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.

Every five years from the date of the posting under the first paragraph of section 35, the second paragraph of section 75 or section 76.3, or if the posting was not made within the time limit, from the date on which it should have been made, the pay equity audit and postings prescribed by this chapter must be conducted or made.

When pay equity plans have been completed or adjustments in compensation determined on different dates within the same enterprise, the pay equity audit and postings prescribed by this chapter may be conducted or made according to the different time limits applicable, or simultaneously for part or all of the enterprise. In the latter case, the time limit applicable is the shortest.

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

2009, c. 9, s. 23; 2019, c. 4, s. 5.

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.

2019, c. 4, s. 6.

76.2. Regardless of the number of employees in his enterprise, the employer shall decide whether a pay equity audit is to be conducted

(1) by the employer alone;

(2) by a pay equity audit committee; or

(3) jointly by the employer and the certified association.

Sections 17 to 30.1 apply to a pay equity audit committee, with the necessary modifications. Section 29 applies, with the necessary modifications, when a pay equity audit is conducted jointly by the employer and the certified association.

2009, c. 9, s. 23; 2019, c. 4, s. 7.

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.

2019, c. 4, s. 8.

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.

2009, c. 9, s. 23; 2019, c. 4, s. 9.

76.4. Within 60 days of the date of a posting under section 76.3, any employee may, in writing, request additional information from or make observations to the pay equity audit committee, or the employer in the absence of such a committee.

Within 30 days of the expiry of the time limit set out in the first paragraph, the pay equity audit committee, or the employer in the absence of such a committee, shall make a new 60-day posting, 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.

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.

2009, c. 9, s. 23; 2019, c. 4, s. 10.

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.

2009, c. 9, s. 23; 2019, c. 4, s. 11.

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.

2019, c. 4, s. 11.

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.

2019, c. 4, s. 11.

76.6. Adjustments in compensation in respect of predominantly female job classes determined in accordance with this chapter are deemed to form part of the collective agreement or the conditions of employment applicable to employees holding positions in those job classes.

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.

2009, c. 9, s. 23; 2019, c. 4, s. 12.

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.

2019, c. 4, s. 13.

76.7. Two or more employers may develop a common procedure for the conduct of a pay equity audit in their respective enterprises. The development of a common procedure requires the agreement of the pay equity audit committee of each of the enterprises that has a committee, or of the certified association if the pay equity audit is conducted jointly.

Each employer remains responsible for the conduct of the pay equity audit in his enterprise in accordance with the other requirements of this chapter.

In addition, a sector-based pay equity audit committee may be formed for a sector of activity. Chapter III applies to such a committee, with the necessary modifications.

2009, c. 9, s. 23.

76.8. The employer shall keep the information used to conduct the pay equity audit and the content of all postings for a period of six years from the date of the new posting under the second paragraph of section 76.4. 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.

2009, c. 9, s. 23; 2019, c. 4, s. 14.

76.9. No employer, certified association, bargaining agent appointed under the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2) or member of a pay equity audit committee may, as regards the maintenance of pay equity, act in bad faith or in an arbitrary or discriminatory manner or exhibit gross negligence with regard to employees in the enterprise.

2009, c. 9, s. 23.

CHAPTER IV.2

CHANGED CIRCUMSTANCES IN ENTERPRISE

2009, c. 9, s. 23.

76.10. If, before the completion of a pay equity plan or a pay equity audit in an enterprise, an association is certified under the Labour Code (chapter C-27) to represent employees of the enterprise, obligations relative to the establishment of the plan or the conduct of the audit remain unchanged.

The employer may, at the request of the certified association, elect to establish a pay equity plan applicable to the employees represented by the association.

2009, c. 9, s. 23.

76.11. The alienation of an enterprise or the modification of its legal structure shall have no effect upon obligations relative to adjustments in compensation, a pay equity plan or a pay equity audit, which shall be binding on the new employer.

If the legal structure of two or more enterprises is modified as a result of an amalgamation or otherwise, the provisions of this Act which apply according to the number of employees in an enterprise shall, in respect of the enterprise resulting from the modification, be determined to be those applicable to the enterprise which employed the greatest number of employees.

2009, c. 9, s. 23.

CHAPTER V

DUTIES AND POWERS OF THE COMMISSION

2015, c. 15, s. 158.

DIVISION I

Repealed, 2015, c. 15, s. 159.

2015, c. 15, s. 159.

77. *(Repealed).*

1996, c. 43, s. 77; 2015, c. 15, s. 159.

78. *(Repealed).*

1996, c. 43, s. 78; 2015, c. 15, s. 159.

79. *(Repealed).*

1996, c. 43, s. 79; 2015, c. 15, s. 159.

80. *(Repealed).*

1996, c. 43, s. 80; 2015, c. 15, s. 159.

81. *(Repealed).*

1996, c. 43, s. 81; 2015, c. 15, s. 159.

82. *(Repealed).*

1996, c. 43, s. 82; 2015, c. 15, s. 159.

83. *(Repealed).*

1996, c. 43, s. 83; 2015, c. 15, s. 159.

84. *(Repealed).*

1996, c. 43, s. 84; 2015, c. 15, s. 159.

85. *(Repealed).*

1996, c. 43, s. 85; 2015, c. 15, s. 159.

86. *(Repealed).*

1996, c. 43, s. 86; 2015, c. 15, s. 159.

87. *(Repealed).*

1996, c. 43, s. 87; 2000, c. 8, s. 242; 2015, c. 15, s. 159.

88. *(Repealed).*

1996, c. 43, s. 88; 2015, c. 15, s. 159.

89. *(Repealed).*

1996, c. 43, s. 89; 2015, c. 15, s. 159.

89.1. *(Repealed).*

2009, c. 9, s. 24; 2015, c. 15, s. 159.

90. *(Repealed).*

1996, c. 43, s. 90; 2015, c. 15, s. 159.

90.1. *(Repealed).*

2009, c. 9, s. 25; 2015, c. 15, s. 159.

91. *(Repealed).*

1996, c. 43, s. 91; 2009, c. 9, s. 26; 2015, c. 15, s. 159.

92. *(Repealed).*

1996, c. 43, s. 92; 2009, c. 9, s. 27; 2015, c. 15, s. 159.

DIVISION II

Repealed, 2015, c. 15, s. 160.

2015, c. 15, s. 160.

93. For the purposes of this Act, the duties of the Commission shall consist in

(1) overseeing the establishment of pay equity plans, the determination of adjustments in compensation under Division III of Chapter II and the conduct of pay equity audits;

(2) giving advice to the Minister, at his request or on its own initiative, on any matter related to pay equity after consulting, if the Commission sees fit to do so, with the bodies most representative of employers, employees and women;

(3) authorizing an employer to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities;

(3.1) approving the use of predominantly male job classes in an enterprise with characteristics similar to those of the enterprise concerned as comparators under the third paragraph of section 13;

(4) determining the mode of designation of members representing the employees on a pay equity committee or pay equity audit committee, in accordance with the second paragraph of section 21;

(5) determining, on the application of a certified association or of an employee not represented by a certified association, whether the number of employees' representatives on a pay equity committee or pay equity audit committee is in conformity with the provisions of section 20 and, if need be, fix the number of employees' representatives that may be designated;

(5.1) authorizing a mode of designation of representatives to a pay equity committee pay equity audit committee other than that provided for in the first paragraph of section 23;

(5.2) authorizing, in accordance with section 30.1, a committee composition different from that prescribed in subdivision 2 of Division I of Chapter II for a pay equity or pay equity audit committee;

(6) making non-adversary investigations, either on its own initiative or following a dispute referred to in section 96 or 98 or following a complaint under section 96.1, 97, 99, 100, 101 or 107 and, where expedient, determining the measures to be taken to ensure that the provisions of this Act are being complied with;

(7) making non-adversary investigations following a complaint under section 19 of the Charter of human rights and freedoms (chapter C-12) filed by an employee of an enterprise employing fewer than 10 employees, alleging discrimination in compensation between a predominantly female job class and a predominantly male job class;

(8) lending assistance to enterprises by developing tools to facilitate the implementation of pay equity plans and the conduct of pay equity audits;

(9) developing tools to facilitate the achievement of pay equity in enterprises employing fewer than 50 employees;

(10) fostering the creation of sector-based pay equity committees, assisting them in their work and approving, where expedient, the pay equity plan or pay equity audit elements developed by such committees;

(11) fostering a coordination of efforts within enterprises for the implementation of pay equity plans and the conduct of pay equity audits, and encouraging the participation of the persons concerned;

(12) assisting in the training of pay equity committee and pay equity audit committee members;

(13) disseminating information designed to promote understanding and acceptance of the purpose and provisions of this Act; and

(14) conducting research and studies on any matter related to pay equity, in particular by means of consultations with any person having an interest in working environments where there are no predominantly male job classes.

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.

The Commission must make sure that the information concerning enterprises that it obtains in the course of its information and assistance activities is not used for the purposes of investigations or in the processing of a complaint or dispute.

1996, c. 43, s. 93; 2006, c. 6, s. 9; 2009, c. 9, s. 28; 2019, c. 4, s. 15.

94. The Commission may, in exercising the duties and powers assigned to it by this Act,

(1) form committees and determine their powers and duties and their operating rules;

(2) retain the services of experts selected from a list drawn up by the Minister after consulting with the bodies most representative of employers, employees and women;

(3) entrust an investigation to a person other than a member of its personnel, with the obligation to submit a report within a specified time;

(4) enter into an agreement with a department or body of the Gouvernement du Québec or with a person, association, partnership or agency, for such purposes as the administration of a regulation made by the Minister under the second paragraph of section 4; and

(5) require any relevant information.

1996, c. 43, s. 94; 2009, c. 9, s. 29; 2015, c. 15, s. 161.

95. The Commission may, after the expiry of the time limit set out in section 37 or 76.1, require of an employer that he produce, within the time it specifies, a report describing the measures he has taken to achieve or maintain pay equity.

The report shall be drawn up in the form determined and contain the information prescribed by regulation of the Commission.

1996, c. 43, s. 95; 2009, c. 9, s. 30.

CHAPTER V.1

PAY EQUITY ADVISORY COMMITTEE

2009, c. 9, s. 31; 2019, c. 4, s. 25.

95.1. The Minister shall, by an order published in the *Gazette officielle du Québec*, create a pay equity advisory committee whose role is to provide its opinion on any matter that the Minister or the Commission submits to it concerning the carrying out of this Act.

The advisory committee shall be formed of an equal number of members representing employers and members representing employees. At least two of the latter shall represent employees who do not belong to a

certified association, and at least two shall represent employees who belong to a certified association. The members shall be appointed after consultation with bodies which, in the Minister's view, are representative of employers and employees.

The order may specify how the advisory committee is to carry out its consultations and set out the committee's operating rules.

2009, c. 9, s. 31; 2019, c. 4, s. 25.

95.2. Meetings of the pay equity advisory committee shall be called and chaired by the vice-chairman of the Commission who is responsible for matters relating to this Act. The Commission shall assume the secretarial work for the committee. The secretary designated by the Commission shall see to the preparation and conservation of the minutes and opinions of the committee.

2009, c. 9, s. 31; 2015, c. 15, s. 162; 2019, c. 4, s. 25.

95.3. The members of the pay equity advisory committee shall receive no remuneration except in the cases, on the conditions and to the extent determined by the ministerial order. They shall, however, be entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the ministerial order.

2009, c. 9, s. 31; 2019, c. 4, s. 25.

95.4. The Commission shall seek the pay equity advisory committee's opinion

(1) on any regulation it intends to make under this Act;

(2) on any tools it intends to propose in order to facilitate the achievement or maintenance of pay equity;

(3) on any problems encountered in the carrying out of this Act; and

(4) on any other matter that it sees fit to submit to the committee or that the Minister determines.

The pay equity advisory committee's opinions shall not be binding on the Commission.

2009, c. 9, s. 31; 2015, c. 15, s. 163; 2019, c. 4, s. 25.

CHAPTER VI

REMEDIES

DIVISION I

POWERS OF INTERVENTION OF THE COMMISSION

96. Where the representatives of the employees and the representatives of the employers on a pay equity committee or pay equity audit committee cannot agree as to the application of this Act, one of the parties shall submit the dispute to the Commission in writing.

1996, c. 43, s. 96; 2009, c. 9, s. 32.

96.1. In the absence of a pay equity committee in an enterprise employing 100 or more employees, an employee covered by a pay equity plan or a certified association representing employees in the enterprise may file a complaint with the Commission within 60 days after the expiry of the time limit for a new posting set out in the second paragraph of section 76.

An employee or a certified association representing employees in such an enterprise may file a complaint with the Commission, despite the existence of a pay equity committee in the enterprise, if a pay equity plan has not been completed.

2009, c. 9, s. 33.

97. An employee or a certified association representing employees of an enterprise employing 50 or more but fewer than 100 employees who is not covered by a pay equity plan referred to in section 32 may, in the absence of a pay equity committee, within 60 days after the expiry of the time limit for a new posting set out in the second paragraph of section 76, file a complaint with the Commission if he is of the opinion that the employer has not established a pay equity plan in accordance with this Act.

An employee or a certified association representing employees in such an enterprise may file a complaint with the Commission, despite the existence of a pay equity committee in the enterprise, if a pay equity plan has not been completed.

1996, c. 43, s. 97; 2009, c. 9, s. 34.

98. Where a certified association referred to in section 32 or subparagraph 3 of the first paragraph of section 76.2 and the employer cannot agree as to the application of this Act, one of the parties shall submit the dispute to the Commission in writing.

1996, c. 43, s. 98; 2015, c. 15, s. 164.

99. An employee or a certified association representing employees in an enterprise employing fewer than 50 employees may, after the expiry of the time limit set out in section 37, file a complaint with the Commission if the employee or association is of the opinion that the employer has not determined the required adjustments in compensation.

It is incumbent upon the employer to show that the remuneration afforded to his employees in a predominantly female job class is at least equal to that afforded, for equivalent work, to his employees in a predominantly male job class. Where necessary, the Commission shall determine the measures to be taken by the employer and the time alloted for their implementation.

The remedy under the first paragraph may not be exercised if the employer has conducted a pay equity audit in his enterprise in accordance with Chapter IV.1.

Where the employer has elected to establish a pay equity plan, section 96.1, adapted as required, shall apply.

1996, c. 43, s. 99; 2009, c. 9, s. 35.

100. An employee covered by a pay equity audit conducted by the employer alone, or a certified association representing such employees, may file a complaint with the Commission within 60 days of the expiry of the time limit for a new posting set out in the second paragraph of section 76.4 if the employee or association is of the opinion that the employer has not conducted the pay equity audit in accordance with this Act.

An employee or a certified association representing employees in an enterprise may file a complaint with the Commission when a pay equity audit has not been conducted and the related postings have not been made.

1996, c. 43, s. 100; 2009, c. 9, s. 36.

101. An employee may file a complaint with the Commission in respect of a contravention of section 15 or 76.9 within 60 days of the contravention or of the time the employees became aware thereof.

The Commission shall determine the measures to be taken to restore the employee's rights and, where applicable, any measure required for the achievement or maintenance of pay equity in accordance with this Act.

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.

1996, c. 43, s. 101; 2009, c. 9, s. 37; 2019, c. 4, s. 16.

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.

2019, c. 4, s. 17.

101.1. An employer may apply to the Commission for an extension of the time limit for completing a pay equity plan, determining compensation adjustments or conducting a pay equity audit if the employer's ability to meet the time limits set under this Act is compromised by a complaint or a dispute under this Act.

The new time limit has no impact on the date on which compensation adjustments are to be paid but the prescription period for compensation adjustments that is set out in section 103.1 is to be extended accordingly.

2009, c. 9, s. 38.

102. Following a complaint or a dispute, the Commission shall investigate the matter and endeavour to effect a settlement between the parties.

1996, c. 43, s. 102.

102.1. The Commission shall not, during the investigation of a complaint, disclose the identity of the employee concerned, unless the employee consents. The Commission shall, however, inform the employer of the substance of the complaint and of the date on which and provision under which it was filed. The Commission shall likewise inform the certified association, the bargaining agent or the pay equity or pay equity audit committee member against whom a complaint for a contravention of section 15 or 76.9 has been filed.

2009, c. 9, s. 39.

102.2. The Commission may, at any time during an investigation, if the parties consent, appoint a conciliator to meet with them and try to facilitate an agreement between them.

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.

Nothing said or written in the course of conciliation may be admitted as evidence, unless the parties consent.

A conciliator may not be compelled to disclose anything revealed to or learned by him in the exercise of conciliation functions or to produce personal notes or a document prepared or obtained in the course of those functions before a court of justice or a person or body exercising judicial functions or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person shall have a right of access to such a document, unless the document provides the basis for the agreement between the parties.

2009, c. 9, s. 39; 2019, c. 4, s. 18.

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.

2019, c. 4, s. 19.

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.

2019, c. 4, s. 19.

103. An agreement shall be evidenced in writing and any documents to which it refers shall be attached to it. Subject to section 103.0.1, the agreement shall be signed by the conciliator and the parties, shall be binding on the parties and shall settle the complaint or dispute to which it pertains.

1996, c. 43, s. 103; 2009, c. 9, s. 40; 2019, c. 4, s. 20.

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.

2019, c. 4, s. 21.

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.

2019, c. 4, s. 21.

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.

2019, c. 4, s. 21.

103.1. 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.

When conducting an investigation on its own initiative under paragraph 6 of section 93 regarding compensation adjustments that have been determined or a pay equity plan or pay equity audit that has been completed, the Commission may not determine compensation adjustments applicable prior to or require the use of information dating before the date that occurred one year before the date on which the investigation commenced.

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.

2009, c. 9, s. 40; 2019, c. 4, s. 22.

104. Where a party is dissatisfied with the measures determined by the Commission, the party may apply to the Administrative Labour Tribunal within 90 days of the decision of the Commission.

The application shall be made in writing. It shall briefly state the main grounds on which it is based and describe the measures to which it pertains.

The Commission may intervene before the Administrative Labour Tribunal at any time on a matter that puts its jurisdiction into issue or pertains to an interpretation of law and, on the request of the Administrative Labour Tribunal, when an employee is not a union member or the complaint is filed against the certified association or a pay equity or pay equity audit committee member if the employee is not represented.

If the Commission wishes to intervene, it shall send each of the parties and the Administrative Labour Tribunal a notice stating the grounds for its intervention.

1996, c. 43, s. 104; 2001, c. 26, s. 107; 2009, c. 9, s. 41; 2015, c. 15, s. 237.

105. Where the measures determined by the Commission are not implemented to its satisfaction within the allotted time, the Commission shall refer the matter to the Administrative Labour Tribunal.

1996, c. 43, s. 105; 2001, c. 26, s. 108; 2015, c. 15, s. 237.

106. Where the Commission finds, after having investigated on its own initiative, that a provision of this Act is not being complied with, it may refer the matter to the Administrative Labour Tribunal.

1996, c. 43, s. 106; 2001, c. 26, s. 108; 2015, c. 15, s. 237.

107. The Commission may, at the request of an employee or on its own initiative, apply to the Administrative Labour Tribunal for any appropriate measure against any person who takes reprisals against an employee because

(1) the employee is exercising any right conferred on him by this Act;

(2) the employee has provided information to the Commission pursuant to this Act; or

(3) the employee is a witness in a proceeding under this Act.

The employee's request under the first paragraph must be made to the Commission within 30 days of the reprisals.

The Commission may, in particular, request the Administrative Labour Tribunal to order that the injured employee be reinstated, on such date as the Commission des relations du travail considers fair and expedient in the circumstances, in the position he would have held had it not been for the reprisals.

Before the Commission may so apply to the Administrative Labour Tribunal for measures for an employee's benefit, it must obtain the employee's written consent.

1996, c. 43, s. 107; 2001, c. 26, s. 109; 2015, c. 15, s. 237.

108. If it is shown to the satisfaction of the Administrative Labour Tribunal that an employee against whom reprisals have been taken exercised a right set out in the first paragraph of section 107, there is a presumption in his favour that the reprisals were taken against him because he exercised such right and it is incumbent upon the person who exercised the reprisals to prove that they were taken for another good and sufficient reason.

The presumption under the first paragraph shall apply for a minimum period of six months after the date on which the employee exercised his right.

1996, c. 43, s. 108; 2001, c. 26, s. 110; 2015, c. 15, s. 237.

109. Where the Commission does not refer a matter to the Administrative Labour Tribunal under section 107, it shall notify the employee, stating the reasons therefor.

Within 90 days after receiving such notification, the employee may submit the matter to the Administrative Labour Tribunal.

1996, c. 43, s. 109; 2001, c. 26, s. 111; 2015, c. 15, s. 237.

110. Where an employer is dissatisfied with a decision of the Commission under section 72, he may submit the matter to the Administrative Labour Tribunal.

1996, c. 43, s. 110; 2001, c. 26, s. 112; 2015, c. 15, s. 237.

110.1. Upon receipt of an application, the Administrative Labour Tribunal shall send a copy to the Commission.

2009, c. 9, s. 42; 2015, c. 15, s. 237.

111. The Commission shall refuse or cease to act in favour of the employee or complainant where the employee or complainant so requests, subject to the Commission's ascertaining that such request is made freely and voluntarily.

The Commission may refuse or cease to act in favour of the employee or complainant where

(1) the employee or complainant does not have a sufficient interest; or

(2) the complaint is frivolous, vexatious or made in bad faith.

The decision of the Commission shall state in writing the reasons on which it is based and indicate any remedy which the Commission may consider appropriate; it shall be notified to the employee or complainant. Within 90 days after receiving such notification, the employee or complainant may submit the matter to the Administrative Labour Tribunal.

1996, c. 43, s. 111; 2001, c. 26, s. 113; 2015, c. 15, s. 237.

DIVISION II

JURISDICTION OF THE ADMINISTRATIVE LABOUR TRIBUNAL

2001, c. 26, s. 114; 2015, c. 15, s. 237.

112. The Administrative Labour Tribunal is competent to hear and dispose of any matter referred to it regarding the application of this Act.

1996, c. 43, s. 112; 2001, c. 26, s. 115; 2015, c. 15, s. 237.

113. Decisions of the Administrative Labour Tribunal are without appeal.

1996, c. 43, s. 113; 2001, c. 26, s. 116; 2015, c. 15, s. 237.

CHAPTER VII

REGULATORY PROVISIONS

114. The Commission may make regulations

(1) for the purposes of the determination of adjustments in compensation or the conduct of a pay equity audit in an enterprise employing fewer than 50 employees where there are no predominantly male job classes, determining typical job classes on the basis of job classes identified in enterprises in which adjustments in compensation have already been determined and prescribing standards or weighting factors to be applied to the valuation of differences in compensation between such job classes, with due regard, in particular, for the characteristics of enterprises whose job classes are to be so compared;

(2) for the purposes of the establishment of a pay equity plan or the conduct of a pay equity audit in an enterprise where there are no predominantly male job classes, determining typical job classes on the basis of job classes identified in enterprises, in which a pay equity plan has already been completed, prescribing methods to be used to determine the value of those job classes and to valuate the differences in compensation between the typical job classes and the job classes in an enterprise and prescribing standards or weighting factors to be applied to such differences, with due regard, in particular, for the characteristics of enterprises whose job classes are to be so compared;

(3) determining, for the purposes of section 61, other methods for the valuation of differences in compensation;

(4) determining the form of the reports provided for in sections 95 and 120 and the content of the reports provided for in section 120;

(5) specifying the required content of a posting under this Act or identifying new required content; and

(6) specifying the information an employer must keep under section 14.1 or 76.8.

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

Regulations of the Commission made under this Act are subject to the approval of the Government and may be amended by the Government upon approval.

1996, c. 43, s. 114; 2009, c. 9, s. 43; 2015, c. 15, s. 165; 2019, c. 4, s. 23.

CHAPTER VII.1

FINANCING

2015, c. 15, s. 166.

114.1. The expenses incurred for the purposes of this Act are paid out of the contributions collected under Chapter III.1 of the Act respecting labour standards (chapter N-1.1).

2015, c. 15, s. 166.

CHAPTER VIII

PENAL PROVISIONS

115. Whoever

(1) contravenes the second paragraph of section 4, the first paragraph of section 10, section 14, 14.1, 15, 16 or 23, the second paragraph of section 29, the first paragraph of section 31, section 34, 35, 71, 73 or 75, the second paragraph of section 76, section 76.1, 76.2.1 or 76.3, the second paragraph of section 76.4 or section 76.5.2, 76.6.1, 76.8 or 76.9,

(2) fails to send a report, a document or information required under this Act, or provides false information,

(3) takes or attempts to take reprisals as described in section 107, or

(4) hinders or attempts to hinder the Commission, a member or mandatary of the Commission or a member of its personnel in the performance of its or his duties,

is guilty of an offence and is liable to a fine.

The fine shall be of

(1) not less than $1,000 nor more than $15,000 in the case of an employer whose enterprise employs fewer than 50 employees;

(2) not less than $2,000 nor more than $30,000 in the case of an employer whose enterprise employs 50 or more but fewer than 100 employees;

(3) not less than $3,000 nor more than $45,000 in the case of an employer whose enterprise employs 100 or more employees; and

(4) not less than $1,000 nor more than $15,000 in the case of any other person.

For a second or subsequent offence, the amounts set out in the second paragraph shall be doubled.

1996, c. 43, s. 115; 2009, c. 9, s. 44; 2019, c. 4, s. 24.

116. Any person who aids, encourages, counsels, allows, authorizes or orders another person to commit an offence under this Act is guilty of an offence.

A person found guilty under this section is liable to the penalty prescribed in section 115.

1996, c. 43, s. 116.

117. In determining the amount of a fine, the court shall take particular account of the injury suffered and the benefits derived from the commission of the offence.

1996, c. 43, s. 117.

118. Penal proceedings for an offence against this Act may be instituted by the Commission.

1996, c. 43, s. 118.

CHAPTER IX

PROVISIONS APPLICABLE TO PAY EQUITY OR RELATIVITY PLANS ALREADY COMPLETED OR IN PROGRESS

119. A pay equity or relativity plan completed before 21 November 1996 is deemed to have been established in accordance with this Act if it includes

(1) an identification of job classes and an indication of the proportion of women in each job class;

(2) a description of the methods and tools used to determine the value of job classes and a value determination procedure having taken into account such factors as required qualifications, responsibilities, the effort required and the conditions under which the work is performed; and

(3) a method for valuating differences in compensation.

In addition, the plan must have allowed each predominantly female job class to be compared with predominantly male job classes.

The employer must have ensured that no element of the pay equity or relativity plan discriminates on the basis of gender and that all elements are applied on a gender neutral basis.

The same applies to a pay equity or relativity plan in progress on 21 November 1996, if on that date it also meets either of the following conditions:

(1) the plan is completed in respect of at least 50% of predominantly female job classes concerned; or

(2) the determination of the value of job classes has begun.

1996, c. 43, s. 119.

120. Every employer whose pay equity or relativity plan was completed before 21 November 1996 shall, within 12 months of 21 November 1997, send the Commission a report describing the plan and containing the information referred to in section 119.

The same applies to every employer whose pay equity or relativity plan is in progress on 21 November 1996. In such a case, the report must also indicate the degree of completion of the plan.

The employer shall post the report sent to the Commission and forward it to any certified association representing employees in the enterprise. Any employee or certified association of the enterprise may, within 90 days of the posting, send observations or comments on the employer's report to the Commission.

The Commission shall determine, on the basis of the information contained in the report, the observations or comments received and the verifications it makes, whether the plan meets the conditions set out in section 119.

1996, c. 43, s. 120.

121. If the Commission determines that the pay equity plan or pay relativity plan does not meet the conditions set out in section 119, it shall indicate to the employer the extent to which the plan falls short of meeting such conditions and determine what corrective measures are required. The employer may submit the matter to the Administrative Labour Tribunal within 90 days of the decision of the Commission.

1996, c. 43, s. 121; 2001, c. 26, s. 117; 2015, c. 15, s. 237.

122. An employer whose pay equity or relativity plan is in progress and has been determined to meet the conditions set out in section 119 shall complete the plan within the time limit set out in section 37 and proceed with the payment of the required adjustments in compensation. In such case, sections 70, 71, 73 and 74, adapted as required, shall apply.

1996, c. 43, s. 122.

123. An employer whose pay equity or relativity plan has been completed and has been determined to meet the conditions set out in section 119 shall, if the required adjustments in compensation have not yet been made, proceed with the payment thereof.

In such case, sections 70, 71, 73 and 74, adapted as required, shall apply. The first adjustments, however, shall be paid within three months of the decision of the Commission des normes, de l'équité, de la santé et de la sécurité du travail or the Administrative Labour Tribunal.

1996, c. 43, s. 123; 2001, c. 26, s. 118; 2015, c. 15, s. 237.

124. An employer whose pay equity or relativity plan has been determined to meet the conditions set out in section 119 shall maintain pay equity or relativity in his enterprise. In such case, the provisions of Division V of Chapter II and of Division I of Chapter VI, adapted as required, shall apply.

1996, c. 43, s. 124.

CHAPTER X

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

125. *(Amendment integrated into c. C-12, s. 19).*

1996, c. 43, s. 125.

126. *(Amendment integrated into c. C-12, s. 49.1).*

1996, c. 43, s. 126.

127. *(Amendment integrated into c. C-12, s. 71).*

1996, c. 43, s. 127.

128. Complaints concerning discrimination in compensation on the basis of gender in violation of section 19 of the Charter of human rights and freedoms (chapter C-12) filed with the Commission des droits de la personne et des droits de la jeunesse before 21 November 1997 shall be examined and disposed of in accordance with the provisions of the Charter that were applicable at that time.

1996, c. 43, s. 128.

129. Upon receipt of a complaint concerning a matter coming under the jurisdiction of the Commission, the Commission des droits de la personne et des droits de la jeunesse shall forward the file to the Commission, which shall thereupon be seized of the matter by operation of law.

1996, c. 43, s. 129.

130. Not later than 28 May 2019, the Minister shall present a report to the Government on the implementation of this Act and on the advisability of maintaining it in force or amending it.

The report shall be tabled by the Minister in the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption.

1996, c. 43, s. 130; 2009, c. 9, s. 45.

131. The sums required for the carrying out of this Act for the fiscal year 1996-97 shall be taken out of the appropriations granted to the Ministère du Travail.

1996, c. 43, s. 131.

132. The Commission des normes, de l’équité, de la santé et de la sécurité du travail is responsible for the administration of this Act.

1996, c. 43, s. 132; 2015, c. 15, s. 237.

133. The Minister of Labour is responsible for the carrying out of this Act.

1996, c. 43, s. 133.

134. *(Omitted).*

1996, c. 43, s. 134.

REPEAL SCHEDULES

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 43 of the statutes of 1996, in force on 1 March 1997, is repealed, except section 134, effective from the coming into force of chapter E-12.001 of the Revised Statutes.

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), sections 1 to 76 and 96 to 133 of chapter 43 of the statutes of 1996, in force on 1 April 1998, are repealed effective from the coming into force of the updating to 1 April 1998 of chapter E-12.001 of the Revised Statutes.