



Applying a nonprofit sector lens to Ontario's Pay Equity Legislation:

A backgrounder



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Ontario's Pay Equity Act is a critical way in which to reduce the gender wage gap for women¹ workers, particularly for those in women-majority sectors like the nonprofit sector. Nonprofit employers have noted a number of challenges related to implementing the legislation, especially because provincial funders do not always pay for it and pay comparisons are often arbitrary and out of date. ONN looks forward to discussing with government how to make the legislation work better for the sector while working with nonprofit employers and employees to better understand the act. The ultimate goal is for pay equity to be effectively advanced in the sector.

Understanding the Act

Ontario's Pay Equity Act came into effect in 1990 and its purpose is to address historical, systemic gender discrimination in compensation between jobs typically performed by women and those typically performed by men. Pay equity benefits women in "pink-collar ghettos" and also men in women-majority jobs, an important factor for all who work in the nonprofit sector, where many job categories are women-majority.

The legislation requires employers to compare pay in "female job classes" with pay in "male job classes"² in order to determine if equivalent categories of work are being paid comparably, and if not then to correct wage levels. Also referred to as "equal pay for work of equal value," pay equity is not about comparing the pay of people in the same jobs³ but rather the pay between job categories that are comparable in value based on a matrix of factors: skill, effort, responsibility and working conditions.

There are three methods to conduct pay equity comparisons: job-to-job, proportional value, or proxy. In the job-to-job method, female job classes are matched directly to male job classes of equal or comparable value for comparison. In the proportional value method the relationship between the value of the work performed and the compensation received for both male and female job classes in an organization are compared. Both the job-to-job and proportional value methods involve comparisons in the same organization. In contrast, the proxy method allows employers who do not have male job classes in their organizations to use male job classes in other organizations as proxy comparators. This method is only applicable to the broader public sector, where some of the nonprofit sector falls for the purposes of this act, and has limited application. It is an important legal provision for the nonprofit sector, in which many organizations have *only* female job classes. In other words, nonprofits often have to look

¹ ONN uses an inclusive definition of women that recognizes and welcomes trans women, queer women, and nonbinary people.

² Job classes are determined by: (a) percentage of male or females in that job class (60 percent of females make it a female job class and 70 percent of males in the job class make it male), (b) if a Review Officer, Hearings Tribunal, or employer in agreement with the bargaining agent, if any, decide so, and (c) regard should be made to the historical incumbency of the job class, gender stereotypes, of fields of work and such other criteria. decides it is a male or female job class.

³ Equal pay for equal work (doing the same job) falls under Ontario's Employment Standards Act, 2000.

outside their organizations to determine the extent to which their women-majority workforces are underpaid.

<p><i>Purpose:</i> The purpose of The Pay Equity Act⁴ is to redress systemic gender discrimination in compensation for work performed by employees in predominantly female job classes.</p>	
<p><i>Applies to:</i> This Act applies to all employers (and their employees) in the private sector in Ontario which employ ten or more employees, and all employers (and employees) in the public sector. Nonprofits can determine if the Act applies to them by reviewing the Appendix in the Schedule⁵ to the Act, where organizations that are considered part of the “public sector” are listed. Some examples include daycare or childcare agencies and nursing homes, legal aid clinics, long-term care facilities, Native friendship centres, community health services, residential care facilities, developmental and rehabilitation services, and sexual assault centres.</p>	
<p><i>Part 1: Requirements for all employers except for private sector employers with fewer than 10 employees.</i></p>	<ul style="list-style-type: none"> ● Determine job classes and their highest rate of compensation. ● Determine the value of job classes based on four factors: skill, effort, responsibility, and working conditions. ● Conduct comparisons for all “female job classes” using one of three methods: job-to-job, proportional value, or proxy method. ● Adjust the wages of underpaid female job classes so that they are paid at least as much as comparable “male job class” going forward.⁶
<p><i>Part 2: Specific requirements that only apply to: private sector employers that had 100 or more employees on January 1, 1988, public sector employers that had employees on January 1, 1988, and public sector employers that did not have employees on January 1, 1988 but that had employees on July 1, 1993.</i></p>	<ul style="list-style-type: none"> ● Compare job classes using a gender-neutral comparison system if both “male” and “female” job classes exist. ● Prepare and post pay equity plan(s) according to the requirements outlined. ● Negotiate all aspects of the pay equity plan with their existing unions in unionized workplaces. ● Ensure that pay equity obligations are met by the old employer when there is a ‘sale of business’ including following the process for developing a new plan if it is ongoing. ● Spend a minimum of one percent of the previous year’s payroll for pay equity adjustments until pay equity is achieved, within the timelines set by the Act. ● Meet original compliance deadline for implementing pay equity.
<p><i>Part 3: Requirements for proxy method for those public sector employers that could not achieve pay equity for female job classes because they had no male job class comparators.</i></p>	<ul style="list-style-type: none"> ● The proxy method of pay equity is only available to those employers in the public sector that had employees on July 1, 1993 and that are specifically described in the Appendix. ● Identify female job classes. ● Select the proxy organization from the Act’s Proxy Schedule⁷. ● Request information from proxy employer. ● Apply proxy comparison method and achieve pay equity.

⁴ Government of Ontario [“Pay Equity Act”](#); Pay Equity Office [“A Guide to Interpreting Ontario’s Pay Equity Act”](#)

⁵ Government of Ontario [“Pay Equity Act”](#)

⁶ Retroactive payments are only applicable if the employer implements pay equity after the deadline. For specific deadlines see: Pay Equity Office [“A Guide to Interpreting Ontario’s Pay Equity Act January 2019”](#) p.19

⁷ Government of Ontario [“Proxy Method of Comparison”](#)

The Gender Wage Gap in Ontario Nonprofits

The Pay Equity Act is a way in which to ensure women are making comparable pay to men where their work is of equal value. It can help mitigate the gender wage gap for women, particularly for women working in nonprofits. The nonprofit sector across Ontario and Canada consists of an estimated 80 percent of women workers, many of whom are the most marginalized workers in the labour market.

As part of our Decent Work for Women in the Nonprofit Sector project, ONN's recent research identified that a gender wage gap exists for women workers in the sector.⁸ We confirmed three aspects of this gap:

- A phenomenon known as the “care penalty,” where wages in the sector are lower in comparison to other sectors because of the traditional association between “care work” and “women’s work”. This is despite the fact that the nonprofit workforce is highly educated, experienced, and performs a wide range of types of work. 2017 Statistics Canada data reveals that the average compensation in community-governed nonprofits was \$42,500, while average compensation for the entire economy was approximately \$59,800.⁹
- Within the sector, women have lower compensation than men (which consists of both wages/salary and benefits). In ONN's survey of 645 Ontario nonprofit workers, racialized, immigrant, and Indigenous women, and women with disabilities reported experiencing the gender wage gap more commonly, as did senior leaders compared to middle managers and front-line/non-management positions. The *2019 Canadian Nonprofit Sector Salary and Benefits Study* by Charity Village report highlights that the gender wage gap between men and women is the greatest at the senior leadership level (17%), where men reported an average salary of \$100,733 and women \$85,760.¹⁰
- Limited access to a pension plan, health benefits, and maternity and parental benefits top-ups together lower women's overall total compensation over the course of their life cycle.

The gender wage gap in the nonprofit sector is a result of various factors. Some of these are unique to the sector, and others exist in the broader labour market. For example, the “care penalty” means the sector's work is devalued and consequently lower paid even in parts of the sector (e.g., arts, sports) that are not related to care work, which is in part due to the fact that it is a woman-majority sector. On the other hand, just as in the broader labour market, unequal gendered negotiating patterns, lack of pay transparency, and discrimination based on different facets of a woman's identity further impact the gap.

⁸ Ontario Nonprofit Network [“Women's Voices - Stories about working in Ontario's Nonprofit Sector”](#)

⁹ Statistics Canada [“Non-profit institutions and volunteering: Economic contribution 2007 to 2017”](#) p. 4

¹⁰ Charity Village “Nonprofit Sector Salary and Benefits Report” p. 29-30

What we heard from our network

While the Pay Equity Act is a critical mechanism for reducing the gender wage gap, the legislation has had unintended consequences in the nonprofit sector. In order to better understand and document the impact of the act in the sector as well as to think of ways to move forward, we convened and connected with various employers, employees and advocates. Below is a summary of what we heard across perspectives. It speaks to a variety of experiences that may not be true for everyone.

<i>Literacy</i>
<ul style="list-style-type: none">● There is a lack of pay equity literacy in the sector. There may be large numbers of nonprofits that are unaware of the legislation and whether it applies to them, and/or do not know how to implement it and are therefore not compliant (e.g., whether they must use the proxy method or not).● Nonprofits risk untimely enforcement of the legislation if they reach out to the Pay Equity Commission for guidance on creating pay equity plans. At times the commission has been helpful and at other times not so much where they enforce the act without any grace period rather than build organizations' capacity to implement it.● Workers also lack literacy as many don't know their pay equity rights, especially in workplaces that are not unionized. If they do and want to bring about a claim, the process is very challenging.● Record-keeping is weak in nonprofit organizations and so there is a lack of paper trails documenting Pay Equity liabilities and plans over the years in some organizations.● There is a lack of clarity around rules and enforcement.● Ministry staff and public servants responsible for transfer payment agreements lack literacy on the legislation, how it applies to the nonprofit sector, and process/policies around funding liabilities causing shortfalls and inconsistencies across funded programs.
<i>Liability</i>
<ul style="list-style-type: none">● Pay Equity liabilities are based on a one-time snapshot of pay differentials from the 1990s and do not reflect actual current wages. It is taking a long time to fill a gap that was assessed in a different time.● Targets keep changing for some organizations that have pay equity plans as wages and cost-of-inflation rise but funding for pay equity does not cover these costs.● Large Pay Equity liabilities have caused some organizations to run deficits, lay people off, cut services, or increase their reliance on precarious and low wage work without benefits.● Some organizations have closed or merged with others as a result of Pay Equity liabilities
<i>Proxy Method</i>
<ul style="list-style-type: none">● Since the nonprofit sector is women-majority, the proxy method required organizations to look for "male job class" comparators, or proxies, outside of the sector usually in municipalities and the public sector. However, not only was wage parity with these proxies difficult to attain but also the sector used many different comparators, creating arbitrary differentials in wage levels across the sector and within subsectors (e.g., child care, housing, health care, and social services).● The proxy method was repealed and reinstated, causing confusion about its application.● When the proxy method was introduced, the provincial government promised funding, but that was a policy decision, rather than written into the legislation, and it was cut after 2 years.

- There is no clarity around how to maintain parity with proxy comparators and if organizations can have access to new external proxy comparators when maintaining pay equity plans.¹¹

Funding

- Organizations have to dedicate one percent of their previous year's payroll budget towards their Pay Equity liability. In order to fulfill that obligation, either organizations have been receiving funding from the ministry that the largest portion of their funding comes from¹² and/or they make up any shortage themselves such as through fundraising. Some organizations don't have the capacity to make up the shortage but are still liable for it and therefore may not be compliant.
- Pay Equity liability funding from provincial ministries has been intermittent and inequitable, and conditions for receiving it unclear. This has caused instability and volatility within organizations.
- Pay equity funding has either stagnated, with no increases to match pay equity increases, or it has stopped entirely.
- It is unclear how pay equity could be affected by the current round of funding transformations. Examples include social service organizations that receive less or no (transfer payment agreement, or TPA) funding from the Province as funding streams move to "direct funding" of individuals/families who then purchase services directly; and employment & training nonprofits that are shifting from provincial TPA funding to a procurement contract model.
- Changes in ministries and mandates makes the government less accountable and reliable in funding Pay Equity liabilities
- Pay equity legislation addresses only a straightforward gender wage gap but does not address wage discrimination for racialized workers, persons with disabilities, or other marginalized groups

Sector Characteristics

- Traditional "male job classes" in the sector (e.g., finance officers) are now often occupied by women who are not seeing their wages grow because most wage growth is going to Pay Equity liabilities in many cases.
- Some subsectors have had their wages frozen because of funding constraints (such as Early Childhood Educators).
- Lack of human resources management capacity in the sector - meaning that sometimes nonprofits have to divert resources from their missions to pay for consultants.
- As the sector changes, and with people retiring or leaving the sector, pay equity legislation expertise and knowledge is diminishing and succession planning to retain institutional pay equity knowledge challenging.
- The employer in nonprofits is a volunteer board, with the ultimate legal and financial responsibility for the organization; board training, knowledge, and transitions are also relevant for institutional knowledge.
- The role of funders in the nonprofit sector impacts organizations' ability to implement the legislation. The provincial government is not aligning its role as regulator with its role as funder (resources are allocated for pay equity for public service employees but not those of nonprofits they fund).

¹¹ [Ontario Nurses' Association and SEIU Local 1 v Participating Nursing Homes, 2019 ONSC 2168 \(Divisional Court File No 362/16 and 364/16\); Participating Nursing Homes v Ontario Nurses' Association and SEIU Local 1 \(Divisional Court File No. 444/16 and 445/16\)](#)

¹² Approx 6-15K nonprofits receive funding from the provincial government, and they tend to be the larger human service organizations for whom the proxy method is available.

- Given funding structures, some positions in organizations may have achieved pay equity while others may not have. This inequity can lead to bad morale within the workforce.
- Within subsectors, some organizations have achieved pay equity while others may not have - for various reasons. Critics may focus on the fact that some nonprofits are non-compliant without looking at how the legislation may be problematic.
- There are no sector-specific tools for the sector to use to create and implement pay equity plans.

Interaction with other labour legislation

- It is unclear how pay equity requirements interact with proposed legislation limiting compensation increases in the public sector and provincially-funded nonprofits (see [Bill 124: Protecting a Sustainable Public Sector for Future Generations Act, 2019](#))
- Currently there are three frameworks in Ontario that all have the goal of helping to achieve gender wage parity - Pay Equity Act, Pay Transparency Act (not yet proclaimed), and the equal pay for equal work gender-based provision in the Employment Standards Act. They all operate as separate pieces of legislation rather than as an integrated system with streamlined accountability and enforcement.

Next Steps

Ready to take the next step in reducing the gender wage gap in your organizations? Here are a couple of more resources to refer to:

- Guide to Interpreting [Ontario's Pay Equity Act](#)
- [Bridging the gap: How compensation practices can reduce the gender wage in Ontario nonprofits](#)
- Share your pay equity story with us so we can document it: pamela@theonnc.ca

Conclusion

Ontario's Pay Equity Legislation came into effect 30 years ago and remains an important way in which to reduce the gender wage gap women face in the workforce. Women workers in the nonprofit sector particularly stand to benefit from this legislation as their wages are low compared to the Canadian economy as a whole. While existing pay equity legislation in Ontario poses challenges for some nonprofits, the intent of the legislation is positive and nonprofits should take whatever measures are within their control to comply. ONN will continue to seek out opportunities to bring the voices of nonprofit employers and workers to government whenever opportunities arise. In the meantime, this background document provides key information on what the act is, how it connects to the gender wage gap, and how it affects the nonprofit sector, a lens often missing when talking about pay equity.

The ONN is the independent nonprofit network for the 58,000 nonprofits in Ontario, focused on policy, advocacy and services to strengthen the sector as a key pillar of our society and economy. We work to create a public policy environment that allows nonprofits to thrive. We engage our network of diverse nonprofit organizations across Ontario to work together on issues affecting the sector and channel the voices of our network to government, funders, and other stakeholders.

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