

The Proxy Method of Comparison for Pay Equity in Ontario

Achieving and Maintaining Compensation practices that provide for pay equity using the proxy method of comparison

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Agenda

- Introduction
- Overview of the Pay Equity Act
- The Proxy Comparison Method
- Distributing Adjustments and Achieving Pay Equity
- Maintaining Pay Equity with the Proxy Method
- Case Studies
- Questions and Answer Discussion



The Difference Between What is Covered by Pay Equity and Employment Standards

Pay Equity Legislation covers *equal pay for work of equal value* which requires evaluating and comparing different jobs, male to female and if the work is found to be of equal or comparable value, compensating them the same.

- This is different to what is legislated under Employment Standards. Employment Standards Legislation covers *equal pay for equal work* which requires equally compensating males and females doing the same job.

Time limits for Complaints

Pay Equity

- There is no statute of limitation for compliance
- There is no time limit for filing a complaint with the Pay Equity Commission

Employment Standards

- There is a limit of time for filing an Employment Standards complaint which has to be lodged within 6 months.

The Purpose of the Pay Equity Act

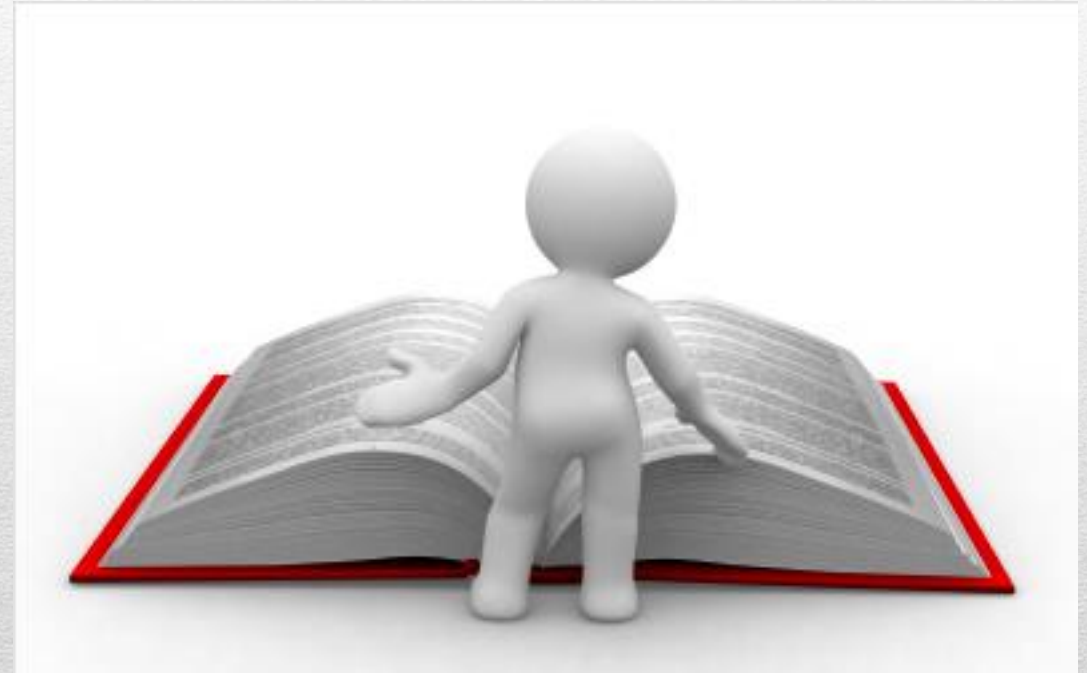
- The purpose of the Pay Equity Act introduced in 1988, is to correct systemic discrimination in the compensation of the work in traditionally female dominated occupations.
- It applies to all public sector employers and all private sector employers with 10 or more employees.

Achieving Pay Equity

- Pay equity is achieved when the pay equity job rate for a female job class equals the pay rate of a male job class, a representative group of male job classes or the proxy target rate where the work performed is of equal or comparable value.

Basic Pay Equity Terms

- Employer
- Bargaining Agent
- Establishment
- Number of pay equity plans
- Female and male job classes
- Value of job class
- Job rate



Employer

- The Pay Equity Act places the responsibility for achieving and maintaining practices that provide for pay equity on the Employer.
- The Pay Equity Hearings Tribunal has provided questions in their decisions regarding Who is the Employer? Where there was no clear determination.
- For example – A Library.
 - The Municipality may be the Employer, or the Board may be the Employer.
- In the case where the Board is the Employer, it would be likely that the Proxy method was used.

Bargaining Agent (Union)

- In the event there is a Bargaining Agent, the pay equity plan for the unionized employees must be negotiated with the Bargaining Agent.
- Maintenance of the pay equity plan is the responsibility of the Employer.
- The Act states that a Bargaining Agent cannot agree to compensation practices that do not provide for pay equity.

Pay Equity Plans

- The Act requires a pay equity plan for each establishment of the Employer.
- Establishments are geographic regions.
- Establishments can be combined.
- There must be a pay equity plan for each bargaining unit and a pay equity plan for all employers that are not represented (non-union).

Job Class

A job class means positions in an organization that have:

- ✓ Similar duties and responsibilities
- ✓ Require similar qualifications
- ✓ Are filled by similar recruiting procedures
- ✓ And have the SAME rate of pay or salary range.

Gender of job class

- A female job class is a job class where 60% or more are female.
- A male job class is a job class where 70% or more are male.
- A gender neutral job class is where the job class is neither male nor female.
- It is important to consider the historic incumbency of the job class as well as the stereotypical nature of the work.
- Once a decision on the gender has been decided and applied, a change in the gender percentage of the incumbency does not change the gender of the job class.

Value of job class

- The Act requires when evaluating a job class that the following are considered:



- There is no stipulation on what job evaluation system is used to evaluate job classes providing it is Gender Neutral, which means it does not favour one gender or another.

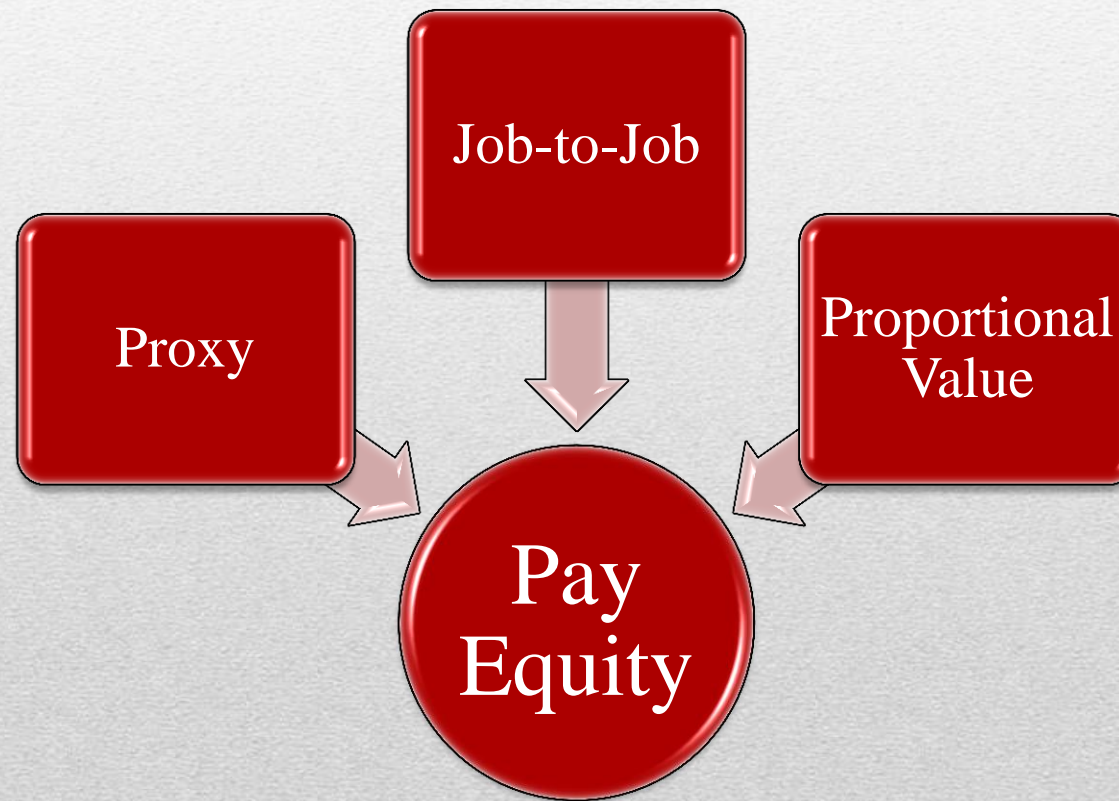
Job Rate

- The definition of job rate is the highest rate of compensation for a job class.
- The definition of compensation is salary and benefits and anything provided to an employee for doing a job of work.
- When comparing job rates it is important to consider both salary and benefits.
- Proxy benefits were calculated as a percentage in the original plan and adjusted at that time.

Adjusting percentage of benefits for proxy

- For Seeking Organizations, the benefits were adjusted as a percentage from the Proxy Organization benefits, which was a one time calculation at the time the plan was prepared.
- If the Proxy Employer provided a higher or lower percentage of non statutory benefits, this percentage was added or deducted from the proxy job classes job rates.
- If the Seeking and Proxy Employer provided the same percentage of non statutory benefits, there was no need to adjust.

The Pay Equity Act provides for three methods of comparison

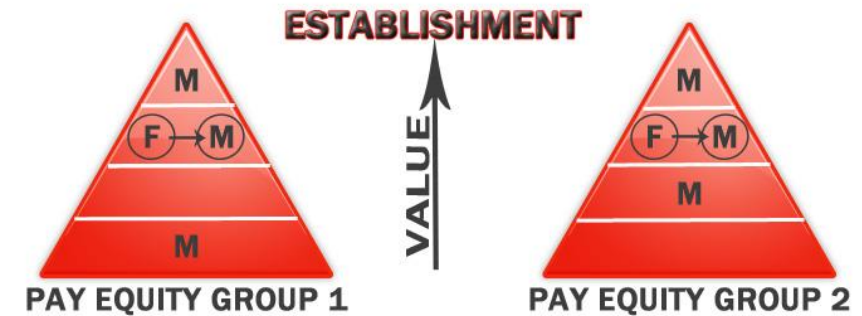


Job-to-Job

- Job-to-job applies to public and private sector employers and allows for a direct comparison between female job classes and male job classes in the same organization if they are the same, or similar value
- Until amendments to the Pay Equity Act were passed in July 1993, there was only the job-to-job method.

The Job-to-Job Method of Comparison

FINDING COMPARATORS "INSIDE"



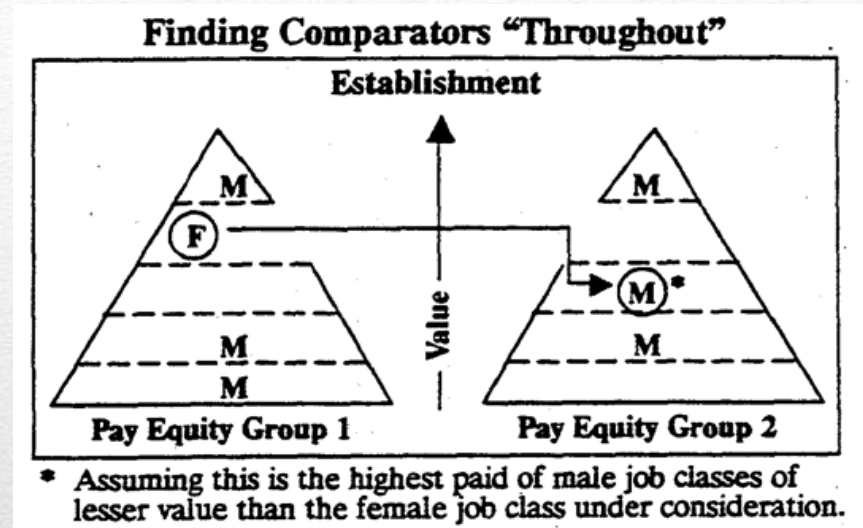
- The job to job comparison method required comparing female job classes to male job classes of equal or comparable value and if the value was found to be the same they are required to be compensated in the same manner.

With only the job-to-job method, some female job classes could not achieve pay equity

Point Value of Job	Gender of Job	Male Comparator
800 Points		M
700 Points		M
600 Points	F	M
500 Points	F	M
400 Points	F	
300 Points		M
200 Points	F	

Search Sequence for Male Comparators

- The Act required Employers to look for male comparators using the job-to-job method first inside a pay equity plan, and then throughout the establishment.



- If there were no male comparators using job-to-job, proportional value was required after the amendments were passed.
- The search sequence would then apply again for male comparators inside the plan and then throughout the establishment.

Amendments to the Pay Equity Act

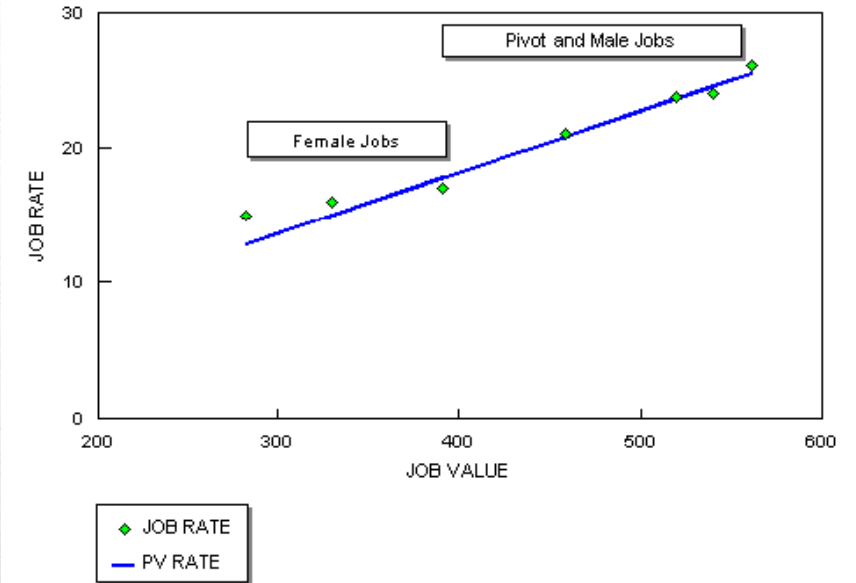
- Proportional Value and Proxy provisions were added to the Act in July, 1993.
- Proportional Value for private and public sector Employers
- Proxy for predominately female public sector workplaces. Without the proxy method, these women would not be able to fall under the Act to obtain adjustments in wages for job classes that had historically been undervalued.
- The Act defines public sector as any corporation or organization as set out in Schedule and Appendix to the Act, which provides a lengthy specific list of public sector (or broader public sector) organizations.

Proportional Value

- Proportional value applies to public and private sector employers. This method is used where the job-to-job cannot be used to compare all the female job classes because there is no male job class that is equal value to the work performed by the female job class. This allows an indirect comparison between female and male job classes.

Proportional Value

- The Proportional Value Method of comparison requires comparing female job classes to a representative range of male job classes.
- This could be achieved by regression analysis calculations or drawing of a male job rate line from the representative male job classes and then comparing the female job classes to the male job rate line.



Proxy

- The proxy method was only for public sector organizations if they could not achieve pay equity using either the job-to-job or proportional value methods, because no male comparator job classes could be found for all the female job classes.
- The proxy method involved comparing the “seeking employer’s” female job classes to female job classes from another public sector organization who becomes their “proxy employer,” and using them as if they were male job classes.

How to Get to Proxy

- If all female job classes could not achieve pay equity with the job-to-job, or proportional value method, the employer was required to notify the Pay Equity Commission by submitting a
 - *Notice of Inability to Achieve Pay Equity*
 - *For Public sector employers, this was a request to be declared a “seeking organization” and to use the proxy method*

Proxy Pay Equity Plans

- Once an employer was ordered to use the proxy method, they were required to prepare a pay equity plan (or plans in the case of a union) as of January 1, 1994.
- Employers whose organizations only started after July 1993, which was the date the amendments were passed, were not required to prepare proxy pay equity plans and did not receive proxy orders. This did not apply to mergers or amalgamations where the organization existed before July 1993.

Who were the Proxy Organizations

- Municipalities
- School Boards
- Hospitals
- These were the Proxy Employers, however it was more defined in the Schedule to the Act which provided a more specific proxy organization to be used.
- Proxy organizations were also selected according to nearest geographic regions.

The Proxy Comparison Steps

- Identify key female job classes in their own organization.
- Select proxy organization (see chart) and request information from the proxy on similar or a range of job classes.
- Evaluate their own job classes.
- Receive information from the proxy organization which included duties and responsibilities of their job classes and their 1994 pay equity achieved job rate including total cost of benefits as a percentage.
- Determine value of proxy job classes and proxy job rate.
- Determine pay equity adjustments required.
- Post pay equity plan(s).
- Begin pay equity adjustments based on 1% of payroll.



Proxy process

Non-union:

- Employers prepared and posted pay equity plans for non-union employees for 90/7/30 days which were then determined deemed approved by the Commission if there were no complaints during the posting period.

Union:

- Employers negotiated plans with the Bargaining Agent which were signed by both parties and posted and then determined deemed approved by the Commission
- No plans were submitted or filed with the Commission
- Employers submitted surveys to their funding ministries
- Started the first adjustment January 1, 1994

Pay Equity is achieved using the Proxy Method

- When every female job class in the seeking organization is compared to a representative group of female job classes from the proxy organization, and
- When the job rate bears the same relationship to the job value as in the proxy organization.
- This means using the proportional value method but with female job classes from the proxy organization.



Repeal and Reinstatement of the Proxy Method

- Schedule J of the Omnibus Bill 175 the “Saving and Restructuring Act” (1996) repealed the proxy comparison method
- The Arbella decision reinstated the proxy method due to a charter challenge from the unions

Pay Out 1% of Previous Year's Payroll in Adjustments

A 3D rendered graphic of the text "1%" in a bold, red, sans-serif font. The numbers and the percentage symbol are slightly offset from each other, giving it a three-dimensional appearance with a soft shadow underneath.

- A minimum of 1% of the previous year's payroll was required to be paid each year in adjustments (or the amount to achieve pay equity).
- Adjustments began January 1, 1994 and became due each year - January 1st.
- Adjustments continued or may be continuing each year January 1st until pay equity was, or is achieved for each female job class requiring an adjustment.

Requirements of the Act when applying the 1% of payroll adjustments each year

- Adjustments are, or were provided to all female job classes requiring an adjustment, for all hours paid (possibly in a lump sum) retroactively to January 1st each year.
- The job rate also increased and increases each year for all female job classes receiving an adjustment until pay equity is achieved.
- The lowest paid in each plan MUST always receive a larger adjustment.
- All incumbents in the same job class are provided the same adjustment in dollar terms.
- In the event of a salary grid system, the whole grid for a female job class was and must be adjusted by the hourly amount.

Requirements of the Act when applying the adjustments

- Adjustments other than pay equity adjustments were required to be added to the current pay equity adjusted rate and added to the pay equity achieved rate.
- The wage gap was or is reduced by adjustments that are identified and applied as pay equity adjustments only. (This should be documented to support pay outs if challenged).
- No portion of the 1% of payroll could, or can be used to pay increases to male or gender neutral job classes, or for any other non-pay equity increases (e.g. annual increases, additional cost of statutory benefits).

Determining Retroactive Obligations

Showing the Compounding Effect of Annual Adjustments on a Job Class Page 1

1994	1995	1996	1997	1998	Total adjustments	Adjusted rate
.21					.21	7.71
.21	.10				.31	7.81
.21	.10	.11			.42	7.92
.21	.10	.11	.11		.53	8.03
.21	.10	.11	.11	.11	.64	8.14
.21	.10	.11	.11	.11	.75	8.25

- Female job class whose pre pay equity December 31/1993 job rate was \$7.50
- From 1994 to 1998 to continue as such until pay equity has been achieved

Retroactive adjustments owing to a Job Class From 1994 to 1998 Page 2

Adjustments owing to a female job class from 1994 to 1998 without negotiated increases added. Adjustments would continue thus until the indicated gap was closed. Could be a huge liability if unpaid.

	PAY EQUITY	HOURS PAID	OWED
1994	.21	1040	\$218.40
1995	.31	1040	\$322.40
1996	.42	1040	\$436.80
1997	.53	1040	\$551.20
1998	.64	1040	\$665.60

Applying Adjustments

One way to distribute the 1% of payroll was to calculate an hourly adjustment and apply it equally among female job classes, with the exception that the lowest paid in each plan MUST receive a larger adjustment.

- 1994's payroll was \$200,000.00
- 1% of 1994 payroll is \$2,000.00
- Total hours paid in 1995 was 10,400

Divide total annual hours paid and divide into total payroll to get amount due to each job class, but ensure that the lowest paid gets more.

Non pay equity Increases

- Adjustments other than pay equity adjustments are added to both the current and the pay equity job rates.
- The wage gap is only reduced by adjustments that are identified and applied as pay equity adjustments.
- It is important to calculate non-pay equity increases as a dollar amount rather than a percentage until pay equity is achieved.

Pay Equity Maintenance

- Pay equity must be maintained, which means the gap identified in the pay equity plan is reduced by the pay equity adjustments and once pay equity is achieved, must remain closed.
- While achieving non pay equity increases are added to the current rate and the pay equity achieved target rate.
- Beware of percentage increases which could widen the gap.
- There is no requirement to redo or renegotiate a pay equity plan.
- Pay equity is a snapshot retro to 1994.

Record Keeping and Communication

- Ensure Pay Equity adjustments are identified clearly to employees e.g. on pay stubs and they are aware of the pay equity process.
- Keep records of adjustments paid to each job class and be aware of when the job class achieves the pay equity job rate.



Jurisprudence on Maintaining pay equity

- The onus is on the Employer to achieve and maintain compensation practices that provide for pay equity
 - Subsection 7.1 of the Act
- Bargaining agents are prohibited from condoning an employer's failure to maintain pay equity
 - Subsection 7.2 of the Act

Bargaining Agents have an ongoing role in maintenance. Results of maintenance agreements are deemed to form part of the Collective Agreement



Maintenance and Changes that may Impact

Monitor changes that occur in the establishment for their pay equity implications, such as:

- New job classes
- Changes in value of job classes
- Unionization after a plan was in place
- Changes in Circumstances that render the plan no longer appropriate
- Reorganization, restructuring
- Sale of Business, Amalgamation, Merger or Acquisition

New Job Classes and changes in value of existing job classes

- New Job Classes must be evaluated and their compensation set at the Proxy job rate.
- The Proxy job rate can be calculated using proportional value with the target rates for existing job classes.
- A job class that has changed in value may not necessarily be a new job class and may increase or decrease in value, but not have to be paid immediately at the achieved rate if the other job classes are still achieving.

Unionization after an existing pay equity plan.

- Unionizing after there is an existing pay equity plan is a Changed Circumstance according to the Pay Equity Hearing Tribunal, because a plan must exist for the union as well as a plan for non-union.
- However, it does not require a new plan, merely splitting the existing plan into union and non-union.

Maintaining Pay Equity Key Maintenance Areas

Changed Circumstances

- If the employer or bargaining agent (if any) is of the view that because of changed circumstances in the establishment the plan is no longer appropriate, they may *amend the plan*, by giving written notice to the other party to negotiate in the case of a union, if there is no resolution in the process, obligation is to refer to the Pay Equity Commission

Sale of Business

- External changes that impact on the pay equity deemed approved plans, such as a merger, lease, transfer, acquisition or amalgamation may impact and require a *new plan*.

Tribunal decisions on Changed Circumstances

- A situation where a bargaining agent obtained bargaining rights for some employees in a pay equity plan was found to be a changed circumstance that rendered the plan no longer appropriate as the union requires their own plan, however this required the plan to be split but did not require a new plan or new tool to be used.
 - St. Joseph's Villa
- A change in bargaining agents for all employees in a plan, which does not affect the composition of the plan did not render the plan no longer appropriate
 - Ottawa Board of Education
- New job classes or changes in value was not found to be a changed circumstance
 - Harmony Hall/Call A Service

Complaints



- Any employee, or group of employees, or the bargaining agent (if any) may file a complaint with the Commission complaining with respect to a pay equity plan.
- ✓ That the plan is not being implemented according to its terms
- ✓ That the plan is not being maintained, in that wage gaps have re-appeared or widened.
- ✓ That changed circumstances have rendered the plan no longer appropriate

The Pay Equity Commission



- A Review Officer will be appointed to resolve all pay equity issues in dispute.
- The Review Officer will attempt to resolve the issue but has the power to order the outcome.
- Review Officer's Orders can be referred to the Pay Equity Hearings Tribunal if in dispute or to have an order enforced.
- Orders may impact on employers with large financial liabilities.
- Ensure your practices are up to date and can support a challenge.
- In particular, retroactive adjustment calculations for proxy liabilities.

Proxy Pay Equity Plans



- Proxy pay equity plans are binding on the employer
- There is no need amend a plan unless there are Changed Circumstances that render the existing plan no longer appropriate.
- In the event of a merger or Sale of Business, the obligation of the adjustments falls on the new employer or merged organization unless it renders the plan no longer appropriate. In the event of a Sale of Business rendering a plan no longer appropriate, a new plan could be required retro to the date of the sale.
- In the event that a plan was never prepared, and a proxy order was issued, the obligation still exists and would be retro to the original date which was January 1, 1994, which could have heavy financial obligations on an organization.

Employer Obligations

- In the event that an organization never prepared a plan and was now required to do so, they would be required to use the job rate of the proxy employer from 1994.
- Employers never go back to their proxy organization, it was a “snap shot” in time and is always retro to January 1, 1994.
- Failure to pay adjustments and demonstrate how pay equity adjustments were paid could impact on heavy financial obligations.
- Complaints could be filed with the Commission at any time, as there is no statute of limitations on pay equity.
- Ensure all records are up to date.

Case Study



- Case where Employer paid 1% of wages and not 1% of payroll
- Case where Employer created a salary range where there was previously only a single rate
- Case where no plan was prepared or employer did not make adjustments

Discussion Questions and Discussion



Individual Questions and Advice

HCI Consulting team

THANK YOU!