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Brief on Bill 25

An act to amend the *Pay Equity Act*

submitted by the

**Fédération des travailleurs et
travailleuses du Québec (FTQ)**

to the

Commission de l'économie et du travail



Montreal, March 26, 2009

INTRODUCTION

The FTQ is delighted to have an opportunity to respond to this new bill amending the *Pay Equity Act (PEA)*, despite the short time frame.

By encouraging the all too many enterprises have yet to complete or even initiate their pay equity exercises to proceed with them, the Bill demonstrates that the Government is concerned about the future of this act, and about the fundamental right of all female employees in Quebec to receive fair compensation for the work that they do.

The inevitable compromises notwithstanding, the Bill has merit, is broadly consistent with our previous discussions and outlines several interesting approaches.

We welcome the introduction of several positive aspects:

- more enterprises covered;
- more specifics on the information to be used;
- more detailed postings;
- the maintenance of the powers and roles of the Commission de l'équité salariale (CES) and the confirmation of its right to intervene before the Commission des relations du travail (CRT);
- the possible formation of a partners advisory committee;
- valuable guidelines on the maintenance of pay equity; etc.

However, we are quite concerned about a number of the proposals:

- the extension of implementation deadlines for delinquent employers;
- the option of using new methods to value differences in compensation;
- limited postings;
- the absence of any obligation to have pay equity maintenance audited by committee;
- ill-advised provisions on maintenance; etc.

Despite all this, Bill 25 is an important step forward for working women in Quebec. We are delighted that the Government is committed to ensuring that the greatest possible number of employers respect the fundamental right of women to pay equity, and do so with greater rigour.

PROVISIONS THAT WE SUPPORT

The FTQ **reiterates its support for the provisions regarding:**

- **the applicability of the Act to enterprises that reach the threshold of 10 or more employees;**
- **the option of establishing a single joint plan for several certified associations;**
- **the Commission de l'équité salariale;**
- **the conciliation process;**
- **the use, in the absence of data for 2001, of the information that an employer possesses for the earliest subsequent period to determine the applicable pay equity conditions.**

SUPPORTED PROVISIONS REQUIRING IMPROVEMENT

The FTQ **also supports the new provision regarding the obligation to keep information for five years**. However, with regard to this, we **also recommend:**

incorporating a provision enabling employees and certified associations to access the relevant information, while ensuring compliance with standard confidentiality guidelines.

The FTQ **welcomes** the proposals on **postings** (enterprises with 10-49 employees), but **reiterates that these provisions must also provide for:**

- **means ensuring that the process followed is entirely free of discrimination based on gender;**
- **the obligation, for the employer, to make available upon request, any of the information required to understand the posted results;**
- **the posting, to the extent possible, of the results of the job valuations for each class used, as well as the compensation associated with each of these classes.**

The FTQ **is delighted that the Government is seeking to promote the involvement of sector-based committees**. However, we **recommend:**

the **maintenance of the obligation, for employers in the sector in question, to complete their plan as specified in the current legislation.**

The FTQ **also supports the establishment of a partners advisory committee**, which will provide input regarding any regulation, opinion, tool or other matter that the CES or the Minister may submit. **However**, we **reiterate** [the need for]:

- a **politically representative group of partners**, to be assisted by a more technically oriented subcommittee;
- **clear operating procedures**;
- a **reasonable amount of time to prepare** for meetings;
- the **respect for consensus**;
- the **broadening** of topics of discussion to include **problems with implementation identified by the partners.**

RECOMMENDATIONS REGARDING PROBLEMATIC PROVISIONS

Moreover, the FTQ would like to draw attention to **two major preoccupations, namely the valuation of differences in compensation and pay equity audits.**

On the valuation of differences in compensation

The Bill adds, at the very end of section 61, that another method of valuating differences in compensation prescribed by regulation of the CES can be used or "*authorized by the Commission on application.*"

The FTQ **is very concerned about this addition.** The new **modification could have a disastrous impact on the rights** of female workers. We are opposed to the use of "segmented line" methods, which could open the door to extremely hazardous results and consequently to endless litigation.

Though the Government is seeking to make the rules to be followed more flexible, it remains important to respect the spirit of the Act as closely as possible. We therefore **propose the following rewording:**

61. Differences in compensation between a predominantly female job class and a predominantly male job class may be valued on an overall or individual basis or, **if these two already prescribed methods prove to be truly inapplicable**, according to any other method for valuating differences **determined by the Commission and in keeping with the objective of the PEA.**

Furthermore, any employer that had **already initiated but had yet to complete its work prior to the introduction of the current bill must remain subject to the conditions of the existing version of section 61.**

On pay equity maintenance

We are **delighted with the proposed addition of this new chapter** to the Act, which is intended to be more proactive than the current provisions. It includes several positive points: the introduction of **the proactive aspect of maintenance** into the PEA, the **audit periods**, the **possibility of establishing a joint audit committee**, the **detailed postings**, the **preservation of maintenance-related information and the content of postings.**

However, several **concerns and questions remain.**

- a) First, Section **76.1 raises an issue for us.** The Act must remain proactive and **must make mandatory adjustments in compensation retroactive to the date when the jobs were initially impacted**, rather than obliging employers to make salary corrections only once every five years.
- b) Second, **the mandatory participation of employees and certified associations in pay equity audits must be provided for in section 76.2, especially in cases where these parties were involved in the implementation of pay equity.** It is illogical that they be excluded from these audits after participating in the pay equity process.
- c) Third, **the employer must make its information available to the certified associations, upon request, and the audit postings (76.3) must include the results for each job class as well as the compensation for each class affected by the changes.** This would make it possible to truly assess the results, and the employees would


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have the assurance that the employer has entirely fulfilled its obligation and that none of the wage differentials have been recreated.

- d) Fourth, we would like **section 76.9 to be further clarified** (the stipulation that the accredited association must not “undermine” pay equity during the negotiation or renewal of a collective agreement).
- e) Fifth, several **delinquent employers** had initiated but had failed to complete their work prior to the introduction of the current bill. However, under the new provisions, the **time limit** for the completion of their work **will be extended until December 31, 2010**. In these cases, the **initial pay equity audit will not begin until 2015** (four years after completion of the pay equity plan).

We have concerns about this. Does this mean that **if wage differentials were to be recreated** at their enterprises **in the meantime**, these employers would benefit from **nine years of immunity (extending from 2001 to 2010)**? We require **more specifics in this regard** for, **if our assumption is correct, this change would be unacceptable**.

Furthermore, in the case of an **employer that has dragged its feet with regard to work initiated prior to the introduction of the current bill**, and if this work was proceeding **on the basis of 2001 information and was quite advanced but not complete** upon introduction of the current bill, we **recommend that this employer be obliged to ensure that pay equity has been maintained since 2001**.

Conclusion on the back 

CONCLUSION

The FTQ welcomes the efforts of the Government to enhance the *Pay Equity Act*, support the Commission de l'équité salariale and encourage recalcitrant employers to comply with the legislation.

Bill 25, An Act to amend the *Pay Equity Act*, has several positive aspects and we are very pleased about this.

However, we realize that this legislation still represents a compromise and that female workers will continue to pay a price for this, which is why we have several concerns, the most serious being those regarding the provisions on the valuation of differences in compensation and those on the maintenance of pay equity.

The FTQ has sought to provide viable solutions that are in keeping with the spirit of the Act.

As we have done in the past, we offer the Government our collaboration to help ensure the optimal application of pay equity and the advancement of the situation of women in Quebec.

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