



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 25

(2009, chapter 9)

An Act to amend the Pay Equity Act

Introduced 12 March 2009
Passed in principle 2 April 2009
Passed 27 May 2009
Assented to 28 May 2009

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EXPLANATORY NOTES

This Act amends the Pay Equity Act to provide that any enterprise whose number of employees grows to 10 or more in the course of a given year becomes subject to the Act from 1 January of the following year. The Act requires that all employers submit a report on the implementation of this Act in their enterprise, in the cases and subject to the conditions prescribed by regulation of the Minister.

The Act also imposes pay equity audits at five-year intervals and sets out how these are to be conducted. It specifies the required content of postings and the time period for which the information used to establish a pay equity plan, determine compensation adjustments or conduct a pay equity audit must be kept.

The Act empowers the Minister to create a partners advisory committee to advise the Commission de l'équité salariale or the Minister. It facilitates recourse to sector-based committees and provides for the amount of penal fines to vary according to the number of employees in the contravening enterprise.

The Act moreover gives the Commission additional responsibilities. It provides for a conciliation process and sets rules for intervention by the Commission before the Commission des relations du travail. It also gives the Commission the power to authorize methods for valuating differences in compensation, to approve the use of predominantly male job classes in an enterprise with characteristics similar to those of the enterprise concerned as comparators, to allow, in certain circumstances, a different committee composition than that prescribed by law for a pay equity committee, and to make regulations on postings and the preservation of information.

In addition, the Act requires that a report by the Minister on the implementation of the Pay Equity Act be tabled in the National Assembly 10 years after the coming into force of the Act.

Lastly, the Act contains transitional measures. More particularly, it imposes on employers that have not completed a pay equity plan or determined compensation adjustments within the legal time limit an obligation to do so by 31 December 2010. In enterprises where a pay equity plan has been completed or compensation adjustments have

been determined, the Act requires that a first pay equity audit be conducted by that same date. It further provides that it will be possible to file complaints as of 1 January 2011 against employers to whom the transitional measures apply.

LEGISLATION AMENDED BY THIS ACT:

- Pay Equity Act (R.S.Q., chapter E-12.001).

Bill 25

AN ACT TO AMEND THE PAY EQUITY ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 4 of the Pay Equity Act (R.S.Q., chapter E-12.001) is amended

(1) by adding the following sentences at the end of the first paragraph: “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.”;

(2) by inserting the following paragraph after the first paragraph:

“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 partners advisory committee.”

2. Sections 6 and 7 of the Act are replaced by the following sections:

“**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 payroll for each pay period in a calendar year.

“**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.”

3. Section 11 of the Act is amended by adding the following sentence at the end of the third paragraph: “Two pay equity plans shall be established for employees of that enterprise who are not represented by certified associations: one applicable to colleges and school boards, and the other, to institutions.”

4. The Act is amended by inserting the following section after section 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.”

5. Section 13 of the Act is amended

- (1) by replacing “doit être” in the French text by “est”;
- (2) by adding the following paragraphs at the end:

“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.”

6. Section 14 of the Act is amended by adding the following paragraph at the end:

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

7. The Act is amended by inserting the following section after section 14:

“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 five years from the date of a posting under the second paragraph of section 76.”

8. Section 21.1 of the Act is amended by replacing “referred to in the third paragraph of section 11” in the first paragraph by “for all employees represented by certified associations that is referred to in the third paragraph of section 11”.

9. The Act is amended by inserting the following section after section 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.”

10. Section 32 of the Act is amended by replacing the last sentence of the second paragraph by the following sentences: “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.”

11. Section 35 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“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 a notice stating that no compensation adjustments are required.”;

(2) by inserting “be dated and shall” after “shall” in the second paragraph;

(3) by adding the following paragraph at the end:

“In addition, the employer shall, by a means of communication likely to reach the employees, inform them of the posting and provide details such as the posting date, the posting period and how they may access its content.”

12. Section 37 of the Act is amended by replacing “of the coming into force of this chapter” by “after the employer becomes subject to this Act”.

13. Section 39 of the Act is repealed.

14. Division V of Chapter II of the Act, comprising the heading and sections 40 to 43, is repealed.

15. The Act is amended by inserting the following sections after section 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.

“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.”

16. Section 47 of the Act is replaced by the following section:

“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.”

17. Section 49 of the Act is repealed.

18. Section 55 of the Act is replaced by the following section:

“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.”

19. Section 61 of the Act is amended by replacing “prescribed by regulation of the Commission for valuating differences in compensation” by “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”.

20. Section 67 of the Act is amended by replacing paragraph 5 by the following paragraphs:

“(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;”.

21. Section 75 of the Act is amended

(1) by inserting “for 60 days” after “post the results thereof” in the first paragraph;

(2) by inserting the following sentence after the first sentence of the second paragraph: “The posting shall include a description of the method used to value differences in compensation.”;

(3) by adding the following paragraph at the end:

“A posting under this section shall be dated. The pay equity committee, or the employer in the absence of such a committee, shall, by a means of communication likely to reach the employees, inform them of the posting and provide details such as the posting date, the posting period and how they may access its content.”

22. Section 76 of the Act is amended

(1) by replacing “posting” in the first paragraph by “the date of a posting” and by replacing “or to” in that paragraph by “or”;

(2) by replacing the second paragraph by the following paragraph:

“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, include information on the remedies available under this Act and the time within which they may be exercised.”

23. The Act is amended by inserting the following chapters after section 76 :

“CHAPTER IV.1

“PAY EQUITY AUDIT

“**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.

Every five years from the date of the posting under the second paragraph of section 76, 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 in order to determine whether adjustments in compensation are required.

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.

“**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 or associations.

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.

“**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 list of the events leading to compensation adjustments;
- (3) a list of the predominantly female job classes that are entitled to compensation adjustments;
- (4) the percentage or amount of the compensation adjustments to be paid; and
- (5) the posting date and information on the rights exercisable under section 76.4 and the time within which they may be exercised.

The pay equity audit committee, or the employer in the absence of such a committee, shall, by a means of communication likely to reach the employees, inform them of the posting and provide details such as the posting date, the posting period and how they may access its content.

“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, with any amendments clearly indicated or with an indication that no amendments are needed. If the pay equity audit was conducted by the employer alone, the posting shall include information concerning the remedies available under this Act and the time within which they may be exercised.

“76.5. Subject to the third paragraph of section 101, the compensation adjustments apply from the date that is the time limit for the new posting under the second paragraph of section 76.4.

Unpaid compensation adjustments shall bear interest at the legal rate from that date.

“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.

“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.

“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 five years from the date of the new posting under the second paragraph of section 76.4.

“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.

“CHAPTER IV.2

“CHANGED CIRCUMSTANCES IN ENTERPRISE

“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.

“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.”

24. The Act is amended by inserting the following section after section 89:

“89.1. Documents emanating from the Commission are authentic if they are signed or, in the case of copies, if they are certified by the president, a member of the Commission or, if applicable, the person designated by the president to exercise that function.”

25. The Act is amended by inserting the following section after section 90:

“**90.1.** The Commission’s fiscal year ends on 31 March.”

26. Section 91 of the Act is replaced by the following section:

“**91.** The Commission shall, not later than 15 days before the end of the fourth month following the end of its fiscal year, submit an activity report for that fiscal year to the Minister.

The report shall contain any further information the Minister may require.

The Minister shall table the report in the National Assembly within four months of the end of the Commission’s fiscal year or, if the Assembly is not sitting, within 15 days of resumption.”

27. Section 92 of the Act is amended by adding “or the carrying out of this Act” at the end.

28. Section 93 of the Act is amended

(1) by replacing paragraph 1 by the following paragraph:

“(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) by inserting the following paragraph after paragraph 3:

“(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;”;

(3) by inserting “or pay equity audit committee” after “pay equity committee” in paragraphs 4 and 5;

(4) by inserting “or pay equity audit committee” after “pay equity committee” in paragraph 5.1;

(5) by inserting the following paragraph after paragraph 5.1:

“(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) by replacing “the first paragraph of section 96 or in section 98 or following a complaint under the second paragraph of section 96 or under section 97” in paragraph 6 by “section 96 or 98 or following a complaint under section 96.1, 97”;

(7) by replacing “in the establishment of pay equity plans by developing tools to facilitate the implementation of pay equity plans” in paragraph 8 by

“by developing tools to facilitate the implementation of pay equity plans and the conduct of pay equity audits”;

(8) by inserting “or pay equity audit” after “pay equity plan” in paragraph 10;

(9) by replacing “and encouraging the participation of the persons concerned” in paragraph 11 by “and the conduct of pay equity audits, and encouraging the participation of the persons concerned”;

(10) by inserting “and pay equity audit committee” before “members” in paragraph 12;

(11) by adding the following paragraph at the end:

“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.”

29. Section 94 of the Act is amended

(1) by striking out “advisory” in paragraph 1;

(2) by adding the following paragraphs at the end:

“(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.”

30. Section 95 of the Act is replaced by the following section:

“**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.”

31. The Act is amended by inserting the following chapter after section 95:

“CHAPTER V.1

“PARTNERS ADVISORY COMMITTEE

“**95.1.** The Minister shall, by an order published in the *Gazette officielle du Québec*, create a partners 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.

“95.2. Meetings of the partners advisory committee shall be called and chaired by the president of the Commission. 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.

“95.3. The members of the partners 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.

“95.4. The Commission shall seek the partners advisory committee's opinion

- (1) on any regulation it intends to make;
- (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 partners advisory committee's opinions shall not be binding on the Commission.”

32. Section 96 of the Act is amended

- (1) by inserting “or pay equity audit committee” after “pay equity committee” in the first paragraph;
- (2) by striking out the second paragraph.

33. The Act is amended by inserting the following section after section 96:

“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 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.”

34. Section 97 of the Act is amended

(1) by replacing “within 30 days after the expiry of the time limit set out in the second paragraph of section 76” by “within 60 days after the expiry of the time limit for a new posting set out in the second paragraph of section 76”;

(2) by adding the following paragraph at the end:

“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.”

35. Section 99 of the Act is amended

(1) by inserting the following paragraph after the second paragraph:

“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.”;

(2) by replacing “96” in the third paragraph by “96.1”.

36. Section 100 of the Act is replaced by the following section:

“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.”

37. Section 101 of the Act is amended

- (1) by inserting “or 76.9” after “section 15” in the first paragraph;
- (2) by inserting “or maintenance” after “achievement” in the second paragraph;
- (3) by adding the following paragraph at the end:

“Despite section 76.5, if an employer contravenes section 76.9, the Commission may determine that the adjustments in compensation are payable from the date the contravention occurred.”

38. The Act is amended by inserting the following section after section 101:

“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.”

39. The Act is amended by inserting the following sections after section 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.

“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. A person having previously acted as an investigator in the investigation may not be appointed as conciliator.

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.”

40. Section 103 of the Act is replaced by the following sections:

“**103.** An agreement shall be evidenced in writing and any documents to which it refers shall be attached to it. 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.

If no agreement is possible, the Commission shall determine the measures to be taken so that pay equity may be achieved or maintained in accordance with this Act and the time allotted for their implementation.

“**103.1.** If the complaint was filed under the second paragraph of section 96.1, the second paragraph of section 97, section 99 or the second paragraph of section 100, the Commission may not determine compensation adjustments applicable prior to or require the use of information dating before the date that occurred five years before the date on which the complaint was filed.

If the complaint was filed under section 100 in connection with a pay equity audit, the Commission may not determine compensation adjustments applicable prior to the date referred to in the first paragraph of section 76.5.

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 is conducting an investigation on its own initiative, that date is the one that occurred five years before the date on which the investigation commenced.”

41. Section 104 of the Act is amended by adding the following paragraphs at the end:

“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 Commission des relations du travail 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 Commission des relations du travail, 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 Commission des relations du travail a notice stating the grounds for its intervention.”

42. The Act is amended by inserting the following section after section 110:

“**110.1.** Upon receipt of an application, the Commission des relations du travail shall send a copy to the Commission.”

43. Section 114 of the Act is amended

(1) by adding the following subparagraphs at the end of the first paragraph:

“(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.”;

(2) by striking out the last paragraph.

44. Section 115 of the Act is replaced by the following section:

“**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 or 76.3, the second paragraph of section 76.4 or section 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 mandatory 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.”

45. Section 130 of the Act is replaced by the following section:

“**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.”

TRANSITIONAL AND FINAL PROVISIONS

46. In an enterprise to which the Pay Equity Act (R.S.Q., chapter E-12.001) applied on 12 March 2009 where, at that date, the compensation adjustments required to achieve pay equity had not been determined or a pay equity plan had not been completed within the time limit set out in section 37, 38 or 39 of that Act as it read at that time, the posting under section 35 or the second paragraph of section 75, as amended by sections 11 and 21, must begin not later than 31 December 2010.

47. An employer to whom section 46 applies, if unable to determine the number of employees in the enterprise at the time the employer became subject to the Pay Equity Act, must use the earliest information dating after that time in the employer’s possession in order to determine which provisions of Chapter II of that Act apply.

Moreover, information as at 1 February 2009 is the only information that may be used to determine the compensation adjustments required to achieve pay equity or to complete a pay equity plan.

Despite the second paragraph,

(1) if, on that date, job classes were already identified, the establishment of the pay equity plan or the determination of compensation adjustments is to continue on the basis of the information used for job class identification purposes; and

(2) if, on that date, the compensation adjustments required to achieve pay equity were already determined for the majority of the employees in the enterprise or one or more pay equity plans were already completed for the majority of the employees in the enterprise, information contemporaneous with the information used for those purposes must be used in respect of the other employees in the enterprise.

48. Subject to section 53, the new time limit set out in section 46 has no impact on the date of payment of compensation adjustments, and the obligations under section 71 of the Pay Equity Act remain unchanged.

Moreover, the amount of the compensation adjustments to be paid must not be determined taking into account a possible spreading of payments over a period of time under section 70 of the Pay Equity Act, unless the employer is in one of the situations described in the third paragraph of section 47 of this Act or is authorized to do so to the extent provided in section 72 of the Pay Equity Act.

If former employees of the enterprise are entitled to compensation adjustments, the employer must take reasonable means to notify them.

49. In an enterprise where the compensation adjustments required to achieve pay equity were determined or a pay equity plan was completed before 12 March 2009, a pay equity audit of the job classes concerned must be undertaken and a posting under section 76.3 of the Pay Equity Act must begin not later than 31 December 2010.

A pay equity audit of the job classes for which a pay equity plan has been established or compensation adjustments have been determined in accordance with the third paragraph of section 47 must also be undertaken, and a posting under section 76.3 of the Pay Equity Act must begin not later than 31 December 2011. In such a case, sections 52 to 54 are to be read as if “2011” were replaced by “2012”.

Despite section 76.5 of the Pay Equity Act, compensation adjustments determined under this section apply from 31 December 2010.

50. In an enterprise to which the Pay Equity Act applied on 12 March 2009 and in respect of which the time limit for determining the compensation adjustments required to achieve pay equity or to complete a pay equity plan had not expired at that date, the pay equity committee, or the employer in the absence of such a committee, must determine the adjustments or complete the plan within that time limit.

51. The four-year time limit set out in section 37 of the Pay Equity Act, as amended by section 12, starts running on 1 January 2010 for an employer who was not subject to this Act in 2008 but whose enterprise employed 10 or more employees at that time.

52. A complaint under the second paragraph of section 96.1, the second paragraph of section 97 or section 99 of the Pay Equity Act, as amended by this Act, against an employer to which section 46 applies may be filed only as of 1 January 2011.

A complaint under the second paragraph of section 100 of the Pay Equity Act, as replaced by section 36, against an employer to which section 49 applies may likewise be filed only as of that date.

53. The compensation adjustments determined further to complaints referred to in section 52 may in no case be spread over a period of time. In addition to interest under the second paragraph of section 71 of the Pay Equity Act, an indemnity is to be computed by applying a percentage equal to the percentage by which the interest rate determined under the first paragraph of section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) exceeds the legal rate to the compensation adjustments, from the date on which they should have been paid.

Section 103.1 of the Pay Equity Act applies to complaints referred to in section 52 only if they are filed after 30 May 2011 against an employer to which section 46 or 49 applies. No indemnity under the first paragraph is applicable to compensation adjustments paid within the time limit set by the Commission under section 12.1 or 101.1 of the Pay Equity Act.

54. The examination of complaints alleging that pay equity has not been maintained in an enterprise, filed under section 100 of the Pay Equity Act after 11 March 2009 and pending on 28 May 2009, is suspended until 1 January 2011. Such complaints, if still relevant, are to be examined at that time under that section 100, as replaced by section 36.

55. A complaint alleging that the employer has not determined the required compensation adjustments or has not completed a pay equity plan, filed before 28 May 2009, continues to be governed by the provisions of the Pay Equity Act in force before that date.

56. Section 46 applies to municipalities and municipal housing bureaus referred to in section 176.27 of the Act respecting municipal territorial organization (R.S.Q., chapter O-9) that did not complete a pay equity plan or determine compensation adjustments by the deadline set by section 176.28 of that Act.

Sections 47 to 55 also apply to those municipalities and municipal housing bureaus, with the necessary modifications.

57. The time limit for a new posting set out in the second paragraph of section 76 of the Pay Equity Act, replaced by paragraph 2 of section 22, applies to a posting that is underway on the date of coming into force of this Act. The time already elapsed before that date is to be taken into account.

58. The time limit for filing a complaint with the Commission set out in the first paragraph of section 96.1 of the Pay Equity Act, enacted by section 33, in the first paragraph of section 97 of that Act, as amended by paragraph 1 of section 34, and in the first paragraph of section 100 of that Act, replaced by section 36, applies to situations underway on the date of coming into force of this Act. The time already elapsed before that date is to be taken into account.

59. This Act comes into force on 28 May 2009.