



What's New in HR Law

Federal Government Proposes Amendments to the *Employment Equity Regulations*

September 6, 2019

Bottom Line

On August 10, 2019, the Federal Government [proposed amendments](#) to the *Employment Equity Regulations* (the “*Regulations*”) under the federal *Employment Equity Act* (the “*Act*”). These amendments will affect all federally regulated private sector employers that are covered by the *Act* and will provide more consistency in reporting salary information amongst employers.

Purpose of the Amendments

The purpose of these proposed amendments is to support new pay transparency measures implemented in the Federal Government’s 2018 and 2019 Budgets. This proposal is part of the Federal Government’s initiative to bring attention to the wage gap between genders, and among Aboriginal peoples, persons with disabilities and members of visible minorities.

Proposed Amendments

The Federal Government has proposed changes to the *Regulations* which set out how an employer must comply with the requirements under the *Act*.

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453

Hamilton

1 King Street West, Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805

Salary Calculation

The current manner of calculating salary under the *Act* has been criticized for being overly cumbersome and not corresponding with common human resources or accounting practices. In an effort to simplify the prescribed salary calculation method, the Federal Government has proposed a much broader definition of the term “salary” and has added definitions to the Regulations for “bonus pay”, “overtime hours” and “overtime pay”. Under the proposed amendments “salary” would be defined as:

...remuneration paid for work performed by an employee, before deductions, in the form of basic pay, rounded to the nearest dollar, but does not include benefits, securities, severance pay or termination pay, vacation pay, pay which is not money, supplementary payments, allowances, retroactive payments, reimbursed employment expenses or compensation for extra-duty services other than overtime pay.

Furthermore, the current salary breakdown only increases by \$5,000 increments up to a maximum level \$100,000. This has likewise been criticized as not accurately capturing current salary levels. As a result, the Federal Government has proposed to align the salary breakdown with the one used by Statistics Canada and to increase the maximum salary level to \$250,000.

Record-Keeping Requirements

In addition to the current list of records, the proposed amendments require employers to maintain the following records:

- A record of each of their respective employees’ salary and salary increases including, where applicable:
 - their salary, excluding any bonus pay or overtime pay;
 - the period over which the salary was paid;
 - the number of hours worked that can be attributed to the salary earned;
 - the bonus pay paid in the reporting period;
 - the overtime pay paid in the reporting period; and
 - overtime hours paid in the reporting period.

- A record of each employee’s occupational group classification and the following information for employees in each designated group:
 - the mean and median difference in hourly rates;
 - the mean and median difference in bonus pay;
 - the mean and median difference in overtime pay corresponding to the overtime hours;
 - the proportion of employees who have received bonus pay; and
 - the proportion of employees who have received overtime pay.

Mandatory Definition of Designated Groups

Under the current legislation employers are required to conduct workplace surveys that allow employees to self-identify with a designated group (women, Aboriginal peoples, persons with disabilities and members of visible minorities). Currently, employers must only ensure that the definitions of these designated groups are consistent with the *Act*. This effectively permits employers to modify the definitions of the designated groups and has resulted in the collection of inconsistent self-identification data. To rectify this issue the Federal Government has proposed that employers use the specific definitions of the designated groups set out in the *Act*. This means if the legislation is passed employers must include in the workplace surveys the following definitions:

Aboriginal Peoples: persons who are Indians, Inuit or Métis.

Members of Visible Minorities: persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.

Persons with Disabilities: persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who

- (a) consider themselves to be disadvantaged in employment by reason of that impairment, or
- (b) believe that a employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment,

and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

Check the Box

Employers have until September 9, 2019 to submit comments to the government with respect to these proposed changes. For now, employers should continue to comply with the current pay transparency requirements and should keep informed regarding these proposed changes.

We will continue to monitor changes to the *Regulations* and provide further updates as they become available.

Need more information?

For more information, please contact [Natalie Garvin](#) at 416-408-3221, or speak to your regular lawyer at the firm.

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca