



474 Bathurst Street, Suite 300, Toronto, Ontario M5T 2S6

Tel: 416-964-1115 Fax: 416-964-5895

Email: info@equalpaycoalition.org - www.equalpaycoalition.org

APPENDIX B

PAY AND EMPLOYMENT EQUITY FOR WOMEN: INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The following pay and employment equity obligations flow from international human rights instruments.ⁱ

A. PAY EQUITY

Basic Principles and Obligations

The principle of equal pay for work of equal value or pay equity must be guaranteed, requiring that women’s jobs where comparable to men’s jobs must have equal compensation. ILO Equal Remuneration Convention (No. 100) (ILO Convention No. 100), Article 1; International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7; Convention on the Elimination of Discrimination Against Women (CEDAW), Article 11; Beijing Platform for Action (Beijing Platform), Paras. 165, 166, 175, 178; Committee on Economic, Social and Cultural Rights, General Comment No. 18, The Right to Work (General Comment No. 18), Para. 13; Committee on Economic, Social and Cultural Rights, General Comment No. 16, The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights (General Comment No. 16), Para. 24.

Equal pay for work of equal value is a fundamental labour standard of the highest priority, necessary for building a sustainable, just and developed society. ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration); CEDAW, Preamble; Beijing Platform, Para. 41; General Comment No. 18, Para. 13; General Comment No. 16, Para. 24.

Governments must enact pay equity legislation to ensure that the right is guaranteed. ILO Convention No. 100, Article 2(2); CEDAW, Articles 2(b), 2(f); Beijing Platform, Paras. 165(a), 178(a); General Comment No. 16, Para. 24.

Pay equity or the elimination of the “compensation gap” between men’s and women’s jobs must be achieved “without delay”. CEDAW, Article 2

Pay equity must break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work. CEDAW, Preamble

Governments must ensure the full and practical realization of the right to equal pay for work of equal value. CEDAW, Articles 2, 24; Beijing Platform, Para. 175(k); ICESCR, Articles 3, 7

Governments must signal that they have made a strong commitment to achieving pay equity, that they have dedicated themselves unreservedly to achieving pay equity, and that they have mobilized adequate resources to achieving pay equity. CEDAW, Articles 2, 24; ICESCR, Article 2; Beijing Declaration, Para. 7; Beijing Platform, Paras. 4, 5

Employers have a proactive obligation to achieve pay equity in their workplaces. Beijing Platform, Para. 178(a), (h), (l), (o); Beijing +5 Resolution, Para. 82(h)

Scope of Pay Equity Obligations

Pay equity must be achieved in both the public sector and the private sector. CEDAW, Articles 2(d), (e); Beijing Platform, Para. 178(a), (h), (l), (o)

Special measures are required to ensure that public authorities and public institutions act in compliance with pay equity obligations. CEDAW, Article 2(d)

A comprehensive system of protection is needed to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value. General Comment No. 18, Para. 13

Methodologies for Achieving Pay Equity

Pay equity laws should require specific gender inclusive or gender neutral methodologies for evaluating and comparing the different jobs that men and women do and for reformulating wage structures of female-dominated jobs. ILO Convention No. 100, Article 3; Beijing Platform, Para. 178(k), (o)

Unions must be afforded an active role in developing and enforcing pay equity. ILO Convention No. 100, Article 4; Beijing Declaration, Para. 20; Beijing Platform, Paras. 166(l), 178(h)

Protection for the most vulnerable workers must be ensured by providing reasonable opportunity for representatives/agents of non-unionized employees to participate in developing and enforcing pay equity. Beijing Platform, Para. 45

Enforcement of Pay Equity Rights

Complaints regarding lack of pay equity must be enforceable before a competent and expert tribunal. International Covenant on Civil and Political Rights (ICCPR), Article 3; CEDAW, Article 2(c)

Mechanisms to adjudicate systemic wage discrimination must be strengthened. Beijing Platform, Para. 178(l)

An effective remedy for systemic wage discrimination must be provided, and competent authorities must enforce pay equity remedies where granted. ICCPR, Article 3

Meaningful sanctions must be imposed for the failure to comply with pay equity obligations. CEDAW, Article 2(b)

A mechanism for external oversight and auditing of employers' compliance with pay equity should be provided. ICESCR, Articles 16, 17; CEDAW, Part V; Beijing Platform for Action, Para. 178(c)

B. EMPLOYMENT EQUITY

Basic Principles and Obligations

The principle of employment equity must be guaranteed, requiring equality of opportunity and treatment in employment and occupation for all women, including those who are disadvantaged on the basis of race, colour, indigenous states, religion, disability, political opinion, national extraction or social origin. ICESCR, Articles 2, 7; ICCPR, Article 26; CEDAW, Article 11(1)(b); International Convention on the Elimination of all Forms of Racial Discrimination (CERD), Articles 4, 5(e)(i); Universal Declaration of Human Rights, Articles 2, 7, 23; ILO Discrimination (Employment and Occupation) Convention (No. 111) (ILO Convention No.111), Articles 1, 2, 3(b); ILO Employment Policy Convention (No. 122) (ILO Convention No. 122), Article 2(c); Durban Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Programme), Articles 48, 66; Beijing +5 Resolution, Paras. 74(b), 82(a), (e); Declaration on the Rights of Disabled Persons, Articles 6, 7; Declaration on the Rights of Mentally Retarded Persons, Articles 2,3; Declaration on Race and Racial Prejudice, Article 9; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 8; World Programme of Action Concerning Disabled Persons, Paras. 116-118; General Comment No. 18, Paras. 13-19; Convention on the Rights of Persons with Disabilities (CRPD), Arts. 5, 6, 27; General Comment No. 16, Para. 24.

The right to work must be guaranteed and protected from discrimination. ICESCR, Article 6; CERD, Article 5(e)(i); CEDAW, Article 11(1)(a); General Comment No. 18, Paras. 13-19; CRPD, Art. 27; General Comment No. 16, Para. 24.

Governments must enact employment equity legislation to ensure the right is guaranteed. CEDAW, Articles 2(b), 2(f); ILO Convention No. 111, Article 3(b); ILO

Maternity Protection Convention (Revised) (No. 183) (ILO Convention No. 183), Article 12

Employment equity is a fundamental labour standard. ILO Declaration on Fundamental Principles and Rights at Work, Preamble, Article 1(b); Beijing Platform, Para. 41

Achieving employment equity is a required action for achieving the full implementation of human rights. Beijing Declaration, Paras. 9, 21; CERD, Article 2; ILO Convention No. 111, Preamble; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Preamble, Rules 7(1), 15(2)

In preventing employment discrimination, the multiple and intersecting forms of discrimination experienced by individuals must be taken into account. Beijing Platform, Para. 178(f), (j), (p); Beijing +5 Resolution, Para. 83(d); Durban Programme, Articles 49, 51, 104(c); Draft Declaration on the Rights of Indigenous Peoples, Article 18

Governments must signal that they have made a strong commitment to achieving employment equity, particularly through legislation, that they have dedicated themselves unreservedly to achieving employment equity, and that they have mobilized adequate resources. ICESCR, Article 2(1); Beijing Platform, Para. 5

Scope of Employment Equity Obligation

Employment equity must be proactively achieved in both the public sector and the private sector. CEDAW, Article 2(d), (e); Beijing Platform, Paras. 165(b), (o), 178(b), (h); Beijing +5 Resolution, Para. 82(m); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 5, 8; Durban Programme, Article 215

Employment equity must be achieved for part-time as well as full-time workers. ILO Part-Time Work Convention (No. 175) (ILO Convention No. 175), Article 4(c)

Methodologies for Achieving Employment Equity

The principle of gender equality must be constitutionalized. CEDAW, Article 2

i. General

Women's right to free choice of employment, the right to promotion, job security, equal benefits and conditions of service, and the right to receive vocational training and retaining must be ensured. CEDAW, Art. 11(1)(c)

Women's right to social security and the right to paid leave in cases of retirement, unemployment, sickness, invalidity, old age, and other incapacity to work must be ensured. UDHR, Art. 22; CEDAW, Art. 11(1)(e); ICESCR, Art. 9; Committee on Economic, Social and Cultural Rights, General Comment No. 19, The Right to Social Security, Paras. 1-84

Governments must coordinate with regional and international institutions and actors to ensure employment equity for women living in poverty. Beijing +5 Resolution, Para.101(d)

Government policies must include gender equality training and gender-awareness campaigns. Beijing +5 Resolution, Paras. 82(j), (k)

Homeworkers' protection against discrimination in employment and occupation must be ensured. ILO Home Work Convention (No. 177) (ILO Convention No. 177), Article 4(2)(b)

Unions must be afforded an active role in promoting employment equity. ILO Convention No. 111, Articles 1(b), 3(a); Beijing Platform, Paras. 178(d), 180(a); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 6, 9; World Programme of Action Concerning Disabled Persons, Para. 131; Durban Programme, Article 215; ILO Workers with Family Responsibilities Convention (No. 156) (ILO Convention No. 156), Article 11; ILO Convention No. 183, Articles 4(4), 11; ILO Convention No. 122, Article 3.

Occupational segregation should be eliminated through measures such as counselling, placement, and the diversification of occupational choices. Equal participation in highly-skilled jobs and senior management positions should be promoted. Beijing Platform, Para. 178(g)

Employment equity must be facilitated by increasing access to risk capital, credit schemes, microcredit, and facilitating microenterprises and small and medium-sized enterprises. Beijing +5 Resolution, Paras. 74(b), 82(g)

ii. Women and Families

Working mothers must be free from discrimination. ILO Convention No. 183, Articles 6, 8, 9, 10; ICESCR, Article 10; CEDAW, Article 11(2)

Governments must promote programmes and policies that enable women and men to reconcile their work and family responsibilities. Beijing +5 Resolution, Paras. 82(b), (c), (d); CEDAW, Article 10; ILO Convention No. 156, Article 3(1)

Workers with family responsibilities must be able to integrate into the labour force, as well as re-enter it after absences due to family responsibilities. ILO Convention No. 156, Article 7 Family support services and flexible working arrangements should be provided by the employer. Beijing Platform, Para. 180(b)

iii. Women with Disabilities

Governments must support personal assistance programmes and interpretation services to increase the level of participation of persons with disabilities in everyday life at work. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 4

Negative attitudes and prejudices concerning disabled workers must be overcome, by means of state-initiated campaigns. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 7(4)

Employment equity for disabled persons must be achieved in both rural and urban areas. World Programme of Action Concerning Disabled Persons, Para. 128

Employment equity for disabled persons should be achieved through various measures, including incentive-oriented quota schemes, designated employment, loans or grants for small businesses, contract compliance, and tax concessions. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 7(2); World Programme of Action Concerning Disabled Persons, Para. 129

Technical aids for persons with disabilities and access to them must be supported by governments to achieve employment equity. World Programme of Action Concerning Disabled Persons, Para. 129

iv. Indigenous Women

Governments must ensure employment equity for indigenous peoples. Durban Programme, Article 16; ILO Indigenous and Tribal Peoples in Independent Countries Convention (No. 169) (ILO Convention No. 169), Article 20; Draft Declaration on the Rights of Indigenous Peoples, Articles 18, 22

Governments must enact and supervise legislation and other measures for employment equity for indigenous and tribal peoples. ILO Convention No. 169, Article 33; Draft Declaration on the Rights of Indigenous Peoples, Article 37

Social security and other occupational benefits must be ensured without discrimination for indigenous and tribal peoples. ILO Convention No. 169, Articles 20(1)(c), 24 Vocational training must be tailored to suit the special needs of indigenous and tribal peoples. ILO Convention No. 169, Article 21

Handicrafts, rural and community-based industries, and a subsistence economy and traditional activities shall be recognized as important factors in the maintenance of cultures and in economic self-reliance and development of indigenous and tribal peoples. ILO Convention No. 169, Article 23

v. Women Disadvantaged by Racism, Racial Discrimination, Xenophobia and Related Intolerance

Methods for achieving employment equity for victims of racism, racial discrimination, xenophobia and related intolerance include civil rights enforcement and public education and communication within the workplace. Durban Programme, Article 104(a)

Enterprises organized and operated by women who are victims of racism, racial discrimination, xenophobia and related intolerance should be supported by

promoting equal access to credit and training programmes. Durban Programme, Article 103

The public and the private sectors should improve the prospects of targeted groups, particularly those subject to multiple discrimination, facing the greatest obstacles in finding, keeping or regaining work. Durban Programme, Article 104(c)

Governments should promote and observe international instruments and norms on workers' rights to avoid the negative effects of discriminatory practices, racism and xenophobia in employment and occupation. Durban Programme, Article 106

Both the private and the public sector should foster the growth of businesses dedicated to improving economic and educational conditions in underserved and disadvantaged areas. Durban Programme, Article 104(b)

Enforcement of Employment Equity Rights

A national coordinating committee for employment equity should be permanent and based on legal and administrative regulation, composed of pluralistic forces, and guaranteed autonomy and resources. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 17; Durban Programme, Articles 90, 91; National Institutions for the Promotion and Protection of Human Rights (Paris Principles)

Employment equity must be enforceable before a competent and expert tribunal, and the remedies must be effective and enforced when granted. ICCPR, Article 3; CERD, Article 6; Durban Programme, Articles 108, 165; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 15(4); CEDAW, Article 2

Meaningful sanctions must be imposed for the failure to comply with employment equity obligations. CEDAW, Article 2(b); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 15(2)

Progress in employment equity must be reported annually. ILO Convention No. 111 Article 3(f) Legislation implementing employment equity must be reviewed and monitored. Beijing Platform, Para. 178(c); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Preamble, Part IV

i See Annex A and - Achieving Pay and Employment Equity for Women - Human Rights and Business/Development Imperatives, supra.