ONTARIO
EQUAL PAY COALITION
CLOSE THE GENDER PAY GAP

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Bill 148 and the Equal Pay provisions

Amendments proposed by the Equal Pay Coalition

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OVERVIEW

1. Bill 148 recognizes and reinforces the fundamental principle that workers who are doing similar work should be paid the same.

2. The *Employment Standards Act* protection for **Equal Pay for Equal Work** is currently found in Part XII of the Act. Historically, this ESA right dealt solely with discrimination based on gender (currently s. 42 of the ESA).

3. Bill 148 introduces two new sections to guarantee equal pay for equal work without distinction based on "**difference in employment status**" (s. 42.1) or "**temporary help agency status**" (s. 42.2). If an employee works part-time, or has temporary, seasonal or casual status, or is employed by a temporary help agency, these proposed amendments will obligate employers to pay them the same rate of pay as full-time employees.

4. This is a significant step in the right direction. This new approach, which follows the approach adopted in the European Union, will greatly assist in closing the gender pay gap. These Bill 148 amendments are a significant breakthrough for women workers and especially so for Indigenous, racialized, immigrant, younger and disabled women who predominate in precarious part-time, temporary, seasonal, casual and temporary help agency work.

5. However, the strength of the proposed equal pay rights will depend on three key features:

    (i) the clarity of the language in the statute;

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(ii) proactive obligations on employers to provide pay transparency; and

(iii) robust enforcement mechanisms to ensure employers live up to their obligations.

6. While the right to equal pay for equal work based on sex has been in the ESA since 1968, it has provided very limited protection for women workers because the language and jurisprudence construed the right very narrowly. For example, the statutory requirement in s. 42 that a woman and a man be doing "substantially the same" work allowed employers to create or maintain minor differences between women's and men's jobs in order maintain pay differences. Moreover, s. 42 provided for a broad range of exceptions which further hollowed out the protective potential of the right.

7. As a result, simply replicating the language of s. 42, as Bill 148 does, is insufficient as under the existing language employers have been able to manipulate job duties to evade the equal pay for equal work obligations. Unless the statutory language is tightened, the promise of equal pay for equal work, particularly for non-union workers, will be largely illusionary.

8. Further, since the ESA equal pay right was introduced in 1968, *Human Rights Code* and *Pay Equity Act* principles have evolved to more precisely address the problems noted above. As a result, there are avoidable inconsistencies between the *ESA* provisions, the *Pay Equity Act* and the *Human Rights Code* which should be corrected as a housekeeping matter.

9. In order for equal pay protections to be effective, employees need to know what the wage structure is in their workplace. This information is generally not available in non-unionized workplaces. Bill 148 gives employees a right to request a review of their own rate of pay, but it does not provide a means to ensure employees have the information needed to determine if they are receiving equal pay. To make these rights effective, employers must have a proactive obligation of pay transparency that requires them to post wage rate information in the workplace and to report this information to the Ministry of Labour. Employees also need to be protected from reprisal for asking about and discussing wage rates.

10. Finally, Bill 148 includes transitional provisions that would allow collective agreements that are in effect on 1 April 2018 to remain non-compliant with the new equal pay standards for the duration of the collective agreement. Where unionized part-time, temporary, seasonal or casual status workers are paid a lower rate than full-time employees, arbitrarily and unfairly, these workers will

continued to be paid unequal wages until the expiry of that collective agreement – a state of non-compliance that could persist for years. There is no reason to introduce this exemption below the basic standards floor.

11. Accordingly, the Equal Pay Coalition submits that Bill 148's provisions on ESA Part XII Equal Pay for Equal Work need revisions in three areas:

    (i) to clarify the scope of the protection;

    (ii) to include a proactive employer obligation to provide pay transparency; and

    (iii) to remove the transition provisions that exempt collective agreements that are in effect on 1 April 2018 from compliance with the equal pay standards.

12. The Equal Pay Coalition sets out its proposed amendments to the Equal Pay provisions below. Appendix A sets out a clean version of the full text of how Part XII, Equal Pay for Equal Work, sections 42 to 42.3, would read with the Equal Pay Coalition's proposed amendments.

A. SCOPE OF EQUAL PAY PROTECTION

1. Section 42: Ensuring the Basic Equal Pay Protection is Effective

13. **<u>What exists now:</u>** The current *ESA* right to equal pay for equal work is based on the ground of sex. Section 42(1) provides that,

> 42. (1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,
>
> (a) they perform *substantially the same kind of work* in the same establishment;
>
> (b) their performance requires *substantially the same skill, effort and responsibility*; and
>
> (c) their work is performed under *similar working conditions*.

14. **The Problem:** The language in s. 42(1) of “substantially the same” has been interpreted and applied in an unduly narrow fashion which enables or encourages employers to manipulate minor job duties or responsibilities to maintain unequal pay.

15. **The Solution:** The words “substantially the same” should be amended and replaced by **“similar”** in subsections 42(1)(a) and (b). A new provision should be added to emphasize that minor differences in duties or job titles will not prevent work from being considered similar.

16. **The Rationale:** First, the term “similar” avoids the narrow focus on “same” duties. In doing this it aims to prevent the evasion of equal pay obligations which has occurred by making minor changes to the assignment of duties and responsibilities in order to maintain unequal pay. The objective is to ensure that the principle of equal pay for equal work is broadly achieved in practice.

17. Second, the term “similar" is consistent with the definition of job class in the *Pay Equity Act* which also aims to ensure that jobs doing similar work are paid the same. This language should be replicated in order to maintain a consistent approach between the ESA and the *Pay Equity Act*.

18. Apart from preventing avoidance strategies, the standard of equal pay for “similar” work with “similar” skill, effort and responsibility is consistent with the language in the *Pay Equity Act*.

19. Even with the language of "similar", employees will face a struggle proving to an ESA Adjudicator that the work is indeed similar. Employers may again seek to manipulate job duties to evade the equal pay standard. To pre-empt this, the Legislature should clearly spell out that the intent of the legislation is to ensure that such subjective and minor changes to duties and responsibilities cannot be used as a mechanism to avoid paying precariously employed workers the same pay.

20. **In summary,** with the amendments proposed by the Equal Pay Coalition, these sections would read as follows:

PROPOSED NEW LANGUAGE

Equal pay for equal work

> 42. (1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,

(a) they perform **similar** work in the same establishment;

(b) their performance requires **similar** skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

2. Section 42: Exceptions to the right to equal pay

21. **What exists now:** The current *ESA* sets out four exceptions to the right to equal pay for equal work in s. 42(2) as follows:

> 42. (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of,
>
> (a) a seniority system;
>
> (b) a merit system;
>
> (c) a system that measures earnings by quantity or quality of production; or
>
> (d) any other factor other than sex.

22. **The Problem:** The exceptions in s. 42(2) are so broad that they essentially hollow out the protection afforded by s. 42(1). Historically these exemptions proved fatal to precariously employed women workers who challenged that they were paid less as a result of gender discrimination. Section 42(2)(c) exempts piece rate systems and s. 42(2)(d) sets out an extremely broad and ambiguous exception clause. Meanwhile, it is clear that different seniority systems and merit systems themselves have been structured or applied in ways which perpetuate systemic sex discrimination.

23. Historically, s. 42(2)(d) was interpreted in the wider context of an employer's wage policies and employment relations. An employer's wage policy and wage structure would be relied upon as "any other factor" that could justify a difference in pay. While the original language of the Act was clearly designed to prevent an

employer from paying employees differently based on sex, the exceptions allowed for differential wages to exist if the factor is proven to be something other than sex or if it fell within the exceptions of seniority, merit or payment based on quality or quantity of production. Adjudicators and arbitrators examined whether a *bona fide* employment or wage policy accounted for the separate wage rate. If such a policy existed, it was deemed to be "any other factor" that created a permissible exception to the equal pay standard. That expansive loophole must be closed.

24. **The Solution:** The Equal Pay Coalition proposes that s. 42(2)(a) and (b) be amended to only allow exceptions for formal seniority and merit systems that do not discriminate contrary to the *Human Rights* Code. The Coalition further proposes that s. 42(2)(c) and (d) be deleted in their entirety.

25. **The Rationale:** The proposed amendments to the language of the seniority system and merit compensation system parallel language of the exemptions in the *Pay Equity Act.* The *Pay Equity Act* requires an employer to show that a difference in job rate is both objective and does not discriminate on the basis of sex. The ESA exemption language should mirror the *Pay Equity Act* language on seniority and merit systems to ensure consistency in redressing discrimination in these pay structures.

26. The basket exclusion clause in s. 42(2)(d) creates a loophole that has allowed discriminatory pay practices to continue and is so broad that it largely defeats the right in s. 42(1). The Changing Workplace Review explicitly concluded that any exceptions or exemptions from the equal pay right must be objective, such as a seniority system or a merit system. No further exemptions are required.

27. **In summary**, the Equal Pay Coalition's proposed amendments on this section would read as follows:

PROPOSED NEW LANGUAGE

42(2) Subsection (1) does not apply **if the employer is able to show that the difference in pay is the result of**

(a) **a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or**

(b) **a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not**

discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.

3. Section 42.1 Equal Pay for Equal Work: "Difference in Employment Status"

28. **What is proposed in Bill 148:** Bill 148 amends Part XII Equal Pay for Equal Work by adding an entirely new section to the ESA. The new provision, section 42.1, ensures that "difference in employment status" shall not be used as a basis to pay an employee at a rate of pay less than a full-time employee doing similar work.

29. This addition of "employment status" as prohibited ground of pay differentials corrects one of the major exceptions relied upon by employers and confirmed in the interpretation of the ESA where "job status" was deemed to be "any other factor than sex."

30. **The Problem:** Unfortunately, because Bill 148 replicated the existing language of s. 42(1) and (2), it replicated all the enduring shortcomings of that language which undermined robust protection for the principle of equal pay for equal work.

31. **The Solution:** The Equal Pay Coalition recommends that the modernized language for s. 42 as detailed above be applied to the new s. 42.1 as follows:

    (i) replace "substantially the same" with **similar;**

    (ii) include language to emphasize that minor variations cannot be relied upon to find that work is not similar;

    (iii) amend the seniority system language in s. 42.1(2)(a) to mirror the *Pay Equity Act* language with the **onus on the employer** to demonstrate that the system does not **discriminate contrary to the *Human Rights Code*;**

    (iv) amend the merit system language of s. 42.1(2)(b) to mirror the *Pay Equity Act* language and ensure merit systems do not discriminate contrary to the *Human Rights Code*;

    (v) repeal the exceptions in Bill 148's proposed s. 42.1(2)(c) and s. 42.1(2)(d)

32. **In summary**, the amendments proposed by the Equal Pay Coalition would read as follows:

PROPOSED NEW LANGUAGE:

42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

(a) they perform **similar** work in the same establishment;

(b) their performance requires **similar** skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) **For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.**

(2) Subsection (1) does not apply **if the employer is able to show that the difference in pay is the result of**

(a) **a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or**

(b) **a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.**

4. Section 42.2 Equal Pay for Equal Work: "Temporary Help Agency Workers" and "Assignment Employee Status"

33. **What is proposed in Bill 148:** Bill 148 proposes to amend Part XII to add a new s. 42.2 to ensure equal pay for workers assigned into a workplace from a temporary help agency. This is a welcome addition. For too long, temporary help agency workers have reported working side-by-side with other workers in an

establishment, completing similar tasks and holding similar responsibilities, yet being paid many dollars less per hour in pay.

34. **The Problem:** Again, Bill 148 replicates the existing language of s. 42(1) and (2) which undermined robust protection for the principle of equal pay for equal work. Moreover, the proposed s. 42.2(2) provides an extremely expansive exception which can significantly undermine the protection promised in s. 42.2(1).

35. **The Solution:** As with s. 42.1, the Equal Pay Coalition recommends that the modernized language for s. 42 as detailed above be applied to the new s. 42.2 as follows:

(i) replace "substantially the same" with similar;

(ii) include language to emphasize that minor variations cannot be relied upon to find that work is not similar;

(iii) amend the language in s. 42.2(2) to mirror the exceptions for formal seniority and merit systems that do not discriminate contrary to the *Human Rights Code* as proposed for both s. 42(2) and s. 42.1(2).

PROPOSED NEW LANGUAGE:

42.2 (1) No temporary help agency shall pay an assignment employee who is assigned to perform work for a client at a rate of pay less than the rate paid to an employee of the client when,

(a) they perform **similar** work in the same establishment;

(b) their performance requires **similar** skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) **For the purposes of s. 42.2(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.**

(2) Subsection (1) does not apply **if the employer is able to show that the difference in pay is the result of**

(a) **a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or**

(b) **a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.**

5. Pay Transparency

36. **What Bill 148 proposes:** In both s. 42.1(6) and s. 42.2(6) Bill 148 introduces new provisions under which an employee can request that their employer or temporary help agency review the employee's pay if the employee believes their pay fails to comply with the equal pay for equal work right. The employer or temporary help agency can either (a) adjust the employee's pay or (b) if the employer or temporary help agency disagrees with the employee's belief, provide a written response setting out the reasons for their disagreement.

37. **The Problem:** Bill 148's proposed "written response" provisions wrongly place the onus solely on the non-union employee to ask an employer for a review of their rate of pay and whether it is in compliance with s. 42.1 or 42.2. Put simply, for a non-union worker, particularly those with a temporary help agency, asking for a review of their pay is a request to have their job terminated.

38. Moreover, in order for this right to be effective, employees need to know what the pay structure is in their workplace. Non-unionized workers, and in particular temporary help agency workers, do not have access to this information. Workers can be disciplined or even terminated for disclosing or discussing their wages. While Bill 148 creates an important right to have pay inequalities addressed, it needs to ensure that employees have a right to disclosure of the information that would enable them to access this right and Bill 148 needs to ensure that employees are protected from reprisals for seeking information about or seeking to enforce their rights.

39. **The Solution:** Bill 148 should be amended to comply with other models of pay transparency internationally. For example, in Iceland, the United Kingdom, Australia, Denmark and other countries, legislation ensures that Employers have the proactive obligation to report wage information about job classifications to

identify wage gaps relating to gender and other factors such as employment status.

40. On Equal Pay Day this year, the Equal Pay Coalition called on the Ontario government to introduce a new *Pay Transparency to Close the Gender Pay Gap Act*. After years of lobbying for such legislation, the Coalition said now is the time for decisive action to close the gender pay gap. Bill 148 presents an opportunity for such action.

41. A full transparency mechanism contains three main principles: (i) the workers' right to know and ask for wage information; (ii) the employer's proactive obligation to disclose wage information, including obligations to post information in the workplace and report information to the Ministry of Labour; and (iii) protection against reprisals for workers who share or discuss wage information, seek information about their rights or seek to enforce their rights.

42. The provincial government has an opportunity to be a leader on pay transparency to ensure that precariously employed workers have a full right to equal pay.

43. The proposed posting obligations of the pay rates in a workplace are consistent with the language in the *Pay Equity Act.* Employers in this province currently have the obligation to post a pay equity plan, a new plan or an amended plan in a prominent place within a workplace. As proposed by the Coalition, the Pay Transparency reports would require similar posting.

44. The public disclosure of information on the pay rates of male and female workers along with their job status is recognized internationally as the most significant way to assist in closing the gender pay gap. Posting of the job rates and pay structures, based upon job status or assignment employee status will equally assist with closing the gap.

45. The Coalition proposes ensuring that sections 42.1 (6) and 42.2 (6) are effective by amending Bill 148 to introduce a new section 42.3 to the ESA as follows:

NEW PROPOSED LANGUAGE Section 42.3

Section 42.3 Equal pay for Equal Work: Pay transparency

42.3 (1) No later than May 15 of every year, each employer shall file an annual Pay Transparency Report with the Minister.

(2) The employer's annual Pay Transparency Report in subsection (1) shall disclose the following information relating to the prior 12-month period ending on March 31 of each year:

(a) annual individual compensation of male employees, categorized by each classification and job status within the establishment,

(b) annual individual compensation of female employees categorized by each classification and job status within the establishment,

(c) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees categorized by each classification and job status within the establishment,

(d) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,

(e) the number of steps in a pay range by each classification and job status within the establishment,

(f) the rate of progression through a pay range by each classification and job status within the establishment.

(3) The employer shall post the Pay Transparency Report in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace.

(4) No employer or temporary help agency may do any of the following:

(a) require, as a condition of employment, that an employee refrain from disclosing the amount of their wages;

(b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of their wages.

(5) Section 74 applies to this Part with no exceptions.

6. Transition: Delete the Exceptions for Existing Collective Agreements

46. **What is proposed by Bill 148:** Bill 148 includes transition provisions that create an unnecessary exemption for collective agreements that are in conflict with the new equal pay for equal work rights. The proposed s. 42.1(7) and s. 42.2(7) provide that if a collective agreement is signed prior to April 1, 2018 and contains a provision which pays part-time, temporary, seasonal, casual or assignment employees an unequal wage, this collective agreement provision prevails and is not in breach of the newly proposed ESA equal pay standard.

47. **The Problem:** A fundamental principle of the ESA is that no employer or trade union may contract out of its basic provisions (s. 4). This principle of mandatory compliance with minimum standards is reiterated in the new s. 42.1(3) and (4) and s. 42.2(3) and (4). And yet this principle is directly contradicted by s. 42.1(7) and s. 42.2(7) which would permit non-compliance with minimum standards in unionized workplaces for a period that could extend for several years.

48. This would give unionized workers lesser protection than non-unionized workers and may, as a result, run afoul of the right to freedom of association protected under s. 2(d) of the *Charter*. By effectively punishing workers for having secured a collective agreement, Bill 148's transition provisions arguably undermine the rationale for unionization which is to collectively bargain protection above minimum standards.

49. In a climate where some unions face pressure to sign 4-year collective agreements in order to avoid lengthy strikes, and in a context where collective agreements will continue to be signed up to March 31, 2018, precariously employed, lower paid workers could be forced to wait for years before they receive the minimum standard of equal pay for equal work.

50. The Developmental Services sector is an example where this delayed access to equal pay will have a significantly detrimental impact to women workers. These workers tend to peoples with disabilities who often live in group homes. These front line workers are predominantly women who tend to the daily needs of their clients twenty-four hours per day, every week. In this sector, and in some collective agreements, part-time and casual employees are paid significantly less for similar work of the full-time employees. In these workplaces, it is women and racialized workers that have been relegated to lower wages as part-timers and casuals. This is a sector where collective agreements expire on March 31st and have lengthy terms. These women workers will be relegated to lower wages for years after the new ESA provisions become effective in the province.

51. As the Changing Workplaces Review acknowledged, the evidence demonstrates that part-time work, contract work and other forms of precarious employment relationships are deeply gendered. They are also deeply racialized. Maintaining this differential payment structure in collective agreements is arguably a violation of basic human rights.

52. The transition provisions which allow for extended non-compliance with equal pay rights are unnecessary and create an arbitrary distinction.

53. It is the Coalition's position that to close the gender pay gap, which is a human rights crisis in this province, there should be no exemptions or transition period. The lower wage is arguably a form of systemic discrimination which the amendment is seeking to cure.

54. **The Solution:** Delete sections 42.1(7), (8) and (9) and sections 42.2(7), (8) and (9).

APPENDIX A:

EQUAL PAY COALITION PROPOSAL

EMPLOYMENT STANDARDS ACT, SECTIONS 42 TO 42.3

Equal pay for equal work: Sex

42. (1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.

(3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1).

(4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1).

(5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee.

Equal pay for equal work: Employment status

42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.

(3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1).

(4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1).

(5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee.

(6) An employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the employee's employer, and the employer shall,

(a) adjust the employee's pay accordingly; or

(b) if the employer disagrees with the employee's belief, provide a written response to the employee setting out the reasons for the disagreement.

Equal pay for equal work: Difference in assignment employee status

42.2 (1) No temporary help agency shall pay an assignment employee who is assigned to perform work for a client at a rate of pay less than the rate paid to an employee of the client when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42.2(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.

(3) No client of a temporary help agency shall reduce the rate of pay of an employee in order to assist a temporary help agency in complying with subsection (1).

(4) No trade union or other organization shall cause or attempt to cause a temporary help agency to contravene subsection (1).

(5) If an employment standards officer finds that a temporary help agency has contravened subsection (1), the officer may determine the amount owing to an assignment employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that assignment employee.

(6) An assignment employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the temporary help agency, and the temporary help agency shall,

(a) adjust the assignment employee’s pay accordingly; or

(b) if the temporary help agency disagrees with the assignment employee’s belief, provide a written response to the assignment employee setting out the reasons for the disagreement.

Equal pay for equal work: Pay transparency

42.3 (1) No later than May 15 of every year, each employer shall file an annual Pay Transparency Report with the Minister.

(2) The annual Pay Transparency Report referred to in subsection (1) shall disclose the following information relating to the prior 12-month period ending on March 31 of each year:

(a) annual individual compensation of male employees, categorized by each classification and job status within the establishment,

(b) annual individual compensation of female employees categorized by each classification and job status within the establishment,

(c) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees categorized by each classification and job status within the establishment,

(d) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,

(e) the number of steps in a pay range by each classification and job status within the establishment,

(f) the rate of progression through a pay range by each classification and job status within the establishment.

(3) The employer shall post the Pay Transparency Report in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace.

(4) No employer or temporary help agency may do any of the following:

(a) require, as a condition of employment, that an employee refrain from disclosing the amount of their wages;

(b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of their wages.

(5) Section 74 applies to this Part with no exceptions.