

Equal Pay for Equal Work

Ontario has legislation called the ***Pay Equity Act*** (<https://www.ontario.ca/laws/statute/90p07>) to ensure that women and men receive equal pay for performing jobs that may be very different but are of equal value.

The ***Employment Standards Act, 2000*** (ESA) (<https://www.ontario.ca/laws/statute/00e41>), on the other hand, has provisions that ensure women and men receive equal pay for performing substantially the same job. That is, they are entitled to receive equal pay for “equal work,” meaning work that is **substantially the same, requiring the same skill, effort and responsibility and performed under similar working conditions in the same establishment.**

According to the ESA, a woman cannot be paid less than a man if she is doing “equal work.” This also applies in reverse; a man cannot receive less pay than a woman if he is doing “equal work.”

Substantially the same work

This means that the work is similar enough that it could reasonably be considered to fall within the same job classification. The jobs do not have to be identical in every respect, nor do they have to be interchangeable.

Substantially the same skill, effort and responsibility

Skill refers to the degree or amount of knowledge, physical, or motor capability needed by the employee performing the job.

Effort is the physical or mental exertion needed to perform a job.

Responsibility is measured by the number and nature of an employee's job obligations, the degree of accountability, and the degree of authority exercised by an employee in the performance of the job.

Similar working conditions

Working conditions refer to such things as exposure to the elements, health and safety hazards, workplace environment, hours of work, etc.

The same establishment

This means a location where the employer carries on business. Two or more locations are considered a single establishment if:

- they are in the same municipality; **or**
- there are common “bumping rights” for at least one employee across municipal borders.

Example: When two people do substantially the same work

Andy and Kyra both work on a production line. Kyra packs plastic spoons into small boxes, and Andy packs the small boxes into bigger boxes. There is not anything about either of these jobs that requires more skill, effort or responsibility.

Andy and Kyra are doing substantially the same work, and they must be paid the same wages (unless one of the exceptions listed below applies).

Example: When a business has two locations

An employer owns two clothing stores in the same city. One sells women's clothes, and the staff are women. The other sells men's clothes, and the staff are men. The two stores are considered one establishment under the ESA, because they are in the same municipality.

Since the staff in both stores do substantially the same work, selling clothes, everyone must receive the same rate of pay.

If employees have not been paid equal pay for equal work, steps must be taken to change this. Employers must raise wages to achieve equal pay. They **cannot** lower wages to achieve equal pay.

Exceptions

Even if a man and a woman are doing substantially the same work, they can be paid different rates of pay if the difference is due to:

- **A seniority system.** An employee with greater seniority than another employee of the opposite sex may be paid more than the other employee even though both are doing substantially the same work if the difference in pay rates is based on a seniority system.
- **A merit system.** An employee may be paid more than another employee of the opposite sex even though both are doing substantially the same work if the difference in pay rates is based on a system that objectively measures merit.
- **A system that measures earnings by quantity or quality of production.** An employee may be paid more than another employee of the opposite sex even though both are doing substantially the same work if the difference in pay rates is based on a system that measures how much employees produce or the quality of what they produce.
- **Any difference that is not based on the sex of the employee.** For example, an employee may be paid more than an employee of the opposite sex even though both are doing substantially the same work if the difference in pay rates is based on a factor other than sex. (For example, employee A may at one time have been in a position that required greater skill than the position that employee B has and so was paid more. However, when A's original position was abolished, he was demoted to the same position that B had but was "red-circled," i.e., he kept the same rate of pay that he had when he was in his original position. The ESA allows this because the reason for A being paid more than B has nothing to do with the sex of either employee.)

<https://www.ontario.ca/document/your-guide-employment-standards-act-0/equal-pay-equal-work>