*LW1210 - Labour and Employment Law*

With Paul Tilley

*UNIT 2 – Employment Law – CHAPTER 9 – Equity in the Workplace*

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| *Provincial:* [Quick guide to NL Employment Standards PDF](http://www.nlimmigration.ca/media/2839/employmentstandards.pdf)Provincial: [*Nl Employment Standards*](http://www.gov.nl.ca/lra/faq/labourstandards.html) *FAQ*Provincial: *[Nl Employment Standards Legislation](http://www.gov.nl.ca/lra/agency/legislation.html)**Federal:* [*Employment Equity Act*](http://laws-lois.justice.gc.ca/eng/acts/E-5.401/)[*Employment equity tools, resources and publications*](http://www.labour.gc.ca/eng/standards_equity/eq/emp/tools/)[*Canadian Human Right Commission on Employment Equity*](http://www.chrc-ccdp.ca/eng/content/employment-equity) |

# *Employment Equity in Newfoundland and Labrador*

According to the Canadian Charter of Rights and Freedoms: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Beginning in 1986, Canadian provinces began to enact specific pay equity legislation that imposed pro-active obligations on employers (usually public sector employers) to take active steps to identify and eliminate wage discrimination.

Newfoundland and Labrador does not have specific pay equity legislation, however it does have provisions in its employment legislation for pay equity, to 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.

**What is 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:

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**.**

# *Filing a Complaint*

***Before filing a discrimination complaint…***

If you think you have been discriminated against and are considering filing a complaint with the Provincial or Canadian Human Rights Commission, there are three things you need to know.

1. The Commission will expect that you first try to resolve the issue where it took place.

The Commission’s human rights officer will encourage you to try to solve the problem by using an internal dispute resolution process in your workplace, if there is one. If your complaint is with a service provider, the human rights officer will encourage you to speak to a manager or contact the customer service department, if the organization has one.

2. Your complaint may be a provincial or territorial matter.

Provinces and territories are responsible for the majority of employers and service providers in Canada. Things like restaurants, grocery stores and gas stations fall under the responsibility of your province or territory. So be prepared to go to a Provincial and Territorial Human Rights Agencies instead.

3. Your complaint needs to meet certain criteria to be valid.

Not all unfair situations are valid discrimination complaints. A valid complaint requires one of 11 grounds of discrimination, a discriminatory practice, and a negative effect on you. To find out if you have a valid complaint, you can use the complaint assessment tool, or contact the Commission.

It is also important to note that only people who are in Canada legally can file a complaint, and that your complaint must be filed with the Commission within 12 months of the incident otherwise your complaint may be refused.

***Key elements of a Complaint***

Generally you will need to issue a formal complaint to the respective Human Rights Commission, and it will need to contain 3 essential elements:

**WHO**

1. Your complaint must be about an employer or service provider that the Commission has authority over.

**WHAT**

2. Your complaint must be about conduct or behaviour that is a discriminatory practice, and

**WHY**

3. The behaviour you are complaining about must be related to one of the grounds of discrimination.