



What's New in HR Law

Pay Transparency, Take Two

November 7, 2023

Bottom Line

On November 6, 2023, the Government of Ontario announced that it will introduce legislation which would require employers to include the expected salary range on some job postings and would also require employers to disclose the use of artificial intelligence (“AI”) in hiring processes. The Government of Ontario has also announced that it will initiate a consultation process on the practice of using non-disclosure agreements (“NDAs”) in the settlement of cases of workplace sexual harassment, misconduct, or violence.

Disclosing Salary in Job Postings

The Government of Ontario has announced that it will introduce new legislation (likely the fourth instalment in the *Working for Workers* series of Acts) which will require Ontario employers to disclose the wages or salary range on a public job posting.

Pending the full text of the proposed Bill, which is expected the week of November 14, 2023, employers can look to the Ministry of Labour’s statements, past attempts in Ontario to legislate pay transparency in job postings, and similar statutes in other provinces, to anticipate what these new requirements may be.

Minister of Labour David Piccini has stated that there will be a consultation period on the specific requirements of the anticipated legislation. He also hinted that it may only apply to positions below a certain yearly earnings threshold. Minister Piccini intimated that \$100,000 a year may be an appropriate threshold, though that number is, as with the rest of the announcement, subject to change.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

The Pay Transparency Act, 2018

This will not be the first law in Ontario mandating disclosure of expected salary ranges in public job postings. In May, 2018, the former Liberal Government of Ontario passed the *Pay Transparency Act, 2018*, which included such a requirement, and which would have come into force on January 1, 2019. However, between these dates, the Conservative Party formed a new Government, which indefinitely postponed *Pay Transparency Act, 2018* from coming into force.

In addition to requiring salary ranges to be included in public job postings, the *Pay Transparency Act, 2018* also prohibited employers from asking job applicants about their previous salaries or wage rates, and prohibited reprisal for employees disclosing or discussing compensation rates with other employees.

While we expect the new legislation to be more limited, at least initially, in that it is anticipated that it will apply only to job postings for positions below a certain compensation threshold, it is not known at this point whether it will also include the other pay transparency protections of the *Pay Transparency Act, 2018*.

British Columbia's Pay Transparency Act

The anticipated pay transparency legislation is part of a larger pay transparency trend in Canada. In May, 2023, British Columbia passed its own *Pay Transparency Act* requiring employers to include salary or wage information on public job postings.

In British Columbia, the requirement only applies to public job postings (including those posted by third parties on behalf of the employer), and does not apply to general recruitment campaigns which are not for a specific job opportunity. For these job postings, British Columbia requires the employer to disclose a minimum and maximum anticipated salary or wage, which need not include bonus, overtime, tips, or benefits.

As in the previous Ontario *Pay Transparency Act, 2018*, the British Columbia *Pay Transparency Act* also prohibits employers from asking job applicants about their previous salaries or wage rates, and prohibits reprisal for employees disclosing compensation rates to other employees—but also to job applicants.

AI in Hiring Processes

The Government of Ontario also announced that it would require employers to inform job applicants when using AI tools and algorithms in hiring processes.

It is not known at this point the extent of this disclosure requirement (*i.e.*, whether it will extend to an obligation to disclose how the AI tools will be used, or if, similar to the rules regarding electronic monitoring policies introduced in the *Working for Workers Act, 2022*, it will require disclosure of how the AI tools “may” be used).

NDA's, Workplace Sexual Harassment, and Workplace Sexual Violence

In the ambit of the same announcement, the Government of Ontario also revealed that it will begin a consultation process geared at assessing potential restrictions on the use of NDAs with respect to allegations of workplace sexual harassment and workplace sexual violence.

Employers often, as a matter of course, include confidentiality clauses in settlement agreements. In recent years, this practice has been criticized when used in the context of incidents or allegations of

workplace sexual harassment and workplace sexual violence. While the Government of Ontario is showing interest in restricting using NDAs in workplace sexual harassment and violence cases, it has also expressed that any such restrictions must respect the rights of victims and survivors of sexual harassment and violence.

This consultation on NDAs follows amendments made in 2022 to the *Ministry of Training, Colleges and Universities Act* which prohibited non-disclosure agreements relating to allegations that an employee of a post-secondary institution committed an act of sexual misconduct towards a student.

The Government of Ontario has yet to announce how interested employers may participate in the anticipated consultation process.

Check the Box

The text of the anticipated Bill will be announced once the Bill is officially proposed at the Legislative Assembly of Ontario and will be subject to change as it moves through the legislative process.

The process for the announced consultation regarding NDAs will also be announced at a further date, for employers who wish to voice their opinion on the use of NDAs in the settlement of cases of workplace sexual harassment, misconduct, or violence.

We will continue to monitor the status of this anticipated Bill as it proceeds through the Legislative Assembly of Ontario and provide updates on further developments.

Need More Information?

For more information or assistance with the latest changes to the legislative employment framework, contact [your regular lawyer](#) at the firm.



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