



What's New in HR Law

Proposed Legislation Targets Wage Gap between Ontario Men and Women

March 7, 2018

BOTTOM LINE

Ontario will become the first province in Canada to legislate pay transparency if Bill 203, the *Pay Transparency Act, 2018* is passed. Bill 203 is part of *Then Now Next: Ontario's Strategy for Women's Economic Empowerment*, the Ontario Government's three-year plan to increase gender equity, challenge bias, and eliminate barriers women face at work, at home and in their communities.

New Strategy Introduced March 6, 2018

According to a news release issued by the Ontario Government on March 6, 2018, the gender wage gap in Ontario has remained stagnant for the last decade, with women earning approximately 30 per cent less than men.

To address the wage gap, Bill 203 would:

- increase pay transparency at the hiring stage;
- prohibit employers from asking about compensation history;

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- require certain employers to track and publish information about compensation in their organizations;
- prohibit reprisal against employees who do discuss or disclose compensation; and
- provide for various compliance measures, such as investigations into possible contraventions and compliance inspections.

Inclusion of compensation information in certain job postings

An employer who publicly advertises externally for a specific job will be required to include information about the expected compensation for the position in the job posting. This requirement will not apply to recruitment campaigns, general “help wanted” signs, or positions advertised to existing employees only.

Inquiries about compensation history

Employers will be prohibited from asking external job applicants about their compensation history. Applicants themselves will not be prohibited from disclosing their compensation history, nor will employers be prevented from considering or relying on such disclosure in determining the applicant’s compensation. The proposed legislation does not prohibit employers from seeking information about ranges of compensation or aggregate compensation provided for positions comparable to the posted position.

Pay transparency reports

Every prescribed employer will be required to prepare pay transparency reports containing information relating to the employer, the employer’s workforce composition, and differences in compensation in the employer’s workforce with respect to gender and other characteristics.

Employers will be required to file the report with the Ministry of Labour and post the report online or in at least one conspicuous place in the workplace where it is likely to come to the attention of employees. The Ministry may publish an employer’s pay transparency report, or otherwise make it available to the public.

The pay transparency report requirements will begin with the Ontario Public Service, then extend to employers with more than 500 employees, and, eventually, to employers with more than 250 employees.

Reprisals against employees who discuss or disclose compensation

Employers will be prohibited from intimidating, dismissing, or otherwise penalizing an employee or threatening to do so because an employee has made inquiries about the employee’s compensation, disclosed the employee’s compensation to other employees, made inquiries about pay transparency reports, given information regarding the employer’s compliance to the Ministry of Labour, or asked the employer to comply with the legislation.

Complaints that an employer has contravened the prohibition on reprisal may be dealt with by arbitration (pursuant to an applicable collective agreement) or by filing a complaint with the Ontario Labour Relations Board (“OLRB”).

Significantly, where such a complaint has been made, the onus will lie on the employer to establish that it did not engage in any reprisal. The OLRB will be vested with a variety of enforcement powers, including the ability to reinstate an employee whose employment termination constituted a reprisal.

Investigations and compliance inspections

Compliance officers will be empowered to conduct investigations into possible contraventions and perform inspections to ensure compliance. Compliance officers will be permitted to enter and inspect places without a warrant, examine records or other items, question any persons regarding matters that may be relevant, and issue notices of contravention.

A contravention will be deemed to have occurred if an employer does not apply for review of a notice of contravention, or where, upon review, a contravention is confirmed. In such circumstances, the Ministry of Labour may publish the name of the person, a description of the contravention, the date of the contravention, and the penalty issued. The amount(s) of the penalty for contraventions is yet to be determined by regulations made under the proposed legislation.

Check the Box

Bill 203 must move through the second and third reading stages before being passed. If passed, Bill 203 will become law on January 1, 2019. If the proposed legislation becomes law, employers must ensure that all hiring and pay practices comply with Bill 203 and must be sure to file and post pay transparency reports, as prescribed.

We will continue to monitor the status of Bill 203 as it proceeds through the legislative process and will provide further updates as needed.

Need more information?

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