

# CONSULTATION PAPER ON JOB POSTINGS RULES IN THE *EMPLOYMENT STANDARDS ACT, 2000*

## **CONTEXT**

The [Working for Workers Four Act, 2024](#) amended the *Employment Standards Act, 2000* (ESA), to add a new Part III.1 (Job Postings). This new part is aimed at giving jobseekers greater certainty in the hiring process without adding unnecessary or onerous requirements for employers. This new part is not yet in force. The government is seeking input to inform the regulatory development needed to implement this new part.

There have been calls for greater efforts aimed at improving fairness and transparency in the hiring process for skilled newcomers and jobseekers who are trying to get into the workforce. In 2023, there were 1,054,269 online job postings in Ontario and only approximately 40.5 per cent of the online job postings included salary information.

There have also been growing concerns about the ethical, legal and privacy implications of artificial intelligence (AI), as AI tools and algorithms are being adopted by Ontario businesses at a rapid rate. In May 2024, Statistics Canada reported that 11.4 percent of all businesses or organizations in Ontario were planning to adopt or incorporate software using AI over the next 12 months.<sup>1</sup>

In response, the new Job Postings part of the ESA requires employers to include information about the expected compensation or the range of expected compensation and to disclose the use of AI in publicly advertised job postings and to prohibit the inclusion of Canadian experience as a requirement in publicly advertised job postings and associated application forms. Once in effect, these changes would give jobseekers more information to make informed decisions in their career search.

Concerns have also been raised about job ads that are posted that are not for immediate job vacancies and applicants are not aware of it. A recent survey of 1,000 hiring managers conducted by Clarify Capital in October 2023 found that 50 percent of hiring managers reported creating job openings to keep a talent pool “at the ready” for when they are hiring, without the intention to hire in the immediate term.

Bill 190, the [Working for Workers Five Act, 2024](#), proposes to further amend the ESA related to publicly advertised job postings to address this concern. If passed, Bill 190 would require employers to disclose in publicly advertised job postings whether a job vacancy exists or not. It would also require employers to provide prescribed information within a prescribed time period to job applicants whom they have interviewed for publicly advertised job postings. These changes would make Ontario the first province

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<sup>1</sup> Statistics Canada. [Table 33-10-0822-01 Technologies the business or organization plans to adopt or incorporate over the next 12 months, second quarter of 2024](#)

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in Canada to set this standard. The government is also seeking input on these proposals.

### **OBJECTIVES**

The purpose of the consultation paper is to seek input to inform the smooth implementation of these new areas of regulation in a manner that does not cause undue red tape for employers while giving prospective employees the certainty they deserve.

Your feedback on the questions below will provide valuable insight as the government explores these issues.

### **ISSUES FOR DISCUSSION**

The government is interested in your views on the following:

#### **NEW PART III.1 (JOB POSTINGS)**

A new Part III.1 of the ESA sets out certain requirements and prohibitions related to the content of publicly advertised job postings with respect to compensation range information, Canadian experience, and the use of artificial intelligence.

The government wants to protect prospective employees in the hiring/employment process by increasing transparency for workers and better access to employment opportunities for jobseekers and newcomers.

### **DEFINITIONS**

The part sets out that the definitions of “artificial intelligence” and “publicly advertised job posting” would be defined by regulation.

- 1. In May 2024, Bill 194, *Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024* was introduced. Bill 194 proposes the following definition:**

- “Artificial intelligence” means a machine-based system that, for explicit or implicit objectives, infers from the input it receives in order to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments.

**It is proposed that the definition of AI for the purpose of the ESA would be based on the above definition. *Do you agree with the proposed definition? Why or why not?***

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### 2. Proposed definition of “publicly advertised job posting”:

- “Publicly advertised job posting” means an external job posting that an employer advertises to the general public in any manner.
- This definition does not include recruitment campaigns, general help wanted signs or positions that are only advertised to existing employees of the employer.

***Do you agree with the proposed definition? Why or why not? Should the definition be narrowed to electronic forums only?***

### **COMPENSATION OR COMPENSATION RANGE INFORMATION**

To improve transparency by providing jobseekers with knowledge about the expected compensation for positions to make informed decisions – especially for individuals looking to enter the workforce - employers who advertise a publicly advertised job posting would be required to include in the posting information about the expected compensation or range of expected compensation for the position.

There is regulation-making authority to exempt postings that meet specified criteria and to limit or set conditions on a range of expected compensation.

3. ***Should postings that are for positions with higher compensation not be required to include expected compensation or a range of expected compensation? If so, is \$200,000 a reasonable threshold for an exemption?***
4. ***Is a limit of \$40,000 on the expected range of compensation reasonable? If not, what should the limit on the range be?***

### **CANADIAN EXPERIENCE**

To remove an initial barrier to employment for newcomers entering the workforce and fill labour shortages, employers who advertise a publicly advertised job posting would be prohibited from including in the posting or in any associated application form any requirements related to Canadian experience.

There is regulation-making authority to exempt postings that meet specified criteria.

5. ***Should there be any exceptions?***
6. ***Do you think that a prohibition on requirements related to Canadian***

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***experience in job postings and application forms would help to make Ontario a more attractive place for newcomers by lowering barriers to entry? Why or why not?***

- 7. Education and outreach would be important to raise awareness and understanding about this prohibition across newcomer communities and employers. *Do you have any comments to provide about the approach that should be taken and where the ministry should focus its outreach?***

### **USE OF ARTIFICIAL INTELLIGENCE**

To strengthen transparency for job seekers given that there are many unanswered questions about the ethical, legal and privacy implications that these technologies introduce, employers who advertise a publicly advertised job posting and who use AI to screen, assess or select applicants for the position would be required to include in the posting a statement disclosing the use of the AI.

There is regulation-making authority to exempt postings that meet specified criteria.

- 8. *Should there be exceptions to the requirement to disclose use of AI? If so, for what criteria?***
- 9. *Would an employer's use of AI for recruitment affect your decision to apply for a job advertised by that employer? Why or why not?***

### **BILL 190, THE *WORKING FOR WORKERS FIVE ACT, 2024***

Bill 190 proposes to amend the ESA related to publicly advertised job postings.

### **JOB POSTING INFORMATION**

To improve transparency for jobseekers so that they can make an informed decision on applying for a position, employers who advertise a publicly advertised job posting would be required to include in the posting a statement disclosing whether the posting is for an existing vacancy or not.

There would be regulation-making authority to prescribe other required information in a publicly advertised job posting and to exempt postings that meet specified criteria.

- 10. *Should employers be required to also disclose the approximate timeframe of when a vacancy is expected?***

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- 11. *Should there be an exception to the requirement to disclose if a vacancy exists or not for employers with less than 25 employees?*** (Employers with less than 25 employees are currently exempt from certain ESA requirements, such as the requirements to have a written policy on electronic monitoring and a written policy on disconnecting from work.)
- 12. *The bill would allow for other information requirements to be required in a posting. Is there any other information that should be required to be disclosed in a publicly advertised job posting?***

**DUTY TO INFORM APPLICANTS INTERVIEWED**

To provide for greater transparency in the hiring process and allow individuals who put in the time and effort to interview to not be left in limbo without any knowledge of the outcome, employers would be required to inform job applicants that they interviewed for publicly advertised job postings by providing the applicants with prescribed information within a prescribed time period.

- 13. *Is 30 calendar days a reasonable amount of time for an employer to be required to follow up with an interviewee? If not, how long does it typically take after interviews are completed for a hiring decision to be made?***
- Proposed information to be provided to interviewees could include:
    - Result of recruitment process, i.e.:
      - a. Hiring decision has been made; or
      - b. Hiring decision has not been made.
- 14. *The bill would allow for the manner the information is to be provided to be prescribed. Should the manner be prescribed in regulation?***
- Potential methods for communication of information could include:
    - Telephone call
    - Email message
    - Text message
    - Email message including a link to the status of the recruitment process.
- Are there any other methods that should be captured?***

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**15. *Should there be an exception to the requirement to respond to interviewees for employers with less than 25 employees?***

**16. The bill would allow for a definition of “interview”. Proposed definition:**

- A conversation and/or discussion between the applicant who has applied to a publicly advertised job posting and the interviewer(s);
- where questions are asked, and answers are given to assess an applicant’s suitability for a job; and
- the interviewer(s) would be the employer or representative of the employer.

***Do you agree with the proposed definition?***

**GENERAL QUESTION**

**17. *For any of the regulatory proposals above about the content of publicly advertised job postings and the requirement to inform job applicants that are interviewed for publicly advertised job postings, are there any consequences, benefits, or equity considerations that the government should consider?***

**OTHER: INFORMATION TO BE PROVIDED BY START DATE**

The [\*Working for Workers Act, 2023\*](#), amended the ESA to provide the regulation-making authority to prescribe information that must be provided to an employee or a prospective employee, in writing, and when the information must be provided.

The intent of a regulation would be to provide some certainty to employees starting a new job. Employees and prospective employees would be entitled to receive employment related information in writing by their first day of employment.

**18. The government is considering making a regulation that would require an employer to provide the following information in writing to employees prior to their start date: work location, salary/wage, and expected hours of work. *Is this appropriate information and is there any other information that should be included?***

**HOW TO RESPOND TO THIS CONSULTATION PAPER**

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour, Immigration, Training and Skills Development by:

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STANDARDS ACT, 2000***

**Mail:**

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**Please provide your responses by Friday, September 20, 2024.**

Your input will help us address the critical issues that have been raised in this paper.

*Thank you for taking the time to participate.*

**NOTICE TO CONSULTATION PARTICIPANTS**

Submissions and comments provided to the Ministry of Labour, Immigration, Training and Skills Development (the Ministry) are part of a public consultation process to inform the smooth implementation of these new areas of regulation. This process may involve the Ministry publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

Therefore, you should not include the names of other parties (such as the names of employers, employees, sponsors, apprentices, trainers, etc.) or any other information by which other parties could be identified in your submission.

Further, if you, as an individual, do not want your identity to be made public, you should not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission, this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission (such as that which may be found in a cover letter, on the outside of an envelope, or in the header or signature of an email) will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

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Personal information collected during this consultation is under the authority of the *Employment Standards Act, 2000* and is in compliance with subsection 38(2), 39(1)(h), 41(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*.

If you have any questions regarding the collection of personal information as a result of this consultation, you may contact the Employment Rights and Responsibilities Office, 400 University Avenue, 15<sup>th</sup> Floor, Toronto, Ontario, M7A 1T7, or by emailing [ESA-Regs-Consultation@ontario.ca](mailto:ESA-Regs-Consultation@ontario.ca).