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Ontario Employers May Soon Have to Disclose Salary Ranges and Use of AI in Hiring; May Also be Banned from Using NDAs in Some Cases

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On November 6, 2023, the Ontario government announced (the Announcement) proposed new legislation that, if passed, will require Ontario employers to disclose:

- expected salary ranges in job postings; and
- use of Artificial Intelligence (AI) in the hiring process.

The new legislation is expected to be introduced in the Legislative Assembly in the week of November 14, 2023, as part of amendments to the *Working for Workers Acts*.

The Announcement also indicates that the government will be undertaking consultations to consider a complete ban on the use of Non-Disclosure Agreements (NDAs) in the settlement of some cases.

Disclosure of Salary Ranges in Job Postings

The Announcement notes that the Ontario government's proposal to introduce pay transparency legislation is aimed at closing the gender pay gap, with women in Ontario earning an average of $0.87 for every dollar earned by men. The Announcement also notes that this number is even worse for racialized and Indigenous women.

The Announcement does not include details about the specific obligations that Ontario employers will have with respect to the disclosure of salary ranges in job postings, but we expect them to be similar to what was enacted earlier this year by the British Columbia government under the British Columbia *Pay Transparency Act*. You can read more about British Columbia's pay transparency legislation here.

Currently, only British Columbia and Prince Edward Island have similar pay transparency legislation. If this new legislation is enacted, Ontario will be the third province in Canada to introduce pay transparency legislation. We expect this trend to continue and for other provinces and territories to enact similar legislation.

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Disclosure of AI Use in Hiring

The proposed new legislation will also require Ontario employers to disclose if they use AI in the hiring process to inform hiring decisions. Ontario will be the first province in Canada to enact legislation of this kind.

The Announcement indicates that this new disclosure obligation is in response to the rapid uptake of AI and algorithms by employers and the risks associated with AI use, including privacy and decision-making that is based on biased outcomes.

Potential Ban of NDAs in Workplace Harassment Cases

The Announcement also indicates that the Ontario government will be engaging in consultations to consider a complete ban on the use of NDAs in the settlement of workplace sexual harassment, misconduct, or violence cases. The Announcement indicates that the government will identify legislative options to restrict the use of NDAs while protecting the rights of victims and survivors.

Conclusion

We will continue to monitor the introduction of this new legislation and provide updates as further information becomes available. Please contact a member of our Employment & Labour team if you have any questions.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.