

## Ontario Government May Delay Canada's First Pay Transparency Legislation

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As of the date of writing, Ontario's *Pay Transparency Act, 2018* (the Act) is set to come into force on January 1, 2019. The Act, which we initially reported on back in March 2018 and April 2018, was introduced by Ontario's former Liberal government in March 2018 and is the first legislation of its kind in Canada. It aims to address wage gaps based on gender and promote pay transparency in the workplace by requiring employers to maintain, track and publish employee compensation information.

When asked during a recent interview about the Progressive Conservative government's intentions with respect to the Act, Ontario's Labour Minister indicated that the government was "committed to the principle of pay transparency," but was still considering the timing of the legislation. In light of the PC government's recent move to repeal many of the key employment standards reforms introduced by the former Liberal government under Bill 148 (discussed in more detail here), it would certainly come as no surprise if the PC government were to amend or, at the very least, delay the coming into force of the Act.

With less than two months to go until the Act is scheduled to come into force, employers in Ontario are undoubtedly wondering whether they ought to be preparing for the significant reforms around recruiting, interviewing, and compensation tracking that would be required under the Act. As a reminder, the key requirements of the Act are as follows:

- All publicly advertised job postings must include a salary rate or range.
- Prospective employers are prohibited from asking job candidates about their past compensation.
- Employers are prohibited from reprisal against employees who discuss or disclose compensation information.
- Employers with 100 or more employees are required to track and report annually on compensation gaps based on gender and other prescribed characteristics for the purposes of preparing a pay transparency report, which must be filed with the Ministry of Labour. Pay transparency reports must also be posted online or in at least one conspicuous location in every workplace of the employer.
- Employers with 250 or more employees will be required to submit their first pay transparency report by May 15, 2020, while the deadline for employers with 100 to 249 employees is May 15, 2021.

The Act indicates that employers may be required to track not only compensation data but additional employee characteristics, and that the details surrounding such requirements will be prescribed in the Act's supporting regulations. The Act further provides that the requirement to track employee data and file pay

transparency reports may, under the Act's supporting regulations, extend to certain classes of employers with fewer than 100 employees. To date, however, no such regulations have been enacted. Without any proposed regulations, it is difficult for employers to determine whether the Act's tracking and reporting obligations will apply to them, and which data other than compensation they ought to be monitoring and analyzing for the purposes of the pay transparency reports.

Despite the uncertainty surrounding the scope of the reporting requirements and timing of the Act, it would be prudent for employers in Ontario to take this opportunity to review and modify their existing recruitment, job posting and interview processes as necessary to ensure compliance with the Act in the event that it comes into force as scheduled. Standard job application forms should be updated to ensure that they do not include any requests for past earnings information. Workplace confidentiality policies should be revised to remove any prohibition on employees sharing compensation information. Employers with 100 or more employees should also address any gaps in their compensation policies that relate to gender in advance of the January deadline.

As always, we will be monitoring any developments with respect to the Act and any new regulations as they are enacted and will provide updates as they become available.

For further information, please contact Maria Constantine or any other member of the Employment & Labour Group.

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