

Ontario Needs Clarity on Pay Transparency

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With the new Ontario government's move to [repeal a number of key Bill 148 reforms](#) underway, the next question on the minds of many employers is what will happen to the [Pay Transparency Act, 2018](#).

The Pay Transparency Act, 2018 is legislation that the previous Ontario Liberal government enacted shortly before the 2018 provincial election that saw that government replaced by a Progressive Conservative government. The legislation establishes a number of rules regulating how employers conduct recruitment. In addition, starting in 2020, the act will require larger Ontario employers to track and report compensation based on gender and possibly other demographic characteristics as part of "pay transparency reports" to be filed with the Ministry of Labour.

The act is largely bereft of details as to what types of information an employer will need to report to the government, what characteristics other than gender will be tracked, and how the enforcement process will work. All these key details will be addressed through regulations. These regulations have not been published even

though the legislation will take effect in only two months, on January 1, 2019.

Unlike with Bill 148, the new government has not indicated that it intends to repeal or amend the Pay Transparency Act, 2018 before it takes effect. However, the government may delay the application of the law rather than repeal it entirely as one media outlet has reported. Hopefully, the government will soon provide some clarity on the intended scope of regulations under the Act.

What Can Employers Do in the Meantime?

There's little that Ontario employers can do to plan for filing pay transparency reports at the moment; without even draft regulations, trying to predict what an employer has to track and report would be guesswork. The same applies to collecting the underlying data, as it is possible that some other personal characteristics besides gender will need to be tracked. Nevertheless, Ontario employers may want to begin preparing for certain requirements that are currently scheduled to take effect on January 1, 2019.

Starting on January 1, 2019, the following requirements will take effect:

1. Employers will be prohibited from seeking information about a job applicant's compensation history directly from the employee or through indirect means.
2. Employers that publicly advertise job openings must include "information about the expected compensation for the position or the range of expected compensation for the position" in their job postings.
3. Employers will be prohibited from retaliating against an employee for:
4. making an inquiry to his or her employer about his or her compensation;
5. disclosing his or her compensation to another employee;
6. making inquiries about pay transparency reports filed with the Ministry of Labour (this provision will not be relevant until such reports are required);
7. giving information to the Ministry of Labour about his or her employer's compliance or lack of compliance with the Act; or
8. asking his or her employer to comply with the Act.

The safest assumption for an Ontario employer to make at this time is that these rules will take effect on January 1, 2019. If that turns out not to be the case, the employer will at least be in a better position to comply with any future deadline.

What Sort of Policies or Practices Might an Employer Need to Change?

A few common workplace rules and practices may conflict with the Act as currently drafted.

Rules prohibiting employees from discussing compensation may violate the Act (at least if the rule is coupled with punishment and therefore could constitute retaliation). A rule against discussing compensation may appear in a number of different places in the workplace, such as in handbooks, employment contracts, and other employment policies. Ontario employers may want to examine whether they have any such rules in their workplace documents and consider removing those

requirements if and when the Act takes effect.

Hiring managers and recruiters may want to find different ways to assess what compensation to offer a potential new hire instead of asking about compensation history. Indeed, because of the obligation to provide the anticipated compensation or a range of compensation for a position in public job postings, employers that might otherwise have waited to decide the compensation package for a position until after they selected a candidate may want to turn their attention to this issue long before they conduct interviews.

Employers without formal compensation systems, grids, or levels may find it necessary to create a more formal compensation scheme in order to make compliance with the Act easier to achieve.

No details have yet been provided about what is meant by the Act's requirement that employers provide "information about the expected compensation for the position or the range of expected compensation for the position" in job postings. Most private sector employers do not publish the anticipated compensation for a position (whereas the practice is more common for public sector employers). Private sector employers may want to follow the example of their public sector counterparts when the Act takes effect.

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