

# Ontario Employers - Get Ready to Tell the Government What You Pay Employees . . . or Else

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Thursday, March 8, 2018

The Ontario government recently introduced Bill 203, the Pay Transparency Act, 2018. The goal of this legislation is to increase transparency in pay practices in the hopes of closing the pay gap between male and female employees. [The draft legislation](#) also empowers the Ministry of Labour to impose fines on employers that do not comply with the legislation.

The Ontario government modelled this legislation after similar legislation in the United Kingdom (UK), Australia, and Germany. [As explained by Daniella McGuigan](#), a partner in Ogletree Deakins' London office, under the UK's Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, employers with 250 or more employees in the UK are required to publish statutory calculations each year showing how large the pay and bonus gap is between male and female employees. [More recently](#), the UK's Equality and Human Rights Commission (EHRC) proposed a draft plan for enforcement actions to take against employers that fail to

comply with the UK legislation.

Although the Ontario legislation is in its infancy, here is a summary of the key proposals contained in the draft legislation:

1. Employers will be prohibited from inquiring about an applicant's compensation history, either directly from the employee or through indirect means.
2. Employers that post open positions publicly must include "information about the expected compensation for the position or the range of expected compensation for the position."
3. Employers will be required to report to the Ministry of Labour concerning their pay practices. Although the regulations specifying what must be included in employers' reports have yet to be written, the draft legislation contemplates that employers will be required to report their workforce demographic compositions and differences in compensation in relation to gender and other prescribed characteristics. It is unclear what other prescribed characteristics (such as race or ethnicity) will be included in the regulations, but in theory, the regulations could require reporting on virtually any protected grounds under Ontario's Human Rights Code.
4. Employers will be prohibited from retaliating against employees who:
  1. make inquiries to their employers about their compensation (reprisal for such inquiries could also run afoul of Ontario's recent [Bill 148](#) amendments relating to equal pay);
  2. disclose their compensation to another employee;
  3. make inquiries about a pay transparency report filed with the Ministry of Labour;
  4. give information to the Ministry of Labour about their employers' compliance or noncompliance with the Act; or
  5. ask their employers to comply with the Act.
5. An employee who believes his or her employer has retaliated against him or her in violation of the Act may bring a complaint to the Ontario Labour Relations Board. If the complaining employee is a unionized employee governed by a collective bargaining agreement, he or she may bring a grievance and/or initiate arbitration under the collective agreement. Employers will bear the onus to prove they have *not* breached the Act.
6. The minister of labour will appoint compliance officers. These officers will be empowered to:
  1. conduct compliance audits to determine whether an employer has breached the Act, conduct inspections, and make demands for production of documents (although the powers of compliance officers are not fully enumerated in the legislation, it appears they will have powers similar to

the powers Ministry of Labour inspectors exercise under [the Employment Standards Act, 2000](#)); and

2. issue notices of noncompliance and impose fines and penalties.
  3. If an employer disagrees with a notice of noncompliance issued by a compliance officer, it will be required to apply to the Ontario Labour Relations Board to challenge the notice.
7. There will be a one-year limitation period on employer liability for breaches of the Act.

Many of the details of the legislation and its enforcement mechanisms—such as the exact reporting requirements and how the government will conduct audits and ensure compliance—will be determined by regulations that have yet to be drafted.

A provincial election is expected to take place in June of 2018 in Ontario, so it is possible that the legislation may not be implemented before then.

What is clear is that, if this legislation is enacted as is, Ontario employers will have significant and unprecedented reporting obligations relating to pay practices and proactive salary disclosure that are unlike any other province in Canada. It remains to be seen what changes may be made to the legislation before the final version is tabled.

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**Source URL:** <https://www.natlawreview.com/article/ontario-employers-get-ready-to-tell-government-what-you-pay-employees-or-else>