



Pay Transparency: A Fresh Attempt at Pay Equality?

May 03, 2018

Kelly O'Ferrall

Summary

The Ontario Government has become the first provincial government in Canada to pass pay transparency legislation. The *Pay Transparency Act, 2018* (the “Act”) will come into force January 1, 2019 and, according to an Ontario government [News Release](#) dated April 26, 2018, the Act will “increase transparency in hiring processes and give women more information when negotiating compensation that is equal to their male peers.”

Key Provisions

- **Postings, pay transparency reports and deadlines:**
 - Effective January 1, 2019, Employers will be required to include information about the expected compensation (or range of compensation) in publicly-advertised job postings. Compensation is defined in the Act to include all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle a person to a fixed or ascertainable amount.
 - Employers with 100 or more employees (and certain other prescribed employers) will be required to prepare and submit a pay transparency report to the Ministry of Labour **by May 15 every year**, commencing on:
 - **May 15, 2020** for employers with 250 or more employees; and
 - **May 15, 2021** for employers with between 100 and 250 employees.
 - Pay transparency reports will be required to include information regarding the employer, its workforce composition and differences in compensation with respect to gender and other prescribed characteristics. The format and content of such reports is not yet clear and will be outlined in the regulations to the Act.
 - Pay transparency reports must also be posted by employers online or in a conspicuous place in every workplace where they are likely to come to the attention of employees. In addition, the Ministry of Labour will publish or otherwise make public the pay transparency reports submitted pursuant to the Act.

- **The Act will prohibit employers from:**
 - Proactively seeking compensation history information about an applicant, although applicants may voluntarily (and without prompting) disclose their compensation with a current or former employer. The Act does not prohibit an employer from seeking information about “ranges of compensation or aggregate compensation provided for positions comparable to the position for which the applicant is applying”. It is unclear whether this means that an employer *can* ask an applicant about the range of compensation the applicant would expect.
 - Engaging in or threatening reprisal against employees for inquiring about their compensation, disclosing their compensation to another employee, making inquiries about a pay transparency report, providing information about their employer’s compliance with the Act or requesting that their employer comply with the Act.
- **Compliance and Enforcement:**
 - Compliance officers, with the power to conduct compliance audits and workplace inspections, may be appointed under the Act. Penalties for non-compliance will be set out in regulations to the Act.
 - The Ministry will have the power to publish the name of any person who contravenes the Act, along with a description of the contravention and date of contravention.
 - Complaints will be resolved through arbitration under a collective agreement, if one applies to the complainant, or by the Ontario Labour Relations Board, for non-unionized employees.

Impact

- Employers will no longer be able to view compensation as confidential information within their workplace. Employers can expect that their employees share their compensation with other employees and inquire into differences in pay. Employers will need to understand their compensation practices so as to be able to answer these anticipated inquiries.

Action

- Employers should review their job posting practices to ensure that postings contain the required compensation information commencing in January 2019.
- Job applications should also be reviewed and revised to ensure they do not contain questions regarding a job applicant’s compensation history.
- Although pay transparency reports will not be required for some time, employers with 100 or more employees should plan ahead by reviewing their compensation record-keeping practices, with a view to making it easier to disclose their workforce composition and differences in compensation between men and women when the time comes.

As always, if you have any questions or concerns, please feel free to contact us for more information or guidance.

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