

LABOUR AND EMPLOYMENT

PAY TRANSPARENCY AND PAY EQUITY IN ONTARIO

by *Eric Kay*

Two new laws that seek to enhance pay transparency and pay equity have been passed and, once proclaimed, will impact provincially-regulated and federally-regulated employees and employers.

Bill 3, Pay Transparency Act, 2018 - For Provincially Regulated Employers and Employees

The Ontario government passed Bill 3, Pay Transparency Act, 2018 (PTA), which imposes requirements on Ontario employers and is intended to:

1. promote gender equality and equal opportunity in employment and in the workplace, including equal compensation, through increased transparency of pay and workforce compensation;
2. increase disclosure of inequities related to employment and compensation that women and other Ontarians may experience to encourage removal of these inequities;
3. promote the elimination of gender and other biases in hiring, promotion, employment status and pay practices; and
4. support open dialogue and workplace consultation between employers and employees, including with respect to compensation an equal opportunity.

The PTA has passed, but will not come into force until proclaimed, which has been delayed pending the Government of Ontario's consideration of the public's response to the Ministry of Labour's Pay Transparency Consultation Paper issued on February 19, 2019.

The PTA will establish new pay transparency obligations for provincially-regulated employers:

1. salary rates or ranges must be stated in all publicly advertised job postings;
2. employment candidates may not be asked about their past compensation;
3. reprisals cannot be taken against employees who discuss or disclose compensation;
4. employers with 100 or more employees as well as certain prescribed employers must track and report compensation gaps based on gender and other prescribed characteristics;
5. such employers must post their pay transparency reports online, or at least in one conspicuous place in every workplace of the employers; and

6. the Province will also publish such pay transparency reports, which may be done online.

Employers with 250 or more employees were scheduled to submit their first pay transparency report by May 15, 2020 and employers with 100 to 249 employees were scheduled to submit their first pay transparency report by May 15, 2021.

Ontario already has a Pay Equity Act that requires provincially regulated employers to:

1. determine job classes, including gender and job rate of job classes;
2. determine the value of job classes based on skill, effort, responsibility and working conditions using a gender neutral comparison tool;
3. conduct job comparison for all female job classes using job-to-job and/or proportional value method of comparison;
4. identify and adjust the compensation of underpaid female job classes so that they are paid at least as much as an equal or comparable male job class or classes; and
5. provide payroll summary and proof of payment as required by the Pay Equity Office.

The Budget Implementation Act, 2018 No 2 - For Federally Regulated Employers and Employees

On October 29, 2018, the Canadian Government introduced the Budget Implementation Act, 2018 No. 2 (BI Act #2), which proposed that federally regulated employers be required to evaluate their compensation practice practices to ensure that they are providing equal pay for work of equal value. Although BI Act #2 has been passed, it is not expected to be proclaimed in force until 2020.

Within three years from the date that they become subject to the BI Act #2, federally-regulated employers will be required to establish a pay equity plan. In establishing this plan, such employers will be expected to:

1. identify job classes within their workplace;
2. determine the gender predominance of each identified job class;
3. determine the value of work performed by each job class;
4. identify the level of compensation associated with each job class;
5. compare the compensation associated with the predominantly female job classes with the compensation associated with the predominantly male job classes of similar value; and

6. identify predominantly female job classes that require an increase in compensation and also the date on which the increases in compensation will be payable.

Pay equity plans are to be reviewed and updated at least once every five years. Employers with 100 or more employees will be required to establish a pay equity committee to develop and update the pay equity plan.

Recommendations

Although the PTA and BI Act #2 are not yet in force, it is recommended that employers be proactive and (1) prepare updated policies and practices relating to hiring, pay and promotion; (2) identify compensation gaps based on gender and get ready to make any necessary adjustments, (3) review workplace policies to remove any prohibition on employees sharing compensation information.

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FOR MORE INFORMATION CONTACT:



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