British Columbia’s Pay Transparency Act becomes law

May 24, 2023

Introduction

On May 11, 2023, Bill 13, the *Pay Transparency Act* (the "Act"), received Royal Assent in British Columbia.

Bill 13 was first introduced in the British Columbia Legislative Assembly on March 7, 2023. Perhaps unsurprisingly given the current majority NDP government, the legislation quickly made its way through the legislative process. It passed second reading on March 28, 2023 and subsequently passed third reading on April 25, 2023. Overall, in just 65 days, the legislation was introduced, debated and made into law.

What is the *Pay Transparency Act*?

The Act creates new obligations for employers regarding the collection, disclosure and reporting of pay information.

Overall, the Act aims to promote pay equity and transparency in the workplace. The ultimate goal is to increase transparency in the workplace, making it easier for employees to understand how their pay compares to others in similar roles. It is also intended to give members of the public more information on pay differences in specific organizations as well as in the province at large. This increased transparency may help to address pay disparities based on gender and other factors. However, it will no doubt have significant implications for employers in the province. In this article, we will explore the key takeaways for employers.

Key information about the Act

At the hiring stage, the Act requires employers to specify the expected pay or pay range for publicly advertised job opportunities. It also forbids employers from obtaining information on the pay history of an applicant, whether directly or indirectly, unless this information is publicly available.

The Act further prohibits employers from taking reprisals against employees who discuss pay with the employer, with a fellow employee, or with an applicant. Employees who inquire about the employer's compliance with the Act, such as those who request information on a pay transparency report, are also protected against reprisals. Similarly, employees are protected from reprisals that may arise because of reporting their employer for failure to comply with the Act. "Reprisals" are defined under the Act as dismissals, suspensions, demotions, discipline, harassment or other threatened or actual disadvantages.

Perhaps most notably, the Act requires employers to produce a mandatory annual pay transparency report, which must include data on employee pay along with the gender and other diversity characteristics of their employees. The Government of British Columbia intends to use these reports to identify and address pay disparities based on gender and other factors, and to help ensure that all employees – regardless of gender – are fairly compensated for their work.

Not new in Canada, just the latest addition

British Columbia is just the latest province to implement this type of legislation. For example, Manitoba, Ontario, Québec and New Brunswick all have standalone pay transparency legislation while Prince Edward Island and Nova Scotia have added provisions to their respective employment standards legislation with respect to pay transparency. Notably, federal private sector employers are also subject to pay transparency legislation.

The only provinces that are entirely without pay transparency legislation are Saskatchewan and Newfoundland, although human rights legislation in both provinces necessarily prohibits pay differences on the basis of a protected ground. While Alberta public sector bodies, including the Government of Alberta, are obligated to report salaries over a certain amount, the province still lacks pay transparency legislation with a purpose of moving toward equity in pay in the workplace.

Key takeaways for employers

As of Nov. 1, 2023, all employers in British Columbia will be required to include pay or pay ranges on their public job postings. Other "prescribed information" may also be required, but such information will be defined by regulation. There is no indication yet as to what "prescribed information" may include.

The Minister of Finance has indicated that the Government of British Columbia is aiming to implement regulations accompanying the Act by the Fall of 2023. In addition to clarifying the definition of prescribed information, these regulations should clarify the specific format and content requirements of pay information reports, among other points, which are discussed further below.

Notably, the Minister of Finance has already commented that, in the future, the to be drafted regulation could be updated to ensure it aligns with the new anti-racism data standard currently being developed by the Ministry of Citizens' Services under the *Anti-Racism Data Act*. This would allow the Government of British Columbia to understand

how race, indigeneity and other intersectional factors aggravate the gender pay gap in British Columbia.

As of the date of Royal Assent, employers should aware that the following requirements have come into law:

1. Staggered start dates for compliance with reporting requirements: The reporting requirements under the Act will be implemented on a staggered basis on Nov. 1 of each year. By 2026, all public, private and non-profit sector employers in B.C. with 50 or more employees will be required to publicly report their pay gaps. The reporting obligation will come into effect as follows:

- The Government of British Columbia government and the six largest Crown corporations will be required to produce their first annual pay transparency reports by Nov. 1, 2023, which will be released prior to the year's end.
- All employers with 1,000 or more employees must produce their first reports by Nov. 1, 2024.
- All employers with 300 or more employees must produce their first reports by Nov. 1, 2025.
- All employers with 50 or more employees must produce their first reports by Nov. 1, 2026.

This means that employers will need to start collecting data and putting systems in place to ensure compliance well in advance of the deadline. For the purposes of the Act, the size of an employer is determined based on its number of employees on January 1 of each year.

2. Content of reports: Pay transparency reports must contain data on the gender and other diversity characteristics of an employer's employees along with their salaries, bonuses, and other compensation. This data, which is disclosed on a voluntary basis by the employee, will be used to identify and address pay disparities based on gender and other factors. Employers must publish their pay transparency reports on a publicly accessible website. If the employer does not have a website, they must make copies of the report available at all their workplaces and produce copies of the report upon request from a member of the public. Currently, the Government of British Columbia is in collaboration with the BC Public Service Agency and the six largest Crown corporations that will be required to report first in the Fall of 2023 with respect to details on what must be included.

3. Non-compliant employers may be highlighted in annual summary report: While there are not formal compliance and enforcement mechanisms under the Act, employers who fail to comply with the reporting requirements may be listed as non-compliant in the Government of British Columbia's annual summary report. The Government of British Columbia will follow up with non-compliant employers to ensure future compliance. In the words of the Minister of Finance during third reading of this legislation:

> "As we've been saying, the government needs to publish an annual report on June 1 each year. It'll show the pay gap, it will describe the trends that we're seeing, and it will call out the non-compliant. It can also be used to highlight successes of the past year."

4. Potential challenges: While the Act aims to promote pay equity and transparency, it may also present some challenges for employers. For example, employers may need to invest in new systems and processes to collect, report the required data, and may need to address any pay disparities that are identified through the reporting process year-to-year. Employers must take note of the deadline for their first transparency report depending on their size in order to implement these changes within the appropriate timeframe.

Key takeaway

The Act is an important piece of legislation that aims to promote pay equity and transparency in the workplace. Employers in British Columbia will need to be mindful of the reporting requirements, compliance deadlines, and should take steps to ensure that they meet their obligations for data collection and reporting. While the Act may present some challenges for employers, it also presents an opportunity to promote fairness and equality in workplaces across British Columbia.

Resources

The Government of British Columbia has created a webpage where some of the basic requirements of the Act are discussed, Frequently Asked Questions are answered and the Discussion Paper with background information on pau transparency and the gender pay gap is linked. The webpage can be accessed here.

For more information on how the Act could impact you and your business, please reach out to your BLG lawyer or one of the key contacts listed below.

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