

Salary range and AI-use disclosures requirements likely coming soon to Ontario

November 07, 2023

Employers will need to keep a close eye on the Ontario legislature, which returns the week of November 14, as the Ontario Government has pre-emptively announced new legislation imposing new obligations on employers. In brief, on Nov. 6, 2023, the [Ontario Government announced](#) that it will introduce legislation that, if passed, will require employers to include expected salary ranges in job postings and disclose if artificial intelligence (AI) is used in the hiring process. The Government also announced that it will be conducting consultations on ending the use of non-disclosure agreements (NDAs) in the settlement of cases of workplace sexual harassment, misconduct or violence.

Disclosing salary ranges in job postings

The stated goal of requiring employers to include expected salary ranges in job postings is to close the gender pay gap and to provide workers with more information to guide their career search. Details of this proposed requirement have not yet been released. The full text of the proposed legislation is expected to be introduced in the week of November 14 as part of amendments to the *Working for Workers* series of acts.

This will not be Ontario's first attempt to introduce a form of pay transparency legislation. In 2018, the Ontario Government introduced the *Pay Transparency Act, 2018*, which sought to prohibit employers from seeking pay history information from applicants and to require employers to include the expected pay or range of pay on publicly advertised job postings. While *Pay Transparency Act, 2018* was scheduled to come into force in January 2019, it was subsequently indefinitely postponed.

Both British Columbia and PEI already require employers to publish expected pay ranges on publicly advertised job postings and prohibit employers from seeking pay history information from applicants. Nova Scotia also prohibits employers from seeking pay history information from applicants. British Columbia's pay transparency requirements just recently came into force on Nov. 1, 2023 via the *Pay Transparency Act*, which we have [written about here](#). PEI and Nova Scotia do not have standalone pay transparency legislation; rather, their pay transparency requirements were added to their respective employment standards legislation.

Disclosing the use of AI in the hiring process

The Ontario Government's proposed disclosure obligation with respect to the use of AI in the hiring process is stated to be in response to growing concerns about the ethical, legal and privacy implications of AI. At this stage, it is unclear whether employers will only be required to disclose the fact that AI is used in the hiring process, or if the obligations will require employers to provide more detailed disclosure regarding the use of AI including, for example, how, in what circumstances, and for what purpose AI is used in hiring process, similar to the rules regarding electronic monitoring policies.

It is anticipated that more details on this requirement will be included in the full text of the proposed legislation.

Potential ban of NDAs

The potential ban of NDAs in the settlement of cases of workplace sexual harassment, misconduct or violence is only at the consultation stage. In its November 6 announcement, the Government stated that the purpose of these consultations is to identify legislative options to restrict the use of NDAs to "help end workplace misconduct and hold abusers to account" while also protecting the rights of victims and survivors.

It is common practice for employers to include confidentiality, or non-disclosure, clauses in employment related settlement agreements. If legislation which restricts the use of confidentiality or non-disclosure clauses in workplace sexual harassment, misconduct or violence cases, employers could be precluded from including a term in the settlement agreement which prohibits the employee or former employee from discussing the alleged sexual harassment, misconduct or violence.

The Ontario Government has not yet announced how interested parties may participate in this consultation process.

Other proposed changes

The government also has announced that it will introduce changes to:

1. Clarify vacation pay provisions to ensure employees are aware that their written agreement is required if vacation pay is paid in any way other than a lump sum before their vacation; and
2. The *Digital Platform Workers' Rights Act, 2022* that would create a regulatory authority to provide greater flexibility on how pay based on minimum wage must be determined.

Employers will need to take steps to comply with the new legislation, potentially including new policies and reporting. We expect that more details about this will be provided once the legislation is tabled in the legislature. Employers can treat the recent Government announcement as a heads up of things to come.

We will continue to monitor the introduction of this new legislation. Please contact your BLG lawyer or any member of our [Labour and Employment Group](#) if you have any questions.

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