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PUBLICATION

The Countdown is on to Pay Transparency in Ontario

Date: May 29, 2018
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Original Newsletter(s) this article was published in: Employment Update: May 2018

In one of its last acts prior to the issuing of writs for the upcoming general election, the Ontario government passed the *Pay Transparency Act, 2018* (the "Act") on April 26, 2018.

The new legislation is scheduled to come into force on **January 1, 2019**, with some of the requirements being phased in during subsequent years. According to a news release issued by the government, the Act is intended to "increase transparency in hiring processes and give women more information when negotiating compensation that is equal to their male peers". However, the legislation also contemplates that the same approach could be applied to other grounds of discrimination that have resulted in inequities in hiring and pay practices.

Ontario is the first province in Canada to pass such legislation, which is already in place in countries such as Australia, Germany, Iceland and the United Kingdom, as well as certain states in the United States.

The key provisions of the Act include the following:

- **New obligations for employers:**
- **Job posting requirements:** Employers that advertise a publicly advertised job position will be required to include information about expected compensation, or the range of expected compensation, for the posted position. "Compensation" includes payments and benefits of a fixed or ascertainable amount.
- **Pay transparency reports:** Employers with 100 or more employees (or as prescribed) will be required to prepare and submit a "pay transparency report" ("Reports") to the Ministry of Labour. The Reports will be required to include information about the employer, its workforce composition, and differences in compensation in its workforce with respect to gender and other prescribed characteristics. Employers will be required to post their Reports online or in the workplace, and the Ministry of Labour will also make the Reports publically available. The requirement will be phased in according to the following schedule:
- By May 15, 2020 for employers with 250 or more employees
- By May 15, 2021 for employers with between 100 and 250 employees
- **New prohibitions:**

- **Seeking compensation history:** Employers will be prohibited from seeking compensation history information from an individual who has applied for a position, directly or through an agent. The job applicant will be permitted to "voluntarily and without prompting" disclose their own compensation history information to a prospective employer if they wish. Employers will still be permitted to engage in "benchmarking" activities in order to obtain information about the ranges of compensation for comparable positions, or to obtain compensation history information from publicly available sources.
- **Anti-reprisal:** Employers will be prohibited from intimidating, dismissing or otherwise penalizing employees who:
- make compensation inquiries to their employer;
- disclose their compensation to another employee;
- inquire about Reports;
- provide information to the Ministry of Labour about their employer's compliance with the Act (or lack thereof); or
- ask their employer to comply with the Act or any prescribed regulations.

Potential implications for Ontario employers

From the perspective of the government, the gender wage gap in Ontario has remained substantially similar for the past decade, despite the long-standing existence of the "equal pay for equal work" provisions in employment standards legislation and the prohibition on discrimination in employment based on gender. The Act is aimed at addressing the issue through more indirect means.

In addition to expanding employers' obligations when hiring employees and determining compensation, the Act will require a culture shift for employees and employees alike. The clear intent of the Act is to give prospective employees more leverage in addressing the issue of compensation, as they will have greater visibility into the employer's pay scales while being able to maintain the privacy of their own personal compensation history. Employers will need to adjust to the new landscape in which employee compensation is no longer a confidential matter between each employee and their employer.

Employers with "positive" Reports are likely to use the Reports to give them an edge in recruitment, while it can be anticipated that employers with "negative" Reports will find themselves the target of negative publicity.

Employers should begin reviewing their processes and templates regarding job postings, hiring practices and compensation with a view to being prepared for the changes coming in 2019.