

# Employment Update: Pay Transparency, the Use of AI in the Hiring Process, and More

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Co-Authors: Sarah Mills , Christopher McClelland, Maria Kotsopoulos

## Pay Transparency

On November 6, 2023, the government of Ontario announced plans to introduce pay transparency legislation that, if passed, would require Ontario employers to include expected salary ranges in job postings. According to the Ministry of Labour's [News Release](#), only 37% of online job postings in Ontario include salary information. This move is aimed at closing the gender pay gap, which in Ontario stands today at women earning an average of \$0.87 for each dollar earned by men.

The anticipated Ontario pay transparency legislation is part of a growing trend in Canada. In May 2023, British Columbia passed its own *Pay Transparency Act*, requiring BC employers to include salary or wage information on public job postings. BC's *Pay Transparency Act* also prohibits BC employers from asking job applicants about their previous salaries or wage rates with other employers and prohibits reprisals against employees who disclose information about their pay to other employees and job applicants.

## Use of AI in the Hiring Process

In addition, the proposed legislation would also make Ontario the first jurisdiction in Canada to require employers to let job candidates know if artificial intelligence (AI) will be used during the hiring process. This move is in response to increasing concerns about the ethical, legal and privacy implications of AI tools and algorithms, which according to the Ontario government are being adopted by Ontario businesses at a rapid rate.

## Non-Disclosure Agreements

Further, the government of Ontario announced that it will be conducting consultations on banning the use of Non-Disclosure Agreements (NDAs) in settlement cases involving workplace sexual harassment, misconduct and violence. The government News Release states that 7 in 10 workers have reported experiencing a form of harassment or violence in the workplace, and

that rate is even higher for women and gender-diverse workers. This move is intended to protect workers and address mistreatment and abuse in the workplace.

### Additional Proposed Changes

The Ontario government is also proposing the following changes to allow for greater alignment with the *Employment Standards Act, 2000 (ESA)*:

- Clarifying that a written employment agreement is necessary if employees are to receive their vacation pay in any form other than a lump sum prior to their vacation;
- Amending the *Digital Platform Workers' Rights Act, 2022* to “create a regulatory authority to provide greater flexibility on how pay based on minimum wage must be determined.”

The above noted changes are part of a larger package that, if passed, would expand on the changes introduced in the *Working for Workers Acts, 2021, 2022 and 2023*. We will continue to monitor the status of these changes as the anticipated Bill proceeds through the Legislative Assembly of Ontario and provide further updates once they become available.

### Now in Effect: Bill 79 the Working for Workers Act, 2023

Bill 79, the [Working for Workers Act, 2023](#) came into force upon receiving Royal Assent on October 26, 2023. Among the various changes to Ontario employment legislation are the increased corporate fines under the *Occupational Health and Safety Act, (OHSA)*, which are the highest in Canada for a single contravention. Subsection 66(2) of the *OHSA* was specifically amended to increase the maximum corporate fine from \$1,500,000 to \$2,000,000 per charge. While always important, this significantly increased penalty should lead to employers further assessing their health and safety programs, and ensuring that all reasonable precautions are taken and well-documented to ensure safety in the workplace.

Bill 79 also implemented the following additional changes:

1. Mass Terminations: Special rules have historically applied where an employer terminates more than 50 employees in a four-week period at an employer’s “establishment”. Bill 79 expanded the definition of “establishment” under the *ESA* to include remote workers.
2. Reservist Leave: Bill 79 expanded the entitlement of reservist leave to employees who are in treatment, recovery, or rehabilitation in respect of a physical or mental health illness, injury, or medical emergency that resulted from their involvement in a Canadian Forces operation or activity. Additionally, the period of employment to qualify for reservist leave has been reduced from 3 months of consecutive service to 2 months.
3. Disclosure of Information in Hiring: Bill 79 provided regulation making authority with regards to information that employers will be required to provide to prospective

employees, such as pay, work location, hours of work, etc. Once the regulations are in force, further particulars will be provided, which employers will be mandated to follow.

4. *Employment Protection for Foreign Nationals Act*: Bill 79 also imposed significantly higher maximum fines for individuals and corporations convicted of taking possession of or retaining a foreign national's passport or work permit. Individual offenders will be liable for a fine of up to \$500,000 and/or imprisonment of up to 12 months. Convicted corporations will be liable for a fine of up to \$1,000,000.

For more information about these changes, or for specifically tailored advice, please reach out to a member of the Blaneys' [Labour and Employment Group](#).

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